

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

Nonprofit Corporation Law

November 1976

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

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NOTE

This pamphlet begins on page 2201. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 13 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1977.

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this pamphlet as *Recommendation Relating to Nonprofit Corporation Law*, 13 CAL. L. REVISION COMM'N REPORTS 2201 (1976).

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November 15, 1976

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 54 of the Statutes of 1970 to make a study to determine whether the law relating to nonprofit corporations should be revised. The Commission herewith submits its recommendation on this topic.

The Commission began drafting a comprehensive nonprofit corporation statute, based primarily on the comprehensive statutes recently enacted in other states, in 1973. The Commission completed its review of the draft statute in June 1974. Further work on the project was deferred pending the enactment of the new General Corporation Law which was then being drafted as a joint project of the Assembly Select Committee on Revision of the Corporations Code and the State Bar Committee on Corporations. The decision to defer work was made because the Commission concluded that the new nonprofit corporation law should conform to the new General Corporation Law unless need existed for deviation.

The new General Corporation Law was approved by the Governor in September 1975; in October 1975, the Commission decided to give top priority to the nonprofit corporation law study with a goal of submitting a recommendation to the 1977 legislative session.

In July 1976, a mimeographed tentative recommendation was widely distributed for review and comment. The comments

received from interested persons and organizations have been taken into account by the Commission in formulating this recommendation.

The Commission has been aided in its task by its expert consultants who regularly attended Commission meetings and by many other persons who attended Commission meetings, submitted written comments, or otherwise provided information in connection with this study. The Commission's appreciation for this assistance is set forth more fully in the Acknowledgments that follow.

Respectfully submitted,
JOHN N. MCLAURIN
Chairman

ACKNOWLEDGMENTS

Expert Consultants

The Commission retained two expert consultants who provided background research reports or expert advice that was useful in formulating this recommendation. G. Gervaise Davis III of Monterey has served as a consultant since November 1973 when the Commission began its work on this topic. Peter A. Whitman of Palo Alto devoted approximately four months of full-time work in assisting the Commission on this project while on public service leave from his law firm. Both consultants regularly attended Commission meetings when this topic was considered. The Commission is indebted to its consultants for their assistance in this project.

Representatives of State Agencies

The Commission is grateful to representatives of various state agencies who cooperated in this project. Lawrence R. Tapper and Yeoryios C. Apallas, both of the Attorney General's office, attended Commission meetings to provide factual information and expert assistance; Warren J. Abbott of the office of the Attorney General provided detailed written comments; Robert A. Firehock of the State Department of Housing and Community Development provided valuable information concerning experience under the existing law; Robert LaNoue of the Department of Corporations made useful suggestions; J. J. Delaney and Lane A. Morrison, both of the State Board of Equalization, and W. Jerome Thomas of the Department of Real Estate reviewed and commented on the tentative recommendation.

Bill Holden of the office of the Secretary of State, who was requested to review and comment on the tentative recommendation, submitted his suggestions concerning the general approach of the tentative recommendation. Substantial revisions have been made in preparing this recommendation to reflect the suggestions of Mr. Holden.

Assembly Select Committee on Revision of the Nonprofit Corporations Code

The Law Revision Commission has sought to coordinate its work with that of the Assembly Select Committee on Revision of the Nonprofit Corporations Code. Copies of background studies, memoranda, drafts of statutory provisions, and all other materials

prepared by the Commission were sent to the staff of the Assembly Select Committee. The Commission received background studies prepared by the staff of the Assembly Select Committee, and these have been taken into consideration in preparing this recommendation.

The members and staff of the Assembly Select Committee, as of October 1, 1976, are:

Members

John T. Knox, Chairman
Kenneth Maddy, Vice Chairman
John Miller
Bill McVittie
Robert Beverly

Staff

Michael C. Hone, Draftsman
Ira Mark Ellman, Consultant
Martha C. Gorman, Assistant
to Chairman
Gail Glassberg, Committee
Secretary

State Bar Committee on Corporations

The Commission has provided the State Bar Committee on Corporations with preliminary drafts of its proposals and with its tentative recommendation. The State Bar Committee submitted a statement of its view concerning the general approach of the proposed legislation, and substantial revisions have been made in preparing this recommendation to accommodate the views of the State Bar Committee. Several members of the State Bar Committee and staff attended one or more Commission meetings, and their comments and suggestions were useful in formulating this recommendation. In addition, the State Bar Committee has appointed a special subcommittee in part to provide the Commission with additional comments concerning the recommended legislation.

The members of the State Bar Committee, as of October 1, 1976, are:

R. Bradbury Clark,
Chairman

Walter Olson, Advisor

Carl A. Leonard,
Vice Chairman

James R. Andrews
Stuart M. deHaaff
Frank L. Hannig
James R. Hutter
Richard W. Jennings
Curtis M. Karplus
Robert J. Kilpatrick

Alan L. Zimmerman

Rodney Loeb
Bruce A. Mann
Harold D. Marsh
Hans A. Mattes
Denis T. Rice
Henry L. Stern
Brian R. Van Camp

The members of the special subcommittee are:

Members

Carl A. Leonard, Chairman
James R. Andrews
James M. Cowley
Stephen L. Kostka

Liaison Members

Bill Holden
Lawrence Kreig
Warren J. Abbott

Special Subcommittee on Nonprofit Corporations of State Bar Committee on Taxation

A special subcommittee of the State Bar Committee on Taxation was appointed to assist the Commission in connection with this project. The existence of the special subcommittee terminated on October 1, 1976; but, during the time it existed, the subcommittee provided the Commission with valuable assistance in the form of detailed comments on the tentative recommendation.

The members of this subcommittee were:

Kenneth C. Eliasberg, Chairman	
Warren J. Abbott	Brett R. Dick
James M. Cowley	Leslie S. Klinger

Individuals

Numerous other persons also have aided the Commission in its task by providing information and advice at Commission meetings or by providing critical comments on the tentative recommendation. These persons are listed below. (Where a law firm submitted comments on the tentative recommendation, the name of each individual in the firm who agreed to review the tentative recommendation is included in the list, whether or not that individual submitted comments apart from the firm's comments.) The Commission regrets any inadvertent errors or omissions that may have been made in the compilation of this list.

Keith E. Abbott Menlo Park	John Rogers Burk Palo Alto
Virgil P. Anderson Sacramento	Edward L. Butterworth Los Angeles
Kenneth James Arnold San Francisco	David G. Cameron Los Angeles
Luther J. Avery San Francisco	Leonard E. Castro Los Angeles
David G. Baratti Newport Beach	James M. Cowley Los Angeles
Robert James Berton San Diego	Bart Deamer San Francisco
John F. Bradley Los Angeles	Kenneth N. Dellamater Canoga Park
J. J. Brandlin Los Angeles	Louis N. Desmond Sacramento
John W. Broad San Francisco	John B. Dewitt San Francisco
Thomas H. Burcham Berkeley	Walter A. Dold San Francisco

Leonard R. Dubin Los Angeles	Roger W. Hurlbert San Francisco
Robert E. Duffy Los Angeles	Wells A. Hutchins San Francisco
Irving F. Fields Encino	F. Scott Jackson Newport Beach
Albert J. Fink Los Angeles	Charles H. Jarvis Santa Barbara
R. Roy Finkle Los Angeles	Philip M. Jelley Oakland
James H. Flanagan Jr. Clovis	John Paul Jennings San Francisco
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William M. Poindexter Los Angeles	Robert E. Sullivan San Francisco
Richard U. Robison Los Angeles	Wanda Underhill San Francisco
Nathan D. Rowley San Francisco	Thomas T. Vais Santa Clara
Charles A. Rummel Berkeley	Gordon M. Weber San Francisco
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Jon B. Shastid Modesto	Robert Westberg San Francisco
Thomas R. Shearer Jr. San Francisco	David D. Wexler Beverly Hills
Prof. Stanley Siegel Los Angeles	J. Patrick Whaley Los Angeles
Arthur W. Simon San Francisco	George B. White San Francisco
William D. Sommer San Francisco	David E. Willett San Francisco
Robert L. Sorgenfrei Los Angeles	Hon. Thomas C. Yager Los Angeles
Jeffery H. Speich Sacramento	Morris D. Zalle Los Angeles
Thomas F. Stack San Mateo	

PREFACE

This report contains the new Nonprofit Corporation Law recommended by the Commission to replace the existing General Nonprofit Corporation Law and various special statutes relating to nonprofit corporations.

Two bills are recommended and are set out in this report. The first bill is the new Nonprofit Corporation Law. The second bill makes the necessary conforming revisions (additions, amendments, and repeals) of other statutes that would be required upon enactment of the proposed Nonprofit Corporation Law. The sections recommended by the Commission and the Comments to them are drafted as if both of the bills were enacted. Thus, when reference is made to a section by another section, or by a Comment, the reference is to the section as it would exist if both bills were enacted.

The text of the existing General Nonprofit Corporation Law is set out in the Appendix to this report; the disposition of each section in the Appendix is noted in the Comment following that section.

Two tables of parallel provisions are provided in this report. One table shows for each section of the *new* General Corporation Law the comparable section (if any) of the proposed Nonprofit Corporation Law. The other table shows the same information for the *old* General Corporation Law. The Comments to the sections of the proposed Nonprofit Corporation Law (set out following the text of the section in this report) include references to comparable provisions of the new and old General Corporation Laws and comparable provisions of the existing General Nonprofit Corporation Law.

SUMMARY OF RECOMMENDATION

The major purpose of this recommendation is to propose a new nonprofit corporation law that is independent and is complete in itself. The proposed law will replace the existing Corporations Code sections applicable to nonprofit corporations, which incorporate by reference many provisions of a repealed statute that formerly applied to business corporations.

The proposed law is a general law that will govern all types of nonprofit corporations, but it contains a few special provisions that apply only to corporations with large or small memberships or to charitable corporations. It permits a nonprofit corporation to provide by articles or bylaws the structure deemed most appropriate to its particular needs, subject to relatively few restrictions that appear necessary from the standpoint of public policy.

The proposed law is based on the existing General Nonprofit Corporation Law and to a large extent represents an adaptation of the new General Corporation Law which took effect on January 1, 1977. Existing statutory provisions are preserved and present practices codified to a substantial degree but changes are made to accomplish desirable substantive or procedural reforms. The most recent thinking and developments in the nonprofit corporation law field, including modern nonprofit corporation statutes of other jurisdictions, have been taken into consideration in the preparation of the proposed law.

Some of the more significant changes proposed in existing law are summarized below.

Formation

The proposed law simplifies the incorporation process by eliminating incorporation formalities that serve little or no purpose.

Corporate Powers

There is some uncertainty over the extent to which a nonprofit corporation may conduct profit-making business activities. The proposed law makes clear that a nonprofit

corporation may engage in business activities to the same extent as any other corporation, subject to the limitation that any profits be applied to the corporate purposes and not be distributed to members.

Charitable Corporations

To assist the Attorney General in the execution of supervisory duties over charitable corporations and charitable trusts, the proposed law requires that charitable corporations notify the Attorney General of major corporate actions.

Corporate Elections

To assure adequate membership control over management, the proposed law requires that the election procedures of nonprofit corporations be fair. To this end, the proposed law includes specific requirements that voting members be afforded a reasonable opportunity to nominate candidates, that candidates have a reasonable opportunity to communicate with the voting members, and that proxies be solicited for all candidates on an equal basis.

Multiple Boards of Directors

Some existing nonprofit corporations have honorary or advisory boards or divide the corporate authority among several boards. The proposed law permits such arrangements subject to a requirement that the articles or bylaws designate one of the boards as having any corporate authority that has not been specifically delegated to another board. The liability of each board is limited to the matters delegated to it.

Duty of Care of Directors

The duty of care of directors of a nonprofit corporation under the proposed law is the same standard as is provided in the new General Corporation Law. The proposed law does not attempt to codify any additional duty of care in the management of charitable assets; this matter is left to continued case development. Provision is made for the delegation of investment duties to an institutional trustee.

Notwithstanding the general duty of care, under the proposed law, a director is exonerated from liability for acts reasonably necessary to effectuate the corporate purposes of a charitable corporation or the conditions of a charitable trust.

Indemnification of Corporate Agents

The proposed law liberalizes the rules relating to indemnification of corporate agents in the same manner as in the new General Corporation Law.

Memberships

Existing law limits memberships to one per member. The proposed law authorizes multiple memberships. It also makes clear that a nonprofit corporation may have group memberships, and that memberships may be held by nonnatural persons. The proposed law requires notice and an opportunity to be heard prior to expulsion of members. It also includes a procedure for resignation of members to apply in the absence of a procedure adopted by the nonprofit corporation.

Vote Required for Member Action

Existing law is unclear concerning the vote required where a vote is by mail ballot or by means other than at a meeting. The proposed law makes clear that, except for major corporate actions, the required vote is a majority of the votes cast on the action, subject to the limitation that sufficient votes are cast to equal a quorum of a meeting of members. For major corporate actions—such as merger, consolidation, disposition of all of the corporate assets, and dissolution—the proposed law reduces the existing two-thirds vote requirement to a simple majority of the members entitled to vote. In all of these cases, however, articles or bylaws may require a greater vote of the members for corporate action.

Proxies

The proposed law contains provisions relating to the required form of a proxy which are adapted from the new

General Corporation Law. The proposed law reduces the existing seven-year maximum duration for proxies to three years unless the proxy is coupled with an interest.

Consent to Action Without a Meeting

The proposed law retains the existing requirement that written consents be solicited from all members for action without a meeting, but the number of consents required for approval of the action is reduced to the number of votes that would be required to approve the action at a meeting.

Voting Agreements

The proposed law validates voting agreements among members of nonprofit corporations having 10 or fewer members for renewable 10-year periods. It permits the nonprofit corporation to provide for other types of vote-pooling arrangements in the articles or bylaws.

Membership Record

The proposed law clarifies the requirements concerning the membership records in a number of respects. A record of members is required only to the extent any rights or interests are dependent on it. A member is given express authority to inspect his or her own membership record. A member authorized by five percent of the membership may inspect the membership list, but the proposed law permits a nonprofit corporation to protect the confidentiality of the membership list by providing persons seeking inspection a reasonable alternative means of communicating with the members.

Annual Report

Existing law does not require nonprofit corporations to make annual reports to their membership. The proposed law requires an annual report unless the articles or bylaws provide otherwise. If no annual report is made, the proposed law requires that the nonprofit corporation supply specified financial information upon a proper demand. Under specified circumstances, the information must include a report concerning indemnification of

corporate agents and transactions in which officers or directors might have conflicts of interest.

Inspection of Records

The proposed law requires that a nonprofit corporation keep a copy of its articles and bylaws currently in effect available for inspection at its principal office in this state. The corporation must supply a copy to a member upon request and may make a reasonable charge for the copy. The proposed law gives a member the right to inspect the minutes and financial records for a purpose reasonably related to his or her interests as a member. The provisions of the new business corporation law relating to judicial enforcement of inspection rights are extended to nonprofit corporations.

Corporate Finances

The proposed law permits a member to resign his or her membership and, if resignation occurs promptly, thereby to avoid a capital improvement assessment. This rule would not apply to condominiums or homeowners' associations. A financing device, known as a subvention, which in effect is a form of subordinated debt, is statutorily recognized in the proposed law. The liquidity and solvency requirements of the new General Corporation Law are adopted in the proposed law as a condition to nonprofit corporations purchasing or redeeming memberships.

Derivative Actions

The proposed law clarifies the right of a member of a nonprofit corporation to bring a derivative action. The requirement of existing law that the plaintiff post security is made not applicable where the action is brought by 50 members or 10 percent of the membership.

Merger and Consolidation

The right of dissenters to require repurchase of memberships in the case of a merger or consolidation is not provided in the proposed law since that would violate the basic prohibition on distribution of corporate assets to

members. Instead, dissenting members are given the right to bring a prompt action to contest the validity of an unfair or inequitable agreement of merger or consolidation.

Division and Conversion

The proposed law includes a new statutory procedure that will permit a nonprofit corporation to divide into two or more separate nonprofit corporations. A procedure is also provided to enable a nonprofit corporation to convert into a business corporation and vice versa.

Disposition of Assets on Dissolution

Existing law requires a court order (in a proceeding to which the Attorney General is a party) before a nonprofit corporation may dispose of charitable assets on dissolution. The proposed law permits the disposition of charitable assets without a court order if the Attorney General waives any objection to the proposed disposition.

Operative Date

The operative date of the proposed law is deferred for one year after its enactment and is deferred for an additional period of up to one year for existing nonprofit corporations in recognition of the possible need of such corporations to amend their articles and bylaws.

RECOMMENDATION

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BACKGROUND

The General Nonprofit Corporation Law¹ and special provisions in the Corporations Code and other codes² authorize and regulate the incorporation and operation of nonprofit corporations. The existing scheme has developed piecemeal with the result that nonprofit corporations have suffered from undefined and poorly articulated statutes governing their organization and operation.³ The confusion and ambiguity caused by existing law is particularly unsatisfactory in light of the growing importance of nonprofit corporations in recent years.⁴

For these reasons,⁵ the California Law Revision Commission was authorized in 1970 to make a study to determine whether the law relating to nonprofit corporations should be revised.⁶ The object of the study was a comprehensive revision of the law relating to nonprofit corporations.⁷

The need for a new nonprofit corporation law has now become acute. The enactment of a new General Corporation Law that took effect on January 1, 1977,⁸ and the repeal of the old General Corporation Law,⁹ insofar as

¹ Corp. Code §§ 9000-9802.

² See Divisions 2 and 3 of Title 1 of the Corporations Code. Other provisions are scattered throughout the codes. See, e.g., Educ. Code §§ 94306, 94307 (private educational institutions); Ins. Code § 11496 (hospital corporation).

³ Stumpf, "Preface" to *California Nonprofit Corporations* at v (Cal. Cont. Ed. Bar 1969).

⁴ *Ibid.*: "Nonprofit corporations are no longer confined to the traditional category of political, religious, or social endeavor but have expanded to include community theaters, hospitals, thrift shops, conservation clubs, etc. Moreover, the tax problems, the state and local laws regulating fund-raising, the effect of various activities on the tax-exempt status, the effects of reorganization or dissolution, and many other problems are complex and difficult. Because of these reasons nonprofit corporation law has recently gained a greater vitality."

⁵ See 9 Cal. L. Revision Comm'n Reports 107-108 (1969).

⁶ Cal. Stats. 1970, Res. Ch. 54, at 3547.

⁷ Such comprehensive revisions of nonprofit corporation law have been made in recent years by New York (N.Y. Not-for-Profit Corporation Law (1970)) and Pennsylvania (Pa. Nonprofit Corporation Law of 1972). See also ALL-ABA Model Nonprofit Corporation Act (1964); H. Oleck, "Proposed Uniform Non-Profit Organizations Act," in *Nonprofit Corporations, Organizations, and Associations*, 959 (3d ed. 1974); P. Cumming, *Proposals for a New Not-for-Profit Corporations Law for Canada* (1973). The Commission has drawn upon these sources and statutes of other jurisdictions in the course of its study.

⁸ Corp. Code §§ 100-2319, as added by Cal. Stats. 1975, Ch. 682, § 7.

⁹ Corp. Code §§ 100-6804, as repealed by Cal. Stats. 1975, Ch. 682, § 6.

it applies to corporations governed by the new law, have left nonprofit corporations governed for the most part by a body of law that is otherwise repealed.¹⁰

PROPOSED NONPROFIT CORPORATION LAW

General Approach

Nonprofit corporations generally are governed by the old General Corporation Law with the exception of a handful of key provisions in the General Nonprofit Corporation Law.¹¹ Other statutes authorize corporations of a special nature.¹² Under this scheme, nonprofit corporations are governed to a large extent by a law designed primarily for business corporations and which cannot be applied to nonprofit corporations without creating ambiguity and difficult problems of interpretation.¹³ In place of this scheme, the Commission recommends the adoption of a complete and self-contained nonprofit corporation law.¹⁴ The new statute should follow the new General Corporation Law to the extent practicable¹⁵ but should be tailored to the particular needs and practices of nonprofit corporations.¹⁶

Existing Fragmented Law

The enactment of the new General Corporation Law has not affected existing law for nonprofit corporations,¹⁷ which depends in large part on the old General Corporation Law.

¹⁰ See discussion under "Existing Fragmented Law" *infra*.

¹¹ See discussion under "Existing Fragmented Law" *infra*.

¹² See discussion under "Conforming Revisions" *infra*.

¹³ See discussion under "Existing Fragmented Law" *infra*.

¹⁴ The proposed law specifically incorporates by reference a number of provisions of the new General Corporation Law that should be uniformly applicable to corporations of every sort. See discussion under "Provisions of General Application to All Corporations" *infra*.

¹⁵ See discussion under "Organization of New Law" *infra*.

¹⁶ See discussion under "Philosophy of New Law" *infra*.

¹⁷ Cal. Stats. 1975, Ch. 682, § 16, as amended by Cal. Stats. 1976, Ch. 641, provides that the old general corporation law continues to govern corporations organized under other laws to the extent applicable, but that the provisions of the new General Corporation Law relating to permissible corporate names (Corp. Code § 201(b)) apply to all corporations.

That law now applies to nonprofit corporations "except as to matters specifically otherwise provided for"¹⁸ in the General Nonprofit Corporation Law or where "there is a special provision applicable to the corporation inconsistent with some provision"¹⁹ of the old General Corporation Law.

The incorporation of the old General Corporation Law into the General Nonprofit Corporation Law confronts a person attempting to advise nonprofit corporations with an interpretive dilemma. Since the General Nonprofit Corporation Law contains only a few basic rules, the old General Corporation Law must be frequently consulted for additional requirements affecting the nonprofit corporation. Once the relevant statute is located, the question arises whether these provisions are in fact inconsistent with or otherwise specifically provided for in the General Nonprofit Corporation Law.

This question is particularly troublesome where detailed requirements of the old General Corporation Law are covered in a general fashion by the General Nonprofit Corporation Law. For example, various provisions of the General Nonprofit Corporation Law relate to meetings of members in a general manner²⁰ but do not state whether an annual meeting is mandatory; the old General Corporation Law requires an annual meeting of shareholders.²¹ Does the annual meeting requirement in the latter law apply to nonprofit corporations, or should the absence of a specific requirement in the existing General Nonprofit Corporation Law and the presence of general provisions be construed as "inconsistent" or "otherwise specifically provided for"? Litigation and an appellate decision were necessary to establish that an annual meeting is required.²² But this requirement has been interpreted by the Attorney General as applying only in the absence of a bylaw provision to the contrary.²³

¹⁸ Corp. Code § 9002.

¹⁹ Corp. Code § 119.

²⁰ See, e.g., Corp. Code §§ 9401, 9600.

²¹ Corp. Code § 2200: "Shareholders" is defined by Section 103 to include members of a nonstock corporation.

²² See *Burnett v. Banks*, 130 Cal. App.2d 631, 634, 279 P.2d 579, 581 (1955).

²³ 56 Ops. Cal. Atty. Gen. 317, at 319 (1973).

The statutory overlap is more than merely inconvenient for practicing attorneys. It fosters uncertainty which is particularly harmful for nonprofit corporations since the issue created by the uncertainty may not have sufficient monetary significance to justify clarifying litigation. Thus, legitimate claims and rights may go unsatisfied and unprotected.

Perhaps a more serious defect in the approach of incorporation by reference is that many of the old General Corporation Law provisions are inappropriate for nonprofit corporations even though the General Nonprofit Corporation Law makes no contrary provisions. The old General Corporation Law was designed primarily for business corporations.²⁴ Provisions of the old law were based, for example, on the assumption that dividends would be distributed, that stock would be transferable or have a market value, or that the shareholders would receive the corporate assets on dissolution. These provisions do not work when applied to nonprofit corporations which are prohibited from distributing dividends to members,²⁵ which do not ordinarily permit the unrestricted transfer of memberships,²⁶ which may have memberships with no economic value, and the assets of which may go on dissolution to another nonprofit corporation.²⁷

Proposal for Unified Law

The Commission recommends that the existing fragmented statutory scheme be discontinued. In its place, a new independent and self-contained nonprofit corporation law should be enacted.²⁸ This will enable

²⁴ This is also true of the new General Corporation Law, which by its terms is applicable only to business corporations and makes no endeavor to bring nonprofit corporations within its scope.

²⁵ Corp. Code § 9200.

²⁶ Corp. Code § 9609 (bylaws may permit transfer).

²⁷ See Corp. Code § 9801.

²⁸ A number of provisions of the new General Corporation Law that do not relate to the internal operations of corporations should be incorporated by specific reference with appropriate modification where necessary for nonprofit corporations. The provisions to be incorporated by reference are ones that should be uniformly applicable to all corporations. See discussion under "Provisions of General Application to All Corporations" *infra*.

persons dealing with nonprofit corporations to have readily available and easily accessible a law that is certain in its scope and application and that deals with nonprofit corporation problems in a unified and rational manner.

Organization of New Law

The proposed nonprofit corporation law follows roughly the structure and organization and, where appropriate, the substance of the provisions of the new General Corporation Law. Attorneys and other persons who deal with both business corporations and nonprofit corporations will thus be able to work comfortably with both new laws. For clarity and ease of use as adapted for nonprofit corporations, the proposed nonprofit corporation law on occasion reorganizes and shortens and simplifies the provisions of the new General Corporation Law.²⁹

Philosophy of New Law

Throughout the proposed law run several major premises. These premises—some of which on occasion conflict and are resolved when applied to particular issues—are outlined below.

1. No change should be made in existing nonprofit corporation law unless there is a demonstrable need for change.

This principle will avoid unnecessary disruption in the ongoing activities of established organizations. As a corollary of this principle, existing practice (whether or not recognized by the existing statute) should be accommodated in the new nonprofit corporation law to the

²⁹ The policy of short, clear, and concise sections, initiated by the California Code Commission, has been followed in the proposed nonprofit corporation law. The reasons for this policy have been stated as follows:

In [the Corporations] Code, as in other codes prepared by the [Code] Commission, long sections have been divided into several short sections wherever feasible. This practice facilitates reference to particular provisions; further, when amendments are proposed, and the entire text of the section amended must be set forth in the legislative act in compliance with the republication requirement of the Constitution, the use of short sections not only minimizes the chance of unintentional change in the law through unnoticed printing errors, but also effects a substantial savings to the state in cost of typesetting, proof-reading, etc. [1 H. Ballantine & G. Sterling, *California Corporation Laws* § 13, at 10 (4th ed. 1976) (footnote omitted).]

See Rule 8, Joint Rules of the Senate and Assembly, California Legislature.

extent practicable. The practices that have developed on the basis of demonstrated need should be validated wherever possible.

2. The substance of the new General Corporation Law should be generally followed but should be modified where necessary to accommodate the different character of nonprofit corporations.

There are obvious advantages to parallelism between business and nonprofit corporation laws. Persons dealing with both types of corporations will be able to adjust easily between them to the extent they are the same. Therefore, to the extent the two types of corporations have common characteristics, they should be treated uniformly. Experience and precedent developed under one law would, in appropriate cases, be most useful in construing the meaning of the other law.

3. The nonprofit corporation law should be constructed with sufficient flexibility to enable the wide variety of nonprofit corporations to operate efficiently within its parameters.

This requires that the statute be sufficiently broad to cover the many different types of nonprofit corporations and the variety of circumstances under which they operate. To accomplish this objective, the law should be a basic organizational framework within which each nonprofit corporation may provide the structure most appropriate to it. This approach will avoid the need for detailed regulatory statutes for different types of nonprofit corporations. This approach also makes it unnecessary to propose provisions comparable to the close corporation provisions of the new General Corporation Law; a small nonprofit corporation will be able to function effectively under the new nonprofit corporation law by providing an appropriate structure in the articles or bylaws.

4. Nonprofit corporations should not be subject to extensive regulation except when required to protect the public or basic member or creditor rights.

The existing General Nonprofit Corporation Law imposes few regulations on nonprofit corporations. There is less need for strict statutory regulation of the manner of

operation of internal corporate affairs of nonprofit corporations than of business corporations for several reasons: As a practical matter, many nonprofit corporations are substantially regulated by the tax laws; nonprofit corporations which depart too far from the basic purposes of the nonprofit corporation law in issuing memberships will be subject to regulation by the corporate securities laws;³⁰ and charitable corporations³¹ are subject to the supervision of the Attorney General.

The Commission proposes no changes in the tax laws, corporate securities laws, or laws governing supervision of charitable trusts. These regulatory provisions embody policies that have not been specifically committed to the Commission, and the Commission has not undertaken to review them. Hence, the absence of recommendations by the Commission in these areas does not reflect a position that no changes are needed.

Among the most important nonprofit corporation regulations in the proposed law are those that concern the external relations of the corporation. Such regulations concern protection of creditors against the dissipation of corporate assets and protection of beneficiaries and the public against improper management of charitable corporations. As to internal affairs, basic protections of members' voting rights, control of the board of directors, and rights of inspection are proposed to assure adequate limitations on management.

5. In the absence of an applicable provision in the articles or bylaws, the nonprofit corporation law should provide rules to cover the most commonly occurring internal situations.

This will eliminate the uncertainty that occurs when a nonprofit corporation fails to adopt a rule covering a basic matter. It will provide a guideline for normal practice yet still enable the nonprofit corporation to construct in its articles and bylaws the type of organization desired to meet particular needs.

³⁰ See Commissioner of Corporations, Release No. 15-C (Revised) (Oct. 7, 1970), *California Corporate Securities Law Notebook* (Cal. Cont. Ed. Bar 1973).

³¹ As used herein, "charitable corporation" means a nonprofit corporation organized for charitable purposes or a nonprofit corporation that holds assets on a charitable trust.

Formation and Articles

The incorporation of nonprofit corporations under existing law requires three or more incorporators.³² The articles must be signed and acknowledged by the initial directors and by other persons desiring to associate in the formation of corporation.³³ The articles must be filed with the Secretary of State and certified copies must be filed in the county in which the corporation has its principal office and in each county in which it acquires real property.³⁴ The articles must include the "specific and primary purposes" for which the corporation is formed, the county where its principal office is located, and the names and addresses of three or more initial directors.³⁵

The new General Corporation Law eliminates some of these steps for business corporations, and the proposed law would do the same for nonprofit corporations. Under the proposed law, a nonprofit corporation may be formed by one or more initial directors signing and filing articles with the Secretary of State.³⁶ The articles themselves need set forth only the name of the corporation, the name and address of at least one initial director, and statements that it is organized under the nonprofit corporation law and that it may not distribute gains, profits, or dividends to members.³⁷ The proposed law will continue in effect the requirement that a nonprofit corporation, within 90 days after incorporation, file with the Secretary of State a statement of officers and office. The statement must list the name and address of the principal executive officer and of either the secretary or chief financial officer, the street address of the principal office in this state, and must designate an agent for service of process.³⁸

³² Corp. Code § 9200.

³³ Corp. Code § 9304(a).

³⁴ Corp. Code § 9304.5.

³⁵ Corp. Code § 9300.

³⁶ The new General Corporation Law likewise simplifies the execution and filing requirements. See Corp. Code § 200.

³⁷ The new General Corporation Law likewise simplifies the contents of the articles. See Corp. Code § 202.

³⁸ This requirement is comparable to a provision of the new General Corporation Law. See Corp. Code § 1502; see also Corp. Code § 3301 (old General Corporation Law). For a more full discussion, see "Provisions of General Application to All Corporations" *infra*.

The proposed law requires a charitable corporation to state in its articles that it is organized for charitable purposes and is subject to all provisions governing charitable corporations (which include the prohibition against distribution of assets to members on dissolution). The charitable corporation must also send a copy of its articles to the Attorney General upon filing them with the Secretary of State. These new requirements will assist the office of the Attorney General in performance of its supervisory duties over charitable corporations.³⁹

Amendment of Articles

Existing law specifies the amendments that may be made in the articles of a nonprofit corporation.⁴⁰ The new General Corporation Law eliminated such a specification in favor of general authority to make any necessary amendments, provided the amendments would be proper if inserted in original articles if filed at the time of the amendment.⁴¹ This flexibility is desirable and is extended in the proposed law to nonprofit corporations.

Existing law permits the adoption of amendments to the articles by a vote of two-thirds of a quorum of members⁴² or by a vote of two-thirds of a policymaking committee created by the members.⁴³ These provisions will be continued in effect by the proposed law.⁴⁴

The new General Corporation Law revises and simplifies the provisions relating to certificates of amendment and restated articles.⁴⁵ Comparable provisions are included in the proposed law.

³⁹ See Corp. Code § 9505.

⁴⁰ See Corp. Code §§ 3600-3602 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

⁴¹ See Corp. Code § 900(a).

⁴² Corp. Code § 3632 (old General Corporation Law).

⁴³ Corp. Code § 3632.5 (old General Corporation Law).

⁴⁴ The concept of a policymaking committee should be expanded to apply to other areas than amendment of articles. See discussion under "Voting of Memberships" *infra*.

⁴⁵ Compare Corp. Code §§ 905-908, 910 (new General Corporation Law) with Corp. Code §§ 3670-3674, 3800-3802 (old General Corporation Law).

Corporate Powers

Under existing law, unless the articles of incorporation of a nonprofit corporation limit its corporate powers, the corporation has the power and authority necessary to administer its affairs and attain its purposes.⁴⁶ The proposed law continues the existing law.

A limitation on corporate powers imposed by the articles may be enforced under existing law by any member or by the state in a proceeding to enjoin ultra vires acts of the nonprofit corporation except where third parties have acquired rights by the ultra vires act.⁴⁷ This aspect of existing law is continued in the proposed law. In the case of a charitable corporation, however, the law is changed to permit a limitation on the corporation's powers to be enforced whether or not third parties have acquired rights thereunder.⁴⁸ This change will protect the public against dissipation of charitable assets through ultra vires acts of a charitable corporation.

Among the existing statutory powers of nonprofit corporations is the power to carry on "business at a profit as an incident to the main purposes of the corporation."⁴⁹ Case law authorizes a nonprofit corporation to carry on a business for profit, however, whether or not the business is "incident" to its main purposes.⁵⁰ The case law is codified in the proposed law, subject to the limitation that any gain or profit may be applied only to the corporate purposes and may not be distributed as gains, profits, or dividends to members. This will allow a nonprofit corporation to

⁴⁶ Corp. Code § 9501.

⁴⁷ Corp. Code § 803 (old General Corporation Law). This provision is applicable to nonprofit corporations through Corporations Code Section 9002. See, e.g., *Osteopathic Physicians & Surgeons v. California Medical Ass'n*, 224 Cal. App.2d 378, 401, 36 Cal. Rptr. 641, 655 (1964).

⁴⁸ In such a case, the performance of an ultra vires contract of a charitable corporation would be subject to injunction only upon action by a director, the Attorney General, or a person having a right of visitation (which is the right of the founding donor to inspect and regulate the trust) only if all the parties to the contract are parties to the action and only if it is equitable to enjoin performance of the contract. This recommendation is comparable to ALI-ABA Model Nonprofit Corporation Act § 6 (1964).

⁴⁹ Corp. Code § 9200.

⁵⁰ See *People ex rel. Groman v. Sinai Temple*, 20 Cal. App.3d 614, 620-621, 99 Cal. Rptr. 603, 607 (1971).

generate income for its legitimate purposes and will recognize the existing practice of both nonprofit corporations generally and charitable corporations in particular to engage in business activity in support of their corporate purposes. The taxability of income generated by business activities of nonprofit corporations is a separate matter with which the Commission has not dealt, and no recommendation is made on this subject.

The most significant limitation on the powers of nonprofit corporations under existing law is the prohibition on distribution of gains, profits, or dividends to members.⁵¹ This limitation is central to the character of nonprofit corporations and should be retained. However, the proposed law makes clear that a nonprofit corporation may pay compensation to members for services rendered, pay debts and other obligations owed to members, purchase and redeem memberships, and confer services or other benefits on members in conformity with the purposes for which it is formed. Existing authority to distribute corporate assets (with the exception of charitable property) to members upon dissolution⁵² should be retained in the proposed law.

The proposed law authorizes creditors and other members to bring an action in the name of the nonprofit corporation to recover an improper distribution to members.⁵³ Likewise, the proposed law makes any director who authorizes the improper distribution liable to the corporation for the amount improperly distributed upon an action brought by creditors or members in the name of the corporation.⁵⁴

Execution of Corporate Instruments

Existing law establishes a presumption of valid execution for instruments to which the corporate seal has been

⁵¹ See Corp. Code § 9200.

⁵² Corp. Code § 9200. See discussion under "Voluntary and Involuntary Dissolution" *infra*.

⁵³ This provision is comparable to a provision of the new General Corporation Law. See Corp. Code § 506.

⁵⁴ This provision continues existing law. See Corp. Code §§ 823-829 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

affixed.⁵⁵ The proposed law substitutes for this presumption a more effective method of proof of valid execution. Persons dealing with a nonprofit corporation will be entitled to rely upon the authority of specified senior executive officers to execute any instrument on behalf of the corporation.⁵⁶ While this guarantee of valid execution requires involvement of senior officers, it grants commensurately greater assurance to third parties than the rebuttable presumption created under existing law by use of the seal. To avoid the need for unnecessary proof that the instrument was actually signed by the officers whose purported signatures it bears, a presumption (affecting the burden of producing evidence) that the signatures are those of such officers will be created.⁵⁷

Directors

Number and Term of Directors

Existing law requires a nonprofit corporation to have a minimum of three directors.⁵⁸ This rule is continued in the proposed law except where the corporation has fewer than three members. In such a case, fewer than three directors are permitted.⁵⁹

Existing law permits a nonprofit corporation to have a variable number of directors, with a minimum of not less than five and a maximum that does not exceed the stated minimum by more than three.⁶⁰ The permissible limits of variation are expanded in the proposed law, with the minimum being lower and the maximum being not more than one less than twice the stated minimum.⁶¹

⁵⁵ Corp. Code § 833 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

⁵⁶ This is the approach of the new General Corporation Law. See Corp. Code § 313.

⁵⁷ There is no comparable provision in the new General Corporation Law.

⁵⁸ Corp. Code §§ 9300(e), 9500.

⁵⁹ The new General Corporation Law makes a comparable change. See Corp. Code § 212(a).

⁶⁰ Corp. Code § 9300(e).

⁶¹ The new General Corporation Law makes a comparable change. See Corp. Code § 212(a).

Under existing law, the term of directors may be specified in the articles or bylaws.⁶² Absent a specification in the articles or bylaws, the term of directors is one year.⁶³ The proposed law provides that the term is one year and until successors are elected and take office, absent a contrary provision in the articles or bylaws.

In order to assure member control over the board, the proposed law provides that a bylaw relating to the number of directors, or a bylaw affecting the term of directors, may be adopted, amended, or repealed only by the voting members. Existing law limits such protection to changes in the number of directors.⁶⁴

Selection of Directors

In order to give members an adequate opportunity to participate in corporate management and control, the proposed law requires a nonprofit corporation to provide a reasonable means for nominating persons for election as directors and a reasonable means for nominees to communicate with the membership. Likewise, the corporation must permit all nominees to solicit proxies on an equal basis. The Commission recommends no specific standards for what constitutes "reasonable means" of nomination and communication; the standard may differ from corporation to corporation depending on its character, size, purposes, and the like. The existence of a statutory right to a reasonable means for nominating and communicating, however, will provide a legislative guide to a court required to decide a challenge to the nomination and election procedures in place of more nebulous common law or equitable principles.

Although the articles or bylaws may provide the manner of selection of directors,⁶⁵ the proposed law makes clear that, absent a provision in the articles or bylaws, the selection is to be by election of the voting members at a meeting.⁶⁶

⁶² Corp. Code §§ 9302, 9401(c).

⁶³ 56 Ops. Cal. Atty. Gen. 317 (1973).

⁶⁴ Corp. Code § 9400(c).

⁶⁵ Corp. Code §§ 9302, 9401(a).

⁶⁶ This is comparable to the rule for business corporations provided in the new General Corporation Law. See Corp. Code § 301(a) (annual election of directors mandatory).

Cumulative voting in an election of directors of nonprofit corporations is not permitted in California unless the articles or bylaws provide for it,⁶⁷ and the same rule is applied to nonprofit corporations in nearly all jurisdictions.⁶⁸ In California, very few nonprofit corporations have elected to provide for cumulative voting. Cumulative voting for directors is required for business corporations by the new General Corporation Law.⁶⁹ There are significant differences, however, between nonprofit corporations and business corporations where the manner of selection of directors is concerned. Nonprofit corporations may select directors by appointment or by a means other than election.⁷⁰ Directors may be elected or otherwise selected on the basis of geography, function, interest, or other special qualification.⁷¹ Even where elected by the members generally, all directors need not be elected annually.⁷² Moreover, mail ballot and other voting techniques may make cumulative voting impractical.⁷³ For these reasons, the Commission recommends that the existing law relating to cumulative voting be retained insofar as nonprofit corporations are concerned.

Multiple Boards of Directors

It is the practice of some nonprofit corporations—particularly charitable corporations—to have two or more independent boards of directors with separate authority, functions, or manner of selection. This practice is recognized in the proposed law which permits multiple boards if (1) the articles or bylaws provide for them, (2) the manner of selection and authority of each board is specified, and (3) one board is designated to have all residual authority of the nonprofit corporation. While all rules and liabilities applicable to corporate directors generally will apply to directors of nonprofit corporations,

⁶⁷ Corp. Code §§ 9402(d), 9601.

⁶⁸ See, e.g., N.Y. Not-for-Profit Corp. Law § 617 (McKinney 1970); H. Oleck, *Non-Profit Corporations, Organizations, and Associations* § 169, at 422 (3d ed. 1974).

⁶⁹ Corp. Code § 708(a) (subject to the notice requirement of Corp. Code § 708(b)).

⁷⁰ Corp. Code § 9401(c).

⁷¹ *Id.*

⁷² *Id.*

⁷³ Corp. Code § 9601 (manner of voting).

members of boards with limited authority will be responsible only for the matters delegated to such boards. This will facilitate the practice in some nonprofit corporations of having honorary or advisory boards.

Committees of the Board; Advisory Committees

Under existing law, a nonprofit corporation may provide for the appointment and authority of executive or other committees of the board.⁷⁴ The new General Corporation Law provides more detailed rules concerning committees of the board, including provisions that:⁷⁵

(1) A committee consists of two or more directors designated by the board and who serve at the pleasure of the board.

(2) The board may designate alternate committee members to replace absent members at committee meetings.

(3) The committee has all the authority of the board delegated to it, with the exception of authority with respect to certain fundamental actions which is reserved for the board as a whole.

The proposed law adopts for nonprofit corporations these procedural details applicable to committees. In addition, the proposed law provides that the articles or bylaws of a nonprofit corporation may specify that designated directors shall be members of specified committees. This will accommodate those corporations whose committees are selected on the basis of geography, function, interest, or other special qualification.

The proposed law also recognizes the practice of some nonprofit corporations to provide for advisory or other committees, composed of persons who may or may not be directors or members and who may be selected by persons or organizations other than directors or members. Such committees, however, are not empowered to exercise any corporate authority.

⁷⁴ See Corp. Code § 9401(d).

⁷⁵ See Corp. Code § 311.

Meetings of Directors

Under existing law, the articles or bylaws of a nonprofit corporation generally govern the meetings of directors.⁷⁶ This basic provision is retained in the proposed law but is supplemented by specific rules governing meetings of directors absent provisions in the articles or bylaws. For the sake of uniformity, the specific rules parallel those of the new General Corporation Law⁷⁷ with a few exceptions discussed below.

Quorum of directors. The new General Corporation Law imposes minimum quorum requirements for directors;⁷⁸ the existing law for nonprofit corporations permits any quorum set by the bylaws.⁷⁹ The proposed law retains the greater flexibility provided by the existing law for nonprofit corporations in recognition that directors of nonprofit corporations—who, for example, may have accepted office as a public service—may not be able to attend meetings with the regularity that should be expected of directors of a business corporation.

Acts of the board. The new General Corporation Law permits a business corporation to require greater than a majority vote of the directors for approval of an action, but only by a provision in the articles.⁸⁰ The proposed law permits a nonprofit corporation to prescribe such a vote in the articles or bylaws. This is consistent with existing law⁸¹ and with the policy of providing nonprofit corporations with flexibility in regulating voting requirements.

Proxy voting. The law is not clear whether proxy voting by directors of a nonprofit corporation is permitted. The proposed law provides that a director may not vote

⁷⁶ See Corp. Code §§ 9401 (a)-(b), 9503.

⁷⁷ See Corp. Code § 307.

⁷⁸ See Corp. Code § 307 (a) (7).

⁷⁹ Corp. Code § 9401 (b).

⁸⁰ See Corp. Code § 204 (a).

⁸¹ See Corp. Code § 817 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

by proxy.⁸²

Provisional Directors

Where there is an even number of directors and the directors are deadlocked, existing law permits the appointment of a provisional director of a nonprofit corporation upon petition of one-third of the members.⁸³

The proposed law makes a few minor changes in existing law:

(1) The appointment provisions apply whether or not there is an even number of authorized directors if there is no working majority.

(2) The lesser of 50 voting members or members holding 10 percent of the voting power are authorized to petition for a provisional director. This lowers what would be an impractically high percentage for many nonprofit corporations and is consistent with other provisions of the proposed law requiring an appropriate number of members to initiate actions.

(3) A provisional director may not be appointed if it is shown that a majority of the members oppose the appointment.

Directors' Duty of Care

The new General Corporation Law imposes a flexible general duty of care on directors of business corporations that exempts a person who has discharged the duty of care from liability resulting from past or present action as a director.⁸⁴ Nonprofit corporations have an equal if not greater need than business corporations to attract capable persons, many of whom may be expected to serve as directors without monetary reward. The proposed law,

⁸² For a discussion of the policies involved, see H. Oleck, *Non-Profit Corporations, Organizations, and Associations* § 179, at 442-445 (3d ed. 1974).

⁸³ See Corp. Code § 819 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002. Chapter 641 of the Statutes of 1976, Section 9, added the authority to appoint a provisional director in cases where the shareholders are deadlocked. The Commission believes that this solution is inappropriate for nonprofit corporations; if the members of a nonprofit corporation are deadlocked, dissolution or division is the appropriate solution.

⁸⁴ See Corp. Code § 309; *Report of the Assembly Select Committee on the Revision of the Corporations Code* 48 (1975).

therefore, provides that the duty of care for directors of nonprofit corporations is to be measured by the same flexible standard as is provided in the new General Corporation Law.⁸⁵

Where a director of a nonprofit corporation has a conflict of interest with respect to a transaction of the corporation, existing law provides several independent procedures for validating the transaction.⁸⁶ The new General Corporation Law makes a number of changes in this procedure, including the addition of a provision for validating contracts in which a director has a material financial interest.⁸⁷ The proposed law follows the provisions of the new General Corporation Law.

Under existing law, a nonprofit corporation cannot make loans to directors or officers without the approval of the members.⁸⁸ The new General Corporation Law makes a number of alterations in these loan provisions, including the addition of authority to make loans pursuant to an employee benefit plan approved by the shareholders and to make travel advances without further approval of the shareholders.⁸⁹ Under this law, a director who approves a loan in violation of the prohibitions is liable to the corporation in an action in the name of the corporation brought by shareholders or creditors.⁹⁰ The proposed law follows the provisions of the new General Corporation Law.

Officers

Under existing law, a nonprofit corporation must have a president, vice president, secretary, and treasurer; any two or more offices may be held by the same person except those of president and secretary.⁹¹ The new General

⁸⁵ This does not affect the applicable law relating to charitable corporations. See discussion under "Charitable Property" *infra*.

⁸⁶ Corp. Code § 820 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

⁸⁷ See Corp. Code § 310.

⁸⁸ See Corp. Code § 823 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

⁸⁹ Corp. Code § 315.

⁹⁰ See Corp. Code § 316.

⁹¹ Corp. Code § 821 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

Corporation Law requires either a chairman of the board or a president as chief executive officer and permits one person to hold any number of offices, including the offices of both president and secretary.⁹² The proposed law follows the scheme of the new General Corporation Law.

The new General Corporation Law also specifies that an officer may resign at any time subject to the rights of the corporation under a contract of employment.⁹³ This provision is included in the proposed law except that, to assure a nonprofit corporation an adequate opportunity to obtain a replacement for the resigning officer, resignation is subject to such notice period (not exceeding 30 days) as may be provided in the articles or bylaws.

Indemnification of Corporate Agents

Existing law restricts the circumstances under which a nonprofit corporation may indemnify a director, officer, or employee for expenses incurred in defending an action in his or her capacity as a corporate agent.⁹⁴ The practical effect of these provisions may be to force an official or employee of the corporation who is a defendant in an action to enter into a settlement regardless of the merit of the claim.⁹⁵

The new General Corporation Law substantially liberalizes the conditions under which corporate agents may be indemnified.⁹⁶ The proposed law includes provisions comparable to those found in the new General Corporation Law.

Members

Multiple Memberships

Under existing law for nonprofit corporations, a corporation may have such memberships and classes of

⁹² Corp. Code § 312(a).

⁹³ Corp. Code § 312(b).

⁹⁴ See Corp. Code § 830 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

⁹⁵ See *Report of the Assembly Select Committee on the Revision of the Corporations Code 61* (1975).

⁹⁶ See Corp. Code § 317.

membership as the articles or bylaws provide, with the classes having differing rights, privileges, and interests.⁹⁷ Although no person may hold more than one membership,⁹⁸ this limitation may be rendered ineffectual by the creation of classes with voting rights proportionate to contributions made to the nonprofit corporation.⁹⁹ In any event, multiple memberships may be appropriate in some nonprofit corporations, as where memberships and membership rights and obligations are based upon the ownership of subdivision lots or condominium units, where members are encouraged to acquire additional memberships of higher classes, or where membership classes are based on specified qualifications (as in a trade association) and a person may satisfy the qualifications for several classes. For these reasons, the proposed law permits a person to hold more than one membership in a nonprofit corporation unless the articles or bylaws preclude it.

Existing law for nonprofit corporations does not provide specific rules concerning joint and fractional memberships or memberships held in the name of groups and corporations.¹⁰⁰ The proposed law makes clear that such memberships are permitted unless precluded by the articles or bylaws.

Membership Certificates

Under existing law, membership in a nonprofit corporation may be evidenced by a certificate, in which case the certificate must state that the corporation is not one for profit.¹⁰¹ The apparent reason for requiring this statement on the certificate is to avoid the possibility of confusion with a stock certificate. The requirement of the statement is unduly broad and is limited in the proposed law to those cases where the certificate is transferable and represents a property interest in the corporation. The proposed law also provides that membership certificates are subject to recall and exchange, where appropriate, in

⁹⁷ Corp. Code §§ 9402(b), 9602.

⁹⁸ Corp. Code § 9602.

⁹⁹ *Erickson v. Gospel Foundation*, 43 Cal.2d 581, 275 P.2d 474 (1954).

¹⁰⁰ See Corp. Code §§ 9402, 9601, 9602.

¹⁰¹ Corp. Code § 9607.

generally the same manner as share certificates under the new General Corporation Law.¹⁰²

The Commission has considered proposals to expand the requirement of information on the membership certificate to include a statement of members' rights and interests. Such a disclosure provision is not included in the proposed law. If necessary, a disclosure requirement could more appropriately be imposed in the context of the general disclosure and qualifications requirements of the Corporate Securities Law.

Options to Purchase Memberships

Under existing law, nonprofit corporations are authorized to issue options for the purchase of memberships.¹⁰³ As with memberships, the proposed law makes options nontransferable unless the articles or bylaws provide otherwise.

Consideration for Memberships

Existing law limits the types of consideration for which memberships may be issued.¹⁰⁴ The new General Corporation Law further narrows what constitutes acceptable consideration for the issuance of stock,¹⁰⁵ with the intent of providing for the "general protection of creditors and shareholders."¹⁰⁶ Nonprofit corporations need greater flexibility. To provide this flexibility, the proposed law allows a nonprofit corporation to determine (or provide the method of determining) in its articles or bylaws the acceptable consideration for the issuance of its memberships.

Redemption of Memberships

Both the old General Corporation Law¹⁰⁷ and the new

¹⁰² See Corp. Code § 422.

¹⁰³ See Corp. Code §§ 1103, 1104 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹⁰⁴ See Corp. Code § 1109 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹⁰⁵ Corp. Code § 409(a).

¹⁰⁶ See *Report of the Assembly Select Committee on Revision of the Corporations Code* 67 (1975).

¹⁰⁷ See Corp. Code §§ 1100, 1101.

General Corporation Law¹⁰⁸ authorize a business corporation to issue redeemable shares as long as the shareholder does not have the option to compel redemption. It is unclear whether nonprofit corporations may issue redeemable memberships subject to these rules.¹⁰⁹ However, provisions comparable to those of the new General Corporation Law are appropriate for nonprofit corporations and are included in the proposed law.

Record Date for Determining Members' Rights

The authority of a nonprofit corporation to set a record date for determining the voting and other rights of members is provided by existing law as are the rules for determining the record date where that authority is not exercised.¹¹⁰ The new General Corporation Law adds provisions for business corporations for the record date of an adjourned shareholders' meeting and changes somewhat the time of the record date where none is selected by a business corporation.¹¹¹ The same rules are adopted for nonprofit corporations in the proposed law except that the record date for notice of or voting at a meeting where no date is fixed by the board is 10 days, rather than one day, prior to the meeting.

Transfer and Termination of Memberships

Under existing law for nonprofit corporations, a membership is transferable only pursuant to authority in the articles or bylaws.¹¹² The proposed law provides that, where the articles or bylaws permit transferability, they

¹⁰⁸ Corp. Code § 402. Section 402 is intended "to clarify and increase the flexibility" of existing law. *Report of the Assembly Select Committee on Revision of the Corporations Code 64* (1975).

¹⁰⁹ Section 9002 of the Corporations Code provides that the provisions of the old General Corporation Law (which includes Sections 1100 and 1101) apply to nonprofit corporations unless specifically otherwise provided. Because Section 1100, by its own terms, is expressly applicable only to "stock corporations," the effect of Section 9002 in this case is unclear.

¹¹⁰ See Corp. Code §§ 2214, 2215 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹¹¹ See Corp. Code § 701.

¹¹² Corp. Code § 9609.

may provide that a transfer is not binding on the corporation until notice thereof is actually received in a specified manner. Such a provision should enable the corporation to maintain more accurate records and should protect it against duplicating claims relating to the same membership.

California courts have long required due process protections for expulsion of members from nonprofit organizations.¹¹³ This general principle is codified in the proposed law.¹¹⁴ The courts have also required that nonprofit corporations provide members a reasonable procedure for resignation of membership.¹¹⁵ Absent a procedure specified in the articles or bylaws, the proposed law gives a member the right to resign membership upon written notice to the corporation. Resignation will terminate future rights and obligations of membership but not liability for preexisting obligations.

