

Memorandum 2003-35

**Unincorporated Association Governance
(Draft of Tentative Recommendation)**

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 staff draft tentative recommendation includes provisions along the lines suggested by the Nonprofit Organizations Committee. The Commission should review the draft to determine whether to approve its circulation, with or without changes, as a tentative recommendation.

The remainder of this memorandum discusses some of the assumptions underlying the attached staff draft. Issues on which the staff would like to receive specific input from the public are addressed in notes in the attached staff draft. All statutory references in the memorandum are to the Corporations Code.

DIRECTOR’S STANDARD OF CARE

Proposed Section 18700 states the standard of care for a director of an unincorporated association. To the extent the director complies with that standard, the director will not be liable for a failure to discharge the director’s duties. Section 18700 is based on similar provisions governing the directors of various types of corporations. It borrows language from those provisions, with some simplification and generalization.

Section 18700 does not include language excepting self-dealing transactions from the general grant of immunity. The staff had considered including such language. However, existing law does not apply such a limitation to all types of nonprofit corporations. Public benefit corporations are subject to such a limit. See Sections 5231(c) (immunity from liability), 5233 (self-dealing transactions). Mutual benefit corporations are not. Apparently, the standards are tighter for a corporation organized to provide service to the public than for a corporation organized for the mutual benefit of its members.

The staff sees three alternative ways to address self-dealing transactions:

(1) *Apply the exception for self-dealing transactions to all unincorporated associations.* This approach could be implemented by adding the following sentence to proposed Section 18700(d):

This subdivision does not apply to a transaction that would be a self-dealing transaction under Section 5233 if the unincorporated association were a public benefit corporation.

Such an approach is fairly straightforward, but it ignores the existing legislative determination that there is reason to distinguish between public benefit and mutual benefit organizations.

(2) *Differentiate between unincorporated associations of different character.* It would be possible to draft an exception for self-dealing transactions that only applies to an unincorporated association that is similar to a public benefit corporation in its purpose, thus:

This subdivision does not apply to a transaction if (1) the transaction would be a self-dealing transaction under Section 5233 if the unincorporated association were a public benefit corporation, and (2) the unincorporated association is organized for a public or charitable purpose.

However, this approach depends on a distinction that is easier to draw for corporations than it would be for unincorporated associations. A corporation organized for a charitable or public purpose must include a statement to that effect in its articles of incorporation. See Section 5130. No such requirement applies to an unincorporated association. This could lead to some confusion as to whether the self-dealing exception applies to a particular unincorporated association, especially for a layperson acting as director.

(3) *Omit the limitation.* This is the approach taken in the attached staff draft. The proposed immunity from liability would only apply if a director acts in good faith, in what the director believes to be the best interests of the association. That general standard would exclude many problematic self-dealing transactions. Considering the informality and lack of legal sophistication of some unincorporated associations, a clear standard of good faith and best interests, may provide sufficient protection against abuse of a director's authority.

MERGER

The Nonprofit Organizations Committee proposes rules for merger of an unincorporated association. The attached staff draft includes provisions along the lines suggested. Two issues relating to merger are discussed below.

Adequacy of Simplified Procedure

The law governing a merger between corporations is more detailed than that proposed for merger of an unincorporated association. For example, the Nonprofit Mutual Benefit Corporation Law includes the following provisions that are omitted from the proposed law:

- Section 8011.5, mandating equal treatment of memberships of the same class.
- Section 8013, specifying which officers must sign a merger agreement.
- Section 8014, requiring that a merger agreement be filed with the Secretary of State, along with certification that the constituent parties' corporate tax liabilities have been paid or secured.
- Section 8017, governing the evidentiary value of a copy of the filed agreement of merger.
- Section 8018, governing the law applicable to the surviving corporation.
- Section 8019, governing the law applicable in a merger with a business corporation.
- Section 8019.1, providing rules for merger with other types of business entities (including an unincorporated association).

Given the differences in nature between a corporation and an unincorporated association, it makes sense for an unincorporated association to have a substantially simpler procedure for merger. However, the staff is unsure that the procedure provided in the attached staff draft addresses all of the issues that should be addressed. A staff note has been added following proposed Section 18760 asking for public input on the matter.

