

Second Supplement to Memorandum 2001-47

Uniform Unincorporated Nonprofit Association Act: Property Issues

Memorandum 2001-47 discusses the property powers of an unincorporated association. R. Bradbury Clark, of the State Bar Nonprofit Organizations Committee, has made a number of informal suggestions on how to improve the draft language presented in that memorandum. These suggestions are discussed briefly below.

PROPERTY POWERS

Proposed Corporations Code Section 18100 would restate existing law providing that an unincorporated association may acquire, hold, manage, encumber, and transfer property as necessary for its business purposes and objects. Mr. Clark suggests that property transactions “incidental” to an association’s purposes should also be authorized. This would avoid any potential dispute over how strictly the word “necessary” should be construed. He also proposes that the word “business” be stricken from the phrase “business purposes and objects” — the purposes and objects of nonprofit associations will not necessarily be “business” purposes and objects. **The staff recommends** that these changes be made. The staff would also make minor changes to improve the parallelism between subdivisions (a) and (b), and between this section and proposed section 18105. These changes could be made by revising Section 18100 as follows:

§ 18100. Property powers

18100. (a) An unincorporated association in its name may acquire, hold, manage, encumber, or transfer an ~~estate or~~ interest in real or personal property as necessary or incidental to achieve its ~~business~~ purposes and objects.

(b) An unincorporated association may acquire an ~~estate or~~ interest in real or personal property by will or other donative transfer, and may hold, manage, pledge, encumber, or transfer that property, whether or not the property is necessary ~~for the business purposes or objects of the association~~ or incidental to its purposes and objects.

Comment. Section 18100 continues former Section 20001 without substantive change, except that the former provision requiring disposition of unnecessary property acquired by will or deed within 10 years is not continued. Under this section, an unincorporated association has all of the powers granted under former Section 20001, including the power to “purchase, receive, own, hold, lease, mortgage, pledge, or encumber, by deed of trust or otherwise, manage, and sell” property.

A parallel change would be made to the Comment to proposed Section 18105:

Comment. Section 18105 is drawn from Section 208(a). It protects third parties from claims that an action of an unincorporated association is unauthorized or improperly executed. See Sections 18100(a) (limiting property powers of unincorporated association to those necessary for business or incidental to its purposes and objects of association), 18110 (requirements for transfer of real property by unincorporated association).

AUTHORITY TO TRANSFER

Proposed Corporations Code Section 18110 would continue existing law governing who may transfer real property on behalf of an unincorporated association. Mr. Clark is concerned that the phrase “transfer affecting title” in the introductory clause of Section 18110 may be ambiguous or too narrow. This could perhaps be addressed by revising Section 18100 as follows:

§ 18110. Transfer of real property

18110. Except as otherwise provided by statute, ~~a transfer affecting title to real property owned by an unincorporated association shall be executed by one of the following either of the following may acquire, encumber, or transfer an interest in real property on behalf of an unincorporated association:~~

(a) The president or other head and the secretary, recording secretary or other comparable officer.

(b) A person specifically designated by a resolution duly adopted by the association or by a committee or other body duly authorized to act by the governing instruments of the association.

Comment. Section 18110 continues the first paragraph of former Section 20002 without substantive change, except that the special, more restrictive, rule for fraternal or benevolent societies and labor organizations has not been continued. These organizations are now subject to the same rule as any other form of unincorporated association.

The revised language also more closely parallels proposed Section 18100. **The staff recommends** that these changes be made.

STATEMENT OF AUTHORITY

Proposed Corporations Code Section 18115 would continue existing law providing that an unincorporated association may record a statement of authority to transfer real property on its behalf. A bona fide purchaser or encumbrancer for value can rely on the authority of a person named in such a statement, unless another statement has been recorded disputing the authority of the person named in the first statement. Mr. Clark suggests that Section 18115 is not sufficiently clear as to timing. The staff agrees. As drafted, the provision could be read to permit retroactive repudiation of a recorded statement of authority, perhaps defeating the protection of a bona fide purchaser who relied on that statement of authority. **The staff recommends** that Section 18115 be revised to address this problem (and to make a few minor technical changes), as follows:

§ 18115. Recorded statement of authority to transfer

18115. (a) Except as otherwise provided by law, an unincorporated association 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 transfer or encumber real property owned or held by the association.

(b) 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 transfer or encumber real property unless, prior to the transaction at issue, 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.

(c) As used in this section, “unincorporated association” has the meaning provided in Section 24000, except that “unincorporated association” does not include a partnership.

Comment. Section 18115 continues the second paragraph of former Section 20002 without substantive change.

Former Section 20002 incorporated definitions set out in former Section 15010.5, which was repealed. The obsolete definitions have not been continued. The term “conveyance” has been replaced with the term “transfer.” This is a nonsubstantive change.

DISPOSITION OF ASSETS OF TERMINATED ASSOCIATION

Proposed Corporations Code Section 18120 would establish a statutory rule for the disposition of the assets of a terminated unincorporated association. One of the constraints on distribution of assets is the possibility that the assets are subject to a charitable trust. In such a case, the assets must be distributed in accordance with the trust. The language addressing this point in proposed Section 18120 was drawn from a similar provision applicable to mutual benefit corporations. See Corp. Code § 8716. Mr. Clark notes, and the staff agrees, that the language is somewhat awkward inasmuch as it implies the existence of a written trust instrument. In many cases a charitable trust is imposed as a matter of law and there is no written trust instrument. **The staff recommends** that Section 18120 be revised to use more general language.

After reviewing Section 18120, **the staff recommends** that one further change be made — it should be made clear that the distribution rule only applies to assets that remain after the association has satisfied any other obligations. The changes discussed above could be made by revising Section 18120 as follows:

§ 18120. Disposition of assets of terminated unincorporated association

~~18120. On termination of the existence~~ After winding up the affairs of a nonprofit association, the any remaining assets of the association shall be distributed as follows:

(a) Assets that are held ~~under a~~ in trust shall be distributed ~~according to the provisions of the~~ in accordance with the trust.

(b) Assets that are not held ~~under a~~ in trust shall be distributed ~~according to~~ in accordance with the governing documents of the association. If the governing documents do not address provide the manner of distribution of the assets, they shall be distributed pro rata to the members of the association.

Comment. Section 18120 is new. It provides rules for distribution of assets of a nonprofit association that ~~has ceased to exist~~ remain after the association has wound up its affairs.

Subdivision (a) governs distribution of assets held in charitable trust. See *Lynch v. Spilman*, 67 Cal. 2d 251, 260, 431 P.2d 636, 642, 62 Cal. Rptr. 12, 18 (1967) (“property transferred to a corporation or other institution organized for a charitable purpose without a declaration of the use to which the property is to be put, is received and held by it ‘in trust to carry out the objects for which the organization was created.’”) (citations omitted).

Subdivision (b) governs assets that are not subject to a trust. It is consistent with the holding in *Holt v. Santa Clara County Sheriff’s Benefit Ass’n*, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180, 185 (1967) (“It is the general rule that upon the dissolution of a voluntary association its property should be distributed pro-rata among its members unless otherwise provided by its constitution or by-laws.”) (citations omitted).

Respectfully submitted,

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