Under existing law, unless the articles or bylaws provide otherwise, death terminates all rights of a member in a nonprofit corporation or in its property.¹¹⁶ Because this rule may be unduly harsh where the membership represents a substantial property interest, the Commission considered several alternative provisions regarding the effect of the death of a member. However, these provisions, while protecting the heirs of deceased members, would create additional problems that outweigh their benefits.¹¹⁷ The

¹¹³ See, e.g., *Cason v. Glass Bottle Blowers Ass'n*, 37 Cal.2d 134, 231 P.2d 6 (1951); *Taboada v. Sociedad Espanola de Beneficencia Mutua*, 191 Cal. 187, 215 P. 673 (1923); *Otto v. Tailors' Protective and Benevolent Union*, 75 Cal. 308, 17 P. 217 (1888).

¹¹⁴ Termination of membership for nonpayment of dues or other proper financial burdens of membership normally requires a lesser due process standard. *DeMille v. American Fed'n of Radio Artists*, 31 Cal.2d 139, 187 P.2d 769, cert. denied, 333 U.S. 876 (1947).

¹¹⁵ See *Haynes v. Annandale Golf Club*, 4 Cal.2d 28, 47 P.2d 470 (1935).

¹¹⁶ Corp. Code § 9608.

¹¹⁷ The chief problems are: (1) the difficulty of defining what type or magnitude of property interest should be protected; (2) the determination of the identity and the status of the deceased member's heirs during the period prior to dissolution of the nonprofit corporation when the property interest would normally be realized; (3) the possible unfairness to other members and violation of the principle prohibiting distributions to members before dissolution inherent in any proposal that involves the forced purchase of the membership by the nonprofit corporation; (4) the difficulty of determining the value of the interest of the deceased member; and (5) the problem that might be created for the nonprofit corporation in raising the funds to pay the deceased member's heirs.

Commission, therefore, recommends the continuation of existing law, which leaves to the corporation the authority to provide such protection in its articles or bylaws if desired.

Members' Meetings

Annual Meeting

The requirement in existing law that a nonprofit corporation hold an annual meeting of members unless the bylaws provide otherwise¹¹⁸ is continued in the proposed law. This requirement is supplemented by a provision adapted from the new General Corporation Law permitting the bylaws to set the time and place of the annual meeting and providing a procedure for the members to obtain a court order to require the corporation to hold the annual meeting where it has failed to do so.¹¹⁹

Special Meetings

Existing law provides that, subject to the articles or bylaws, a special meeting of the members of a nonprofit corporation may be called by the directors or by members holding one-tenth of the voting power.¹²⁰ The new General Corporation Law authorizes the chairman of the board and the president to call a special meeting as well.¹²¹ The proposed law includes this additional authority.

Quorum

Under existing law for nonprofit corporations, the bylaws may provide that a quorum at a meeting of members is greater or less than the majority quorum.¹²² The proposed law provides that, absent a contrary provision in the articles or bylaws, a quorum is a majority of the votes entitled to be

¹¹⁸ See Corp. Code § 2200 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002; Corp. Code § 9401 (a); *Burnett v. Banks*, 130 Cal. App.2d 631, 279 P.2d 579 (1955); 56 Ops. Cal. Atty. Gen. 317 (1973).

¹¹⁹ Corp. Code § 600.

¹²⁰ Corp. Code § 9600.

¹²¹ Corp. Code § 600(d).

¹²² Corp. Code § 9401 (b).

cast at the meeting.¹²³ If a quorum is initially present, the proposed law permits the meeting to continue, provided any action taken is by a majority of the number required to constitute a quorum. This provision, similar to one in the new General Corporation Law,¹²⁴ will prevent a minority from paralyzing corporate action by withdrawal from a meeting.

Notice of Meetings

A nonprofit corporation may, under existing law, specify the manner of giving notice of meetings of members and may dispense with notice of all regular meetings.¹²⁵ This rule is appropriate in view of the variety of types of nonprofit corporations. However, the proposed law makes the broad authority to regulate notice of meetings subject to a general requirement of reasonableness in order to assure adequate notice.¹²⁶ Absent a reasonable provision in the articles or bylaws, the time, contents of notice, the manner of giving notice, and persons to whom notice is given are the same under the proposed law as under the new General Corporation Law.¹²⁷ The new General Corporation Law makes several improvements in the existing procedure¹²⁸ for validation of defectively noticed meetings, which are adapted in the proposed law for use by nonprofit corporations.¹²⁹

¹²³ The new General Corporation Law quorum requirement is a majority of the shares entitled to vote except as varied in the articles. See Corp. Code § 602(a).

¹²⁴ Corp. Code § 602(b).

¹²⁵ Corp. Code § 9401(a).

¹²⁶ The bylaws should not be permitted, however, to waive notice of certain fundamental corporate actions to be taken at a meeting. These actions include change in members' voting rights, approval of a contract or transaction in which a director has a conflict of interest, amendment of the articles, sale or other disposition of all or substantially all of the corporate assets, merger, consolidation, division, conversion, and voluntary dissolution. This is comparable to a provision of the new General Corporation Law. See Corp. Code § 601(f).

¹²⁷ See Corp. Code § 601.

¹²⁸ Corp. Code §§ 2209, 2210 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹²⁹ See Corp. Code § 601(e). For an analysis of the changes, see *Report of the Assembly Select Committee on Revision of the Corporations Code 80-81* (1975).

Voting of Memberships

Voting Rights

Existing law provides that each member of a nonprofit corporation has one vote, to be cast at a meeting of members. This rule is subject to modification by the articles or bylaws, which may provide more or less than one vote per member and a manner of voting by mail or other reasonable means.¹³⁰ This flexibility is important to nonprofit corporations and is retained in the proposed law. However, there are certain aspects of voting rights of members that require clarification. These are discussed below.

Persons entitled to take member action. A number of basic corporate actions require approval of the "members." Whether approval of all members is required, including honorary and other members having no proprietary interest in the nonprofit corporation, is unclear under existing law. The proposed law provides that the approval required is that of the members who are entitled to vote for the election of directors. The articles or bylaws may specify additional members or other persons whose approval is required but, except in the case of a policymaking committee discussed below, may not remove the decisionmaking authority on these basic matters from the members holding the power to elect the directors.

Action by policymaking committee of members. Existing law permits member approval of amendments to the articles of incorporation to be made by a two-thirds vote of a "policymaking committee" of the members "with or without authority to represent and act for the corporation members in other matters."¹³¹ The device of a policymaking committee is particularly useful in a corporation with a large membership. It enables such a corporation to

¹³⁰ Corp. Code § 9601.

¹³¹ See Corp. Code § 3632.5 (old General Corporation Law).

provide in its bylaws for a representative body, the composition of which may be determined on the basis of regional, population, interest, or other considerations peculiar to the nature of the corporation, to act on behalf of the members and thereby avoid the expense and other disadvantages of proxy solicitations or mail referendums.¹³² The proposed law would expand the scope of existing law by authorizing the articles or bylaws to provide that any action required to be taken by the members, not just approval of amendments to the articles, may be taken by the policymaking committee. In order to assure adequate representation, the proposed law requires that the policymaking committee be composed solely of members who are selected by the membership to represent the membership and that the action of a member of the policymaking committee is deemed to be the action of those members whom he or she represents.

Memberships held in representative capacity or by nonnatural person. The new General Corporation Law specifies a variety of rules for the manner of voting shares held by an administrator, executor, guardian, conservator, custodian, trustee, pledgee, minor, or corporation, or by two or more persons.¹³³ These provisions are useful and, unless the articles or bylaws provide otherwise, the proposed law provides that most apply to the voting of memberships in a nonprofit corporation.¹³⁴ In addition, the proposed law makes clear that, absent a provision otherwise in the articles or bylaws, the manner of voting of memberships standing in the name of a partnership, association, family, or other group is the same as the manner of

¹³² Compare Corp. Code § 12453 (district delegates in cooperative corporations).

¹³³ See Corp. Code §§ 702-704.

¹³⁴ The Commission does not recommend adoption for nonprofit corporations of the rule found in Section 702(a) that shares held by a trustee must be transferred into the name of the trustee before they may be voted by the trustee. Likewise, similar provisions relating to shares held by a receiver should not be adopted. The rule in these cases should be that provided in the trust and receivership laws generally.

voting a membership that stands in the names of two or more persons.

Vote Required for Member Action

Existing law is silent on the vote required for many actions of members of nonprofit corporations. The members may generally take action by vote of a majority of a quorum at a meeting.¹³⁵ The vote required where the bylaws authorize a mail ballot or other reasonable voting method is not stated. The proposed law makes clear that, in the case of such a ballot by mail or other method, the number of votes cast must be the equivalent of a quorum at a meeting,¹³⁶ and the vote required must be a majority of the votes cast.

The existing law requires that a number of important corporate actions be approved by a two-thirds vote of the shareholders or members. These actions include amendment of articles and merger and consolidation.¹³⁷ The new General Corporation Law reduces this requirement for business corporations to a majority of the shareholders.¹³⁸ In view of the difficulty for some nonprofit corporations of achieving a large voter turnout or participation, this reduction in the required vote is adopted for nonprofit corporations in the proposed law.

The new General Corporation Law permits the articles but not the bylaws of a business corporation to require a class vote or a super majority vote of the shareholders for approval of specified corporate actions.¹³⁹ The proposed law would permit such a requirement to be included in the bylaws as well as in the articles of a nonprofit corporation. Such authority, however, is qualified by the provision that any bylaw that adversely affects the voting rights of members may only be adopted, amended, or repealed by approval of the members.

¹³⁵ See, e.g., Corp. Code § 9400(a) (adoption of bylaws).

¹³⁶ For a discussion of quorum requirements, see "Members' Meetings" *supra*.

¹³⁷ Corp. Code § 3632 (amendment of articles) and Corp. Code §§ 4107, 9701 (merger and consolidation).

¹³⁸ See, e.g., Corp. Code §§ 902 (amendment of articles) and 1201 (reorganizations); *cf.* Corp. Code § 152.

¹³⁹ See Corp. Code § 204(a)(5).

The new General Corporation Law lists a number of corporate actions for which the approval of a class of shareholders is required.¹⁴⁰ Although many of the listed actions are inapplicable to nonprofit corporations, the general principle of class approval of actions harmful to the rights and interests of the class is sound and is codified in general form in the proposed law.

Proxy Voting

Proxy voting is permitted but not required by existing law for nonprofit corporations; the Commission recommends no change in this rule.¹⁴¹ As a practical matter, voting by proxy may be a necessity for a corporation with a large membership in order to assure a sufficient vote to enable basic corporate actions to be taken.¹⁴²

The new General Corporation Law requires that the form for a proxy solicited from 10 or more shareholders in a corporation having 100 or more shareholders afford an opportunity to specify a choice of approval, disapproval, or abstention with respect to the proposal for which the proxy is solicited; this does not preclude use of general proxies.¹⁴³ Comparable provisions are included in the proposed law.

Under existing law, a proxy may be made effective for a period of up to seven years.¹⁴⁴ This period is unduly long for nonprofit corporations. The proposed law provides that a proxy is effective only for a maximum of three years unless the proxy is coupled with an interest, in which case it may be made irrevocable until the interest is discharged, terminated, or otherwise satisfied.

Consents

Existing law permits an action that may be taken at a meeting of members to be taken instead by unanimous

¹⁴⁰ Corp. Code § 903.

¹⁴¹ See Corp. Code § 9601. The issue of proxy voting of memberships in nonprofit corporations has been the subject of recent litigation in *Braude v. Havenner*, 38 Cal. App.3d 526, 113 Cal. Rptr. 386 (1974).

¹⁴² H. Oleck, *Non-Profit Corporations, Organizations, and Associations*, § 175, at 433-435 (3d ed. 1974).

¹⁴³ Corp. Code § 604.

¹⁴⁴ See Corp. Code § 2226 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

written consent of the members.¹⁴⁵ The new General Corporation Law allows action by less than unanimous written consent but requires the written consent form to provide the option of approval, disapproval, or abstention.¹⁴⁶ Since, under existing law, a nonprofit corporation may permit member action by any reasonable means, including mail,¹⁴⁷ these new provisions are appropriate for inclusion in the proposed law except that, to assure adequate member information and participation, the proposed law requires that written consents be solicited from all members.

Voting Agreements

Voting agreements and voting trusts have less utility for members of nonprofit corporations than for shareholders in business corporations, but they may have some value in limited situations where, for example, the members of a family may wish to maintain control over a family foundation.

The proposed law authorizes voting agreements in the nonprofit equivalent of a close business corporation—a corporation having fewer than 10 memberships. The agreement is limited to 10 years, renewable for 10-year periods. If memberships in the corporation are otherwise transferable, the parties to the agreement are permitted to transfer their memberships to a third party to vote in accordance with the terms of the agreement. A copy of the voting agreement must be deposited with the corporation and is open to inspection by any member. The provisions described above would not limit the authority of a corporation to expressly authorize other types of vote-pooling arrangements. The limited voting agreement provisions of the proposed law are based on features of the voting agreement and voting trust provisions of the new General Corporation Law.¹⁴⁸

¹⁴⁵ Corp. Code § 2239 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹⁴⁶ See Corp. Code §§ 603, 604.

¹⁴⁷ Corp. Code § 9601.

¹⁴⁸ See Corp. Code § 706.

Supervision of Elections

Inspectors of election may be appointed under existing law to oversee elections held at membership meetings of nonprofit corporations.¹⁴⁹ Because a nonprofit corporation may have elections other than at a meeting of members, the proposed law broadens this authority to make clear that inspectors of election may be appointed for any election or vote of members.

Under existing law, the court has broad authority to determine the validity of elections and appointments of directors.¹⁵⁰ This authority includes a determination as to whether the basic election procedures are fair, equitable, and reasonable.¹⁵¹ The broad authority of the court is codified in the proposed statute, but the burden of proving that the basic election procedures were unfair, inequitable, or unreasonable is placed on the person challenging the procedures.

Required Books and Records

The new General Corporation Law includes requirements that a corporation keep adequate and correct books and records of account and minutes of the proceedings of the shareholders, board, and of committees of the board.¹⁵² These provisions supersede the more detailed provisions of the old General Corporation Law, which govern nonprofit corporations.¹⁵³ Provisions comparable to the more general provisions of the new General Corporation Law are included in the proposed law.

Existing law requires that a nonprofit corporation keep a "membership book" containing the name and address of each member and requires that termination of any membership be recorded in the book, together with the

¹⁴⁹ Corp. Code §§ 2232, 2233 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹⁵⁰ See Corp. Code §§ 2236-2238 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹⁵¹ Braude v. Havenner, 38 Cal. App.3d 526, 113 Cal. Rptr. 386 (1974).

¹⁵² Corp. Code § 1500.

¹⁵³ See Corp. Code §§ 3000, 3001, which apply to nonprofit corporations through Corp. Code § 9002.

date on which the membership ceased.¹⁵⁴ The proposed law specifies the content of the membership record in more detail: The membership record must include the name and address of each member, the date the member became a holder of record of the membership, and, where applicable, the number and class of memberships held by each member, and a record of the termination of memberships, together with the date of termination. The membership record is required under the proposed law, however, only if a record is necessary to determine the members entitled to vote, to share in the distribution of assets on dissolution, or otherwise to participate in the affairs of the nonprofit corporation.

More flexible procedures for keeping the membership and fiscal records are authorized in the proposed law. The corporation is permitted to retain the membership record and the books and records of account either in written form or in any other form capable of being converted into written form, but the minutes must be kept in written form. These requirements, the same in substance as those of the new General Corporation Law,¹⁵⁵ provide needed flexibility in maintaining accounting and membership records. While not preventing a corporation from keeping a membership book, they permit the use of electronic data processing equipment to maintain such a record so long as the record can be converted into written form.

Annual Report; Special Financial Statements

Under existing law, the bylaws of a nonprofit corporation may provide for the making of annual reports and financial statements to members,¹⁵⁶ but there is no requirement that a corporation make an annual report or provide financial statements to members.¹⁵⁷

¹⁵⁴ Corp. Code § 9606.

¹⁵⁵ See Corp. Code § 1500.

¹⁵⁶ See Corp. Code § 9402(e).

¹⁵⁷ Corp. Code § 3006 (old General Corporation Law) (annual reports) was limited to a "stock corporation" and Corp. Code § 3011 (old General Corporation Law) (financial statements) specifically excepted "nonprofit corporations."

Annual Report

The old General Corporation Law required "stock corporations" to send an annual report to the shareholders unless the bylaws expressly dispensed with the report.¹⁵⁸ The new General Corporation Law requires that an annual report be sent to shareholders by business corporations unless the corporation has less than 100 shareholders of record and expressly waives the requirement in the bylaws.¹⁵⁹ The proposed law requires that the board of a nonprofit corporation present an oral or written annual report (containing specified information similar to that required by the new General Corporation Law) at the annual meeting of members except to the extent the articles or bylaws otherwise provide.

The proposed law requires that the annual report, which would cover a fiscal year ending not more than 12 months prior to the date of the annual meeting, show all of the following:

- (1) The assets (including any held in trust) and liabilities as of the end of the fiscal year.
- (2) The major changes in assets (including any held in trust) and liabilities during the fiscal year.
- (3) The revenue or receipts, both unrestricted and restricted to particular purposes, during the fiscal year.
- (4) The expenses or disbursements, for both general and restricted purposes, during the fiscal year.

In addition to this fiscal information, the annual report should also describe briefly:

- (1) Any transaction during the fiscal year involving an amount in excess of \$40,000 to which the corporation was a party and in which a director or officer of the corporation or (if known to the corporation) a person holding more than 10 percent of the voting power of the corporation had a direct or indirect material interest. This requirement would not apply to compensation of officers and directors, to contracts let at competitive bid or services rendered at prices regulated by law, or to transactions approved by the members.

¹⁵⁸ Corp. Code § 3006.

¹⁵⁹ Corp. Code § 1501.

(2) The amount and circumstances of indemnification or advances aggregating more than \$10,000 paid during the fiscal year to an officer or director except for indemnification approved by the members.

The requirement of an annual report under the proposed law would apply except to the extent the articles or bylaws otherwise provide. Thus, for example, the articles or bylaws could dispense entirely with the requirement of an annual report, provide for an annual report that contains different or more or less information than is required by the statute, or require that a copy of the annual report be mailed to each member. The provisions of the proposed law will provide flexibility to meet the needs of various types of nonprofit corporations but will, at the same time, require that the articles or bylaws expressly set forth a decision to alter the statutory annual report scheme.

If the articles or bylaws dispense with the requirement of an annual report or with the inclusion of the financial information specified by statute, the proposed law would authorize the members to obtain that financial information by using the procedure discussed below. In addition, notwithstanding the articles or bylaws, the proposed law requires that the information concerning (1) transactions in which a director, officer, or person holding more than 10 percent of the voting power has an interest and (2) indemnification and advances to officers and directors be furnished to the voting members, whether or not the corporation makes an annual report.

Special Financial Statements

The old General Corporation Law required a corporation to provide special financial statements upon demand of shareholders holding at least 10 percent of the number of outstanding shares but expressly excepted nonprofit corporations from this requirement.¹⁶⁰ The new General Corporation Law contains a comparable requirement that special financial statements be provided within 30 days upon written request of holders of at least five percent of

¹⁶⁰ Corp. Code § 3011.

the outstanding shares of any class.¹⁶¹

The proposed law includes provisions generally comparable to the special financial statements provisions of the new General Corporation Law with the following major exceptions:

(1) The corporation is allowed 60 days within which to prepare the requested financial statement or statements.

(2) The corporation is permitted to open its fiscal records to inspection as an alternative to providing the requested financial statement as long as the records are located at an address which is within the county where its principal office in this state is located. This option is appropriate because a nonprofit corporation may not prepare financial statements with the regularity of a business corporation, and a demand for a special financial statement may thus impose an unreasonable cost on the nonprofit corporation.

(3) Although an authorized member (one having written authorization of at least five percent of the voting power or such lesser authorization as is specified in the articles or bylaws) must be provided a copy of the requested fiscal statement or statements without charge, the proposed law permits the corporation to impose a reasonable charge for providing additional copies of the statement or statements.

Rights of Inspection

The new General Corporation Law provisions pertaining to the right of inspection of corporate records¹⁶² supersede provisions of the old General Corporation Law which apparently apply to nonprofit corporations.¹⁶³

Membership Records

The new General Corporation Law expands the

¹⁶¹ Corp. Code § 1501(c); see also Corp. Code § 1501(d)-(f).

¹⁶² See Corp. Code §§ 1600-1605.

¹⁶³ See Corp. Code §§ 3003-3005, apparently applicable to nonprofit corporations through Corp. Code § 9002; *Mooney v. Bartenders Union Local 284*, 48 Cal.2d 841, 313 P.2d 857 (1957).

inspection rights provided by the old law¹⁶⁴ by giving an absolute right to inspect the shareholder record to specified shareholders—those who have a significant ownership interest in the corporation or who, in addition to an ownership interest in the corporation, have instituted a proxy contest with respect to the election of directors. The new General Corporation Law permits a shareholder to obtain a court order postponing any previously noticed shareholders' meeting until the corporation complies with a proper request for a shareholder list. The court may award the shareholder his reasonable expenses (including attorney's fees) incurred in an action to enforce compliance with the statutory inspection rights upon a finding that the corporation's refusal was not justified.

The proposed law gives to members of nonprofit corporations the expanded inspection rights given shareholders by the new General Corporation Law with the following major adjustments:

(1) Under the proposed law, an authorized member (one having written authorization of at least five percent of the voting power or such lesser authorization as is specified in the articles or bylaws) has a statutory right to inspect the membership record or obtain a list of voting members upon 10 days' prior written demand upon the corporation. However, the proposed law permits the corporation to protect its membership list from disclosure if the corporation provides an alternative reasonable procedure whereby an authorized member may communicate without cost with the members to seek support for the nomination of any person or persons for election as directors, to communicate a candidate's statement for persons nominated for director, or to solicit proxies.¹⁶⁵ The proposed statute includes a section specifying procedural requirements which, if provided in the articles or bylaws,

¹⁶⁴ See generally Corp. Code §§ 1600-1605 (rights of inspection).

¹⁶⁵ This provision would not limit the right of an individual member to inspect his membership record for a purpose reasonably related to his interests as a member, but a member demanding such an inspection should be required to state in writing under oath the purpose of the inspection and the use of the information obtained should be limited by statute to the purpose stated in the demand.

are deemed to be a reasonable procedure.¹⁶⁶ This option will provide an authorized member with a practical and economical means of communicating with other members. At the same time, it will permit a corporation to protect the list from possible improper use.¹⁶⁷

(2) The proposed law gives the court specific authority to allow the corporation additional time (beyond the 10 days allowed by statute) within which to provide its membership list to an authorized member. It authorizes the court to impose just and proper conditions for the exercise of the right to inspect the membership records or secure a membership list and to postpone a previously noticed meeting of the members or make other appropriate orders if the corporation fails to comply with a proper demand for inspection.

(3) A provision is included in the proposed law making the member who obtained the membership information, and any other person who used the information, liable to the corporation for any damages resulting from the improper use of the information. This will provide protection to a corporation against the improper use of a membership list, such as, for example, the solicitation of members to join a competing organization. The damage remedy would not be exclusive; improper use of the membership information could be enjoined or other appropriate remedies used.

Financial Records and Minutes

The new General Corporation Law continues the substance of provisions of the old General Corporation Law¹⁶⁸ which authorized a shareholder to inspect the

¹⁶⁶ A bylaw that does not satisfy all of these requirements should satisfy the statute if the procedure it provides is reasonable in view of the circumstances, practices, and nature of the particular nonprofit corporation; but, if the bylaw is challenged, the burden should be on the nonprofit corporation to establish that the bylaw is reasonable under this standard.

¹⁶⁷ This will enable, for example, a means of preserving the right of privacy of members (a matter of some importance where the corporation is one that advocates an unpopular cause) and a means of preserving the integrity of the list (particularly important in cases where the list is a valuable trade secret or is a pool of potential donors).

¹⁶⁸ Compare Corp. Code § 1601 (new General Corporation Law) with Corp. Code § 3003 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

financial records and minutes of a corporation for a purpose reasonably related to his interests as a shareholder. The right of a member of a nonprofit corporation to inspect the financial records and minutes for a purpose reasonably related to his interests as a member is continued in the proposed law with several additions. In order to help assure a proper purpose, the proposed law includes a requirement adapted from the Pennsylvania Nonprofit Corporation Law of 1972 that the demand for inspection must be under oath and must state the purpose of the demand.¹⁶⁹ The proposed law gives the corporation 10 business days within which to comply with the demand. This will give the corporation time to determine whether the demand is for a proper purpose and time to schedule the inspection with a minimum disruption of its office personnel.

Articles and Bylaws

Existing law requires a nonprofit corporation to keep a book of bylaws at its principal office; it does not specifically grant inspection rights to members.¹⁷⁰ The new General Corporation Law requires that the bylaws of a business corporation be open to inspection by the shareholders.¹⁷¹ This new requirement is salutary and is included in the proposed law, but the proposed law covers the articles as well as the bylaws of a nonprofit corporation. In addition, the proposed law requires that, upon written request, the corporation furnish a member with a copy of the articles and bylaws and authorizes the corporation to make a reasonable charge for furnishing the copy.

Director's Right of Inspection

The director's right under existing law to inspect all books, records, and documents and physical properties of the nonprofit corporation¹⁷² is continued in the proposed law.

¹⁶⁹ See 15 Pa. Cons. Stat. Ann. § 7508(b) (Purdon Cum. Supp. 1976-1977).

¹⁷⁰ Corp. Code § 9404.

¹⁷¹ Corp. Code § 213. If the corporation does not have an office in this state where the bylaws may be inspected, it must furnish the shareholder with a copy upon written request.

¹⁷² Corporations Code Section 3004 (old General Corporation Law), which applies to nonprofit corporations through Section 9002, allows inspection of records and properties within the state.

Application to Foreign Nonprofit Corporations

The provisions relating to rights of inspection are extended in the proposed law to a foreign nonprofit corporation having its principal executive office in this state and to any other foreign nonprofit corporation with respect to books and records, documents, and properties actually or customarily located in this state.¹⁷³

Judicial Enforcement

The new General Corporation Law¹⁷⁴ continues the substance of provisions of the old General Corporation Law¹⁷⁵ relating to judicial enforcement of the right of inspection and adds a new provision¹⁷⁶ authorizing the court to award a shareholder his or her reasonable expenses (including attorney's fees) if the court finds that the failure of the corporation to comply with a proper demand for inspection was without justification.

The proposed law makes comparable provisions applicable to nonprofit corporations except that the authority for an award of reasonable expenses (including reasonable attorney's fees) is extended to directors who seek to enforce rights of inspection. However, in any proceeding to enforce an individual member's right of inspection, the proposed law imposes on the member the burden of establishing that the inspection is for a proper purpose.

¹⁷³ The recommended provisions do not extend, as do some provisions of the new General Corporation Law, to a foreign corporation customarily holding meetings of its board in this state. On the other hand, the provisions apply with respect to all books, records, documents, and properties actually or customarily located in this state. Contrast Corp. Code §§ 1600-1605 (new General Corporation Law) (some rights of inspection not made applicable to foreign corporations customarily located in this state). Where the foreign corporation has its principal executive office in this state, it should be noted that the right of inspection under the proposed law extends to books and records kept outside the state.

¹⁷⁴ Corp. Code § 1603.

¹⁷⁵ Corp. Code § 3005, applicable to nonprofit corporations through Corp. Code § 9002.

¹⁷⁶ Corp. Code § 1604.

Corporate Finance

Financial Obligations of Members

Existing law grants general authority to a nonprofit corporation to provide in its articles or bylaws for the amount and terms of payment of, and collection procedures for, membership dues and assessments,¹⁷⁷ as well as for imposition of admission and transfer fees.¹⁷⁸ A member is liable to the corporation for these charges as long as the corporation's own rules are followed in imposing the obligations and the payments are used for corporate purposes.¹⁷⁹ It is likely that even resignation of membership after the levy of an assessment does not terminate such an obligation.¹⁸⁰

Nonprofit corporations will continue under the proposed law to have full authority to regulate their financial relations with their members by means of provisions in the articles or bylaws. However, the proposed law provides a method for members, by prompt resignation of membership, to escape liability for assessments imposed to acquire or construct expensive capital improvements. As the resigning member will not benefit from the future improvements, it is equitable that the member not pay the assessment. This new rule does not apply to such nonprofit corporations as condominiums and homeowners' associations where the obligation to pay assessments runs with the land at law.

Financing Devices

Existing law authorizes nonprofit corporations to raise funds by incurring debt.¹⁸¹ The proposed law continues this authority and specifically authorizes the payment of interest (as long as it is not measured by or contingent upon profits) or principal to members who hold debt instruments

¹⁷⁷ See Corp. Code §§ 9301, 9403, 9611.

¹⁷⁸ See Corp. Code § 9403.

¹⁷⁹ *Cf. DeMille v. American Fed'n of Radio Artists*, 31 Cal.2d 139, 187 P.2d 722, cert. denied, 333 U.S. 876 (1947) (unincorporated association).

¹⁸⁰ *Cf. Locust Club v. Einstein*, 129 Pa. Super. Ct. 338, 195 A. 432 (1937) (Pennsylvania case) and cases cited therein.

¹⁸¹ Corp. Code § 9501.

of the nonprofit corporation. In order to protect both the members and third persons who deal with the nonprofit corporation, acceptable consideration for the issuance of debt instruments is defined in the proposed law.

The nonprofit corporation laws of both New York and Pennsylvania authorize the issuance of subvention certificates.¹⁸² In brief, a subvention is a form of subordinated debt, the repayment of which is normally contingent on the financial health of the corporation and the occurrence of some event—*e.g.*, the completion of funding for the project for which the subvention was solicited. The subvention has been greeted in New York as a new means of obtaining subsidies for nonprofit corporations.¹⁸³ Subvention provisions are included in the proposed California statute. However, this specific statutory authorization of subventions will not restrict the full authority of corporations to incur debt in such form as they find desirable.

The Commission also considered the use of another device provided by New York and Pennsylvania law—the capital contribution.¹⁸⁴ This consists of a required contribution from members (such as an admission fee or assessment) which may, under limited circumstances, be returned to the members by the corporation. The Commission does not recommend adoption of express provisions on capital contributions inasmuch as California nonprofit corporations presently have full and flexible authority to provide for them,¹⁸⁵ which is continued in the proposed law.

Partly Paid Memberships

Presently, nonprofit corporations, if authorized in the articles or bylaws, may issue partly paid memberships,¹⁸⁶ the

¹⁸² See N.Y. Not-for-Profit Corp. Law §§ 504, 505 (McKinney 1970); 15 Pa. Cons. Stat. Ann. § 7542 (Purdon Cum. Supp. 1976-1977).

¹⁸³ See Note, *New York's Not-for-Profit Corporation Law*, 47 N.Y.U. L. Rev. 761, 783-784 (1972).

¹⁸⁴ See N.Y. Not-for-Profit Corp. Law §§ 502, 503 (McKinney Supp. 1976); 15 Pa. Cons. Stat. Ann. § 7541 (Purdon Cum. Supp. 1976-1977).

¹⁸⁵ Corp. Code § 9501 (f).

¹⁸⁶ See Corp. Code § 1109 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

purchaser being liable to the nonprofit corporation for the unpaid balance of the price.¹⁸⁷ The liability to the nonprofit corporation of transferors and transferees of such partly paid memberships is regulated by statute although always subject to specific written agreement between the parties as to primary and secondary liability.¹⁸⁸ It is important for members to know whether memberships may be purchased on an installment basis. Accordingly, the existing law regarding partly paid memberships is continued in the proposed law with the additional requirement that authorization for issuance of memberships on a partly paid basis be set forth in the articles or bylaws.

Repurchase and Redemption of Memberships

The former financial requirements for repurchase of shares by a business corporation remain applicable to a nonprofit corporation that reacquires memberships from members.¹⁸⁹ In general, payment for the memberships must be from earned surplus or surplus resulting from reduction of stated capital and may not threaten the solvency of the corporation. The new General Corporation Law continues the solvency requirement. However, with the goal of rationalizing the restrictions and providing meaningful protection for creditors and investors,¹⁹⁰ the new General Corporation Law substitutes for the existing surplus account requirement a test based upon the earnings, net worth, and liquidity of the corporation (as disclosed by its financial statements).¹⁹¹

The proposed law applies these new financial requirements to nonprofit corporations which repurchase memberships, with some adaptation to reflect differing accounting terminology for nonprofit corporations. In

¹⁸⁷ Corp. Code § 1300 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹⁸⁸ See Corp. Code §§ 1301-1304 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹⁸⁹ See Corp. Code §§ 1706-1708 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002. *But see* 1A H. Ballantine & G. Sterling, *California Corporation Laws* § 408.01, at 761 (4th ed. 1976).

¹⁹⁰ *Report of the Assembly Select Committee on Revision of the Corporations Code* 72 (1975).

¹⁹¹ See Corp. Code §§ 500, 501.

addition, under the proposed law, the repurchase is subject to the requirement that payments not be made pursuant to a plan to distribute gains, profits, or dividends to members.

The specific redemption procedures (*e.g.*, notice, time of payment) of the old General Corporation Law which now govern nonprofit corporations¹⁹² have been continued in the new General Corporation Law.¹⁹³ Comparable provisions are included in the proposed law.

Charitable Property

In addition to general common law powers over charitable institutions,¹⁹⁴ the Attorney General now has specific statutory authority to supervise charitable corporations.¹⁹⁵ This authority is continued in the proposed law.

Existing statutes do not impose specific duties of care upon directors of a charitable corporation. Case law provides, at least to some extent, that the management activities of a charitable corporation and its directors, are to be measured by the standards applicable to private trustees.¹⁹⁶ This is a developing area of law and should be left to continued case law evolution. The proposed law will make clear, however, that the directors of a charitable corporation may comply with the express purposes of the charitable trust without violating the applicable general standard of care. This will enable such activities as support of business ventures by the economically disadvantaged, construction of low-income housing, establishment of mission churches, and the like.

Existing law saves indefinite or uncertain gifts to particular charitable corporations and authorizes these corporations to determine the best use for such gifts.¹⁹⁷ The proposed law expands this provision to apply to all

¹⁹² See Corp. Code §§ 1700-1703 (old General Corporation Law), applicable to nonprofit corporations through Corp. Code § 9002.

¹⁹³ See Corp. Code § 509.

¹⁹⁴ See *People v. Cogswell*, 113 Cal. 129, 45 P. 270 (1896).

¹⁹⁵ See Corp. Code § 9505; Uniform Supervision of Trustees for Charitable Purposes Act, Govt. Code §§ 12580-12597.

¹⁹⁶ See *Lynch v. John M. Redfield Foundation*, 9 Cal. App.3d 293, 88 Cal. Rptr. 86 (1970).

¹⁹⁷ See Corp. Code § 10206(b).

nonprofit corporations named as recipients of indefinite or uncertain charitable gifts.

New York and Pennsylvania provide authority for nonprofit corporations to transfer for investment purposes all or part of their assets, including those held for charitable purposes, to an institutional trustee; these statutes protect the directors of the nonprofit corporation from liability arising out of the administration of the transferred assets by the trustee.¹⁹⁸ Similar provisions are included in the proposed law for California nonprofit corporations.

Common Trust Funds

Existing law authorizes a charitable corporation or corporation sole to form a common trust fund for the pooling of investment funds by it and affiliated organizations.¹⁹⁹ Certain educational institutions are also authorized to participate in such funds.²⁰⁰ The proposed law continues these provisions.

Sales of Assets

The provisions of the new General Corporation Law relating to sales of assets²⁰¹ are, with a few modifications, equally suitable for nonprofit corporations. The proposed law adapts these provisions to require that a sale, lease, or other disposition of all or substantially all of the assets of a nonprofit corporation be approved by the governing board in every case and approved by the members if the transaction is not in the usual and regular course of corporate activities.²⁰² The proposed law requires that notice of the general nature of the proposal be given to members before member approval (other than unanimous approval) may be obtained at a meeting, whether the

¹⁹⁸ See N.Y. Not-for-Profit Corp. Law § 514 (McKinney Supp. 1976); 15 Pa. Cons. Stat. Ann. § 7551 (Purdon Cum. Supp. 1976-1977). See also Civil Code § 2290.5.

¹⁹⁹ See Corp. Code § 10250.

²⁰⁰ See Corp. Code § 10251.

²⁰¹ Corp. Code §§ 1000-1002.

²⁰² See Corp. Code § 1001(a) (new General Corporation Law).

meeting is regular or special.²⁰³ This will effectuate an earlier Commission recommendation.²⁰⁴

The proposed law makes clear that assets held on condition or on a charitable trust are subject, respectively, to the limitations in the instrument of conveyance or in the instrument creating the trust. Where any assets are subject to a charitable trust and the transaction is not in the usual and regular course of corporate activities, the proposed law requires the nonprofit corporation to give written notice to the Attorney General before the transaction is consummated. This will facilitate performance of the Attorney General's duty to supervise charitable property.²⁰⁵

Merger and Consolidation

Under existing law, nonprofit corporations may merge or consolidate with other nonprofit corporations.²⁰⁶ The new General Corporation Law has eliminated consolidation for business corporations on the ground that it was outmoded.²⁰⁷ The Commission recommends that consolidation be retained for nonprofit corporations, however, since many nonprofit corporation combinations employ the consolidation procedures in preference to merger procedures.²⁰⁸

A merger or consolidation is accomplished by filing with the Secretary of State a copy of the agreement of merger or consolidation, with certificates as to approvals by the boards and members of the constituent corporations. Under existing law and under the new General Corporation Law, the agreement for the merger of business corporations may

²⁰³ The new General Corporation Law contains a comparable provision. See Corp. Code § 601 (a) (notice of general nature of proposal must be given if meeting is special but not annual).

²⁰⁴ See *Recommendation and Study Relating to Notice to Shareholders of Sale of Corporate Assets*, 2 Cal. L. Revision Comm'n Reports G-1 (1959).

²⁰⁵ See Corp. Code § 9505.

²⁰⁶ Corporations Code Section 9700 makes the provisions of Article 1 (commencing with Section 4100) of Chapter 3 of Part 8 of Division 1 of the old General Corporation Law applicable to nonprofit corporations.

²⁰⁷ *Report of the Assembly Select Committee on the Revision of the Corporations Code* 13 (1975).

²⁰⁸ See Davis, Reorganization and Termination, in *California Nonprofit Corporations* § 9.17, at 325 (Cal. Cont. Ed. Bar 1969).

provide for equalization of the interests of shareholders by the payment of money or property.²⁰⁹ This is inappropriate for nonprofit corporations because of the basic policy against distributing gains, profits, or dividends to members of a nonprofit corporation except upon dissolution.²¹⁰

Existing law provides for approval of the agreement by a majority of the members acting by vote or by two-thirds of the members acting by written consent, disregarding any limitations or restrictions on the voting power of a class of membership.²¹¹ The requirement of a two-thirds majority approval where members act by written consent is reduced in the proposed law to simple majority approval.

Where a charitable corporation proposes to merge or consolidate, the proposed law requires that the Attorney General be given notice of the proposed merger or consolidation before it is effective so that the Attorney General may ensure that the charitable purposes will not be violated.

It appears that the consolidation or merger of nonprofit corporations is subject to the provisions of the old General Corporation Law, which gave a dissenting shareholder the right to require the corporation to purchase the shares.²¹² Dissenting members of nonprofit corporations should not be afforded the forced purchase rights granted to dissenting shareholders of business corporations. Obviously, such a right could not be applicable in the case of a charitable corporation; to require other types of nonprofit corporations to purchase the memberships of dissenting members would violate the policy against distribution of gains, profits, or dividends to members except upon dissolution,²¹³ as well as create other problems.²¹⁴

²⁰⁹ See Corp. Code §§ 4103 (old General Corporation Law), 1101(d) (new General Corporation Law).

²¹⁰ See discussion under "Corporate Powers" *supra*.

²¹¹ Corp. Code § 9701.

²¹² Corporations Code Section 9700 makes the merger and consolidation provisions of the old General Corporation Law applicable to nonprofit corporations without excepting the provisions of Section 4123 which provides for the compensation of dissenters.

²¹³ See discussion under "Corporate Powers" *supra*.

²¹⁴ See discussion under "Transfer and Termination of Memberships" *supra*.

The new General Corporation Law eliminated the requirement that the corporation give to each shareholder notice of the approval of the agreement of merger in favor of a provision that notice be sent to those shareholders who hold dissenting shares.²¹⁵ However, the proposed law retains the requirement that all members be given notice of approval. All members will thus receive timely notice for purposes of any challenge to the merger or consolidation. The required notice is given in the same manner as notice of meetings of members.

The Commission recognizes that there may be situations where valuable property rights of members are infringed by a merger or consolidation. Where these rights are limited to certain classes, they are protected by the rule that the approval of a class of members is required where an action would adversely affect the rights of the members of a class to a greater extent than members of other classes.²¹⁶ In addition, where a merger or consolidation would be unfair to the property rights of an individual member, the proposed law permits a member to bring a prompt action to enjoin or rescind the merger or consolidation. In every other case, except where an action is brought to test whether the proper vote of approval was obtained, the members have no right under the proposed law to enjoin or rescind the merger or consolidation.

The new General Corporation Law has codified the "de facto merger" doctrine, which gives shareholders the right of approval in corporate transactions that have the effect of a merger but are not formal mergers.²¹⁷ The Commission does not recommend the codification of the de facto merger doctrine in the proposed nonprofit corporation law. It will be a rare case in which a nonprofit corporation is involved in a transaction of the type covered by the doctrine.

²¹⁵ See Corp. Code §§ 1300, 1301.

²¹⁶ See discussion under "Vote Required for Member Action" *supra*.

²¹⁷ See Corp. Code §§ 160, 181, 1200, 1201; *Report of the Assembly Select Committee on the Revision of the Corporations Code 93-94* (1975).

Division

Although existing law provides for the merger or consolidation of nonprofit corporations, no provision is made for dividing a nonprofit corporation into two or more separate corporations. A nonprofit corporation may wish to divide, for example, to sever membership factions that cannot agree or to separate different types of corporate activities. The proposed law includes a division procedure, based in part on the division provisions of the Pennsylvania Nonprofit Corporation Law of 1972.²¹⁸

The major features of the recommended division procedure are:

(1) Any nonprofit corporation is permitted to take advantage of the division procedure.

(2) A dividing corporation may (a) survive the division and create one or more new nonprofit corporations or (b) cease to exist and create two or more new nonprofit corporations.

(3) The dividing corporation will be permitted to divide its assets and liabilities among the resulting corporations as it sees fit so long as the rights of creditors are not impaired.

(4) In order to ensure that a charitable trust will not be violated by a division, the Attorney General must be given notice of a planned division by a charitable corporation.

(5) Other aspects of the recommended division procedure—including the contents of the plan of division, the manner of adoption, amendment, or abandonment of the plan, the effect of filing the plan, and the limitations on actions to enjoin or rescind a division—are analogous to the merger or consolidation procedures.²¹⁹

Conversion of Nonprofit to Business Corporation or Business to Nonprofit Corporation

Existing law provides no means whereby a nonprofit corporation may be converted into a business corporation or a business corporation may be converted into a nonprofit

²¹⁸ 15 Pa. Cons. Stat. Ann. §§ 7941-7946 (Purdon Cum. Supp. 1976-1977).

²¹⁹ See discussion under "Merger and Consolidation" *supra*.

corporation. It may be argued that conversion of a nonprofit corporation into a business corporation permits the shareholders to receive dividends and other distributions, which were previously denied them under the nonprofit corporation law. However, this result can be achieved indirectly by dissolution and reincorporation. Consequently, the proposed law includes conversion provisions based on the conversion provisions of the Pennsylvania Nonprofit Corporation Law of 1972.²²⁰

The significant features of the recommended conversion procedure are:

(1) A nonprofit corporation (other than a charitable corporation) will be permitted to convert into a business corporation.

(2) A business corporation will be permitted to convert into either a charitable or noncharitable nonprofit corporation.

(3) The procedure for conversion is analogous to the merger procedure.²²¹ The conversion will be accomplished by filing a plan of conversion which has been approved by the board and the shareholders or members of the converting corporation in the same manner as is provided for the approval of mergers or consolidations. Members of a converting nonprofit corporation will be given notice of the approval of the plan of conversion and will be permitted to bring an action to enjoin or rescind the conversion if the conversion would be manifestly unfair to their property rights. Dissenting shareholders of a converting business corporation will be given the same right to require the corporation to purchase their shares as dissenting shareholders have where a merger takes place under the new General Corporation Law.²²² No other action to enjoin or rescind the conversion may be brought except to test whether the proper number of memberships or shares were voted in favor of the plan of conversion.²²³

²²⁰ See 15 Pa. Cons. Stat. Ann. §§ 7951-7956 (Purdon Cum. Supp. 1976-1977).

²²¹ See discussion under "Merger and Consolidation" *supra*.

²²² See Corp. Code §§ 1300-1312.

²²³ Compare Corp. Code § 1312(b) (new General Corporation Law).

Voluntary and Involuntary Dissolution

General Approach

The rules governing dissolution of nonprofit corporations are generally the same as those governing business corporations²²⁴ with the major exceptions noted below. This statutory scheme is sound and the new General Corporation Law provisions are adapted in the proposed law for nonprofit corporations.

A number of provisions of the new General Corporation Law that are applicable both to voluntary and involuntary dissolution proceedings are consolidated in the proposed law. Examples of such provisions are those concerning powers of the court, limitations on corporate activities, powers of the board and officers, notice, and cessation of corporate existence.²²⁵ This will eliminate duplication and will simplify the statute.

Disposition of Charitable Assets

Dissolution of a nonprofit corporation differs from dissolution of a business corporation principally in the special treatment accorded to charitable assets. The proposed law codifies existing law that such assets be distributed on dissolution in conformity with the purposes of the charitable trust or the charitable purposes for which the nonprofit corporation was organized.²²⁶ This codification will not affect the judicially developed rule that, if the dominant purpose, express or implied, of a donor cannot be carried out, the doctrine of *cy pres* will be applied by substituting another charitable object approaching the original purpose as nearly as possible.²²⁷

²²⁴ See Corp. Code § 9800 (nonprofit corporations wound up and dissolved in same manner as stock corporation).

²²⁵ See Corp. Code §§ 1801(c), 1802-1804, 1805(b), 1806, 1904 (powers of court); 1805(c), 1903(c) (corporate activities during winding up); 1805(b), 1903(b), 2001 (powers of board and officers); 1805(c), 807(b), 1903(c) (notice); 1808(b), 1905(b), 2010 (cessation of corporate existence).

²²⁶ See Corp. Code § 9801; *Pacific Home v. County of Los Angeles*, 41 Cal.2d 844, 264 P.2d 539 (1953).

²²⁷ See, e.g., *In re Metropolitan Baptist Church of Richmond, Inc.*, 48 Cal. App.3d 850, 121 Cal. Rptr. 899 (1975); *In re Veterans' Industries, Inc.*, 8 Cal. App.3d 902, 88 Cal. Rptr. 303 (1970).

The present rule requiring court proceedings for distribution of charitable assets²²⁸ is modified in the proposed law to allow distribution to be made without court proceedings if the Attorney General makes a written waiver of objections. This will recognize the existing practice and expedite those proceedings in which there is no problem and no need to go to court. This would not preclude a corporation from obtaining a court order for distribution of assets even though the Attorney General has waived objections, nor would it preclude subsequent court challenge of the distribution by an interested party. The common law rule that a conditional gift be disposed of in accordance with the donor's intent if dissolution violates the condition is codified in the proposed law.²²⁹

Grounds for Dissolution

The proposed law expands the grounds for voluntary dissolution by the board to include the grounds that the term of existence of a corporation formed for a limited period has expired without extension or renewal²³⁰ and that the charter of a subordinate body has been surrendered to, taken away, or revoked by the head or national body granting it.²³¹ These changes will allow such corporations to wind up without the necessity of court proceedings.

Avoidance of Dissolution by Purchase

Corporations involved in dissolution proceedings may avoid dissolution by purchasing the shares or memberships of the persons initiating the proceedings.²³² This remedy is limited in the proposed law to situations where the

²²⁸ See Corp. Code § 9801.

²²⁹ See *In re Los Angeles County Pioneer Society*, 40 Cal.2d 852, 257 P.2d 1, cert. denied, 346 U.S. 888 (1953).

²³⁰ Under the new General Corporation Law, this is now a ground for involuntary, but not voluntary, dissolution. Compare Corp. Code § 1800(b)(6) with Corp. Code § 1900(b).

²³¹ Under present law, whenever the charter of a "subordinate body" incorporated under the General Nonprofit Corporation Law "is surrendered to, taken away, or revoked by the head or national body granting it, the subordinate body shall dissolve." Corp. Code § 9802.

²³² See Corp. Code §§ 2000 (new General Corporation Law), 4658-4659 (old General Corporation Law).

dissolution is initiated by members holding a majority of the voting power. This will eliminate the possibility of a minority commencing involuntary proceedings as a device to circumvent the prohibition against distribution of gains to members.²³³ The proposed law permits a nonprofit corporation to limit the use of this remedy in the articles or bylaws. The proposed law prohibits use of the remedy by charitable corporations.

In order to assure equity to all members, (1) if the corporation elects (by vote of members excluding those initiating the dissolution proceeding) to purchase the memberships, the members who opposed such election are allowed under the proposed law to require the corporation to purchase their memberships in addition to the memberships of the persons initiating the proceeding and (2) if the corporation does not elect to purchase the memberships, any member is authorized to make the purchase.²³⁴

Presentation of Claims

Under the new General Corporation Law, notice of the commencement of proceedings for winding up is given to shareholders and creditors by mail,²³⁵ and notice to creditors to present claims is given by publication.²³⁶ The requirement of publication is inadequate and is not duplicated in the proposed law.

In order to assure adequate notice of the commencement of proceedings and notice to present claims, the proposed law requires that notice ordinarily be given to all members by mail and authorizes the court to prescribe a different method of notice where appropriate. Under the proposed law, the notice of commencement of proceedings may contain a statement of the time and place for presentation of creditors' claims. If it does not do so, a separate notice to present claims is required.

²³³ See discussion under "Corporate Powers" *supra*.

²³⁴ Compare Corp. Code § 2000(a) (new General Corporation Law).

²³⁵ Corp. Code §§ 1805(c), 1903(c).

²³⁶ Corp. Code § 1807.

Dissolution of Regulated Nonprofit Corporation

Under the Public Utilities Act,²³⁷ a public utility may not dispose of its assets without the consent of the Public Utilities Commission.²³⁸ And under the Insurance Code, the Insurance Commissioner may commence a proceeding to obtain control of the assets of an insolvent or delinquent insurer and to dissolve the corporation.²³⁹ The proposed law requires that consent of the appropriate regulatory agency be obtained in these cases before dissolution proceedings under the nonprofit corporation law may be maintained.

Religious Corporations

There may be constitutional limits on the extent to which provisions of the nonprofit corporation law may be applied to religious corporations.²⁴⁰ The Commission recommends that all nonprofit corporations (including religious corporations) be treated equally, to the extent constitutionally permissible. The proposed law includes a section stating that the proposed law applies to religious corporations except to the extent a particular application would be unconstitutional under the state or federal constitution.²⁴¹

Provisions of General Application to All Corporations

The old General Corporation Law applied to every private corporation, profit or nonprofit, "now existing or hereafter formed," unless the corporation was expressly excepted from the operation thereof or there was a special provision applicable to the corporation inconsistent with

²³⁷ Pub. Util. Code §§ 201-2115.

²³⁸ Pub. Util. Code § 851; *Grover v. Sharp & Fellows Contracting Co.*, 82 Cal. App.2d 515, 186 P.2d 682 (1947) (rule not absolute); *Slater v. Shell Oil Co.*, 39 Cal. App.2d 535, 103 P.2d 1043 (1940).

²³⁹ Ins. Code §§ 1011(i), 1017.

²⁴⁰ See, e.g., *Serbian Eastern Orthodox Diocese for the United States & Canada v. Milivojevich*, 96 S.Ct. 2372 (1976).

²⁴¹ See Cal. Const., Art. I, § 4 (religious freedom); U.S. Const., Amend. I (establishment and free exercise of religion).

some provision of the old General Corporation Law, in which case the special provision prevailed.²⁴²

The new General Corporation Law is limited in its application; the new law does not apply to nonprofit corporations subject to Division 2 (commencing with Section 9000) of Title 1 of the Corporations Code, to certain corporations subject to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code—chambers of commerce, boards of trade, mechanics' institutes, cooperative corporations, fish marketing associations, California job creation corporations, or business and industrial development corporations—or to corporations organized or existing under any statute of this state other than the Corporations Code unless expressly included in a particular provision of the new General Corporation Law.²⁴³

Section 16 of Chapter 682 of the Statutes of 1975 saves the old General Corporation Law to the extent that that law applies to corporations not covered by the new General Corporation Law.²⁴⁴

There are a number of provisions of the old General Corporation Law that were carried forward into the new General Corporation Law that should apply generally to all corporations, profit or nonprofit, now existing or hereafter formed. These provisions—and only these provisions—of the new General Corporation Law should apply to nonprofit corporations. Accordingly, the provisions listed below are made applicable to nonprofit corporations by specific incorporation by reference in the proposed law:

Section 105 (suit against corporation)

Section 106 (subjection of corporate property to attachment)

Section 107 (issuing or putting in circulation other than lawful money)

Section 108 (fees of Secretary of State)

Section 109 (correction of instruments)

Section 110 (filing of instruments)

²⁴² Corp. Code § 119.

²⁴³ Corp. Code § 102.

²⁴⁴ See Section 16, as amended by Section 43.5 of Chapter 641 of the Statutes of 1976.

- Chapter 14 (commencing with Section 1400) (bankruptcy reorganizations and arrangements)
- Chapter 17 (commencing with Section 1700) (service of process on domestic corporations)
- Chapter 21 (commencing with Section 2100) (excepting Sections 2108, 2109, and 2115)²⁴⁵ and Section 191 (foreign corporations—registration of corporate name, qualification to transact intrastate business, permissible corporate name, service of process, and related provisions)
- Chapter 22 (commencing with Section 2200) (excepting Sections 2200–2202) (crimes and penalties)

Other provisions of the new General Corporation Law also are incorporated by reference in the proposed law with appropriate modifications or additions:

(1) Subdivisions (b) (permissible corporate name) and (c) (reservation of corporate name) of Section 201 are incorporated by reference, and the proposed law further provides that a nonprofit corporation shall not adopt (a) a name the use of which is prohibited by any other statute or (b) a name in which the word “charitable” or its equivalent appears unless the corporation is a charitable corporation.

