

Memorandum 2002-25

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. 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.

Most recently, the Commission considered issues relating to property ownership and disposition, and made a number of decisions regarding the proposed law's treatment of those matters. Those decisions have been implemented in the attached draft. In the interest of placing the property provisions in context and providing some general background for the Commission's new members, the attached draft also includes provisions on liability that were previously approved by the Commission. A few new issues are discussed in this memorandum or in staff notes in the attached draft. Once the Commission has settled the property issues, the staff will prepare material relating to civil procedure (capacity to sue, venue, and service of process).

In preparing the attached draft, the staff has benefited from the observations and suggestions of R. Bradbury Clark, of the Nonprofit Organizations Committee of the Business Law Section of the State Bar.

Note that this memorandum supersedes Memorandum 2002-6 and its supplements. 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 nonprofit associations. The concern is that the unincorporated associations law should apply broadly, but should not conflict with statutes that

govern particular types of for-profit association. 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 that would apply to unincorporated associations generally.

Limitations on Application of Proposed Law

The problem of overbroad application of unincorporated associations law can be partially addressed by adding a provision that exempts those types of unincorporated association that are comprehensively regulated elsewhere and clearly should be exempt, thus:

§ 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.
- (c) A limited liability company.

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

Subdivisions (b) and (c) are new. A partnership or limited liability company is subject to other law. See Sections 15501-15533 (Uniform Limited Partnership Act), 15611-15723 (California Revised Limited partnership Act), 16100-16962 (Uniform Partnership Act of 1994), 17000-17655 (Limited Liability Companies).

This section can easily be expanded if the Commission identifies other types of entities that should also be exempt. The staff recommends that a note be added following Section 18055, specifically requesting input on whether there are other types of unincorporated association that should be excluded from application of the proposed law.

However, Section 18055 does not address the fact that there are some unincorporated entities that should generally be subject to the unincorporated association law, but that are also subject to specific statutory rules that should not be overridden. Exempting such entities from the proposed law entirely would deprive them of the benefits of the proposed law and of existing law (which the proposed law would replace). The staff draft addresses this issue by providing that the proposed law applies to an unincorporated association except to the extent that it is inconsistent with a provision governing a specific type of entity, thus:

§ 18060. Relation to other law

18060. If a statute that is specific to a particular type of unincorporated association is inconsistent with a provision of this title, the specific statute prevails to the extent of the inconsistency.

Comment. Section 18060 is new. It makes clear that the general provisions of this title are subordinate to entity-specific statutes. For example, Section 18105 authorizes an unincorporated association to own property. Insurance Code Section 9089 provides a more restrictive property ownership rule specific to fraternal fire insurers. An unincorporated fraternal fire insurer would be subject to both sections. To the extent they are inconsistent, Insurance Code Section 9089 would prevail.

DISTRIBUTION OF ASSETS ON DISSOLUTION

Proposed Section 18125 governs distribution of the assets of an unincorporated association on dissolution. At a later point in this study the Commission will consider other dissolution issues generally. 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 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 governing 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 life span. 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 draft limits distribution to current members.

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:

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

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, but could lead to members keeping items of small value for themselves, even where a more equitable result could be reached with little effort.

The \$250 ceiling on disposal under subdivision (c) is somewhat arbitrary and the staff welcomes input on what a proper limit should be.

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. An

incorporated cemetery association 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 governs some aspects of disposition of cemetery property. If all bodies have been removed from a private cemetery and re-interred 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 attached draft provides that the property distribution rule does 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. Existing law should control.

On the other hand, if the proposed law includes Section 18060, which provides that inconsistent entity-specific rules prevail over general provisions of the unincorporated associations law, it may not be necessary to expressly exempt cemetery associations from the property distribution rule. Perhaps Comment language along the following lines would be sufficient:

Section 18060 provides that a statute specific to a particular type of unincorporated association prevails over a provision of this title, to the extent of any inconsistency. Accordingly, any statutory rule governing disposition of the property of a dissolved cemetery association would prevail over provisions of this section, to the extent of any inconsistency. See, e.g., Health & Safety Code §§ 7925 (limitation on proceeds of sale of cemetery land), 8825-8829 (dedication of pioneer memorial park).

Recovery of Distributed Assets

Mr. Clark suggests that there should perhaps be a provision permitting recovery of assets distributed to members, up to the amount distributed, if valid claims are made *after* dissolution and distribution.

The issue raised by Mr. Clark is partially addressed by the Uniform Fraudulent Transfer Act. See Civ. Code §§ 3439-3439.12. The Uniform Fraudulent Transfer Act provides remedies for a creditor where a debtor has transferred property to a third party while insolvent. If a transfer is made with actual intent to defraud, then the transfer can be avoided or the property attached. Civ. Code §§ 3439.04(a), 3439.07.

In the absence of fraudulent intent, a transfer that predates a claim may be deemed fraudulent if the transferor does not receive a reasonably equivalent value in exchange for the transferred property and the transferor:

- (1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
- (2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they came due.

Civ. Code § 3439.04(b).

