

Memorandum 2002-6

Uniform Unincorporated Nonprofit Association Act: Discussion of Issues

The Commission has decided to recommend the reorganization and improvement of existing law governing unincorporated associations, rather than adoption of the Uniform Unincorporated Nonprofit Association Act ("Uniform Act"). This project is proceeding incrementally, with the Commission considering different subject areas and tentatively approving proposals before moving on to the next subject area. Once all of the subject areas have been considered, the staff will prepare a draft tentative recommendation for the Commission's consideration.

This memorandum presents a staff draft of selected provisions, reflecting decisions made by the Commission at its September 2001 meeting. Issues that have arisen in implementing those decisions are discussed below. Except as otherwise indicated, all statutory references in this memorandum are to the Corporations Code.

APPLICATION OF PROPOSED LAW

Throughout the course of this study, questions have arisen as to whether the unincorporated associations law should apply to for-profit associations or should be limited to nonprofits. The concern is that the unincorporated associations law should apply broadly, but should not conflict with statutes that govern particular forms of unincorporated entities. For example, limited liability companies, though unincorporated, are already subject to comprehensive statutory regulation (see Section 17000 *et seq.*) and should not be subject to the different rules applicable to unincorporated associations generally.

The staff draft addresses this concern by adding a broad definition of "unincorporated association" and two provisions relating to the application of the proposed law:

§ 18025. "Unincorporated association" defined

18025. (a) "Unincorporated association" means an unincorporated organization of two or more persons joined by

mutual consent for a common purpose and operating under a common name.

(b) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish an unincorporated association, even if the coowners share use of the property for a common purpose.

(c) As used in this section, “person” includes a natural person, corporation, partnership or other unincorporated organization, government or governmental subdivision or agency, or any other legal or commercial entity.

Comment. Section 18025 is similar to Section 1(2) of the Uniform Unincorporated Nonprofit Association Act. See also *Barr v. United Methodist Church*, 90 Cal. App. 3d 259 (1979) (“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.”).

Subdivision (b) is drawn from Section 16202(c)(1) (formation of partnership).

Subdivision (c) continues former Section 24000(b) without change.

See also Sections 18050 (group subject to title for reasons of fairness), 18055 (exempt entities).

§ 18050. Group subject to title for reasons of fairness

18050. Where fairness requires, a court may treat an unincorporated organization as an unincorporated association under this title.

Comment. Section 18050 recognizes that fairness may require that a group be subject to this title, whether or not it meets the definition of an “unincorporated association.” See *Barr v. United Methodist Church*, 90 Cal. App. 3d 259 (1979) (“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.”).

See also Section 18025 (“unincorporated association” defined).

§ 18055. Exempt entities

18055. This title does not apply to any of the following entities:

(a) A government or governmental subdivision or agency.

(b) A partnership, limited liability company, or other association formed pursuant to statute.

Comment. Subdivision (a) of Section 18055 is drawn from former Section 24000.

Subdivision (b) provides that the law of unincorporated associations does not apply to an entity formed under another statute. This is similar to the rule that a for-profit entity is not a partnership if it is formed pursuant to a statute other than the Uniform Partnership Act of 1994, a predecessor statute, or a similar statute of another jurisdiction. Section 16202(b).

These provisions are discussed below.

Definition

The basic definition in proposed Section 18025(a) is drawn from Section (1)(2) of the Uniform Act. The additional requirement that an organization operate under a common name is drawn from *Barr v. United Methodist Church*, 90 Cal. App. 3d 259 (1979). *Barr* provides that to be an unincorporated association, an entity must operate under a common name *and* fairness must require that it be recognized as a legal entity. Under the proposed definition, an unincorporated association need only operate under a common name. Use of a common name suggests that a group intends to operate as an entity and holds itself out as such to the public. The fairness analysis is not required.