(2) Section 800 (shareholder derivative action) is incorporated by reference with one important modification. In recognition of the nonpecuniary nature of many nonprofit corporations, a provision is included in the proposed law to permit members to bring derivative actions without being required to furnish security where 50

²⁴⁵ The excepted sections relate to pseudo-foreign corporations, which the Commission recommends not be applied to foreign nonprofit corporations at this time. The concept presents difficult conflict of laws and other problems. See Halloran & Hammer, *Section 2115 of the New California General Corporation Law—The Application of California Corporation Law to Foreign Corporations*, 23 U.C.L.A. L. Rev. 1282 (1976). Experience should be accumulated before a determination is made whether a similar provision is appropriate for foreign nonprofit corporations. Moreover, there is much less need for a similar provision for nonprofit corporations—there is little motivation for Californians to incorporate a nonprofit corporation in another state in an effort to avoid application of the California nonprofit corporation law.

members or 10 percent of the members, whichever number is smaller, join in the action. This is similar to provisions of the Pennsylvania Nonprofit Corporation Law of 1972.²⁴⁶

(3) Section 1502 (annual statement of officers, office, and agent for service) is incorporated by reference, but only the following information is required in the annual statement of a nonprofit corporation:²⁴⁷ the name and address of its chief executive officer and either its secretary or chief financial officer; and the address of its principal executive office and, if that office is not located in this state, the address of its principal office in this state, if any. The proposed law requires the nonprofit corporation, like other corporations under the new General Corporation Law, to designate in the statement an agent for service of process.

The references to specific provisions of the new General Corporation Law will include subsequent amendments of the law, thereby assuring continued uniformity.²⁴⁸

Operative Date and Transition Provisions

The operative date of the new nonprofit corporation law should be deferred for a period of one year following its enactment. This will permit adequate time for the law publishers to print the law and for affected persons, organizations, and agencies to become familiar with and prepare forms to implement the law.

An additional period of up to one year following the operative date should be allowed before the new law becomes applicable to nonprofit corporations formed under prior law and in existence on the operative date. Such corporations could elect to be governed by the new law at any time during the additional period. This will accommodate changes in articles and bylaws that may be

²⁴⁶ 15 Pa. Cons. Stat. Ann. § 7765(c) (Purdon Cum. Supp. 1976-1977).

²⁴⁷ These requirements are tailored to the needs of nonprofit corporations. A listing of directors is not required, for example, because many nonprofit corporations have large boards with constant turnover and the administrative burden of continually updating listings would outweigh the benefit of the listing.

²⁴⁸ Corp. Code § 9.

necessitated by the new law.²⁴⁹ To assure that the new requirements for the contents of articles of incorporation do not force an existing nonprofit corporation to make extensive amendments solely to comply with formalities, the provisions relating to the required contents of articles should be deferred until such a time as the existing nonprofit corporation makes any amendment of its articles.

As a general rule, all corporate actions taken on or after the operative date are to be governed by the new nonprofit corporation law. There are a few minor exceptions to this rule, however, set out in the portion of the proposed legislation relating to "Transition Provisions." These exceptions are based largely on comparable provisions of the new General Corporation Law.

CONFORMING REVISIONS

A substantial number of conforming revisions—amendments, additions, and repeals—will be required to conform other laws to the enactment of the proposed nonprofit corporation law and to improve the organization of the statutes relating to nonprofit corporations. These are outlined below. Many of the conforming revisions are technical in nature. The technical revisions are explained, where necessary, in the Comments that follow the sections *infra*.

Cooperative Corporations

There are three major statutes as well as a number of minor statutes under which cooperative corporations may be formed in California. Two of the major statutes—relating to agricultural cooperatives²⁵⁰ and fish marketing cooperatives²⁵¹—incorporate by reference the "General

²⁴⁹ Provisions that an existing nonprofit corporation should consider in determining what amendments, if any, should be made in its articles and bylaws include the requirement that articles or bylaws state the number of directors and prescribe reasonable nomination procedures. See discussion under "Directors" *supra*. In addition, the proposed law requires an affirmative provision in the articles or bylaws to limit memberships to one per member or to waive an annual report. See discussions under "Multiple Memberships" and "Annual Report" *supra*.

²⁵⁰ Food & Agri. Code §§ 54001-54294.

²⁵¹ Corp. Code §§ 13200-13356.

Corporation Law.”²⁵² However, this reference is to the old General Corporation Law rather than to the new General Corporation Law.²⁵³ Because these types of cooperative corporations are governed by laws relating to business corporations, the Commission has not studied or made recommendations with respect to them.

The third major statute—the cooperative corporation law in the Corporations Code²⁵⁴—incorporates by reference the provisions of the General Nonprofit Corporation Law.²⁵⁵ The statute also provides for the formation of cooperatives with shares, memberships, or both²⁵⁶ and permits the distribution of dividends to the shareholders or members.²⁵⁷ The proposed nonprofit corporation law covers only membership corporations and does not include provisions dealing with the issuance of shares or the payment of dividends. Accordingly, the Commission recommends that the General Nonprofit Corporation Law be continued for these cooperative corporations to the same extent it is now applicable to them. This will preserve the existing law applicable to these corporations until a study can be made and a new statute drafted that relates to them.

“Nonprofit cooperative corporations” were formed pursuant to a repealed title in the Civil Code²⁵⁸ that differed from the cooperative corporation law in the Corporations Code in that it forbade the issuance of stock²⁵⁹ and did not

²⁵² See Corp. Code §§ 13204, 13208, 13225, 13230, 13314 (fish marketing cooperatives); Food & Agri. Code §§ 54040, 54082, 54083, 54116, 54178, 54180, 54202, 54291 (agricultural cooperatives).

²⁵³ See Cal. Stats. 1975, Ch. 682, § 16, as amended by Cal. Stats. 1976, Ch. 641, § 43.5. (“All references in any such other statute to any sections or portions of the General Corporation Law shall, until such amendment, continue to be references to Division 1 (commencing with Section 100) of Title 1 of the Corporations Code as in effect immediately prior to the effective date of this act.”)

²⁵⁴ Corp. Code §§ 12200–12956 (cooperative corporations for ultimate producers or consumers or both).

²⁵⁵ Corp. Code § 12205. *But see* Corp. Code §§ 12206 (corporation organized under other law may bring itself under cooperative corporation law by amending articles as prescribed in General Corporation Law), 12900 (cooperative corporation may amend its articles as prescribed by General Corporation Law).

²⁵⁶ Corp. Code § 12402.

²⁵⁷ Corp. Code §§ 12201, 12805.

²⁵⁸ Former Civil Code §§ 653t–653zd (former Title 22 of Part 4 of Division 1).

²⁵⁹ Former Civil Code § 653u.

authorize the distribution of dividends to members.²⁶⁰ The legislation enacting the new General Corporation Law was amended in 1976 to provide that such corporations, if they have not elected to be governed by the cooperative corporation law,²⁶¹ are governed by the General Nonprofit Corporation Law.²⁶² The Commission recommends that these nonprofit cooperative corporations, like those subject to the cooperative corporation law, be governed for the time being by the existing General Nonprofit Corporation Law rather than the proposed Nonprofit Corporation Law.

The Commission recommends that a general study be made of cooperative corporation law. The statutes relating to agricultural cooperatives and fish marketing cooperatives, as noted above, refer to the old General Corporation Law. This requires that repealed statutes be consulted to determine the law applicable to these corporations. In addition, under the Commission's recommendation, with respect to the cooperative corporation law found in the Corporations Code, it will be necessary to refer to the now existing but to be repealed General Nonprofit Corporation Law, which in turn will refer to the old General Corporation Law. This undesirable situation is one that should be corrected as soon as possible.

Corporations for Charitable and Eleemosynary Purposes

A special statute provides for the formation of corporations to receive, hold, and expend funds for charitable purposes.²⁶³ The Commission recommends that this rarely used²⁶⁴ statute be repealed. Nonprofit corporations may be formed for these purposes under the General Nonprofit Corporation Law and under the

²⁶⁰ See former Civil Code § 653zc (corporation may carry on business for profit of its members).

²⁶¹ The election to be governed by the cooperative corporation law (Corp. Code §§ 12200-12956) may be made pursuant to Corp. Code § 12206.

²⁶² Cal. Stats. 1975, Ch. 682, § 16, as amended by Cal. Stats. 1976, Ch. 641, § 43.5.

²⁶³ Corp. Code §§ 10200-10208.

²⁶⁴ *California Nonprofit Corporations* § 1.11, at 10-11 (Cal. Cont. Ed. Bar 1969); see 1A H. Ballantine & G. Sterling, *California Corporation Laws* § 406.02(a), at 761-762 (4th ed. 1976).

proposed nonprofit corporation law. Thus, the specific restrictions contained in the special statute²⁶⁵ have no general application under existing practice and are easily avoided. They should not be continued. A few advantageous provisions²⁶⁶ of the special statute should be continued in the proposed nonprofit corporation law and expanded to make them generally applicable to all charitable corporations. Existing corporations organized under the special statute would continue to exist under and be subject to the provisions of the proposed nonprofit corporation law.²⁶⁷

Chambers of Commerce, Boards of Trade, and the Like

A special statute authorizes the formation, with or without stock,²⁶⁸ of chambers of commerce, boards of trade, mechanics' institutes, and the like.²⁶⁹ If formed with capital stock, the corporation is subject to the old General Corporation Law.²⁷⁰ If formed without capital stock, it is subject to the General Nonprofit Corporation Law.²⁷¹ The statute contains a number of special provisions²⁷² which are unnecessary because they largely duplicate provisions of the new General Corporation Law and the proposed nonprofit corporation law. The statute also contains certain restrictive provisions²⁷³ which are ineffective because they

²⁶⁵ See, e.g., Corp. Code §§ 10200 (formation by a minimum of 25 persons), 10201(d) (board consisting of between 9 and 25 trustees), 10206(d) (no property held other than for charitable purposes), 10206(f) (prohibition against compensation of trustees).

²⁶⁶ See, e.g., Corp. Code §§ 10204 (power of the board to delegate financial and investment decisionmaking authority), 10206(b) (authority to accept funds upon a general charitable trust and to receive and use indefinite or uncertain charitable gifts).

²⁶⁷ These corporations would be free from the restrictions found in Corporations Code Sections 10200-10208 unless otherwise provided in their articles or bylaws.

²⁶⁸ Corp. Code § 12000.

²⁶⁹ See Corp. Code §§ 12000-12006.

²⁷⁰ Corp. Code § 12000; see Corp. Code § 102 (scope of new business corporation law).

²⁷¹ Corp. Code § 12000.

²⁷² See, e.g., Corp. Code §§ 12001 (required provisions of articles), 12002 (required provisions of bylaws), 12005 (levy of assessments).

²⁷³ See, e.g., Corp. Code §§ 12000 (formation by 20 or more persons), 12004 (penalty for violation of bylaws not to exceed \$100).

may be easily evaded by forming the corporation under other laws.²⁷⁴

The Commission recommends that the special statute be repealed.²⁷⁵ Any corporation existing under the special statute on the operative date of its repeal should be subject to the provisions of the proposed nonprofit corporation law if the corporation is currently subject to the General Nonprofit Corporation Law, or to the provisions of the new General Corporation Law if the corporation is currently subject to the old General Corporation Law.

Corporations to Administer Libraries

An infrequently used special statute in the Education Code²⁷⁶ authorizes the formation of corporations to administer libraries. These provisions should be repealed. The statute is not the exclusive authorization for the formation of nonprofit library corporations since such corporations may be formed under the General Nonprofit Corporation Law and they may be formed under the proposed nonprofit corporation law.²⁷⁷ Accordingly, the apparent purpose of its restrictive and unique provisions²⁷⁸ is easily avoided and is not being achieved. Any corporation existing under the special statute on the operative date of the proposed nonprofit corporation law should be subject to the provisions of the proposed law.

Corporations Sole

The Corporations Code governs the formation and operation of a corporation sole—a corporation consisting of

²⁷⁴ See 1A H. Ballantine & G. Sterling, *California Corporation Laws* § 428 at 790 & n.4 (4th ed. 1976).

²⁷⁵ For a complete statement of the proposed disposition of Corporations Code Sections 12000-12006, see the Comment to the proposed repeal of these sections in the "Proposed Legislation" *infra*.

²⁷⁶ Educ. Code §§ 19800-19811.

²⁷⁷ See Corp. Code § 9200. It should be noted that a corporation formed under the proposed nonprofit corporation law would be permitted to restrict its purposes and make special provisions for the governing of its affairs in the same manner as provided in the special provisions in the Education Code.

²⁷⁸ See, e.g., Educ. Code §§ 19801 (business may not be carried on for profit), 19802 (board members subject to approval of Commissioner of Corporations), 19811 (articles subject to approval of Attorney General).

the presiding officer of a church in his official capacity.²⁷⁹ The provisions relating to these unique entities, useful for maintaining continuity of institutional property ownership, should be continued with minor technical revisions²⁸⁰ and should be relocated in Division 3 of Title 1 of the Corporations Code which deals with corporations for specific purposes.²⁸¹

Societies for the Prevention of Cruelty to Children or Animals

Provisions relating to societies for the prevention of cruelty to children or animals are currently located both in the Corporations Code²⁸² and in the Civil Code.²⁸³ These provisions should be relocated in the Health and Safety Code with a few technical revisions to conform them to the proposed nonprofit corporation law.²⁸⁴

Port and Terminal Protection and Development Corporations

The provisions governing port and terminal protection and development corporations, currently located in the Corporations Code,²⁸⁵ should be relocated in the Harbors and Navigation Code which contains other provisions pertaining to ports. A few technical revisions should be

²⁷⁹ See Corp. Code §§ 10000-10015.

²⁸⁰ For example, provisions requiring the verification of the articles (Corp. Code § 10005) and the filing of articles of incorporation with a county clerk (Corp. Code § 10006) should be deleted in conformity with the new General Corporation Law and the proposed nonprofit corporation law. See discussion under "Formation" *supra*.

²⁸¹ It should be noted that corporations sole would not be subject to the proposed nonprofit corporation law except for the provisions authorizing participation in common trust funds and a few provisions of general application such as the annual statement of officers and the service of process provisions.

²⁸² See Corp. Code §§ 10400-10406.

²⁸³ See Civil Code §§ 607d-607f.

²⁸⁴ For example, the provision of Civil Code Section 607f, requiring that an appointment of a humane officer be attested by the seal of the corporation, should be eliminated to be consistent with the proposed abolition of the presumptive validity of instruments to which a seal has been affixed. See discussion under "Execution of Corporate Instruments" *supra*.

²⁸⁵ See Corp. Code §§ 10700-10703.

made in these provisions to conform them to the proposed nonprofit corporation law.²⁸⁶

Nonprofit Corporations for Medical Services

The special provisions relating to nonprofit corporations for medical services, currently located in the General Nonprofit Corporation Law,²⁸⁷ should be relocated in the Business and Professions Code along with other provisions concerning the healing arts.²⁸⁸

Nonprofit Corporations for Legal Services

The special provisions relating to nonprofit corporations for legal services, currently located in the General Nonprofit Corporation Law,²⁸⁹ should be relocated in the Business and Professions Code along with other provisions concerning law corporations.²⁹⁰

Water Companies

Various provisions concerning water companies, including nonprofit water companies, are found in what remains of the old "General Provisions Applicable to All Corporations" in the Civil Code²⁹¹ and in the new General Corporation Law.²⁹² These provisions should be relocated, without substantive change, in the Public Utilities Code where other provisions relating to water companies are compiled.²⁹³

²⁸⁶ For example, the provision of Corporations Code Section 10703, relating to incorporators, should be deleted because it is recommended that the concept of incorporators not be continued in the proposed nonprofit corporation law. See discussion under "Formation" *supra*.

²⁸⁷ See Corp. Code §§ 9201, 9201.1.

²⁸⁸ See Division 2 (commencing with Section 500) of the Business and Professions Code.

²⁸⁹ See Corp. Code § 9201.2.

²⁹⁰ See Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of the Business and Professions Code.

²⁹¹ See Title 1 (commencing with Section 330.24) of Part 4 of Division 1 of the Civil Code.

²⁹² See Corp. Code §§ 602(a), 708(d).

²⁹³ See Chapter 2 (commencing with Section 2701) of Part 2 of Division 1 of the Public Utilities Code.

Fees for Filing Corporate Instruments

Existing law provides different fees for the filing of certain corporate instruments with the Secretary of State, depending on whether the corporation is a business or a nonprofit corporation.²⁹⁴ The fee for filing articles of incorporation or agreements of merger or consolidation is \$15 for nonprofit corporations²⁹⁵ and \$65 for business corporations.²⁹⁶ The Commission recommends that this scheme be preserved and that the fees for filing a plan of division of a nonprofit corporation and for filing a plan of conversion of a nonprofit into a business corporation, and vice versa, be consistent therewith. Accordingly, the fee for filing a plan of division should be \$15; the fee for filing a plan of conversion of a nonprofit into a business corporation should be \$65, and the fee for filing a plan of conversion of a business into a nonprofit corporation should be \$15.

²⁹⁴ See Govt. Code §§ 12200, 12201, 12202, 12205, 12210. These sections are drafted in terms of stock and nonstock corporations rather than business and nonprofit corporations.

²⁹⁵ Govt. Code §§ 12200 (articles of incorporation and agreement of consolidation), 12205 (agreement of merger, fee not otherwise provided for).

²⁹⁶ Govt. Code §§ 12201 (articles of incorporation and agreement of consolidation), 12202 (agreement of merger).

PROPOSED NONPROFIT CORPORATION LAW

DIVISION 2. NONPROFIT CORPORATION LAW

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Article 1. Short Title and Rules of Construction

- § 5000. Short title
- § 5010. Application of rules of construction
- § 5011. Verification
- § 5012. Affidavits
- § 5013. Presentation of accounting items
- § 5014. Time notice given or delivered
- § 5015. Mailing
- § 5016. Writing includes facimile or telegraphic communication

Article 2. Definitions

- § 5100. Application of definitions
- § 5103. Action
- § 5106. Approved by (or approval of) the board
- § 5109. Approved by (or approval of) the members
- § 5112. Articles
- § 5115. Board
- § 5118. Business corporation
- § 5121. Bylaws
- § 5123. Chief executive officer
- § 5125. Class
- § 5127. Consolidated nonprofit corporation
- § 5129. Constituent nonprofit corporation
- § 5131. Converting and converted corporation
- § 5133. Director
- § 5136. Disappearing nonprofit corporation
- § 5139. Dividing nonprofit corporation
- § 5142. Filed
- § 5145. Independent accountant
- § 5148. Member
- § 5151. New nonprofit corporation
- § 5154. Nonprofit corporation organized for charitable purposes
- § 5157. Officers' certificate
- § 5160. On the membership certificate

- § 5163. Parent
- § 5166. Principal executive office
- § 5169. Proper county
- § 5172. Proxy
- § 5175. Proxyholder
- § 5178. Resulting nonprofit corporation
- § 5181. Signed by the officers
- § 5184. Subsidiary
- § 5187. Surviving nonprofit corporation
- § 5190. Vote
- § 5193. Voting members
- § 5196. Voting power

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- § 5210. Scope of division
- § 5211. Application to religious corporations
- § 5212. Reserved power of state; savings clause
- § 5213. Effect on existence of corporations

Article 2. Applicability of General Corporation Law

- § 5220. General Corporation Law not applicable unless expressly provided
- § 5221. Construction of words used in General Corporation Law
- § 5222. Permissible corporate name; reservation of corporate name
- § 5223. Members' derivative action
- § 5224. Annual statement of officers, office, and agent for service
- § 5225. Service of process on domestic nonprofit corporation
- § 5226. Foreign nonprofit corporations
- § 5227. Crimes and penalties
- § 5228. Other applicable General Corporation Law provisions

Article 3. Execution of Written Instruments

- § 5230. Validity of contracts or conveyances generally
- § 5231. Instrument signed by certain officers valid absent actual knowledge of lack of authority
- § 5232. Instruments required to be signed by more than one officer
- § 5233. Corporate seal
- § 5234. Application of article

Article 4. Evidentiary Effect of Corporate Documents and Instruments

- § 5240. Evidence of corporate formation and existence
- § 5241. Evidence of bylaws, resolution, meeting, or minutes

- § 5242. Evidentiary effect of certified copy of agreement of merger or consolidation or plan of division or conversion
- § 5243. Evidence of record ownership after merger, consolidation, division, or conversion
- § 5244. Evidentiary effect of certificate of amendment of articles

Article 5. Enforcement by Attorney General

- § 5250. Enforcement of certain statutory provisions by Attorney General

Article 6. Rules of Practice

- § 5260. Rules of practice applicable to this division

CHAPTER 3. PURPOSES, POWERS, AND FORMATION

Article 1. Purposes and Powers

- § 5310. Any lawful purpose other than distribution of dividends
- § 5311. Incorporation of unincorporated association or subordinate body
- § 5312. Powers of nonprofit corporation
- § 5313. Defense of ultra vires
- § 5314. Enjoining ultra vires act of charitable corporation
- § 5315. Power to engage in business activity
- § 5316. Distributions to members prohibited

Article 2. Formation

- § 5320. Nonprofit corporation formed by executing and filing articles
- § 5321. Execution of articles
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CHAPTER 4. ARTICLES AND BYLAWS

Article 1. Articles of Incorporation

- § 5410. Required contents of articles
- § 5411. Statement in articles of powers or purposes
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Article 2. Amendment of Articles

- § 5420. Permissible amendments of articles
- § 5421. Amendment to delete initial director
- § 5422. Extension of corporate existence
- § 5423. Adoption of amendments by board and members
- § 5424. Adoption of amendment to change required vote
- § 5425. Certificate of amendment
- § 5426. Contents of certificate of amendment

- § 5427. Certificate of amendment to establish wording of amendment
- § 5428. Effect of filing certificate of amendment

Article 3. Restatement of Articles

- § 5430. Restated articles
- § 5431. Contents of restated articles
- § 5432. Approvals required for restated articles
- § 5433. Effect of restated articles

Article 4. Bylaws

- § 5440. Adoption, amendment, and repeal of bylaws
- § 5441. Permitted contents of bylaws
- § 5442. Bylaws relating to members and memberships
- § 5443. Bylaws relating to annual report, financial statements, penalties for violation of regulations
- § 5444. Bylaws relating to voting rights
- § 5445. Bylaws relating to meetings
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- § 5510. Control of corporate affairs by board
- § 5511. Number of directors
- § 5512. Term of directors
- § 5513. Initial directors
- § 5514. Personal liability of directors
- § 5515. Multiple boards
- § 5516. Advisory and other committees
- § 5517. Vote required for board action

Article 2. Selection and Removal of Directors

- § 5520. Election of directors
- § 5521. Nomination and procedures for election of directors
- § 5522. Vacancy on board
- § 5523. Declaration of vacancy by board
- § 5524. Resignation of directors
- § 5525. Removal of directors
- § 5526. Filling vacancies
- § 5527. Appointment of directors by court

Article 3. Meetings of Directors

- § 5530. Articles and bylaws control
- § 5531. Call of meetings
- § 5532. Notice of meetings
- § 5533. Adjournment of meeting
- § 5534. Place of meetings
- § 5535. Meeting by conference telephone
- § 5536. Quorum of directors
- § 5537. Vote required absent a quorum
- § 5538. Validation of defectively noticed meeting
- § 5539. Written consent to action without a meeting

Article 4. Provisional Directors

- § 5540. Superior court may appoint provisional director
- § 5541. Deadlock among directors
- § 5542. Qualifications of provisional director
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Article 5. Committees of the Board

- § 5550. Designation of committees
- § 5551. Designation of committee members
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Article 6. Officers

- § 5560. Corporate offices
- § 5561. Offices held by same person
- § 5562. Chief executive officer
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Article 7. Standards of Conduct by Management

- § 5570. Duty of care of directors
- § 5571. Transactions involving interested directors
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Article 8. Indemnification of Corporate Agents

- § 5580. Definitions
- § 5581. Indemnification in proceeding other than derivative action
- § 5582. Indemnification in derivative action
- § 5583. Indemnification where agent prevails on merits
- § 5584. Corporate action required for indemnification
- § 5585. Authority to advance expenses
- § 5586. Indemnification other than pursuant to this article
- § 5587. Limitation on indemnification
- § 5588. Insurance for corporate agents
- § 5589. Application of article to fiduciary of employee benefit plan
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CHAPTER 6. MEMBERS AND MEMBERSHIPS**Article 1. General Provisions**

- § 5610. Members
- § 5611. Membership classes
- § 5612. Directors as members
- § 5613. Reduction of members below stated number
- § 5614. Liability of members
- § 5615. Illegal distribution; derivative action against members

Article 2. Issuance of Memberships

- § 5620. Consideration
- § 5621. Options
- § 5622. Redeemable memberships
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- § 5624. Membership certificates
- § 5625. Surrender and exchange for new certificate

Article 3. Transfer or Termination of Memberships

- § 5630. Transfer of membership
- § 5631. Termination of membership
- § 5632. Effect of termination of membership
- § 5633. Resignation of members
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Article 4. Record Date for Determining Members

- § 5640. Record date
- § 5641. Record date fixed by articles, bylaws, or board
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CHAPTER 7. MEMBERS' MEETINGS

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- § 5711. Annual meeting
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- § 5713. Business that may be transacted at regular meeting
- § 5714. Special meetings
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- § 5716. Adjournment absent a quorum
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Article 2. Notice of Meetings

- § 5720. When notice required
- § 5721. Time of notice
- § 5722. Contents of notice
- § 5723. Persons to whom notice given
- § 5724. Manner of giving notice
- § 5725. Notice of special meeting
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CHAPTER 8. VOTING OF MEMBERSHIPS

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- § 5810. Voting rights
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- § 5812. Persons entitled to take member action
- § 5813. Articles or bylaws may require greater vote
- § 5814. Vote required for member action
- § 5815. When class vote required
- § 5816. Additional vote required by articles or bylaws
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Article 2. Exercise of Voting Rights

- § 5820. Articles or bylaws may vary provisions of this article
- § 5821. Membership held in representative capacity
- § 5822. Membership standing in name of pledgee

- § 5823. Membership standing in name of minor
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- § 5825. Membership standing in name of two or more persons or group

Article 3. Proxies

- § 5830. When proxy voting allowed
- § 5831. Execution of proxy
- § 5832. Form of proxy
- § 5833. Duration of proxy
- § 5834. Revocation of proxy
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- § 5836. When holder of record must give member proxy

Article 4. Consents

- § 5840. Application of article
- § 5841. Consent to action without a meeting and prior notice
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Article 5. Voting Agreements

- § 5850. Application of article
- § 5851. Voting agreements authorized
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Article 6. Inspectors of Election

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Article 7. Contested Elections or Appointments

- § 5870. Action to determine validity of election or appointment
- § 5871. Persons authorized to bring action

- § 5872. Jurisdiction and venue
- § 5873. Fixing date for hearing
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- § 5880. Conditions for court determination
- § 5881. Venue; notice of action
- § 5882. Court determinations authorized
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- § 5910. "Authorized member" defined
- § 5911. Form in which records to be kept; making available in written form
- § 5912. Inspection by agent or attorney
- § 5913. Right to copy and make extracts
- § 5914. Filing written authorizations with nonprofit corporation
- § 5915. Director's right of inspection
- § 5916. Time of inspection where no regular business hours
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Article 2. Annual Report

- § 5920. Annual report required unless articles or bylaws otherwise provide
- § 5921. Presentation of annual report; filing in records; entry in minutes
- § 5922. Contents of annual report
- § 5923. Corporation having no members
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Article 3. Inspection of Annual Report

- § 5930. Right to inspect or obtain copy of annual report

Article 4. Report of Certain Transactions, Indemnifications, and Advances

- § 5940. Reporting certain transactions, indemnifications, and advances

Article 5. Financial Statements

- § 5950. Request for financial statements by authorized member
- § 5951. Providing authorized member with statements
- § 5952. Opening books to inspection in lieu of providing statements

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Article 6. Membership Records

- § 5960. Membership record required
- § 5961. Place where record kept
- § 5962. Member's right to inspect membership record
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- § 5964. Judicial supervision
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- § 5970. Financial records and minutes required
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- § 5975. Articles and bylaws to be kept at corporate office
- § 5976. Right of member to inspect
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Article 9. Judicial Enforcement

- § 5980. Enforcement of duties in connection with annual report
- § 5981. Enforcement of duties in connection with financial statements
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- § 5984. Recovery of litigation expenses

Article 10. Recovery of Damages; Civil Penalty

- § 5990. Liability for damages for improper use of information
- § 5991. Liability for damages for false report, record, or entry
- § 5992. Civil penalty for failure to keep records or provide financial statements
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CHAPTER 10. CORPORATE FINANCE

Article 1. General Provisions

- § 6010. Levy of dues, assessments, and initiation fees
- § 6011. Enforcement of financial obligations
- § 6012. Levy of assessments for capital improvements
- § 6013. Replacement of lost, stolen, or destroyed instruments

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- § 6020. Definitions
- § 6021. Liability of member or subscriber
- § 6022. Liability of transferee generally
- § 6023. Liability of transferee without knowledge
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Article 2. Approval of Plan

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Article 5. Division Involving Foreign Corporation

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Article 5. Filing and Effect of Plan and Certificate

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**PARTIAL INVALIDITY PROVISION
MANDATED LOCAL COSTS PROVISION
OPERATIVE DATE
DOUBLE JOINTING PROVISION**

DIVISION 2. NONPROFIT CORPORATIONS

An act to add Division 2 (commencing with Section 5000) and to repeal Division 2 (commencing with Section 9000) of Title 1 of the Corporations Code, relating to nonprofit corporations.

The people of the State of California do enact as follows:

Corporations Code §§ 9000–10703 (repealed). Nonprofit corporations

SECTION 1. Division 2 (commencing with Section 9000) of Title 1 of the Corporations Code is repealed.

Comment. Former Division 2, Nonprofit Corporations (former Sections 9000–10703), is replaced by new Division 2 (Nonprofit Corporation Law). The disposition of the parts of former Division 2 is indicated below:

(1) Part 1, the General Nonprofit Corporation Law (former Sections 9000–9802), is superseded by the new Nonprofit Corporation Law (Sections 5000–6626). The disposition of each repealed section of the former law is indicated in the Comment to the repealed section. See Appendix to *Recommendation Relating to Nonprofit Corporation Law*, 13 Cal. L. Revision Comm'n Reports 2201 (1976).

(2) Part 2, Corporations Sole (former Sections 10000–10015), is reenacted as Part 1 (Sections 10000–10015) of Division 3 (Corporations for Specific Purposes).

(3) Part 3, Corporations for Charitable or Eleemosynary Purposes (former Sections 10200–10208), is not continued. See Part 1.3 (Section 10200) of Division 3 (Corporations for Specific Purposes) and the Comment thereto.

(4) Part 3.5, Trust Funds (former Sections 10250–10251), is continued in the Nonprofit Corporation Law as indicated in the following table:

<i>Former Section</i>	<i>Nonprofit Corporation Law</i>
10250	
Subdivision (a), first sentence.....	§ 6080 see also § 10006
Subdivision (a), second sentence.....	§ 6081
Subdivision (b)	§ 6082

Subdivision (c)	§ 6083
Subdivision (d)	§ 6087
10251	
Subdivision (a)	§ 6084
Subdivision (b)	§ 6085
Subdivision (c)	§ 6086
Subdivision (d)	§ 6087

(5) Part 4, Societies for Prevention of Cruelty to Children and Animals (former Sections 10400–10406), is continued in Division 15 (commencing with Section 20700) of the Health and Safety Code as indicated in the table:

<i>Former Section</i>	<i>Health & Safety Code</i>
10400.....	§ 20700
10401.....	§ 20701
10402.....	§ 20702
10403 Power to take and hold property	Corp. Code § 5312
Limitation on holding realty	§ 20710
10404.....	§ 20712
10405.....	§ 20714
10406.....	Not continued

(6) Part 5, Port and Terminal Protection and Development Corporations (former Sections 10700–10703), is continued in Part 1 (commencing with Section 2000) of Division 6 of the Harbors and Navigation Code as indicated in the table:

<i>Former Section</i>	<i>Harbors & Navigation Code</i>
10700.....	§ 2000
10701, first sentence	§§ 2001, 2002(a), 2003
10701, second sentence	§§ 2004, 2005
10702.....	Not continued
10703.....	§ 2006

Corporations Code §§ 5000–6790 (added). Nonprofit Corporation Law

SEC. 2. Division 2 (commencing with Section 5000) is added to Title 1 of the Corporations Code, to read:

DIVISION 2. NONPROFIT CORPORATION LAW

CHAPTER 1. PRELIMINARY PROVISIONS AND DEFINITIONS

Article 1. Short Title and Rules of Construction

§ 5000. Short title

5000. This division shall be known and may be cited as the Nonprofit Corporation Law.

Comment. Section 5000, which provides a short title for this division, continues the substance of former Section 9000.

§ 5010. Application of rules of construction

5010. Unless the provision or context otherwise requires, the provisions of this article govern the construction of this division.

Comment. Section 5010 is the same in substance as Sections 5 (Corporations Code) and 101 (General Corporation Law). Unless otherwise provided in this division, rules of construction found among the general provisions of the Corporations Code are applicable. See, *e.g.*, Sections 5–19.

§ 5011. Verification

5011. (a) An instrument is verified for the purposes of this division if the statements contained in the instrument are declared to be true by the person executing it of the person's own knowledge in either of the following:

(1) An affidavit signed under oath before an officer authorized to administer oaths by the laws of this state or of the place where it is executed.

(2) A declaration in writing executed "under penalty of perjury" that states the date and place of execution (whether within or without this state) in any case where permitted under Section 5012.

(b) An affidavit sworn to without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

Comment. Section 5011 is the same in substance as Section 193 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Oath, § 16

§ 5012. Affidavits

5012. In any case where an affidavit or other written statement under oath is required or permitted under this division, Section 2015.5 of the Code of Civil Procedure (declaration under penalty of perjury) is applicable.

Comment. Section 5012 codifies the rule that, for the purposes of this division, a declaration executed under penalty of perjury may be used instead of an affidavit or other statement under oath where the declaration is executed in this state or in any other state permitting declarations under penalty of perjury. See Section 2015.5 of the Code of Civil Procedure. See also 30 Ops. Cal. Atty. Gen. 294 (1957).

CROSS-REFERENCES

Definitions:

Affidavit, Code Civ. Proc. § 2003

§ 5013. Presentation of accounting items

5013. (a) As used in this section:

(1) "Accounting items" includes assets, liabilities, revenue, receipts, expenses, disbursements, and similar accounting items of a nonprofit corporation.

(2) "Financial statement" includes a financial statement, balance sheet, statement of assets and liabilities, and a statement of major changes in assets and liabilities of a nonprofit corporation.

(b) A reference to a financial statement or an accounting item means the financial statement or accounting item that fairly and adequately presents the matters it purports to present, subject to any specific accounting treatment required by a particular provision of this division. If the nonprofit corporation has subsidiaries, a reference to a financial statement means a consolidated financial statement of the nonprofit corporation and such of its subsidiaries as are required to

be included in a consolidated financial statement in order to fairly and adequately present the matters it purports to present, and a reference to an accounting item means the accounting item determined on a consolidated basis in accordance with the consolidated financial statement.

Comment. Section 5013 is comparable to Section 114 (General Corporation Law) with revisions to reflect the terminology used in this division with respect to the financial matters of nonprofit corporations. Unlike Section 114, this section does not require that accounting items be presented in accordance with “generally accepted accounting principles then applicable”; instead, the section requires that accounting items of a nonprofit corporation fairly and adequately present the matters they purport to present. The generally-accepted-accounting-principles standard has not been adopted in Section 5013 because this standard is not adequately developed for nonprofit corporations, and its adoption would create uncertainty and would be unnecessarily burdensome for most nonprofit corporations.

CROSS-REFERENCES

Definitions:

Subsidiary, § 5184

§ 5014. Time notice given or delivered

5014. A reference to the time a notice is given or delivered means:

(a) The time a written notice by mail is deposited in the United States mail, postage prepaid.

(b) The time any other written notice is personally delivered to the person to be notified or is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic means, to the person to be notified.

(c) The time an oral notice is communicated, in person or by telephone or wireless, to the person to be notified or to a person at the office of the person to be notified who the person giving the notice has reason to believe will promptly communicate it to the person to be notified.

Comment. Section 5014 is the same in substance as Section 118 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Mailing, § 5015

Written notice, § 5016

Notice required to be in writing and in English, § 8

§ 5015. Mailing

5015. A reference to mailing means first-class mail, postage prepaid.

Comment. Section 5015 is the same in substance as a portion of Section 113 (General Corporation Law). Registered and certified mail are forms of first-class mail. It should be noted that any references in this division to registered mail include certified mail. See Section 8.

§ 5016. Writing includes facsimile or telegraphic communication

5016. A reference to a notice or other communication required to be written or in writing includes facsimile and telegraphic communication.

Comment. Section 5016 is the same in substance as Section 195 (General Corporation Law). It should be noted that a writing includes any form of recorded message capable of comprehension by ordinary visual means. Section 8.

Unless otherwise provided, whenever any notice, report, statement, or record is required or authorized by this division, it shall be made in writing in the English language. See Section 8. But see Section 5911 (keeping records in form capable of being converted into written form). Various provisions of this division permit the articles or bylaws to prescribe differing requirements. See, *e.g.*, Section 5720(b) (articles or bylaws may provide reasonable notice of meeting requirements).

Article 2. Definitions

§ 5100. Application of definitions

5100. Unless the provision or context otherwise requires, these definitions govern the construction of this division.

Comment. Section 5100 is the same in substance as Sections 5 (Corporations Code) and 101 (General Corporation Law). Unless otherwise provided in this division, definitions found among the general provisions of the Corporations Code are applicable. See, *e.g.*, Sections 5–18.

§ 5103. Action

5103. “Action” includes special proceeding.

Comment. Section 5103 is new. The term “action” is used uniformly throughout this division regardless whether the lawsuit referred to is technically an action or a special proceeding. See Code Civ. Proc. §§ 21–23.

CROSS-REFERENCES

Rules of practice, § 5260

§ 5106. Approved by (or approval of) the board

5106. “Approved by (or approval of) the board” means authorized, approved, or ratified by the board by the vote specified in Section 5517 or the written consent specified in Section 5539 or by a committee authorized to exercise the powers of the board by the vote or written consent specified in Section 5554.

Comment. Section 5106 is comparable to Section 151 (General Corporation Law). It should be noted that, where a committee of the board acts, it may do so only as to matters within its competence. See Section 5553.

CROSS-REFERENCES

Definitions:

Board, § 5115

§ 5109. Approved by (or approval of) the members

5109. “Approved by (or approval of) the members” means authorized, approved, or ratified by the persons specified in Section 5812, by the vote specified in Section 5814 or the written consent specified in Section 5841.

Comment. Section 5109 is comparable to Sections 152 and 153 (General Corporation Law). It should be noted that approval by the members may be through a policymaking committee. See Section 5818.

§ 5112. Articles

5112. "Articles" includes the articles of incorporation, amendments thereto, amended articles, restated articles, and certificates of incorporation.

Comment. Section 5112 is the same in substance as the first sentence of Section 154 (General Corporation Law). It continues former Section 102, which was applicable to nonprofit corporations through former Section 9002.

§ 5115. Board

5115. "Board" means:

- (a) The board of directors of the nonprofit corporation.
- (b) If the nonprofit corporation has multiple boards of directors, the appropriate board of directors.

Comment. Subdivision (a) of Section 5115 is the same in substance as Section 155 (General Corporation Law). Subdivision (b) is included in recognition of the fact that a nonprofit corporation may provide for multiple boards with differing authority. See Section 5515. The board of directors may be called board of trustees or given any other name or title. *Cf.* Section 5515(a) (3) (managing board). See also Section 5133(b) (directors may be given any other name or title).

CROSS-REFERENCES**Definitions:**

Director, § 5133

§ 5118. Business corporation

5118. "Business corporation" means a corporation organized under the laws of this state which is other than a nonprofit corporation.

Comment. Section 5118 is new.

§ 5121. Bylaws

5121. "Bylaws" means provisions, however named, adopted by a nonprofit corporation in the manner required for adoption of bylaws and kept by the nonprofit corporation, made available for inspection, and delivered to members requesting them, as bylaws.

Comment. Section 5121 codifies the principle that a resolution in name and form may have the force and effect of a

bylaw. See 8 W. Fletcher, *Cyclopedia of the Law of Private Corporations* § 4167, at 626 (perm. ed. rev. vol. 1966).

CROSS-REFERENCES

Bylaws generally, §§ 5440-5447

Definitions:

Member, § 5148

Keeping, inspection, and delivery of bylaws, §§ 5975-5977

Manner of adoption of bylaws, § 5440

§ 5123. Chief executive officer

5123. "Chief executive officer" means the person determined pursuant to Section 5562.

Comment. Section 5123 makes clear that the chief executive officer is the president or, if there is no president, the chairman of the board as provided in Section 5562.

§ 5125. Class

5125. "Class" means class of memberships having the same property, voting, and other rights and interests.

Comment. Section 5125 is new. Compare Sections 183 and 400(b) (General Corporation Law) and former Section 117. A nonprofit corporation may have such classes of membership as the bylaws provide, and, in the absence of a classification, there is deemed to be one class. See Section 5611.

§ 5127. Consolidated nonprofit corporation

5127. "Consolidated nonprofit corporation" means the nonprofit corporation resulting from the consolidation of two or more other nonprofit corporations.

Comment. Section 5127 is based on a portion of former Section 4101. See also Section 5129 ("constituent nonprofit corporation" defined).

§ 5129. Constituent nonprofit corporation

5129. "Constituent nonprofit corporation" means a nonprofit corporation that is merged or consolidated with one or more other nonprofit corporations and, in the case of a merger, includes the surviving nonprofit corporation.

Comment. Section 5129 is based on Section 161 (General Corporation Law) and former Section 4102. It should be noted

that, in the case of a consolidation, the constituent nonprofit corporations and the disappearing nonprofit corporations are the same. See Section 5136 (“disappearing nonprofit corporation” defined).

CROSS-REFERENCES

Definitions:

Surviving nonprofit corporation, § 5187

§ 5131. Converting and converted corporation

5131. (a) “Converting corporation” means a nonprofit corporation that converts into a business corporation or a business corporation that converts into a nonprofit corporation.

(b) “Converted corporation” means a nonprofit corporation that has been converted from a business corporation or a business corporation that has been converted from a nonprofit corporation.

Comment. Section 5131 is new. See Chapter 14 (commencing with Section 6410) for provisions relating to conversion of a corporation.

CROSS-REFERENCES

Definitions:

Business corporation, § 5118

§ 5133. Director

5133. “Director” means a member of the board and includes the following persons and their successors:

(a) Natural persons named in the articles to act in the capacity of initial directors.

(b) Natural persons designated, elected, or appointed as directors or by any other name or title to act in the capacity of directors.

Comment. Subdivision (a) of Section 5133 is new. Subdivision (b) is the same in substance as Section 164 (General Corporation Law). It continues former Section 110 which was applicable to nonprofit corporations through former Section 9002. It should be noted that the directors may be called trustees or given any other name or title. See also Comment to Section 5115.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Initial directors, § 5410(d)

§ 5136. Disappearing nonprofit corporation

5136. "Disappearing nonprofit corporation" means a nonprofit corporation that is not:

(a) The surviving nonprofit corporation in a merger.

(b) The consolidated nonprofit corporation in a consolidation.

(c) A resulting nonprofit corporation in a division.

Comment. Subdivision (a) of Section 5136 is based in part on Section 165 (General Corporation Law). Subdivisions (b) and (c) are new. It should be noted that, in the case of a consolidation, the constituent nonprofit corporations and the disappearing nonprofit corporations are the same. See Section 5129 ("constituent nonprofit corporation" defined).

CROSS-REFERENCES

Definitions:

Consolidated nonprofit corporation, § 5127

Resulting nonprofit corporation, § 5178

Surviving nonprofit corporation, § 5187

§ 5139. Dividing nonprofit corporation

5139. "Dividing nonprofit corporation" means a nonprofit corporation that is divided into two or more nonprofit corporations and includes the surviving nonprofit corporation.

Comment. Section 5139 is new. See Chapter 13 (commencing with Section 6310) for provisions relating to the division of a nonprofit corporation.

CROSS-REFERENCES

Definitions:

Surviving nonprofit corporation, § 5187

§ 5142. Filed

5142. "Filed" means filed in the office of the Secretary of State.

Comment. Section 5142 is the same in substance as Section 169 (General Corporation Law) except that the qualification “unless otherwise expressly provided,” is not included in view of the general rule that the definitions apply unless the provision or the context otherwise requires. See Section 5100. Where a particular provision of this division expressly requires filing other than with the Secretary of State (*e.g.*, with the secretary of the nonprofit corporation or with the court), the express requirement prevails.

§ 5145. Independent accountant

5145. “Independent accountant” means a certified public accountant or public accountant who is independent of the nonprofit corporation as determined in accordance with generally accepted auditing standards.

Comment. Section 5145 is the same in substance as Section 115 (General Corporation Law).

CROSS-REFERENCES

Presentation of accounting items, § 5013

§ 5148. Member

5148. “Member” means:

(a) A person designated as a member, or given rights or interests of a member by any other name or title, in the articles or bylaws.

(b) If there is no person described in subdivision (a), a person entitled to vote for the election of directors.

(c) If there is no person described in subdivision (a) or (b), a director as provided in Section 5612.

Comment. Section 5148 is new. It should be noted that members may be called patrons or donors or given any other name or title.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Director, § 5133

Person, § 18

Vote, § 5190

Voting members, § 5193

Voting rights, §§ 5810, 5442

§ 5151. New nonprofit corporation

5151. "New nonprofit corporation" means a nonprofit corporation that is newly incorporated as a result of the division of a nonprofit corporation.

Comment. Section 5151 is derived from the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7941(c) (Purdon Cum. Supp. 1976-1977). See Chapter 13 (commencing with Section 6310) for provisions relating to the division of a nonprofit corporation.

§ 5154. Nonprofit corporation organized for charitable purposes

5154. "Nonprofit corporation organized for charitable purposes" means a nonprofit corporation formed or operated primarily or exclusively for charitable purposes.

Comment. Section 5154 is new. The phrase defined in this section is used in the following provisions:

- § 5222 (name containing the word "charitable")
- § 5314 (special ultra vires provision)
- § 5323 (notice to Attorney General of formation)
- § 5410 (contents of articles)
- § 5622 (redeemable memberships)
- § 6070 (management of charitable property)
- § 6074 (Attorney General supervision)
- § 6075 (property received on general charitable trust)
- § 6080 (common trust funds)
- § 6112 (notice to Attorney General of disposition of assets)
- § 6242 (notice to Attorney General of merger or consolidation)
- § 6342 (notice to Attorney General of division)
- § 6411 (conversion prohibited)
- § 6541 (purchase of memberships to avoid dissolution prohibited)
- § 6573 (disposition of assets on dissolution)

It should be noted that the phrase "charitable purposes," as used in this section, is used in its broadest sense, it being impossible to enumerate specifically all purposes that are charitable in nature. See, *e.g.*, discussion in *Lynch v. Spilman*, 67 Cal.2d 251, 431 P.2d 636, 62 Cal. Rptr. 12 (1967).

CROSS-REFERENCES

Reports to Attorney General, § 5924

§ 5157. Officers' certificate

5157. "Officers' certificate" means a certificate signed and verified by one officer of each of the following groups:

(a) The chairman of the board, the president, or a vice president.

(b) The secretary, the chief financial officer, the treasurer, an assistant secretary, or an assistant treasurer.

Comment. Section 5157 is the same in substance as Section 173 (General Corporation Law).

CROSS-REFERENCES

Corporate officers, § 5560

Signed by the officers, § 5181

Verification, § 5011

§ 5160. On the membership certificate

5160. "On the membership certificate" means that a statement is printed in clear type on a membership certificate either on the face or on the reverse with a reference thereto on the face.

Comment. Section 5160 is the same in substance as Section 174 (General Corporation Law) with the addition of the requirement that the statement on the membership certificate be printed in clear type. This additional requirement is drawn from former Section 9607.

CROSS-REFERENCES

Irrevocable proxy, § 5835

Membership certificates, § 5624

Partly paid membership, § 5623

§ 5163. Parent

5163. "Parent" of a nonprofit corporation means a business corporation or nonprofit corporation that owns, directly or indirectly through one or more intermediaries, memberships holding more than 50 percent of the voting power of the nonprofit corporation.

Comment. Section 5163 is comparable to the first sentence of Section 175 (General Corporation Law). It supersedes a portion of former Section 118, applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Business corporation, § 5118

Voting power, § 5196

§ 5166. Principal executive office

5166. "Principal executive office" means the office of the nonprofit corporation designated in the statement filed pursuant to Section 5224.

Comment. Section 5166 makes clear that the "principal executive office" for the purposes of this division is the one designated in the annual statement filed pursuant to Section 5224.

§ 5169. Proper county

5169. "Proper county" means:

(a) The county where the principal executive office of the nonprofit corporation is located.

(b) If the principal executive office of the nonprofit corporation is not located in this state, or the nonprofit corporation has no such office, the County of Sacramento.

Comment. Section 5169 is the same in substance as Section 177 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Principal executive office, § 5166

§ 5172. Proxy

5172. "Proxy" means a written authorization made by a person entitled to vote a membership that gives another person power to vote the membership.

Comment. Section 5172 is comparable to the first sentence of Section 178 (General Corporation Law). For provisions relating to the execution of a proxy, see Section 5831. A director may not vote by proxy. Section 5517.

CROSS-REFERENCES

Definitions:

Person, § 18

Vote, § 5190

§ 5175. Proxyholder

5175. "Proxyholder" means the person to whom a proxy is given.

Comment. Section 5175 is the same in substance as Section 179 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Person, § 18
Proxy, § 5172

§ 5178. Resulting nonprofit corporation

5178. "Resulting nonprofit corporation" means a nonprofit corporation in existence after the division of a nonprofit corporation and includes the new nonprofit corporation and the surviving nonprofit corporation, if any.

Comment. Section 5178 is derived from the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7941(c) (Purdon Cum. Supp. 1976-1977). See Chapter 13 (commencing with Section 6310) for provisions relating to the division of a nonprofit corporation.

CROSS-REFERENCES

Definitions:

New nonprofit corporation, § 5151
Surviving nonprofit corporation, § 5187

§ 5181. Signed by the officers

5181. "Signed by the officers" means signed by one officer of each of the following groups:

(a) The chairman of the board, the president, or a vice president.

(b) The secretary, the chief financial officer, the treasurer, an assistant secretary, or an assistant treasurer.

Comment. Section 5181 is drawn from Section 173 (General Corporation Law).

CROSS-REFERENCES

Corporate officers, § 5560
Officers' certificate, § 5157

§ 5184. Subsidiary

5184. "Subsidiary" of a nonprofit corporation means a business corporation or nonprofit corporation of which the nonprofit corporation owns, directly or indirectly through one or more intermediaries, shares or memberships holding more than 50 percent of the voting power.

Comment. Section 5184 is comparable to Section 189(a) (General Corporation Law). It supersedes a portion of former Section 118, applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Business corporation, § 5118

Voting power, § 5196

§ 5187. Surviving nonprofit corporation

5187. "Surviving nonprofit corporation" means:

(a) In the case of a merger, a nonprofit corporation into which one or more other nonprofit corporations are merged.

(b) In the case of a division, a dividing nonprofit corporation that remains in existence after the division.

Comment. Subdivision (a) of Section 5187 is based on Section 190 (General Corporation Law) and a portion of former Section 4101. Subdivision (b) is derived from the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7941(c) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Dividing nonprofit corporation, § 5139

§ 5190. Vote

5190. "Vote" includes authorization by written consent, but authorization by written consent is subject to Section 5539 (written consent of directors) and Article 4 (commencing with Section 5840) of Chapter 8 (written consent of members).

Comment. Section 5190 is the same in substance as Section 194 (General Corporation Law).

§ 5193. Voting members

5193. "Voting members" means persons entitled to vote for the election of directors.

Comment. Section 5193 is new. It should be noted that all members of a nonprofit corporation may vote for directors unless the articles or bylaws provide otherwise. See Section 5810. Where a nonprofit corporation provides for election of directors through a representative committee, the "voting members" are the representatives on the committee who vote for the election of directors. See Section 5819.

CROSS-REFERENCES**Definitions:**

Director, § 5133

Person, § 18

Vote, § 5190

§ 5196. Voting power

5196. "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

Comment. Section 5196 is comparable to Section 194.5 (General Corporation Law). An example of the application of the second sentence of Section 5196 follows: A nonprofit corporation has five directors and two classes of membership. Class A has two members and elects three directors; class B has 10 members and elects two directors. Class A has 60 percent of the voting power as a class, and each member of the class has 30 percent of the voting power. Class B has 40 percent of the voting power as a class, and each member of the class has four percent of the voting power. Where approval of 50 percent of the voting power is required for a corporate action, the 50 percent could be attained by approval of both class A members (60 percent) or by approval of one class A member and five class B members (50

percent); the 10 class B members alone (40 percent) could not approve the action.

CROSS-REFERENCES

Definitions:

Class, § 5125

Director, § 5133

Vote, § 5190

CHAPTER 2. GENERAL PROVISIONS

Article 1. Applicability of Division

§ 5210. Scope of division

5210. (a) Except as otherwise provided in this section and subject to Chapter 16 (commencing with Section 6610) (transition provisions), this division applies to every nonprofit corporation.

(b) If there is a special statutory provision applicable to a nonprofit corporation inconsistent with a provision of this division, the special provision prevails.

(c) This division does not apply to a foreign nonprofit corporation except as expressly provided in this division.

(d) This division does not apply to any of the following:

(1) A nonprofit corporation that is expressly excepted from the operation of this division.

(2) A corporation that is authorized to issue shares of stock.

(3) A cooperative cooperation.

Comment. Section 5210 is based on former Section 9001.

Subdivision (a) makes this division applicable to every nonprofit corporation, whether formed before or after the operative date of this division. For the operative date and transition provisions for existing nonprofit corporations, see Sections 6610–6626.

The special provisions—referred to in subdivision (b)—that are inconsistent with this division include:

Bus. & Prof. Code § 700(a) (proxies and cumulative voting prohibited in nonprofit corporation for medical services)

Bus. & Prof. Code § 6175 (proxies and cumulative voting prohibited in nonprofit corporation for legal services)

Corp. Code § 14080 (Nonprofit Corporation Law applies to job creation corporations except as otherwise provided by Corp. Code §§ 14000–14122)

Educ. Code § 94306(d) (private postsecondary educational institution to have not less than five directors)

Food & Agri. Code § 4702 (escheat of property of citrus fruit fair associations upon dissolution)

- Harb. & Nav. Code § 2002(b) (articles or bylaws to provide that public agencies may become members of port and terminal protection and development corporation)
- Harb. & Nav. Code § 2005 (articles or bylaws to include limitation on amount of assessments)
- Health & Saf. Code § 20700 (20 or more citizens and residents of California may form corporation for prevention of cruelty to children or animals)
- Health & Saf. Code § 20701 (approval of Department of Justice or court as to necessity of corporation for prevention of cruelty)
- Health & Saf. Code § 20710 (corporation for prevention of cruelty may not hold real property yielding over \$50,000 annually)
- Health & Saf. Code §§ 20720–20722 (special provision for appointing and removing humane officers)
- Health & Saf. Code § 35131 (Nonprofit Corporation Law applies to corporations formed pursuant to Community Land Chest Law except where inconsistent)
- Ins. Code § 11496 (nonprofit hospital service corporations incorporate pursuant to Nonprofit Corporation Law to extent not inconsistent with Ins. Code §§ 11491–11517)
- Pub. Util. Code § 2714 (special manner of amending articles of nonprofit water company)
- Pub. Util. Code § 2717 (special quorum requirement for members of nonprofit mutual water company)

Special provisions relating to nonprofit corporations in this and other codes that are not expressly repealed remain in effect.

