Study B-501 September 8, 2003

Memorandum 2003-29

Uniform Unincorporated Nonprofit Association Act: Governance Issues

The Nonprofit Organizations Committee of the Business Law Section of the State Bar ("Nonprofit Organizations Committee") has suggested that California law should be amended to include certain default rules for the governance of an unincorporated association. The attached letter from the Nonprofit Organizations Committee provides specific suggestions on the sort of governance provisions it believes would be useful. See Exhibit.

This memorandum briefly discusses each suggested provision, identifying some of the issues that will need to be addressed in connection with that provision. After the Commission determines which of the suggested provisions it would like to see developed further, the staff will prepare a staff draft tentative recommendation for consideration at a future meeting. All statutory references in this memorandum are to the Corporations Code.

CODIFY DEFAULT APPROACH?

As a general principle, the Nonprofit Organizations Committee proposes that any statutory governance provisions be drafted as default rules: "To the extent an unincorporated association has governing documents which address the matters on which we comment below or has a sufficiently established practice as to them, we believe that, to the extent lawful, those provisions and practices should be respected by any general law regulating associations." See Exhibit p. 2. The staff agrees with this general approach. Except where it is necessary to have a uniform rule, the law should allow flexibility for unincorporated associations to determine their own governance rules. This is particularly important in the case of unincorporated religious associations, which may have governance practices that are based on religious belief.

The staff recommends that a provision along the following lines be included in the staff draft tentative recommendation:

> Except as required by law, an unincorporated association shall be governed by its governing principles.

STANDARD OF CONDUCT

The Nonprofit Organizations Committee proposes adding a provision governing the standard of conduct of a director of an unincorporated association (see Exhibit pp. 5-6):

> (a) A member of the board or of a committee of the board shall perform his or her duties as such: (i) as provided in the governing documents of the association, or (ii) to the extent not so provided, mutatis mutandis (A) as set forth in paragraphs (a) and (b) of Section 5231 or (B) if the purposes of the association are primarily religious, as set forth in paragraphs (a) and (b) of Section 9241.
>
> (b) A person referred to in subdivision (a) who performs his or her duties as provided in that subdivision shall have no liability based on an alleged failure to discharge that person's obligations as a director or other member of the association's board or a committee thereof.

If an unincorporated association's governing principles don't provide a standard of care for directors, the standard would be derived from Sections 5231 and 9241, which govern public benefit and religious corporations, respectively.

Note that subdivision (b) would provide immunity from liability for a director that satisfies the standard of conduct. The Nonprofit Organizations Committee's letter makes clear that this is intended to limit a director's liability to the association or its members. See Exhibit p. 2. However, the proposed language doesn't include such a limitation. Perhaps clear limiting language should be added to define the intended scope of the immunity provision.

Other issues relating to the proposed standard of conduct and immunity are discussed below.

Deference to Governing Documents

In general terms, Sections 5231 and 9241 require good faith and reasonable care. Those are fairly modest requirements. However, the proposed provision would allow an association's governing documents to override the statutory standards. This could result in lower standards for director conduct. In principle, an association should be able to set its own standards for director conduct, if it is only the rights of association members and directors that would be affected. However, immunity from liability for bad faith, carelessness, or worse may exceed the bounds of good public policy.

Perhaps a better approach would be to establish good faith and reasonable care as a minimum standard, while permitting an unincorporated association to establish stricter standards. If this approach is taken, the staff would recommend that an express writing be required to establish a higher standard of care. That way board members have fair notice of their duties before agreeing to serve (see proposed Section 18300(c) below).

Conflict of Interest

Existing statutory standards for the conduct of a director of a corporation are qualified by rules restricting self-interested transactions. See Sections 310 (for-profit corporation), 5233 (public benefit corporation), 7233 (mutual benefit corporation), and 9243 (religious corporation).