However, there may be cases where a group does not operate under a common name, yet fairness would require that it be treated as an unincorporated association. Proposed Section 18050 has been added to authorize a court to treat a group as an unincorporated association where fairness requires. This preserves the fairness element from *Barr*, but recasts it as an independent equitable basis for treating a group as an unincorporated association, rather than as an element of the general definition.

Subdivision (b) of the proposed definition, providing that joint ownership of property does not by itself create an unincorporated association, is drawn verbatim from the definition of “partnership” (which is itself based on Uniform Act language). See Section 16202(c)(1). The concept behind this provision is sound, but the Commission may wish to simplify its language, thus:

(b) Joint tenancy, tenancy in common, community property, or other forms of property tenure does not by itself establish an unincorporated association, even if coowners share use of the property for a common purpose.

This would better reflect the forms of property tenure recognized in California, but would be inconsistent with the Uniform Partnership Act language.

Government Entities

Proposed Section 18055(a) exempts government entities from the proposed law. The language in the subdivision is drawn from the existing definition of “unincorporated association,” which was originally enacted on Commission recommendation. See Section 24000(a). It has been recast as a substantive provision, rather than as part of the proposed definition.

Entities Formed Pursuant to Statute

Proposed Section 18055(b) exempts from the proposed law any association formed pursuant to statute. This parallels the default nature of the definition of “partnership,” which includes any association of coowners carrying on a business for profit, other than one formed under another statute. See Section 16202(b). Thus, if an association is formed pursuant to statute, it is the kind of entity formed under that statute (e.g., a limited liability company). If an association is organized by coowners to carry on a business for profit, and is not formed under a specific statute, it is a partnership. Any other unincorporated organization would be an “unincorporated association.”

One problem with the system described above is that there are a few types of business entities that are created under common law authority, rather than pursuant to an authorizing statute. These entities would apparently not be excluded from the statutory definition of “partnership.” However, they differ from partnerships in significant ways and probably should not be treated as partnerships for all purposes (and in some situations have been expressly distinguished from partnerships by the courts). They are the business trust, real estate investment trust, and joint stock company.

Business Trust

A business trust is a form of business organization created by declaration of trust, whereby property is conveyed to trustees to be held and managed for the benefit of persons holding transferable certificates representing shares of the beneficial interest. Profits are shared ratably between the certificate holders. The trust instrument typically shields beneficiaries from liability resulting from business activity. See generally *Goldwater v. Oltman*, 210 Cal. 408, 292 P. 624

(1930). As a form of trust, one would expect a business trust to be subject to the Trust Law. However, the definition of “trust” in the Probate Code specifically excludes “business trusts that are taxed as partnerships or corporations” (Prob. Code § 82(b)(6)) and business trusts are subject to corporate income taxes (Rev. & Tax. Code §§ 23038, 23501, 23731).

Real Estate Investment Trust

A real estate investment trust is a specialized form of business trust that is principally involved in real property transactions. See Section 23000; 26 U.S.C.A. § 856 (“real estate investment trust” defined). Again, one might expect an entity based on a declaration of trust to be governed by the trust law. However, the definition of “trust” also excludes “investment trusts subject to regulation under the laws of this state or any other jurisdiction.” Prob. Code § 86(b)(7). Although of common law origin, the real estate investment trust is subject to special rules under federal tax law. They are also subject to minor regulation under California statutes. See Sections 23001-23006 (which are part of the existing “Unincorporated Associations” title).

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 “directors” or “managers.” 15 Cal. Jur. 3d Corporations §§ 540-541 (1983). California law imposes criminal penalties for various frauds involving a “joint stock association.” See Sections 22000-22003 (which are part of the existing “Unincorporated Associations” title).

Discussion

Each of the entities described above is of common law origin. Although a real estate investment trust and joint stock company are subject to some statutory regulation, it would be a stretch to conclude that they are formed pursuant to statute. One can therefore argue that these entities fall within the statutory

definition of “partnership” (with some uncertainty as to whether a business trust is an association of “coowners,” since title to the business assets is actually held by a trust rather than by the trust beneficiaries).