Would a distribution of assets to members be in exchange for reasonably equivalent value? Probably. Members may have joined an association and contributed their time and money with the understanding that assets would be distributed to members on dissolution of the association. In such a case, distribution of assets to members would be in satisfaction of that agreement. Civil Code Section 3439.03 provides: “Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, ... an antecedent debt is secured or satisfied....” The staff could not find any case in which a transfer of assets to members, partners, or shareholders of a dissolving unincorporated association, partnership, or corporation was deemed fraudulent under Civil Code Section 3439.04(b).

The question remains then: in the absence of fraudulent intent, should there be a mechanism for return of assets distributed to members if a valid claim is made after distribution? Fairness to creditors suggests that there should be. The law governing mutual benefit corporations provides a useful model, with Section 8721 and 8723 providing in part:

8721. (a) Whenever in the process of winding up a corporation any distribution of assets has been made, otherwise than under an order of court, without prior payment or adequate provision for payment of any of the debts and liabilities of the corporation, any amount so improperly distributed to any person may be recovered by the corporation. Any of such persons may be joined as defendants in the same action or be brought in on the motion of any other defendant.

8723. (a)(1) Causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against any of the following:

...

(B) If any of the assets of the dissolved corporation have been distributed to other persons, against those persons to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less.

The total liability of a person under this section may not exceed the total amount of assets of the dissolved corporation distributed to that person upon dissolution of the corporation.

If the Commission decides that such provisions should be applied to unincorporated associations, the staff will prepare language for inclusion in the next draft.

OWNERSHIP OF ASSOCIATION PROPERTY

Mr. Clark suggests that it would be helpful to add a section providing that property acquired by an unincorporated association is property of the association and not of the members individually. A similar provision applies to partnerships (Section 16203): "Property acquired by a partnership is property of the partnership and not of the partners individually." Such a provision would be consistent with the proposed law's treatment of an unincorporated association as an entity separate from its members. The staff agrees that this could provide helpful clarification and sees no disadvantage to adding such a provision. If the Commission decides to include such a provision, the staff will draft appropriate language for inclusion in the next draft.

APPARENT DEFECT IN PARTNERSHIP LAW

The staff has found what appears to be a problem in the Uniform Partnership Act of 1994. Section 16202 provides in part:

16202. (a) Except as otherwise provided in subdivision (b), 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.

(b) 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.

In other words, the Uniform Partnership Act applies to all unincorporated associations of coowners carrying on a business for profit, except those excluded under subdivision (b).

The problem is that there are at least three types of for-profit unincorporated associations that are formed under the common law rather than “under a statute.” These entities are discussed below.

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 § 82(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.

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.

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 are not excluded, under Section 16202(b), from application of the Uniform Partnership Act.

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. 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 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 existing scope of the Uniform Partnership Act appears to be a defect. The Commission may wish to recommend the following revision of Section 16202(b):

(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).

Respectfully submitted,

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Staff Counsel

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PROPOSED LEGISLATION

1 **Corp. Code §§ 18005-_____ (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 with a
13 primary common 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), 16202
19 (“partnership” defined). Unincorporated associations organized primarily to carry on a business
20 for profit include a business trust, real estate investment trust, and joint stock association.

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

23  **Staff Note.** The liability provisions in this draft apply only to “nonprofit associations.” See
24 proposed Sections 18205-18240. Existing Section 21000 defines “nonprofit association” as “an
25 unincorporated association of natural persons for religious, scientific, social, literary, educational,
26 recreational, benevolent, or other purpose not that of pecuniary profit.”

27 The staff sees two problems with that definition. (1) It appears to limit membership in a
28 nonprofit association to natural persons. (2) It could be read to exclude an organization that
29 engages in some for-profit activity in service of its nonprofit purpose (e.g., a nonprofit bird
30 sanctuary that operates a gift store to supplement its funds).

31 Proposed Section 18015 is drafted so as to avoid these problems. Subdivision (a) defines a
32 “nonprofit association” as a type of unincorporated association, and an unincorporated association
33 may consist of “persons” other than natural persons. See proposed Section 18025. Subdivision (b)
34 recognizes that a nonprofit association may engage in for-profit activity so long as its primary
35 purpose is not operating a business for profit and any profits it does earn are applied to the
36 primary purpose of the association.

1 **§ 18025. “Unincorporated association” defined**

2 18025. (a) “Unincorporated association” means an unincorporated organization
3 of two or more persons joined by mutual consent for a common purpose and
4 operating under a common name.

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

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

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

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

18 See also Sections 18050 (group subject to title for reasons of fairness), 18055 (exempt entities),
19 18060 (relation to other law).

20 ☞ **Staff Note.** In *Barr*, the court states a three pronged test to determine whether a group is an
21 unincorporated association: (1) the members must share a common purpose, (2) they must
22 function under a common name, and (3) fairness must require that the group be recognized as a
23 legal entity.

24 The first prong is similar to the Uniform Act’s definition and is consistent with California
25 statutory definitions. See Sections 21000, 24000.

26 The second prong is not present in the Uniform Act or existing statutory definitions, but is
27 included the proposed definition. Operation under a common name indicates that an organization
28 is holding itself out to the public as an entity. That bears on both the intent of the association
29 members and the expectations of third parties. In determining whether a group should be treated
30 as a legal entity or an aggregation of individuals, it seems reasonable to consider whether the
31 group has a name.