Subdivision (c) makes clear that this division applies only to domestic corporations unless otherwise expressly provided. *Cf.* former Section 106. Provisions of this division which are specifically made applicable to foreign nonprofit corporations include:

- § 5212 (preservation of power)
- § 5226 (application of provisions of General Corporation Law)
- § 5234 (execution of instruments)
- § 5313 (defense of ultra vires)
- § 5634 (liability for transfer)
- § 5824 (voting of membership)
- § 5870 (validity of election)
- § 5918 (inspection of records)

§ 6250 (merger and consolidation)

§ 6350 (division)

Paragraph (1) of subdivision (d) continues the substance of an exception found in former Section 9001. For express exceptions from the operation of this division, see, *e.g.*, Sections 10006 (corporations sole) and 12205 (cooperative corporations). Paragraph (2) of subdivision (d), which had no counterpart in former law, is included to reflect the fact that this division covers only nonstock, membership corporations. See, *e.g.*, Section 12000 (chambers of commerce having stock). The division does not include provisions necessary to deal with corporations that issue stock; those provisions are found in the General Corporation Law or in the particular statute relating to the corporation. Paragraph (3) of subdivision (d) makes clear that provisions in laws relating to cooperative corporations stating that such cooperatives are “nonprofit”—since they are “not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers” (*e.g.*, Corp. Code § 13203; Food & Agri. Code § 54033)—do not subject them to this division. See, *e.g.*, Corp. Code § 13204 (application of General Corporation Law to fish marketing cooperatives); Food & Agri. Code § 54040 (application of General Corporation Law to agricultural cooperatives).

§ 5211. Application to religious corporations

5211. The provisions of this division do not apply to a nonprofit corporation organized for religious purposes to the extent that such application would be unconstitutional under the Constitution of the United States or the Constitution of this state.

Comment. Section 5211 recognizes that the First Amendment to the United States Constitution limits the extent to which the state may regulate religious organizations where ecclesiastical matters are concerned. See, *e.g.*, *Serbian Eastern Orthodox Diocese for the United States & Canada v. Milivojevich*, 96 S. Ct. 2372 (1976). See also Cal. Const., Art. I, § 4 (religious freedom). For a comparable provision, see 15 Pa. Cons. Stat. Ann. § 7106 (Purdon Cum. Supp. 1976-1977).

§ 5212. Reserved power of state; savings clause

5212. (a) This division, or any portion thereof, and any other statute affecting domestic or foreign nonprofit corporations, may at any time be amended or repealed.

(b) Neither the enactment of this division, nor the amendment, repeal, or reenactment of this division or any portion thereof, nor of any other statute affecting domestic or foreign nonprofit corporations, shall take away or impair any existing liability or cause of action existing or incurred against any domestic or foreign nonprofit corporation, its members, directors, or officers incurred prior to the time of the enactment, amendment, repeal, or reenactment.

Comment. Subdivision (a) of Section 5212 is comparable to Section 100(b) (General Corporation Law) and the first sentence of former Section 126, but the phrase "and any other statute affecting domestic or foreign nonprofit corporations" has been added in subdivision (a). See also Cal. Const., Art. XX, § 5 (alteration or repeal of laws concerning corporations).

Subdivision (b) is comparable to Section 102(c) (General Corporation Law) and portions of former Sections 125 and 126.

CROSS-REFERENCES

Definitions:

Director, § 5133

Member, § 5148

§ 5213. Effect on existence of corporations

5213. (a) The existence of a nonprofit corporation formed prior to January 1, 1979, is not affected by the enactment of this division, by any change in the requirements for the formation of a nonprofit corporation, or by the amendment or repeal of the law under which it was formed or created.

(b) Subject to Chapter 16 (commencing with Section 6610) (transition provisions), on and after January 1, 1979, a nonprofit corporation formed prior to January 1, 1979, is deemed to be organized under this division.

Comment. Subdivision (a) of Section 5213 is the same in substance as subdivision (b) of Section 102 (General Corporation Law) and the second paragraph of former Section 119. Subdivision (b) has been added to make clear that—subject to the transition provisions—the provisions of this division are applicable to existing nonprofit corporations after the operative date of this division. But see Section 6611 (b). See also Corp. Code §§ 10200 (charitable and eleemosynary corporations), 12000

(chambers of commerce); Educ. Code § 19800 (corporations to administer libraries).

Article 2. Applicability of General Corporation Law

§ 5220. General Corporation Law not applicable unless expressly provided

5220. Except as otherwise expressly provided in this article, the provisions of the General Corporation Law (Division 1 (commencing with Section 100) of this title) do not apply to a nonprofit corporation.

Comment. Section 5220 supersedes former Sections 119 and 9002. Unlike former law, this division provides a complete set of rules governing nonprofit corporations and does not incorporate by reference generally the General Corporation Law. It makes clear that the General Corporation Law applies to nonprofit corporations under this division only to the extent specifically provided in this article, and this article makes specified provisions of the General Corporation Law applicable to nonprofit corporations. Nevertheless, court decisions under the General Corporation Law, to the extent they concern problems common to business and nonprofit corporations, may be useful in construing the comparable provisions of the Nonprofit Corporation Law.

See Section 5226 regarding application of these provisions to foreign nonprofit corporations.

It should be noted that references to the General Corporation Law include subsequent amendments thereto. See Section 9.

§ 5221. Construction of words used in General Corporation Law

5221. For the purposes of this article:

(a) "Shareholder" as used in the General Corporation Law includes member.

(b) "Share" as used in the General Corporation Law includes membership.

Comment. Section 5221 provides definitions that are the same in substance as portions of the definitions provided by former Section 103 (shareholder includes a member of a

nonstock corporation) and former Section 115 (shares includes membership in nonstock corporations). The portions of the definitions referred to above are not continued in the General Corporation Law.

CROSS-REFERENCES

Definitions:

Member, § 5148

§ 5222. Permissible corporate name; reservation of corporate name

5222. (a) Subdivision (b) of Section 201 (permissible corporate name) applies to a nonprofit corporation.

(b) A nonprofit corporation shall not adopt any of the following:

(1) A name in which the word "charitable" or its equivalent appears unless the corporation is a nonprofit corporation organized for charitable purposes.

(2) A name the use of which is prohibited by any other statute.

(c) Subdivision (c) of Section 201 (reservation of corporate name) applies to a nonprofit corporation.

Comment. Subdivision (a) of Section 5222 is consistent with Cal. Stats. 1975, Ch. 682, § 16, as amended by Cal. Stats. 1976, Ch. 641, § 43.5, which makes subdivision (b) of Section 201 (General Corporation Law) apply to all corporations. See also former Section 310, applicable to nonprofit corporations through former Section 9002.

Subdivision (b) (1) is a specific application of the general rule stated in subdivision (b) of Section 201. A nonprofit corporation that is organized for charitable purposes must so state in its articles (Section 5410(c)) and may be subject to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code (Uniform Supervision of Trustees for Charitable Purposes Act).

Subdivision (b) (2) recognizes that there may be other applicable name limitations in other statutes. See, *e.g.*, Section 12950 (use of word "cooperative"); Fin. Code § 5501 (building and loan and savings and loan associations); 36 U.S.C. § 379 (use of words "Olympic" or "Olympiad").

CROSS-REFERENCES

Consolidated corporation, § 6241

Converted corporation, § 6422

Definitions:

New corporation after division, § 6314

Nonprofit corporation organized for charitable purposes, § 5154

Surviving corporation after merger, § 6214

§ 5223. Members' derivative action

5223. (a) Except as provided in subdivision (b), the provisions of Section 800 (shareholder derivative actions) are applicable in the case of a nonprofit corporation. For the purposes of this section, the reference in Section 800 to Section 317 is deemed to be a reference to Article 8 (commencing with Section 5580) of Chapter 5.

(b) If a members' derivative action is brought pursuant to this section by at least 50 voting members or members holding at least 10 percent of the voting power, whichever number is the smaller, the plaintiff is not required to furnish security for the defendant's expenses.

Comment. Section 5223 continues provisions of former Section 834, applicable to nonprofit corporations through former Section 9002.

Subdivision (b) of Section 5223 permits plaintiffs who meet the stated numerical requirements to avoid having to furnish security for the defendant's expenses in a members' derivative action under this section. Subdivision (b) has no predecessor in California law but is similar to Section 7765 of the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7765 (Purdon Cum. Supp. 1976-1977). Of course, all such plaintiffs must satisfy the other requirements of Section 800.

It should be noted that the rule in *Ensher v. Ensher, Alexander & Barsoom, Inc.*, 187 Cal. App.2d 407, 9 Cal. Rptr. 732 (1960) (derivative action may not be dismissed without court approval), continues to apply to nonprofit corporations.

See Sections 800(b) and 5226(b) regarding application of this section to foreign nonprofit corporations.

CROSS-REFERENCES

Definitions:

Member, § 5148

Voting member, § 5193

Voting power, § 5196

Illegal distribution or loan, derivative action, §§ 5574, 5615, 6577

Transition provision, § 6614

§ 5224. Annual statement of officers, office, and agent for service

5224. (a) Except as provided in subdivision (b), Section 1502 (annual statement of officers, office, and agent for service) applies to a nonprofit corporation.

(b) In lieu of the information required by subdivision (a) of Section 1502, the statement for a nonprofit corporation shall contain all of the following:

(1) The name and complete business or residence address of its chief executive officer.

(2) The name and complete business or residence address of either its secretary or chief financial officer.

(3) The street address of its principal executive office.

(4) If the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any.

Comment. Subdivision (b) of Section 5224 is based in part on former Sections 3301, 3301.3, and 3301.6, which required a listing of the officers but not the directors of nonprofit corporations. However, unlike former Section 3301, which required the statement to list the name and address of the president, vice president, secretary, and treasurer of the nonprofit corporation, subdivision (b) requires only the name and address of the chief executive officer and one additional officer of the nonprofit corporation.

CROSS-REFERENCES

Definitions:

Chief executive officer, § 5123

Principal executive office, § 5166

Enforcement by Attorney General, § 5250

Transition provision, § 6615

§ 5225. Service of process on domestic nonprofit corporation

5225. Chapter 17 (commencing with Section 1700) of Division 1 (service of process) applies to service of process on a domestic nonprofit corporation.

Comment. Section 5225 makes clear that the provisions of the General Corporation Law relating to service of process on domestic corporations (defined in Section 167) apply to service

on domestic nonprofit corporations. This continues former Sections 3300, 3302–3303, and 3306, applicable to nonprofit corporations through former Section 9002.

§ 5226. Foreign nonprofit corporations

5226. (a) Section 191 (defining “transact intrastate business”) and Chapter 21 (commencing with Section 2100) (foreign corporations) of Division 1 (excluding Sections 2108, 2109, and 2115) apply to foreign nonprofit corporations. For the purposes of this subdivision, the reference in Section 2114 to Section 2113 is deemed to include a reference to Sections 6254 and 6255.

(b) A provision of the General Corporation Law that is made applicable to a nonprofit corporation by any other section of this article applies to a foreign nonprofit corporation to the same extent that the provision of the General Corporation Law applies to a foreign corporation.

Comment. Subdivision (a) of Section 5226 makes clear that the provisions of the General Corporation Law relating to registration of corporate name and qualification of foreign corporations to transact intrastate business in California apply to foreign nonprofit corporations. The requirement that a foreign corporation qualify before transacting intrastate business applied to foreign nonprofit corporations under prior law. See former Sections 6200–6804, applicable to nonprofit corporations through former Section 9002. See also *Mechanical Contractors Ass’n of America, Inc. v. Mechanical Contractors Ass’n of Northern California, Inc.*, 342 F.2d 393, 398–400 (1965).

The provisions of Chapter 21 relating to pseudo-foreign corporations (Sections 2108, 2109, and 2115) do not apply to foreign nonprofit corporations. These provisions are new to California corporation law and present difficult conflict of laws and other problems. See Halloran & Hammer, *Section 2115 of the New California General Corporation Law—The Application of California Corporation Law to Foreign Corporations*, 23 U.C.L.A. L. Rev. 1282 (1976). Some experience with these provisions should be accumulated under the General Corporation Law before a determination is made whether similar provisions should be applied to foreign nonprofit corporations.

Subdivision (b) makes clear that provisions of the General Corporation Law that apply to foreign corporations also apply to

foreign nonprofit corporations if they are incorporated by reference in this article.

§ 5227. Crimes and penalties

5227. Except for Sections 2200, 2201, and 2202, the provisions of Chapter 22 (commencing with Section 2200) of Division 1 (crimes and penalties) are applicable in the case of a nonprofit corporation.

Comment. Section 5227 makes Chapter 22 of the General Corporation Law applicable to nonprofit corporations. It continues former Sections 1308–1309, 1511, 3019–3022, applicable to nonprofit corporations through former Section 9002. Sections 2200–2202 are not adopted by reference because provisions comparable to Sections 2200 and 2202 are included in this division (Sections 5992 and 5993), and Section 2201 is not considered to be appropriate for application to a nonprofit corporation.

§ 5228. Other applicable General Corporation Law provisions

5228. The following provisions of the General Corporation Law apply to a nonprofit corporation:

- (a) Section 105 (suit against corporation).
- (b) Section 106 (subjection of corporate property to attachment).
- (c) Section 107 (issuing or putting in circulation other than lawful money).
- (d) Section 108 (fees of Secretary of State).
- (e) Section 109 (correction of instruments).
- (f) Section 110 (filing of instruments).
- (g) Chapter 14 (commencing with Section 1400) of Division 1 (bankruptcy reorganizations and arrangements).
- (h) Section 1506 (making corporate records available to assessor).
- (i) Section 1801 and last sentence of Section 1809 (action by Attorney General).

Comment. Section 5228 makes the specified provisions of the General Corporation Law applicable to nonprofit corporations. This continues the following former provisions, applicable to nonprofit corporations through former Section 9002: Subdivision

(a) continues former Section 128; subdivision (b) continues former Section 126.1; subdivision (c) continues former Section 129; subdivision (d) continues former Section 124; subdivision (e) continues former Section 127; subdivision (f) continues former Section 308; subdivision (g) continues former Sections 4400–4405; subdivision (h) continues former Section 3001.1; subdivision (i) continues former Sections 4690–4693. See Section 5226(b) regarding application of these provisions to foreign nonprofit corporations.

CROSS-REFERENCES

Attorney General, enforcement of subdivision (h), § 5250

Article 3. Execution of Written Instruments

§ 5230. Validity of contracts or conveyances generally

5230. (a) A contract or conveyance, whether executed or wholly or partly executory, made in the name of a nonprofit corporation, binds the nonprofit corporation and the nonprofit corporation acquires rights thereunder if any of the following occurs:

- (1) It is approved by the board.
- (2) It is made within the scope of authority, actual or apparent, conferred by the board.
- (3) It is within the agency authority of the officer executing it.

(b) This section does not apply to a contract or conveyance made or executed in violation of law other than this division.

Comment. Section 5230 is comparable to Section 208(b) (General Corporation Law) and former Section 803(c), which was applicable to nonprofit corporations through former Section 9002.

Subdivision (a) validates a written instrument in certain circumstances even though an officer executing the instrument on behalf of the nonprofit corporation was not properly authorized to do so. Subdivision (b) excludes illegal contracts from such validation. See *Stevens v. Boyes Hot Springs Co.*, 113 Cal. App. 479, 298 P. 508 (1931).

Application of Section 5230 to contracts of foreign nonprofit corporations is governed by Section 5234.

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106

Board, § 5115

§ 5231. Instrument signed by certain officers valid absent actual knowledge of lack of authority

5231. An instrument in writing, including an assignment or endorsement thereof, executed or entered into between a nonprofit corporation and another person and signed by the officers as specified in Section 5181 is:

(a) Presumed to be signed by the officers specified. This presumption is a presumption affecting the burden of producing evidence.

(b) Not invalidated by any lack of authority of the signing officers unless (subject to subdivision (b) of Section 5313) the other person has actual knowledge of the lack of authority.

Comment. Section 5231 is similar to Section 313 (General Corporation Law) and is derived in part from Pennsylvania's Corporation Not-for-Profit Code, 15 Pa. Cons. Stat. Ann. § 7506 (Purdon Cum. Supp. 1976-1977). There was no comparable provision in prior law.

Section 5231 covers all written instruments, including evidences of indebtedness, securities, agreements, contracts, mortgages, and conveyances. Outside parties are entitled to rely upon the authority of certain corporate officers—those specified in Section 5181—to execute any instrument on behalf of the nonprofit corporation, thus creating an instrument binding upon all parties regardless of the authority of the officer. Compare Section 5230 (validity of contracts). While this reliance is generally denied to a person having actual knowledge of an executing officer's lack of authority, such a person may nonetheless be a party to a binding contract where the lack of authority results from limitations contained in or implied by the articles or certain statutes. See Section 5313 (defense of *ultra vires*).

This section does not create an inference that instruments not signed by the officers as specified in Section 5181 are invalid. For such instruments, the defense of lack of authority may be defeated by such validating concepts as apparent authority and

agency authority, where applicable. See Section 5230 (validity of contracts).

It should be noted that the statement of officers filed pursuant to Section 5224 does not place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of the statement. See Section 1502(f) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Signed by the officers, § 5181

Presumption affecting burden of producing evidence, Evid. Code § 604

§ 5232. Instruments required to be signed by more than one officer

5232. Any instrument required by this division to be signed or executed by more than one officer may not be signed or executed by the same person acting in different official capacities unless the nonprofit corporation has only one officer.

Comment. Section 5232 is new. It is necessitated by the provision permitting any number of offices to be held by the same person. See Section 5561.

§ 5233. Corporate seal

5233. Failure to affix a corporate seal does not affect the validity of a written instrument.

Comment. Section 5233 is the same in substance as a portion of Section 207(a) (General Corporation Law). It eliminates the presumption of validity of documents bearing a seal formerly provided in Section 833, which was applicable to nonprofit corporations through former Section 9002. Section 5231 serves the same purpose as the presumption formerly given to a corporate document bearing a seal.

§ 5234. Application of article

5234. This article applies to all of the following:

- (a) Domestic nonprofit corporations.
- (b) Instruments in writing made or to be performed by a foreign nonprofit corporation in this state.
- (c) Conveyances by a foreign nonprofit corporation of real property in this state.

Comment. Section 5234 gives this article a scope of application comparable to that specified in Section 208 (General Corporation Law) and former Section 803.

Article 4. Evidentiary Effect of Corporate Documents and Instruments

Comment. This article contains a number of provisions relating to the evidentiary effect of corporate documents and instruments. Other evidentiary provisions may be found in this division. See, *e.g.*, Sections 5724 (affidavit of notice), 5824 (voting of membership), 5831 (execution of proxy), 5834 (revocation of proxy), 5864 (report of inspector of election), 5875 (fairness of election), 6114 (certificate of transfer of assets).

CROSS-REFERENCES

Report or certificate of elections inspector, § 5865

Sale or disposition of assets, certificate, § 6114

§ 5240. Evidence of corporate formation and existence

5240. For all purposes other than an action in the nature of quo warranto, a copy of the articles of a nonprofit corporation, duly certified by the Secretary of State, is conclusive evidence of the formation of the nonprofit corporation and prima facie evidence of its corporate existence.

Comment. Section 5240 is the same in substance as Section 209 (General Corporation Law). It continues former Section 313 which was applicable to nonprofit corporations through former Section 9002. See, *e.g.*, *Cavin Memorial Corp. v. Requa*, 5 Cal. App.3d 345, 353-354, 85 Cal. Rptr. 107, 110-111 (1970); *Barber v. Irving*, 226 Cal. App.2d 560, 565, 38 Cal. Rptr. 142, 145 (1964). For provisions relating to an action in the nature of quo warranto, see Section 803 of the Code of Civil Procedure.

Section 5240 does not in any way affect the equitable doctrine in which the corporate entity is "disregarded" in order to fasten responsibility upon the owners who are found to be the alter ego of the corporation. In applying the alter ego doctrine, the courts do not in fact disregard a corporation's otherwise legal existence, as may be established under this section, but instead treat the corporation and its owners as "procedurally synonymous" and not as "separate juristic entities." *People v. Clauson*, 231 Cal. App.2d 374, 379, 41 Cal. Rptr. 691, 694 (1964).

CROSS-REFERENCES

Definitions:

Action, § 5103
Articles, § 5112

§ 5241. Evidence of bylaws, resolution, meeting, or minutes

5241. The original or a copy (if certified to be a true copy by a person purporting to be the secretary or an assistant secretary of the nonprofit corporation) of:

(a) The bylaws of a nonprofit corporation is prima facie evidence of the adoption of the bylaws and of the contents of the bylaws.

(b) The minutes of members', directors', committee, or other meeting is prima facie evidence of the due holding of the meeting and of the contents of the minutes.

(c) A resolution adopted by the board, a committee of the board, or the members, is prima facie evidence of the adoption of the resolution and of the contents of the resolution.

Comment. Section 5241 is the same in substance as Section 314 (General Corporation Law) and former Section 832, which was applicable to nonprofit corporations through former Section 9002 but did not specifically refer to resolutions.

CROSS-REFERENCES

Bylaws, making available to members, §§ 5975-5977

Definitions:

Board, § 5115
Bylaws, § 5121
Director, § 5133
Member, § 5148

Minutes, record of, §§ 5970-5971

§ 5242. Evidentiary effect of certified copy of agreement of merger or consolidation or plan of division or conversion

5242. A copy of an agreement of merger or consolidation or plan of division or conversion, certified on or after its effective date by a public official having custody thereof:

(a) Has the same force in evidence as the original.

(b) Except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, consolidation, division, or conversion, and the existence on the effective date of the surviving, consolidated, or resulting nonprofit corporation or the converted corporation.

(c) Is prima facie evidence of the performance of the conditions necessary to the adoption of (1) any amendment to the articles of the surviving nonprofit corporation contained in the agreement of merger or plan of division and (2) the articles of the consolidated nonprofit corporation contained in the agreement of merger or the converted corporation contained in the plan of conversion.

Comment. Section 5242 is comparable to Section 1106 (General Corporation Law) and former Sections 4115 and 4120, which were applicable to nonprofit corporations through former Section 9002. Section 5242, unlike Section 1106, does not purport to give a filed agreement of merger conclusive effect as to performance of conditions necessary to the adoption of amendments of articles. In this respect, Section 5242 is consistent with Section 908 (General Corporation Law) and Section 5244 (Nonprofit Corporation Law) (evidentiary effect of certificate of amendment of articles).

CROSS-REFERENCES

Agreement of merger or consolidation, §§ 6210–6255

Definitions:

Articles, § 5112

Consolidated nonprofit corporation, § 5127

Converted corporation, § 5131

Resulting nonprofit corporation, § 5178

Surviving nonprofit corporation, § 5187

Plan of conversion, §§ 6420–6454

Plan of division, §§ 6310–6351

§ 5243. Evidence of record ownership after merger, consolidation, division, or conversion

5243. (a) This section applies where a merger, consolidation, division, or conversion is effected under (1) the laws of this state or (2) the laws of a state or place that provides substantially that all the real property of a

disappearing nonprofit corporation or converting corporation, or the designated real property of a dividing nonprofit corporation, is vested in the surviving, consolidated, or new nonprofit corporation or in the converted corporation.

(b) The filing for record in the office of the county recorder of a county in this state in which real property of the disappearing or dividing nonprofit corporation or the converting corporation is located of either (1) a certificate prescribed by the Secretary of State or (2) a copy of the agreement of merger or consolidation or plan of division or conversion, certified by the Secretary of State or an authorized public official of the state or place under the laws of which the merger, consolidation, division, or conversion is effected, evidences record ownership in the surviving, consolidated, or new nonprofit corporation or the converted corporation of all interest of the disappearing nonprofit corporation or the converting corporation, or the designated interest of the dividing nonprofit corporation, in the real property located in that county.

Comment. Section 5243 is comparable to Section 1109 (General Corporation Law) and portions of former Sections 4114 and 4119, which required the filing of a certificate in a county where a constituent corporation held property, and former Section 4122, which provided that recording a certificate or agreement operated to vest the real property of a foreign constituent corporation in the foreign surviving or consolidated corporation. Section 5243 extends the application of these provisions to division and conversion, as well as merger and consolidation.

CROSS-REFERENCES

Definitions:

- Consolidated nonprofit corporation, § 5127
- Converting and converted corporation, § 5131
- Disappearing nonprofit corporation, § 5136
- Dividing nonprofit corporation, § 5139
- New nonprofit corporation, § 5151
- Surviving nonprofit corporation, § 5187

Rights of creditors, §§ 6245, 6344, 6452

§ 5244. Evidentiary effect of certificate of amendment of articles

5244. A copy of a certificate of amendment of articles, certified by the Secretary of State, is prima facie evidence of the performance of the conditions necessary to the adoption of the amendment.

Comment. Section 5244 is the same in substance as a portion of Section 908 (General Corporation Law) and former Section 3673, which was applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Merger or division, evidence of performance of conditions necessary to amendment of articles, § 5242

Article 5. Enforcement by Attorney General

§ 5250. Enforcement of certain statutory provisions by Attorney General

5250. The Attorney General, upon complaint that a domestic or foreign nonprofit corporation is failing to comply with the applicable requirements of the provisions of Section 5224 (annual statement of officers, office, and agent for service), subdivision (h) of Section 5228 (making corporate records available to assessor), Chapter 7 (commencing with Section 5710) (members' meetings), Chapter 8 (commencing with Section 5810) (voting of memberships), or Chapter 9 (commencing with Section 5910) (records, reports, and inspection rights), may in the name of the people of the State of California give notice of the complaint to the nonprofit corporation at its principal executive office. If the Attorney General does not receive a satisfactory answer, the Attorney General may institute, maintain, or intervene in any proceeding of any type in any court or tribunal of competent jurisdiction or before any administrative agency for relief by way of injunction, dissolution of entities, appointment of receivers, or any other temporary, preliminary, provisional, or final

remedies, as may be appropriate to protect the rights of members or to undo the consequences of failure to comply with the applicable requirements. All persons and entities responsible for or affected by the failure to comply with the applicable requirements may be joined as parties in the proceeding.

Comment. Section 5250 is the same in substance as Section 1508 (General Corporation Law) and former Section 2240, which applied to nonprofit corporations through former Section 9002. See also Sections 5228(i) (action by Attorney General), 5880–5883 (action by Attorney General to determine persons entitled to vote), 6510 (action by Attorney General for involuntary dissolution of nonprofit corporation).

CROSS-REFERENCES

Articles of charitable corporation, delivery of copy to Attorney General, § 5323

Definitions:

Member, § 5148

Person, § 18

Principal executive office, § 5166

Notice to Attorney General

Dissolution, § 6541

Division, § 6342

Merger or consolidation, § 6242

Sale or disposition of assets, § 6112

Supervision of charitable trusts, §§ 6074, 6541; Govt. Code §§ 12580–12597

Article 6. Rules of Practice

§ 5260. Rules of practice applicable to this division

5260. Except as otherwise provided in this division, the rules of practice that govern civil actions and proceedings generally are the rules of practice for actions under this division. This section is declaratory of existing law.

Comment. Section 5260 makes applicable the rules of practice in Parts 2 (Civil Actions) and 3 (Special Proceedings of a Civil Nature) of the Code of Civil Procedure as well as additional provisions in other portions of the Code of Civil Procedure and many nonstatutory rules of procedure which apply to civil actions and proceedings generally. No comparable statutory provision was included in prior law. However, California courts have long utilized these rules in enforcing rights granted by the corporation laws. See, *e.g.*, *Columbia*

Engineering Co. v. Joiner, 231 Cal. App.2d 837, 42 Cal. Rptr. 241 (1965) (motion for judgment); *Private Investors, Inc. v. Homestake Mining Co.*, 11 Cal. App.2d 488, 54 P.2d 535 (1936) (writ of mandate).

CROSS-REFERENCES

- Annual meeting, court ordered, §§ 5712, 5725
- Annual report, judicial enforcement of duties in connection with, §§ 5980, 5984
- Attachment of corporate property, § 5228(b)
- Attorney General, action by, §§ 5228(i), 5250, 5880-5883
- Compelling compliance with form requirements for
 - Proxy, § 5832
 - Written consent, § 5843
- Consolidation, validity of, §§ 6260-6262
- Conversion, validity of, §§ 6460-6462
- Definitions:
 - Action, § 5103
- Derivative actions, §§ 5223, 5574, 5615, 6577
- Directors
 - Appointment by court, § 5527
 - Provisional directors, appointment by court, §§ 5540-5544
 - Removal, action for, § 5525
- Dissolution proceedings, §§ 6510, 6525, 6528, 6530-6534
- Division, validity of, §§ 6360-6362
- Election procedures, judicial review of, §§ 5870-5876
- Indemnification of corporate agents, §§ 5580-5590
- Inspection rights, enforcement of, §§ 5982, 5984
- Membership certificate, action to enforce surrender, § 5625
- Merger, validity of, §§ 6260-6262
- Persons entitled to vote, judicial determination of, §§ 5880-5883
- Service, dissolved nonprofit corporation, § 6583
- Service, domestic nonprofit corporations, § 5225
- Service, foreign nonprofit corporation, § 5226
- Suit against nonprofit corporation, § 5228(a)
- Suit by or against dissolved nonprofit corporation, §§ 6581, 6583
- Ultra vires act of charitable corporation, enjoining, § 5314
- Voting agreements
 - Determination of validity and construction of, § 5876
 - Specific enforcement, § 5856

CHAPTER 3. PURPOSES, POWERS, AND FORMATION

Article 1. Purposes and Powers

§ 5310. Any lawful purpose other than distribution of dividends

5310. Subject to the laws and regulations applicable to the particular type of nonprofit corporation or line of activity, a nonprofit corporation may be formed under this division for any lawful purposes other than the distribution of gains, profits, or dividends to members.

Comment. Section 5310 continues the substance of a portion of the first sentence of former Section 9200. Section 5310 permits incorporation for purposes specifically listed in former Section 9200—"religious, charitable, social, educational, or cemetery purposes, or for rendering services"—but, like former Section 9200, does not limit incorporation to these purposes. The requirement of former Section 9200 that the corporate purposes be ones for which individuals lawfully may associate themselves is not continued; it is unnecessary in light of the general limitation of Section 5310 that the nonprofit corporation be formed only for "lawful purposes."

The articles of a nonprofit corporation must preclude distribution of gains, profits, or dividends to members except to the extent provided in this division. See Section 5410. It should be noted, however, that Section 5310 does not prohibit a nonprofit corporation from operating a business or from making profits thereon. See Section 5315 (a) (power to engage in business activity). Any profits must be applied to lawful corporate purposes (Section 5315(b)) and may not be distributed to members except to the extent permitted by Section 5316.

The introductory portion of Section 5310 recognizes, for example, that there may be special regulations applicable to particular types of nonprofit corporations. See, *e.g.*, Bus. & Prof. Code §§ 700–701 (medical services corporations) and 6175 (legal services corporations). It should also be noted that a nonprofit corporation may be formed, subject to Section 5310, for the purpose of incorporating an unincorporated association or subordinate body of a head or national organization. Section 5311.

CROSS-REFERENCES

- Board of trade, § 12000
 California Job Creation Corporations, § 14080
 Chambers of commerce, § 12000
 Community land chest corporations, Health & Saf. Code § 35131
 Cooperative corporations, § 12206
 Corporations sole, §§ 10000-10015
 Definitions:
 Member, § 5148
 Hospital service corporations, Ins. Code § 11496
 Mechanics' institute, § 12000
 Nonprofit corporations for
 Charitable or eleemosynary purposes, § 10200
 Legal services, Bus. & Prof. Code §§ 6175-6176
 Libraries, Educ. Code § 19800
 Medical services, Bus. & Prof. Code § 700
 Port and terminal protection and development corporations, Harb. & Nav. Code § 2001
 Private educational institutions, Educ. Code § 94307
 Societies for prevention of cruelty to children and animals, Health & Saf. Code §§ 20700-20714
 Thrift Guaranty Corporation, Fin. Code § 18475

§ 5311. Incorporation of unincorporated association or subordinate body

5311. (a) As used in this section:

(1) "Unincorporated association" includes but is not limited to society, library, school, college, club, church, trustees of a charitable trust, and chamber of commerce and includes a subordinate body.

(2) "Subordinate body" means an unincorporated association instituted or created under the authority of a head or national association, lodge, order, beneficial association, fraternal or beneficial society, labor union, foundation, federation, or any other society, organization, or association.

(b) Except to the extent otherwise provided in the agreement of association, an existing unincorporated association may incorporate as a nonprofit corporation under this division upon authorization of a majority of the governing board or body of the unincorporated association. Incorporation of a subordinate body is not

prevented by the fact that the head or national body is unincorporated.

(c) The articles shall state the name of the existing unincorporated association.

(d) The articles shall be signed by (1) the presiding officer or acting presiding officer and the secretary or clerk or similar officer of the unincorporated association or by (2) at least a majority of its governing board or body.

(e) There shall be attached to the articles an affidavit of the signing officers or governing board or body that the unincorporated association has (1) duly authorized its incorporation, (2) given written notice of the authorization to each member of the unincorporated association addressed to the last known address of the member, and (3) authorized the officers or governing board or body to execute the articles.

(f) A member of the unincorporated association becomes a member of the nonprofit corporation unless the member files a dissent in writing with the secretary of the unincorporated association within 15 days after the giving of notice of authorization to incorporate. Nothing in this section affects the rights, if any, of a dissenting member in the assets of the unincorporated association.

Comment. Section 5311 continues the substance of former Sections 9202 (incorporation of unincorporated association) and 9203 (incorporation of subordinate body). The provision of former Section 9203 relating to the corporate seal is not continued; the corporate seal is no longer given legal effect. See Section 5233 and Comment thereto.

Subdivision (b) is subject to Section 5310 (proper corporate purposes). The provision in subdivision (b) specifying the means of authorization is new.

Subdivision (c) continues subdivision (f) of former Section 9300. Subdivision (c) is in addition to the requirements of Section 5410 (required contents of articles).

Subdivision (d) continues the first portion of subdivision (b) of former Section 9304, with the exception of the acknowledgment requirement, which is omitted. See Comment to Section 5321. Subdivision (d) is an exception to the provisions of Section 5321 (execution of articles).

Subdivision (e) continues the last portion of subdivision (b) of former Section 9304, with the addition of the requirement that notice shall have been given to the members.

The first sentence of subdivision (f) continues former Section 9604, with the addition of the time within which dissent must be made. The second sentence is new. It makes clear that the authority contained in Section 5311 does not preclude dissenters from obtaining a share of the assets of the association where they have the right to do so. The rights of dissenters are not determined by this section; such rights are determined under the law otherwise applicable under the circumstances of the particular case and the particular agreement of association.

It should be noted that conversion of memberships in an unincorporated association into corporate memberships may be subject to qualification under the Corporate Securities Law, absent an exemption. See Section 25017 ("sale" or "sell" includes any exchange of securities).

CROSS-REFERENCES

Affidavits, § 5012

Definitions:

Articles, § 5112

§ 5312. Powers of nonprofit corporation

5312. Subject to any limitations contained in the articles or provided by law, a nonprofit corporation in carrying out its activities:

(a) Has all of the powers of a natural person and all the powers provided in this division.

(b) May, without limitation on the generality of subdivision (a), do all of the following:

(1) Adopt, use, and at will alter a corporate seal.

(2) Adopt, amend, and repeal bylaws.

(3) Qualify to conduct activities in any other state, territory, dependency, or foreign country.

(4) Issue, acquire, own, dispose of, pledge, and otherwise use its memberships and its other securities.

(5) Make donations, regardless of specific corporate benefit, for the public welfare or other charitable purposes.

(6) Pay pensions; establish and carry out pension, savings, thrift, and other retirement, incentive, and

benefit plans, trusts, and provisions for any or all of the directors, officers, and employees of the nonprofit corporation or any of its subsidiaries.

(7) Assume obligations; enter into contracts (including contracts of guaranty, suretyship, or indemnity); incur liabilities; borrow and lend money and otherwise use its credit; secure any of its obligations, contracts, or liabilities by mortgage, pledge, or other encumbrance of all or part of its property, franchises, revenue, or receipts.

(8) Participate with others in a partnership, joint venture, or other association, transaction, or arrangement, whether or not participation involves sharing control with or delegating control to others.

(9) Act as trustee under a trust not in conflict with the purposes of the nonprofit corporation; receive, hold, administer, and expend funds and property subject to such a trust.

Comment. Section 5312 supersedes former Section 9501. The omission from Section 5312 of several of the specific powers of nonprofit corporations set out in former Section 9501 does not effect any substantive change in the law. These powers are those of a natural person and are thus granted by subdivision (a). They include the power to sue, acquire and own shares in a corporation, make contracts, receive property by devise or bequest (see Section 27 of the Probate Code), and convey or otherwise dispose of real or personal property. See also Section 5228(a) (suit against corporation).

Subdivision (a) is derived from Section 207 (General Corporation Law) and is new to nonprofit corporation law. Subdivisions (a) and (b) are both subject to limitations found in other laws or the articles.

The powers listed in subdivision (b) are specified in order to ensure the authority of a nonprofit corporation to do certain acts which may not be within the power of a natural person. This subdivision, which is drawn largely from Section 207 (General Corporation Law), does not limit the scope of subdivision (a). Paragraph (1) of subdivision (b) is the same as the first part of Section 207(a) and former Section 801(b). Failure to affix a corporate seal does not affect the validity of a written instrument. Section 5233. Paragraph (2) is the same as Section 207(b) and comparable to former Section 801(c). Paragraph (3) is the same as Section 207(c) and a portion of former Section 801(e).

Subdivision (b) (4) is comparable to Section 207(d) and former Section 802(e). It continues that portion of former Section 9501(f) that authorized issuance of "bonds, notes, and debentures." The authority of a nonprofit corporation to deal in its own memberships and securities is subject to the limitations of Chapter 10 (commencing with Section 6010) (corporate finance). A nonprofit corporation may also acquire and own memberships and shares in other corporations pursuant to subdivision (a).

Paragraph (5) of subdivision (b) is comparable to Section 207(e) and former Section 802(g). Paragraph (6) is comparable to Section 207(f), which is derived from Section 122 of the Delaware General Corporation Law and is new to California. The authority granted in this subdivision may, in appropriate cases, include traditional profit-sharing plans. Paragraph (7) is the same in substance as Section 207(g) and comparable to a portion of former Section 9501. It is subject to Section 5573 (loans to officers).

Subdivision (b) (8) is comparable to Section 207(h), which is derived from Section 122 of the Delaware General Corporation Law. This subdivision, new to California nonprofit corporation law, does not permit the participation in an arrangement or venture of a type which the nonprofit corporation does not itself have the power to conduct. See the introductory proviso (corporate powers subject to limitation in the articles or statutes). The term "control" is not defined for nonprofit corporations. Contrast Section 160 (General Corporation Law).

Subdivision (b) (9) continues former Section 9501(d) with the deletion of language relating to the "principal objects" of the nonprofit corporation consistent with the deletion of the required statement of purposes in the articles. See Section 5411.

CROSS-REFERENCES

Definitions:

- Articles, § 5112
- Bylaws, § 5121
- Director, § 5133
- Subsidiary, § 5184

§ 5313. Defense of ultra vires

5313. (a) A limitation in the articles upon the activities, purposes, or powers of a nonprofit corporation or upon the powers of the members, officers, or directors, or the manner of exercise thereof, may be asserted in:

(1) An action by a member or the state to enjoin unauthorized activities by the nonprofit corporation or its officers, or both, in cases where third parties have not acquired rights thereby.

(2) An action to dissolve the nonprofit corporation.

(3) An action by the nonprofit corporation or representative action brought by a member against the officers or directors for violation of their authority.

(b) A limitation described in subdivision (a) or contained in or implied by Chapter 15 (commencing with Section 6510) shall not be asserted as between the nonprofit corporation or member and any third person.

(c) The application of this section extends to a contract or conveyance made by a foreign nonprofit corporation in this state and to a conveyance by a foreign nonprofit corporation of real property situated in this state.

Comment. Section 5313 is the same in substance as subdivisions (a) and (c) of Section 208 (General Corporation Law) and subdivisions (a), (b), and (d) of former Section 803, applicable to nonprofit corporations through former Section 9002. See, e.g., *Osteopathic Physicians & Surgeons v. California Medical Ass'n*, 224 Cal. App.2d 378, 36 Cal. Rptr. 641 (1964); *House of Rest v. County of Los Angeles*, 151 Cal. App.2d 523, 312 P.2d 392 (1957). For related provisions, see Sections 5314 (enjoining ultra vires act of charitable corporation), 5230 (validity of contracts), and 5231 (execution of instruments).

CROSS-REFERENCES

Definitions:

- Action, § 5103
- Articles, § 5112
- Director, § 5133
- Member, § 5148

§ 5314. Enjoining ultra vires act of charitable corporation

5314. (a) Notwithstanding Section 5313, if a nonprofit corporation holds assets on a charitable trust or is organized for charitable purposes, a limitation described in subdivision (a) of Section 5313 may be asserted in an action to enjoin unauthorized activities by the nonprofit corporation or its officers, or both, that affect the charitable trust or charitable purposes, regardless of whether third parties have acquired rights thereby.

(b) In an action under this section, the court may enjoin the performance of a contract if it is equitable to do so and all the parties to the contract are parties to the action.

(c) An action may be brought under this section by the Attorney General, a director, or a person having the right of visitation.

Comment. Section 5314 is new; for a comparable provision, see ALI-ABA Model Nonprofit Corporation Act § 6(a). See also *Holt v. College of Osteopathic Physicians & Surgeons*, 61 Cal.2d 750, 394 P.2d 932, 40 Cal. Rptr. 244 (1964) (minority trustees of charitable corporation may seek to enjoin unauthorized corporate activity).

The remedy provided by Section 5314 supplements those of Section 5313. A "right of visitation" may be possessed by the founding donor to inspect and regulate the trust. See *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819).

The remedy provided in Section 5314, which permits injunction of ultra vires acts, should be distinguished from other remedies available to enforce charitable trusts. Nothing in Section 5314 limits the law of trusts as to standing to sue to enforce a trust or pursuit of other remedies than ultra vires to prevent misuse or diversion of charitable assets. See, e.g., *O'Hara v. Grand Lodge of the Independent Order of Good Templars*, 213 Cal. 131, 140, 2 P.2d 21, 24 (1931) (action to enforce trust may be maintained by anyone who has "some definite interest in the property"); accord, *Holt v. College of Osteopathic Physicians & Surgeons*, *supra*. Nor does Section 5314 limit rights provided by any other statute.

CROSS-REFERENCES

Definitions:

Action, § 5103

Director, § 5133

Nonprofit corporation organized for charitable purposes, § 5154

§ 5315. Power to engage in business activity

5315. (a) Subject to any limitations contained in the articles or provided by law, a nonprofit corporation may engage in business activity.

(b) Any gain or profit that results from business or other activity of a nonprofit corporation shall be applied

only to lawful activities in furtherance of or incidental to the purposes for which the nonprofit corporation is formed.

Comment. Section 5315 supersedes the portion of the second sentence of former Section 9200 which provided that "carrying on business at a profit as an incident to the main purposes of the corporation" was not forbidden. Subdivision (a) makes clear that a corporation may carry on a business for profit whether or not the business is "incident" to its main purposes. See *People ex rel. Groman v. Sinai Temple*, 20 Cal. App.3d 614, 99 Cal. Rptr. 603 (1971). For a comparable provision, see Section 206 (General Corporation Law). Subdivision (b) requires that any gains or profits of the business be applied to the purposes of the nonprofit corporation. It should be noted that a nonprofit corporation may not have as a purpose the distribution of gains, profits, or dividends to members. See Section 5310. Nor may a nonprofit corporation distribute any such gains, profits, or dividends to members. See Section 5316.

CROSS-REFERENCES

Action by Attorney General, § 5228(i)

Definitions:

Articles, § 5112

Liability of directors, § 5570

§ 5316. Distributions to members prohibited

5316. (a) A nonprofit corporation shall not distribute any gains, profits, or dividends to members.

(b) None of the following shall be deemed to be a distribution of gains, profits, or dividends to members:

(1) Payment of compensation to members for services rendered.

(2) Conferring benefits upon members in conformity with the purposes for which the nonprofit corporation is formed.

(3) Making distributions to members upon dissolution to the extent permitted by this division.

(4) Making payments to members authorized by Chapter 10 (commencing with Section 6010).

(5) Purchasing memberships as provided in Article 4 (commencing with Section 6540) of Chapter 15.

Comment. Section 5316 is comparable to the last portion of Section 26 of the ALI-ABA Model Non-Profit Corporation Act.

Subdivision (a) continues a limitation formerly found in the second sentence of Section 9200. A nonprofit corporation may not be formed for profit-distribution purposes. See Section 5310. This limitation must be stated in the articles. See Section 5410. While subdivision (a) continues the limitation of former law that profits, gains, or dividends may not be distributed, this limitation is subject to the provisions of subdivision (b).

Subdivision (b) lists major types of disbursement of corporate funds which do not violate the prohibition of subdivision (a). It should be noted that the authority to make the disbursements referred to in subdivision (b) may be dependent upon provisions in the articles or bylaws. Paragraph (1) of subdivision (b) is new. Compensation may be limited or precluded in the articles or bylaws. Paragraph (2) supersedes the portion of former Section 9200 permitting the formation of a nonprofit corporation for the purpose of rendering services. It makes clear that a nonprofit corporation may provide benefits to its members without violating the prohibition against distributions of gains, profits, or dividends as such. This codifies case law. See *People ex rel. Groman v. Sinai Temple*, 20 Cal. App.3d 614, 99 Cal. Rptr. 603 (1971) (discount on price of cemetery land to members of nonprofit corporation is proper). Paragraph (3) continues portions of former Section 9200 permitting distributions on dissolution. For limitations on such distributions, see Sections 6570-6577. Paragraph (4) makes clear that the nonprofit corporation may repay debts owed to members and purchase or redeem other corporate instruments held by members to the extent permitted in Sections 6010-6087 (corporate finance), without violating subdivision (a). Paragraph (5) implements the provisions of Sections 6540-6546, relating to avoidance of dissolution by purchase of memberships.

CROSS-REFERENCES

Action by Attorney General, § 5228(i)

Definitions:

Member, § 5148

Derivative action to recover improper distribution

Against director, § 5574

Against member, § 5615

Liability of directors, § 5570

Article 2. Formation

§ 5320. Nonprofit corporation formed by executing and filing articles

5320. A nonprofit corporation is formed by executing and filing articles of incorporation.

Comment. Section 5320 supersedes a portion of former Section 9200 which provided that a nonprofit corporation may be formed by three or more persons. Section 5320 eliminates the concept of incorporators, who perform no necessary function; one or more initial directors execute and file the articles of incorporation and are fully empowered to govern the affairs of the nonprofit corporation until the selection of their successors. See Sections 5321 (execution of articles) and 5513 (initial directors). For a comparable provision, see Section 200(a) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Filed, § 5142

§ 5321. Execution of articles

5321. The articles shall be executed by any one or more of the persons named in the articles to act in the capacity of initial directors personally signing the articles.

Comment. Section 5321 supersedes former Sections 9200 and 9304(a). The provision of former Section 9304(a) that other persons "desiring to associate with" the first directors were permitted to sign the articles is not continued in Section 5321. Section 5321 also eliminates the acknowledgment requirement of former Section 9304(a) since it served no useful purpose. For an exception to the provisions of Section 5321, see Section 5311 (incorporation of unincorporated association or subordinate body). For a comparable provision, see Section 200(b) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Initial directors named in articles, § 5410

§ 5322. Filing of articles

5322. The corporate existence begins upon the filing of the articles and continues perpetually except to the extent otherwise provided in the articles or until terminated in a manner provided by law.

Comment. Section 5322 is the same in substance as Section 200(c) (General Corporation Law). Section 5322 supersedes former Section 9304.5. Like the General Corporation Law, Section 5322 eliminates the former requirement that articles be filed with the county clerk of the county in which the nonprofit corporation is to have its principal office and in which it acquires real property.

Section 5322, unlike former Section 9304.5, authorizes the nonprofit corporation to limit in the articles the term of its existence. Section 5322 also makes clear that the corporate existence is subject to termination in the manner provided by law. See, *e.g.*, Chapters 12 (merger and consolidation), 13 (division), 14 (conversion), and 15 (dissolution).

CROSS-REFERENCES

Action by Attorney General to dissolve corporation, § 5228(i)

Definitions:

Articles, § 5112

Filed, § 5142

Evidence of corporate formation and existence, § 5240

Filing of instruments by Secretary of State, § 5228(f)

§ 5323. Additional requirement for charitable corporations

5323. Promptly upon formation, a nonprofit corporation organized for charitable purposes shall deliver a copy of its articles to the Attorney General.

Comment. Section 5323 imposes a new requirement designed to assist the office of the Attorney General in its supervisory duties under the Uniform Supervision of Trustees for Charitable Purposes Act. See Govt. Code §§ 12580–12597. It should be noted that a charitable corporation need submit only one copy of its articles to the Attorney General; if a copy is submitted pursuant to the Uniform Supervision Act, this section is satisfied.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Nonprofit corporation organized for charitable purposes, § 5154

Statement in articles that corporation is organized for charitable purposes, § 5410

CHAPTER 4. ARTICLES AND BYLAWS

Article 1. Articles of Incorporation

§ 5410. Required contents of articles

5410. The articles shall state:

- (a) The name of the nonprofit corporation.
- (b) That the nonprofit corporation is formed under the Nonprofit Corporation Law and that the nonprofit corporation shall not distribute gains, profits, or dividends to members except to the extent permitted by the Nonprofit Corporation Law.
- (c) In the case of a nonprofit corporation organized for charitable purposes, that the nonprofit corporation is organized for charitable purposes and is subject to all provisions of the Nonprofit Corporation Law that relate to nonprofit corporations organized for charitable purposes.
- (d) In the case of original articles, the names and addresses of one or more natural persons who are to act in the capacity of initial directors.

Comment. Section 5410 supersedes former Section 9300; for a comparable provision, see Section 202 (General Corporation Law). The requirement of former law that the articles state the number of directors is superseded by Section 5511.

Subdivision (a) continues subdivision (a) of former Section 9300. For limitations on corporate names, see Section 5222.

Subdivision (b) continues the substance of a requirement of former Section 9300(c) (that the articles state that the corporation is organized under the General Nonprofit Corporation Law) and adds the requirement that the articles state that the nonprofit corporation may not make distributions to members except as provided in this division. A nonprofit corporation may be formed for any lawful purpose other than to make such distributions (Section 5310), and such distributions are prohibited except to the extent provided in Section 5316(b). It should be noted that nothing in Section 5410 precludes a nonprofit corporation from regulating in its articles the extent to which assets may be distributed to members on dissolution or the extent to which any other distributions may be made. See Section 5412.

Subdivision (c) is a new requirement. For a listing of provisions relating to corporations organized for charitable purposes, see the Comment to Section 5154. There may be other provisions outside this division applicable to charitable corporations. See, *e.g.*, Govt. Code §§ 12580–12597 (Uniform Supervision of Trustees for Charitable Purposes Act). Where the articles do not designate the corporation as one organized for charitable purposes, but the corporation is in fact one organized for charitable purposes, nothing in subdivision (c) precludes the application to such corporations of provisions relating to corporations organized for charitable purposes.

Subdivision (d) supersedes the first sentence of former Section 9300(e). *Cf.* Section 204(c) (General Corporation Law). For provisions relating to initial directors, see Section 5513.

It should be noted that a copy of the articles must be kept available for inspection at a specified office of the nonprofit corporation. See Sections 5975–5977.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Member, § 5148

Nonprofit corporation organized for charitable purposes, § 5154

Transition provision, § 6616

Unincorporated association, incorporation of, articles to include name of unincorporated association, § 5311

§ 5411. Statement in articles of powers or purposes

5411. (a) The articles need not include any statement with respect to the purposes or powers of the nonprofit corporation.

(b) Unless the articles include a provision limiting the purposes for which the nonprofit corporation is formed, the nonprofit corporation may engage in any activity in which a nonprofit corporation formed under this division may engage.

(c) Unless the articles include a provision limiting the powers which the nonprofit corporation may exercise, the nonprofit corporation may exercise all the powers a nonprofit corporation formed under this division may exercise.

(d) A provision limiting the purposes for which the nonprofit corporation is formed or the powers which the

nonprofit corporation may exercise or both is not effective unless expressly provided in the articles.

(e) If the articles include a provision with respect to the purposes or powers of the nonprofit corporation, the provision shall not be construed as a limitation on the purposes or powers of the nonprofit corporation unless the articles expressly so provide.

Comment. Section 5411 supersedes the requirement of former Section 9300(b) that the articles state the specific and primary purposes of the nonprofit corporation. This is consistent with Section 202 (General Corporation Law), which also no longer requires a statement of specific and primary purposes. Unlike Section 202, however, Section 5411 does not provide that any statement of purposes or powers in the articles is to be construed as a limitation; such a statement is not to be construed as a limitation unless it is expressly so provided in the articles.

Section 5411 requires that a limitation be stated in the articles to be effective. This is consistent with Section 204(a)(6) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Articles, § 5112

§ 5412. Permitted contents of articles

5412. The articles may state any provision, not in conflict with law, for the conduct of the activities and for the management of the affairs of the nonprofit corporation, including any provision which is required or permitted by this division to be stated in the bylaws.

Comment. Section 5412 is the same in substance as Section 204(d) (General Corporation Law). It supersedes former Section 9303. See also Section 5441 (permitted contents of bylaws) and Sections 5442-5446 (permitted contents of bylaws).

The pattern of the Nonprofit Corporation Law is to specify rules regulating the affairs of nonprofit corporations absent contrary provisions in the articles or bylaws. Some of the rules may not be varied, however. See, *e.g.*, Section 5316 (distributions to members prohibited), Section 5570 (duty of care of directors). Other rules may be varied only in the articles. See, *e.g.*, Sections 5411 (limitation on purposes or powers must be stated in articles to be effective), 5322 (corporate existence perpetual except to the extent stated in the articles). It should be noted that, where

a provision is specifically authorized by this division to be included in the articles or bylaws, the provision is effective only if adopted as articles or bylaws unless this division authorizes adoption of the provision by additional means. See Section 5447 and Comment thereto.