The language proposed by the Nonprofit Organizations Committee would not restrict self-dealing, or provide an exception to director immunity in cases of self-dealing. That seems problematic. Directors of an unincorporated association should not be permitted to make decisions on behalf of an association that benefit themselves personally, except in the narrow circumstances recognized as exceptions under existing law (e.g., the transaction was authorized or ratified in good faith by the members, other than the directors, after disclosure of the conflict).

Existing Section 24001.5 provides a standard of conduct and immunity from liability for a volunteer director of a nonprofit medical association. That section includes a list of exceptions to the scope of immunity — for self-dealing, conflict of interest, and certain actions that are prohibited by statute (see, e.g., Corp. Code § 5237(a)(1) (prohibiting distribution of the assets of dissolving entity before obligations to creditors have been satisfied). That list could serve as a model for limiting the immunity of a director of an unincorporated association in cases of self-dealing and conflict of interest (see proposed Section 18300(e) below).

Recommendation

The staff recommends that a provision along the following lines be included in the staff draft tentative recommendation:

> 18300. (a) A director of an unincorporated association shall perform the duties of a director, including duties as a member of any committee of the board, in good faith, in a manner the director believes to be in the best interests of the unincorporated association, and with such care, including reasonable inquiry, as an

ordinarily prudent person in a like position would use under similar circumstances.

(b) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that is prepared and presented by any of the following persons or committees, so long as the director believes that the person or committee is reliable and competent in the matters presented:

(1) An officer or employee of the corporation.

(2) An attorney, independent accountant, or other expert.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority.

(4) If the unincorporated association has a religious purpose, a religious authority, such as a minister, priest, or rabbi, as to matters within that person's designated authority.

(c) The written governing documents of an unincorporated association may establish a higher standard of conduct than is provided in subdivisions (a) and (b).

(d) A person who performs the duties of a director in accordance with this section shall not be liable to the association or a member of the association for an alleged failure to discharge that person's obligations as a director, including any action or omission that exceeds or defeats any purpose to which the unincorporated association, or assets held by it, may be dedicated.

(e) This section shall not limit the liability of a director for any of the following:

(1) Self-dealing transactions, as described in Sections 5233 and 9243.

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

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

It may also be appropriate to include three other exceptions to liability immunity drawn from Section 24001.5:

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

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

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

AMENDMENT OF GOVERNING DOCUMENTS

The Nonprofit Organizations Committee writes, at Exhibit p. 2:

It is our impression that under existing case law an unincorporated association that has no provision with respect to

> amending its governing documents could only do so by unanimous consent. This seems inconsistent with the generally applicable principle as to other types of business or nonprofit entities that there should be an element of democracy allowing some majority to make decisions about actions, especially important actions, of their association. In addition, many unincorporated associations do not keep careful records of their members and may not have adequate provisions as to termination of membership so that amendment of documents becomes essentially impossible. The proposed default rule would correct this problem.

The staff could not find case law directly holding that an unincorporated association that does not provide a procedure for amendment of its governing documents may only amend the documents by unanimous consent. There is a case holding that an unincorporated association can only be *dissolved* by "the unanimous consent of its members, by the decision of some superior organization, or by a court decree." *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 930 (1967). The court noted in passing that the association's governing documents included a provision for amendment of the governing documents by two-thirds of the membership. So that was not a case in which the governing documents were silent on amendment procedures.

Assuming that the Nonprofit Organizations Committee's characterization of the case law is correct, should there be a statutory provision allowing amendment by less than unanimous action? Such a rule would probably be useful. However, before drafting the rule, additional research will need to be done to determine whether case law imposes any substantive limits on amendment of governing documents that must be taken into account. For example, there are cases holding that an amendment that would impair a contractual obligation can only be made "by consent of all members to be affected thereby." *Hogan v. Pacific Endowment League*, 99 Cal. 248, 250 (1893).

In addition to the majority required for approval of an amendment, the procedure set out by the Nonprofit Organizations Committee at Exhibit p. 6 touches on a range of procedural issues: written balloting, voter eligibility at the time of the vote, member meetings, proxy voting, quorum, and pre-meeting notice. If these issues need to be addressed and settled in this narrow context, why not address them more generally? For example, if we're going to set a default quorum for a meeting to amend governing documents, why not just address the issue of quorum generally, in a separate section.

