

## Memorandum 2004-41

**Unincorporated Association Governance  
(Comments on Tentative Recommendation)**

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Existing law provides rules for the creation, governance, merger, and dissolution of specific types of unincorporated association (e.g., a business partnership or unincorporated homeowners association). However, there are no such rules for unincorporated associations generally. The absence of such rules can leave the members and officers of an unincorporated association unsure of how to address fundamental matters of governance. It can also subject such groups to burdensome common law procedures.

In November 2003, the Commission circulated a tentative recommendation proposing a set of basic unincorporated association governance rules. The proposed law would complement the organizational and substantive improvements recommended by the Commission in *Unincorporated Associations*, 33 Cal. L. Revision Comm'n Reports 729 (2003), which were enacted into law this year as SB 1746 (Ackerman), 2004 Cal. Stat. ch. 178.

The only public comment we have received regarding the tentative recommendation is from Lisa Runquist and R. Bradbury Clark, two members of the Nonprofit Organizations Committee of the Business Law Section of the State Bar ("Nonprofit Organizations Committee"). It is not too surprising that we received so little comment. The proposed law is fairly technical and probably of little interest to anyone who is not professionally involved in advising unincorporated associations.

What's more, the proposed law should be relatively noncontroversial. Most of the rules it provides are framed as default rules, which would yield to a contrary rule in an association's governing documents. Thus, they provide a helpful backstop, without interfering in the affairs of organizations that have made specific choices on how to govern themselves.

A staff draft recommendation is attached, which reflects the content of the tentative recommendation, with a few technical changes. Some of those changes are made at the suggestion of Ms. Runquist and Mr. Clark. The rest reflect the fact that the Commission's recommendation on Unincorporated Associations has

been enacted into law. The staff recommends that the attached draft be approved as a final recommendation, subject to any changes the Commission decides to make. A few noteworthy issues are discussed below.

All statutory references in this memorandum are to the Corporations Code.

### **Suggestions of Members of Nonprofit Organizations Committee**

Ms. Runquist and Mr. Clark are generally pleased with the proposed law and offer only a few technical suggestions. Most of their proposals are nonsubstantive and unobjectionable and have been implemented in the attached draft. Staff notes in the attached draft identify these changes. The notes will be deleted from the draft if it is approved as a final recommendation.

One suggestion that was not implemented in the attached draft is discussed below.

#### *Definition of "Other Business Organization"*

Proposed Section 18760 provides authority for an "inter-species" merger between an unincorporated association and any other type of entity authorized by law to effect such a merger. The list of eligible entities includes "other business entities," a term that is defined in various places throughout the Corporations Code. Section 18760 incorporates one of those definitions by reference.

Ms. Runquist and Mr. Clark note that the various provisions defining "other business entity" specifically exclude a "nonprofit association." They believe that this is inappropriate and that it would be worthwhile to delete that restriction throughout the code.

The proposed change is not necessary for the immediate purposes of the proposed law, because the list of eligible entities provided in Section 18760 includes "unincorporated association." By definition "unincorporated association" includes a nonprofit association. See Section 18035. The Comment to Section 18760 has been revised to make the applicability of the section to nonprofit associations clear.

The staff recommends against tinkering with the definition of "other business entity" as part of the proposed law. We have not studied what the implications of such a change might be and have not submitted the issue to public review and comment. If the Commission wishes, we could pursue the matter as a follow-up to this project.

Note that a few stylistic suggestions made by Ms. Runquist and Mr. Clark were not implemented because they were not consistent with the Commission's general drafting practices.

### **Labor Organizations**

In response to SB 1746, the California Labor Federation ("CLF") expressed concern about the application of the proposed unincorporated associations law to labor organizations. CLF asserted that existing federal law provides labor organizations with better protections than those offered in our proposal. See, e.g., 29 U.S.C. § 186(b):

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

In order to avoid any uncertainty as to the supremacy of the federal protections, CLF asked that labor organizations be exempted from the unincorporated associations law.

The staff spoke with CLF's counsel, suggesting that CLF reconsider its position, for two general reasons:

(1) The law proposed in SB 1746 is a default that yields to any entity-specific statute, to the extent of any inconsistency. Thus, it would not conflict with federal law applicable to labor organizations. CLF acknowledged that general point, but worried that there would need to be litigation to define the extent of any inconsistency between federal and California law.