However, some of the central features of these entities are inconsistent with partnership law. The limited shareholder liability common to business trusts (and imposed by statute on a real estate investment trust) is inconsistent with the joint and several liability rule applicable to partners (although the partnership rule can be overridden where “otherwise agreed by the claimant or provided by law”). See Section 16306. The separation between ownership and control that is central to business trusts (where beneficiaries may not control the business) and joint stock companies (where the business is managed by agents) is inconsistent with the partnership model, where each partner is an agent of the business. See Sections 16301 (each partner an agent of business), 16401(f) (each partner has equal rights in management and conduct of partnership business). Free transferability of beneficial ownership, found in all of the entities described above, is inconsistent with the partnership rule that “a person may become a partner only with the consent of all of the partners.” See Section 16401(i).

For the reasons discussed above, it would be inappropriate to apply the Uniform Partnership Act to a business trust, real estate investment trust, or joint stock company. The fact that these entities arguably fall within the statutory definition of “partnership” appears to be a defect in that definition. **The Commission may wish to recommend changes to the definition of “partnership” to exclude these entities.** A straightforward way to do so would be to amend Section 16202(b) as follows:

(b) None of the following entities is a partnership under this chapter:

(1) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(2) A business trust, except a trust in which the shareholders exercise control of the business.

(3) A real estate investment trust.

(4) A joint stock association.

Comment. Subdivision (b) of Section 16202 is amended to exclude certain common law business entities from the definition of “partnership.” These entities, which are not “formed under a statute,” differ from a partnership in significant ways. Paragraph (2) reflects the common law rule that a nominal business trust in

which control resides in the shareholders is a partnership rather than a true trust. See *Goldwater v. Oltman*, 210 Cal. 408, 420, 292 P. 624 (1930).

If the entities described above are not formed pursuant to statute, and are not partnerships, then they would not be exempt under proposed Section 18055(b). This should not be a problem, so long as these entities are exempt from the liability rules developed by the Commission earlier in this project (which were not drafted with business entities in mind and would not be suitable for these types of entities). This could be accomplished either by adding express language excluding these entities from the scope of the liability rules, or by limiting the liability rules to “nonprofit associations” — as is done in the current draft of the liability provisions. The latter approach requires that a definition of “nonprofit association” be drafted. **The staff suggests the following:**

§ 18015. “Nonprofit association” defined

18015. (a) “Nonprofit association” means an unincorporated association organized primarily for a purpose other than operating a business for profit.

(b) A nonprofit association may carry on a business for profit if any profit that results from the business activity is applied to the primary purpose of the association.

Comment. Subdivision (a) of Section 18015 defines “nonprofit association” for the purpose of this title. See Section 18025 (“unincorporated association” defined). *Cf.*, Sections 16101(7), 16202 (“partnership” defined). Unincorporated associations organized primarily to carry on a business for profit include a business trust, real estate investment trust, and joint stock association.

Subdivision (b) recognizes that a nonprofit entity may carry on incidental for-profit activity in service of its primary purpose. See, e.g., Section 5140(l) (powers of nonprofit public benefit corporation).

The definition above has been included in the attached staff draft.

DISTRIBUTION OF ASSETS ON DISSOLUTION

Proposed Section 18125 governs distribution of the assets of an unincorporated association on dissolution. The attached staff draft presents a revised version of the provision, which reflects refinements made at the September 2001 meeting. At a later point in this study the staff will draft

provisions governing other aspects of the dissolution of an unincorporated association, for the Commission's consideration. For present purposes, the term "dissolution" is used to refer to termination of the existence of an unincorporated association, for whatever reason. Issues relating to the latest version of Section 18125 are discussed below.