Member Liability

The Nonprofit Organizations Committee proposed that all members of an unincorporated association be required to approve a merger if the merger could result in member liability. Presumably, this could arise where the unincorporated association is the surviving party and succeeds to the liabilities of the disappearing party. In such a case, member approval of the merger agreement

could be construed as express approval of a contractual obligation, resulting in member liability for that obligation.

The staff doesn't see potential member liability as a reason to make it more difficult to approve a merger. Under the liability rules proposed by the Commission, a member who votes *against* approval of a merger would not be deemed to have expressly approved the contractual obligation. The Commission's Comment to proposed Section 18610, governing member liability for a contractual obligation of the association, states in relevant part:

Subdivision (b) does not continue the common law rule that a member is liable for a contract that the member has impliedly authorized or ratified. Authorization and ratification may not be inferred from mere participation in the governance of the association — express approval of the contract is required. For example, approval of by-laws, election of officers, or participation in a vote in which the member votes against authorization or ratification of a contract would not constitute express authorization or ratification of a contract.

If liability for obligations assumed as a consequence of a merger only extends to those members who vote in favor of the merger, it shouldn't matter what percentage of the vote is required to approve the merger.

Respectfully submitted,

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UNINCORPORATED ASSOCIATION GOVERNANCE

1 An unincorporated association may be a social club, charitable group, mutual aid
2 society, homeowners association, labor union, political group, religious society, or
3 other similar group.¹ Although some unincorporated associations are legally
4 sophisticated, others are small, informal groups, without legal counsel. It is
5 important that the law governing an unincorporated association be clear and
6 understandable to a layperson.

7 Existing law provides detailed rules for the creation, governance, merger, and
8 dissolution of specific types of unincorporated association.² However, no such
9 rules govern unincorporated associations generally. This situation can leave the
10 members and officers of an unincorporated association uncertain how to deal with
11 an issue that is not addressed in the association’s governing documents.

12 The lack of structural guidance can also subject an association to burdensome
13 common law procedures. For example, when an unincorporated association is
14 created its founders may not anticipate and provide rules for its eventual
15 dissolution. In the absence of such rules, unanimous member consent is required
16 for dissolution of the association.³ Such a high threshold makes it difficult for a
17 defunct association to wind up its affairs. The proposed law would allow
18 dissolution by a majority of the membership,⁴ providing a measure of flexibility
19 that an unincorporated association would likely have provided for itself, had it
20 foreseen the need to do so.

21 The Commission recommends that this situation be addressed by adding basic
22 governance rules to the law of unincorporated associations. In large part, the
23 proposed law would provide default rules, that would only apply to the extent that
24 an association’s governing documents are silent. In some cases the proposed law
25 provides mandatory rules, either to guarantee minimal fairness,⁵ or to standardize
26 relations with other organizations.⁶

27 The drafting of the proposed law assumes enactment of the Commission’s
28 recommendation on *Unincorporated Associations* (September 2003) which would
29 reorganize and revise existing law governing unincorporated associations. That
30 recommendation includes a provision subordinating general unincorporated
31 associations law to any statute governing a specific type of unincorporated

1. See Corp. Code §§ 21000 (“nonprofit association” defined), 24000 (“unincorporated association” defined)

2. See, e.g., Corp. Code §§ 16100-16962 (partnership), 17000-17655 (limited liability company).

3. See *Holt v. Santa Clara County Sheriff’s Benefit Ass’n*, 250 Cal. App. 2d 925, 930, 59 Cal. Rptr. 180 (1967).

4. See proposed Corp. Code § 18810 (dissolution), *infra*.

5. See proposed Corp. Code § 18720 (expulsion or suspension of membership), *infra*.

6. See proposed Corp. Code §§ 18760-18800 (merger), *infra*.

1 association.⁷ Thus, the governance provisions proposed in this tentative
2 recommendation would yield to a statute governing a specific type of
3 unincorporated association. For example, existing law provides specific rules for
4 amendment of the governing documents of an unincorporated homeowners
5 association.⁸ Those entity-specific rules would control over the general rules for
6 amendment of a governing document provided in the proposed law.⁹

7. “If a statute specific to a particular type of unincorporated association is inconsistent with a general provision of this title, the specific statute prevails to the extent of the inconsistency.” Proposed Corp. Code § 18060.

