

First Supplement to Memorandum 2001-47

Uniform Unincorporated Nonprofit Association Act: Property Issues

Memorandum 2001-47 discusses a number of issues relating to the property powers of an unincorporated association. The memorandum points out that it is uncertain whether existing Corporations Code Sections 20001 and 20002 are intended to apply to all unincorporated associations, including those organized for profit. This supplement provides additional information regarding that issue. It also briefly discusses Corporations Code Section 20000, which relates to property but was not discussed in the main memorandum.

APPLICATION OF SECTIONS 20001 AND 20002

Corporations Code Section 20001 (capacity of unincorporated association to own property and engage in property transactions) and the first paragraph of Section 20002 (execution requirements for transfer of property by unincorporated association) both use the term “unincorporated association” without defining it. The unlimited nature of the term “unincorporated association” suggests that it is intended to include both for-profit and nonprofit associations. This is especially true considering that other sections use the limited term “nonprofit association” or expressly preclude specific forms of for-profit association. See e.g., the second paragraph of Section 20002 (procedure for recording statement of authority to transact on behalf of unincorporated association, *other than a partnership*).

The proposition that Sections 20001 and 20002 were intended to apply to both for-profit and nonprofit unincorporated associations is supported by the sections’ legislative history. Chapter 962 of the Statutes of 1972 renumbered and relocated a number of provisions relating to unincorporated associations. A letter explaining the bill, from its author to the Governor, includes the following passage:

Under the amendments made in 1970 to Sections 21200 and 21201 of the Corporations Code [now Sections 20001 and 20002], unincorporated associations operating for profit were allowed to hold and deal with property, and particular provisions were then inserted to govern their dealings with real property. Prior to such

amendments, only unincorporated "benevolent or fraternal" associations were authorized to hold and deal with property in the association name.

Unfortunately, the above sections were left in Part 1 of Title 3 of the Corporations Code, and Part 1 is entitled "Nonprofit Associations", a title which is obviously a misnomer when dealing with associations which operate for profit. At best, this is confusing. Therefore, SB 1065 was introduced to do the following:

1. The provisions of existing law relating *solely* to nonprofit associations are kept in the Part so headed, now renumbered as "Part 2";

2. Those provisions of existing law which, since 1970, relate to either profit or nonprofit associations are transferred without substantive change into a *new* Part 1, entitled "In General".

See letter from Senator John W. Holmdahl to Governor Ronald Reagan (August 2, 1972) (on file with Commission) (emphasis in original). Under Senator Holmdahl's bill, former Sections 21200 and 21201 were moved to the new Part 1 and renumbered as Sections 20001 and 20002. Thus, it is clear that Senator Holmdahl understood and intended that Sections 20001 and 20002 apply to for-profit associations.

However, it is still not clear whether the general property rules provided in Sections 20001 and 20002 apply to for-profit associations that are subject to entity-specific statutes governing property powers. For example, Section 17052(f) authorizes a limited liability company to record a statement of authority to engage in property transactions on its behalf. This is similar, though not identical to the statement of authority authorized by Section 20002, which by its terms is applicable to all unincorporated associations other than a partnership. The specific provision governing a limited liability company should probably be interpreted as superseding the more general provision in Section 20002.

The staff recommends that conflicts between entity-specific property rules and the general property rules provided in Sections 20001 and 20002 be resolved by adding a general provision to the "Unincorporated Associations" title, expressly providing that its provisions are subordinate to entity-specific provisions. If the Commission approves of this approach, the staff will draft a general subordination provision for the Commission's consideration at a later meeting.

MEMBERSHIP INTEREST IS PERSONAL PROPERTY

Section 20000 provides: "The interest of a member of an unincorporated association is personal property." The purpose of this provision, which was added by Senator Holmdahl's bill in 1972, is explained in his letter to Governor Reagan:

This simply conforms the law with respect to unincorporated associations to that of partnership law in this regard. Section [16502] of the Corporations Code makes the same statement with respect to partnerships, and the same reasons apply to associations. One example will make the problem clear. Under existing law, if a creditor of a member of an unincorporated association reduces the debt to judgment, a judgment lien will attach to *all* real property of the judgment debtor in any county in which it is properly recorded. If, as is now the case, the interest of a member of an association in real property owned and held by the association is a part interest in the real property itself, that lien automatically attaches to the association's realty and thus effectively prevents the association from dealing with it until such lien can be removed. This is true even though the association had nothing whatever to do with the cause of the debt.... This situation is extremely unfair to both the association itself and its nonculpable members, and can so tie up association property as to work great hardships. Hence, SB 1065 would simply define the interest of a member to be personalty, without regard to the type of property the association owned. His interest is not in the property itself, but rather in the association as a whole.

This new provision, it should be pointed out, will not operate to defraud creditors or be a shield to the payment of debts. Any obligations incurred by the association itself, including those incurred via one of its members as agent of the association, will attach to association property. The interest of an individual member can still be charged for his debts, just as can be done today in a partnership situation. It only prevents tying up the property of all for the obligations of one.

The stated policy for Section 20000 is reasonable and **the staff recommends** that the provision be continued without change.

Respectfully submitted,

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