CROSS-REFERENCES

Definitions:
Articles, § 5112
Bylaws, § 5121

Article 2. Amendment of Articles

§ 5420. Permissible amendments of articles

5420. (a) By complying with the provisions of this article, a nonprofit corporation may amend its articles from time to time, in any and as many respects as may be desired, so long as the articles as amended contain only provisions that would be lawful in original articles filed at the time of the filing of the amendment.

(b) It is the intent of the Legislature in adopting this section to exercise to the fullest extent the reserve power of the state over nonprofit corporations and to authorize any amendment of the articles described in subdivision (a) regardless whether any provision contained in the amendment was permissible at the time of formation of the nonprofit corporation.

Comment. Section 5420 is the same in substance as Section 900(a) (General Corporation Law). It supersedes former Sections 3600-3602, which were applicable to nonprofit corporations through former Section 9305.

CROSS-REFERENCES

Definitions:
Articles, § 5112
Filed, § 5142

Reserve power of the state, Cal. Const., Art. XX, § 5; Corp. Code § 5212(a)

§ 5421. Amendment to delete initial director

5421. (a) Notwithstanding Section 5420, a nonprofit corporation shall not amend its articles to alter the statement in the original articles of the name and address of an initial director except to correct an error in the

statement or to delete the statement after the nonprofit corporation has filed a statement under Section 5224.

(b) Notwithstanding Section 5423, an amendment deleting the name and address of an initial director may be adopted by approval of the board alone.

Comment. Subdivision (a) of Section 5421 is comparable to Section 900(b) (General Corporation Law). It supersedes former Section 3603, which was applicable to nonprofit corporations through former Section 9305. A correction of an error in the articles may be made by a certificate of correction. See Section 5228(e).

Subdivision (b) is the same in substance as Section 902(d) (General Corporation Law). There was no comparable provision in prior law.

CROSS-REFERENCES

Definitions:

Approval of the board, § 5106

Filed, § 5142

Required contents of articles, § 5410

Required statement of officers, § 5224

§ 5422. Extension of corporate existence

5422. (a) A nonprofit corporation formed for a limited period may at any time after the expiration of the term of its corporate existence extend the term of its existence by an amendment of its articles to remove the provision limiting the term of its existence and to provide for perpetual existence.

(b) For the purpose of the adoption of an amendment pursuant to this section, persons who have been functioning as directors of the nonprofit corporation shall be considered to have been validly elected even though their election may have occurred after the expiration of the original term of the corporate existence.

(c) If the filing of the certificate of amendment providing for perpetual existence would be prohibited by Section 5222 if it were original articles, the Secretary of State shall not file the certificate unless by the same or a concurrently filed certificate of amendment the articles are amended to adopt a new available name.

Comment. Section 5422 is the same in substance as Section 909 (General Corporation Law) with the exception of the requirement that the nonprofit corporation shall have "continuously acted as a corporation," which is deleted as unnecessary. It supersedes former Sections 3700-3703, which were applicable to nonprofit corporations through former Section 9305.

Unlike the former provisions, Section 5422 applies only to extensions of corporate existence made after expiration of the nonprofit corporation's term of existence; extensions prior to expiration are made pursuant to the general amendment provisions of this article. The vote required to amend the articles to extend corporate existence is the vote required for other amendments to the articles. Contrast former Section 3701.

CROSS-REFERENCES

Available name, § 5222

Definitions:

Articles, § 5112

Director, § 5133

Filed, § 5142

§ 5423. Adoption of amendments by board and members

5423. (a) An amendment of the articles may be adopted only by approval of the board and approval of the members.

(b) Approval of the members shall be by a majority of the votes cast but in no case by an affirmative vote of less than two-thirds of a quorum required for a meeting of members.

(c) Approval of the members may be either before or after the approval of the board.

Comment. Section 5423 continues and clarifies the portion of the first paragraph of former Section 3632 that related to nonprofit corporations. For a comparable provision, see Section 902(a) (General Corporation Law). For a quorum of a meeting of members, see Section 5715.

CROSS-REFERENCES

Approved by the board in lieu of approval by members, § 5818

Definitions:

Approval of the board, § 5106

Approval of the members, § 5109

Articles, § 5112

Vote, § 5190

Notice required, § 5728

Persons entitled to take member action, § 5812

Policymaking committee, approval by, § 5818

Transition provision, § 6617

§ 5424. Adoption of amendment to change required vote

5424. Except to the extent otherwise provided in the articles, if the articles require for corporate action the vote of a greater number or all of the members or a class, or of a greater number or all of the directors, than is otherwise required by this division, the requirement in the articles shall not be amended or repealed except by the greater vote.

Comment. Section 5424 is the same in substance as Section 902(e) (General Corporation Law). No comparable provision was found in prior law.

CROSS-REFERENCES

Bylaws relating to voting rights, § 5444

Definitions:

Articles, § 5112

Class, § 5125

Director, § 5133

Vote, § 5190

Persons entitled to take member action, § 5812

§ 5425. Certificate of amendment

5425. Upon adoption of an amendment of the articles, the nonprofit corporation shall file a certificate of amendment.

Comment. Section 5425 supersedes former Section 3670, which was applicable to nonprofit corporations through former Section 9305. Section 5425 is comparable to the preliminary portions of Sections 905 and 906 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Filed, § 5142

§ 5426. Contents of certificate of amendment

5426. The certificate of amendment shall be an officers' certificate, which states the following:

(a) The wording of the amendment or amended articles in accordance with Section 5427.

(b) That the amendment was approved by the board by the required vote.

(c) That the amendment was approved by the members by the required vote and, in addition, if the amendment was one for which approval of the members of a class is also required, that the amendment was approved by the members of the class by the required vote.

Comment. Section 5426 is comparable to Sections 905 and 906 (General Corporation Law). It supersedes former Sections 3671 and 3672, which were applicable to nonprofit corporations through former Section 9305. Section 5426 omits some of the requirements of the former sections for the contents of the certificate of amendment, which included a statement of the time and place of the meeting at which the resolution adopting the amendment was approved and the number of members voting in favor of the resolution.

CROSS-REFERENCES

Class vote, when required, § 5815

Definitions:

- Approved by the board, § 5106
- Approved by the members, § 5109
- Class, § 5125
- Officers' certificate, § 5157
- Vote, § 5190

Policymaking committee, action taken by, § 5818

§ 5427. Certificate of amendment to establish wording of amendment

5427. The certificate of amendment shall establish the wording of the amendment or amended articles by one or more of the following means:

(a) By stating that the articles shall be amended to read as therein set forth in full.

(b) By stating that a provision of the articles, which shall be identified by the numerical or other designation given it in the articles or by stating the wording thereof, shall be stricken from the articles or shall be amended to read as set forth in the certificate.

(c) By stating that the provision set forth therein shall be added to the articles.

Comment. Section 5427 is the same in substance as a portion of Section 907 (General Corporation Law). It supersedes former Section 3631, which was applicable to nonprofit corporations through former Section 9305.

CROSS-REFERENCES

Definitions:
Articles, § 5112

§ 5428. Effect of filing certificate of amendment

5428. Subject to subdivision (c) of Section 110 (delayed effective date), upon filing the certificate of amendment, the articles are amended in accordance with the certificate.

Comment. Section 5428 is the same in substance as a portion of Section 908 (General Corporation Law). It continues a portion of the third sentence of former Section 3673, which was applicable to nonprofit corporations through former Section 9305. An amendment of the articles is not effective until filed by the Secretary of State. See *Pasadena Hospital Ass'n v. County of Los Angeles*, 35 Cal.2d 779, 788-789, 221 P.2d 62, 68 (1950).

CROSS-REFERENCES

Definitions:
Articles, § 5112
Filed, § 5142

Evidentiary effect of certificate of amendment, § 5244

Article 3. Restatement of Articles

§ 5430. Restated articles

5430. A nonprofit corporation may restate in a single certificate the entire text of its articles as amended by filing an officers' certificate entitled "Restated Articles of Incorporation of _____" (insert name of nonprofit corporation).

Comment. Section 5430 is the same in substance as a portion of Section 910(a) (General Corporation Law). It continues a portion of the first paragraph of former Section 3800, which was applicable to nonprofit corporations through former Section 9305.

CROSS-REFERENCES

Definitions:
Officers' certificate, § 5157

§ 5431. Contents of restated articles

5431. The certificate of restated articles shall set forth the articles as amended to the date of the filing of the certificate except that:

(a) The certificate shall omit the signatures of the initial directors and, after the nonprofit corporation has filed a statement under Section 5224, the names and addresses of the initial directors. Such omissions are not alterations or amendments of the articles.

(b) The certificate may also itself alter or amend the articles in any respect, in which case the certificate must satisfy the requirements for a certificate of amendment.

Comment. Section 5431 is comparable to a portion of Section 910(a) (General Corporation Law). It supersedes a portion of the first paragraph of former Section 3800, which was applicable to nonprofit corporations through former Section 9305. Unlike the former provision, Section 5431 requires the restated articles to omit the signatures and the names and addresses of initial directors.

CROSS-REFERENCES**Definitions:**

Articles, § 5112

Filed, § 5142

Signature, § 17

§ 5432. Approvals required for restated articles

5432. (a) If the certificate of restated articles does not itself alter or amend the articles, it may be approved by the board alone.

(b) If the certificate of restated articles does itself alter or amend the articles, it is subject to the provisions of this chapter relating to the amendment or amendments so made.

Comment. Section 5432 is the same in substance as Section 910(b) (General Corporation Law). It supersedes the second paragraph of former Section 3800, which was applicable to nonprofit corporations through former Section 9305.

CROSS-REFERENCES**Definitions:**

Approved by the board, § 5106

Articles, § 5112

§ 5433. Effect of restated articles

5433. Restated articles filed pursuant to this article supersede the original articles or previously restated articles and all amendments filed prior to the filing of the restated articles. Subject to subdivision (c) of Section 110, the restated articles are effective upon filing.

Comment. Section 5433 is the same in substance as Section 910(d) (General Corporation Law). It supersedes former Section 3802, which was applicable to nonprofit corporations through former Section 9305.

CROSS-REFERENCES

Definitions:
Filed, § 5142

Article 4. Bylaws**§ 5440. Adoption, amendment, and repeal of bylaws**

5440. (a) Except as otherwise provided by statute, bylaws may be adopted, amended, or repealed only by (1) approval of the members or (2) approval of the board, subject to the power of the members to amend or repeal the bylaws.

(b) Notwithstanding subdivision (a), the articles or a bylaw adopted by the members may restrict or eliminate the power of the members or board to adopt, amend, or repeal any or all bylaws.

Comment. Subdivision (a) of Section 5440 continues the substance of subdivisions (a) and (b) of former Section 9400. Subdivision (b) continues the last sentence of former Section 9400. For comparable provisions, see Section 211 (General Corporation Law).

The power of the directors to adopt, amend, or repeal the bylaws may be limited by statute as well as by the articles or bylaws. See, *e.g.*, Sections 5444(b) (bylaws adversely affecting voting rights of members may be adopted, amended, or repealed only by the members), 5511(d) (bylaws relating to the number of directors may be adopted, amended, or repealed only by the members), 5512(b) (bylaws affecting the term of office of directors may be adopted, amended, or repealed only by the members), and 5818 (bylaw relating to policymaking committee

of members may be adopted, amended, or repealed only by the members).

CROSS-REFERENCES

Definitions:

Approval of the board, § 5106
Approval of the members, § 5109
Articles, § 5112
Board, § 5115
Bylaws, § 5121
Member, § 5148

Persons entitled to take member action, § 5812

Vote required for board action, § 5517

Vote required for member action, § 5814

§ 5441. Permitted contents of bylaws

5441. A nonprofit corporation may adopt, as a bylaw or otherwise, any provision not in conflict with law or the articles for the conduct of its activities and the management of its affairs.

Comment. Section 5441 is comparable to the introductory portion of Section 212(b) (General Corporation Law). See also former Section 501(k). It is new to nonprofit corporation law. The bylaws may include, but are not limited to, the provisions specified in the remainder of this article. See Sections 5442–5446. Except as limited by Section 5447 (provisions effective only in articles or bylaws), the nonprofit corporation may adopt by other means (including resolution) additional rules for its management.

While Section 5441 requires that the bylaws not be in conflict with law, it does not preclude a nonprofit corporation from adopting bylaws that implement a provision of this division, provided the implementing provision is consistent with this division and does not limit rights granted in this division.

CROSS-REFERENCES

Definitions:

Articles, § 5112
Bylaws, § 5121

§ 5442. Bylaws relating to members and memberships

5442. Subject to this division, the bylaws may provide for:

(a) The authorized number and qualifications of members, if any.

(b) The different classes of membership if there is more than one class.

(c) The property, voting, and other rights or interests of memberships or classes and, if the property, voting, or other rights or interests are unequal, the rules by which the property, voting, or other rights or interests are fixed and determined.

(d) The liability of members for, and the method of collection of, dues, assessments, fees, or other obligations of members.

(e) The admission, election, appointment, resignation, suspension, and expulsion of members.

(f) The transfer, forfeiture, and termination of membership; whether the property interest of a member ceases at death or other termination of membership; and the mode of ascertaining the property interest, if any, at death or other termination of membership.

(g) Consideration, or the method of determining consideration, for memberships and the purchase or redemption of memberships.

Comment. Section 5442 supersedes portions of former Sections 9301 and 9402.

Subdivision (a). Subdivision (a) continues portions of the first sentence of former Section 9301 and of former Section 9402(b). If the nonprofit corporation makes no provision for the number of memberships or qualifications of members: (1) nonnatural persons may be members and (2) a member may hold more than one membership. Section 5610.

Subdivision (b). Subdivision (b) continues portions of the first sentence of former Section 9301 and of former Section 9402(b). If the nonprofit corporation makes no provision for different classes of membership, it is deemed to have but one class. Section 5611(a).

Subdivision (c). Subdivision (c) continues portions of the first two sentences of former Section 9301. If the nonprofit corporation makes no provision for property, voting, or other rights and interests of memberships or classes, or does not set forth the rules by which they are fixed and determined, the rights and interests of memberships are equal as to any right or interest not so fixed, every membership having one vote. Sections 5611(b) and 5810.

Subdivision (d). Subdivision (d) continues portions of former Sections 9301, 9403, and 9611. A nonprofit corporation may levy dues, assessments, or fees (including fees of admission and transfer fees) and fix the method of collection thereof only pursuant to authority contained in its articles or bylaws. See Sections 6010 (levy of dues, assessments, or initiation fees), 6011 (enforcement of financial obligations), and Section 5447 (provision effective only if in articles or bylaws). It should be noted that a nonprofit corporation which levies dues, assessments, or initiation fees may be subject to the Corporate Securities Law. See, e.g., Sections 25019 ("security" defined) and 25100(j) (exemption of certain securities). For the method of collection of obligations of members, see Section 6011.

Subdivision (e). Subdivision (e) continues the substance of former Section 9402(a). Unless the articles or bylaws make reasonable provision for resignation of members, a member may resign by written notice to the nonprofit corporation. Section 5633. It should be noted that a nonprofit corporation may expel a member only in substantial compliance with its provisions for expulsion and only if the member has been afforded a reasonable opportunity to be heard. See Section 5631(b) and the Comment thereto; *Ascherman v. San Francisco Medical Society*, 39 Cal. App.3d 623, 649-650, 114 Cal. Rptr. 681, 697-698 (1974).

Subdivision (f). Subdivision (f) continues the substance of former Section 9402(c). Absent a provision for transfer of memberships, no member may transfer his membership or any right arising therefrom. Section 5630(a). Absent a provision relating to termination of membership, the rights of a member cease on death or other termination. Section 5632. It should be noted that one ground for forfeiture of membership may be failure to pay dues, assessments, or charges. See Section 6011.

Subdivision (g). Subdivision (g) is new. See also Sections 5620 (consideration), 6050-6067 (purchase or redemption).

CROSS-REFERENCES

Articles, permitted provisions, § 5412

Definitions:

Bylaws, § 5121

Class, § 5125

Member, § 5148

Redemption of membership, protection of liquidation preference, § 6065

§ 5443. Bylaws relating to annual report, financial statements, penalties for violation of regulations

5443. Subject to this division, the bylaws may provide for:

(a) The making of annual reports and financial statements to members.

(b) Penalties for violation of articles, bylaws, or other regulations by members.

Comment. Subdivision (a) of Section 5443 continues former Section 9402(e). See also Sections 5920–5930 (annual report), 5950–5954 (financial statements).

Subdivision (b) expands and extends to all nonprofit corporations a provision formerly applicable to a limited number of corporations. See former Section 12004 (chambers of commerce), Section 13242(e) (fish marketing corporations), and Food & Agri. Code § 54117 (agricultural cooperatives).

CROSS-REFERENCES

Articles, permitted provisions, § 5412

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Presentation of accounting items, § 5013

§ 5444. Bylaws relating to voting rights

5444. (a) Subject to this division, the bylaws may provide for:

(1) The manner of voting by members and whether cumulative voting and proxy voting are allowed.

(2) Voting rights of holders of evidences of indebtedness, issued or to be issued by the nonprofit corporation. Except to the extent otherwise provided in the articles or bylaws, the provisions of this division and of the articles and bylaws applicable to voting of memberships apply to voting rights of holders of evidences of indebtedness that are provided for in the articles or bylaws.

(b) A bylaw that adversely affects voting rights of members may be adopted, amended, or repealed only by approval of the members.

(c) Except to the extent otherwise provided in the articles or bylaws, if the bylaws require for corporate action the vote of a greater number or all of the members or a class, or of a greater number or all of the directors, than is otherwise required by this division, the requirement in the bylaws shall not be amended or repealed except by the greater vote.

Comment. Subdivision (a)(1) of Section 5444 continues former Section 9402(d). Unless the articles or bylaws provide otherwise, cumulative voting is not permitted. Section 5520(c). For provisions relating to proxy voting, see Sections 5830–5836.

Subdivision (a)(2) is comparable to Sections 204(a)(7) and 111 (General Corporation Law). It continues provisions of former Section 306 applicable to nonprofit corporations through former Section 9002 except that subdivision (a)(2) permits the bylaws, rather than the articles alone, to provide voting rights for creditors.

Subdivisions (b) and (c) are new. They are exceptions to the rule of Section 5440 (manner of adoption, amendment, and repeal of bylaws). Where a class is adversely affected more than other classes, the class must also approve the change. See Section 5815.

CROSS-REFERENCES

Adoption of amendment of articles to change required vote, § 5424

Articles, permitted provisions, § 5412

Definitions:

Approval of the members, § 5109

Articles, § 5112

Bylaws, § 5121

Class, § 5125

Director, § 5133

Member, § 5148

Proxy, § 5172

Vote, § 5190

Notice required, § 5728

§ 5445. Bylaws relating to meetings

5445. Subject to this division, the bylaws may provide for:

(a) The time, place, and manner of calling, giving notice of, and conducting regular and special meetings of members or directors.

(b) The requirements of a quorum of members or directors.

Comment. Section 5445 continues portions of former Section 9401 (a) and (b).

Subdivision (a) permits the articles or bylaws to specify details concerning meetings. See also Sections 5720 (notice of members' meetings), 5530 (directors' meetings). Absent a designation of the place of meetings, meetings are held at the principal executive office of the nonprofit corporation. See Sections 5710 (members' meetings), 5534 (directors' meetings). The articles or bylaws may specify persons authorized to call meetings. See Sections 5714 (special meetings of members), 5530-5531 (directors' meetings). As to the manner of notice of meetings, see Sections 5724 (members' meetings), 5532 (directors' meetings). It should be noted that Section 5530 provides that the articles or bylaws may not vary certain provisions relating to meetings of directors.

Subdivision (b) permits the articles or bylaws to specify a quorum for meetings, which may be greater or less than a majority. Absent a specification, a majority constitutes a quorum. See Sections 5715 (quorum of members), 5536 (quorum of directors). It should be noted that the minimum quorum for a mutual water company is 20 percent of the votes entitled to be cast at a meeting of members. See Pub. Util. Code § 2717.

CROSS-REFERENCES

Articles, permitted provisions, § 5412

Definitions:

- Bylaws, § 5121
- Director, § 5133
- Member, § 5148

§ 5446. Bylaws relating to directors, officers, and committees

5446. Subject to this division, the bylaws may provide for:

(a) The number, time and manner of selection, manner of removal from office, qualifications, terms of office, official designations, powers, duties, and compensation of directors and officers.

(b) The appointment and authority of committees of the board.

Comment. Section 5446 continues former Section 9302 and subdivisions (c) and (d) of former Section 9401. For provisions relating to directors, officers, and committees, see generally Chapter 5 (commencing with Section 5510).

CROSS-REFERENCES

- Articles, permitted provisions, § 5412
- Causes for declaring office of director vacant, § 5523
- Definitions:
 - Board, § 5115
 - Bylaws, § 5121
 - Director, § 5133
- Offices, required, § 5560
- Provisional directors
 - Compensation, § 5544
 - Qualifications, § 5542
- Removal of director, § 5525
- Resignation of director, § 5524
- Vacancies on board, filing, § 5526

§ 5447. Provisions effective only if in articles or bylaws

5447. Unless this division authorizes a nonprofit corporation to adopt the provision by additional means, a provision specifically authorized by this division to be included in the articles or bylaws is effective only if adopted as articles or bylaws.

Comment. Section 5447 is new. This division permits, and on occasion requires, the articles or bylaws of a nonprofit corporation to regulate the internal affairs of the nonprofit corporation and the rights and obligations of members. See, *e.g.*, Section 6010 (dues or assessments may be levied only pursuant to the articles or bylaws); Section 5511(a) (articles or bylaws must state the number of directors). It is important that these fundamental matters be adopted with the formality required of articles or bylaws and made available for inspection at the principal executive office of the nonprofit corporation. See Sections 5975–5977 (inspection of articles and bylaws). For these reasons, Section 5447 makes clear that provisions specifically authorized by this division to be contained in the articles or bylaws must actually be adopted as articles or bylaws. This rule is subject to the exception that provisions expressly authorized by this division to be adopted by means other than articles or bylaws, such as resolution or other corporate action, may be so adopted. See, *e.g.*, Sections 5441 (general authority to regulate corporate affairs), 5532 (notice of board meeting), 5534 (place of board meeting), 5560 (corporate officers), 5587 (limit on indemnification of corporate agents).

It should be noted that, in some instances, actions inconsistent with existing bylaws taken by those entitled to adopt or amend

bylaws may have the legal effect of an amendment or waiver of the existing bylaws. See *Underhill v. Santa Barbara Land, Bldg. & Improvement Co.*, 93 Cal. 300, 28 P. 1049 (1892); *Horner v. Marine Engineers' Beneficial Ass'n*, 175 Cal. App.2d 837, 1 Cal. Rptr. 113 (1959); 8 W. Fletcher, *Cyclopedia of the Law of Private Corporations* § 4179, at 678 (perm. ed. rev. vol. 1966). In order to be effective, such actions must be in substantial compliance with statutory requirements for the adoption of bylaws. *Noble v. California Prune & Apricot Growers Ass'n*, 98 Cal. App. 230, 239, 276 P. 636, 640 (1929); *Powers v. Marine Engineers' Beneficial Ass'n*, 52 Cal. App. 551, 553, 199 P. 353, 354 (1921).

Nothing in this section is intended to preclude the adoption by a nonprofit corporation of rules relating to membership activities, such as house rules, swimming pool rules, and other rules that are not bylaws. See Section 5441 (nonprofit corporation may adopt provisions for conduct of activities and management of affairs as bylaws or otherwise). Such rules may be adopted by a nonprofit corporation in whatever manner it provides in its articles or bylaws. Likewise, the general authority under Section 5412 to include provisions in the articles for the conduct of the activities and for the management of the affairs of the nonprofit corporation does not preclude adoption of provisions by other means if there is no specific provision requiring or permitting the particular matter to be included in the articles or bylaws. See, e.g., Section 5510 (authority of board).

CROSS-REFERENCES

Adoption and amendment of bylaws, § 5440

Amendment of articles, §§ 5420-5428

Definitions:

Articles, § 5112

Bylaws, § 5121

CHAPTER 5. DIRECTORS AND MANAGEMENT

Article 1. General Provisions Relating to Directors

§ 5510. Control of corporate affairs by board

5510. (a) Subject to the provisions of this division and any limitations in the articles or bylaws relating to action required to be approved by the members, the activities and affairs of the nonprofit corporation shall be conducted and managed and all corporate powers shall be exercised by or under the direction of the board.

(b) The board may delegate the management of the day-to-day operation of the nonprofit corporation to a management company or other person, provided that the activities and affairs of the nonprofit corporation shall be conducted and managed and all corporate powers shall be exercised under the ultimate direction of the board.

Comment. Section 5510 is the same in substance as Section 300(a) (General Corporation Law). It continues the portion of former Section 9500 that provided that the board of directors exercises the powers, controls the property, and conducts the affairs of a nonprofit corporation. It should be noted that the authority of the board may be divided among multiple boards. See Section 5515 (multiple boards). The board may be given whatever name the nonprofit corporation deems appropriate.

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Person, § 18

§ 5511. Number of directors

5511. (a) The articles or bylaws shall state the number of directors.

(b) The articles or bylaws may provide that the number of directors shall be not less than a stated

minimum nor more than a stated maximum (which in no case shall be greater than one less than two times the stated minimum), with the exact number of directors to be fixed, within the limits specified, by the board or the members in the manner provided in the articles or bylaws.

(c) The number or minimum number of directors shall be not less than three, unless the nonprofit corporation has only one or two voting members, in which case the number or minimum number shall be not less than the number of voting members.

(d) A bylaw relating to the number of directors may be adopted, amended, or repealed only by approval of the members.

Comment. Section 5511 is comparable to Section 212(a) (General Corporation Law). See also Section 5446 (bylaws relating to number of directors). A provision relating to the number of directors is effective only if included in articles or bylaws. See Section 5447.

Subdivision (a) continues portions of former Sections 9302 and 9401(c) that permitted the bylaws to specify the number of directors of a nonprofit corporation and supersedes the portion of former Section 9300(e) that provided for the number of directors to be specified in the articles. If the number of directors is specified in the articles, it may only be changed by an amendment of the articles.

Subdivision (b) supersedes the portion of former Section 9300(e) that permitted a nonprofit corporation to specify a variable number of directors. Subdivision (b) broadens the permissible limits of variation and liberalizes the specification procedure in the same manner as Section 212(a) (General Corporation Law).

Subdivision (c) supersedes portions of former Sections 9300(e) and 9500 that provided for a minimum of three directors of a nonprofit corporation.

Subdivision (d) continues portions of former Sections 9300(e) and 9400(c) which provided for adoption by the members of bylaws relating to the number of directors. See also Section 5512(b) (bylaw relating to term of directors may be adopted only by members). Before any members have been admitted, or where a nonprofit corporation has no members, the directors may take any action required of members. See Section 5612 (directors as members).

CROSS-REFERENCES

Definitions:

- Approval of the members, § 5109
- Articles, § 5112
- Board, § 5115
- Bylaws, § 5121
- Director, § 5133
- Member, § 5148
- Voting members, § 5193

§ 5512. Term of directors

5512. (a) Except to the extent otherwise provided in the articles or bylaws:

(1) The term of office of directors is one year.

(2) Each director, including a director selected to fill a vacancy, holds office until the expiration of the term for which selected and until a successor is selected and takes or accepts office.

(3) A reduction of the authorized number of directors does not remove a director from office prior to the expiration of the term for which selected.

(b) A bylaw affecting the term of office of directors may be adopted, amended, or repealed only by approval of the members.

Comment. The introductory portion of subdivision (a) of Section 5512 continues portions of former Sections 9302 and 9401(c) which permitted the articles or bylaws to regulate the terms of directors. See Section 5446; 56 Ops. Cal. Atty. Gen. 317 (1973). The articles or bylaws may provide for longer terms of office than the one-year term specified in paragraph (1) and for staggered terms of office.

Paragraph (1) of subdivision (a) is comparable to Section 301(a) (General Corporation Law). Paragraph (2) is the same as Section 301(b) (General Corporation Law). Paragraph (3) is the same in substance as Section 303(b) (General Corporation Law) and continues a portion of former Section 809 which was applicable to nonprofit corporations through former Section 9002.

Subdivision (b), which is new, is designed to ensure member control over selection of directors. See also Section 5511(d) (bylaw relating to number of directors may be adopted only by members).

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109

Articles, § 5112

Bylaws, § 5121

Director, § 5133

§ 5513. Initial directors

5513. (a) Persons named in the articles to act in the capacity of initial directors are subject to all laws of this state relating to directors.

(b) Notwithstanding subdivision (a):

(1) The manner of selection of initial directors is by naming them in the articles.

(2) The number of initial directors is the number of initial directors named in the articles.

(3) The term of office of an initial director is until a successor is selected and takes or accepts office.

Comment. Section 5513 continues the second sentence of former Section 9300(e). The initial directors perform all the duties of directors until the election of their successors, including whatever actions are necessary and proper to perfect the organization of the nonprofit corporation, such as adoption and amendment of bylaws and election of directors and officers. The number of initial directors named in the articles may be one or more but need not be the same as the number of directors of the nonprofit corporation.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Director, § 5133

Initial directors named in articles, § 5410(d)

§ 5514. Personal liability of directors

5514. A director is not personally liable for the debts, liabilities, or obligations of the nonprofit corporation.

Comment. Section 5514 continues former Section 9504. Section 5514 does not in any way affect the equitable doctrine in which the corporate entity is disregarded in order to fasten responsibility upon those found to be the alter ego of the corporation.

CROSS-REFERENCES

Definitions:

Director, § 5133

§ 5515. Multiple boards

5515. (a) A nonprofit corporation may have multiple boards of directors if all of the following conditions are satisfied:

(1) The articles or bylaws provide for multiple boards.

(2) The articles or bylaws specify the manner of selection and the matters delegated to each board.

(3) The articles or bylaws designate one managing board, however named, that has all the power of the board of directors provided in this division that is not specifically delegated to another board.

(b) The liability of each board other than the managing board is limited to the matters delegated to it by the articles or bylaws.

(c) The liability of the managing board extends to all matters not specifically delegated to another board.

Comment. Section 5515 recognizes the practice of some nonprofit corporations of having more than one board of directors with a division of authority. There was no comparable provision in prior law.

Under Section 5515, each board is responsible for those matters delegated to it, and the liability of directors will vary accordingly. The matters delegated may vary with the type of board. An honorary board, for example, may have no duties or only advisory duties.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Director, § 5133

§ 5516. Advisory and other committees

5516. A nonprofit corporation may have such advisory or other committees as it deems appropriate, but such committees shall not be deemed committees of the board and shall not exercise the power of the board.

Comment. Section 5516 is new. It recognizes the practice of some nonprofit corporations of having advisory and other committees. Such committees are not committees of the board, however, and do not have the power or authority of the board unless Sections 5550–5554 (committees of the board) are satisfied. See Section 5510 (control of corporate affairs by board). See also the Comment to Section 5550.

CROSS-REFERENCES

Definitions:

Board, § 5115

§ 5517. Vote required for board action

5517. (a) Except as otherwise provided in this division, or unless the articles or bylaws require a greater vote, every act done or decision made by vote of a majority of the directors present and entitled to vote at a meeting duly held at which a quorum is present is the act of the board.

(b) The articles or bylaws may require for any or all corporate actions a greater vote (including all) of the directors than is otherwise required by this division. The articles or bylaws may not provide that a lesser vote than is otherwise required by this division is the act of the board.

(c) A director may not vote by proxy.

Comment. Subdivision (a) of Section 5517 is comparable to the first sentence of Section 307(a)(8) (General Corporation Law). It continues former Section 817, which was applicable to nonprofit corporations through former Section 9002.

Subdivision (b) is new. For a provision comparable to the first sentence of subdivision (b), see Section 204(a)(5) (General Corporation Law), which requires that a greater vote be stated in the articles, with the exception of a vote of a majority of the authorized number of directors, which may be stated in the bylaws. Section 204(a) (penultimate sentence) (General Corporation Law). For a provision comparable to the second sentence of subdivision (b), see the second sentence of Section 307(a)(8) (General Corporation Law).

Subdivision (c) is new.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115
Bylaws, § 5121
Director, § 5133
Proxy, § 5172
Vote, § 5190

Article 2. Selection and Removal of Directors

§ 5520. Election of directors

5520. Except to the extent otherwise provided in this division or in the articles or bylaws:

(a) The directors shall be elected by the members at the annual meeting of members.

(b) The election need not be by ballot unless a member demands election by ballot at the meeting and before voting begins.

(c) No member may cumulate votes for directors.

(d) The nominees for election as director, up to the number of directors to be elected, who receive the highest number of votes are elected.

Comment. Section 5520 supersedes portions of former Sections 9302 and 9401 (c), which permitted the bylaws to specify the time and manner of choosing directors. See also Section 5446 (bylaws relating to time and manner of selection of directors). Under Sections 5520 and 5446, the articles or bylaws may specify a procedure for selection of directors by classes of members, by a representative system, by persons other than members, by means other than election at a meeting of members, or by other appropriate means. Compare Section 301(a) (General Corporation Law) (articles may provide election of directors by class); former Section 10202 (Corporations for Charitable or Eleemosynary Purposes) (articles may provide for selection of trustees by specified associations or corporations, or by their officers, and by public officials).

Subdivision (a) is comparable to Section 301(a) (General Corporation Law), which provides for election of directors at the annual meeting of shareholders. The articles or bylaws of a nonprofit corporation may dispense with the annual meeting. See Section 5711(a). Election of directors may be by written consent pursuant to Section 5842. The articles or bylaws of a nonprofit corporation may prescribe voting by mail or other reasonable means. See Section 5811. The nonprofit corporation may have a policymaking committee that acts for the members

in electing directors. See Section 5818. The articles or bylaws may provide for staggered terms for directors. See Section 5512 and the Comment thereto.

Subdivision (b) is the same in substance as Section 708(e) (General Corporation Law). It continues former Section 2234, applicable to nonprofit corporations through former Section 9002.

Subdivision (c) continues the last sentence of former Section 2235 and the last sentence of former Section 9601. Nonprofit corporations, unlike business corporations, need not permit cumulative voting by members. Contrast Section 708 (General Corporation Law). See also Section 5444 (bylaws relating to voting rights). It should be noted, moreover, that cumulative voting in certain types of nonprofit corporations is prohibited. See Bus. & Prof. Code §§ 700 (medical services corporations), 6175 (legal services corporations).

Subdivision (d) is comparable to Section 708(c) (General Corporation Law). Where the articles or bylaws provide for election of directors by classes or some other means of election, they should also provide the rules governing such election.

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121
 Director, § 5133
 Member, § 5148
 Vote, § 5190

Filling vacancies, §§ 5524, 5526

§ 5521. Nomination and procedures for election of directors

5521. If directors are elected by members, there shall be available to the members reasonable nomination and election procedures, which procedures shall include:

(a) A reasonable means of nominating persons for election as directors.

(b) A reasonable opportunity for a nominee to communicate to the voting members the qualifications of the nominee and the reasons for the nominee's candidacy.

(c) If proxy voting is permitted, an equal opportunity for all nominees to solicit proxies.

Comment. Section 5521 is a new provision which codifies the principle that a nonprofit corporation may not unreasonably restrict the right of members to nominate and elect directors and recognizes the power of the court to determine that electoral procedures for directors are unfair and unlawful and, as a court of equity, to require the nonprofit corporation to put into effect such electoral process as the court may consider just and proper under the circumstances of the particular case. See *Braude v. Havenner*, 38 Cal. App.3d 526, 113 Cal. Rptr. 386 (1974). Section 5521 requires a nonprofit corporation to provide reasonable nomination and election procedures but permits the nonprofit corporation to prescribe procedures appropriate to its particular circumstances. Section 5521 is not intended to preclude any manner of selection of directors of a nonprofit corporation that is reasonable, such as through a representative body. See, e.g., Section 5818 (action taken by policymaking committee). Under Section 5521, if a court finds that the nomination and election procedures of a nonprofit corporation are inadequate or unreasonable, it may impose adequate and reasonable requirements. See *Braude v. Havenner*, *supra*.

CROSS-REFERENCES

Definitions:

Director, § 5133

Member, § 5148

Proxy, § 5172

Voting members, § 5193

Judicial review of election procedures, §§ 5870-5876

§ 5522. Vacancy on board

5522. (a) A vacancy on the board exists when an authorized position of a director is not filled by a duly selected director.

(b) A vacancy may occur as a result of any of the following:

- (1) The death, resignation, or removal of a director.
- (2) A change in the authorized number of directors, whether by the board or the members.
- (3) A declaration of vacancy by the board pursuant to Section 5523.
- (4) Any other cause.

Comment. Section 5522 is the same in substance as Section 192 (General Corporation Law). It continues portions of former

Section 806 that were applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Change in the authorized number of directors, §§ 5511, 5512

Definitions:

Board, § 5115

Director, § 5133

Member, § 5148

Removal of directors, § 5525

Resignation of directors, § 5524

§ 5523. Declaration of vacancy by board

5523. The board may declare the office of a director vacant in any of the following cases:

(a) The director has been declared by an order of court to be incompetent or of unsound mind.

(b) A conservator or guardian of the person or estate of the director has been appointed.

(c) The director has been convicted of a felony.

(d) Any other cause provided in the articles or bylaws.

Comment. Subdivisions (a) and (c) of Section 5523 are the same in substance as Section 302 (General Corporation Law). They continue a portion of former Section 807, which was applicable to nonprofit corporations through former Section 9002. Subdivisions (b) and (d) are new. It should be noted that the articles or bylaws may make failure to perform, absenteeism, and neglect of duties cause for removal from the board.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Director, § 5133

§ 5524. Resignation of directors

5524. (a) A director may resign upon written notice to the board, the chairman of the board, the president, or the secretary.

(b) The resignation is effective upon giving the notice, subject to any notice period in the articles or bylaws not exceeding 30 days unless the notice specifies a later time for the effectiveness of the resignation.

(c) If the resignation becomes effective at a time after the time the notice of resignation is given, a successor may be selected to take office when the resignation becomes effective.

Comment. Section 5524 is the same in substance as Section 305(d) (General Corporation Law) except that the articles or bylaws may provide a notice period not exceeding 30 days. It continues portions of former Section 809 which were applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Director, § 5133

Time notice given, § 5014

Written notice, § 5016

§ 5525. Removal of directors

5525. (a) Except to the extent otherwise provided in the articles or bylaws, a director may be removed from office, without cause, by approval of the members holding a majority of the voting power. A director elected pursuant to a provision of the articles or bylaws for election of directors by classes may be removed only by approval of the members of the class entitled to elect the director.

(b) The superior court of the proper county, in an action brought by not less than 10 percent of the members, or by not less than 10 percent of the members of the class where the director is elected by a class, may remove a director from office for fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the nonprofit corporation. The court may bar from reelection a director so removed for a period prescribed by the court. The nonprofit corporation shall be made a party to the action.

Comment. The introductory portion of subdivision (a) of Section 5525 continues a portion of former Section 9302 (articles or bylaws may provide manner of removal of directors). Unlike the General Corporation Law, however, Section 5525 is not

intended to provide the sole means by which directors may be removed. The articles and bylaws may provide other procedures with whatever grounds (*e.g.*, failure to perform, absenteeism, neglect of duties) may be deemed appropriate. See Section 5446. See also Section 5523 (removal by board).

Subdivision (a) is comparable to a portion of Section 303(a) (General Corporation Law). Subdivision (a) continues a portion of former Section 810 that was applicable to nonprofit corporations through former Section 9002. The members may remove any or all of the directors by majority vote unless the articles or bylaws provide otherwise. Where directors are elected by classes of members, a director may be removed only by a majority of the class that elected him or her. Section 5814(b).

Subdivision (b) is the same in substance as Section 304 (General Corporation Law) except that 10 percent of the membership, as opposed to 10 percent of the membership of a class, is required to bring an action to remove a director not elected by a class. It continues former Section 811, which was applicable to nonprofit corporations through former Section 9002. An action to remove a director is governed by the rules of practice applicable to civil actions generally. Section 5260. See *Remillard Brick Co. v. Remillard-Dandini Co.*, 109 Cal. App.2d 405, 241 P.2d 66 (1952).

Nothing in this section limits any authority the Attorney General may have to seek by court action the removal of a director of a nonprofit corporation organized for charitable purposes in appropriate cases.

CROSS-REFERENCES

Definitions:

- Action, § 5103
- Approval of the members, § 5109
- Articles, § 5112
- Bylaws, § 5121
- Class, § 5125
- Director, § 5133
- Members, § 5148
- Proper county, § 5169
- Voting power, § 5196

Persons entitled to take member action, § 5812

Vote required for member action, § 5814

§ 5526. Filling vacancies

5526. Except to the extent otherwise provided in the articles or bylaws:

(a) A vacancy on the board may be filled by vote of a majority of directors then in office, whether or not less than a quorum, or by a sole remaining director.

(b) The members may elect a director at any time to fill a vacancy not filled by the directors.

Comment. Subdivision (a) of Section 5526 is comparable to the first sentence of Section 305(a) (General Corporation Law). It continues former Section 9502. See *Cavin Memorial Corp. v. Regua*, 5 Cal. App.3d 345, 85 Cal. Rptr. 107 (1970).

Subdivision (b) is the same in substance as the first sentence of Section 305(b) (General Corporation Law). It continues a portion of former Section 809, which was applicable to nonprofit corporations through former Section 9002. The election of a director by written consent of the members must be by a majority of the persons returning written consent forms. See Section 5842. See also the second sentence of Section 305(b) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Articles, § 5112
Board, § 5115
Bylaws, § 5121
Director, § 5133
Member, § 5148
Vote, § 5190

Persons entitled to take member action, § 5812

§ 5527. Appointment of directors by court

5527. If a nonprofit corporation has no voting members and all the offices of directors are vacant or could be declared vacant under Section 5523, the superior court of any county may appoint directors upon application of any party in interest.

Comment. Section 5527 is the same in substance as Section 306 (General Corporation Law). It continues the portion of former Section 809.5 that applied to nonprofit corporations except that (1) application may be made to the superior court of any county rather than the county in which the principal office of the nonprofit corporation is located and (2) application may be made by any party having an interest in the nonprofit corporation rather than only by a creditor, the personal representative of a deceased director, or the guardian or conservator of an incompetent director.

CROSS-REFERENCES

Definitions:

Director, § 5133

Voting members, § 5193

Article 3. Meetings of Directors**§ 5530. Articles and bylaws control**

5530. The provisions of this article apply except to the extent otherwise provided in the articles or bylaws, but the articles or bylaws may not vary the provisions of subdivision (b) of Section 5532 or Section 5538 or 5539.

Comment. Section 5530 is comparable to the introductory portion of Section 307 (General Corporation Law). It continues former Section 9401(a) which permitted the bylaws of a nonprofit corporation to make provisions for the time, place, and manner of calling, giving notice of, and conducting regular and special meetings of directors and to dispense with notice of all regular directors' meetings. It continues former Section 9401(b) which permitted the bylaws of a nonprofit corporation to provide for the requirements of a quorum of directors, which could be greater or less than a majority. See also former Section 9503 (meetings of directors called and held as ordered by directors, subject to the articles or bylaws).

CROSS-REFERENCES

Bylaws relating to meetings, § 5445

Definitions:

Articles, § 5112

Bylaws, § 5121

§ 5531. Call of meetings

5531. Meetings of the board may be called by any of the following:

- (a) The chairman of the board.
- (b) Any two directors.
- (c) The president, any vice president, or the secretary.

Comment. Section 5531 is the same in substance as Section 307(a)(1) (General Corporation Law). It supersedes former Section 9503. It should be noted that Section 5531 is subject to Section 5530 (articles and bylaws control).

CROSS-REFERENCES

Definitions:

Board, § 5115

Director, § 5133

§ 5532. Notice of meetings

5532. (a) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the articles or bylaws or by resolution of the board.

(b) Special meetings of the board shall be held upon not less than four days' notice by mail or 48 hours' notice delivered personally or by telephone or telegraph.

(c) Notice of a meeting need not be given to a director who does either of the following:

(1) Signs a waiver of notice, whether before or after the meeting.

(2) Attends the meeting without protesting, prior to its commencement, the lack of notice.

(d) A notice or waiver of notice need not specify the purpose of any regular or special meeting of the board.

Comment. Section 5532 is the same in substance as Section 307(a)(2) and (3) (General Corporation Law). Subdivision (a) supersedes the second sentence of former Section 9401(a) (bylaws may dispense with notice of all regular directors' meetings). The reference in subdivision (a) to regular meetings of the board includes the annual meeting. It should be noted that, except for subdivision (b), Section 5532 is subject to Section 5530 (articles and bylaws control). Moreover, notwithstanding any provision of the articles or bylaws, an improperly noticed meeting may be validated pursuant to Section 5538. Action also may be taken by unanimous written consent in writing without a meeting. See Section 5539.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Director, § 5133

Mailing, § 5015

Time notice given, § 5014

§ 5533. Adjournment of meeting

5533. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. If a meeting is adjourned for more than 24 hours, notice of the adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of adjournment.

Comment. Section 5533 is the same in substance as Section 307(a)(4) (General Corporation Law). It is new to nonprofit corporation law. It should be noted that Section 5533 is subject to Section 5530 (articles and bylaws control).

CROSS-REFERENCES**Definitions:**

Director, § 5133

Time notice given, § 5014

§ 5534. Place of meetings

5534. Meetings of the board may be held at any place within or without the state designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated in the articles or bylaws or by resolution of the board. In the absence of a designation, meetings of the board shall be held at the principal executive office of the nonprofit corporation.

Comment. The first sentence of Section 5534 is the same in substance as Section 307(a)(5) (General Corporation Law). It continues the portion of former Section 9401(a) that provided for the bylaws to specify the place of meetings of directors and permitted meetings to be held outside the state. The second sentence of Section 5534 is comparable to the second sentence of former Section 815. It should be noted that Section 5534 is subject to Section 5530 (articles and bylaws control).

CROSS-REFERENCES**Definitions:**

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Principal executive office, § 5166

§ 5535. Meeting by conference telephone

5535. Directors may participate in a meeting of the board through use of conference telephone or similar communications equipment so long as all directors participating in the meeting can hear one another. Participation by a director in a meeting pursuant to this section constitutes presence by the director at the meeting.

Comment. Section 5535 is the same in substance as Section 307(a)(6) (General Corporation Law). It is new to nonprofit corporation law. It should be noted that Section 5535 is subject to Section 5530 (articles and bylaws control).

CROSS-REFERENCES**Definitions:**

Board, § 5115

Director, § 5133

§ 5536. Quorum of directors

5536. A majority of the authorized number of directors constitutes a quorum of the board for the transaction of business.

Comment. Section 5536 is the same in substance as the first sentence of Section 307(a)(7) (General Corporation Law). It should be noted that Section 5536 is subject to Section 5530 (articles and bylaws control). This continues the portion of former Section 9401(b) that applied to a quorum of directors.

CROSS-REFERENCES**Definitions:**

Board, § 5115

Director, § 5133

§ 5537. Vote required absent a quorum

5537. The directors present at a meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of enough directors to leave less than a quorum if any action taken is approved by the board by a majority of the required quorum or such greater number as is required by this division or the articles or bylaws.

Comment. Section 5537 is comparable to the last sentence of Section 307(a)(8) (General Corporation Law). It is new to

nonprofit corporation law and is intended to preclude disruption of meetings by withdrawal of a sufficient number of directors to leave less than a quorum. It should be noted that Section 5537 is subject to Section 5530 (articles and bylaws control).

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
 Articles, § 5112
 Bylaws, § 5121
 Director, § 5133

§ 5538. Validation of defectively noticed meeting

5538. The transactions of a meeting of the board, however called and noticed or wherever held, are as valid as though had at a meeting duly held after regular call and notice if all of the following conditions are satisfied:

- (a) A quorum is present.
- (b) Either before or after the meeting, each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes of the meeting.
- (c) All waivers, consents, and approvals are made a part of the minutes of the meeting.

Comment. Section 5538 is the same in substance as Section 307(b) (General Corporation Law) except that inclusion of waivers, consents, and approvals with the minutes of the meeting is made a condition of validation. It continues provisions of former Section 814 which were applicable to nonprofit corporations through former Section 9002. It should be noted that Section 5538 is not subject to Section 5530 (articles and bylaws control).

CROSS-REFERENCES

Definitions:

Board, § 5115
 Director, § 5133
 Written, §§ 8, 5016

Waiver of notice need not specify purpose of meeting, § 5532

§ 5539. Written consent to action without a meeting

5539. An action required or permitted by this division to be taken by the board may be taken without a meeting

if all directors individually or collectively consent in writing to the action. The written consents shall be made a part of the minutes of the proceedings of the board. Action by written consent has the same force and effect as a unanimous vote of the directors.

Comment. Section 5539 is the same in substance as Section 307(c) (General Corporation Law). It continues former Section 9503.1, with the exception of the last sentence relating to authority in the articles or bylaws to take action by written consent, which is not continued in order to eliminate needless complexity in the articles and bylaws. It should be noted that Section 5539 is not subject to Section 5530 (articles and bylaws control).

CROSS-REFERENCES

Definitions:

Board, § 5115

Director, § 5133

Written, §§ 8, 5016

Article 4. Provisional Directors

§ 5540. Superior court may appoint provisional director

5540. The superior court of the proper county may appoint a provisional director pursuant to this article.

Comment. Article 4 (commencing with Section 5540) supersedes former Section 819, which was applicable to nonprofit corporations through former Section 9002. It is comparable to Section 308 (General Corporation Law). This section applies notwithstanding any provision of the articles or bylaws. It should be noted that, in the case of multiple boards, a provisional director may be appointed to the appropriate one of the multiple boards. *Cf.* Sections 5515 (multiple boards), 5133 (“director” defined).

CROSS-REFERENCES

Definitions:

Proper county, § 5169

§ 5541. Deadlock among directors

5541. (a) Appointment of a provisional director may be made if the directors are equally divided and cannot agree as to the management of the affairs of the nonprofit

corporation and, as a result, its activities can no longer be conducted to advantage or there is danger that its property will be impaired or lost or its activities will be impaired.

(b) Action for appointment of a provisional director may be brought by either of the following:

- (1) A director.
- (2) A person authorized to do so by 50 voting members or by members holding not less than 10 percent of the voting power, whichever is less. The authorization shall be in writing and shall be filed in the action.

(c) Appointment of a provisional director may not be made if it is shown that the appointment is opposed by persons holding a majority of the voting power.

(d) This section applies whether or not an action is pending for involuntary dissolution of the nonprofit corporation.

Comment. Section 5541 is the same in substance as Section 308(a) (General Corporation Law) except that the action may be brought upon authorization of 50 members or persons holding 10 percent of the voting power, whichever is less. The members so authorizing the action need not be parties to the action, but the authorizations must be filed in the action. It should be noted that, in the case of multiple boards, a provisional director may be appointed to the appropriate one of the multiple boards. *Cf.* Sections 5515 (multiple boards), 5133 (“director” defined), 5115 (“board” defined). An action pursuant to this section is governed by the rules of practice applicable to civil actions generally. See Section 5260. See also *In re Jamison Steel Corp.*, 158 Cal. App.2d 27, 322 P.2d 246 (1958).

CROSS-REFERENCES

Appointment of provisional director in involuntary dissolution, § 6532(b)

Definitions:

- Action, § 5103
- Director, § 5133
- Member, § 5148
- Person, § 18
- Voting members, § 5193
- Voting power, § 5196
- Writing, § 8

§ 5542. Qualifications of provisional director

5542. A provisional director shall be an impartial person who is neither a member nor a creditor of the nonprofit corporation nor related by consanguinity or affinity within the third degree according to the common law to any of the other directors of the nonprofit corporation or to any judge of the court by which the provisional director is appointed.

Comment. Section 5542 is the same in substance as the first sentence of Section 308(c) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Director, § 5133

Member, § 5148

§ 5543. Rights and powers of provisional director

5543. A provisional director has all the rights and powers of a director until removed by order of the court or by approval of the members holding a majority of the voting power.

Comment. Section 5543 is comparable to the second sentence of Section 308(c) (General Corporation Law). A provisional director, being a court appointed officer, is subject to the obligations thereof. See *In re Jamison Steel Corp.*, 158 Cal. App.2d 27, 40, 322 P.2d 246, 253 (1958).

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109

Director, § 5133

Voting power, § 5196

Persons entitled to take member action, § 5812

§ 5544. Compensation of provisional directors

5544. A provisional director is entitled to such compensation as is fixed by the court unless otherwise agreed with the nonprofit corporation.

Comment. Section 5544 is the same in substance as the third sentence of Section 308(c) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Director, § 5133

Article 5. Committees of the Board

§ 5550. Designation of committees

5550. Unless the articles or bylaws provide that the board has no such authority, the board may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees of the board pursuant to this article.

Comment. Section 5550 is comparable to the first portion of the first sentence of Section 311 (General Corporation Law). It supersedes former Section 9401(d) which permitted the bylaws to make provisions for the appointment and authority of executive or other committees of the board of directors. The articles or bylaws may designate committees of the board. Section 5446(b).

Where the authority to appoint committees of the board is delegated to one of multiple boards, Section 5550 requires for appointment a majority of the authorized directors of the appropriate board. See Sections 5133 ("director" means member of the board) and 5115 ("board" means the appropriate one of multiple boards).

It should be noted that the board may appoint advisory and other committees not pursuant to this article, which may consist of persons other than directors. Such committees, however, may not exercise the power of the board. See Section 5516 (advisory and other committees) and Section 5510 (control of corporate affairs by board). They may, however, perform such other functions as authorized by the board of directors.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Director, § 5133

Delegation of management of day-to-day operations, § 5510(b)

§ 5551. Designation of committee members

5551. (a) A committee of the board shall consist of two or more directors.

(b) Unless the articles or bylaws provide that particular directors are members of specified committees, committee members are designated by the board and serve at the pleasure of the board.

Comment. Section 5551 is comparable to the last portion of the first sentence of Section 311 (General Corporation Law). It should be noted that subdivision (a) of Section 5551 imposes a requirement that cannot be varied by the articles or bylaws.

CROSS-REFERENCES

Definitions:

Articles, § 5112
Board, § 5115
Bylaws, § 5121
Director, § 5133

§ 5552. Designation of alternate committee members

5552. Except to the extent otherwise provided in the articles or bylaws:

(a) The board may designate one or more directors as alternate members of a committee.

(b) An alternate committee member may replace an absent committee member at a meeting of the committee.

Comment. Section 5552 is the same in substance as the second sentence of Section 311 (General Corporation Law) except that the articles or bylaws may vary the requirements of Section 5552.

CROSS-REFERENCES

Definitions:

Articles, § 5112
Board, § 5115
Bylaws, § 5121
Director, § 5133

§ 5553. Authority of committees

5553. (a) A committee of the board, to the extent provided by resolution of the board or in the articles or bylaws, shall have all the authority of the board.