(2) Many of the provisions in SB 1746 are beneficial and address issues that might not be covered adequately by federal law (e.g., the provisions authorizing and facilitating property ownership and transfer). For that reason, a more narrowly tailored exemption might be preferable.

After considering these issues, CLF renewed its original request for a blanket exemption, in part because labor organizations are legally sophisticated and invariably have thorough and well-thought out governing documents.

SB 1746 was amended to exempt labor organizations from application of the new law. Unless we provide otherwise, that exemption would also apply to the proposed governance provisions. Assuming that labor organizations do have thorough and well thought out governing documents, their exemption should not be a problem.

If the Commission approves a final recommendation, the staff will provide CLF with a copy of the recommendation and inquire whether their concerns about SB 1746 would also apply to the proposed governance provisions.

### **Director Duties**

In response to SB 1746, the Senate Judiciary Committee staff expressed concern about proposed Corporations Code Section 18620, which would have provided as follows:

#### **§ 18620. Tort liability**

18620. A member, director, officer, or agent of a nonprofit association is not liable for injury, damage, or harm caused by an act or omission of the association or an act or omission of a director, officer, or agent of the association, unless one of the following conditions is satisfied:

(a) The member, director, officer, or agent expressly assumes liability for injury, damage, or harm caused by particular conduct and that conduct causes injury, damage, or harm.

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

**Comment.** Section 18620 is new. It specifies the scope of liability of a member, director, officer, or agent of a nonprofit association for a tort of the association or of an officer or agent of the association. See also Sections 18005 (“director” defined), 18015 (“member” defined), 18020 (“nonprofit association” defined), 18025 (“officer” defined).

Despite the fact that Section 18620 was intended as a codification of case law principles, the Committee staff was concerned that differences between the language used in the cases and in proposed Section 18620 might inadvertently affect the scope of potential liability in some unforeseeable way. The concerns expressed were serious enough that they might have caused committee disapproval of SB 1746. For that reason, the provision was removed from the bill. It will be reexamined by the Commission in a supplement to this memorandum.

The tentative recommendation includes a provision that would provide immunity from liability to an association director for decisions made consistent with a stated standard of care:

**§ 18700. Director duties**

18700. (a) A director of an unincorporated association shall perform the duties of a director, including duties as a member of a committee of the board, in good faith, in a manner the director believes to be in the best interests of the 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 or 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 unincorporated association.

(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 the director believes to be within that person's designated authority.

(c) The governing documents of an unincorporated association may establish a higher standard of conduct, but shall not establish a lower 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 is not liable for an alleged failure to discharge that person's obligations as a director, including any act or omission that exceeds or defeats any purpose to which the unincorporated association, or assets held by it, may be dedicated.

**Comment.** Section 18700 is new. Cf. Sections 309 (general corporation), 5231 (nonprofit public benefit corporation), 7231 (nonprofit mutual benefit corporation), 9241 (nonprofit religious corporation). See also Sections 18003 ("board" defined), 18005 ("director" defined), 18008 ("governing documents" defined), 18025 ("officer" defined), 18035 ("unincorporated association" defined).

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

means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board's authority and presumed expertise").

If concerns about the possible inadvertent consequences of codification of existing liability rules raised political concerns, it seems likely that a provision creating a new defense from liability might also be politically controversial. The Commission should consider that likelihood in deciding whether and how to include such a provision in its recommendation.

### **Nonprofit Medical Associations**

As introduced, SB 1746 would have relocated an existing statute on liability of a director of a nonprofit medical association. The author expressed concern that one aspect of the relocated section might be politically controversial. Rather than risk causing a problem in the bill unrelated to its main thrust, we agreed to remove that provision from the bill. If the attached draft is approved as a final recommendation, the staff will seek to ensure that the nonprofit medical association provision is included in any implementing legislation.