32 The third prong is not included in the Uniform Act, existing statutory definitions, or the
33 proposed definition. The staff feels that inclusion of a fairness requirement would make the
34 definition too indeterminate. However, in unusual cases, considerations of fairness may justify
35 treating a group as an unincorporated association, even if it does not meet the statutory definition.
36 That possibility is recognized in proposed Section 18050, below.

37 **CHAPTER 2. APPLICATION OF TITLE**

38 **§ 18050. Group subject to title for reasons of fairness**

39 18050. Where fairness requires, a court may treat an unincorporated organization
40 as an unincorporated association under this title.

41 **Comment.** Section 18050 recognizes that fairness may require that a group be subject to this
42 title, whether or not it meets the definition of an “unincorporated association.” See *Barr v. United*
43 *Methodist Church*, 90 Cal. App. 3d 259 (1979) (“Fairness includes those situations where persons
44 dealing with the association contend their legal rights have been violated. Formalities of quasi-
45 corporate organization are not required.”). Fairness may require providing an unincorporated
46 organization and its members, officers, or agents with the benefits provided by this title, as well

1 as protecting others who deal with or have claims against the organization or its members,
2 officers, or agents.

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

4 **§ 18055. Exempt entities**

5 18055. This title does not apply to any of the following entities:

6 (a) A corporation.

7 (b) A government or governmental subdivision or agency.

8 (c) A partnership.

9 (d) A limited liability company.

10 **Comment.** Section 18055 lists entities that are not subject to this title because they are
11 governed by other law. Subdivision (b) is drawn from former Section 24000.

12 **§ 18060. Relation to other law**

13 18060. If a statute that is specific to a particular type of unincorporated
14 association is inconsistent with a provision of this title, the specific statute prevails
15 to the extent of the inconsistency.

16 **Comment.** Section 18060 is new. It makes clear that the general provisions of this title are
17 subordinate to entity-specific statutes. For example, Section 18105 authorizes an unincorporated
18 association to own property. Insurance Code Section 9089 provides a more restrictive property
19 ownership rule specific to fraternal fire insurers. An unincorporated fraternal fire insurer would be
20 subject to both sections. To the extent they are inconsistent, Insurance Code Section 9089 would
21 prevail.

22 **§ 18065. Relation to law of agency**

23 18065. Except where this title provides a specific rule, the general law of
24 agency, including Article 2 (commencing with Section 2019) of Chapter 2 of Title
25 6 of, and Title 9 (commencing with Section 2295) of, Part 4 of Division 3 of the
26 Civil Code, applies to an unincorporated association.

27 **Comment.** Section 18065 makes clear that the general law of agency applies to an
28 unincorporated association. See also Sections 18215 (contract liability of agent of nonprofit
29 association), 18220 (tort liability)

30 **CHAPTER 3. PROPERTY**

31 **§ 18100. Membership interest is personal property**

32 18100. The interest of a member of an unincorporated association is personal
33 property.

34 **Comment.** Section 18100 continues former Section 20000 without change. See also Section
35 18025 (“unincorporated association” defined).

36 **§ 18105. Property powers**

37 18105. An unincorporated association in its name may acquire, hold, manage,
38 encumber, or transfer an interest in real or personal property.

39 **Comment.** Section 18105 continues the substance of former Section 20001, except that the
40 limitation on the permissible purpose for which property is acquired, held, managed, encumbered,

1 or transferred is not continued. Under this section, an unincorporated association has all of the
2 powers granted under former Section 20001, including the power to “purchase, receive, own,
3 hold, lease, mortgage, pledge, or encumber, by deed of trust or otherwise, manage, and sell”
4 property. See also Section 18025 (“unincorporated association” defined).

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

9 **§ 18110. Execution of real property acquisition, transfer, or encumbrance**

10 18110. The acquisition, transfer, or encumbrance of an interest in real property
11 by an unincorporated association shall be executed by its president and secretary
12 or other comparable officers, or by a person specifically designated by a resolution
13 duly adopted by the association or by a committee or other body duly authorized
14 to act by the governing instruments of the association.

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

20 **§ 18115. Statement of authority**

21 18115. (a) An unincorporated association may record in any county in which it
22 has an interest in real property a verified and acknowledged statement, or a
23 certified copy of a statement recorded in another county, stating the name of the
24 association, the names of its officers and the title or capacity of its officers and
25 other persons who are authorized on its behalf to acquire, transfer, or encumber
26 real property owned or held by the association.

27 (b) It shall be conclusively presumed in favor of a bona fide purchaser or
28 encumbrancer for value of real property of the association located in the county in
29 which a statement or certified copy has been recorded pursuant to subdivision (a),
30 that the officers and persons designated in the statement are duly authorized to
31 acquire, transfer, or encumber real property unless, before the transaction at issue,
32 there is recorded in the county by a person claiming to be a member of the
33 association a statement, verified and acknowledged by the person executing it, that
34 states the name of the association, particularly identifies the recorded statement of
35 the unincorporated association, and states that the previously recorded statement
36 was recorded without authority or that the officers or other persons designated
37 therein are not so authorized.