Debts, Liabilities, and "Winding Up"

The previous version of the proposed section began "After winding up the affairs of a nonprofit association, any remaining assets of the association shall be distributed as follows." The staff's intent in drafting this language was to make it clear that the distribution rules only apply to property that remains after any debts or other liabilities have been satisfied. However, the staff now believes that "winding up," though not specifically defined anywhere, should probably be understood to *include* the process of distributing remaining assets. Therefore, to say that distribution occurs *after* winding up would be inaccurate. The revised Section 18125 now begins: "After determining that all the known debts and liabilities of an unincorporated association in the process of winding up its affairs have been paid or adequately provided for, the assets of the association may be distributed as follows." This is clearer and expressly states the requirement that known debts and liabilities be paid or provided for before distributing remaining assets.

Distribution to Members

Basically, the proposed asset distribution scheme is as follows: (1) If assets are held in trust, they shall be distributed in accordance with the trust. (2) Assets that are not held in trust shall be distributed in accordance with the association's governing instruments. (3) If the government instruments are silent, non-trust assets shall be distributed pro-rata to members. At the September 2001 meeting, the Commission questioned whether the default rule of pro-rata distribution to members was clear enough. Would only currently active members be included in the distribution? How would "member" be defined for the purposes of distribution?

There are a number of different approaches that could be taken. Distribution could be limited to current members, or former members could be included as well. Distribution could be on a per-person basis or based on duration of

membership or amount contributed to the association (either in dues or donations).

The most expedient alternative would be to distribute assets to current members on a per-person basis. However, this could result in a significant windfall for those who happen to be members at the time of dissolution. Imagine a social club that owns a clubhouse in the central business district of a large city. Faced with dwindling membership, the forty remaining members vote to dissolve the club. The club's sole significant asset, its clubhouse, is sold for \$4,000,000 and the proceeds are distributed to the members, each receiving \$100,000. A member who joined one month before the dissolution is overjoyed. A 50-year member who let his membership lapse one month before the vote is not.

Another approach would be to distribute assets to all members, whether currently members or not, based on their contributions to the association. So, on dissolution, the hypothetical social club would need to review membership rolls from the club's entire existence, calculate the dues paid by each member, and divide the \$4,000,000 sale proceeds based on each member's proportion of the total amount contributed to the association over its lifespan. The one-month member and 50-year member would each receive a share reflecting their relative contributions to the club, avoiding any windfall. However, the process would be complex and costly. Distribution to former members would also raise the question of whether to impose a duty of reasonable inquiry to determine the identities of former members and their current whereabouts, or whether to limit distribution to actually known former members with current addresses on record.

In the interests of simplicity, **the staff favors limiting distribution to current members.** That is the approach reflected in the staff draft.

The question of who qualifies as an association member, absent clear guidance in an association's governing instruments, will be considered later in the study. The staff anticipates drafting a default definition of "member" and exploring the possibility of default rules governing member rights (voting, member discipline, etc.) as part of the general consideration of "governance" provisions.

Property of Minimal Value

Subdivision (c) has been added to proposed Section 18125 to simplify disposal of personal property of minimal value. At some point, the cost and

inconvenience of liquidating an asset or calculating an offset for an item that is not liquidated will exceed the value of the item. In such cases, it may be appropriate to leave disposal of the item up to the person who holds it. For example, if one group member is holding a portable CD player belonging to the group when it dissolves, the member would have discretion to dispose of the item without being compelled to sell it and divide the proceeds with other members. This would be efficient. However, such a rule might result in members keeping items of small value for themselves, even where a more equitable result could be reached with little effort.

As drafted, the proposed provision applies only to personal property with a resale value of \$250 or less. This threshold is somewhat arbitrary and the staff welcomes input on whether the amount is appropriate. Cash and other liquid assets are expressly excluded from subdivision (c). Liquid assets should go into the general pool for distribution to members.

Cemetery Associations

The question has been raised how the proposed property distribution rule would apply to a cemetery association. Most cemetery associations would not be subject to the proposed law. As a general rule, an entity operating a private cemetery must incorporate to do so. Health & Safety Code § 8252. A cemetery corporation would not be subject to the laws governing unincorporated associations. However, Section 8252 does not apply to all cemeteries. Health and Safety Code Section 8250 exempts churches and religious societies from the law governing private cemeteries. Also exempted is a private or fraternal burial park of 10 acres or less in area, if it does not collect a “care, maintenance or embellishment deposit or funds for commodities or services.” If a cemetery association in one of the exempt categories is unincorporated, then it would be subject to the proposed distribution rule.