8. See Civ. Code §§ 1355-1356.

9. See proposed Corp. Code §18740 (amendment of governing documents), *infra*.

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PROPOSED LEGISLATION

1 ☞ **Note.** The organization of the proposed law assumes enactment of the Commission's
2 recommendation on *Unincorporated Associations* (September 2003) which would reorganize Part
3 1 of Title 3 of the Corporations Code. The reorganized Part 1 contains chapter headings and
4 includes provisions relevant to the proposed law, including the following:

5 18005. "Director" means a natural person serving as a member of the board or other
6 representative governing body of the association.

7 18015. "Governing principles" means the principles stated in the constitution, articles of
8 association, bylaws, regulations or other writing that governs the purpose or operation of an
9 unincorporated association or the rights or obligations of its members. If there is no written
10 provision governing an issue, the association's governing principles regarding that issue may be
11 inferred from its established practices. For the purpose of this section, "established practices"
12 means the practices used by an unincorporated association without material change or exception
13 during the most recent five years of its existence, or if it has existed for less than five years,
14 during its entire existence.

15 18020. (a) If the governing principles of an unincorporated association define the membership
16 of the association, "member" has the meaning provided by the governing principles.

17 (b) If the governing principles of an unincorporated association do not define the membership
18 of the association, "member" means a person who, pursuant to the governing principles of the
19 unincorporated association, has a right to participate in the selection of persons authorized to
20 manage the affairs of the unincorporated association or in the development of policy of the
21 unincorporated association, but does not include a person who participates solely as director,
22 officer, or agent of the association.

23 18030. "Officer" means a natural person serving as an unincorporated association's chair,
24 president, secretary, chief financial officer, or other position of authority that is established
25 pursuant to the association's governing principles.

26 18035. "Person" includes a natural person, corporation, partnership or other unincorporated
27 organization, government or governmental subdivision or agency, or any other entity.

28 18040. (a) "Unincorporated association" means an unincorporated group of two or more
29 persons joined by mutual consent for a common lawful purpose, whether organized for profit or
30 not.

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

34 (c) Marriage or creation of a registered domestic partnership does not by itself establish an
35 unincorporated association.

36 18060. If a statute specific to a particular type of unincorporated association is inconsistent with
37 a general provision of this title, the specific statute prevails to the extent of the inconsistency.

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CORPORATIONS CODE

TITLE 3. UNINCORPORATED ASSOCIATION

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

Corp. Code § 18003 (added). Board

SEC. _____. Section 18003 is added to the Corporations Code, to read:
18003. “Board” means the board of directors or other representative governing body of an unincorporated association.

Comment. Section 18003 is new. See also Sections 18005 (“director” defined), 18040 (“unincorporated association” defined).

Corp. Code § 18013 (added). Governing documents

SEC. _____. Section 18013 is added to the Corporations Code, to read:
18013. “Governing document” means a constitution, articles of association, bylaws, or other writing that governs the purpose or operation of an unincorporated association or the rights or obligations of its members.

Comment. Section 18013 is new. See also Sections 18020 (“member” defined), 18040 (“unincorporated association” defined).

Corp. Code § 18015 (amended). Governing principles

SEC. _____. Section 18015 of the Corporations Code is amended to read:
18015. “Governing principles” means the principles stated in ~~the constitution, articles of association, bylaws, regulations or other writing that governs the purpose or operation of an unincorporated association or the rights or obligations of its members~~ an unincorporated association’s governing documents. If there is ~~no written~~ an association has no governing documents or the governing documents do not include a provision governing an issue, the association’s governing principles regarding that issue may be inferred from its established practices. For the purpose of this section, “established practices” means the practices used by an unincorporated association without material change or exception during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.