Respectfully submitted,

Brian Hebert  
Assistant Executive Secretary

## UNINCORPORATED ASSOCIATION GOVERNANCE

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

7 Existing law provides detailed rules for the creation, governance, merger, and  
8 dissolution of specific types of unincorporated association.<sup>2</sup> However, no such  
9 rules govern unincorporated associations generally. This situation can leave the  
10 members and officers of an unincorporated association unsure of 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.<sup>3</sup> Such a high threshold makes it difficult for a  
17 defunct association to wind up its affairs.<sup>4</sup>

18 The Commission recommends that basic governance rules be added to the law of  
19 unincorporated associations. In large part, the proposed law would provide default  
20 rules that would only apply to the extent that an association’s governing  
21 documents are silent. In some cases the proposed law provides mandatory rules,  
22 either to guarantee minimal fairness<sup>5</sup> or to standardize relations with other  
23 organizations.<sup>6</sup>

24 Pursuant to existing Corporations Code Section 18060, the proposed law would  
25 yield to any statute governing a specific type of unincorporated association.<sup>7</sup> For  
26 example, existing law provides specific rules for amendment of the governing

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1. See Corp. Code §§ 18020 (“nonprofit association” defined), 18035 (“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. The proposed law would allow dissolution by a majority of the membership, providing a measure of flexibility that an unincorporated association would likely have provided for itself, had it foreseen the need to do so. See proposed Corp. Code § 18810 (dissolution) *infra*.

5. See proposed Corp. Code § 18720 (expulsion or suspension of membership where membership affects economic interest) *infra*.

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

7. Corp. Code § 18060 (“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.”).

1 documents of an unincorporated homeowners association.<sup>8</sup> Those entity-specific  
2 rules would control over the general rules for amendment of a governing document  
3 provided in the proposed law.<sup>9</sup>

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8. See Civ. Code §§ 1355-1356.

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



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PROPOSED LEGISLATION

1 CORPORATIONS CODE

2 TITLE 3. UNINCORPORATED ASSOCIATION

3 PART 1. GENERAL PROVISIONS

4 CHAPTER 1. DEFINITIONS

5 **Corp. Code § 18003 (added). Board**

6 SEC. \_\_\_\_\_. Section 18003 is added to the Corporations Code, to read:

7 18003. “Board” means the board of directors or other governing body of an  
8 unincorporated association.

9 **Comment.** Section 18003 is new. See also Sections 18005 (“director” defined), 18035  
10 (“unincorporated association” defined).

11 **Corp. Code § 18005 (amended). Director**

12 18005. “Director” means a natural person serving as a member of the board or  
13 other representative governing body of the unincorporated association.

14 **Comment.** Section 18005 is amended to make clear that “director” includes a person who  
15 serves on a governing body that serves only the interests of the unincorporated association itself  
16 and is not representative of any group of members of the association. See also Sections 18015  
17 (“member” defined), 18035 (“unincorporated association” defined).

18 ☞ **Staff Note.** Suppose a hierarchical organization appoints the governing body of a subordinate  
19 or affiliated unincorporated association. Would that body be considered “representative”? The  
20 term is overly restricted and would be deleted.

21 **Corp. Code § 18008 (added). Governing documents**

22 SEC. \_\_\_\_\_. Section 18008 is added to the Corporations Code, to read:

23 18008. “Governing document” means a constitution, articles of association,  
24 bylaws, or other writing that governs the purpose or operation of an  
25 unincorporated association or the rights or obligations of its members.

26 **Comment.** Section 18008 is new. See also Sections 18015 (“member” defined), 18035  
27 (“unincorporated association” defined).

28 **Corp. Code § 18010 (amended). Governing principles**

29 SEC. \_\_\_\_\_. Section 18010 of the Corporations Code is amended to read:

30 18010. “Governing principles” means the principles stated in ~~the constitution,~~  
31 ~~articles of association, bylaws, regulations or other writing that governs the~~  
32 ~~purpose or operation of an unincorporated association or the rights or obligations~~

1 of its members an unincorporated association's governing documents. If there is  
2 ~~no written~~ an association has no governing documents or the governing documents  
3 do not include a provision governing an issue, the association's governing  
4 principles relating to that issue may be inferred from its established practices. For  
5 the purpose of this section, "established practices" means the practices used by an  
6 unincorporated association without material change or exception during the most  
7 recent five years of its existence, or if it has existed for less than five years, during  
8 its entire existence.

9 **Comment.** Section 18010 is amended to reflect the definition of "governing documents"  
10 provided in Section 18008. See also Sections 8 ("writing" defined), 18015 ("member" defined),  
11 18035 ("unincorporated association" defined).

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

13 SEC. \_\_\_\_ Chapter 6 (commencing with Section 18700) is added to the  
14 Corporations Code, to read:

15 CHAPTER 6. GOVERNANCE

16 Article 1. Director Duties

17 **§ 18700. Director duties**

18 18700. (a) A director of an unincorporated association shall perform the duties  
19 of a director, including duties as a member of a committee of the board, in good  
20 faith, in a manner the director believes to be in the best interests of the association,  
21 and with such care, including reasonable inquiry, as an ordinarily prudent person  
22 in a like position would use under similar circumstances.