(b) Notwithstanding subdivision (a), a committee of the board does not have authority to do any of the following:

(1) Approve any action for which this division also requires approval of the members.

(2) Fill vacancies on the board or in a committee.

(3) Fix compensation of the directors for serving on the board or on a committee.

- (4) Amend or repeal bylaws or adopt new bylaws.
- (5) Amend or repeal a resolution of the board which by its express terms is not so amendable or repealable.
- (6) Appoint other committees of the board or committee members.

Comment. Section 5553 is the same in substance as the third sentence of, and subdivisions (a)-(g) of, Section 311 (General Corporation Law) except that Section 311(f) is not duplicated since a nonprofit corporation cannot make distributions to members. See Section 5316.

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109
 Articles, § 5112
 Board, § 5115
 Bylaws, § 5121
 Director, § 5133

§ 5554. Meetings of and action by committees

5554. Section 5517 and Article 3 (commencing with Section 5530) apply to meetings of a committee of the board and to action by the committee, with necessary changes having been made in the language thereof.

Comment. Section 5554 is the same in substance as Section 307(d) (General Corporation Law).

Article 6. Officers

§ 5560. Corporate offices

5560. A nonprofit corporation shall have the following offices, with such titles as the articles or bylaws provide:

- (a) A chairman of the board or a president, or both.
- (b) A secretary.
- (c) A chief financial officer.

(d) Other offices, with such duties as are stated in the articles or bylaws or determined by the board, as may be necessary to enable the nonprofit corporation to sign instruments.

Comment. Section 5560 is the same in substance as the first sentence of Section 312(a) (General Corporation Law). See also

Section 5561 (any number of offices may be held by same person). It supersedes the first sentence of former Section 821, which was applicable to nonprofit corporations through former Section 9002. See also Section 5446 (bylaws may make provisions for the number, official designations, and duties of officers), continuing former Section 9401(c). It should be noted that a nonprofit corporation may designate its statutory officers by such titles as it deems appropriate. *E.g.*, the vice president for finance, treasurer, comptroller, bursar, or the like, may sign instruments as the chief financial officer. See Sections 5157 (“officers’ certificate”) and 5181 (“signed by the officers”).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

§ 5561. Offices held by same person

5561. Any number of offices may be held by the same person except to the extent otherwise provided in the articles or bylaws.

Comment. Section 5561 is the same in substance as the last sentence of Section 312(a) (General Corporation Law). It supersedes the third sentence of former Section 821, which was applicable to nonprofit corporations through former Section 9002 and which permitted a person to hold two or more offices except those of president and secretary. Under Section 5561, a single person may be both president and secretary. It should be noted, however, that an instrument required to be signed or executed by more than one officer may not be signed or executed by the same person acting in different official capacities unless there is only one officer. See Section 5232.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

§ 5562. Chief executive officer

5562. Except to the extent otherwise provided in the articles or bylaws, the chief executive officer of a nonprofit corporation is:

(a) The president.

(b) The chairman of the board if there is no president.

Comment. Section 5562 is the same in substance as the second sentence of Section 312(a) (General Corporation Law) except that the president or chairman of the board is not defined as the general manager of a nonprofit corporation. This is unnecessary for purposes of the inherent agency authority of the president or chairman of the board because the president or chairman of the board has the authority of a general manager to bind the nonprofit corporation. The omission avoids confusion with the term "general manager" as used in statutes relating to service of process. Section 5562 is new to nonprofit corporation law.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

§ 5563. Selection of officers

5563. Except to the extent otherwise provided in the articles or bylaws, officers are chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under a contract of employment.

Comment. Section 5563 is the same in substance as the first sentence of Section 312(b) (General Corporation Law). It continues a portion of the first sentence of former Section 821 which was applicable to nonprofit corporations through former Section 9002. See also Section 5446 (bylaws may make provisions for the manner of choosing and terms of office of officers), continuing former Section 9401(c).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

§ 5564. Resignation of officers

5564. An officer may resign upon written notice to the nonprofit corporation. Subject to any notice period in the articles or bylaws not exceeding 30 days, the resignation is effective upon giving the notice unless the notice specifies a later time for the effectiveness of the resignation. Resignation of an officer is without prejudice

to the rights, if any, of the nonprofit corporation under a contract to which the officer is a party.

Comment. Section 5564 is the same in substance as the second sentence of Section 312(b) (General Corporation Law) except that the articles or bylaws may provide a notice period not exceeding 30 days in order to allow adequate time to obtain a replacement. It is new to nonprofit corporation law.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Time notice given, § 5014

Written notice, §§ 8, 5016

Article 7. Standards of Conduct by Management

§ 5570. Duty of care of directors

5570. (a) A director shall perform the duties of a director, including duties as a member of a committee of the board upon which the director serves, in good faith, in a manner the director believes to be in the best interests of the nonprofit corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, so long as the director acts in good faith, after reasonable inquiry (when the need therefor is indicated by the circumstances), and without knowledge that would cause such reliance to be unwarranted, where the information, opinion, report, or statement is prepared or presented by any of the following:

(1) One or more officers or employees of the nonprofit corporation whom the director believes to be reliable and competent in the matters presented.

(2) Counsel, independent accountants, or other persons as to matters the director believes to be within the person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, as to the matters delegated to that committee, which committee the director believes to merit confidence.

(c) A person who performs the duties of a director in accordance with this section shall have no liability based upon an alleged failure to discharge the person's obligations as a director.

Comment. Section 5570 is the same in substance as Section 309 (General Corporation Law). It sets a standard of care for directors of nonprofit corporations generally. It does not address the extent to which a trustee's duty may apply to directors with respect to assets held on charitable trust or by a nonprofit corporation organized for charitable purposes. See Section 6070 and Comment thereto.

CROSS-REFERENCES

Definitions:

Director, § 5133

Independent accountant, § 5145

Person, § 18

Multiple boards, liability of members of, § 5515

Presentation of accounting items, § 5013

Transfer of corporate assets to institutional trustee, § 6072

§ 5571. Transactions involving interested directors

5571. (a) As used in this section, "transaction" means a contract or other transaction between a nonprofit corporation and (1) a director of the nonprofit corporation or (2) a business corporation, nonprofit corporation, firm, or association in which a director of the nonprofit corporation has a material financial interest.

(b) No transaction is either void or voidable because (1) the director or the other business corporation, nonprofit corporation, firm, or association are parties or (2) the director is present at a meeting at which the transaction is approved by the board, if any of the following circumstances exist:

(1) The material facts as to the transaction and as to the director's interest are fully disclosed or known to the members and the transaction is approved by the members in good faith, with the membership of the

interested director not being entitled to be voted thereon.

(2) The material facts as to the transaction and as to the director's interest are fully disclosed or known to the board, the transaction is approved by the board in good faith by a vote sufficient without counting the vote of the interested director, and the transaction is just and reasonable as to the nonprofit corporation at the time it was approved by the board.

(3) The person asserting the validity of the transaction sustains the burden of proving that the transaction was just and reasonable as to the nonprofit corporation at the time it was approved by the board.

(c) An interested director may be counted in determining the presence of a quorum at a meeting at which the transaction is approved.

(d) A common directorship in and of itself does not constitute a material financial interest, within the meaning of this section. A director is not interested, within the meaning of this section, in a resolution fixing the compensation of another director as a director, officer, or employee of the nonprofit corporation, notwithstanding the fact that the first director is also receiving compensation from the nonprofit corporation.

Comment. Section 5571 is the same in substance as subdivision (a) and a portion of subdivision (c) of Section 310 (General Corporation Law). It supersedes provisions of former Section 820 which were applicable to nonprofit corporations through former Section 9002. It should be noted that Section 5571 does not address the extent to which a trustee's duty may apply to directors with respect to assets held on charitable trust or by a nonprofit corporation organized for charitable purposes. See Section 6070 and Comment thereto.

CROSS-REFERENCES

Definitions:

- Approved by the board, § 5106
- Approved by the members, § 5109
- Board, § 5115
- Business corporation, § 5118
- Director, § 5133
- Member, § 5148
- Vote, § 5190

Notice required, § 5728

Reporting certain transactions, § 5940

§ 5572. Transactions involving common directors

5572. (a) As used in this section, “transaction” means a contract or other transaction between a nonprofit corporation and a business corporation, nonprofit corporation, or association of which a director of the nonprofit corporation is a director, other than a contract or other transaction under Section 5571.

(b) No transaction is either void or voidable because the director is present at a meeting at which the transaction is approved by the board, if any of the following circumstances exist:

(1) The material facts as to the transaction and as to the director’s other directorship are fully disclosed or known to the members and the transaction is approved by the members in good faith, with the membership of the common director not being entitled to be voted thereon.

(2) The material facts as to the transaction and as to the director’s other directorship are fully disclosed or known to the board, and the transaction is approved by the board in good faith by a vote sufficient without counting the vote of the common director.

(3) The transaction is just and reasonable as to the nonprofit corporation at the time it is approved by the board.

(c) A common director may be counted in determining the presence of a quorum at a meeting at which the transaction is approved.

Comment. Section 5572 is the same in substance as subdivision (b) and a portion of subdivision (c) of Section 310 (General Corporation Law) except that an express requirement of disclosure to or knowledge of the members of the material facts of the transaction is added, as is the requirement that the common director’s membership be excluded from the vote. It supersedes provisions of former Section 820 which were applicable to nonprofit corporations through former Section 9002.

Because “material financial interest” is not defined in Section 5571, a common director who has more than a common directorship alone should rely on the validating provisions of Section 5572 with caution. It should also be noted that Section

5572 does not address the extent to which a trustee's duty may apply to directors with respect to assets held on charitable trust or by a nonprofit corporation organized for charitable purposes. See Section 6070 and Comment thereto.

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
Approved by the members, § 5109
Board, § 5115
Business corporation, § 5118
Director, § 5133
Member, § 5148
Vote, § 5190

Notice required, § 5728

Reporting certain transactions, § 5940

§ 5573. Loans to directors and officers

5573. A nonprofit corporation shall not loan money or property to, or guarantee the obligation of, a director or officer of the nonprofit corporation or of the parent or a subsidiary of the nonprofit corporation unless one of the following provisions is satisfied:

(a) The loan or guarantee is approved by the members by a majority of the votes entitled to be cast thereon, with the membership of the benefited director or officer not being entitled to be voted.

(b) The loan or guarantee is pursuant to an employee benefit plan approved by the members after disclosure of the right to include officers or directors under the plan if the board determines that the loan or guaranty may reasonably be expected to benefit the nonprofit corporation. The loan or guaranty may be with or without interest and may be secured in a manner approved by the board or unsecured.

(c) The loan is an advance for expenses reasonably anticipated to be incurred in the performance of the duties of the director or officer, for which the director or officer would be entitled to reimbursement by the nonprofit corporation.

Comment. Section 5573 is comparable to Section 315 (General Corporation Law). It supersedes former Section 823, which was applicable to nonprofit corporations through former

Section 9002. Section 5573 relates only to loans made by a nonprofit corporation and does not affect "participant loans" under any benefit plans. Also, Section 5573 does not address the extent to which a trustee's duty may apply to directors with respect to assets held on charitable trust or by a nonprofit corporation organized for charitable purposes. See Section 6070 and Comment thereto.

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
 Approved by the members, § 5109
 Board, § 5115
 Director, § 5133
 Parent, § 5163
 Subsidiary, § 5184
 Vote, § 5190

Persons entitled to take member action, § 5812

§ 5574. Illegal distribution or loan; derivative action against directors

5574. (a) As used in this section, "illegal distribution" means any of the following:

- (1) A distribution to members contrary to Section 5316.
- (2) A loan or guaranty contrary to Section 5573.
- (3) A payment contrary to Chapter 10 (commencing with Section 6010).
- (4) A distribution of assets contrary to Section 6570.

(b) Subject to Section 5570, a director who votes for an illegal distribution, or who is present and abstains from voting at a meeting at which the illegal distribution is approved by the board, is liable to the nonprofit corporation for the benefit of all creditors and members entitled to bring an action under subdivision (c).

(c) An action may be brought under this section in the name of the nonprofit corporation, without regard to Section 5223, by:

- (1) Any creditor whose claim arose prior to the time of the illegal distribution and who has not consented thereto, whether or not the creditor's claim is reduced to judgment, excluding a creditor whose claim was not filed within the time limit set in a notice to creditors under Chapter 15 (commencing with Section 6510).

(2) Any member at the time of the illegal distribution who has not consented thereto.

(d) The damages recoverable from a director under this section are the lesser of the following:

(1) The amount of the distribution or the loss suffered by the nonprofit corporation as a result of the illegal distribution.

(2) The amount of the liability of the nonprofit corporation to nonconsenting creditors at the time of the illegal distribution and the injury suffered by nonconsenting members as a result thereof.

(e) Liability of directors under this section is joint and several.

(f) A director liable under this section:

(1) Is entitled to be subrogated to the rights of the nonprofit corporation against the persons who received the illegal distribution.

(2) May compel contribution by other directors liable under this section.

Comment. Section 5574 is comparable to Section 316 (General Corporation Law). It supersedes former Sections 823–829, which were applicable to nonprofit corporations through former Section 9002.

A director may be liable to persons other than the nonprofit corporation for approval of illegal distributions. The remedy provided in this section supplements, and does not replace, any other available remedies including remedies under the Uniform Fraudulent Conveyance Act (Civil Code §§ 3439–3439.12). See also Section 6577 (action by creditor in name of nonprofit corporation to enforce recovery of improper distribution to members).

Subdivision (c)(1) removes the limitation of prior law that only judgment creditors might bring an action in the name of the nonprofit corporation. Compare former Section 826.

Subdivision (f) provides a director liable under this section with the right of contribution by other directors and of subrogation against other persons. These rights may be enforced either in the action in which the director is held liable or in an independent action pursuant to the ordinary rules of civil practice. See Section 5260. See also *Hoover v. Galbraith*, 7 Cal.3d 519, 498 P.2d 981, 102 Cal. Rptr. 733 (1972).

CROSS-REFERENCES

Definitions:

Action, § 5103

Approved by the board, § 5106

Director, § 5133

Member, § 5148

Person, § 18

Vote, § 5190

Derivative action against member, § 5615

Derivative actions generally, § 5223

Article 8. Indemnification of Corporate Agents

Comment. Article 8 (commencing with Section 5580) supersedes former Section 830, which was applicable to nonprofit corporations through former Section 9002. It is comparable to Section 317 (General Corporation Law).

CROSS-REFERENCES

Reporting indemnifications and advances, § 5940

Transition provision, § 6618

§ 5580. Definitions

5580. For the purposes of this article:

(a) "Agent" means a person who is or was a director, officer, employee, or other agent of any of the following entities:

(1) The nonprofit corporation or a predecessor nonprofit corporation.

(2) A foreign nonprofit corporation or another domestic nonprofit corporation, a foreign or domestic business corporation, a partnership, a joint venture, a trust, or other enterprise at the request of the nonprofit corporation or a predecessor nonprofit corporation.

(b) "Expenses" includes, but is not limited to, reasonable attorney's fees and any expenses of establishing a right to indemnification under Section 5583 or subdivision (c) of Section 5584.

(c) "Proceeding" means a threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

Comment. Section 5580 is the same in substance as Section 317(a) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Business corporation, § 5118

Director, § 5133

§ 5581. Indemnification in proceeding other than derivative action

5581. (a) A nonprofit corporation may indemnify a person who was or is a party or is threatened to be made a party to a proceeding (other than a proceeding by or in the right of the nonprofit corporation) by reason of the fact that the person is or was an agent, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding.

(b) A person may not be indemnified under this section unless the following conditions are satisfied:

(1) The person acted in good faith and in a manner the person reasonably believed to be in the best interests of the nonprofit corporation.

(2) In the case of a criminal proceeding, the person had no reasonable cause to believe that the person's conduct was unlawful.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, create a presumption that the conditions of subdivision (b) are not satisfied.

Comment. Section 5581 is the same in substance as Section 317(b) (General Corporation Law). For indemnification in derivative actions, see Section 5582.

CROSS-REFERENCES

Definitions:

Agent, § 5580

Expenses, § 5580

Person, §§ 18, 5590

Proceeding, § 5580

Estate of agent, right to indemnification, § 5590

§ 5582. Indemnification in derivative action

5582. (a) A nonprofit corporation may indemnify a person who was or is a party or is threatened to be made

a party to a proceeding by or in the right of the nonprofit corporation by reason of the fact that the person is or was an agent, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of the proceeding.

(b) A person may not be indemnified under this section unless the person acted in good faith, in a manner the person believed to be in the best interests of the nonprofit corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(c) A person may not be indemnified under this section for any of the following:

(1) Amounts paid in settling or otherwise disposing of the proceeding, with or without court approval.

(2) Expenses incurred in defending a proceeding which is settled or otherwise disposed of without court approval.

(3) Expenses incurred in connection with a claim, issue, or matter as to which the person is adjudged liable to the nonprofit corporation in the performance of the person's duty to the nonprofit corporation except to the extent that the court in which the proceeding was brought determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court determines.

Comment. Section 5582 is the same in substance as Section 317(c) (General Corporation Law). It should be noted that court approval may be required for the settlement or other disposition of a derivative action. See Comment to Section 5223.

CROSS-REFERENCES

Definitions:

Agent, § 5580

Expenses, § 5580

Person, §§ 18, 5590

Proceeding, § 5580

Estate of agent, right to indemnification, § 5590

§ 5583. Indemnification where agent prevails on merits

5583. A nonprofit corporation shall indemnify an agent who has been successful on the merits in defense of a

proceeding, or in defense of a claim, issue, or matter therein, against expenses actually and reasonably incurred in connection therewith.

Comment. Section 5583 is the same in substance as Section 317(d) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Agent, § 5580

Expenses, § 5580

Proceeding, § 5580

Estate of agent, right to indemnification, § 5590

§ 5584. Corporate action required for indemnification

5584. Except as provided in Section 5583, a person may be indemnified under this article by the nonprofit corporation only if, upon a determination that the conditions prescribed in Section 5581 or 5582 are satisfied, indemnification is authorized by one of the following means:

(a) A majority vote of a quorum consisting of directors who are not parties to the proceeding.

(b) Approval of the members, with the membership of the person to be indemnified not being entitled to be voted thereon.

(c) Order of the court in which the proceeding was brought, upon application made by (1) the nonprofit corporation or (2) the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney, or other person is opposed by the nonprofit corporation.

Comment. Section 5584 is the same in substance as Section 317(e) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Agent, § 5580

Approval of the members, § 5109

Director, § 5133

Person, §§ 18, 5590

Proceeding, § 5580

Vote, § 5190

§ 5585. Authority to advance expenses

5585. Expenses incurred by an agent in defending a proceeding may be advanced by the nonprofit corporation prior to final disposition of the proceeding. The advance shall be conditioned on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance unless it is determined ultimately that the agent is entitled to be indemnified as authorized in this article.

Comment. Section 5585 is the same in substance as Section 317(f) (General Corporation Law).

CROSS-REFERENCES**Definitions:**

Agent, § 5580
 Expenses, § 5580
 Proceeding, § 5580

Estate of agent, right to indemnification, § 5590

§ 5586. Indemnification other than pursuant to this article

5586. (a) No provision made by a nonprofit corporation (whether contained in the articles, bylaws, a resolution of members or directors, an agreement, or otherwise) to indemnify its directors or officers or its subsidiary's directors or officers for the defense of any proceeding is valid unless consistent with this article.

(b) Nothing in this article affects any right to indemnification to which persons other than those described in subdivision (a) may be entitled by contract or otherwise.

Comment. Section 5586 is the same in substance as Section 317(g) (General Corporation Law).

CROSS-REFERENCES**Definitions:**

Articles, § 5112
 Bylaws, § 5121
 Director, § 5133
 Member, § 5148
 Person, §§ 18, 5590
 Proceeding, § 5580
 Subsidiary, § 5184

§ 5587. Limitation on indemnification

5587. Except as provided in Section 5583 or subdivision (c) of Section 5584, no indemnification or advance may be made under this article where either of the following appears:

(a) It would be inconsistent with the articles, bylaws, a resolution of members or directors, or an agreement in effect at the time of accrual of the cause of action asserted in the proceeding.

(b) It would be inconsistent with a condition expressly imposed by a court in approving a settlement.

Comment. Section 5587 is the same in substance as Section 317(h) (General Corporation Law).

CROSS-REFERENCES**Definitions:**

Articles, § 5112

Bylaws, § 5121

Director, § 5133

Member, § 5148

Proceeding, § 5580

§ 5588. Insurance for corporate agents

5588. A nonprofit corporation may purchase and maintain insurance on behalf of a person against any liability asserted against or incurred by the person as an agent or arising out of the person's status as an agent, whether or not the nonprofit corporation is authorized under this article to indemnify the person against the liability.

Comment. Section 5588 is the same in substance as Section 317(i) (General Corporation Law). It should be noted that insurance authorized by this section may cover the expense of defending the agent against any "liability asserted," whether or not liability actually exists, as well as judgments, fines, settlements, and expenses incurred in the defense of actions and proceedings and appeals therefrom.

CROSS-REFERENCES**Definitions:**

Agent, § 5580

Person, §§ 18, 5590

§ 5589. Application of article to fiduciary of employee benefit plan

5589. (a) This article does not apply to a proceeding against a person in the capacity of a trustee, investment manager, or other fiduciary of an employee benefit plan even though such person may also be an agent of the employer nonprofit corporation.

(b) Nothing in this article limits a right to indemnification to which a person described in subdivision (a) may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law other than this article.

Comment. Section 5589 is the same in substance as Section 317(j) (General Corporation Law). Persons described in this section may be indemnified by the nonprofit corporation without regard to the limitations of this article.

CROSS-REFERENCES

Definitions:

Agent, § 5580

Person, §§ 18, 5590

Proceeding, § 5580

§ 5590. Indemnification of estate of deceased agent

5590. This article applies to the estate, executor, administrator, heirs, legatees, or devisees of an agent, and the term "person" where used in this article includes the estate, executor, administrator, heirs, legatees, or devisees of the agent.

Comment. Section 5590 is clarifying only; it is derived from former Section 830(g). No comparable provision is found in the General Corporation Law.

CROSS-REFERENCES

Definitions:

Agent, § 5580

CHAPTER 6. MEMBERS AND MEMBERSHIPS

Article 1. General Provisions

§ 5610. Members

5610. Except to the extent otherwise provided in the articles or bylaws:

(a) Any natural person, public entity, association, organization, partnership, trust, corporation, or other person may be a member of a nonprofit corporation.

(b) A person may hold more than one membership, a fractional membership, or a joint interest in a membership.

Comment. Section 5610 provides that a nonprofit corporation may have as members business corporations, other nonprofit corporations, or partnerships or other unincorporated associations unless the articles or bylaws provide otherwise. Former law did not provide a rule applicable where the articles or bylaws are silent. If a nonprofit corporation has corporations, partnerships, associations, families, or other groups as members, it should make any other necessary provisions regarding classes of members, voting rights of the different types of members (including multiple or fractional voting), the benefits and privileges available to different membership classes, additional qualifications for admission to membership, and dues and assessments. See Section 5442 (bylaws relating to members). See also Sections 5824 (voting of membership held by corporation) and 5825 (voting of membership held by group).

Under subdivision (b), a person may have more or less than one membership unless the nonprofit corporation provides a different rule in the articles or bylaws. Former law forbade the holding of more than one membership. See the last portion of former Section 9602. The prohibition of holding more than one membership was emasculated by the rule that different classes of memberships could be established with different voting power. See *Erickson v. Gospel Foundation*, 43 Cal.2d 581, 275 P.2d 474 (1954) (bylaw permitting one vote for every donation by a member of \$1,000 to the nonprofit corporation in effect created different membership classes). If a nonprofit corporation permits the acquisition of more or less than one membership, it should also consider special provisions concerning voting rights,

benefits and privileges, membership qualifications, and dues and assessments. See Section 5442 (bylaws relating to members). See also Section 5825 (voting of membership held by two or more persons).

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121
 Member, § 5148
 Person, § 18

§ 5611. Membership classes

5611. (a) A nonprofit corporation shall have such memberships or classes as the articles or bylaws specify and, in the absence of any such classification, there is deemed to be but one class.

(b) Unless the articles or bylaws set forth the rule fixing the respective voting, property, and other rights and interests of each membership or class, the rights and interests of each membership are equal as to any right or interest not so fixed.

Comment. Section 5611 continues the substance of former Section 9602 with the exception of the prohibition of a member holding more than one membership, which is superseded by Section 5610(b). A provision creating membership classes is effective only if included in the articles or bylaws. See Section 5447. For comparable provisions, see Sections 203 and 400(a) (General Corporation Law). For voting and property rights of memberships, see, *e.g.*, Sections 5810 (voting rights) and 6574 (distribution among members in accordance with rights).

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121
 Class, § 5125

§ 5612. Directors as members

5612. If the articles or bylaws do not provide for members or there are in fact no members, the directors are, for the purpose of any law relating to nonprofit corporations, the members of the nonprofit corporation and shall exercise all the rights and powers of members.

Comment. Section 5612 continues the substance of former Section 9603. See *Coon v. Freeman*, 1 Cal.3d 542, 463 P.2d 441, 83 Cal. Rptr. 217 (1970). The rights and powers of members include voting (Section 5810) and receipt of assets upon dissolution (Section 6574).

CROSS-REFERENCES

Annual report, where no members, § 5923

Bylaws relating to members, § 5442

Definitions:

Articles, § 5112

Bylaws, § 5121

Director, § 5133

Member, § 5148

§ 5613. Reduction of members below stated number

5613. If the membership of a nonprofit corporation having an authorized number of members is reduced below that number by death, resignation, or otherwise, the nonprofit corporation shall not be dissolved for that reason. Except to the extent otherwise provided in the articles or bylaws, the remaining members may, in the absence of a quorum, by majority vote of the remaining members fill vacancies and continue the corporate existence.

Comment. Section 5613 continues the substance of former Section 9605 with the addition of the words "by majority vote of the surviving or continuing members" to make clear that only a majority of the remaining members is necessary to fill vacancies and continue the corporate existence.

CROSS-REFERENCES

Bylaws relating to members, § 5442

Court determination of persons entitled to vote, §§ 5880-5883

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Vote, § 5190

Grounds for dissolution proceedings, §§ 6511, 6521

§ 5614. Liability of members

5614. Members of a nonprofit corporation are not, by reason of their membership alone, personally liable for

the debts, liabilities, or obligations of the nonprofit corporation.

Comment. Section 5614 continues the substance of former Section 9610.

CROSS-REFERENCES

Definitions:

Member, § 5148

§ 5615. **Illegal distribution; derivative action against members**

5615. (a) A member who receives a distribution prohibited by Section 5316 is liable to the nonprofit corporation for the benefit of all creditors and members entitled to bring an action under subdivision (b).

(b) An action may be brought under this section in the name of the nonprofit corporation, without regard to Section 5223, by either of the following:

(1) Any creditor whose debt or claim arose prior to the time of the distribution and who has not consented thereto, whether or not the creditor's claim is reduced to judgment.

(2) Any member at the time of the distribution who has not consented thereto.

(c) The damages recoverable from a member under this section are the lesser of the following:

(1) The amount of the distribution received by the member with interest thereon, at the legal rate on judgments, until paid.

(2) The amount of the liability of the nonprofit corporation to nonconsenting creditors at the time of the distribution and the amount of damages suffered by nonconsenting members, as the case may be.

(d) A member liable under this section may compel contribution by other members liable under this section.

(e) Nothing in this section affects any liability a member may have under the Uniform Fraudulent Conveyance Act, Sections 3439 to 3439.12, inclusive, of the Civil Code.

Comment. Section 5615 is comparable to Section 506 (General Corporation Law). It supersedes former Section 1510,

relating to payment of unauthorized dividends. Section 5615 expands, and does not limit, the rights of creditors. Subdivision (a), unlike the comparable provision of the General Corporation Law, does not require that the distribution have been received "with knowledge of the facts indicating the impropriety thereof." Unlike a business corporation, any distribution by a nonprofit corporation is sufficient to indicate to a member the possible impropriety. The right to contribution in subdivision (d) may be enforced either in the action in which the member is held liable or in an independent action pursuant to the ordinary rules of civil procedure. See Section 5260.

CROSS-REFERENCES

Action by Attorney General, § 5228(i)

Definitions:

Action, § 5103

Member, § 5148

Directors

Criminal liability, § 5227

Derivative action against, § 5574

Persons entitled to take member action, § 5812

Recovery of improper distribution to members, § 6577

Article 2. Issuance of Memberships

Comment. Article 2 (commencing with Section 5620), which relates to issuance of memberships, governs only the internal affairs of nonprofit corporations. It does not affect in any way the coverage of the Corporate Securities Law, Sections 25000–25804, which may in an appropriate case be applicable to the issuance of memberships in a nonprofit corporation. See Sections 25019, 25100(j). *Cf. Silver Hills Country Club v. Sobieski*, 55 Cal.2d 811, 361 P.2d 906, 13 Cal. Rptr. 186 (1961) (membership in country club operated for profit).

CROSS-REFERENCES

Determining members entitled to vote, §§ 5880–5883

Determining validity of issuance of memberships, § 5876

§ 5620. Consideration

5620. A membership may be issued for the consideration specified in the articles or bylaws or determined pursuant to authority contained in the articles or bylaws. In the absence of fraud in the

transaction, the judgment of the board as to the value of the consideration received by the nonprofit corporation is conclusive.

Comment. Section 5620 supersedes former Sections 1109, 1111, and 1112, which were applicable to nonprofit corporations through former Section 9002.

Unlike Section 409(a) (General Corporation Law), the first sentence of Section 5620 does not limit the types of consideration for which memberships may be issued. The policies which require such limitations upon a business corporation for the protection of investors and creditors do not apply to the same extent to nonprofit corporations. The articles or bylaws must determine, or provide a means (such as by vote of members, the board, or a committee of the board) for determining, the acceptable forms of consideration. See Section 5447.

The second sentence of Section 5620 is the same in substance as the last sentence of Section 409(b) (General Corporation Law).

CROSS-REFERENCES

Bylaws relating to consideration, § 5442

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Initiation fees and similar required contributions, § 6010

§ 5621. Options

5621. A nonprofit corporation may grant an option to purchase or subscribe for a membership upon such terms and conditions as are deemed expedient. Except to the extent otherwise provided in the articles or bylaws, an option is not transferable but may be separable or inseparable from another security of the nonprofit corporation.

Comment. The first sentence of Section 5621 is comparable to the first sentence of Section 404 (General Corporation Law). It continues the authorization to grant option rights found in former Sections 1103 and 1104 which were applicable to nonprofit corporations through former Section 9002. The second sentence of Section 5621 is the same in substance as the last sentence of Section 404 (General Corporation Law) and the last sentence of former Section 1104 except that option rights in

nonprofit corporations, like memberships, are nontransferable unless the articles or bylaws provide otherwise. See Section 5630 (transfer of membership).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Securities, power to issue, § 5312

§ 5622. Redeemable memberships

5622. (a) To the extent provided in the articles or bylaws, a nonprofit corporation other than a nonprofit corporation organized for charitable purposes may issue memberships or classes of memberships that are redeemable in whole or in part.

(b) Redemption shall be at the price, within the time or upon the happening of one or more specified events, and upon the terms and conditions, stated in the articles or bylaws.

(c) A nonprofit corporation shall not issue memberships or classes of memberships that are redeemable at the option of the holders thereof.

Comment. Subdivisions (a) and (b) of Section 5622 continue the substance of a portion of former Section 1100, which may have been applicable to nonprofit corporations through former Section 9002. For comparable provisions of the General Corporation Law, see Section 402(a).

Subdivision (c) continues the substance of former Section 1101, which may have been applicable to nonprofit corporations through former Section 9002. For a comparable provision, see Section 402(b) (General Corporation Law). Provisions for sinking funds and similar agreements concerning redemption or repurchase of memberships are not prohibited by subdivision (c) as long as the members do not have the option to determine the time of redemption.

A subvention is distinguishable from a membership since a subvention is a type of loan to the nonprofit corporation. Accordingly, although subdivision (c) precludes redemption of memberships at the option of the holder, a subvention may be redeemable at the option of the holder pursuant to Section 6036.

It should be noted that all redemption and repurchase payments are subject to the requirements of Sections 6060-6067.

In the absence of applicable procedural provisions in the articles or bylaws, certain redemption procedures are provided in Sections 6050-6054.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Nonprofit corporation organized for charitable purposes, § 5154

§ 5623. Partly paid memberships

5623. (a) The full agreed consideration for a membership shall be paid prior to or concurrently with the issuance thereof, unless the membership is issued as partly paid pursuant to subdivision (b), in which case the consideration shall be paid in accordance with the agreement of subscription or purchase.

(b) To the extent provided in the articles or bylaws, a nonprofit corporation may issue the whole or any part of its memberships as partly paid and subject to call for the remainder of the consideration to be paid therefor. The partly paid status of a transferable membership shall be stated in the record of members and on the membership certificate, if any.

Comment. Section 5623 continues the last sentence of former Section 1109, applicable to nonprofit corporations through former Section 9002. Subdivision (a) is the same in substance as Section 410(b) (General Corporation Law). Subdivision (b) is comparable to the first two sentences of Section 409(d) (General Corporation Law), but a nonprofit corporation must be authorized by its articles or bylaws to issue partly paid memberships. See Section 5447. For provisions relating to liability for unpaid and partly paid memberships, see Sections 6020-6027.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

On the membership certificate, § 5160

Enforcement of obligations, § 6011

Membership certificates, § 5624

Record of members, § 5960

Transfer of membership, § 5630

§ 5624. Membership certificates

5624. (a) Membership in a nonprofit corporation may be evidenced by a membership certificate.

(b) A statement that the nonprofit corporation is not one for profit shall appear on the membership certificate if the certificate is transferable and represents a property interest in the nonprofit corporation.

Comment. Section 5624 supersedes former Section 9607, making clear that the limitation of subdivision (b) applies only to certificates that represent a transferable property interest and not, for example, to membership identity cards. For a comparable provision, see Section 416(a) (General Corporation Law).

CROSS-REFERENCES**Definitions:**

On the membership certificate, § 5160

Partly paid membership, statement on certificate, § 5623

Proxies, irrevocable, notation on membership certificate, § 5835

Transfer of membership, § 5630

§ 5625. Surrender and exchange for new certificate

5625. If it becomes desirable for any reason, in the discretion of the board, to cancel a membership certificate and issue a new certificate, the board may order a holder of a membership certificate to surrender and exchange it for a new certificate within a reasonable time to be fixed by the board. The order of the board may provide that a holder of a membership certificate ordered to be surrendered is not entitled to vote or exercise any of the other rights of members until the holder has complied with the order, but the order operates to suspend such rights only after notice and until compliance. The duty of surrender of a membership certificate may also be enforced by civil action.

Comment. Section 5625 is the same in substance as Section 422 (General Corporation Law) and former Section 2407.

CROSS-REFERENCES**Definitions:**

Action, § 5103

Board, § 5115

- Member, § 5148
Vote, § 5190
Membership certificates, § 5624
Replacement of lost, stolen, or destroyed certificates, § 6013
Rules of practice in this division, § 5260
Time notice given, § 5014

Article 3. Transfer or Termination of Memberships

§ 5630. Transfer of membership

5630. (a) Except to the extent otherwise provided in the articles or bylaws, a member may not transfer a membership or right arising therefrom.

(b) If the articles or bylaws provide for transfer of a membership or right arising therefrom, the articles or bylaws may also provide that the nonprofit corporation is not bound by the transfer until notice is received in the manner specified in the articles or bylaws.

Comment. Subdivision (a) of Section 5630 continues the substance of former Section 9609. A provision for transferable memberships is effective only if included in the articles or bylaws. See Section 5447. Subdivision (b) is new. It enables the nonprofit corporation to keep its membership record updated.

CROSS-REFERENCES

Definitions:

- Articles, § 5112
Bylaws, § 5121
Member, § 5148

§ 5631. Termination of membership

5631. (a) Subject to subdivision (b), a membership may be terminated in the manner provided in the articles or bylaws.

(b) Except where the membership is terminated pursuant to Section 6011, no member may be expelled from a nonprofit corporation without due notice and a reasonable opportunity to be heard.

Comment. Subdivision (a) of Section 5631 continues the substance of the first sentence of former Section 9608.

Subdivision (b) is new. California courts have long required minimal due process for expulsion proceedings. See *Taboada v.*

Sociedad Espanola de Beneficencia Mutua, 191 Cal. 187, 215 P. 673 (1923); *Otto v. Journeyman Tailors' Protective & Benevolent Union*, 75 Cal. 308, 17 P. 217 (1888). The nature of the nonprofit corporation and the extent of the member's interest involved will determine the minimum standards of notice and hearing which must be followed. See *Erickson v. Gospel Foundation*, 43 Cal.2d 581, 585, 275 P.2d 474, 477 (1954).

Termination of membership because of the nonpayment of dues or other proper financial burdens of membership normally requires only reasonable notice without the opportunity of a hearing. See Section 6011; *Demille v. Radio Artists, Los Angeles Local*, 31 Cal.2d 139, 187 P.2d 769 (1947). See also 15 Pa. Cons. Stat. Ann. §§ 7545(c) and 7767(b) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Recording termination in corporate records, § 5960

§ 5632. Effect of termination of membership

5632. (a) Except to the extent otherwise provided in the articles or bylaws, all rights of a member in a nonprofit corporation or its property cease on death or other termination of membership.

(b) Death or other termination of membership is without prejudice to any rights of the member as the holder of a subvention certificate, bond, or other evidence of indebtedness of the nonprofit corporation.

Comment. Subdivision (a) of Section 5632 continues the substance of the second sentence of former Section 9608. Cessation of rights on death or other termination may, under existing law, create problems of forfeiture and may complicate rights of joint members. Some nonprofit corporations may find it appropriate in their articles or bylaws to preserve rights of members on death or other termination.

Subdivision (b) is adapted from Section 516(a) of the New York Not-for-Profit Corporation Law (McKinney 1970). It distinguishes the property rights of a member from rights as a holder of subvention certificates or evidences of indebtedness. The property rights of a member may be extinguished by

termination of membership but not property rights evidenced by a subvention certificate or indebtedness.

CROSS-REFERENCES

Bylaws relating to members, § 5442

Debt, §§ 6040-6041

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Subventions, §§ 6030-6039

§ 5633. Resignation of members

5633. (a) Unless the articles or bylaws provide a procedure for resignation of membership, a member may resign membership by giving written notice to the nonprofit corporation.

(b) Except to the extent otherwise provided in the articles or bylaws, resignation of membership terminates all future rights, powers, and obligations of membership, but does not terminate the member's liability for dues, assessments, fees, charges, or other obligations incurred prior to resignation.

(c) Notwithstanding any other provision of this section, resignation of membership does not extinguish binding contract obligations that run with the land at law.

Comment. Subdivision (a) of Section 5633 provides a procedure for resignation in the absence of a procedure in the articles or bylaws. *Cf. Haynes v. Annandale Golf Club*, 4 Cal.2d 28, 47 P.2d 470 (1935) (nonprofit organization may impose only reasonable restrictions on a member's right to resign).

Subdivisions (b) and (c) are new. Subdivision (c) makes clear that condominiums and homeowners' associations, for example, will be able to limit the effect of resignation of membership in the nonprofit corporation without transfer of the underlying property.

CROSS-REFERENCES

Bylaws relating to members, § 5442

Capital improvements, levy of assessments for, § 6012

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Written, §§ 8, 5016

Enforcement of financial obligations of members, § 6011

Partly paid membership, §§ 5623, 6020-6027

Time notice given, § 5014

§ 5634. Corporate liability in connection with transfers

5634. Neither a domestic or foreign nonprofit corporation nor its transfer agent or registrar is liable:

(a) For transferring or causing to be transferred on the books of the nonprofit corporation a membership or other security to the survivor of two or more persons who appear on the books of the nonprofit corporation to hold the membership or security in joint tenancy, whether or not the transfer is made with actual or constructive knowledge (1) of the existence of any understanding, agreement, condition, or evidence that the membership or other security is held other than in joint tenancy or (2) of a breach of trust by a joint tenant.

(b) To a minor or incompetent person in whose name a membership is held of record on its books, or to any transferee of or transferor to either, for (1) transferring the membership on its books to, or at the instance of, the minor or incompetent or (2) recognizing or dealing with the minor or incompetent as a member. This subdivision applies whether or not the nonprofit corporation, transfer agent, or registrar had notice, actual or constructive, of the nonage or incompetency, unless a guardian or conservator of the property of the minor or incompetent has been appointed and the nonprofit corporation, transfer agent, or registrar has received written notice of the appointment.

(c) To a married person or to a transferee of a married person for transferring a membership on the books of the nonprofit corporation at the instance of the person in whose name it is registered, without the signature of the married person's spouse and regardless of whether the registration indicates that the membership is community property, in the same manner as if the married person were unmarried. Section 5125 of the Civil Code is subject to the provisions of this subdivision and shall not be construed to prevent transfers, or result in liability to the

nonprofit corporation, transfer agent, or registrar permitting or effecting transfers, which comply with this subdivision.

Comment. Section 5634 is the same in substance as Section 420 (General Corporation Law), which is derived from former Sections 2413, 2414, and 2415.

CROSS-REFERENCES

Definitions:

Person, § 18

Signature, § 17

Written, §§ 8, 5016

Record of members, § 5960

Transfer of membership, § 5630

Article 4. Record Date for Determining Members

Comment. This article supersedes provisions of former Sections 2214 and 2215 which were applicable to nonprofit corporations through former Section 9002.

§ 5640. Record date

5640. A nonprofit corporation shall have a record date, fixed as provided in this article, to determine the members entitled to:

(a) Notice of a meeting.

(b) Vote.

(c) Exercise rights with respect to any other lawful action.

Comment. Section 5640 is new. For a comparable provision, see the first portion of Section 701(a) (General Corporation Law).

CROSS-REFERENCES

Bylaws relating to members, § 5442

Court ordered meeting, record date, §§ 5712, 5725

Definitions:

Member, § 5148

Vote, § 5190

§ 5641. Record date fixed by articles, bylaws, or board

5641. (a) The articles or bylaws may provide the record date or, if the articles or bylaws do not so provide, the board may fix the record date in advance.

(b) The record date provided in the articles or bylaws or fixed by the board shall be:

(1) In the case of a meeting, not more than 60 nor less than 10 days prior to the date of the meeting.

(2) In the case of any other action, not more than 60 days prior to the action.

Comment. Section 5641 is the same in substance as the last portion of Section 701(a) (General Corporation Law) with the addition of authority to prescribe the record date in the articles or bylaws. It supersedes a portion of former Section 2214, which was applicable to nonprofit corporations through former Section 9002, extending the permissible record date from 50 to 60 days prior to the event to which it relates and adding a 10-day cutoff prior to meetings of members.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

§ 5642. Record date where not otherwise fixed

5642. If no record date is provided in the articles or bylaws or fixed by the board:

(a) The record date for determining members entitled to notice of or to vote at a meeting of members is the close of business on the 10th business day preceding (1) the day on which notice is given or (2) if no notice is required to be given, the day on which the meeting is held.

(b) The record date for determining members entitled to give consent to corporate action in writing without a meeting, when no prior action by the board has been taken, is the close of business on the day on which the first written consent to the action is received by the secretary of the nonprofit corporation.

(c) The record date for determining members for any other action is the close of business on the day on which the board adopts the resolution relating thereto or the 60th day prior to the date of the other action, whichever is later.

Comment. Section 5642 is the same in substance as Section 701(b) (General Corporation Law) except that the record date

under subdivision (a) is 10 business days before the day on which notice is given or the meeting is held. It is new to nonprofit corporation law.

CROSS-REFERENCES

Consents, §§ 5840-5845

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Member, § 5148

Vote, § 5190

Notice of meetings, §§ 5720-5728

Time notice given, § 5014

Voting rights, § 5810

§ 5643. Record date for adjourned meeting

5643. (a) Except as provided in subdivision (b), the record date for determination of members entitled to notice of or to vote at a meeting of members that has adjourned to another time or place applies to the reconvened meeting unless the board fixes a new record date for the reconvened meeting.

(b) If the meeting is adjourned for more than 45 days from the date set for the original meeting, the board shall fix a new record date for the reconvened meeting.

Comment. Section 5643 is the same in substance as Section 701(c) (General Corporation Law). It is new to nonprofit corporation law.

CROSS-REFERENCES

Definitions:

Board, § 5115

Member, § 5148

Vote, § 5190

Notice of adjourned meeting, § 5726

Notice of meetings, §§ 5720-5728

Voting rights, § 5810

§ 5644. Effect of record date on rights of members

5644. Except to the extent otherwise provided in the articles or bylaws, notwithstanding the acquisition, transfer, or termination of the membership on the books of the nonprofit corporation after the record date, a

person who was a member on the record date is entitled, as the case may be, to:

(a) Notice of the meeting.

(b) Vote.

(c) Exercise the rights with respect to any other lawful action.

Comment. Section 5644 is comparable to Section 701(d) (General Corporation Law). It supersedes portions of former Sections 2214 and 2215, which were applicable to nonprofit corporations through former Section 9002. Under Section 5644, the articles or bylaws may provide, notwithstanding the establishment of a record date, for example, that members admitted after the record date may vote and that persons no longer members after the record date may not vote.

CROSS-REFERENCES

Bylaws relating to members, § 5442

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Person, § 18

Vote, § 5190

Notice of meetings, §§ 5720-5728

Voting rights, § 5810

CHAPTER 7. MEMBERS' MEETINGS

CROSS-REFERENCES

Enforcement by Attorney General, § 5250

Transition provision, § 6619

Article 1. Meetings

§ 5710. Place of meetings

5710. Meetings of members may be held at a place within or without the state that is stated in or fixed in accordance with the articles or bylaws. If no other place is stated or so fixed, meetings of members shall be held at the principal executive office of the nonprofit corporation.

Comment. Section 5710 is the same in substance as Section 600(a) (General Corporation Law). It continues a portion of the first sentence of former Section 9401 (a) and supersedes a portion of former Section 2200 and the first two sentences of former Section 2210, which were applicable to nonprofit corporations through former Section 9002. See also Section 5445 (bylaws relating to meetings). Under Section 5710, the articles or bylaws may provide a manner in which the meeting place is fixed, such as by resolution of the board or in the notice of the meeting.

CROSS-REFERENCES

Court ordered annual meeting, time and place, §§ 5712, 5725

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Principal executive office, § 5166

§ 5711. Annual meeting

5711. (a) Except to the extent otherwise provided in the articles or bylaws, an annual meeting of members shall be held for the election of directors. Any other proper business may be transacted at the annual meeting.

(b) The annual meeting shall be held on a date and at a time stated in or fixed in accordance with the articles or bylaws or, if none is stated or so fixed, on the first Tuesday of April at 11 o'clock in the morning.

Comment. Section 5711 is comparable to Section 600(b) (General Corporation Law). The articles or bylaws may dispense with the annual meeting and provide another method of electing directors. See Section 5520 and the Comment thereto. See also Section 5445 (bylaws relating to meetings) and Section 5446 (bylaws relating to time and manner of selection of directors).

Subdivision (a) continues portions of former Section 2201, which was applicable to nonprofit corporations through former Section 9002. See *Burnett v. Banks*, 130 Cal. App.2d 631, 279 P.2d 579 (1955). For notice requirements of the business to be transacted at the annual meeting in addition to election of directors, see Section 5722.

Subdivision (b) continues former Section 2200, which was applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Annual report, presentation at annual meeting, § 5921

Court ordered annual meeting, §§ 5712, 5725

Definitions:

Articles, § 5112

Bylaws, § 5121

Director, § 5133

Member, § 5148

§ 5712. Failure to hold annual meeting

5712. (a) If a nonprofit corporation that is required to hold an annual meeting fails to hold the annual meeting for a period of 60 days after the date prescribed for the meeting under Section 5711, the superior court of the proper county may, upon the application of 50 members or 10 percent of the members, whichever is smaller, after notice to and an opportunity for the nonprofit corporation to be heard, order the meeting to be held.

(b) The votes represented at the meeting and entitled to be cast on the business to be transacted at the meeting constitute a quorum for the purpose of the meeting, notwithstanding any provision to the contrary in this division or the articles or bylaws.

(c) The court may make such orders as are appropriate including, without limitation, orders designating the time and place of the meeting, the record date for determining members entitled to vote, and the manner of giving and the contents of the notice of the meeting.

Comment. Section 5712 is comparable to Section 600(c) (General Corporation Law). It is new to nonprofit corporation law. Subdivision (a) differs from Section 600(c) in that a single member may not require the annual meeting to be held. Subdivision (b) supersedes the quorum provisions of Section 5715 for an annual meeting which is held pursuant to court order. Subdivision (c) supersedes the time and place provisions of Sections 5710 and 5711, the notice provisions of Article 2 (commencing with Section 5720), and the record date provisions of Sections 5640–5644. An action or proceeding under this section is governed by the ordinary rules of civil practice. See Section 5260; see also *City of Los Angeles v. Owens River Canal Co.*, 120 Cal. App. 380, 7 P.2d 1064 (1932) (action); *Stabler v. El Dora Oil Co.*, 27 Cal. App. 516, 150 P. 643 (1915) (mandamus).

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121
 Member, § 5148
 Proper county, § 5169
 Vote, § 5190

Persons entitled to take member action, § 5812

§ 5713. Business that may be transacted at regular meeting
 5713. Any proper business may be transacted at a regular meeting of members.

Comment. Section 5713 is new. See also Section 5711 (any proper business may be conducted at the annual meeting).

CROSS-REFERENCES

Definitions:

Member, § 5148

§ 5714. Special meetings

5714. (a) A special meeting of members may be called by any of the following:

- (1) The board.
- (2) The chairman of the board.
- (3) The president.

(4) A person who has the written authorization of persons entitled to cast not less than 10 percent of the votes on the business to be transacted at the meeting and has provided the nonprofit corporation, prior to the

calling of the meeting, such written authorizations or copies thereof.

(5) Other persons, if any, specified in the articles or bylaws.

(b) A special meeting may be called for any purpose, but the only business that may be transacted is that which is stated in the notice of the meeting.

Comment. Subdivision (a) of Section 5714 is comparable to Section 600(d) (General Corporation Law). It supersedes former Section 9600 and permits special meetings to be called by the chairman of the board, the president, and other persons designated in the articles or bylaws. See also Section 5445 (bylaws relating to meetings).

Subdivision (b) is new. For the contents of the notice of the meeting, see Section 5722. An improperly noticed meeting may be validated pursuant to Section 5727.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Member, § 5148

Person, § 18

Notice of special meetings, § 5725

Persons entitled to take member action, § 5812

§ 5715. Quorum

5715. Except to the extent otherwise provided in the articles or bylaws, a quorum is present at a meeting of members if a majority of the votes entitled to be cast on the business to be transacted are represented at the meeting.

Comment. Section 5715 is comparable to a portion of the first sentence of Section 602(a) (General Corporation Law). It continues a portion of former Section 9401(b). See also former Section 2211. It should be noted that the minimum quorum for a mutual water company is 20 percent of the votes entitled to be cast at a meeting of members. See Pub. Util. Code § 2717. A vote may be represented at a meeting by a proxy if proxies are permitted. See Sections 5830–5836. A proxy marked “abstain” or “withhold” shall not be voted on the particular matter but is represented at the meeting for the purposes of a quorum. See Section 5832.

CROSS-REFERENCES

Court determination of quorum, § 5882

Court ordered annual meeting, quorum, § 5712

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Disqualified vote, § 5817

§ 5716. Adjournment absent a quorum

5716. In the absence of a quorum, a meeting of members may be adjourned from time to time by persons holding a majority of the votes represented at the meeting and entitled to be cast on the business to be transacted at the meeting, but no other business may be transacted except as provided in Section 5717.

Comment. Section 5716 is the same in substance as Section 602(c) (General Corporation Law). It continues provisions of former Section 2213 which were applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Member, § 5148

Person, § 18

Notice of adjourned meeting, § 5726

§ 5717. Vote required where quorum initially present

5717. The persons present at a meeting of members at which a quorum is initially present may continue to transact business until adjournment, notwithstanding the withdrawal of persons holding enough votes to leave less than a quorum, if any action taken (other than adjournment) is approved by the members by a majority of the votes required for a quorum or such greater vote as would be required by this division or the articles or bylaws if a quorum were present.

Comment. Section 5717 is comparable to Section 602(b) (General Corporation Law). It supersedes provisions of former Section 2212, which were applicable to nonprofit corporations through former Section 9002, adding the specification of the vote necessary to take action. This section applies only so long as there

is an absence of a quorum. When a quorum is regained, the normal rules governing the vote required for member action at a meeting apply. See Section 5814.

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109

Articles, § 5112

Bylaws, § 5121

Person, § 18

Vote, § 5190

Disqualified vote, § 5817

Article 2. Notice of Meetings

§ 5720. When notice required

5720. (a) If members are required or permitted to take action at a meeting, notice of the meeting shall be given in the manner provided in this article.

(b) Except as provided in Section 5728, the provisions of this article are subject to any reasonable provisions in the articles or bylaws.

Comment. Subdivision (a) of Section 5720 is comparable to the first sentence of Section 601 (a) (General Corporation Law). Subdivision (b) supersedes a portion of the second sentence of former Section 9401 (a). Whether a particular provision of the articles or bylaws is a reasonable notice requirement depends on all the circumstances of the particular case including, but not limited to, the number of members and their location. See also former Section 9702.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Notice pursuant to court order, §§ 5712, 5725

§ 5721. Time of notice

5721. Notice of a meeting of members shall be given not less than 10 nor more than 60 days before the date of the meeting.

Comment. Section 5721 is the same in substance as a portion of the first sentence of Section 601(a) (General Corporation Law). It supersedes former Section 2206, which was applicable to nonprofit corporations through former Section 9002, and required notice seven days before the meeting unless the bylaws provided otherwise. It should be noted that the articles or bylaws may prescribe reasonable requirements for the time of notice. See Section 5720(b).

CROSS-REFERENCES

Definitions:

Member, § 5148

Notice pursuant to court order, §§ 5712, 5725

Time notice given, § 5014

§ 5722. Contents of notice

5722. Notice of a meeting of members shall state all of the following:

(a) The place of the meeting.

(b) The date and hour of the meeting.

(c) In the case of a special meeting, the general nature of the business to be transacted and that no other business may be transacted.

(d) In the case of the annual or a regular meeting, the matters (other than those prescribed in the articles or bylaws) which the board, at the time of the notice, intends to present for action by the members but that any proper matter may be presented at the meeting for action by the members.

(e) In the case of a meeting at which directors are to be elected, the names of nominees known to the board at the time of the notice.