Comment. Section 18015 is new. See also Sections 8 (“writing” defined), 18013 (“governing documents” defined), 18020 (“member” defined), 18040 (“unincorporated association” defined).

1 **Corp. Code §§ 18700-18810 (added). Governance**

2 SEC. ____ Chapter 6 (commencing with Section 18700) is added to the
3 Corporations Code, to read:

4 CHAPTER 6. GOVERNANCE

5 Article 1. Director Duties

6 **§ 18700. Director duties**

7 18700. (a) A director of an unincorporated association shall perform the duties
8 of a director, including duties as a member of a committee of the board, in good
9 faith, in a manner the director believes to be in the best interests of the
10 unincorporated association, and with such care, including reasonable inquiry, as an
11 ordinarily prudent person in a like position would use under similar circumstances.

12 (b) A director, acting in good faith after reasonable inquiry, is entitled to rely on
13 information, opinions, reports, or statements, including financial statements and
14 other financial data, that is prepared and presented by any of the following persons
15 or committees, so long as the director believes that the person or committee is
16 reliable and competent in the matters presented:

17 (1) An officer or employee of the unincorporated association.

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

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

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

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

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

31 **Comment.** Section 18700 is new. *Cf.* Sections 309 (general corporation), 5231 (nonprofit
32 public benefit corporation), 7231 (nonprofit mutual benefit corporation), 9241 (nonprofit
33 religious corporation). See also Sections 18005 ("director" defined), 18013 ("governing
34 documents" defined), 18030 ("officer" defined), 18040 ("unincorporated association" defined).

35 Note that a director decision that satisfies the standard provided in this section may be entitled
36 to judicial deference. See, e.g., *Lamden v. La Jolla Shores Clubdominium*, 21 Cal. 4th 249, 265,
37 980 P.2d 940, 87 Cal. Rptr. 2d 237 (1999) ("where a duly constituted community association
38 board, upon reasonable investigation, in good faith and with regard for the best interests of the
39 community association and its members, exercises discretion within the scope of its authority
40 under relevant statutes, covenants and restrictions to select among means for discharging an

1 obligation to maintain and repair a development's common areas, courts should defer to the
2 board's authority and presumed expertise”).

3 **Article 2. Termination or Suspension of Membership**

4 **§ 18710. Termination of membership**

5 18710. Membership in an unincorporated association is terminated by any of the
6 following events:

7 (a) Resignation of the membership.

8 (b) Expiration of the fixed term of the membership, unless the membership is
9 renewed before its expiration.

10 (c) Expulsion of a member.

11 (d) Death of the member, unless the association’s governing principles provide
12 otherwise.

13 (e) Termination of the legal existence of a member that is not a natural person,
14 unless the association’s governing principles provide otherwise.

15 **Comment.** Section 18710 is new. See also Sections 18020 (“member” defined), 18040
16 (“unincorporated association” defined).

17 **§ 18720. Expulsion or suspension of membership**

18 18720. (a) A member of an unincorporated association may only be expelled or
19 suspended pursuant to a procedure that satisfies the requirements of this section.
20 An expulsion or suspension that does not satisfy the requirements of this section is
21 void.

22 (b) An expulsion or suspension shall be done in good faith and in a fair and
23 reasonable manner. Any procedure that conforms to the requirements of
24 subdivision (c) is fair and reasonable, but a court may also find another procedure
25 to be fair and reasonable when the full circumstances of the expulsion or
26 suspension are considered.

27 (c) A procedure is fair and reasonable if it satisfies the following requirements:

28 (1) The procedure is included in the unincorporated association’s governing
29 documents, or copies of the procedure are sent annually to all members.

30 (2) The procedure provides for notice to the member who is to be expelled or
31 suspended, including a statement of the reasons for the expulsion or suspension.
32 The notice shall be delivered at least 15 days prior to the effective date of the
33 expulsion or suspension

34 (3) The procedure provides an opportunity for the member to be heard, orally or
35 in writing, not less than five days before the effective date of the expulsion or
36 suspension by a person or body authorized to decide that the expulsion or
37 suspension not take place.