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

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

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

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

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

35 (c) The governing documents of an unincorporated association may establish a  
36 higher standard of conduct, but shall not establish a lower standard of conduct,  
37 than is provided in subdivisions (a) and (b).

38 (d) A person who performs the duties of a director in accordance with this  
39 section is not liable for an alleged failure to discharge that person's obligations as

1 a director, including any act or omission that exceeds or defeats any purpose to  
2 which the unincorporated association, or assets held by it, may be dedicated.

3 **Comment.** Section 18700 is new. *Cf.* Sections 309 (general corporation), 5231 (nonprofit  
4 public benefit corporation), 7231 (nonprofit mutual benefit corporation), 9241 (nonprofit  
5 religious corporation). See also Sections 18003 (“board” defined), 18005 (“director” defined),  
6 18008 (“governing documents” defined), 18025 (“officer” defined), 18035 (“unincorporated  
7 association” defined).

8 A director decision that satisfies the standard provided in this section may be entitled to judicial  
9 deference. See, e.g., *Lamden v. La Jolla Shores Clubdominium*, 21 Cal. 4th 249, 265, 980 P.2d  
10 940, 87 Cal. Rptr. 2d 237 (1999) (“where a duly constituted community association board, upon  
11 reasonable investigation, in good faith and with regard for the best interests of the community  
12 association and its members, exercises discretion within the scope of its authority under relevant  
13 statutes, covenants and restrictions to select among means for discharging an obligation to  
14 maintain and repair a development’s common areas, courts should defer to the board’s authority  
15 and presumed expertise”).

## 16 Article 2. Termination or Suspension of Membership

### 17 § 18710. Termination of membership

18 18710. (a) Unless otherwise provided by an unincorporated association’s  
19 governing principles, membership in the unincorporated association is terminated  
20 by any of the following events:

21 (1) Resignation of the member.

22 (2) Expiration of the fixed term of the membership, unless the membership is  
23 renewed before its expiration.

24 (3) Expulsion of the member.

25 (4) Death of the member.

26 (5) Termination of the legal existence of a member that is not a natural person.

27 (b) Termination of membership does not relieve a person from an obligation  
28 incurred as a member before termination.

29 (c) Termination of membership does not affect the right of an unincorporated  
30 association to enforce an obligation against a person incurred as a member before  
31 termination, or to obtain damages for its breach.

32 **Comment.** Section 18710 is new. Subdivision (b) makes clear that termination of membership  
33 does not relieve a former member from an obligation incurred before termination of membership.  
34 Such an obligation might include an obligation for a charge, assessment, fee, or dues, or an  
35 obligation for a service or benefit rendered before termination. See also Sections 18015  
36 (“member” defined), 18035 (“unincorporated association” defined).

37 ☞ **Staff Note.** The phrase “whether arising from contract or otherwise” is deleted from the end  
38 of subdivision (b) as unnecessary and potentially confusing.

### 39 § 18720. Expulsion or suspension of membership

40 18720. (a) This section only applies if membership in an unincorporated  
41 association includes a property right or if expulsion or suspension of a member  
42 would affect an important, substantial economic interest. This section does not  
43 apply to an unincorporated association that has a religious purpose.

1 (b) Expulsion or suspension of a member shall be done in good faith and in a fair  
2 and reasonable manner. A procedure that satisfies the requirements of subdivision  
3 (c) is fair and reasonable, but a court may also determine that another procedure is  
4 fair and reasonable taking into account the full circumstances of the expulsion or  
5 suspension.

6 (c) A procedure for expulsion or suspension of a member that satisfies the  
7 following requirements is fair and reasonable:

8 (1) The procedure is included in the unincorporated association's governing  
9 documents.

10 (2) The member to be expelled or suspended is given notice, including a  
11 statement of the reasons for the expulsion or suspension. The notice shall be  
12 delivered at least 15 days before the effective date of the expulsion or suspension.

13 (3) The member to be expelled or suspended is given an opportunity to be heard  
14 by the person or body deciding the matter, orally or in writing, not less than five  
15 days before the effective date of the expulsion or suspension.