Comment. Section 5722 is the same in substance as the last two sentences of Section 601(a) (General Corporation Law) except that the notice must include names of all nominees, not just those presented by management. Subdivisions (a) and (b) continue provisions of former Section 2207, which were applicable to nonprofit corporations through former Section 9002. Subdivisions (c)–(e) supersede the provisions of former Section 2207 that required the notice of meeting to state the general nature of the business to be transacted. Under subdivision (d), whether a matter presented at a meeting is

proper for action by the members is determined by reference to the provisions of this division and to the articles and bylaws. It should be noted that the articles or bylaws may prescribe reasonable requirements for the contents of notice. See Section 5720(b).

CROSS-REFERENCES

Definitions:

Articles, § 5112
Board, § 5115
Bylaws, § 5121
Director, § 5133
Member, § 5148

Notice pursuant to court order, §§ 5712, 5725

§ 5723. Persons to whom notice given

5723. Notice of a meeting of members shall be given to persons entitled to vote on the business to be transacted at the meeting.

Comment. Section 5723 is the same in substance as a portion of the first sentences of subdivisions (a) and (c) of Section 601 (General Corporation Law). It should be noted that the articles or bylaws may prescribe reasonable requirements for the persons to whom notice is given. Section 5720(b).

CROSS-REFERENCES

Definitions:

Member, § 5148
Person, § 18

§ 5724. Manner of giving notice

5724. (a) Notice of a meeting of members shall be given to persons entitled to notice either personally or by mail or other means of written communication, addressed (1) to the person at the address of the person appearing in the record of members of the nonprofit corporation or (2) if the person has given the nonprofit corporation a different address for the purpose of notice, to the person at that address.

(b) If the nonprofit corporation does not have an address for the person, or if the notice is returned to the nonprofit corporation marked by the United States Postal Service to indicate that it is unable to deliver the notice to the person at the address specified in subdivision (a),

the notice shall be posted and be made available at the principal executive office of the nonprofit corporation.

(c) An affidavit of the giving of notice in accordance with this section, executed by the secretary or an assistant secretary, is prima facie evidence of the giving of the notice.

Comment. Section 5724 is comparable to Section 601(b) (General Corporation Law). It supersedes former Section 2205, which was applicable to nonprofit corporations through former Section 9002. See also Section 5445 (bylaws relating to meetings). Unlike the General Corporation Law provision, Section 5724 does not provide for notice of the meetings of a nonprofit corporation by publication in a newspaper of general circulation, nor does it deal with the manner of giving reports. Nothing in subdivision (b) is intended to require address correction service from the United States Postal Service.

It should be noted that the articles or bylaws may prescribe reasonable requirements for the manner of giving notice. See Section 5720(b). The articles or bylaws may prescribe notice by means such as inclusion in the house organ mailed to the members, third-class mail, announcement at a regular meeting, and the like, where reasonable.

CROSS-REFERENCES

Declaration under penalty of perjury permitted, § 5012

Definitions:

Mailing, § 5015

Member, § 5148

Person, § 18

Principal executive office, § 5166

Written, §§ 8, 5016

Notice pursuant to court order, §§ 5712, 5725

Record of members, § 5960

§ 5725. Notice of special meeting

5725. (a) Upon request in writing to the chairman of the board, president, vice president, or secretary by a person entitled to call a special meeting of members, the officer forthwith shall cause notice to be given that a meeting will be held at a time requested by the person calling the meeting, not less than 35 nor more than 60 days after receipt of the request.

(b) If the notice is not given within 20 days after receipt of the request, the person entitled to call the

meeting may either give notice of the meeting or apply to the superior court of the proper county for an order that the notice be given. If application is made to the court, the court, after notice to and an opportunity for the nonprofit corporation to be heard, shall, upon making a determination that the notice required by subdivision (a) has not been given, summarily order the giving of the notice of the meeting. The court may issue such orders as may be appropriate, including without limitation, orders designating the time and place of the meeting, the record date for determination of persons entitled to vote, and the manner of giving and the contents of the notice of the meeting.

(c) Nothing in this section affects the date or hour of a special meeting of members called by the board.

Comment. Section 5725 is the same in substance as Section 601(c) (General Corporation Law). It continues provisions of former Section 2203, which were applicable to nonprofit corporations through former Section 9002, with changes to: (1) permit a request for a special meeting to be made to the chairman of the board, (2) increase the minimum time within which the meeting must be held and within which the nonprofit corporation must respond in order to enable the nonprofit corporation to prepare proxy materials, and (3) permit a member to obtain a court order for notice in recognition of the fact that the member list may not be readily accessible to the person calling the meeting or that the cost of giving the notice may be substantial. A court proceeding under this section is governed by the ordinary rules of civil practice. See Section 5260; see also *Dedrick v. California Whaling Co.*, 16 Cal. App.2d 284, 60 P.2d 551 (1936) (mandamus). It should be noted that the articles or bylaws may prescribe reasonable requirements for notice of special meetings. See Section 5720(b).

CROSS-REFERENCES

Definitions:

Board, § 5115

Person, § 18

Proper county, § 5169

Written, §§ 8, 5016

Persons entitled to call special meetings, § 5714

Time notice given, § 5014

§ 5726. Notice of adjourned meeting

5726. (a) Except as provided in subdivision (b), when a meeting of members is adjourned to another time or place, notice need not be given of the reconvened meeting if the time and place are announced at the meeting at which the adjournment is taken. At the reconvened meeting, the members may transact any business that might have been transacted at the original meeting.

(b) Notice shall be given of the reconvened meeting in both of the following cases:

- (1) Where the adjournment is for more than 45 days.
- (2) Where, after the adjournment, a new record date is fixed for the reconvened meeting.

Comment. Section 5726 is the same in substance as Section 601(d) (General Corporation Law). It continues provisions of former Section 2208, which were applicable to nonprofit corporations through former Section 9002, but extends the length of time for adjournment without notice from 30 to 45 days. It should be noted that the articles or bylaws may prescribe reasonable requirements for notice of adjourned meetings. See Section 5720(b).

CROSS-REFERENCES**Definitions:**

Member, § 5148

Record date, §§ 5640-5644

§ 5727. Validation of defectively noticed meeting

5727. (a) The transactions of a meeting of members, however called and noticed and wherever held, are as valid as though had at a meeting duly held after regular call and notice if all of the following conditions are satisfied:

- (1) A quorum is present.
- (2) Either before or after the meeting, written waivers of notice, consents to the holding of the meeting, or approvals of the minutes of the meeting are signed by persons entitled to vote on the business transacted at the meeting and not represented at the meeting who, if combined with the persons at the meeting who voted to

approve the transactions, would be sufficient to approve the transactions by written consent. Unless otherwise required by Section 5728, neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in a written waiver of notice, consent to the holding of the meeting, or approval of the minutes of the meeting.

(3) All waivers, consents, and approvals are made a part of the minutes of the meeting.

(b) Attendance of a person at a meeting constitutes representation at the meeting, and a waiver of notice of the meeting except in either of the following cases:

(1) The person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or held.

(2) The person expressly objects at the meeting to the consideration of matters required by this division to be but not included in the notice.

Comment. Section 5727 is the same in substance as Section 601(e) (General Corporation Law) except that the waivers, consents, or approvals need be signed only by a sufficient number of persons to satisfy the required vote when combined with those who voted to approve the transaction at the meeting. It supersedes provisions of former Sections 2209 and 2210, which were applicable to nonprofit corporations through former Section 9002. It should be noted that the articles or bylaws may prescribe reasonable requirements for validation of a defectively noticed meeting. See Section 5720(b).

CROSS-REFERENCES

Definitions:

Member, § 5148

Person, § 18

§ 5728. Notice required for approval of specific proposals

5728. Notwithstanding any provision of the articles or bylaws, an action approved by the members at a meeting of members, other than by unanimous vote of those entitled to vote, pursuant to any of the following provisions is valid only if the general nature of the action was stated in the notice of meeting or in a written waiver of notice:

Section 5423 (amendment of articles)

Subdivision (b) of Section 5444 (bylaw that adversely affects voting rights of members)

Section 5571 (transaction involving interested directors)

Section 5572 (transaction involving common directors)

Section 6111 (sale of assets)

Section 6221 (agreement of merger or consolidation)

Section 6321 (plan of division)

Section 6431 (plan of conversion)

Section 6520 (voluntary dissolution)

Comment. Section 5728 is comparable to Section 601(f) (General Corporation Law). It supersedes provisions of former Section 2201, which were applicable to nonprofit corporations through former Section 9002. Section 5720(b), permitting the articles or bylaws to prescribe reasonable notice requirements, does not permit waiver of the notice requirement of this section.

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109

Articles, § 5112

Bylaws, § 5121

Member, § 5148

CHAPTER 8. VOTING OF MEMBERSHIPS

CROSS-REFERENCES

Enforcement by Attorney General, § 5250

Holders of evidences of indebtedness, voting rights, § 5444

Transition provision, § 6619

Article 1. General Provisions

§ 5810. Voting rights

5810. Except to the extent otherwise provided in the articles or bylaws, every membership in a nonprofit corporation is entitled to one vote.

Comment. Section 5810 continues a portion of the first sentence of former Section 9601. For a comparable provision, see Section 700(a) (General Corporation Law). Although the established norm for nonprofit corporations is one vote per membership (see *Green Cables Home Owners Ass'n v. Sunlite Homes, Inc.*, 202 P.2d 143 (1949)), the articles or bylaws may provide different classes of membership with differing voting rights (see Section 5442; *Erickson v. Gospel Foundation*, 43 Cal.2d 581, 585, 275 P.2d 474, 476-477 (1954)). Absent a specification of the rules fixing the respective voting rights of each membership or class of membership, the voting rights of memberships are equal. See Section 5611.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Vote, § 5190

§ 5811. Manner of voting

5811. The manner of voting of memberships may be:

(a) At a meeting of members.

(b) By written consent pursuant to Article 4 (commencing with Section 5840).

(c) By any reasonable means (including, but not limited to, mail) provided in the articles or bylaws.

Comment. Subdivision (c) of Section 5811 continues the substance of the second sentence of former Section 9601. It makes clear that the articles or bylaws may provide any

reasonable means or combination of means of voting. Absent a provision in the articles or bylaws, the requirements of this chapter and Chapter 7 (members' meetings) control.

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121
 Mailing, § 5015
 Member, § 5148

§ 5812. Persons entitled to take member action

5812. Except as otherwise expressly provided in this division, an action required or permitted by this division to be taken by the members or a class shall be taken by the voting members or the voting members of the class and such additional persons as are specifically authorized by the articles or bylaws to take the action.

Comment. Section 5812 is new. Unless the articles or bylaws provide otherwise, all memberships of a nonprofit corporation are voting memberships. See Sections 5611(b) (rights of memberships equal) and 5810 (voting rights).

This division in some cases specifies persons who may take actions instead of or in addition to the voting members and persons specified in the bylaws. See, *e.g.*, Sections 5440 (adoption of bylaws), 5815 (when class vote required), 6215 (equal treatment of memberships of same class of constituent nonprofit corporation).

This section specifies the right to vote only for those actions required or permitted by this division to be taken by the members. The articles or bylaws may require approval by the members for an action not otherwise required by this division to be approved by the members. See Section 5816 (additional vote required by articles or bylaws).

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121
 Class, § 5125
 Member, § 5148
 Person, § 18
 Voting member, § 5193

§ 5813. Articles or bylaws may require greater vote

5813. The articles or bylaws may require a greater vote than is otherwise required by this division for an action required by this division to be approved by the members or approved by the members of a class.

Comment. Section 5813 continues and broadens the first sentence of the last paragraph of former Section 9400; see also the first sentence of former Section 9703. For a comparable provision, see Section 204(a)(5) (General Corporation Law), which requires the articles to state a greater class vote. This division as a general rule permits voting rights to be specified in the articles or bylaws. Where the articles or bylaws require a greater vote than is otherwise required by this division, the requirement of the articles or bylaws prevails. See Section 5814(c).

CROSS-REFERENCES**Definitions:**

Approved by the members, § 5109
Articles, § 5112
Bylaws, § 5121
Class, § 5125
Vote, § 5190

§ 5814. Vote required for member action

5814. (a) Subject to subdivision (c), if this division requires an action to be approved by the members, the action is approved by the members if:

(1) The approval is at a meeting of members duly held at which a quorum is present, and the votes represented at the meeting and entitled to be cast on the action are cast in a greater number for approval than for disapproval of the action.

(2) The approval is by written consent or by any reasonable means provided in the articles or bylaws, and the votes cast on the action are cast in a greater number for approval than for disapproval of the action, provided the number of votes cast (including abstentions) equals or exceeds the number required for a quorum of a meeting of members.

(b) Subject to subdivision (c), if this division requires an action to be approved by the members of a class, the action is approved by the members of the class if it is

approved by the members of the class holding a majority of the votes entitled to be cast on the action.

(c) If this division or the articles or bylaws require a greater vote than that prescribed in this section, an action required by this division to be approved by the members or approved by the members of a class shall be approved by such greater vote.

Comment. Section 5814 is new. It applies to adoption, amendment, or repeal of bylaws as well as to other corporate actions. For the requirements for approval by written consent, see Sections 5840–5845. For the requirements for a quorum at a meeting of members, see Section 5715. For the vote required absent a quorum, see Sections 5716–5717. For the requirements for election of directors, see Section 5520. The articles or bylaws may require approval by the members for an action not required by this division to be approved by the members. See Section 5816.

This division requires voting by class in certain circumstances. See, *e.g.*, Sections 5525 (removal of director elected by class), 5815 (class adversely affected by corporate action), 6215 (consent by class to unequal treatment). The articles or bylaws also may require approval by a class for an action not required by this division to be approved by the members of the class. See Section 5816.

The provisions listed below require the approval by a greater percentage of the vote than that prescribed in subdivision (a):

- § 5423 (amendment of articles)
- § 5424 (amendment of greater percentage provision in articles)
- § 5444 (amendment of greater percentage provision in bylaws)
- § 5525 (removal of directors)
- § 5543 (removal of provisional directors)
- § 5573 (approval of loans to directors)
- § 6111 (disposition of corporate assets)
- § 6221 (agreement of merger or consolidation)
- § 6321 (plan of division)
- § 6431 (plan of conversion)
- § 6520 (voluntary dissolution)
- § 6542 (purchase to avoid dissolution)

The articles or bylaws also may require a greater vote than that prescribed by subdivision (a) for an action required by this division to be approved by the members. See Section 5813.

CROSS-REFERENCES

Court determination of number of votes required, § 5882

Definitions:

Approved by the members, § 5109

Articles, § 5112

Bylaws, § 5121

Class, § 5125

Member, § 5148

Vote, § 5190

§ 5815. When class vote required

5815. (a) Notwithstanding any other provision of this division, an action required by this division to be approved by the members shall be both approved by the members and approved by the members of a class, whether or not the class is otherwise entitled to vote thereon, if the action would adversely affect voting or property rights of the class to a greater extent than other classes.

(b) This section does not apply to either of the following:

(1) An action that was authorized by the articles or bylaws upon creation of the class.

(2) An action that is taken pursuant to a provision of the articles or bylaws previously approved by the members of the class.

Comment. Section 5815 is new. For a comparable provision, see Section 903 (General Corporation Law). Section 5815 requires a class vote in cases where any action, including adoption, amendment, or repeal of bylaws, would adversely affect substantial property rights of members of a particular class to a greater extent than members of other classes. Such an action might have an adverse effect either directly through restrictions on the class rights or indirectly through an increase of rights of other classes or the creation of new memberships that will have the effect of diluting the rights of the class members.

It should be noted that class approval of adverse actions must be by vote of a majority of all the class votes entitled to be cast on the action. See Section 5814(b) (vote required for member action).

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109

Articles, § 5112
Bylaws, § 5121
Class, § 5125
Vote, § 5190

§ 5816. Additional vote required by articles or bylaws

5816. (a) The articles or bylaws may require:

(1) Approval of the members for an action not required by this division to be approved by the members.

(2) Approval of the members of a class for an action not required by this division to be approved by the members of the class.

(b) Except to the extent otherwise provided in the articles or bylaws, the provisions of this division that relate to an action required by this division to be approved by the members or approved by the members of a class apply to the approvals referred to in paragraphs (1) and (2) of subdivision (a).

Comment. Section 5816 is new. For a comparable provision, see paragraph (9) of Section 204(a) (General Corporation Law), which provide that only the articles may impose shareholder approval where not otherwise required. Subdivision (b) makes clear that the quorum, vote, and other requirements relating to actions for which this division requires approval also relate to actions for which the articles or bylaws require approval.

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109
Articles, § 5112
Bylaws, § 5121
Class, § 5125

§ 5817. Disqualified vote

5817. Notwithstanding any other provision of this division or the articles or bylaws, if a vote is disqualified by a provision of this division from being cast on an action, the vote shall not be considered for the determination of the presence of a quorum at a meeting to approve, or the vote required to approve, the action.

Comment. Section 5817 supersedes the last sentence of former Section 2211, applicable to nonprofit corporations through former Section 9002. For a comparable provision, see Section 112 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Vote, § 5190

Determining right to vote, §§ 5876, 5880-5883

Loan or guarantee for director or officer, § 5573

Suspension of voting rights until certificate surrendered, § 5625

Transactions involving common directors, § 5572

Transactions involving interested directors, § 5571

§ 5818. Action taken by policymaking committee

5818. (a) To the extent provided in the articles or bylaws, an action required or permitted by this division to be taken by the members may be taken by a policymaking committee.

(b) The policymaking committee represents and acts for the members on the matters stated in the articles or bylaws. Only members of the nonprofit corporation who are selected by the membership to represent the membership may serve on the policymaking committee.

(c) Except to the extent otherwise provided in the articles or bylaws, for the purposes of this division:

(1) The members of the policymaking committee are the voting members.

(2) An action taken by a member of the policymaking committee is the action of all the members of the nonprofit corporation whom the member of the policymaking committee represents.

(d) A bylaw creating or relating to the policymaking committee may be adopted, amended, or repealed only by approval of the members.

Comment. Section 5818 supersedes former Section 3632.5 (policymaking committee for adoption of articles "with or without authority to represent and act for the corporation members in other matters"). *Cf.* Section 12453 (district delegates in cooperative corporations). The bylaws may provide for a policymaking committee of members only if consistent with the articles. See Section 5441 (nonprofit corporation may adopt bylaws not in conflict with articles). The vote required of a

policymaking committee is the same as the vote required for member action generally as provided in Section 5814.

CROSS-REFERENCES

Class vote provisions, §§ 5814-5816

Definitions:

Approval of the members, § 5109
 Articles, § 5112
 Bylaws, § 5121
 Member, § 5148
 Voting members, § 5193

Article 2. Exercise of Voting Rights

§ 5820. Articles or bylaws may vary provisions of this article

5820. The provisions of this article apply to a nonprofit corporation except to the extent otherwise provided in the articles or bylaws.

Comment. Section 5820 makes clear that the provisions relating to exercise of voting rights apply only in the absence of contrary provisions in the articles or bylaws. See also Section 5444 (bylaws relating to voting rights).

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121

§ 5821. Membership held in representative capacity

5821. A membership held by an administrator, executor, guardian, conservator, custodian, or trustee may be voted by the holder without a transfer of the membership into the holder's name.

Comment. Section 5821 is comparable to Section 702(a) (General Corporation Law), but Section 702(a) requires a transfer into the trustee's name before the trustee may vote. A person entitled to vote the membership may vote by proxy. See Section 5830. Section 5821 supersedes former Sections 2218-2220, which were applicable to nonprofit corporations through former Section 9002. It should be noted that Section 5821 is subject to contrary provisions in the articles or bylaws. See Section 5820.

CROSS-REFERENCES

Definitions:

Vote, § 5190

§ 5822. Membership standing in name of pledgee

5822. Except as otherwise agreed in writing between the parties:

(a) A member whose membership is pledged may vote the membership until the membership has been transferred into the pledgee's name.

(b) After the membership has been transferred into the pledgee's name, the pledgee may vote the membership.

Comment. Section 5822 is the same in substance as Section 702(c) (General Corporation Law). It supersedes a portion of former Section 2218, which was applicable to nonprofit corporations through former Section 9002. It should be noted that Section 5822 is subject to contrary provisions in the articles or bylaws. See Section 5820.

CROSS-REFERENCES

Definitions:

Member, § 5148

Vote, § 5190

Written, § 8

§ 5823. Membership standing in name of minor

5823. (a) A membership standing in the name of a minor may be voted, and all other rights incident to the membership may be exercised, by the minor, whether or not the nonprofit corporation has notice, actual or constructive, of the member's minority unless a guardian of the minor's property has been appointed and written notice of the appointment given to the nonprofit corporation.

(b) A membership voted, or other right incident to membership exercised, by a minor is not subject to subsequent disaffirmance by reason of the member's minority.

Comment. Subdivision (a) of Section 5823 is the same in substance as Section 702(d) (General Corporation Law). A person entitled to vote the membership may vote by proxy. See

Section 5830. Subdivision (a) supersedes former Section 2221, which was applicable to nonprofit corporations through former Section 9002. Subdivision (b) is new. It should be noted that Section 5823 is subject to contrary provisions in the articles or bylaws. See Section 5820.

CROSS-REFERENCES

Definitions:

Member, § 5148

Vote, § 5190

Time notice given, § 5014

Written notice, § 5016

§ 5824. Membership held by corporation

5824. (a) A membership standing in the name of a business corporation or another nonprofit corporation, domestic or foreign, may be voted by:

(1) Such officer, agent, or proxyholder as the articles or bylaws of the business corporation or other nonprofit corporation may provide.

(2) In the absence of such provision, the chairman of the board, president, or any vice president of the business corporation or other nonprofit corporation, or any other person authorized to do so by the chairman of the board, president, or any vice president.

(b) A membership that is purported to be voted by a business corporation or nonprofit corporation, domestic or foreign, is presumed to have been voted in accordance with this section unless the contrary is shown.

Comment. Section 5824 is the same in substance as Section 703(a) (General Corporation Law) with the exception of the proxy provisions, which are continued in Section 5831 (execution of proxy). Subdivision (a) continues provisions of former Section 2222, which were applicable to nonprofit corporations through former Section 9002. Subdivision (b) is new. The articles or bylaws may provide differing voting requirements, such as designation of a voting representative. See Section 5820.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Business corporation, § 5118

Bylaws, § 5121

Person, § 18
Proxyholder, § 5175
Vote, § 5190

§ 5825. Membership standing in name of two or more persons or group

5825. (a) As used in this section, “group membership” means:

(1) A membership which stands in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, or tenants by the entirety.

(2) A membership which stands in the name of a partnership, association, family, or other group.

(3) A membership in which two or more persons (including proxyholders) have the same fiduciary relationship respecting the membership.

(b) A group membership shall be voted by the persons or members of the group in whose name the membership stands or by the persons who have the same fiduciary relationship respecting the membership, with the following effect:

(1) If only one person votes, the act binds all.

(2) If more than one person votes, the act of the majority binds all. If the vote is evenly split on a matter, each faction votes the membership proportionately. If the record of members or instrument or order shows that the membership is held in unequal interests, a majority or an even split for the purposes of this paragraph is a majority or an even split in interest.

(c) This section does not apply if the secretary of the nonprofit corporation is given written notice of some other voting arrangement and is furnished with a copy of the instrument or order appointing the persons or creating the relationship that provides the other voting arrangement.

Comment. Section 5825 is the same in substance as Section 704 (General Corporation Law), with the inclusion of families, partnerships, associations, and other groups. It continues provisions of former Section 2223 applicable to nonprofit

corporations through former Section 9002. The articles or bylaws may provide differing voting requirements, such as designation of a single voting representative or fractional voting. See Section 5820.

CROSS-REFERENCES

Definitions:

Person, § 18
 Proxyholder, § 5175
 Vote, § 5190

Record of members, § 5960

Time notice given, § 5014

Written notice, § 5016

Article 3. Proxies

CROSS-REFERENCES

Transition provision, § 6620

§ 5830. When proxy voting allowed

5830. Except to the extent otherwise provided in the articles or bylaws, a **person entitled to vote a membership** may authorize another **person to vote the membership** by proxy.

Comment. Section 5830 is the same in substance as the first sentence of Section 705(a) (General Corporation Law) except that the articles or bylaws may preclude voting by proxy. This continues a portion of the first sentence of former Section 9601. See also Section 5444 (bylaws relating to voting rights).

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121
 Person, § 18
 Proxy, § 5172
 Vote, § 5190

§ 5831. Execution of proxy

5831. (a) A proxy shall be executed by placing on the proxy, whether by manual signature, typewriting, telegraphic transmission, or otherwise the name of the person entitled to vote the membership.

(b) A proxy shall be executed by either of the following:

- (1) The person entitled to vote the membership.
- (2) The person's attorney in fact. The attorney in fact shall also place his or her own name on the proxy and indicate his or her status.
- (c) A proxy purporting to be executed in the manner provided in this section is presumptively valid.

Comment. Section 5831 is new to nonprofit corporation law. Subdivision (a) is comparable to the second sentence of Section 178 (General Corporation Law). Subdivision (b) makes clear that, where the attorney in fact places the name of the person giving the proxy on the proxy, the attorney in fact must also indicate his or her status as attorney in fact. Subdivision (c) is the same in substance as the second sentence of Section 705(a) (General Corporation Law). A proxy must be in writing. See Section 5172.

CROSS-REFERENCES

Definitions:

- Person, § 18
- Proxy, § 5172
- Signature, § 17
- Vote, § 5190

§ 5832. Form of proxy

5832. (a) This section applies to a form of proxy distributed to persons entitled to vote 10 or more memberships in a nonprofit corporation having 100 or more memberships.

(b) A form of proxy shall afford an opportunity to specify a choice among approval, disapproval, or abstention with respect to each proposal set forth therein, or in connection with which the proxy is solicited, other than election of directors. The proxy shall be voted in accordance with the choice specified, if any. A proxy marked "abstain" with respect to a particular proposal, or otherwise marked in a manner indicating a desire to abstain from voting on the proposal, shall not be voted for or against that proposal but shall be represented at a meeting of members for purposes of a quorum.

(c) In an election of directors, a proxy in which the nominees for election are set forth and which is marked "withhold," or otherwise marked in a manner indicating

that the authority to vote for a nominee is withheld, shall not be voted either for or against the election of that nominee, but shall be represented at a meeting of members for purposes of a quorum.

(d) Failure of the form of proxy to comply with this section does not invalidate any corporate action taken but may be the basis for challenging a proxy. The superior court of the proper county may compel compliance with this section in an action brought by a member.

(e) This section shall not apply to nor preclude the use of general proxies. As used in this section, a general proxy is one where specific proposals or directors to be voted upon as candidates are not set forth.

Comment. Section 5832 is comparable to a portion of Section 604 (General Corporation Law). It is new to nonprofit corporation law. For a comparable provision relating to written consents, see Section 5843 (form of written consent).

CROSS-REFERENCES

Definitions:

- Action, § 5103
- Directors, § 5133
- Member, § 5148
- Proper county, § 5169
- Proxy, § 5172
- Vote, § 5190

§ 5833. Duration of proxy

5833. (a) Except to the extent otherwise provided in the proxy, a proxy is not valid after the expiration of 11 months from the date of its execution.

(b) A proxy may provide its duration, but a proxy is not valid after the expiration of three years from the date of its execution unless the proxy is coupled with an interest.

Comment. Section 5833 supersedes a portion of former Section 2226, which was applicable to nonprofit corporations through former Section 9002. See *Braude v. Havenner*, 38 Cal. App.3d 526, 113 Cal. Rptr. 386 (1974). Section 5833 reduces the maximum duration of a proxy from seven to three years in recognition of the desirability of membership responsibility and control in nonprofit corporations. Compare Section 705(b) (General Corporation Law), which imposes no maximum duration.

CROSS-REFERENCES

Definitions:

Proxy, § 5172

Irrevocable proxies, § 5835

Transition provision, § 6620

§ 5834. Revocation of proxy

5834. (a) Except to the extent otherwise provided in this article, a proxy continues in full force and effect until revoked.

(b) A proxy may be revoked by any of the following means:

(1) A writing by the person who executed the proxy stating that the proxy is revoked.

(2) Execution of a subsequent proxy by the person who executed the proxy. The dates contained on the proxies presumptively determine their order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

(3) Voting in person by the person who executed the proxy.

(4) Receipt by the nonprofit corporation, before the vote is counted, of written notice of the death or incapacity of the person who executed the proxy.

(c) Revocation of a proxy does not invalidate a vote pursuant thereto prior to the revocation.

Comment. Subdivisions (a) and (b) of Section 5834 are comparable to the last portion of subdivision (b) and to subdivision (c) of Section 705(b) (General Corporation Law). It supersedes former Sections 2226–2228, which were applicable to nonprofit corporations through former Section 9002. See *Braude v. Havenner*, 38 Cal. App.3d 526, 113 Cal. Rptr. 386 (1974). Subdivision (c) is new. Section 5834 is subject to Sections 5833 (duration of proxy) and 5835 (irrevocable proxies).

CROSS-REFERENCES

Definitions:

Mailing, § 5015

Person, § 18

Proxy, § 5172

Vote, § 5190

Written notice, § 5016

§ 5835. Irrevocable proxies

5835. A proxy that states that it is irrevocable is irrevocable for the period specified in the proxy if it is coupled with an interest except that:

(a) The proxy may be revoked by a transferee of the membership without knowledge thereof unless the existence of the proxy and its irrevocability appear on the membership certificate, if any.

(b) The proxy becomes revocable when the interest with which it is coupled is discharged, terminated, or otherwise satisfied.

Comment. Section 5835 is comparable to Section 705(e) and (f) (General Corporation Law). Revocability of a proxy depends on the same principle as the revocability of agency generally—whether it is coupled with an interest.

CROSS-REFERENCES**Definitions:**

On the membership certificate, § 5160

Proxy, § 5172

§ 5836. When holder of record must give member proxy

5836. Except where other provision has been made by written agreement between the parties, if a membership is held of record by a person other than the member (whether as a pledgee, security holder, or otherwise), the holder of the membership shall issue to the member, upon demand therefor and payment of necessary expenses thereof, a proxy to vote thereon.

Comment. Section 5836 is comparable to Section 705(d) (General Corporation Law).

CROSS-REFERENCES**Definitions:**

Member, § 5148

Person, § 18

Proxy, § 5172

Vote, § 5190

Record of members, § 5960

Article 4. Consents

§ 5840. Application of article

5840. (a) This article applies except to the extent otherwise provided in the articles or bylaws.

(b) Notwithstanding subdivision (a), the articles or bylaws may not reduce:

(1) The number of persons from whom written consents are required by this article to be solicited.

(2) The number of written consents required by this article for approval of an action.

(c) Nothing in this article precludes a nonprofit corporation from adopting a manner of voting of members by any reasonable means (including, but not limited to, mail) provided in the articles or bylaws.

Comment. Section 5840 is new. Under subdivision (a), a nonprofit corporation may alter the provisions of this article and may preclude member action to be taken by written consent. The articles and bylaws may not, however, alter the provisions listed in subdivision (b). See also Sections 5841, 5842, 5844.

Subdivision (c), which makes clear that a nonprofit corporation may provide a reasonable means of voting by mail or otherwise, is consistent with Section 5811(c). Written consent may supply a substitute for the mail ballot in the absence of a provision in the articles or bylaws.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Mailing, § 5015

Person, § 18

§ 5841. Consent to action without a meeting and prior notice

5841. An action that may be taken at a meeting of members may be taken without a meeting and without prior notice if consents in writing, setting forth the action to be taken, are signed by persons holding the minimum number of votes required by Section 5814.

Comment. Section 5841 is comparable to a portion of Section 603(a) (General Corporation Law). It supersedes provisions of

former Section 2239, which applied to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Member, § 5148
Person, § 18
Vote, § 5190

§ 5842. Consents required to elect directors

5842. Notwithstanding Section 5520, a director may not be elected by written consent except by written consent of persons holding the minimum number of votes required by Section 5814.

Comment. Section 5842 is comparable to Section 603(d) (General Corporation Law) except that a majority rather than unanimous consent is required. This provision is new to nonprofit corporation law.

CROSS-REFERENCES

Definitions:

Director, § 5133
Person, § 18
Voting power, § 5196

§ 5843. Form of written consent

5843. (a) This section applies to a form of written consent distributed to persons entitled to vote 10 or more memberships in a nonprofit corporation having 100 or more memberships.

(b) A form of written consent shall afford an opportunity to specify as to each matter or group of related matters intended to be acted upon by written consent, a choice among approval, disapproval, or abstention.

(c) In an election of directors, a form of written consent in which the nominees for election are set forth and which is marked "withhold," or otherwise marked in a manner indicating that the consent for a nominee is withheld, shall not be counted either for or against the election of that nominee.

(d) Failure of the form of written consent to comply with this section does not invalidate any corporate action

taken but may be the basis for challenging a written consent. The superior court of the proper county may compel compliance with this section in an action brought by a member.

Comment. Section 5843 is comparable to a portion of Section 604 (General Corporation Law). It is new to nonprofit corporation law. For a comparable provision relating to proxies, see Section 5832 (form of proxy). Where a written consent is marked "abstain" or "withhold," it is treated in the same manner as a proxy similarly marked. See, *e.g.*, Section 5814(a)(2) (abstentions counted in determining whether number of votes cast exceed a quorum).

CROSS-REFERENCES

Definitions:

Action, § 5103

Director, § 5133

Member, § 5148

Proper county, § 5169

Persons entitled to take member action, § 5812

§ 5844. Persons from whom consents must be solicited

5844. No action may be taken by written consent unless consent of all persons entitled to vote on the action has been solicited in writing.

Comment. Section 5844 continues the rule of former Section 2239, applicable to nonprofit corporations through former Section 9002, that required solicitation of consents from all persons entitled to vote. Contrast Section 603(a) (General Corporation Law) (no requirement imposed). Nonprofit corporations differ from business corporations in this respect, in that normally large blocs of votes are not controlled by a few individuals.

CROSS-REFERENCES

Definitions:

Person, § 18

Vote, § 5190

Written, §§ 8, 5016

§ 5845. Revocation of consent

5845. (a) A written consent may be revoked by any of the following persons:

- (1) The person giving the consent.

(2) Such person's transferee or personal representative.

(3) The proxyholder of such person, transferee, or personal representative.

(b) The revocation shall be in writing and is effective upon its receipt by the secretary of the nonprofit corporation.

(c) A revocation may be made prior to the time that written consents of the number of persons required to authorize the proposed action have been received by the secretary of the nonprofit corporation but not thereafter.

Comment. Section 5845 is the same in substance as Section 603(c) (General Corporation Law). It continues provisions of former Section 2217 that were applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Person, § 18
 Proxyholder, § 5175
 Written, §§ 8, 5016

Article 5. Voting Agreements

CROSS-REFERENCES

Transition provision, § 6621

§ 5850. Application of article

5850. This article applies except to the extent otherwise provided in the articles or bylaws.

Comment. Section 5850 is new. Unlike the comparable provisions of the General Corporation Law, this article applies only in the absence of provisions in the articles or bylaws to the contrary. See also Section 5857.

CROSS-REFERENCES

Definitions:

Articles, § 5112
 Bylaws, § 5121

§ 5851. Voting agreements authorized

5851. Two or more persons entitled to vote memberships in a nonprofit corporation that has not

more than 10 memberships may agree that the memberships shall be voted as provided in the agreement or as determined by a procedure provided in the agreement or to be agreed upon by the parties. The agreement shall be in writing and signed by the parties thereto.

Comment. Section 5851 is the same in substance as a portion of the first sentence of Section 706(a) (General Corporation Law). Section 5851 is subject to contrary provisions in the articles or bylaws. See Sections 5850, 5857.

CROSS-REFERENCES

Definitions:

Person, § 18

Vote, § 5190

§ 5852. Duration of voting agreements

5852. (a) The agreement may be made for a period not exceeding 10 years.

(b) The fact that by its terms the agreement lasts beyond a 10-year period does not affect the validity of the agreement during a period of 10 years from the date it was made.

Comment. Section 5852 is comparable to the first portion of Section 706(b) (General Corporation Law), which relates to voting trusts. Section 5852 is subject to contrary provisions in the articles or bylaws. See Sections 5850, 5857.

§ 5853. Extension of duration of voting agreements

5853. The parties to the agreement may by written agreement extend the duration of the agreement for an additional period not exceeding 10 years from the expiration date of the agreement as originally made or as last extended. The extension of an agreement may be made at any time within two years prior to the expiration of the agreement as originally made or as last extended.

Comment. Section 5853 is comparable to the middle portion of Section 706(b) (General Corporation Law), which relates to voting trusts. Section 5853 is subject to contrary provisions in the articles or bylaws. See Sections 5850, 5857.

§ 5854. Transfer of membership pursuant to voting agreement

5854. If the articles or bylaws permit transfer of memberships, the parties to the agreement may transfer the memberships under the agreement to a third party with authority to vote the memberships in accordance with the terms of the agreement.

Comment. Section 5854 is the same in substance as a portion of the first sentence of Section 706(a) (General Corporation Law). Section 5854 is subject to contrary provisions in the articles or bylaws. See Sections 5850, 5857.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Vote, § 5190

§ 5855. Filing duplicate with nonprofit corporation; right to inspect

5855. The agreement is enforceable only if a duplicate of the agreement and any extension thereof is filed with the secretary of the nonprofit corporation. The duplicate so filed is open to inspection upon the same terms as the record of members of the nonprofit corporation by a member, or by a party to the agreement, or by an agent of either.

Comment. Section 5855 is the same in substance as the last sentence of Section 706(b) (General Corporation Law). Section 5855 is subject to contrary provisions in the articles or bylaws. See Sections 5850, 5857.

CROSS-REFERENCES

Definitions:

Member, § 5148

Inspection of record of members, §§ 5962-5966

§ 5856. Enforcement of voting agreements

5856. The agreement shall not be denied specific performance by a court on the ground that the remedy at law is adequate.

Comment. Section 5856 is the same in substance as a portion of the second sentence of Section 706(a) (General Corporation Law).

CROSS-REFERENCES

Validity and construction of voting agreement, judicial determination, § 5876

§ 5857. Articles or bylaws may authorize other voting agreements

5857. Nothing in this article precludes a nonprofit corporation from providing in its articles or bylaws for a voting trust or other vote pooling agreement on such terms and conditions as it deems appropriate.

Comment. Section 5857 makes clear that the provisions of this article are not intended as the exclusive means by which votes in nonprofit corporations may be pooled, nor are they intended to limit the provisions of the bylaws of a nonprofit corporation that provide for a voting trust or other vote pooling agreement.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Vote, § 5190

Permitted contents of bylaws, § 5441

Article 6. Inspectors of Election

Comment. Article 6 (commencing with Section 5860) is comparable to Section 707 (General Corporation Law). It continues provisions of former Sections 2232 and 2233, which were applicable to nonprofit corporations through former Section 9002.

§ 5860. Appointment of inspector

5860. (a) In advance of a meeting or other election or vote of members, the board may appoint an inspector of election to act at the meeting and any reconvened session after adjournment thereof or other election or vote.

(b) If an inspector of election is not appointed pursuant to subdivision (a) or if a person appointed as inspector of election fails to appear or refuses to act, the chairman of

a meeting of members or in case of an election or vote other than at a meeting of members the chief executive officer may, and on the request of a person entitled to vote at the meeting or other election or vote shall, appoint an inspector of election at the meeting or other election or vote.

Comment. See Comment to this article.

CROSS-REFERENCES

Definitions:

Board, § 5115

Chief executive officer, § 5123

Member, § 5148

Person, § 18

Vote, § 5190

§ 5861. Number of inspectors

5861. The number of inspectors of election shall be either one or three. If appointed at a meeting on request of a person entitled to vote at the meeting, whether the number of inspectors of election is one or three shall be determined by approval of the members. If appointed on request of a person entitled to vote at an election or vote other than at a meeting, the number of inspectors shall be either one or three as specified in the request or, if the request makes no specification, as determined by the chief executive officer.

Comment. See Comment to this article.

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109

Chief executive officer, § 5123

Person, § 18

Vote, § 5190

§ 5862. Authority of inspector

5862. The inspector of election shall:

(a) Determine the memberships represented at the meeting or other election or vote.

(b) Determine the number of votes to which each membership is entitled and the number of votes entitled to be cast.

(c) Determine the existence of a quorum.

(d) Determine the authenticity, validity, and effect of proxies.

(e) Receive votes or ballots.

(f) Hear and determine all challenges and questions in any way arising in connection with the right to vote.

(g) Count and tabulate all votes.

(h) Determine when the voting shall be closed.

(i) Determine the result of the vote.

(j) Do such other acts as may be proper to conduct the election or vote with fairness to all members.

Comment. See Comment to this article.

CROSS-REFERENCES

Definitions:

Member, § 5148

Proxy, § 5172

Vote, § 5190

§ 5863. Duty of care of inspector

5863. The inspector of election shall perform the duties of an inspector impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical.

Comment. See Comment to this article.

§ 5864. Majority effective where three inspectors

5864. If there are three inspectors of election, the decision, act, or certificate of a majority is effective in all respects as the decision, act, or certificate of all.

Comment. See Comment to this article.

§ 5865. Evidentiary effect of report or certificate of inspector

5865. (a) On request of (1) the chairman of the meeting, or (2) in the case of an election or vote other than at a meeting of members, the chief executive officer, or (3) a person entitled to vote at the meeting or other election or vote, the inspector of election shall make a report in writing of any challenge, question, or matter determined and execute a certificate of any fact found.

(b) A report or certificate made by the inspector of election is prima facie evidence of the facts stated therein.

Comment. See Comment to this article.

CROSS-REFERENCES

Definitions:

Chief executive officer, § 5123

Member, § 5148

Person, § 18

Vote, § 5190

Article 7. Contested Elections or Appointments

Comment. Article 7 (commencing with Section 5870) is comparable to Section 709 (General Corporation Law). It continues provisions of former Sections 2236-2238 applicable to nonprofit corporations through former Section 9002. See *Braude v. Havenner*, 38 Cal. App.3d 526, 113 Cal. Rptr. 386 (1974).

Except as otherwise specifically provided, an action brought pursuant to this article is governed by the rules of practice applicable to civil actions generally. See Section 5260; see also *Columbia Engineering Co. v. Joiner*, 231 Cal. App.2d 837, 42 Cal. Rptr. 241 (1965).

§ 5870. Action to determine validity of election or appointment

5870. (a) The validity of an election or other selection of a director of a domestic nonprofit corporation, or of a foreign nonprofit corporation if the election was held or other selection was made in this state, may be tried and determined in the manner provided in this article.

(b) For the purposes of this article, an election is held at the place where votes are received.

Comment. Section 5870 is new.

CROSS-REFERENCES

Definitions:

Director, § 5133

Vote, § 5190

§ 5871. Persons authorized to bring action

5871. The action under this article may be brought by either of the following persons:

(a) A voting member.

(b) A person who claims to have been denied the right to vote.

Comment. Section 5871 is comparable to the first portion of Section 709(a) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Action, § 5103

Person, § 18

Vote, § 5190

Voting member, § 5193

§ 5872. Jurisdiction and venue

5872. (a) Except as provided in subdivision (b), the action shall be brought in the superior court of the proper county.

(b) In the case of a foreign nonprofit corporation, the action may be brought at the option of the plaintiff in the superior court of the county (1) in which the foreign nonprofit corporation has its principal office in this state or (2) in which the election was held or other selection was made.

Comment. Section 5872 is comparable to portions of Section 709(a) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Action, § 5103

Proper county, § 5169

Place where election is held, § 5870(b)

§ 5873. Fixing date for hearing

5873. (a) If an action under this article is brought, before any further proceedings in the action, the court shall enter an order that fixes a date for the hearing.

(b) An action under this article takes precedence over all other civil actions in the matter of setting for hearing in order that the action shall be quickly heard and determined.

Comment. Section 5873 is comparable to a portion of Section 709(b) except that the provision for a five-day hearing is deleted as unrealistic and a preference for setting substituted. Where there is a need for speed, injunctive relief may be available. See Section 5260 (rules of practice in this division).

CROSS-REFERENCES

Definitions:

Action, § 5103

§ 5874. Notice of hearing

5874. (a) The plaintiff shall serve notice of the date for the hearing and a copy of the complaint upon all of the following:

(1) The nonprofit corporation.

(2) The person whose purported election or other selection is questioned.

(3) The person (other than the plaintiff), if any, whom the plaintiff alleges to have been elected or otherwise selected.

(b) Service shall be in the manner in which a summons is required to be served or, if the court so directs, by certified mail.

(c) The court may make such further requirements as to notice as appear to be proper under the circumstances of the case.

Comment. Section 5874 is comparable to portions of Section 709(b) (General Corporation Law).

§ 5875. Standards for determining validity

5875. (a) In an action under this article, the court shall base its determinations upon the applicable law and articles or bylaws and whether the procedure that was used for the election or other selection was fair, equitable, and reasonable in the circumstances of the case.

(b) In an action under this article, the procedure that was used for the election or other selection is presumed to be fair, equitable, and reasonable if it was in compliance with the applicable law and articles or bylaws. This presumption is a presumption affecting the burden of proof.

Comment. Section 5875 codifies the rule that the scope of inquiry of the court is not limited to technical and procedural questions and that the fairness, equity, and reasonableness of the procedure used in the election or in making the selection or appointment of the director may be reviewed. See, *e.g.*, *Braude*

v. Havenner, 38 Cal. App.3d 526, 530, 113 Cal. Rptr. 386, 388 (1974).

CROSS-REFERENCES

Definitions:

Action, § 5103
 Articles, § 5112
 Bylaws, § 5121

Presumption affecting burden of proof, effect of, Evid. Code § 606

Reasonable nomination and election procedures required, § 5521

§ 5876. Remedies

5876. The court may, where appropriate, grant the following relief:

(a) Determine the person entitled to the office of director.

(b) Order a new election to be held or other selection to be made.

(c) Determine the validity, effectiveness, and construction of voting agreements.

(d) Determine the validity of the issuance of memberships and the right of persons to vote.

(e) Direct such other relief as may be just and proper.

Comment. Section 5876 is comparable to Section 709(c) (General Corporation Law). In an action under this article, the court should consider all factors bearing on the validity of the questioned election and give effective direction to the relief required. See *Braude v. Havenner*, 38 Cal. App.3d 526, 530, 113 Cal. Rptr. 386, 388 (1974). A court that has entered judgment pursuant to this article may reserve continuing jurisdiction to oversee the implementing election procedures. *Cf.* 1 B. Witkin, *California Procedure*, Jurisdiction § 286, at 827 (2d ed. 1970).

CROSS-REFERENCES

Definitions:

Director, § 5133
 Person, § 18
 Vote, § 5190

Article 8. Court Determination of Persons Entitled to Vote

Comment. Article 8 (commencing with Section 5880) has no predecessor in nonprofit corporation law or equivalent in the

General Corporation Law. It is intended to enable a nonprofit corporation to take action requiring the approval of members where the corporation would be otherwise unable to act because of inadequate records of members or other causes making it impossible to muster sufficient known members for a quorum or a vote. The authority of the court under this article is strictly limited to the situation prescribed and the powers granted.

§ 5880. Conditions for court determination

5880. This article applies if both of the following conditions are satisfied:

(a) An action required to be approved by the members of a nonprofit corporation, or other member action, should be taken in the interest of the nonprofit corporation, the members, or the public.

(b) The action cannot be taken because the identities or whereabouts of one or more persons entitled to vote on the action are unknown.

Comment. See Comment to this article.

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109

Member, § 5148

Person, § 18

Directors, court determination or appointment of, § 6554

§ 5881. Venue; notice of action

5881. (a) An action under this article may be brought in the superior court of the proper county by a director, a member, or the Attorney General.

(b) Notice of the action and an opportunity to be heard shall be given to the nonprofit corporation. Such other notice, if any, as the court determines is appropriate under the circumstances of the case shall also be given.

Comment. See Comment to this article.

CROSS-REFERENCES

Definitions:

Action, § 5103

Director, § 5133

Member, § 5148

Proper county, § 5169

§ 5882. Court determinations authorized

5882. (a) Notwithstanding any other provision of this division or the articles or bylaws, the court may, upon a determination that the conditions of Section 5880 are satisfied and solely for the purposes of an action described in Section 5880, determine the following:

(1) The persons entitled to vote on the action whose identities and whereabouts are known.

(2) The number of persons required to constitute a quorum at a meeting of members.

(3) The minimum number of votes required for the action to be approved by the members.

(4) The number of persons required to commence an action for involuntary dissolution of the nonprofit corporation.

(b) In making the determinations authorized by this section, the court shall take into account the number of known persons entitled to vote on the action and shall apply to the extent reasonably practical any applicable provisions of the articles or bylaws.

Comment. See Comment to this article.

CROSS-REFERENCES**Definitions:**

Approved by the members, § 5109

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Person, § 18

Vote, § 5190

§ 5883. Rights of persons entitled to vote not affected

5883. (a) Nothing in this article otherwise affects the rights or interests of any person entitled to vote on the action, whether or not the person's identity or whereabouts is known, including but not limited to any right to receive notice of a meeting of members, to vote, or to share in the assets of the nonprofit corporation on dissolution.

(b) If a person in addition to the known persons entitled to vote on the action attempts to vote on the action and establishes the right to vote to the satisfaction

of the nonprofit corporation, the person shall be added to the number of known persons entitled to vote for the purposes of any determinations made under Section 5882.

(c) The court may retain jurisdiction to resolve any disputes concerning the persons entitled to vote on the action.

Comment. See Comment to this article.

CROSS-REFERENCES

Definitions:

Member, § 5148

Person, § 18

Vote, § 5190

CHAPTER 9. RECORDS, REPORTS, AND INSPECTION RIGHTS

CROSS-REFERENCES

Enforcement by Attorney General, § 5250

Article 1. General Provisions

§ 5910. “Authorized member” defined

5910. As used in this chapter, “authorized member” means a person having the written authorization of persons holding not less than five percent of the voting power or such lesser number as is specified in the articles or bylaws.

Comment. Section 5910 adopts the five-percent requirement of Sections 1501(c) (financial statements) and 1600 (rights of inspection) (General Corporation Law) but permits a lesser percentage or number to be specified in the articles or bylaws.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Person, § 18

Voting power, § 5196

Written, §§ 8, 5016

Written authorizations, filing with corporation, § 5914

§ 5911. Form in which records to be kept; making available in written form

5911. (a) Except as otherwise provided in this section, the books and records required by this chapter shall be kept either in written form or in a form capable of being converted into written form.

(b) The minutes shall be kept in written form.

(c) If a record subject to inspection under this chapter is not maintained in written form, a request for inspection is not complied with until the nonprofit corporation at its own expense makes the record available in written form.

Comment. Subdivisions (a) and (b) of Section 5911 are the same in substance as the last two sentences of Section 1500

(General Corporation Law). These subdivisions supersede the requirement of former Section 9606 that every nonprofit corporation keep a "membership book." Nothing in subdivision (a) prevents a nonprofit corporation from continuing to keep its record of members in a membership book. However, under subdivision (a), the membership record also may be kept in any other written form or in any other form capable of being converted into written form. Whatever the form of the membership record, the record must be sufficient to determine the information required by Section 5960 as of any relevant record date. See Section 5640 (record date).

Subdivision (c) is the same in substance as Section 1605 (General Corporation Law).

CROSS-REFERENCES

Annual report, filing in records and entry in minutes, §§ 5921, 5923

Definitions:

Written, § 8

English language, records to be kept in, § 8

Foreign corporation, § 5918

Inspection

Annual report, § 5930

Articles, §§ 5976-5977

Bylaws, §§ 5976-5977

Director's right of, § 5915

Financial records, § 5971

Financial statements, §§ 5950-5954

Membership record, §§ 5962-5966

Minutes, § 5971

Voting agreement, § 5855

Required books and records

Articles, § 5975

Bylaws, § 5975

Financial records, § 5970

Membership record, § 5960

Minutes, § 5970

§ 5912. Inspection by agent or attorney

5912. Inspection under this chapter may be made in person or by agent or attorney.

Comment. The rule stated in Section 5912 is the same as that stated in Sections 1600, 1601, and 1602 (General Corporation Law). It continues portions of former Sections 3003 and 3004, applicable to nonprofit corporations through former Section 9002.

§ 5913. Right to copy and make extracts

5913. The right of inspection under this chapter includes the right to copy and make extracts.

Comment. The rule stated in Section 5913 is the same as that stated in Sections 1600, 1601, and 1602 (General Corporation Law). It continues portions of former Sections 3003 and 3004, applicable to nonprofit corporations through former Section 9002.

§ 5914. Filing written authorizations with nonprofit corporation

5914. An authorized member who makes a request or demand pursuant to this chapter shall provide the nonprofit corporation, at the time of the request or demand, the written authorizations referred to in Section 5910 or copies thereof.

Comment. Section 5914 provides a method whereby the nonprofit corporation can determine whether a person making a request or demand under this chapter is an authorized member as defined in Section 5910. No comparable provision is found in the General Corporation Law.

§ 5915. Director's right of inspection

5915. Every director has the absolute right at any reasonable time to inspect all books, records, and documents of every kind and to inspect the physical properties of the nonprofit corporation. This right of inspection extends to the books, records, documents, and physical properties of a subsidiary of the nonprofit corporation.

Comment. Section 5915 is the same in substance as the first sentence of Section 1602 (General Corporation Law). It continues portions of former Sections 3001 and 3004, applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Director, § 5133

Subsidiary, § 5184

Foreign corporation, § 5918

Inspection by agent or attorney, § 5912

Right to copy, § 5913

§ 5916. Time of inspection where no regular business hours

5916. If a nonprofit corporation does not maintain a place where regular business hours are kept, books and records shall be made available for inspection under this chapter at a reasonable time and place convenient to the person requesting the inspection.

Comment. Section 5916 deals with the situation where the nonprofit corporation is one that does not have an office where regular business hours are kept. For example, the required books and records of a small nonprofit corporation may be maintained at an "office" which is the home of the secretary-treasurer of the nonprofit corporation. No comparable provision is found in the General Corporation Law.

CROSS-REFERENCES

Definitions:

Person, § 18

Inspection by agent or attorney, § 5912

Right to copy, § 5913

§ 5917. Making records available at regular meetings

5917. Notwithstanding any other provision of this chapter, a nonprofit corporation satisfies the requirements of inspection under this chapter with respect to particular books and records if the nonprofit corporation holds at least 11 regular meetings annually and adopts and complies with a provision of the articles or bylaws that requires that such books and records be made available for inspection by the members at each regular meeting and for a reasonable time before or after each regular meeting.

Comment. Section 5917 is designed to provide, for example, a nonprofit corporation that does not maintain an office with regular business hours with a simple, optional means of satisfying the right of inspection provisions of this division. The section would be most useful to a small nonprofit corporation whose required books and records are kept and maintained at the home of one of its officers who brings the books and records to each meeting for examination by the members. No comparable provision is found in the General Corporation Law.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Inspection by agent or attorney, § 5912

Right to copy, § 5913

§ 5918. Application to foreign corporations

5918. The application of the provisions of this chapter relating to rights of inspection extends to a foreign nonprofit corporation having its principal executive office in this state and to any other foreign nonprofit corporation with respect to books and records actually or customarily located in this state and, in the case of an inspection under Section 5915, with respect to such other documents and properties as are actually or customarily located in this state.