38 (d) A notice delivered pursuant to this section may be delivered by any method
39 reasonably calculated to provide actual notice. A notice delivered by mail must be


1 sent by first-class or registered mail sent to the last address of the member shown
2 on the unincorporated association's records.

3 (e) An action challenging an expulsion or suspension of membership, including a
4 claim alleging defective notice, shall be commenced within one year after the
5 effective date of the expulsion or suspension. The court may order any relief,
6 including reinstatement, if it finds equitable under the circumstances. No vote of the
7 members or of the board may be set aside solely because a person was wrongfully
8 excluded from voting by virtue of the challenged expulsion or suspension, unless
9 the court finds that the wrongful expulsion or suspension was in bad faith and for
10 the purpose, and with the effect, of wrongfully excluding the member from the
11 vote or from the meeting at which the vote took place, so as to affect the outcome
12 of the vote.

13 (f) This section governs only the procedure for expulsion or suspension and not
14 the substantive grounds for expulsion or suspension. An expulsion or suspension
15 based on substantive grounds that violate contractual or other rights of the member
16 or are otherwise unlawful is not made valid by compliance with this section.

17 (g) A member who is expelled or suspended is liable for any association charges,
18 dues, assessments, or fees incurred by the member before the effective date of the
19 expulsion or suspension.

20 **Comment.** Section 18720 is drawn from Section 7341 (expulsion, suspension, or termination
21 of membership in nonprofit mutual benefit corporation). See also Sections 18013 ("governing
22 documents" defined), 18020 ("member" defined), 18040 ("unincorporated association" defined).

23  **Note.** This section is intended to require minimum procedural fairness before an association
24 may expel or suspend a member. This is consistent with the common law protection against
25 arbitrary expulsion from a private association that involves important economic interests. See,
26 e.g., *Swital v. Real Estate Comm'r*, 116 Cal. App. 2d 677 (1953) (member of local realty board
27 may not be expelled without charges, notice, and hearing). Is the procedure provided in this
28 section sufficient, or should the proposed law also provide for a less "adjudicative" procedure
29 (e.g., majority vote of the membership) applicable where important economic interests are not
30 involved? Should the law expressly approve governing documents that provide for automatic
31 suspension for nonpayment of dues? The Commission would like to receive comment on these
32 issues.

33 Article 3. Member Voting

34 **§ 18730. Member voting**

35 18730. Except as otherwise provided by an unincorporated association's
36 governing principles, the following rules govern a member vote conducted
37 pursuant to this chapter:

38 (a) A vote may be conducted either at a member meeting or by a written ballot.

39 (b) Notice of the vote shall be delivered to all members entitled to vote on the
40 date of delivery. The notice shall be delivered or mailed or sent electronically to
41 the member addresses shown in the association's records a reasonable time before

1 the vote is to be conducted. The notice shall state the matter to be decided and
2 describe how and when the vote is to be conducted.

3 (c) One-third of the voting power of the association constitutes a quorum.

4 (d) The voting power of the association is the total number of votes that can be
5 cast by members on a particular issue at the time the member vote is held.

6 **Comment.** Section 18730 is new. See also Sections 18015 (“governing principles” defined),
7 18020 (“member” defined), 18040 (“unincorporated association” defined).

8 Article 4. Amendment of Governing Documents

9 § 18740. Amendment of governing documents

10 18740. If an unincorporated association’s governing principles do not provide a
11 procedure to amend the association’s governing documents, the governing
12 documents may be amended by a vote of the members. The amendment shall be
13 approved by an affirmative majority of the votes cast, either at a meeting at which
14 a quorum is present, or by a written ballot in which the total number of votes cast
15 constitutes a quorum.

16 **Comment.** Section 18740 is new. See also Sections 18013 (“governing documents” defined),
17 18015 (“governing principles” defined), 18020 (“member” defined), 18040 (“unincorporated
18 association” defined), 18730 (member voting procedure).