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

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

1 ☞ **Staff Notes. (1)** Proposed Section 18115 provides for recording of a statement of authority.
2 Mr. Clark wonders whether it is necessary to make a conforming change to the law governing
3 what types of documents are recordable.

4 As a general matter, a county recorder is required to accept for recordation “any instrument,
5 paper, or notice that is authorized or required by statute or court order to be recorded.” Gov’t
6 Code § 27201(a). Government Code Section 27280 authorizes recordation of “any instrument or
7 judgment affecting the title to or possession of real property.” As used in that provision,
8 “instrument” means “a written paper signed by a person or persons transferring the title to, or
9 giving a lien on real property, or giving a right to a debt or duty.” Gov’t Code § 27279(a). Under
10 that definition, the document described in proposed Section 18115 (and existing Section 20002)
11 would not be an instrument authorized for recordation by Government Code Section 27280.

12 However, a statute may specifically authorize recordation of a particular type of instrument.
13 Miller & Starr contains a non-exhaustive list of recordable documents, many of which are
14 authorized pursuant to specific statutes. See 5 Miller & Starr, Cal. Real Estate § 11:6 (3d ed.
15 2000). Although Miller & Starr does not list a statement of authority of an unincorporated
16 association, it does list a statement of partnership authority. Such a statement may specify the
17 authority or limitations on the authority of partners to enter into transactions on behalf of the
18 partnership. See Sections 16105(b), 16303(b) & (d)(2). The statement of authority of an
19 unincorporated association is analogous to a statement of partnership authority with respect to
20 transfers of real property. Furthermore, Section 20002 (and proposed Section 18115) expressly
21 authorize that a statement of authority of an unincorporated association may be recorded. The
22 staff does not believe that any additional authority for recordation is required.

23 (2) Mr. Clark also questions whether it is necessary to require that the statement of authority
24 include the names of an association’s officers. He believes it might be adequate to clearly state
25 the offices that are authorized without naming the persons who occupy those offices. The staff
26 prefers to include the names of officers. If the names are not included, then a person’s authority
27 will depend on facts that are not recorded, which could be problematic for title insurers.
28 Requiring inclusion of specific names is more burdensome to the association, because statements
29 will need to be updated to reflect changes in leadership, but the staff feels the additional certainty
30 justifies the burden.

31 (3) On a related point, Mr. Clark suggests that a provision be added authorizing recordation of a
32 later statement, revoking or revising an earlier one, to reflect changes in those authorized to
33 execute documents. This seems reasonable, and if the Commission approves of the change the
34 staff will draft appropriate implementing language.

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

41 **§ 18120. Limit on assertion of unauthorized action**

42 18120. No limitation on the power of an unincorporated association to acquire,
43 hold, manage, pledge, encumber, or transfer an interest in real or personal
44 property, or the manner of exercise of those powers, shall be asserted as between
45 the unincorporated association or a member of the unincorporated association and
46 a third person, except in the following proceedings:

47 (a) A proceeding to enjoin an unauthorized act, or the continuation of an
48 unauthorized act, where a third person has not yet acquired rights that would be

1 adversely affected by the injunction, or where, at the time of the unauthorized act,
2 the third person had actual knowledge that the act was unauthorized.

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

4 (c) A proceeding against an officer or agent of the unincorporated association for
5 violation of the officer's authority.

6 **Comment.** Section 18120 is drawn from Section 208(a). It protects third parties from claims
7 that an action of an unincorporated association is unauthorized or improperly executed. See also
8 Section 18025 ("unincorporated association" defined).

9 ☞ **Staff Notes. (1)** The previous version of subdivision (a) was drafted incorrectly. That problem
10 has been corrected in this draft.

11 **(2)** Subdivision (b) is bracketed to reflect uncertainty as to the nature of any as yet undrafted
12 rules governing dissolution of an unincorporated association.

13 **§ 18125. Disposition of assets of dissolved association**

14 18125. After all of the known debts and liabilities of an unincorporated
15 association in the process of winding up its affairs have been paid or adequately
16 provided for, the assets of the association may be distributed as follows:

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

18 (b) Assets that are not held in trust shall be distributed in accordance with the
19 governing documents of the association. If the governing documents do not
20 provide the manner of distribution of the assets, they shall be distributed pro rata
21 to the current members of the association.

22 (c) Notwithstanding subdivisions (a) and (b), if a member or officer of an
23 association holds one or more items of association property with a total resale
24 value of \$250 or less, that property may be disposed of at the discretion of the
25 member or officer. This subdivision does not apply to cash, cash equivalents, or
26 assets that are readily convertible into cash.

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

28 **Comment.** Section 18125 is new. It provides rules for distribution of assets of a dissolving
29 unincorporated association that remain after the association has satisfied its known debts and
30 liabilities. See also Section 18025 ("unincorporated association" defined).

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

36 Subdivision (b) governs assets that are not subject to a trust. It is consistent with the holding in
37 *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180,
38 185 (1967) ("It is the general rule that upon the dissolution of a voluntary association its property
39 should be distributed pro-rata among its members unless otherwise provided by its constitution or
40 by-laws.") (citations omitted).