The staff recommends that a default rule allowing amendment of governing documents by a majority vote be included in the staff draft tentative recommendation. General issues relating to voting procedure could be addressed separately.

TERMINATION OF MEMBERSHIPS

The Nonprofit Organizations Committee suggests that a default rule be created for determining how a membership can be terminated. This will facilitate determining matters dependent on the number and identity of the members of an unincorporated association (e.g., who may vote, how many votes constitutes a quorum, who owes dues, who receives benefits, etc.).

The proposed rule is fairly straightforward. A membership would terminate when (1) the member resigns, (2) the member dies, (3) the membership is terminated by action of a majority of the members, or (4) a specified term of membership expires (unless renewed). See Exhibit p. 6.

For the most part, this seems sensible. However, the staff is concerned about the legality of the third method, which would allow termination without cause by a simple majority of the membership. There is considerable case authority to the effect that membership in a voluntary association can be a valuable right that cannot be divested arbitrarily, and without notice and an opportunity to be heard. See, e.g., *Swital v. Real Estate Comm'r*, 116 Cal. App. 2d 677 (1953) ("In this state 'a member of an unincorporated association may not be suspended or expelled without charges, notice and a hearing, even though the rules of the association make no provisions therefore.'") (citations omitted).

It is possible that the procedural fairness issue could be resolved fairly easily, by replacing the provision for expulsion by a majority with a reference to Corporations Code Section 7341. That section provides a default "fair and reasonable" procedure for member discipline, which may provide an appropriate mechanism for expulsion of a member of an unincorporated association.

The staff recommends that a provision on termination of memberships be included in the staff draft tentative recommendation, with language added to ensure fairness in involuntary termination proceedings.

MERGERS

The Nonprofit Organizations Committee suggests that California law should provide rules for the merger of an unincorporated association with another unincorporated association, corporation, or other business entity (See Exhibit p. 3):

> Most of the laws governing other types of entities in common use now provide that those entities may merge with others of their own kind and also with other types of entities, the latter being the so-called "interspecies merger". Interspecies mergers permitted among most of those other entities include mergers with unincorporated associations other than nonprofit associations but such a merger would not be possible unless the unincorporated association itself were allowed to merge with other associations or other types of entities. Accordingly, the merger provisions our comment suggests be added to any proposed legislation cover this matter.

The Nonprofit Organizations Committee offers detailed statutory provisions to govern the method and results of a merger. See Exhibit pp. 3-5. On first reading, these provisions appear to be appropriate. Before including them in the staff draft tentative recommendation, the staff will need to study them more carefully, particularly in comparison to comparable provisions governing other entities.

The suggested provisions would serve two useful purposes: (1) They would authorize and provide a procedure for mergers between unincorporated associations. (2) They would authorize mergers between an unincorporated association and some other form of nonprofit or business entity. Each of the principal entities regulated by the Corporations Code allows "interspecies mergers" but only if the law governing the other "species" also permits such mergers. Existing unincorporated association law does not expressly provide for such mergers.

Note that merger is one area in which the Nonprofit Organizations Committee proposes mandatory rules, rather than defaults. This is appropriate because merger involves two different entities which may have entirely different characters and internal procedures. That said, the suggested provisions do defer appropriately to an unincorporated association's governing principles on matters of internal decisionmaking.

The staff recommends that merger provisions similar to those proposed by the Nonprofit Organizations Committee be included in the staff draft tentative recommendation.

DISSOLUTION

The Nonprofit Organizations Committee suggests that default procedures for dissolution of an unincorporated association be added to the proposed law. The Committee writes, at Exhibit p. 3:

> We think this is another area where unincorporated associations' documentation often lacks coverage because the founders and those participating in early stages often do not look ahead to the ultimate demise of the activity. The default rule on this point is among the most important matters the Commission should add to its Study B-501.