19 Note that an amendment of an unincorporated association’s governing documents may not
20 impair an existing contract right without the consent of the person whose right would be affected.
21 See *Hogan v. Pacific Endowment League*, 99 Cal. 248, 250, 33 P. 924 (1893). However, if the
22 governing documents reserve the power to make future changes to member benefits, an
23 association may amend its governing documents in a way that impairs those benefits so long as
24 the change is substantively reasonable. An association cannot use its power of amendment to
25 repudiate its fair and just obligations. See *Power v. Sheriff’s Relief Ass’n of Los Angeles County*,
26 57 Cal. App. 2d 350, 134 P.2d 827 (1943).

27 Article 5. Merger

28 § 18750. Definitions

29 18750. As used in this article, the following terms have the following meanings:

30 (a) “Constituent entity” means an entity that is merged with one or more other
31 entities and includes the surviving entity.

32 (b) “Disappearing entity” means a constituent entity that is not the surviving
33 entity.

34 (c) “Surviving entity” means an entity into which one or more other entities are
35 merged.

36 **Comment.** Subdivision (a) of Section 18750 is drawn from Section 5044. Subdivision (b) is
37 drawn from Section 5048. Subdivision (c) is drawn from Section 5074. See also Section 18040
38 (“unincorporated association” defined).

1 **§ 18760. Merger authority**

2 18760. An unincorporated association may merge with any other unincorporated
3 association, domestic corporation, foreign corporation, or other business entity. As
4 used in this section, the term “other business entity” has the meaning provided in
5 Section 5063.5.

6 **Comment.** Section 18760 is new. See also Section 18040 (“unincorporated association”
7 defined).

8 **§ 18770. Merger procedure**

9 18770. A merger involving an unincorporated association is subject to the
10 following requirements:

11 (a) Each party to the merger shall approve an agreement of merger. The
12 agreement shall include the following provisions:

13 (1) The terms of the merger.

14 (2) Any amendments the merger would make to the articles or bylaws of the
15 surviving entity.

16 (3) The identity of each constituent entity.

17 (4) The identity of the surviving entity.

18 (5) The disposition of the memberships or ownership interests of each
19 constituent entity.

20 (6) Other details or provisions, if any.

21 (b) The principal terms of the merger agreement shall be approved by the board
22 of directors and the members of the unincorporated association. The members
23 shall approve the agreement in the manner provided for member approval of an
24 amendment of the unincorporated association’s governing documents. The
25 members may approve the agreement before or after the board approves the
26 agreement.

27 (c) A merger agreement may be amended by the board of directors, unless the
28 amendment would change a principal term of the agreement, in which case it shall
29 be approved by the board of directors and members as provided in subdivision (b).

30 (d) Subject to the contractual rights of third parties, the board may abandon a
31 merger without the approval of the members.

32 **Comment.** Section 18770 is new. *Cf.* Sections 8011-8019 (merger of nonprofit mutual benefit
33 corporation). See also Sections 18005 (“director” defined), 18013 (“governing documents”
34 defined), 18020 (“member” defined), 18040 (“unincorporated association” defined).

35 ☞ **Note.** This section provides rules for merger that are simpler than the rules for merger
36 involving a nonprofit corporation. The Commission would like to receive comment on whether
37 any element of the corporate merger rules should be added to the rules for merger involving an
38 unincorporated association.

39 **§ 18780. Effect of merger**

40 18780. (a) Merger pursuant to this article has the following effect:

41 (1) The separate existence of the disappearing entity ceases.

1 (2) The surviving entity succeeds, without other transfer, to the rights and
2 property of the disappearing entity.

3 (3) The surviving entity is subject to all the debts and liabilities of the
4 disappearing entity. A trust obligation governing property of the disappearing
5 entity applies as if it were incurred by the surviving entity.

6 (b) All rights of creditors and all liens on or arising from the property of each of
7 the constituent entities shall be preserved unimpaired, provided that a lien on
8 property of a disappearing entity is limited to the property subject to the lien
9 immediately prior to the time the merger is effective.