41 Subdivision (d) exempts cemetery associations from the application of the section. Most private
42 cemetery associations are incorporated. See Health & Safety Code § 8252. Religious associations
43 and some small burial parks are exempt from the incorporation requirement. See Health & Safety
44 Code § 8250. However, these associations are subject to provisions restricting use of proceeds of
45 sale of cemetery lands (Health & Safety Code § 7925), and small burial parks are subject to

1 provisions governing dedication of abandoned cemeteries as parks. See Health & Safety Code §§
2 8825-8829.

3 CHAPTER 4. LIABILITY

4 **§ 18200. Liability of unincorporated association**

5 18200. Except as otherwise provided by law, an unincorporated association is
6 liable for its act or omission and for the act or omission of its officer, agent, or
7 employee, acting within the scope of the office, agency, or employment, to the
8 same extent as if the association were a natural person.

9 **Comment.** Section 18200(a) continues the substance of former Section 24001, with two
10 exceptions:

11 (1) Language providing that former Section 24001 did not affect the liability of an association
12 to a member of the association has not been continued. It is now clear that an unincorporated
13 association may be liable to a member of the association. See *Marshall v. ILWU*, 57 Cal. 2d 781
14 (1962) (member can sue labor union for negligent acts which member neither participated in nor
15 authorized), *White v. Cox*, 17 Cal. App. 3d 824 (1971) (“unincorporated associations are now
16 entitled to general recognition as separate legal entities and ... as a consequence a member of an
17 unincorporated association may maintain a tort action against his association.”).

18 (2) The phrase “except as otherwise provided by statute” has been broadened. Both statutory
19 and common law limitations on the liability of an unincorporated association should govern. For
20 example, in *Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n*, 21 Cal. 4th 249
21 (1999), the court held that courts should defer to a decision of a duly-constituted community
22 association board, where the board, “upon reasonable investigation, in good faith, and with regard
23 for the best interests of the community association and its members, exercises discretion within
24 the scope of its authority under relevant statutes, covenants and restrictions to select among
25 means for discharging an obligation to maintain and repair a development’s common areas....”
26 Section 18200 does not override the rule stated in that case.

27 ☞ **Staff Note.** Section 18200 has been simplified and redrafted to improve its clarity. When
28 former Section 24001 was originally added, the extent to which an unincorporated association is
29 subject to suit by a member was unclear. Section 24001 was drafted so as not to address the issue.
30 That matter is now settled, so there is no longer any need for special language relating to liability
31 to a member.

32 **§ 18205. No liability based solely on membership or agency**

33 18205. A member, officer, or agent of a nonprofit association is not personally
34 liable for a debt, obligation, or liability of the association solely by reason of being
35 a member, officer, or agent.

36 **Comment.** Section 18205 codifies the general rule that a member of an unincorporated
37 nonprofit association is not personally liable for the association’s debts, obligations, or liabilities
38 solely by reason of membership. See *Security First National Bank of Los Angeles v. Cooper*, 62
39 Cal. App. 2d 653, 667 (1945) (“membership, as such, imposes no personal liability for the debts
40 of the association”); *Orser v. George*, 252 Cal. App. 2d 660, 670 (1967) (“mere membership does
41 not make all members liable for unlawful acts of other members without their participation,
42 knowledge or approval”).

43 The general rule has been extended to officers and agents of an association. This is consistent
44 with existing law providing that an agent is not liable for obligations of a disclosed principal or
45 for torts of the principal, where the agent is personally innocent of wrongdoing. See 2 B. Witkin,
46 *Summary of California Law Agency* § 145, at 141, § 151, at 145 (9th ed. 1987).

1 **§ 18210. Contract liability of member of nonprofit association**

2 18210. A member of a nonprofit association may not be held personally liable
3 for a contractual obligation of the association, except in one of the following
4 circumstances:

5 (a) The member expressly assumes personal responsibility for the obligation.

6 (b) The member expressly authorizes or ratifies the specific contract.


7 (c) With notice of the contract, the member receives a benefit under the contract.

8 Liability under this subdivision is limited to the value of the benefit received.

9 **Comment.** Section 18210 is new. It specifies the scope of personal liability of a member of a
10 nonprofit association for a contractual obligation of the association.

11 Subdivision (a) provides that a member may be liable where the member has personally
12 guaranteed a debt or otherwise assumed responsibility for a contract. A promise to answer for the
13 debt of another is subject to the statute of frauds. Civ. Code § 1624(a)(2).

14 Subdivision (b) codifies the common law rule that a member of a nonprofit association may be
15 personally liable for a contractual obligation that the member has expressly authorized or ratified.
16 See Security First National Bank of Los Angeles v. Cooper, 62 Cal. App. 2d 653 (1944).
17 Subdivision (b) does not continue the common law rule that a member may be liable for a
18 contract that the member has impliedly authorized or ratified. Authorization and ratification may
19 not be inferred from mere participation in the governance of the association — express approval
20 of the contract is required. For example, approval of by-laws, election of officers, or participation
21 in a vote in which the member votes against authorization or ratification of a contract would not
22 constitute express authorization or ratification of a contract.

