

First Supplement to Memorandum 2004-42

**Unincorporated Association Tort Liability:
Comments of R. Bradbury Clark**

R. Bradbury Clark and Lisa Runquist are our liaisons with the Nonprofit Committee of the Business Law Section of the State Bar for this study. Mr. Clark has written to indicate that he and Ms. Runquist agree with the changes proposed by Mr. Patton, as set out in Memorandum 2004-42 (available at www.clrc.ca.gov). See the attached letter. They feel that the proposed revisions would be nonsubstantive, but would provide some additional comfort to a layperson who is worried about the potential liability resulting from participation in a nonprofit association.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

November 12, 2004

Brian Hebert, Esq.
California Law Revision Commission
3200 5th Avenue
Sacramento, CA 95817

Dear Brian:

Thank you for sending me your memo about tort liability of directors, etc. in connection with the November meeting of the Law Revision Commission.

Lisa Runquist and I have discussed the suggestions of Gary Patton as set forth in your memorandum proposing changes in the Commission's proposal as circulated for comment. We agree with Mr. Patton's suggestions. As you will recall, except for the later addition of subdivision (c), it was originally formulated essentially as he now suggests. Given the addition of subdivision (c), use of the word "if" in the place where it appears instead of the word "unless" at that point may make little difference in view of the open-endedness of subdivision (c) which essentially omits any other basis for liability under a statute or common law. However, from the standpoint of the typical reader of the section looking for some guidance as to that person's exposure if he or she should take one of the positions involved, use of "unless" is much more helpful since it appears to put a circle around the grounds for liability rather than, possibly, simply setting forth some of the exposure. We realize that the law is not just to provide guidance to non-lawyer readers, but also to set workable standards, but we think the section with "unless" in it does this just as well from a technical standpoint as the other format and is much better in terms of helpfulness to a reader. Thus, with the changes Mr. Patton proposes, the section, along with the rest of the additions to the law, will allow persons relying on the statute more comfort as to their position if they are or are to become involved with an unincorporated association.

With best regards,

Sincerely yours,

R. Bradbury Clark

RBC:bas
cc: Lisa Runquist

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