Existing law governing some aspects of disposition of cemetery property. If all bodies have been removed from a private cemetery and reinterred elsewhere, cemetery lands may be sold, but the proceeds must be used exclusively for specified cemetery purposes. Health & Safety Code § 7925. If a private cemetery is abandoned by its governing association, a city or county may dedicate the abandoned cemetery as a “pioneer memorial park.” Health & Safety Code §§ 8825-8829. The city or county then holds title to the land (subject to the dedication) and bears responsibility for maintaining the park “so that it will not

endanger the health, safety, comfort, or welfare of the public.” Note that cemeteries operated by a church or religious society are exempt from the abandonment provisions.

The staff recommends that the proposed property distribution rule not apply to a cemetery association. Most cemetery associations will be incorporated. Use of the proceeds of sale of cemetery land is already restricted by statute. Rules governing abandoned cemeteries apply to all cemeteries except those operated by churches or religious societies. It would be best to let existing law control.

Respectfully submitted,

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PROPOSED LEGISLATION

1 **Corp. Code §§ 18000-_____ (added). Unincorporated associations**

2 SECTION. 1. Title 3 (commencing with Section 18000) is added to the
3 Corporations Code, to read:

4 **TITLE 3. UNINCORPORATED ASSOCIATIONS**

5 **CHAPTER 1. DEFINITIONS**

6 **§ 18005. Application of definitions**

7 18005. Unless the provision or context otherwise requires, the definitions in this
8 chapter govern the construction of this title.

9 **Comment.** Section 18005 limits these definitions to the provisions on unincorporated
10 associations.

11 **§ 18015. “Nonprofit association” defined**

12 18015. (a) “Nonprofit association” means an unincorporated association
13 organized primarily for a purpose other than operating a business for profit.

14 (b) A nonprofit association may carry on a business for profit if any profit that
15 results from the business activity is applied to the primary purpose of the
16 association.

17 **Comment.** Subdivision (a) of Section 18015 defines “nonprofit association” for the purpose of
18 this title. See Section 18025 (“unincorporated association” defined). *Cf.*, Sections 16101(7),
19 16202 (“partnership” defined). Unincorporated associations organized primarily to carry on a
20 business for profit include a business trust, real estate investment trust, and joint stock
21 association.

1 Subdivision (b) recognizes that a nonprofit entity may carry on incidental for-profit activity in
2 service of its primary purpose. See, e.g., Section 5140(l) (powers of nonprofit public benefit
3 corporation).

4 **§ 18025. “Unincorporated association” defined**

5 18025. (a) “Unincorporated association” means an unincorporated organization
6 of two or more persons joined by mutual consent for a common purpose and
7 operating under a common name.

8 (b) Joint tenancy, tenancy in common, tenancy by the entireties, joint property,
9 common property, or part ownership does not by itself establish an unincorporated
10 association, even if the coowners share use of the property for a common purpose.

11 (c) As used in this section, “person” includes a natural person, corporation,
12 partnership or other unincorporated organization, government or governmental
13 subdivision or agency, or any other legal or commercial entity.

14 **Comment.** Section 18025 is similar to Section 1(2) of the Uniform Unincorporated Nonprofit
15 Association Act. See also *Barr v. United Methodist Church*, 90 Cal. App. 3d 259 (1979) (“The
16 criteria applied to determine whether an entity is an unincorporated association are no more
17 complicated than (1) a group whose members share a common purpose, and (2) who function
18 under a common name under circumstances where fairness requires the group be recognized as a
19 legal entity.”).