23  **Commission Note.** Proposed Section 18210 would not continue existing Section 21100,
24 which provides that a member of an unincorporated nonprofit association is not “individually or
25 personally liable for debts or liabilities contracted or incurred by the association in the acquisition
26 of lands or leases or the purchase, leasing, designing, planning, architectural supervision,
27 erection, construction, repair, or furnishing of buildings or other structures, to be used for the
28 purposes of the association.”

29 It is not clear what purpose is served by this exemption — why should these types of debts and
30 liabilities be treated differently from others? At the time of enactment the distinction was
31 criticized by the Legislative Counsel (Wood, Report on Assembly Bill No. 356 4-5 (April 21,
32 1945) (on file with the Commission)):

33 Those creditors who had contracts of the kinds described in the bill would have a more
34 restricted recourse to members’ property than would those creditors who sold food, an
35 aircraft, a ship or furnishings for it, or musical instruments for a band, or who performed the
36 services of secretaries, janitors or clergymen.

37 ...

38 I have not been able to conceive of a state of facts that would show that the classification of
39 debts and liabilities contained in the bill is founded on a natural, intrinsic or constitutional
40 distinction which reasonably justifies different treatment from that which would be given to
41 debts and liabilities not mentioned in it; although I freely admit that it is hypothetically
42 possible that a court might find such a distinction. It is my opinion that grave doubt exists as
43 to whether a court would find the proposed legislation to be constitutional as far as the
44 classification affects it.

45 The Commission would like to receive input on whether Section 21100 should be continued, and
46 if so, why.

1 **§ 18215. Contract liability of officer or agent of nonprofit association**

2 18215. An officer or agent of a nonprofit association may be held personally
3 liable for a contractual obligation of the nonprofit association if the officer or
4 agent does any of the following:

5 (a) Expressly assume personal responsibility for the obligation.

6 (b) Execute the contract without disclosing that the officer or agent is acting as
7 an officer or agent of the association.

8 (c) Execute the contract without authority to execute the contract.

9 **Comment.** Section 18215 is new. This section states possible bases for the liability of an
10 officer or agent of a nonprofit association. Liability of an officer or agent of a nonprofit
11 association is governed by the general law of agency. See Section 18065.

12 Subdivision (a) provides that an officer or agent may be liable where the officer or agent has
13 personally guaranteed a debt or otherwise assumed responsibility for a contract. A promise to
14 answer for the debt of another is subject to the statute of frauds. Civ. Code § 1624(a)(2).

15 Subdivision (b) is consistent with existing law providing that an agent is not liable for contracts
16 entered into on behalf of a disclosed principal. See 2 B. Witkin, Summary of California Law
17 *Agency* § 145-48, at 141-44 (9th ed. 1987).

18 Subdivision (c) provides that an officer or agent may be liable for a contract executed on behalf
19 of an association if the officer or agent lacks authority to execute the contract. See Civ. Code §§
20 2342 (warranty of authority), 2343(2) (bad faith representation of authority), 2 B. Witkin,
21 Summary of California Law *Agency* §§ 144-45, at 141-42 (9th ed. 1987).

22 **§ 18220. Tort liability**

23 18220. A member, officer, or agent of a nonprofit association may not be held
24 personally liable for an injury caused by an act or omission of the association or an
25 act or omission of an officer or agent of the association, except in either of the
26 following circumstances:

27 (a) The member, officer, or agent expressly assumes liability for any injury
28 caused by particular conduct and that conduct causes an injury.

29 (b) The tortious conduct of the member, officer, or agent causes the injury.

30 **Comment.** Section 18220 is new. It specifies the scope of personal liability of a member,
31 officer, or agent of a nonprofit association for a tort of the association or of an officer or agent of
32 the association.

33 ☞ **Commission Note.** As discussed in the Commission Note following proposed Section 18210,
34 the proposed law does not continue Section 21100, which provides that a member of a nonprofit
35 association is not personally liable for debts or liabilities contracted or incurred in connection
36 with specified real property matters. Although Section 21100 was enacted in response to a case
37 involving contractual liability, as drafted it also limits liability for torts relating to the specified
38 real property transactions. The Commission would like to receive input on whether there is good
39 justification for such an exemption.

40 ☞ **Staff Note.** Previously separate provisions relating to the tort liability of a member, or of an
41 agent, have been combined in proposed Section 18220.

42 **§ 18230. Alter ego liability of member of nonprofit association**

43 18230. Notwithstanding any other provision of this chapter, a member of a
44 nonprofit association may be personally liable for a debt, obligation, or liability of
45 the association under common law principles governing alter ego liability of

1 shareholders of a corporation, taking into account differences in form between a
2 nonprofit association and a corporation.

3 **Comment.** Section 18230 is new. It provides that the common law alter ego doctrine applicable
4 to corporations may also be applied to nonprofit associations. The alter ego doctrine is
5 summarized in *Communist Party of the United States v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980,
6 993 (1995) (“In general, the two requirements for applying the alter ego doctrine are that (1) there
7 is such a unity of interest and ownership between the corporation and the individual or
8 organization controlling it that their separate personalities no longer exist, and (2) failure to
9 disregard the corporate entity would sanction a fraud or promote injustice.”).