Dissolution does require unanimous member consent, unless the association's governing documents provide another method. See *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 930 (1967). This could create a significant problem for a dwindling association that did not have the foresight to draft a more accommodating rule for dissolution.

The proposed procedure is quite similar to that proposed for amendment of governing documents. See Exhibit pp. 5-6. The staff's general reaction to both provisions is the same: the question of the majority required for dissolution should be addressed in one section, with issues relating to voting procedures addressed separately.

In drafting a provision on the percentage of votes required for dissolution, the Commission will need to consider whether a bare majority is sufficient. While unanimity may not be realistic, requiring approval by a supermajority may be both realistic and appropriate. The court in *Holt* expressed a general judicial policy against dissolution of an unincorporated association "even though the majority of the members desire it, where the government of the association is fairly administered and its purposes can be carried out by a minority consisting of a sufficient number to constitute the association." *Holt* at 930.

The Nonprofit Organizations Committee proposal would also provide for dissolution by the current (or last preceding) board if the association has no members or has not performed its primary functions for at least three years. Something along these lines should probably be included in any default

dissolution rule. It may also be appropriate to include a provision for dissolution by judicial order in some circumstances.

The staff recommends that a dissolution rule be included in the staff draft tentative recommendation, consistent with the preceding discussion.

CONCLUSION

The staff recommends that the Commission develop the governance rules proposed by the Nonprofit Organizations Committee. It would be helpful to provide statutory guidance on the basic issues addressed in those proposals. If the Commission agrees, the staff will prepare a staff draft tentative recommendation for consideration at a future meeting.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

THE STATE BAR OF CALIFORNIA
BUSINESS LAW SECTION
NONPROFIT ORGANIZATIONS COMMITTEE

February 13, 2003

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Attention: Brian Hebert, Esq.
Email: bhebert@clrc.ca.gov

Re: ***Study B-501: Revision of Law Governing Unincorporated Associations***

Ladies and Gentlemen:

The Nonprofit Organizations Committee of the California Bar Business Law Section has appreciated the opportunity to provide comment and attempt to be helpful as to the above project. We think the proposed revisions you have prepared and approved so far are an excellent step to provide long needed changes in the statutory structure governing unincorporated associations. State Bar policy requires that we include in this letter the disclaimers set forth in the final paragraph below.

We understand that the Commission may be planning to conclude at least its present project with the sections it has already approved but that it indicated a willingness to consider further comments by our committee as to additional provisions which we believe ought to be included. We believe that adding provisions like those mentioned below is extremely important to the utility of the project and urge the Commission to do so.

The most critical additional provisions that we believe should be included in the project are what amount to default provisions respecting several of the most important matters affecting internal affairs of unincorporated associations. One key defect we have seen in the proposed model Unincorporated Associations Law proposed by the National Conference of Commissioners on Uniform State Laws is that it provides no help or guidance for most of these matters of internal affairs. Our experience with unincorporated associations indicates that many of them do not have governing documents which effectively cover such important matters as standards of conduct, amendment of governing documents, mergers or other combinations and dissolution. There may be other areas of concern which could be addressed later but we think at least these areas should be addressed in your initial proposal. The following comments indicate some of our reasons for believing this and our suggested provisions.

To the extent an unincorporated association has governing documents which address the matters on which we comment below or has a sufficiently established practice as to them, we believe that, to the extent lawful, those provisions and practices should be respected by any general law regulating associations. We agree with what we understand to be the Commission's position that legislation it may propose on this subject should not attempt to be anything like as extensive or exhaustive as the General Corporation Law, the Nonprofit Corporation Laws, or the other laws in the Corporations Code governing established types of entities. We do think, however, that the legislation should include sufficient provisions so that as an unincorporated association proceeds during its term of existence it will not find itself effectively paralyzed by lack of guidance and unknown validity of actions in the areas described below that it needs or wants to take.