16 (d) A notice pursuant to this section may be delivered by any method reasonably  
17 calculated to provide actual notice. A notice delivered by mail shall be sent by  
18 first-class, certified, or registered mail to the last address of the member shown on  
19 the unincorporated association's records.

20 (e) A member may commence a proceeding to challenge the expulsion or  
21 suspension of the member, including a claim alleging defective notice, within one  
22 year after the effective date of the expulsion or suspension. The court may order  
23 any relief, including reinstatement, it determines is equitable under the  
24 circumstances. A vote of the members or of the board may not be set aside solely  
25 because a person was wrongfully excluded from voting by virtue of the challenged  
26 expulsion or suspension, unless the court determines that the wrongful expulsion  
27 or suspension was in bad faith and for the purpose, and with the effect, of  
28 wrongfully excluding the member from the vote or from the meeting at which the  
29 vote took place, so as to affect the outcome of the vote.

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

34 **Comment.** Section 18720 is new. It requires good faith and use of a fair procedure before  
35 terminating or suspending a membership, where membership involves a property right or where  
36 expulsion or suspension of a member would affect "an important, substantial economic interest,"  
37 for example, the right to carry on one's trade or profession. See generally *Potvin v. Metropolitan*  
38 *Life Insurance Co.*, 22 Cal. 4th 1060, 997 P.2d 1153, 95 Cal. Rptr. 2d 496 (2000) (expulsion of  
39 doctor from list of insurance company's preferred providers could impair ability of competent  
40 physician to practice medicine and affected "important, substantial economic interest"). See also  
41 *Swital v. Real Estate Comm'r*, 116 Cal. App. 2d 677 (1953) (member may not be expelled from  
42 local realty board without fair procedure).

43 Nothing in this section affects the common law right of fair procedure as it applies to a decision  
44 to exclude a person from membership in a private association. See *Pinsker v. Pacific Coast Soc.*  
45 *of Orthodontists* 1 Cal. 3d 160, 81 Cal. Rptr. 623, 460 P.2d 495 (1969); *Pinsker v. Pacific Coast*

1 Society of Orthodontists, 12 Cal. 3d 541, 550, 116 Cal. Rptr. 245, 526 P.2d 253 (1974) (“Taken  
2 together, these decisions establish the common law principle that whenever a private association  
3 is legally required to refrain from arbitrary action, the association’s action must be both  
4 substantively rational and procedurally fair.”).

5 To avoid state interference with the free exercise of religion, this section does not apply to an  
6 unincorporated association with a religious purpose. *Cf.* Section 7341 (expulsion, suspension, or  
7 termination of membership in nonprofit mutual benefit corporation). See also Sections 18003  
8 (“board” defined), 18008 (“governing documents” defined), 18015 (“member” defined), 18035  
9 (“unincorporated association” defined).

10 ☞ **Staff Note.** Section 18720(d) is revised to permit use of certified mail to deliver a notice by  
11 mail.

## 12 Article 3. Member Voting

### 13 § 18730. Member voting

14 18730. Except as otherwise provided by statute or by an unincorporated  
15 association’s governing principles, the following rules govern a member vote  
16 conducted pursuant to this chapter:

17 (a) A vote may be conducted either at a member meeting at which a quorum is  
18 present or by a written ballot in which the number of votes cast equals or exceeds  
19 the number required for a quorum. Approval of a matter voted on requires an  
20 affirmative majority of the votes cast.

21 (b) Notice of the vote shall be delivered to all members entitled to vote on the  
22 date of delivery. The notice shall be delivered or mailed or sent electronically to  
23 the member addresses shown in the association’s records a reasonable time before  
24 the vote is to be conducted. The notice shall state the matter to be decided and  
25 describe how and when the vote is to be conducted.

26 (c) If the vote is to be conducted by written ballot, the notice of the vote shall  
27 serve as the ballot. It shall set forth the proposed action, provide an opportunity to  
28 specify approval or disapproval of any proposal, and provide a reasonable time  
29 within which to return the ballot to the unincorporated association.

30 (d) One-third of the voting power of the association constitutes a quorum.

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

33 **Comment.** Section 18730 is new. Subdivision (a) provides a default rule for the number of  
34 votes required for approval of a matter. A statute providing a different standard controls over  
35 subdivision (a). See, e.g., Sections 18770(c) (unanimous approval required for merger if members  
36 of association would become liable for obligations of other constituent entity), 18810(b) (majority  
37 of total voting power of association required for dissolution of association.)