10 In applying the alter ego doctrine to unincorporated associations, courts should take into
11 account differences in form between corporations and nonprofit associations. For example, failure
12 to observe corporate formalities may be a factor in a decision to impose alter ego liability on
13 shareholders of a corporation. Although it may be unreasonable to expect a nonprofit association
14 to observe the governance formalities required of a corporation, it would be reasonable to expect
15 that a nonprofit association will follow the governance formalities it has established for itself.
16 Failure to do so may indicate that the personality of a nonprofit association and its members are
17 not truly separate.

18 Failure to provide a corporation with reasonably adequate assets to cover its prospective
19 liabilities may also justify imposing alter ego liability on shareholders of a corporation. In
20 *Automotriz del Golfo de California v. Resnick*, 47 Cal. 2d 792, 797 (1957), the court relied in
21 part on inadequate capitalization to justify imposing alter ego liability (quoting *Ballantine on*
22 *Corporations* (1946)):

23 If a corporation is organized and carries on business without substantial capital in such a way
24 that the corporation is likely to have no sufficient assets available to meet its debts, it is
25 inequitable that shareholders should set up such a flimsy organization to escape personal
26 liability. The attempt to do corporate business without providing any sufficient basis of
27 financial responsibility to creditors is an abuse of the separate entity and will be ineffectual to
28 exempt the shareholders from corporate debts. It is coming to be recognized as the policy of
29 the law that shareholders should in good faith put at the risk of the business unencumbered
30 capital reasonably adequate for its prospective liabilities. If the capital is illusory or trifling
31 compared with the business to be done and the risks of loss, this is a ground for denying the
32 separate entity privilege.

33 This principle could also be applied to nonprofit associations. However, it would be necessary to
34 carefully consider the nature of the association to determine what level of unencumbered capital
35 would be reasonably adequate for the association’s prospective liabilities. For example, a small
36 historical society, operating a museum that is open to the public, should probably insure against
37 liability for any injuries suffered by the public while in the museum. Such insurance might
38 reasonably be considered adequate capitalization. On the other hand, an association that publishes
39 controversial and potentially defamatory commentaries about public figures might reasonably
40 anticipate considerable liability. If the association fails to insure against that risk or maintain a
41 cash reserve to satisfy any judgment against it, a court might conclude that the association is
42 inadequately capitalized.

43 **§ 18235. Enforcement of judgment against nonprofit association**

44 18235. (a) A judgment creditor of a member, officer, or agent of a nonprofit
45 association may not levy execution against the assets of the member, officer, or
46 agent to satisfy a judgment based on a claim against the nonprofit association
47 unless a judgment based on the same claim has been obtained against the nonprofit
48 association and one or more of the following conditions is satisfied:

1 (1) A writ of execution on the judgment against the nonprofit association has
2 been returned unsatisfied in whole or in part.

3 (2) The nonprofit association is a debtor in bankruptcy.

4 (3) The member, officer, or agent has agreed that the creditor need not exhaust
5 the assets of the nonprofit association.

6 (4) A court grants permission to the judgment creditor to levy execution against
7 the assets of a member, officer, or agent based on a finding that the assets of the
8 nonprofit association subject to execution are clearly insufficient to satisfy the
9 judgment, that exhaustion of the assets of the nonprofit association is excessively
10 burdensome, or that the grant of permission is an appropriate exercise of the
11 court's equitable powers.

12 (b) Nothing in this section affects the right of a judgment creditor to levy
13 execution against the assets of a member, officer, or agent of a nonprofit
14 association if the claim against the member, officer, or agent is not based on a
15 claim against the nonprofit association.

16 **Comment.** Section 18235 is drawn from Section 16307(d).

17 **§ 18240. Fraudulent transfers**

18 18240. Nothing in this chapter limits application of the Uniform Fraudulent
19 Transfer Act.

20 **Comment.** Section 18240 is new. It makes clear that limits on liability provided in this chapter
21 do not affect the application of the Uniform Fraudulent Transfer Act. See Civ. Code §§ 3439-
22 3439.12. Thus, if an insolvent association transfers assets to a member (e.g., through a general
23 distribution or redemption of membership), those assets may be subject to attachment by a
24 creditor, regardless of whether the member is personally liable for the debt.

25 **CHAPTER 5. GOVERNANCE [RESERVED]**

26 **CHAPTER 6. NONPROFIT MEDICAL ASSOCIATIONS**

27 **Article 1. Definitions**

28 **§ 18300. "Nonprofit medical association" defined**

29 18300. As used in this chapter, "nonprofit medical association" means an
30 unincorporated association that is an organized medical society limiting its
31 membership to licensed physicians and surgeons and that has as members at least
32 25 percent of the eligible physicians and surgeons residing in the area in which it
33 functions (which must be at least one county). However, if the association has less
34 than 100 members, it shall have as members at least a majority of the eligible
35 persons or licensees in the geographic area served by the particular association.

36 **Comment.** Section 18300 continues the definition provisions of former Section 21200 without
37 substantive change.

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Article 2. Member Liability

§ 18305. Liability of member of nonprofit medical association

18305. A member of a nonprofit medical association may not be held personally liable for a contractual obligation of the association, except in one of the following circumstances:

- (a) The member expressly assumes personal responsibility for the obligation.
- (b) With notice of the contract, the member receives a benefit under the contract.

