

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Nonprofit Association Tort Liability

September 2004

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **October 29, 2004.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

Under existing law, a member, director, officer, or agent of an unincorporated nonprofit association is not liable for a tort of the association merely because of that person's status as a member, director, officer, or agent. The proposed law would make clear that this does not immunize a member, director, officer, or agent of an unincorporated association from tort liability that exists for reasons other than the person's status as a member, director, officer, or agent. This would provide guidance to a layperson involved in an unincorporated nonprofit association, who might otherwise not understand the scope of potential liability.

This recommendation was prepared pursuant to Resolution Chapter 92 of the Statutes of 2003.

NONPROFIT ASSOCIATION TORT LIABILITY

1 Many private nonprofit associations are not organized as corporations. Such
2 groups could include a charitable group, mutual aid society, social club,
3 homeowners association, political group, or religious society. Although some
4 unincorporated nonprofit associations are legally sophisticated, others are small,
5 informal groups, without legal counsel. It is important that the law governing these
6 groups be as clear and understandable to a layperson as is practicable.

7 Under existing law, a member, director, officer, or agent of an unincorporated
8 nonprofit association is not liable for a tort of the association merely because of
9 that person's status as a member, director, officer, or agent.¹ However, this does
10 not preclude liability existing for reasons other than the person's status. For
11 example, an agent of a nonprofit association would be liable if the agent's own
12 conduct causes an injury. This would be in addition to any liability of the nonprofit
13 association as the agent's principal.²

14 The proposed law would make clear that a member, director, officer, or agent of
15 a nonprofit association may be liable for a tort of the association for reasons other
16 than the person's status as a member, director, officer, or agent. This would
17 provide guidance to a layperson involved in an unincorporated nonprofit
18 association, who might not otherwise understand the scope of potential liability.

19 The proposed law would codify existing grounds for liability, in a nonexclusive
20 list. It would not foreclose any existing common law basis for liability.

1. See Corp. Code §18605 (added by 2004 Cal. Stat. ch. 178, § 11). See also *Security First National Bank of Los Angeles v. Cooper*, 62 Cal. App. 2d 653, 666, 145 P.2d 722 (1945) (“membership, as such, imposes no personal liability for the debts of the association”); *Orser v. George*, 252 Cal. App. 2d 660, 670, 60 Cal. Rptr. 708 (1967) (“mere membership does not make all members liable for unlawful acts of other members without their participation, knowledge or approval”).

2. See Civ. Code § 2343(3) (agent liable as principal for agent's own wrongful conduct in the course of agency). See also 2 B. Witkin, *Summary of California Law Agency* § 149 (9th ed. 1990).

PROPOSED LEGISLATION

1 **Corp. Code § 18620 (added). Tort liability**

2 18620. A member, director, officer, or agent of a nonprofit association is liable
3 for injury, damage, or harm caused by an act or omission of the association or an
4 act or omission of a director, officer, or agent of the association, if any of the
5 following conditions is satisfied:

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

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

11 (c) The member, director, officer, or agent is otherwise liable under another
12 statute or under the common law.

13 **Comment.** Section 18620 is consistent with existing law. A member, director, officer, or agent
14 of a nonprofit association is not vicariously liable for a tort of the association merely because of
15 the person's status as a member, director, officer, or agent of the association. See Section 18605
16 (no liability based solely on membership or agency). A member, director, officer, or agent of a
17 nonprofit association is liable for a tort of the association if that person expressly assumes liability
18 or that person's own tortious conduct causes the injury. The term "tortious conduct" is intended to
19 be construed broadly and includes such conduct as negligent entrustment of a vehicle. See, e.g.,
20 *Steuer v. Phelps*, 41 Cal. App. 3d 468, 116 Cal. Rptr. 61 (1974). Tortious conduct also includes
21 directing or authorizing an agent to engage in tortious conduct. See Cal. Jur. *Agency* § 136 (3d ed.
22 2004) (liability based on personal responsibility). See also *Orser v. George*, 252 Cal. App. 2d 660,
23 670-71, 60 Cal. Rptr. 708 (1967) (nonprofit association member may be liable for "personal
24 participation in an unlawful activity or setting it in motion").

25 Subdivision (c) makes clear that the grounds for liability provided in subdivisions (a) and (b)
26 are not exclusive. Other grounds for liability may exist. For example, the members of an
27 unincorporated homeowners association who own property as tenants in common may be liable in
28 tort for an injury that results from negligent maintenance of that property, even if the members'
29 own conduct was not responsible for the injury. Such liability derives from the law governing
30 tenancy in common. See *Ruoff v. Harbor Creek Community Ass'n*, 10 Cal. App. 4th 1624, 13
31 Cal. Rptr. 2d 755 (1992); but see Civ. Code § 1365.9 (tort action arising from common ownership
32 must be brought against association, and not against individual members, if liability insurance is
33 maintained in specified amount).

34 Other provisions of law may expressly limit the liability of a member, director, officer, or agent
35 of a nonprofit association. See, e.g., Civ. Code § 1365.7 (limitation of liability of officer or
36 director of homeowners association); Corp. Code § 24001.5 (limitation of liability of officer or
37 director of nonprofit medical association). Nothing in this section affects the application of such
38 law. See Section 18060 ("If a statute specific to a particular type of unincorporated association is
39 inconsistent with a general provision of this title, the specific statute prevails to the extent of the
40 inconsistency.").

41 See also Sections 18005 ("director" defined), 18015 ("member" defined), 18020 ("nonprofit
42 association" defined), 18025 ("officer" defined).

43 ☞ **Note.** Corporations Code Section 18610, which governs member liability for an association
44 contract, requires a signed writing in order to assume liability. Should a similar requirement apply
45 to tort liability?