The specific matters on which this comment focuses are each described briefly below and are the matters referred to generally above. These are:

1. Default provision governing the standards of conduct of a governing board of an association. We think this is important to eliminate doubt as to the duties of members of the governing board to the association and its members. What we have proposed is, as you will see, a short provision which essentially incorporates, with appropriate variations because of the difference in form ("*mutatis mutandis*"), the provisions as applicable as to the standard of conduct of directors of nonprofit public benefit corporations or nonprofit religious corporations. We think those provisions establish a fair balance between the requisite standard of care which should be expected of a member of a governing body and protection of that member if he or she carries out those duties.

2. Amendment of governing documents. It is our impression that under existing case law an unincorporated association that has no provision with respect to amending its governing documents could only do so by unanimous consent. This seems inconsistent with the generally applicable principle as to other types of business or nonprofit entities that there should be an element of democracy allowing some majority to make decisions about actions, especially important actions, of their association. In addition, many unincorporated associations do not keep careful records of their members and may not have adequate provisions as to termination of membership so that amendment of documents becomes essentially impossible. The proposed default rule would correct this problem.

3. Termination of memberships. One of the key necessities for an unincorporated association is to have established rules as to who are its members and how those memberships may be terminated by resignation, expiration or otherwise. Here again the governing documents or established practice should provide the rule but in the absence of coverage by them, a default rule seems important both for general operations and government purposes and also to permit amendment of documents, and mergers and dissolution. We have not covered expulsion because existing case law seems entirely adequate.

4. Mergers. Most of the laws governing other types of entities in common use now provide that those entities may merge with others of their own kind and also with other types of entities, the latter being the so-called "interspecies merger". Interspecies mergers permitted among most of those other entities include mergers with unincorporated associations other than nonprofit associations but such a merger would not be possible unless the unincorporated association itself were allowed to merge with other associations or other types of entities. Accordingly, the merger provisions our comment suggests be added to any proposed legislation cover this matter.

5. Dissolution. The Commission has already provided for distribution of assets of an association upon its dissolution but has not complemented that provision with provisions as to how dissolutions are approved and consummated. We think this is another area where unincorporated associations' documentation often lacks coverage because the founders and those participating in early stages quite often do not look ahead to the ultimate demise of the activity. The default rule on this point is among the most important matters the Commission should add to its Study B-501. We would suggest making a few technical changes to the Commission's section and then adding it to these provisions.

6. Other provisions. Several of the proposals briefly described above seem to us to be facilitated by definitions of certain terms and the materials which our comment suggests be added are included in those attached. Also, we have noticed one or two relatively minor changes which we would suggest be made in a few of the provisions the Commission has already adopted. Revised versions of these sections are also attached.

Again, we appreciate the opportunity to provide comments on your study of unincorporated associations. We hope that what we have done so far has been helpful and that the suggestions and comments contained in this letter will also be helpful. As always, if the Commission or staff has any questions or comments about anything our comments suggest, we will do our best to be helpful in providing answers or further materials.

These comments are provided on behalf of the Nonprofit Organizations Committee (the "Committee") of the Business Law Section of the California State Bar. Please note that positions set forth in this letter are only those of the Committee. As such, they have not been adopted by either the State Bar's Board of Governors, its overall membership, or the overall membership of the Business Law Section, and are not to be construed as representing the position of the State Bar of California. The Committee is composed of attorneys regularly advising California corporations and out-of-state corporations transacting business in California. Membership in the

Committee, is voluntary and funding for activities of them, including all legislative activities, is obtained entirely from voluntary sources. There are currently more than 16,000 members of the Business Law Section.

Respectfully submitted on behalf of the
Nonprofit Organizations Committee,

R. Bradbury Clark
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RBC:bas
Enclosures

LA1:997148.2

Chapter 1

[Provisions to add to Chapter 1, Definitions]

§ 18026. "Board" defined

18026 "Board" means the board or other governing body consisting of directors (Section 18027) managing the business or affairs of an association. If the association has no directors as defined in Section 18027, its members shall constitute its board.