Liability under this subdivision is limited to the value of the benefit received.

Comment. Section 18305 is drawn in part from former Section 21200, which provided that a member of a nonprofit medical association is not liable for “debts or liabilities contracted or incurred by the association in the carrying out or performance of any of its purposes....” That exemption from liability has been narrowed slightly to permit member liability where the member has expressly assumed liability for a contract or receives a personal benefit under a contract, A member would also be liable for a tort where the member has expressly assumed liability or where the tort is based on the member’s own tortious conduct. See Section 18220.

See also Section 18300 (“nonprofit medical association” defined).

Article 3. Director and Officer Liability

§ 18310. Finding and declaration

18310. The Legislature finds and declares that the services of directors or officers of nonprofit medical associations who serve without compensation are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of volunteers to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these associations to protect the personal assets of their volunteer decisionmakers with adequate insurance. It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

Comment. Section 18310 continues former Section 24001.5(a) without substantive change. See Section 18300 (“nonprofit medical association” defined).

§ 18311. Liability limited

18311. (a) Except as provided in this article, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit medical association, on account of any negligent act or omission occurring (1) within the scope of that person’s duties as a director acting as a board member, or within the scope of that person’s duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the association; and (4) is in the exercise of his or her policymaking judgment.

1 (b) This section does not apply to any volunteer director or officer who receives
2 compensation from the association in any other capacity, including, but not limited
3 to, as an employee.

4 (c) For the purpose of this section, the payment of actual expenses incurred in
5 attending meetings or otherwise in the execution of the duties of a director or
6 officer shall not constitute compensation.

7 **Comment.** Section 18311 continues former Section 24001.5(b), (f), (i) without substantive
8 change. See Section 18300 (“nonprofit medical association” defined).

9 **§ 18312. Exceptions**

10 18312. Section 18311 does not limit the liability of a director or officer for any
11 of the following:

12 (a) Self-dealing transactions, as described in Sections 5233 and 9182.

13 (b) Conflicts of interest, as described in Section 7233.

14 (c) Actions described in Sections 5237, 7236, and 9245.

15 (d) In the case of a charitable trust, an action or proceeding against a trustee
16 brought by a beneficiary of that trust.

17 (e) Any action or proceeding brought by the Attorney General.

18 (f) Intentional, wanton, or reckless acts, gross negligence, or an action based on
19 fraud, oppression, or malice.

20 (g) Any action brought under Chapter 2 (commencing with Section 16700) of
21 Part 2 of Division 7 of the Business and Professions Code.

22 **Comment.** Section 18312 continues former Section 24001.5(c) without substantive change.
23 See Section 18300 (“nonprofit medical association” defined).

24 **§ 18313. Tax exempt status**

25 18313. Section 18311 only applies to a nonprofit organization organized to
26 provide charitable, educational, scientific, social, or other forms of public service
27 that is exempt from federal income taxation under Section 501(c)(3) or 501(c)(6)
28 of the Internal Revenue Code.

29 **Comment.** Section 18313 continues former Section 24001.5(d) without substantive change.
30 See Section 18300 (“nonprofit medical association” defined).

31 **§ 18314. Liability insurance**

32 18314. Section 18311 only applies if the nonprofit association maintains a
33 general liability insurance policy with an amount of coverage of at least the
34 following amounts:

35 (a) If the association’s annual budget is less than fifty thousand dollars
36 (\$50,000), the minimum required amount is five hundred thousand dollars
37 (\$500,000).

38 (b) If the association’s annual budget equals or exceeds fifty thousand dollars
39 (\$50,000), the minimum required amount is one million dollars (\$1,000,000).

1 This section applies only if the general liability insurance policy is in force both
2 at the time of injury and at the time that the claim is made, so that the policy is
3 applicable to the claim.

4 **Comment.** Section 18314 continues former Section 24001.5(e) without substantive change.
5 See Section 18300 (“nonprofit medical association” defined).

6 **§ 18315. Nondiscrimination**

7 18315. Section 18311 does not apply to any association that unlawfully restricts
8 membership, services, or benefits conferred on the basis of race, religious creed,
9 color, national origin, ancestry, sex, marital status, disability, political affiliation,
10 or age.

11 **Comment.** Section 18315 continues former Section 24001.5(g) without substantive change.
12 See Section 18300 (“nonprofit medical association” defined).

13 **§ 18316. Liability of association**

14 18316. Nothing in this article shall be construed to limit the liability of a
15 nonprofit association for any negligent act or omission of a director, officer, agent,
16 or employee occurring within the scope of the duties of the director, officer, agent,
17 or employee.

18 **Comment.** Section 18316 continues former Section 24001.5(g) without substantive change.
19 See Section 18300 (“nonprofit medical association” defined).

20 **CHAPTER 7. JOINT STOCK ASSOCIATIONS [RESERVED]**

21 **CHAPTER 8. REAL ESTATE INVESTMENT TRUSTS [RESERVED]**

22 **Corp. Code §§ 20000-24007 (repealed). Unincorporated associations**

23 **SEC. 2.** Title 3 (commencing with Section 20000) of the Corporations Code is
24 repealed.