38 See also Sections 18010 (“governing principles” defined), 18015 (“member” defined), 18035  
39 (“unincorporated association” defined).

40 ☞ **Staff Note.** The second sentence of subdivision (a) is added to provide a default standard for  
41 approval of a measure. The words “by law or” are added to the section’s introductory clause to  
42 reflect the fact that a statute may impose a different threshold for approval of a measure. See the  
43 discussion in the Comment.


1 Article 4. Amendment of Governing Documents

2 **§ 18740. Amendment of governing documents**

3 18740. If an unincorporated association’s governing principles do not provide a  
4 procedure to amend the association’s governing documents, the governing  
5 documents may be amended by a vote of the members.

6 **Comment.** Section 18740 is new. See also Sections 18008 (“governing documents” defined),  
7 18010 (“governing principles” defined), 18015 (“member” defined), 18035 (“unincorporated  
8 association” defined), 18730 (member voting procedure).

9 An amendment of an unincorporated association’s governing documents may not impair an  
10 existing contract right without the consent of the person whose right would be affected. See  
11 Hogan v. Pacific Endowment League, 99 Cal. 248, 250, 33 P. 924 (1893). However, if the  
12 governing documents reserve the power to make future changes to member benefits, an  
13 association may amend its governing documents in a way that impairs those benefits so long as  
14 the change is substantively reasonable. An association cannot use its power of amendment to  
15 repudiate its fair and just obligations. See Power v. Sheriff’s Relief Ass’n of Los Angeles County,  
16 57 Cal. App. 2d 350, 134 P.2d 827 (1943).

17  **Staff Note.** The second sentence of the section was deleted as superfluous. Section 18720  
18 provides an equivalent rule for approval of a measure in a member election.

19 Article 5. Merger

20 **§ 18750. Definitions**

21 18750. The following definitions govern the construction of this article:

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

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

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

28 **Comment.** Subdivision (a) of Section 18750 is drawn from Section 5044. Subdivision (b) is  
29 drawn from Section 5048. Subdivision (c) is drawn from Section 5074. See also Section 18035  
30 (“unincorporated association” defined).

31 **§ 18760. Merger authority**

32 18760. An unincorporated association may merge with any other unincorporated  
33 association, domestic corporation, foreign corporation, or other business entity that  
34 is authorized by law to effect such a merger. As used in this section, the term  
35 “other business entity” has the meaning provided in Section 5063.5.

36 **Comment.** Section 18760 is new. Note that “unincorporated association” includes a nonprofit  
37 association. See Sections 18020 (“nonprofit association” defined), 18035 (“unincorporated  
38 association” defined).



1 **§ 18770. Merger procedure**

2 18770. A merger involving an unincorporated association is subject to the  
3 following requirements:

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

6 (1) The terms of the merger.

7 (2) Any amendments the merger would make to the articles, bylaws, or other  
8 governing documents of the surviving entity.

9 (3) The name, place of organization, and type of entity of each constituent entity.

10 (4) The name of the constituent entity that will be the surviving entity.

11 (5) If the name of the surviving entity will be changed in the merger, the new  
12 name of the surviving entity.

13 (6) The disposition of the memberships or ownership interests of each  
14 constituent entity.

15 (7) Other details or provisions, if any, including any details or provisions  
16 required by the law under which a constituent entity is organized.

17 (b) The principal terms of the merger agreement shall be approved by the board,  
18 the members, and any person whose approval is required by the association's  
19 governing documents. Unless otherwise provided in the governing documents, the  
20 members shall approve the agreement in the manner provided for amendment of  
21 the association's governing documents. The members may approve the agreement  
22 before or after the board approves the agreement.

23 (c) A merger agreement that would cause the members of an unincorporated  
24 association to become individually liable for an obligation of a constituent or  
25 surviving entity shall be approved by all of the members of the unincorporated  
26 association. Approval by all members is not required under this subdivision if the  
27 agreement of merger provides for purchase by the surviving entity of the  
28 membership interest of a member who votes against approval of the merger  
29 agreement.

30 (d) A merger agreement may be amended by the board, unless the amendment  
31 would change a principal term of the agreement, in which case it shall be approved  
32 as provided in subdivision (b).

33 (e) Subject to the contractual rights of third parties, the board may abandon a  
34 merger without the approval of the members.