§ 18027 "Director" defined

18027 "Director" means (i) a natural person designated in the governing documents of an association, or designated, elected or appointed by its members and his or her successor and (ii) a natural person designated, elected or appointed by any other name or title in accordance with the governing documents or established practices (Section 18028) of the association, in either case to act as a member of the board of the association.

§ 18028 "Established practices" means the historical practices used by an association without material change or exception during the most recent five years of its existence or if shorter, the period of its existence, as applicable.

§ 18029. "Officer" means chairman of the board or president or both, secretary, chief financial officer, and such other officers with such titles and duties as shall be stated in the governing documents of the unincorporated association or determined by the governing body of the unincorporated association and also as may be necessary to sign instruments.

[New Chapter 5]

Chapter 5 Governance

Article 1. General Provisions

§ 18250. Application of Title to established practices

Except as provided by this Title, or required by other applicable statutory law or by the governing documents of an unincorporated association, the conduct of its affairs (including decisions made and actions taken by or on behalf of the association or its members, board, officers or employees) shall be governed by its established practices (Section 18028).

§ 18251. Standards of conduct.

(a) A member of the board or of a committee of the board shall perform his or her duties as such: (i) as provided in the governing documents of the association, or (ii) to the extent not so provided, mutatis mutandis (A) as set forth in paragraphs (a) and (b) of Section 5231 or (B) if the purposes of the association are primarily religious, as set forth in paragraphs (a) and (b) of Section 9241.

(b) A person referred to in subdivision (a) who performs his or her duties as provided in that subdivision shall have no liability based on an alleged failure to discharge that person's obligations as a director or other member of the association's board or a committee thereof.

Article 2. Resignation, termination, or expiration of membership.

§ 18252. Unless otherwise provided by the governing documents or, if not covered by them, by the established practices (Section 18028) of the association:

(a) A member may resign from membership at any time.

(b) All rights of membership cease upon the member's death or dissolution.

(c) A membership may be terminated by the affirmative vote or written consent of a majority of all persons who are members at the time of the vote or consent.

(d) Except as provided in subdivisions (a), (b), and (c) of this section, a membership issued for a period of time shall expire when such period of time has elapsed unless the membership is renewed.

(e) This section shall not relieve a resigning, deceased, or dissolving member, or a member whose membership is terminating or expiring, from any obligation for charges incurred, services or benefits rendered to the member, dues, assessments or fees, or arising from contract or otherwise, and this section shall not diminish any right of the unincorporated association or its members to enforce any such obligation or obtain damages for its breach.

Article 3. Amendment of Governing Documents.

§ 18253. Governing documents of an association may be amended:

(a) As provided in its governing documents; or

(b) If not so provided, either: (i) by the affirmative vote or written consent of a majority of all persons who are members at the time of the vote or consent; or (ii) by (A) the affirmative vote of a majority of the members present in person (or, if provided by the governing documents or, if not covered by them, by the established practices (Section 18028) of the association, by proxy) at a meeting of members held in accordance with the established practices (Section 18028) of the association at which a quorum is present and (B) if there is a board other than the members, the approval by that board at a duly held meeting or otherwise in accordance with the board's procedure for making decisions on behalf of the association. "Quorum" as used in this paragraph (b) shall have the meaning set forth in the association's governing documents or if not so set forth shall mean a majority of the members at the time of the meeting. In each case, reasonable notice of the proposed amendment shall be given to all members entitled to vote and to all directors in accordance with the governing documents or established practices (Section 18028) of the association or, if none, in writing delivered or mailed or communicated by telephonic or electronic means to the respective addresses of the addressees as shown in the records of the association.

Article 4. Merger

§ 18254. Merger; Purposes

(a) An unincorporated association may merge with any other unincorporated association, domestic corporation (Section 5050), foreign corporation (Section 171), or other business entity (Section 5063.5) established in this Article.