20 Subdivision (b) is drawn from Section 16202(c)(1) (formation of partnership).

21 Subdivision (c) continues former Section 24000(b) without change.

22 See also Sections 18050 (group subject to title for reasons of fairness), 18055 (exempt entities).

23 **CHAPTER 2. APPLICATION OF TITLE**

24 **§ 18050. Group subject to title for reasons of fairness**

25 18050. Where fairness requires, a court may treat an unincorporated organization
26 as an unincorporated association under this title.

27 **Comment.** Section 18050 recognizes that fairness may require that a group be subject to this
28 title, whether or not it meets the definition of an “unincorporated association.” See *Barr v. United*
29 *Methodist Church*, 90 Cal. App. 3d 259 (1979) (“Fairness includes those situations where persons
30 dealing with the association contend their legal rights have been violated. Formalities of quasi-
31 corporate organization are not required.”).

32 See also Section 18025 (“unincorporated association” defined).

33 **§ 18055. Exempt entities**

34 18055. This title does not apply to any of the following entities:

35 (a) A government or governmental subdivision or agency.

36 (b) A partnership, limited liability company, or other association formed
37 pursuant to statute.

38 **Comment.** Subdivision (a) of Section 18055 is drawn from former Section 24000.

39 Subdivision (b) provides that the law of unincorporated associations does not apply to an entity
40 formed under another statute. This is similar to the rule that a for-profit entity is not a partnership
41 if it is formed pursuant to a statute other than the Uniform Partnership Act of 1994, a predecessor
42 statute, or a similar statute of another jurisdiction. Section 16202(b).

1 CHAPTER 3. PROPERTY

2 **§ 18100. Membership interest is personal property**

3 18100. The interest of a member of an unincorporated association is personal
4 property.

5 **Comment.** Section 18100 continues former Section 20000 without change. See also Section
6 18025 (“unincorporated association” defined).

7 **§ 18105. Property powers**

8 18105. An unincorporated association in its name may acquire, hold, manage,
9 encumber, or transfer an interest in real or personal property.

10 **Comment.** Section 18105 continues the substance of former Section 20001, except that the
11 limitation on the permissible purpose for which property is acquired, held, managed, encumbered,
12 or transferred is not continued. Under this section, an unincorporated association has all of the
13 powers granted under former Section 20001, including the power to “purchase, receive, own,
14 hold, lease, mortgage, pledge, or encumber, by deed of trust or otherwise, manage, and sell”
15 property. See also Section 18025 (“unincorporated association” defined).

16 ☞ **Staff Note.** Language limiting the property powers of an unincorporated association to those
17 necessary for its “business purposes and objects” has not been continued in proposed Section
18 18105. The Commission would like to receive comments on whether that limitation should be
19 continued.

20 **§ 18110. Execution of real property acquisition, transfer or encumbrance**

21 18110. The acquisition, transfer, or encumbrance of an interest in real property
22 by an unincorporated association shall be executed by its president and secretary
23 or other comparable officers, or by a person specifically designated by a resolution
24 duly adopted by the association or by a committee or other body duly authorized
25 to act by the governing instruments of the association.

26 **Comment.** Section 18110 continues the first paragraph of former Section 20002 without
27 substantive change, except that the special, more restrictive, rule for fraternal or benevolent
28 societies and labor organizations has not been continued. These organizations are now subject to
29 the same rule as any other form of unincorporated association. See also Section 18025
30 (“unincorporated association” defined).

31 **§ 18115. Recorded statement of authority to transfer**

32 18115. (a) An unincorporated association may record in any county in which it
33 has an interest in real property a verified and acknowledged statement, or a
34 certified copy of a statement recorded in another county, stating the name of the
35 association, the names of its officers and the title or capacity of its officers and
36 other persons who are authorized on its behalf to acquire, transfer, or encumber
37 real property owned or held by the association.

38 (b) It 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 a statement or certified copy has been recorded pursuant to subdivision (a),
41 that the officers and persons designated in the statement are duly authorized to
42 acquire, transfer, or encumber real property unless, before the transaction at issue,

1 there is recorded in the county by a person claiming to be a member of the
2 association a statement, verified and acknowledged by the person executing it, that
3 states the name of the association, particularly identifies the recorded statement of
4 the unincorporated association, and states that the previously recorded statement
5 was recorded without authority or that the officers or other persons designated
6 therein are not so authorized.