35 **Comment.** Section 18770 is new. *Cf.* Sections 8011-8019 (merger of nonprofit mutual benefit  
36 corporation). See also Sections 18003 ("board" defined), 18005 ("director" defined), 18008  
37 ("governing documents" defined), 18015 ("member" defined), 18035 ("unincorporated  
38 association" defined).

39 ☞ **Staff Note.** Subdivision (a)(3) was revised to require identification of the "type of entity" for  
40 each constituent entity in a proposed merger. The second paragraph of the Comment was deleted.  
41 It was intended to provided an example of the application of subdivision (c), but was potentially  
42 confusing.

1    **§ 18780. Effect of merger**

2       18780. (a) Merger pursuant to this article has the following effect:

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

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

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

9       (b) All rights of creditors and all liens on or arising from the property of each of  
10 the constituent entities are preserved unimpaired, provided that a lien on property  
11 of a disappearing entity is limited to the property subject to the lien immediately  
12 before the merger is effective.

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

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

19       **Comment.** Subdivisions (a)-(c) of Section 18780 are drawn from Section 8020. Subdivision (d)  
20 is new. See also Sections 18005 (“director” defined), 18015 (“member” defined), 18025  
21 (“officer” defined), 18035 (“unincorporated association” defined).

22    **§ 18790. Record ownership of real property**

23       18790. If, as a consequence of merger, a surviving entity succeeds to ownership  
24 of real property located in this state, the surviving entity’s record ownership of that  
25 property may be evidenced by recording in the county in which the property is  
26 located a copy of the agreement of merger that is signed by the president and  
27 secretary or other comparable officers of the constituent entities and is verified and  
28 acknowledged as provided in Sections 149 and 193.

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

30    **§ 18800. Future transfers**

31       18800. A bequest, devise, gift, grant, or promise contained in a will or other  
32 instrument of donation, subscription, or conveyance that is made to a disappearing  
33 entity and that takes effect or remains payable after the merger inures to the benefit  
34 of the surviving entity. A trust obligation that would govern property if transferred  
35 to the disappearing entity applies to property that is instead transferred to the  
36 surviving entity under this section.

37       **Comment.** Section 18800 is drawn from Section 8022. The second sentence is added to make  
38 clear that property that would be impressed with a trust if transferred to a disappearing entity does  
39 not avoid that trust as a result of transfer to a surviving entity under this section. See *Lynch v.*  
40 *Spilman*, 67 Cal. 2d 251, 260, 431 P.2d 636, 62 Cal. Rptr. 12 (1967) (“property transferred to a  
41 corporation or other institution organized for a charitable purpose without a declaration of the use

1 to which the property is to be put, is received and held by it ‘in trust to carry out the objects for  
2 which the organization was created.’”) (citations omitted).

3 Article 6. Dissolution

4 **§ 18810. Dissolution**

5 18810. An unincorporated association may be dissolved by any of the following  
6 methods:

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

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

12 (c) If the association’s operations have been discontinued for at least three years,  
13 by the board or, if the association has no incumbent board, by the members of its  
14 last preceding incumbent board.

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

16 **Comment.** Section 18810 is new. Subdivision (a) is consistent with case law. See *Holt v. Santa*  
17 *Clara County Sheriff’s Benefit Ass’n*, 250 Cal. App. 2d 925, 930, 59 Cal. Rptr. 180 (1967). An  
18 unincorporated association that is subordinate to another organization may be subject to  
19 dissolution by order of the superior organization. *Id.* See also Sections 18003 (“board” defined),  
20 18005 (“director” defined), 18008 (“governing documents” defined), 18015 (“member” defined),  
21 18035 (“unincorporated association” defined), 18730 (member voting procedure).

22 ☞ **Staff Note.** The order of subdivision’s (c) and (d) were reversed to reinforce the impression  
23 that a court order dissolving an association should only be sought as a last resort.

24 **§ 18815. Procedure on dissolution**

25 18815. Promptly after commencement of dissolution of an unincorporated  
26 association, the board or, if none, the members shall promptly wind up the affairs  
27 of the association, pay or provide for its known debts or liabilities, collect any  
28 amounts due to it, take any other action as is necessary or appropriate for winding  
29 up, settling, and liquidating its affairs, and dispose of its assets as provided in  
30 Section 18130.

31 **Comment.** Section 18815 is new. See also Sections 18003 (“board” defined), 18015 (“member”  
32 defined), 18035 (“unincorporated association” defined).