§ 18255. Approval of merger; Agreement; Contents. Each party that desires to merge shall approve an agreement of merger in accordance with the law affecting that party. The agreement of merger shall include those terms required by law for the merger of each party. The agreement shall include:

(a) The terms and conditions of the merger;

(b) The name and place of organization of each constituent party and which of the constituent parties is the surviving party;

(c) The manner, if any, of converting equity securities of the constituent parties into equity securities of the surviving party;

(d) Other details or provisions required by laws under which any party is organized; and

(e) Such other details or provisions as are desired, if any.

For purposes of this section, "equity security" means any share or membership of a domestic or foreign corporation; any partnership interest, membership interest, or equivalent equity interest in an other business entity; and any security convertible with or without consideration into, or any warrant or right to subscribe to or purchase, any of the foregoing.

§ 18256. Approval by the unincorporated association

(a) The principal terms of the merger shall be approved by the members and board of the unincorporated association and by each other person or persons whose approval of an amendment of governing documents would be required by its governing documents. The approval by the members or such other person or persons required by this section may be given before or after the approval by the board. Notwithstanding the previous two sentences, if the members of any constituent unincorporated association would become personally liable for any obligations of a constituent other party to the merger (including the surviving party) as a result of the merger, the principal terms of the agreement of merger shall be approved by all of the members of that constituent unincorporated association. To the extent that the members of any constituent party of a merger are liable for its obligations, that liability, as accrued as of the date of effectiveness of the merger, shall continue to the same extent as it existed before the merger.

(b) Approval by the members shall be: (a) As provided in its governing documents; or (b) If not so provided, either: (i) by the affirmative vote or written consent of a majority of all persons who are members at the time of the vote or consent; or (ii) by the affirmative vote or written consent of a majority of the members present in person (or, if provided by the governing documents or, if not covered by them, by the established practices (Section 18028) of the association, by proxy) at a meeting of members held in accordance with the established practices (Section 18028) of the association at which a quorum is present. If there is a board other than the members, the approval by that board shall be at a duly held meeting or otherwise in accordance with its procedure for making decisions on behalf of the association. "Quorum" as used in this paragraph (b) shall have the meaning set forth in the association's governing documents or if not so set forth shall mean a majority of the members at the time of the meeting. In each case, reasonable notice of the proposed merger shall be given to all members entitled to vote and to all directors in accordance with the governing documents or established practices (Section 18028) of the association or, if none, in writing delivered or mailed or communicated by telephonic or electronic means to the respective addresses of the addressees as shown in the records of the association.

§ 18257. Amendment of agreement; Approval of amendments

(a) Any amendment to the agreement may be approved and adopted by the board and, if it changes any of the principal terms of the agreement, by the members and other person or persons, if any, as required by Section 18256, of any constituent party in the same manner as the original agreement.

(b) If the agreement so amended is approved as provided in subdivision (a), the agreement so amended shall then constitute the agreement of merger.

§18258. Abandonment of merger

The board may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent parties, without further approval by the members (Section 18256) or other persons entitled to approve the merger at any time before the merger is effective.

§ 18259. Merger with parties other than unincorporated associations

(a) The merger of an unincorporated association with a party other than an unincorporated association may be effected if the party is authorized by the laws under which it is formed to effect the merger. The surviving party may be any one of the constituent parties and shall continue to exist under the laws of the state or place of its formation. The merger proceedings may be in accordance with the laws of the state or place of formation of the surviving party.

§ 18260. Succession to property rights; Rights of creditors; Liens and trusts; Actions

(a) Upon merger pursuant to this article the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each and trust obligations upon the property of a disappearing party in the same manner as if incurred by the surviving party to the merger.

(b) All rights of creditors and all liens and trusts upon or arising from the property of each of the constituent parties and other parties to the merger shall be preserved unimpaired, provided that the liens and trust obligations upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing party or other party to the merger may be prosecuted to judgment, which shall bind the surviving party to the merger, or the surviving party to the merger may be proceeded against or substituted in its place.