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

9 Former Section 20002 incorporated definitions set out in former Section 15010.5. The obsolete
10 definitions have not been continued. See also Section 18025 (“unincorporated association”
11 defined).

12 ☞ **Staff Note.** The second part of subdivision (b) provides a mechanism for repudiation of a
13 recorded statement of authority. Section 5 of the Uniform Unincorporated Nonprofit Association
14 Act, which is analogous to proposed Section 18115 does not contain such a provision. Section
15 16303 provides for filing of a statement of partnership authority. It also lacks a “repudiation”
16 provision. Is such a provision actually useful or should it be deleted as unnecessarily complicating
17 the law?

18 § 18120. Limit on assertion of unauthorized action

19 18120. No limitation on the power of an unincorporated association to acquire,
20 hold, manage, pledge, encumber, or transfer an interest in real or personal
21 property, or the manner of exercise of those powers, shall be asserted as between
22 the unincorporated association or a member of the unincorporated association and
23 a third person, except in the following proceedings:

24 (a) A proceeding to enjoin an unauthorized act, or the continuation of an
25 unauthorized act, where a third party has not yet acquired rights that would be
26 adversely affected by the injunction.

27 [(b) A proceeding to dissolve the unincorporated association.]

28 (c) A proceeding against an agent of the unincorporated association for violation
29 of the officer’s authority.

30 **Comment.** Section 18120 is drawn from Section 208(a). It protects third parties from claims
31 that an action of an unincorporated association is unauthorized or improperly executed. See also
32 Section 18025 (“unincorporated association” defined).

33 ☞ **Staff Note.** Subdivision (b) is bracketed to reflect uncertainty as to the nature of any as yet
34 undrafted rules governing dissolution of an unincorporated association.

35 § 18125. Disposition of assets of dissolved association

36 18125. After determining that all the known debts and liabilities of an
37 unincorporated association in the process of winding up its affairs have been paid
38 or adequately provided for, the assets of the association may be distributed as
39 follows:

40 (a) Assets that are held in trust shall be distributed in accordance with the trust.

41 (b) Assets that are not held in trust shall be distributed in accordance with the
42 governing documents of the association. If the governing documents do not

1 provide the manner of distribution of the assets, they shall be distributed pro rata
2 to the current members of the association.

3 (c) Notwithstanding subdivisions (a) and (b), items of personal property with a
4 current resale value of \$250 or less may be disposed of at the discretion of the
5 association officer or member who holds the property. This subdivision does not
6 apply to cash, cash equivalents, or assets that are readily convertible into cash.

7 (d) This section does not apply to a cemetery association.

8 **Comment.** Section 18125 is new. It provides rules for distribution of assets of an
9 unincorporated association that remain after the association has wound up its affairs. See also
10 Section 18025 (“unincorporated association” defined).

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

16 Subdivision (b) governs assets that are not subject to a trust. It is consistent with the holding in
17 *Holt v. Santa Clara County Sheriff’s Benefit Ass’n*, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180,
18 185 (1967) (“It is the general rule that upon the dissolution of a voluntary association its property
19 should be distributed pro-rata among its members unless otherwise provided by its constitution or
20 by-laws.”) (citations omitted).

21 Subdivision (d) exempts cemetery associations from the application of the section. Most private
22 cemetery associations are incorporated. See Health & Safety Code § 8252. Religious associations
23 and some small burial parks are exempt from the incorporation requirement. See Health & Safety
24 Code § 8250. However, these associations are subject to provisions restricting use of proceeds of
25 sale of cemetery lands (Health & Safety Code § 7925), and small burial parks are subject to
26 provisions governing dedication of abandoned cemeteries as parks. See Health & Safety Code §§
27 8825-8829.