10 (c) An action or proceeding pending by or against a disappearing entity or other
11 party to the merger may be prosecuted to judgment, which shall bind the surviving
12 entity, or the surviving entity may be proceeded against or substituted in its place.

13 (d) Merger does not affect an existing liability of a member, director, officer, or
14 agent of a constituent unincorporated association for an obligation of the
15 unincorporated association.

16 **Comment.** Subdivisions (a)-(c) of Section 18780 are drawn from Section 8020. Subdivision (d)
17 is new. See also Sections 18005 (“director” defined), 18020 (“member” defined), 18030
18 (“officer” defined), 18040 (“unincorporated association” defined).

19 ☞ **Notes.** (1) Section 18780 states the effect of a merger “pursuant to this article.” That would
20 exclude unincorporated associations that purport to merge their operations and existence despite a
21 failure to follow the procedures provided in this article. Should Section 18780 apply to such de
22 facto mergers, or are the requirements of this article modest enough to serve as a minimum
23 requirement for effective merger?

24 (2) Section 18770 is drawn from existing Section 8020. A reference to trusts in Section 8020(b)
25 seems to duplicate the substantive effect of the reference to trusts in Section 8020(a). The
26 apparently redundant reference is not continued in Section 18780. The Commission would like to
27 receive comments on whether that change would cause any problems.

28 **§ 18790. Record ownership of real property**

29 18790. If, as a consequence of merger, a surviving entity succeeds to ownership
30 of real property of a disappearing entity that is located in this state, the surviving
31 entity’s record ownership of that property may be evidenced by recording in the
32 county in which the property is located a copy of the agreement of merger that is
33 signed by the president and secretary or other comparable officers of the
34 constituent entities and is verified and acknowledged as provided in Sections 149
35 and 193.


36 **Comment.** Section 18790 is drawn from Section 8021.

37 **§ 18800. Future transfers**

38 18800. A bequest, devise, gift, grant, or promise contained in a will or other
39 instrument of donation, subscription, or conveyance, which is made to a
40 disappearing entity and which takes effect or remains payable after the merger,
41 shall operate to the benefit of the surviving entity. A trust obligation that would

1 govern property if transferred to the disappearing entity applies to property that is
2 instead transferred to the surviving entity under this section.

3 **Comment.** Section 18800 is drawn from Section 8022. The second sentence is added to make
4 clear that property that would be impressed with a trust if transferred to a disappearing entity does
5 not avoid that trust as a result of transfer to a surviving entity under this section. See *Lynch v.*
6 *Spilman*, 67 Cal. 2d 251, 260, 431 P.2d 636, 62 Cal. Rptr. 12 (1967) (“property transferred to a
7 corporation or other institution organized for a charitable purpose without a declaration of the use
8 to which the property is to be put, is received and held by it ‘in trust to carry out the objects for
9 which the organization was created.’”) (citations omitted).

10  **Note.** The second sentence is added to Section 18800 to clarify an ambiguous point. Should
11 similar language be added to parallel provisions of nonprofit corporations law (i.e., Sections 6022
12 and 8022)?

13 Article 6. Dissolution

14 § 18810. Dissolution

15 18810. An unincorporated association may be dissolved by any of the following
16 methods:

17 (a) If the association’s governing documents provide a method for dissolution,
18 by that method.

19 (b) If the association’s governing documents do not provide a method for
20 dissolution, by the affirmative vote of a majority of the voting power of the
21 association.

22 (c) If the association’s operations have been discontinued, by court order.

23 (d) If the association’s operations have been discontinued for at least three years,
24 by the board of directors.

25 **Comment.** Section 18810 is new. Subdivisions (a) is consistent with case law. See *Holt v.*
26 *Santa Clara County Sheriff’s Benefit Ass’n*, 250 Cal. App. 2d 925, 930, 59 Cal. Rptr. 180 (1967).
27 An unincorporated association that is subordinate to another organization may be subject to
28 dissolution by order of the superior organization. *Id.* See also Sections 18005 (“director” defined),
29 18013 (“governing documents” defined), 18020 (“member” defined), 18040 (“unincorporated
30 association” defined), 18730 (member voting procedure).