§ 18261. Record ownership of property in surviving party; evidence of record ownership

Whenever an unincorporated association having any real property in this state merges with one or more other parties pursuant to the laws of this state or of the state or place in which any constituent party to the merger was organized, and the laws of the state or place of organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger vests in the surviving party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing party to the merger is located of either (a) a certificate prescribed by the Secretary of State,[*] or (b) a copy of the agreement of merger acknowledged (Section 149) by all the constituent parties shall evidence record ownership in the surviving party to the merger of all interest of that disappearing party to the merger in and to the real property located in that county.

§ 18262. Property inures to surviving party

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a constituent party and which takes effect or remains payable after the merger, inures to the surviving party to the merger.

Article 5. Dissolution.

§ 18263. Election to dissolve. An association may elect to wind up and dissolve:

(a) As provided in its governing documents; or

[*] We need to deal with this filing.

(b) If not so provided, either: (i) by the affirmative vote or written consent of a majority of all persons who are members at the time of the vote or consent; or (ii) by (A) the affirmative vote or written consent of a majority of the members present in person (or, if provided by the governing documents or, if not covered by them, by the established practices (Section 18028) of the association, by proxy) at a meeting of members held in accordance with the established practices (Section 18028) of the association at which a quorum is present and (B) if there is a board other than the members, the approval by that board at a duly held meeting or otherwise in accordance with its procedure for making decisions on behalf of the association. "Quorum" as used in this paragraph (b) shall have the meaning set forth in the association's governing documents or, if not so set forth, shall mean a majority of the members at the time of the meeting. In each case, reasonable notice of the proposed dissolution shall be given to all members entitled to vote and to all directors in accordance with the governing documents or established practices (Section 18028) of the association or, if none, in writing delivered or mailed or communicated by telephonic or electronic means to the respective addresses of the addressees as shown in the records of the association.

(c) By the incumbent (or if none, the last preceding) board in the manner described in (ii) of subdivision (b) if: (i) the association has no members, or (ii) the association has not conducted the activity for which it was formed (or any successor activity the association has adopted) for a period of three years.

§ 18264. Procedure upon election to dissolve. Promptly after an election described in Section 18253, the board or, if none, the members shall promptly wind up the affairs of the association, pay or provide for its known debts or liabilities, collect any amounts due to it, take such other actions as are necessary or appropriate for winding up, settling and liquidating its affairs, and dispose of its assets as provided in subdivision (c).

[CLR approved section 18125, renumbered, with some changes, and moved here. It is marked to show changes.]

§ ~~18125~~ 18265. Disposition of assets of dissolved ~~corporation.~~ association.

~~18125~~ 18265. After all of 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~~ shall be distributed as follows:

(a) Assets that are held in trust shall be distributed in accordance with the trust. If the unincorporated association is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, the assets~~(b) Assets that are not held in trust~~ shall be distributed ~~in accordance with~~ to a nonprofit fund, foundation, corporation or trust which is organized and operated exclusively for charitable purposes and which is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, in accordance with any limiting distribution provisions of the governing documents of the ~~association. If~~ unincorporated association.

(b) Assets that are not governed by subdivision (a) shall be distributed in accordance with the governing documents of the unincorporated association and such other legally enforceable agreements to which the unincorporated association is a party or is subject. If the

governing documents or other legally enforceable agreements to which the unincorporated association is a party or is subject do not provide the manner of distribution of the assets, they shall be distributed pro rata to the current members of the association.

[CLR Approved Section with suggested changes. It is marked to show changes.]

§ 18210. Contract liability of member of nonprofit association

18210. A member of a nonprofit 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~~ liability for the obligation.

(b) The member expressly authorizes or ratifies the ~~specific contract.~~ contract when such member does not disclose that the member is acting as an officer or agent of the unincorporated association and the party seeking to enforce such agreement against that member has no knowledge or reason to know that the member is acting as an officer or agent of the unincorporated association.

~~(c)~~ With notice of the contract, the member receives a benefit under the contract. Liability under this subdivision is limited to the monetary value of the benefit received by the member.