Comment. Section 5918 is based on the last sentence of subdivision (d) of Section 1600 (General Corporation Law), a portion of subdivision (a) of Section 1601 (General Corporation Law), and the third sentence of Section 1602 (General Corporation Law). It continues portions of former Sections 3003 and 3004, applicable to nonprofit corporations through former Section 9002. Section 5918 does not extend, as do some provisions of the General Corporation Law, to a foreign corporation customarily holding meetings of its board in this state. On the other hand, Section 5918 applies with respect to all books, records, documents, and properties actually or customarily located in this state whereas some of the provisions of the General Corporation Law are not made applicable on this basis. Where the foreign nonprofit corporation has its principal executive office in this state, it should be noted that the right of inspection is not limited to books and records in this state.

CROSS-REFERENCES

Definitions:

Principal executive office, § 5166

Article 2. Annual Report

§ 5920. Annual report required unless articles or bylaws otherwise provide

5920. This article applies except to the extent otherwise provided in the articles or bylaws.

Comment. Section 5920 makes the provisions of this article applicable to nonprofit corporations except to the extent the articles or bylaws contain inconsistent provisions. Thus, for example, the articles or bylaws may dispense entirely with the requirement of an annual report or may provide for an annual report that contains different or more or less information than is required by this article. Likewise, the articles or bylaws may require that a copy of the annual report be mailed to each member rather than presented at the annual meeting of members as required by this article.

CROSS-REFERENCES

Bylaws, provisions concerning annual report, § 5443

Definitions:

Articles, § 5112

Bylaws, § 5121

Enforcement by Attorney General, § 5250

Failure to provide financial information in annual report, penalty, §§ 5992-5993

False report, criminal penalty, §§ 2254, 5227

False report, damages, § 5991

Judicial enforcement, §§ 5980, 5984

§ 5921. Presentation of annual report; filing in records; entry in minutes

5921. The board shall prepare and present at the annual meeting of members an oral or written annual report as provided in this article. The annual report, if written, shall be made a part of the records of the nonprofit corporation. Either a copy or a summary of the annual report shall be made a part of the minutes of the annual meeting of members.

Comment. Section 5921 requires an annual report unless this requirement is waived in the articles or bylaws. See Section 5920. Section 5921 is comparable to the first sentence of subdivision (a) of Section 1501 (General Corporation Law) except that the provision of the General Corporation Law authorizing waiver of

the annual report requirement for business corporations is limited to a corporation with less than 100 holders of record of its shares. Any nonprofit corporation, regardless of how many members it has, may waive the requirement of an annual report by an appropriate provision in its articles or bylaws.

Former Section 9402 provided that the bylaws of a nonprofit corporation might make provision for annual reports and financial statements to members, but this was not a mandatory requirement. As to charitable corporations, see the Comment to Section 5924.

Section 5921 requires (1) that the annual report be presented at the annual meeting of members and, if written, be filed with the records of the nonprofit corporation and (2) whether or not written, that either a copy or summary thereof be entered in the minutes. These requirements are drawn from Section 519 of the New York Not-for-Profit Corporation Law except that the New York provision requires a written annual report whereas Section 5921 permits an oral annual report in lieu thereof. The requirement of Section 1501 that a copy of the annual report of a business corporation be sent to each shareholder is not carried over into the nonprofit corporation law in order to avoid the expense of duplicating and mailing copies of the annual report to all the members of the nonprofit corporation. However, nothing in this article prevents the nonprofit corporation from sending each member a copy of its annual report. Unless the articles or bylaws otherwise provide, if the nonprofit corporation prepares and presents a written annual report at the annual meeting of members, the nonprofit corporation is required by Section 5930(b) either to send a copy to a member upon written request or to permit the member to examine a copy of the annual report. See also Section 5980 (judicial enforcement of duty to make annual report). In addition, even if the articles or bylaws dispense with the requirements of this article, Sections 5950-5954 provide a procedure whereby an "authorized member" may obtain comparable information.

CROSS-REFERENCES

Annual meeting, § 5711

Bylaws, provisions concerning annual reports, § 5443

Definitions:

Board, § 5115

Member, § 5148

Written, § 8

Enforcement by Attorney General, § 5250

Failure to provide financial information, penalty, §§ 5992-5993

False report, criminal penalty, §§ 2254, 5227

False report, damages, § 5991

Judicial enforcement, §§ 5980, 5984

Minutes, § 5970

Nonprofit corporation without members, § 5923

§ 5922. Contents of annual report

5922. (a) The information required by this section shall be for a fiscal year ending not more than 12 months prior to the date of the annual meeting.

(b) The annual report shall show all of the following:

(1) The assets (including any held in trust) and liabilities of the nonprofit corporation as of the end of the fiscal year.

(2) The major changes in assets (including any held in trust) and liabilities during the fiscal year.

(3) The revenue or receipts of the nonprofit corporation, both unrestricted and restricted to particular purposes, during the fiscal year.

(4) The expenses or disbursements of the nonprofit corporation, for both general and restricted purposes, during the fiscal year.

(c) The statements required by subdivision (b) shall be accompanied by a report thereon of an independent accountant or, if there is no such report, the certificate of the chief financial officer, or other officer authorized by the nonprofit corporation, that such statements were prepared without audit from the books and records of the nonprofit corporation.

(d) In addition to the financial information required by subdivision (b), the annual report shall also include the information required by Section 5940.

Comment. Section 5922 applies unless the bylaws otherwise provide. See Section 5920. Section 5922 adopts the substance of portions of Section 519 of the New York Not-for-Profit Corporation Law. See also 15 Pa. Cons. Stat. Ann. § 7555 (Purdon Cum. Supp. 1976-1977). Subdivision (c), which is not found in the New York law, is the same in substance as a portion of subdivision (a) of Section 1501 (General Corporation Law). The

initial annual report may be for a fiscal year of less than 12 months, but the annual reports thereafter would be for a 12-month fiscal year. Subdivision (d) refers to information concerning certain transactions in which a director, officer, or major membership holder has a material interest and certain indemnifications and advances.

CROSS-REFERENCES

Annual meeting, date of, § 5711

Bylaws, provisions concerning annual reports, § 5443

Definitions:

Independent accountant, § 5145

Enforcement by Attorney General, § 5250

Failure to provide financial information, penalty, §§ 5992-5993

False report, criminal penalty, §§ 2254, 5227

False report, damages, § 5991

Financial statement and accounting items, fair representation, § 5013

Judicial enforcement, §§ 5980, 5984

§ 5923. Corporation having no members

5923. The board of a nonprofit corporation having no members (other than members who are also directors) shall direct the chief executive officer and chief financial officer to present annually at a time specified by the board a report in accordance with this article. This report shall be made a part of the minutes of the meeting of the board at which it is presented.

Comment. Section 5923 is the same in substance as subdivision (c) of Section 519 of the New York Not-for-Profit Corporation Law. See also 15 Pa. Cons. Stat. Ann. § 7555(c) (Purdon Cum. Supp. 1976-1977). The section applies unless the articles or bylaws otherwise provide. See Section 5920.

CROSS-REFERENCES

Bylaws, provisions concerning annual reports, § 5443

Definitions:

Board, § 5115

Chief executive officer, § 5123

Director, § 5133

Member, § 5148

Enforcement by Attorney General, § 5250

Judicial enforcement, §§ 5980, 5984

§ 5924. Reports to Attorney General not affected

5924. Nothing in this article relieves a nonprofit corporation from the requirements of Section 12586 of the Government Code. If the report sent to the Attorney General in compliance with the requirements of Section 12586 of the Government Code includes the information required by this article, that report shall be deemed to satisfy the requirements of this article if a copy of the report sent to the Attorney General is made a part of the minutes of the annual meeting.

Comment. Section 5924 makes clear the relationship of the requirements of this article and the requirement imposed by Government Code Section 12586 that reports be made to the Attorney General by charitable corporations and those which hold property in trust or accept property to be used for a charitable purpose. Nothing in this article relieves such a corporation from complying with the requirement imposed by Government Code Section 12586 that the corporation make the reports required by the Attorney General. However, if the report made by such a corporation to the Attorney General includes the information required by this article, a separate report need not be prepared in order to comply with the requirements of this article.

CROSS-REFERENCES

Attorney General, enforcement of provisions of this article, § 5250

Article 3. Inspection of Annual Report**§ 5930. Right to inspect or obtain copy of annual report**

5930. If a written annual report was presented at the immediately preceding annual meeting of members in compliance with Article 2 (commencing with Section 5920) or prepared pursuant to the articles or bylaws, the nonprofit corporation shall:

(a) Upon written request of an authorized member, deliver a copy of the annual report to the authorized member within 10 days after the nonprofit corporation receives the request.

(b) Upon written request of a member, at the option of the nonprofit corporation, either make a copy of the

annual report reasonably available for inspection by the member or deliver a copy of the annual report to the member.

Comment. Subdivision (a) of Section 5930 gives an authorized member (defined in Section 5910) an absolute right to obtain a copy of the annual report if a written annual report, was presented at the immediately preceding annual meeting in compliance with Article 2 of this chapter or the articles or bylaws. Subdivision (a) does not apply if an oral annual report was presented at the annual meeting (as permitted by Section 5921) or if the nonprofit corporation failed to comply with Article 2. Where subdivision (a) does not apply, the authorized member can obtain comparable information pursuant to Sections 5950–5954.

Subdivision (b) provides a means whereby any member may examine a copy of the annual report. It permits the nonprofit corporation, at its option, to mail or otherwise deliver a copy of the annual report to the member instead of permitting the examination.

CROSS-REFERENCES

Agent or attorney, inspection by, § 5912

Bylaws, provisions concerning annual reports, § 5443

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Written, § 8

Director's right to inspect, § 5915

Enforcement by Attorney General, § 5250

Foreign corporation, § 5918

Inspection where no regular business hours, § 5916

Judicial enforcement, §§ 5980–5984

Optional procedure, inspection at meetings, § 5917

Right to copy, § 5913

Written authorizations, filing with corporation, § 5914

Article 4. Report of Certain Transactions, Indemnifications, and Advances

§ 5940. Reporting certain transactions, indemnifications, and advances

5940. (a) The nonprofit corporation shall make a report to the members, as provided in subdivision (b), describing briefly:

(1) Any transaction during the fiscal year involving an amount in excess of forty thousand dollars (\$40,000) to which the nonprofit corporation or its parent or subsidiary was a party and in which a director or officer of the nonprofit corporation or of a subsidiary or (if known to the nonprofit corporation or its parent or subsidiary) a person holding more than 10 percent of the voting power in the nonprofit corporation had a direct or indirect material interest. The report shall name the director, officer, or person and state his or her relationship to the nonprofit corporation, interest in the transaction, and where practicable, amount of the interest. In the case of a transaction with a partnership in which the director, officer, or person is a partner, only the interest of the partnership need be stated. This paragraph does not apply to compensation of officers and directors, to loans or guarantees authorized by Section 5573, to contracts let at competitive bid or services rendered at prices regulated by law, or to transactions approved by the members under Section 5571 or 5572.

(2) The amount and circumstances of indemnification or advances aggregating more than ten thousand dollars (\$10,000) paid during the fiscal year to an officer or director of the nonprofit corporation under Article 8 (commencing with Section 5580) of Chapter 5. This paragraph does not apply to indemnification approved by the members under Section 5584.

(b) If a written annual report is presented to the annual meeting of members in compliance with Article 2 (commencing with Section 5920), the nonprofit corporation shall include in the annual report the information required by subdivision (a), such

information covering the same fiscal year as the financial information required by Section 5922. If a written annual report is not presented to the annual meeting of members in compliance with Article 2 (commencing with Section 5920) and the articles or bylaws require an annual report, the information required by subdivision (a) shall be included in the annual report made pursuant to the articles or bylaws. In any other case, the information required by subdivision (a) shall be reported to each voting member of the nonprofit corporation by mailing to the member, between January 1 and March 1 of each year, the information covering the immediately preceding fiscal year of the nonprofit corporation.

Comment. Subdivision (a) of Section 5940 is the same in substance as Section 1501 (b) (General Corporation Law) and is new to nonprofit corporation law. Subdivision (b) is included in recognition of the fact that some nonprofit corporations will adopt articles or bylaws which provide for a different annual report than the one provided for by statute (see Section 5920) or which dispense with the requirement of an annual report. It should be noted that the term "material" as used in this section is not defined but is to be determined in accordance with the circumstances of the case.

CROSS-REFERENCES

Definitions:

- Approved by the members, § 5109
 - Articles, § 5112
 - Bylaws, § 5121
 - Director, § 5133
 - Member, § 5148
 - Parent, § 5163
 - Person, § 18
 - Subsidiary, § 5184
 - Voting member, § 5193
 - Voting power, § 5196
 - Written, § 8
- Enforcement by Attorney General, § 5250
 - Failure to provide information, penalty, §§ 5992-5993
 - False report, criminal penalty, §§ 2254, 5227
 - False report, damages, § 5991
 - Indemnification or advance to corporate agents, §§ 5580-5590
 - Judicial enforcement, §§ 5980, 5981, 5984
 - Mailing, § 5015
 - Transactions involving directors or officers, §§ 5571-5572

Article 5. Financial Statements

§ 5950. Request for financial statements by authorized member

5950. (a) If the nonprofit corporation did not present a written annual report at the immediately preceding annual meeting of members in compliance with Article 2 (commencing with Section 5920), an authorized member may make a written request to the nonprofit corporation for a statement containing the information required by Section 5922 that would have been included in the annual report if one had been prepared and presented at the immediately preceding annual meeting of members.

(b) An authorized member may make a written request to the nonprofit corporation for a statement containing information comparable to that required by Section 5922 for a period specified in the request ending not less than 30 days prior to the date of the request. Unless the nonprofit corporation and the member making the request otherwise agree, the period specified in the request shall commence immediately upon the end of the fiscal year covered by the last written annual report made pursuant to Article 2 (commencing with Section 5920) or the statement referred to in subdivision (a), as the case may be, and shall be for a period of three months or a multiple of three months.

Comment. Section 5950 is comparable to the first sentence of subdivision (c) of Section 1501 (General Corporation Law). There was no comparable requirement applicable to nonprofit corporations under former law.

Subdivision (a) gives an authorized member (defined in Section 5910) an absolute right to demand and receive (see Section 5951) the fiscal information that would have been included in an annual report under Article 2 (see Section 5922) if one had been presented at the immediately preceding annual meeting of members. Subdivision (a) applies only where an annual report was not presented in compliance with Article 2; where a report was presented in compliance with Article 2, the authorized member has an absolute right to obtain a copy of the annual report and any member may inspect a copy of the annual

report pursuant to Section 5930. See also Section 5980 (judicial enforcement of duty to make annual report). Subdivision (b) provides for comparable fiscal information for the period subsequent to the period covered by the last written annual report or the statement obtained under subdivision (a).

Nothing in this article limits the right of a member under Section 5971 to inspect the financial records of the nonprofit corporation for a "purpose reasonably related to the member's interests as a member." Inspection of the financial records may be necessary, for example, to determine whether a financial statement obtained under this article is accurate or to obtain information concerning the member's own account or for some other proper purpose. See the Comment to Section 5971.

CROSS-REFERENCES

Bylaws, provision for financial statements, § 5443

Definitions:

Member, § 5148

Written, § 8

Fiscal items, fair presentation of, § 5013

Foreign corporations, § 5918

Optional procedure, inspection at meetings, § 5917

Written authorizations, filing with corporation, § 5914

Written form, making available in, § 5911

§ 5951. Providing authorized member with statements

5951. Subject to Section 5952, the nonprofit corporation shall deliver or mail to the authorized member making the request under this article the statement or statements requested within 60 days after the nonprofit corporation receives the request. No charge may be made to the authorized member for the statement or statements.

Comment. Section 5951 is similar to the second sentence of subdivision (c) of Section 1501 (General Corporation Law) except that the nonprofit corporation is given 60 days—instead of 30 days as under the General Corporation Law—within which to comply with the request for the financial statement. This greater time is allowed the nonprofit corporation in recognition of the fact that frequently nonprofit corporations do not prepare fiscal statements with the regularity of business corporations. Section 5951 also makes clear that no charge may be imposed for the statement; compare Section 5954 (copies).

CROSS-REFERENCES

Attorney General, enforcement by, § 5250

Definitions:

Authorized member, § 5910

False report, criminal penalty, §§ 2254, 5227

False report, damages, § 5991

Judicial enforcement, §§ 5981, 5984

Penalty for noncompliance, §§ 5992-5993

§ 5952. Opening books to inspection in lieu of providing statements

5952. (a) In lieu of providing the requested statements under Section 5951, the nonprofit corporation may, within 10 days after it receives the request for the statements, respond to the request by delivering or mailing to the authorized member making the request a statement that the nonprofit corporation elects to open its books and records of account to inspection under Article 7 (commencing with Section 5970) of Chapter 9 of Division 2 of the Corporations Code and that such books and records of account will be made available to the authorized member or the member's agent or attorney for inspection during usual business hours, specified in the statement, at an address specified in the statement.

(b) This section applies only if the address specified in the statement is in this state and is one of the following:

(1) An address within the county where the principal executive office of the nonprofit corporation is located.

(2) An address within the county where the principal business office of the nonprofit corporation in this state is located if the address of its principal executive office is not in this state.

Comment. Section 5952 is a new provision; no comparable provision is found in the General Corporation Law. Section 5952 is included in recognition of the fact that frequently nonprofit corporations do not prepare fiscal statements with the regularity of business corporations. The section permits the nonprofit corporation to avoid the expense of preparing financial statements by opening up its books and records to examination. If the nonprofit corporation elects to open its books and records

to inspection, the corporation cannot object that the inspection is not “for a purpose reasonably related to the member’s interests as a member” under Section 5971 since the authorized member has an absolute right to obtain the financial statements under Sections 5950–5951.

CROSS-REFERENCES

Agent or attorney, inspection by, § 5912

Definitions:

Authorized member, § 5910

Principal executive office, § 5166

Director’s right to inspect, § 5915

Foreign corporation, § 5918

Inspection where no regular business hours, § 5916

Mailing, § 5015

Office, designation of in annual statement, § 5224

Optional procedure, inspection at meetings, § 5917

Right to copy, § 5913

Written authorizations, filing with corporation, § 5914

Written form, making record available in, § 5911

§ 5953. Report of accountant or certificate to accompany statements

5953. The statements referred to in this article shall be accompanied by a report thereon of an independent accountant or, if there is no such report, the certificate of the chief financial officer, or other officer authorized by the nonprofit corporation, that such statements were prepared without audit from the books and records of the nonprofit corporation.

Comment. Section 5953 is the same in substance as subdivision (e) of Section 1501 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Independent accountant, § 5145

§ 5954. Right of member to inspect or obtain copy of statements

5954. A copy of the statements prepared pursuant to this article shall be:

(a) Kept on file in the principal executive office of the nonprofit corporation for 12 months, available for inspection at any reasonable time by any member.

(b) Delivered or mailed to any member who makes a written request for a copy and pays the reasonable charge, if any, the nonprofit corporation imposes to cover the cost of reproducing and delivering or mailing the copy to the member.

Comment. Section 5954 is similar to subdivision (d) and the last sentence of subdivision (c) of Section 1501 (General Corporation Law) except that the nonprofit corporation is permitted to impose a reasonable charge to cover the cost of reproducing and delivering copies of the statements. No charge is authorized under Section 5951, however, to cover the cost of providing the authorized member who made the original request with the statement or statements requested. The nonprofit corporation is permitted to impose a charge for subsequent copies of statements so that possible abuse of the right to obtain subsequent copies can be limited. Absent a charge, it is possible that each of the members who give the original written authorization (see Sections 5910 and 5914) might make such requests, probably in the original written authorization, and thus impose an undue burden on the nonprofit corporation.

CROSS-REFERENCES

Agent or attorney, inspection by, § 5912

Attorney General, enforcement by, § 5250

Definitions:

Member, § 5148

Principal executive office, § 5166

Foreign corporation, § 5918

Inspection where no regular business hours, § 5916

Judicial enforcement, §§ 5981, 5984

Optional procedure, inspection at meetings, § 5917

Right to copy, § 5913

Article 6. Membership Records

§ 5960. Membership record required

5960. To the extent such a record is necessary to determine the members entitled to vote, to share in the distribution of assets on dissolution, or otherwise to participate in its affairs, a nonprofit corporation shall

keep a record of members that includes all of the following:

(a) The name and address of each member.

(b) If a member holds more than one membership, the number of memberships held by the member.

(c) If there is more than one class, the class of each membership held by each member.

(d) The date when the member became a holder of record of each membership.

(e) When a membership terminates, a record of that fact and of the date of termination.

Comment. Section 5960 is drawn from the first sentence of Section 1500 (General Corporation Law), from former Section 9606, and from Section 621(a) of the New York Not-for-Profit Corporation Law. Concerning the “membership book” requirement of former Section 9606, see the Comment to Section 5911.

Subdivisions (a), (b), and (c) are comparable to the record of shareholders required to be kept under Section 1500.

Subdivision (d), which requires that the record of members show the date when the member became the holder of record of the membership, is taken from the New York section. This is a new requirement for California nonprofit corporations. No comparable requirement is found in Section 1500.

Subdivision (e), which requires a record of termination of memberships, is drawn from former Section 9606 which applied to nonprofit corporations.

The introductory clause of Section 5960 requires the keeping of a membership record (and the keeping of the information specified in the section) only to the extent that such a record (or information) is necessary to determine those members entitled to vote, to share in the distribution of assets on dissolution, or otherwise to participate in the affairs of the nonprofit corporation. However, to the extent the membership record or specified information is necessary for any of these purposes, the keeping of the record is a mandatory requirement. The record of the date when a member became a holder of record and the record of the termination of memberships are required primarily so that the record of members will be sufficient to determine the members as of any relevant record date. See Section 5640.

CROSS-REFERENCES

Attorney General, enforcement by, § 5250

Definitions:

Class, § 5125
 Member, § 5148
 Vote, § 5190

Director's right to inspect, § 5915

Failure to keep record, penalty, §§ 5992-5993

False record, criminal penalty, §§ 2254, 5227

False record, damages, § 5991

Foreign corporation, § 5918

Judicial enforcement, §§ 5982, 5984

Judicial supervision, § 5964

Membership held in representative capacity, voting of, § 5821

Membership held jointly, voting of, § 5825

Partly paid membership, notation in record, § 5623

Place where kept, § 5961

Right to copy, § 5913

Voting memberships standing in name of

Business corporation, § 5824

Family, § 5825

Husband and wife, § 5825

Minor, § 5823

Nonprofit corporation, § 5824

Partnership or other association, § 5825

Pledgee, § 5822

Written form, making record available in, § 5911

§ 5961. Place where record kept

5961. The record of members shall be kept by the nonprofit corporation at its principal executive office or at the office of its transfer agent or registrar.

Comment. Section 5961 is consistent with a portion of Section 1500 (General Corporation Law). Former Section 9606 did not specify the place where the "membership book" required by that section was to be kept.

CROSS-REFERENCES

Definitions:

Member, § 5148
 Principal executive office, § 5166

§ 5962. Member's right to inspect membership record

5962. (a) A member has the right to inspect his or her membership record during usual business hours upon 10 business days' prior written demand upon the nonprofit

corporation for a purpose reasonably related to the member's interests as a member. The written demand shall be under oath and shall state the purpose of the inspection.

(b) The nonprofit corporation may satisfy a demand for inspection under this section by any reasonable means that satisfies the purpose of the inspection as stated in the demand.

(c) The use of the information obtained pursuant to this section is limited to the purpose stated in the demand.

Comment. Section 5962 supersedes a portion of former Section 3003, applicable to nonprofit corporations through former Section 9002. It serves the same purpose as subdivision (c) of Section 1600 (General Corporation Law) except that (1) only the portion of the record of members that relates to the inspecting member may be examined, (2) the nonprofit corporation is given 10 business days to comply with the demand for inspection in order to give the corporation time to determine whether the inspection is for a proper purpose, (3) the nonprofit corporation may satisfy the demand for inspection by any reasonable means, (4) the demand must be under oath and state the purpose of the inspection, and (5) the use of the information obtained is limited to the purpose stated in the demand. The member is required to state in the demand a purpose reasonably related to his or her interests as a member. The burden is on the member to establish this required relationship. See Section 5982(a) (judicial enforcement of right of inspection). An injunction would be an appropriate remedy to prevent use of the information obtained for a purpose other than the one stated in the demand. Use of the information for an improper purpose may give rise to liability for damages. See Section 5990.

CROSS-REFERENCES

Attorney General, enforcement by, § 5250

Attorney or agent, inspection by, § 5912

Declaration under penalty of perjury permitted, § 5012

Definitions:

Member, § 5148

Written, § 8

Director's right to inspect, § 5915

Foreign corporation, § 5918

Inspection where no regular business hours, § 5916

Judicial enforcement, §§ 5982, 5984
Judicial supervision, § 5964
Optional procedure, inspection at meetings, § 5917
Record of members, § 5960
Right to copy, § 5913
Voting agreement, right to inspect, § 5855
Written form, making record available in, § 5911

§ 5963. Authorized member's right to inspect or obtain membership list

5963. Subject to Sections 5964 and 5965, an authorized member has the absolute right to do either or both of the following:

(a) Inspect the membership record during usual business hours upon 10 business days' prior written demand upon the nonprofit corporation.

(b) Obtain from the nonprofit corporation, upon written demand, a list of the voting members, showing the name and address of each voting member, the class of membership held by the member if there is more than one class of voting members, and the number of memberships of that class held by the member if the member holds more than one membership, as of the most recent record date for which such a list has been compiled or as of a date specified by the authorized member subsequent to the date of the demand. The list shall be made available on or before the later of 10 business days after (1) the demand is received or (2) the date specified in the demand as the date as of which the list is to be compiled. The nonprofit corporation may require, as a condition of obtaining the list of voting members, that the demand be accompanied by tender of a reasonable charge specified by the nonprofit corporation, not in excess of the actual cost to the nonprofit corporation of furnishing the list.

Comment. Section 5963 supersedes a portion of former Section 3003, applicable to nonprofit corporations through former Section 9002. It is based on subdivision (a) of Section 1600 (General Corporation Law), but Section 5963 gives the nonprofit corporation 10 business days—instead of five as under the

General Corporation Law—within which to compile the membership list or to permit examination of the record of members and permits the nonprofit corporation to impose a reasonable charge for a membership list. The nonprofit corporation may adopt a bylaw making Section 5963 not applicable to the corporation. See Section 5965. The court is authorized to allow the corporation additional time to comply with Section 5963 and otherwise to deal with any problems that arise under the section. See Sections 5964 and 5982.

CROSS-REFERENCES

Attorney General, enforcement by, § 5250

Attorney or agent, inspection by, § 5912

Damages for improper use of information, § 5990

Definitions:

Authorized member, § 5910

Class, § 5125

Voting members, § 5193

Written, §§ 8, 5016

Director's right to inspect, § 5915

Foreign corporation, § 5918

Inspection where no regular business hours, § 5916

Judicial enforcement, §§ 5982, 5984

Judicial supervision, § 5964

Optional procedure, inspection at meetings, § 5917

Record date, § 5640

Record of members, § 5960

Right to copy, § 5913

Written authorization, filing with corporation, § 5914

Written form, making record available in, § 5911

§ 5964. Judicial supervision

5964. Upon the filing of a verified petition and after a hearing, notice of which shall be given to such persons and in such manner as the court may direct, the superior court of the proper county may, for good cause shown, make such orders and decrees as may be just and proper under the circumstances of the case to enable compliance with this article, including but not limited to:

(a) Allowing the nonprofit corporation additional time to comply.

(b) Postponing or recessing a meeting of members or limiting the matters that may be considered at a meeting of the members.

(c) Imposing conditions for the exercise of inspection rights, including imposing reasonable restrictions on the purposes for which the information may be used.

Comment. Section 5964 is comparable to subdivision (b) of Section 1600 (General Corporation Law) but provides the court greater flexibility in enabling compliance with statutory requirements. Section 5964 does not limit the persons authorized to seek court supervision, which may be the nonprofit corporation as well as a member. See also Section 5982 (power of court to impose just and proper conditions where member seeks to enforce inspection rights).

It should be noted that postponement of a meeting under subdivision (b) in case of a failure to comply with Section 5963 may be made only after an authorized member has made a demand under Section 5963, including payment or tender of the specified charge, if any. The court should postpone a previously noticed meeting only in extreme cases.

CROSS-REFERENCES

Definitions:

Member, § 5148

Person, § 18

Proper county, § 5169

Verification, § 5011

Recovery of reasonable expenses by member, § 5984

§ 5965. Article or bylaw making Section 5963 not applicable; providing procedure for communicating to members

5965. (a) Section 5963 does not apply to a nonprofit corporation if the nonprofit corporation provides in its articles or bylaws that Section 5963 does not apply and a provision is adopted that satisfies the requirements of subdivision (b).

(b) The requirements of this subdivision are satisfied if a reasonable procedure is provided in the articles, bylaws, or by resolution of the board that permits an authorized member to communicate with the voting members for all of the following purposes:

(1) Seeking support for the nomination of one or more persons for election as directors.

(2) Seeking support for one or more nominees for election as directors.

(3) Soliciting proxies if proxies may be used in voting for directors.

(c) A provision that does not include all of the requirements stated in Section 5966 may satisfy the requirements of subdivision (b) of this section if the procedure provided is reasonable in view of the circumstances, practices, and nature of the particular nonprofit corporation.

Comment. Section 5965, which is new, permits a nonprofit corporation to provide in its articles or bylaws that Section 5963 (authorized member's right to inspect or obtain membership list) is not applicable to the corporation. In such a case, the corporation must provide a reasonable procedure whereby an authorized member (defined in Section 5910) can communicate with the other members in connection with the nomination and election of directors. The procedure may be enforced by appropriate court orders if necessary. See Sections 5983-5984. Accordingly, Section 5965 permits a nonprofit corporation to protect its membership list from possible improper use by providing a reasonable communication procedure in lieu of turning over its membership list.

The nonprofit corporation can have confidence that its membership list is protected if the procedure it provides includes all of the requirements stated in Section 5966. However, the requirements stated in Section 5966 may be burdensome or inappropriate in the case of some nonprofit corporations, and subdivision (c) makes clear that the nonprofit corporation may protect its membership list by adopting a procedure that does not satisfy all the requirements stated in Section 5966. However, in such case, the procedure must be one that is reasonable in view of the circumstances, practices, and nature of the particular nonprofit corporation, and, under subdivisions (b) and (c), the burden is on the nonprofit corporation to establish that the procedure is reasonable under this standard.

CROSS-REFERENCES

Definitions:

- Articles, § 5112
- Authorized member, § 5910
- Board, § 5115
- Bylaws, § 5121
- Director, § 5133
- Proxy, § 5172
- Vote, § 5190
- Voting members, § 5193

**§ 5966. Requirements for procedure deemed to satisfy
Section 5965**

5966. (a) As used in this section:

(1) "Candidate's statement" means a statement of not more than 200 words, or such greater number of words as may be provided in the articles, bylaws, or by resolution of the board, giving biographical information for and a statement of the views of the nominee or person sought to be nominated.

(2) "Nominee" means any person who has been nominated, by petition or otherwise, for election as a director.

(3) "Proxy solicitation statement" means a statement of not more than 300 words, or such greater number of words as may be provided in the articles, bylaws, or by resolution of the board, soliciting the proxies of members.

(b) A procedure provided in the articles, bylaws, or by resolution of the board is deemed to satisfy the requirements of subdivision (b) of Section 5965 if it includes all of the following:

(1) A statement that the provision is adopted pursuant to Section 5966 of the Corporations Code.

(2) A procedure to permit an authorized member to communicate with the voting members for the purpose of seeking support for the nomination of any person or persons for election as directors of the nonprofit corporation. The authorized member shall be permitted to communicate the name of each person so sought to be nominated, together with a candidate's statement for each such person. The number so sought to be nominated by an authorized member shall not exceed the number of positions to be filled at the next election of directors.

(3) A procedure to permit a nominee who has been nominated a reasonable time prior to the time of the election to communicate to the voting members a candidate's statement for the nominee.

(4) If proxies may be used in voting for directors, a procedure to permit an authorized member to communicate with the voting members for the purpose

of soliciting proxies. The authorized member shall be permitted to communicate a proxy solicitation statement and a proxy form to the voting members to be returned by those voting members who desire to give a proxy to the authorized member. Proxies shall be returned at the expense of the voting member receiving the solicitation or at the expense of the authorized member soliciting the proxy, at the latter's election, except that, if the management of the nonprofit corporation solicits proxies and provides envelopes for returning the proxies with the postage to be paid by the nonprofit corporation or otherwise provides for returning proxies at the expense of the nonprofit corporation, the provision adopted pursuant to this section shall include the same provision for returning proxies solicited by an authorized member.

(c) If a provision is adopted pursuant to this section:

(1) The limitations as to the number of words permitted in a candidate's statement or proxy solicitation statement apply to all such statements, whether sent on behalf of the nonprofit corporation, its management, or an authorized member or nominee.

(2) No candidate's statement or proxy solicitation statement may be altered or modified by the nonprofit corporation without the written consent of the person submitting the statement except to eliminate matter that would likely result in the imposition of liability on the nonprofit corporation.

(d) The procedure provided for communicating with the voting members:

(1) May include a separate delivery or mailing, inclusion in a publication delivered or mailed to voting members, or any other reasonable method whereby substantially all of the voting members receive the communication.

(2) Shall impose on the nonprofit corporation all costs of printing or otherwise reproducing, and delivering or mailing the communication to the voting members.

Comment. Section 5966, which is new, specifies the requirements for a procedure for communicating to voting members that is deemed to satisfy the requirements of

subdivision (b) of Section 5965. See discussion in Comment to Section 5965. If a procedure that satisfies the requirements of Section 5966 is adopted, the nonprofit corporation may, at its option, include a provision in the articles or bylaws that Section 5963 (authorized member's right to inspect or obtain membership list) does not apply to the corporation. See Section 5965. This will permit a nonprofit corporation that considers its membership list to be a trade secret, for example, to protect the membership list from possible improper use. The procedure adopted pursuant to Section 5966 may be enforced by appropriate court orders if necessary. See Sections 5983, 5984. It should be noted that a nonprofit corporation may protect its membership list by adopting a procedure that does not satisfy all of the requirements of Section 5966. See Section 5965 (c) and the Comment to that section.

Subdivision (c) (2) provides that the statement submitted for communication to the voting members may be altered or modified only to eliminate matters which would likely result in the imposition of liability on the nonprofit corporation. This will permit, for example, deletion of material which the nonprofit corporation establishes is libelous.

Subdivision (d) (2) requires that the nonprofit corporation assume all costs of printing and delivering the communication to the voting members. The cost of delivering would include such expenses as the cost of envelopes, postage, and labor to put the material in the envelopes if the procedure provided in the bylaws results in these expenses.

CROSS-REFERENCES

Definitions:

Articles, § 5112
Authorized member, § 5910
Board, § 5115
Bylaws, § 5121
Director, § 5133
Member, § 5148
Proxy, § 5172
Vote, § 5190
Voting members, § 5193
Written, §§ 8, 5016

Article 7. Financial Records and Minutes

§ 5970. Financial records and minutes required

5970. A nonprofit corporation shall keep:

(a) Adequate and correct books and records of account.

(b) Minutes of the proceedings of members, the board, and, to the extent they exercise the authority of the board, committees of the board.

Comment. Section 5970 is the same in substance as a portion of the first sentence of Section 1500 (General Corporation Law) and supersedes the more detailed provisions of former Sections 3000 and 3001 which applied to nonprofit corporations through former Section 9002. The requirement of minutes of proceedings of members includes minutes of proceedings of a policymaking committee of members acting on behalf of the members pursuant to Section 5818.

CROSS-REFERENCES

Attorney General, enforcement by, § 5250

Definitions:

Board, § 5115

Member, § 5148

Entry in minutes

Annual report, §§ 5921, 5923, 5924, 5980

Evidentiary effect of original or copy of minutes, § 5241

Failure to keep record, penalty, §§ 5992-5993

False record, criminal penalty, §§ 2254, 5227

False record, damages, § 5991

Foreign corporations, § 5918

Meeting, validation of, reflection in minutes, §§ 5538, 5727

Written consents, part of minutes, § 5539

Written form

Minutes must be kept in, § 5911

Record to be made available in, § 5911

§ 5971. Right of inspection

5971. A member has the right to inspect the books and records of account and the minutes during usual business hours upon 10 business days' prior written demand upon the nonprofit corporation for a purpose reasonably related to the member's interests as a member. The written demand shall be under oath and shall state the

purpose of the inspection. The right of inspection under this section extends to the books and records of account and the minutes of a subsidiary of the nonprofit corporation.

Comment. Section 5971 is based on subdivision (a) of Section 1601 (General Corporation Law). The requirement that the demand be under oath and state the purpose of the inspection is taken from Pennsylvania nonprofit corporation law. See 15 Pa. Cons. Stat. Ann. § 7508(b) (Purdon Cum. Supp. 1976-1977). The requirement that the nonprofit corporation be given 10 business days to comply with the demand is not found in the comparable provision of the General Corporation Law, but it is included here to give the nonprofit corporation time to determine whether the demand is for a proper purpose and time to schedule the inspection to minimize disruption of office routine.

Under Section 5971, a member may inspect the financial records and minutes only for a purpose reasonably related to such member's interests as a member. The member has the burden to establish that the inspection is for a proper purpose. See Section 5982(a). Under Sections 5950-5951, an authorized member (defined in Section 5910) may obtain a financial statement without the necessity of showing the purpose of obtaining the financial statement. See also Section 5952 (opening books to inspection in lieu of providing financial statements) and Comment to that section.

CROSS-REFERENCES

- Attorney General, enforcement by, § 5250
- Attorney or agent, inspection by, § 5912
- Declaration under penalty of perjury permitted, § 5012
- Definitions:
 - Member, § 5148
 - Subsidiary, § 5184
 - Written, § 8
- Director's right to inspect, § 5915
- Foreign corporation, § 5918
- Inspection where no regular business hours, § 5916
- Judicial enforcement, §§ 5982, 5984
- Optional procedure, inspection at meetings, § 5917
- Right to copy, § 5913
- Subvention certificate holder's right to inspect books, § 6036
- Written form, record to be made available in, § 5911

Article 8. Articles and Bylaws

Comment. Sections 5975–5977 are the same in substance as Section 213 (General Corporation Law) except that (1) Sections 5975–5977 apply to the articles of incorporation as well as the bylaws and (2) Section 5977 requires the nonprofit corporation to provide a member with a copy of the articles and bylaws (whether or not its principal executive office is outside this state) and permits the nonprofit corporation to impose a reasonable charge to cover the cost of reproducing and delivering the copy. Sections 5975–5977 supersede former Section 9404, which provided only that a nonprofit corporation keep a record book of bylaws at its principal office.

§ 5975. Articles and bylaws to be kept at corporate office

5975. A nonprofit corporation shall keep a copy of its articles and bylaws, as amended to date, available for inspection at:

- (a) Its principal executive office in this state; or
- (b) Its principal business office in this state if its principal executive office is not in this state.

Comment. See the Comment to this article.

CROSS-REFERENCES

Attorney General, enforcement by, § 5250

Definitions:

Articles, § 5112

Bylaws, § 5121

Principal executive office, § 5166

Evidentiary effect of

Amendment of articles, certificate of, § 5244

Articles, copy of, § 5240

Bylaws, original or copy of, § 5241

Failure to keep copy of articles or bylaws, penalty, §§ 5992–5993

False entry, damages, § 5991

Foreign corporations, § 5918

Office, designation of in annual statement, § 5224

§ 5976. Right of member to inspect

5976. A member has the absolute right at any reasonable time during regular business hours to inspect the copy of the articles and bylaws required to be kept under this article.

Comment. See the Comment to this article.

CROSS-REFERENCES

Agent or attorney, inspection by, § 5912
 Attorney General, enforcement by, § 5250
 Definitions:
 Articles, § 5112
 Bylaws, § 5121
 Member, § 5148
 Director's right to inspect, § 5915
 Foreign corporation, § 5918
 Inspection where no regular business hours, § 5916
 Judicial enforcement, §§ 5982, 5984
 Optional procedure, inspection at meetings, § 5917
 Right to copy, §§ 5913, 5977

§ 5977. Right of member to obtain copy

5977. Upon written request of a member, the nonprofit corporation shall deliver to the member a copy of the articles and bylaws as amended to date. The nonprofit corporation may make a reasonable charge to cover the cost of reproducing and delivering the copy to the member.

Comment. See the Comment to this article.

CROSS-REFERENCES

Definitions:
 Articles, § 5112
 Bylaws, § 5121
 Member, § 5148
 Written, § 8

Article 9. Judicial Enforcement

§ 5980. Enforcement of duties in connection with annual report

5980. The superior court of the proper county shall enforce the duty of making and permitting examination or providing a copy of the annual report required by this chapter. If the annual report was not prepared and presented at the immediately preceding annual meeting as required by Article 2 (commencing with Section 5920),

the court shall enforce the duty of making the annual report by making an order that requires the nonprofit corporation to do all of the following:

(a) Prepare a written report that satisfies the requirements of Article 2 (commencing with Section 5920) for an annual report for such annual meeting and deliver, within such time as the court specifies, a copy of the report to the member who brought the action.

(b) Not more than 10 days after delivery of the written report to the member, make a copy of the report a part of the minutes of the annual meeting at which the annual report should have been presented.

(c) Comply with the duty of making the annual report required by Article 2 (commencing with Section 5920) at future annual meetings.

Comment. Section 5980 provides for judicial enforcement of the duty of making and permitting inspection of the annual report required by this chapter and indicates the relief to be ordered by the court. The duty to permit inspection of the annual report is imposed by Section 5930. It should be noted that the duty of making the annual report required by this chapter may be dispensed with entirely by the articles or bylaws, or the articles or bylaws may provide for an annual report that contains different or more or less information than is required by this chapter. See Section 5920. Section 5980 does not apply where the articles or bylaws contain such provisions; enforcement of the duty to make an annual report as required by the articles or bylaws is a matter not dealt with in this section but is governed by general principles of law relating to compelling corporate officers to perform duties mandated by the articles or bylaws.

The court is authorized to award litigation expenses in an action under this section if the requisite determinations are made by the court. See Section 5984.

Rules of practice that govern civil actions and proceedings generally are applicable to litigation pursuant to this section. See Section 5260; *cf. Kovacevich v. Fischer Motor Body Co.*, 94 Cal. App. 405, 271 P. 351 (1928) (mandamus).

CROSS-REFERENCES

Attorney General, enforcement by, § 5250

Definitions:

Action, § 5103

Member, § 5148

Proper county, § 5169

Written, § 8

§ 5981. Enforcement of duties in connection with financial statements

5981. In addition to the penalty provided in Section 5992, the superior court of the proper county shall enforce the duty of making and delivering the statements required by Articles 4 (commencing with Section 5940) and 5 (commencing with Section 5950) and, for good cause shown, may extend the time therefor.

Comment. Section 5981 is the same in substance as subdivision (f) of Section 1501 (General Corporation Law), with the addition of a provision enabling enforcement of duties under Section 5940.

CROSS-REFERENCES

Definitions:

Proper county, § 5169

§ 5982. Enforcement of right of inspection

5982. (a) If a nonprofit corporation fails to comply with a proper demand for inspection, upon application of the person making the demand, the superior court of the proper county or of the county in which any of the books, records, documents, or property is located may enforce the right of inspection provided in this chapter with just and proper conditions. When inspection is sought by a member pursuant to Section 5962 or Section 5971, the member has the burden of establishing that the inspection is for a proper purpose.

(b) The court may, for good cause shown, appoint one or more competent inspectors or accountants to audit the books and records and to investigate the property, funds, and affairs of the nonprofit corporation if such books, records, property, funds, and affairs are subject to inspection under this chapter. The court may direct the inspectors or accountants to report thereon in such manner as the court may direct.

(c) All officers and agents of the nonprofit corporation shall produce to the inspectors or accountants appointed under this section all books and documents subject to inspection that are in their custody or under their control

under penalty of punishment for contempt of court for willful noncompliance.

(d) All expenses of the investigation or audit shall be paid by the applicant unless the court orders them to be paid or shared by the nonprofit corporation.

Comment. Section 5982 is based on Section 1603 (General Corporation Law). It continues former Section 3005, applicable to nonprofit corporations through former Section 9002. Section 5982 expands upon the venue provisions of Section 1603 to include the county where “any of the” documents sought are located whether the nonprofit corporation is domestic or foreign. When inspection is sought by a member, the member has the burden of establishing the right to such inspection.

The court’s power to appoint inspectors or accountants under subdivision (b) is in addition to its other powers. The rules of practice that govern civil actions and proceedings generally are applicable to enforcement proceedings authorized by Section 5982. Section 5260; see also *Private Investors, Inc. v. Homestake Mining Co.*, 11 Cal. App.2d 488, 54 P.2d 535 (1936).

Subdivisions (c) and (d) are the same in substance as subdivisions (b) and (c), respectively, of Section 1603 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Member, § 5148

Person, § 18

Proper county, § 5169

Enforcement by Attorney General, § 5250

Foreign corporation, § 5918

Liability for damages for improper use, § 5990

Litigation expenses, § 5984

Membership records, judicial supervision of inspection, § 5964

§ 5983. Enforcement of provision providing procedure for communicating to members

5983. Subject to Section 5964, the superior court of the proper county shall, by appropriate orders, require compliance with any procedure provided in the articles, bylaws, or by resolution of the board, pursuant to Section 5965 or 5966.

Comment. Section 5983, which is new, provides a clear means of enforcing compliance with a procedure adopted by the nonprofit corporation to provide members a means of communicating with other members in connection with nominations and elections.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Proper county, § 5169

Enforcement by Attorney General, § 5250

Foreign corporation, § 5918

Rules of practice generally, § 5260

§ 5984. Recovery of litigation expenses

5984. In any action under this chapter, the court may award an amount to reimburse the person who brought the action for reasonable expenses incurred by the person, including reasonable attorney's fees, in connection with the action if the court determines both of the following:

(a) Prior to commencing the action, the person made a written demand on the nonprofit corporation that it comply with the requirements of this chapter, specifying the action demanded of the nonprofit corporation.

(b) The nonprofit corporation willfully failed without justification to comply with the demand within a reasonable time.

Comment. Section 5984 is based on subdivision (g) of Section 1501 and on Section 1604 (General Corporation Law). Section 5984 is somewhat more limited than the General Corporation Law provisions in that Section 5984 requires that the nonprofit corporation have "willfully failed" without justification to comply with the demand "within a reasonable time"; but Section 5984 also goes beyond the General Corporation Law provisions by extending the right to recover reasonable litigation expenses to directors who seek to enforce rights of inspection pursuant to Section 5915, to a person seeking to enforce a provision for communicating with other members under Section 5983, and to members who seek to enforce the right of inspection of articles and bylaws under Section 5982.

CROSS-REFERENCES

Definitions:

Action, § 5103

Person, § 18

Written, § 8

**Article 10. Recovery of Damages;
Civil Penalty****§ 5990. Liability for damages for improper use of information**

5990. (a) Except as provided in subdivision (b), the person who obtains the information, and any other person who uses the information, is liable to the nonprofit corporation for any damages resulting from the use of information obtained under Section 5962 for a purpose other than the purpose stated in the written demand referred to in Section 5962 if such person so uses the information with the knowledge that the use of the information is limited to the purpose stated in the demand.

(b) If a court order made pursuant to Section 5964 imposes limitations on the use of information obtained under Section 5962 or 5963, the person who obtains the information, and any other person who uses the information, is liable to the nonprofit corporation for any damages resulting from the use of the information for a purpose other than the purposes permitted under the court order if such person so uses the information with the knowledge that the use of the information is limited under the court order.

(c) The remedy provided by this section is in addition to any other legal or equitable remedies to which the nonprofit corporation may be entitled.

Comment. Section 5990, which is new, makes clear that the nonprofit corporation may recover damages for improper use of information obtained under Section 5962 or information obtained under Section 5963 when the use of such information has been limited as provided in Section 5964(c). For example, the nonprofit corporation may recover damages if the membership list is a trade secret and is used for the purpose of soliciting its

members to join another organization. The remedy is not exclusive. Improper use of the information may be enjoined or other appropriate remedies used.

CROSS-REFERENCES

Definitions:

Person, § 18
Written, § 8

§ 5991. Liability for damages for false report, record, or entry

5991. An officer, director, employee, or agent of a nonprofit corporation who does any of the following is liable jointly and severally for all the damages resulting therefrom to the nonprofit corporation or to any person injured thereby who relied thereon or to both:

(a) Makes, issues, delivers, or publishes any report, circular, certificate, financial statement, balance sheet, public notice, or document respecting the nonprofit corporation or its memberships, assets, liabilities, capital, activities, revenues, receipts, or accounts which is false in any material respect, knowing it to be false, or participates in the making, issuance, delivery, or publication thereof with knowledge that the same is false in a material respect.

(b) Makes or causes to be made in the articles, bylaws, books, minutes, records, or accounts of a nonprofit corporation any entry which is false in any material particular knowing such entry is false.

(c) Removes, erases, alters, or cancels any entry in the articles, bylaws, books, minutes, records, or accounts of the nonprofit corporation, with intent to deceive.

Comment. Section 5991 is the same in substance as Section 1507 (General Corporation Law) and former Section 3018 except that changes have been made to reflect the fact that a nonprofit corporation does not issue shares of stock and the scope of these provisions is expanded in Section 5991 to include articles and bylaws.

CROSS-REFERENCES

Accounting items, fair presentation of, § 5013
Criminal penalties, §§ 2254, 5227

Definitions:

- Articles, § 5112
- Bylaws, § 5121
- Director, § 5133
- Person, § 18

Enforcement by Attorney General, § 5250

§ 5992. Civil penalty for failure to keep records or provide financial statements

5992. (a) A nonprofit corporation is subject to the penalty provided in subdivision (b) if it neglects, fails, or refuses to do any of the following:

(1) Keep or cause to be kept the articles, bylaws, record of members, or books of account required by this chapter to be kept.

(2) Prepare or cause to be prepared or provided the financial statements required by this chapter to be prepared or provided, including the financial information required to be included in the annual report.

(b) The penalty is twenty-five dollars (\$25) for each day that the neglect, failure, or refusal continues, beginning 30 days after receipt of written request that the duty be performed from a person entitled to make the request, up to a maximum of one thousand five hundred dollars (\$1,500).

(c) The penalty shall be paid to the person or persons jointly making the request for performance of the duty and damaged by the neglect, failure, or refusal if the action to recover the penalty is commenced within 90 days after the written request is made; but the maximum daily penalty because of failure to comply with any number of separate requests made on any one day or for the same act is two hundred fifty dollars (\$250).

Comment. Section 5992 is the same in substance as Section 2200 (General Corporation Law) and is similar to former Section 3015 except that the scope of these provisions has been expanded in Section 5992 to include articles and bylaws.

Section 5992 provides an additional means of enforcement of duties imposed in other sections to persons entitled by statute to require the performance of such duties. See Section 5993 (penalty cumulative; remission of penalty in case of inadvertent

or excusable failure). Section 5992 is a penalty section, not a statute imposing a liability, and actual pecuniary damages are not the measure of liability thereunder. See *Pourroy v. Gardner*, 122 Cal. App. 521, 528, 10 P.2d 815, 818 (1932). See also Sections 5991 (liability for false report, record, or entry) and 5984 (recovery of reasonable litigation expenses by member or director).

Nothing in this section limits the authority of the Attorney General to enforce the duties of the directors of nonprofit corporations organized for charitable purposes under authority of Government Code Sections 12580–12597 or other statutory or common law authority.

CROSS-REFERENCES

Definitions:

Action, § 5103
 Articles, § 5112
 Bylaws, § 5121
 Member, § 5148
 Person, § 18
 Written, § 8

§ 5993. Penalty cumulative; remission of penalty

5993. (a) The penalty prescribed by Section 5992 is in addition to any remedy by injunction or action for damages or by writ of mandate for the nonperformance of acts and duties required by law of the nonprofit corporation or its directors or officers.

(b) The court in which an action for the penalty is brought may reduce, remit, or suspend the penalty on such terms and conditions as it deems reasonable if the neglect, failure, or refusal was inadvertent or excusable.

Comment. Section 5993 is the same in substance as Section 2202 (General Corporation Law) and former Section 3017.

CROSS-REFERENCES

Definitions:

Action, § 5103
 Director, § 5133

CHAPTER 10. CORPORATE FINANCE

Article 1. General Provisions

§ 6010. Levy of dues, assessments, and initiation fees

6010. (a) The articles or bylaws may authorize dues or assessments or both to be levied upon all members or classes alike or in different amounts or proportions or upon a different basis upon different members or classes and may exempt some members or classes from either dues or assessments or both.

(b) The articles or bylaws may fix, or provide the manner of fixing, the amount and method of collection of dues or assessments or both and make them payable at such times or intervals and upon such notice and by such methods as the board may prescribe.

(c) The articles or bylaws may authorize the imposition of fees or other required contributions upon admission to membership and may fix, or provide the manner of fixing, the amount of such fees or contributions and the time and manner of payment.

Comment. Subdivision (a) of Section 6010 continues the substance of former Section 9611 and the third sentence of former Section 9301; subdivision (b) is comparable to the fourth sentence of former Section 9301; subdivision (c) is new. Section 6010 augments Section 5442(d) (bylaws relating to dues, assessments, fees, and other obligations). A nonprofit corporation may levy dues, assessments, or initiation fees only pursuant to authority contained in its articles or bylaws. See Section 5447. For comparable provisions, see Section 423 (General Corporation Law).

CROSS-REFERENCES

Assessments for capital improvements, § 6012

Consideration for memberships, § 5620

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Class, § 5125

Member, § 5148

Enforcement of financial obligations, § 6011

§ 6011. Enforcement of financial obligations

6011. The articles or bylaws may fix the manner of enforcement of the financial obligations of members to the nonprofit corporation, including enforcement by action or by sale or forfeiture of membership, or both, upon reasonable notice.

Comment. Section 6011 continues and expands the substance of the last sentence of former Section 9301. Financial obligations of members may include, among others, initiation or admission fees, dues, assessments, and charges for services or property furnished.

There is a general requirement of due process when a member is expelled or significant membership rights are affected by a nonprofit corporation. See *Cason v. Glass Bottle Blowers Ass'n*, 37 Cal.2d 134, 143-144, 231 P.2d 6, 10-11 (1951); *Ascherman v. San Francisco Medical Soc'y*, 39 Cal. App.3d 623, 647-650, 114 Cal. Rptr. 681, 696-698 (1974). See also Section 5631 (b) (termination of membership). However, the termination of membership for failure to pay a legal assessment or other membership obligation, or in other such circumstances involving undisputed facts, does not require a hearing. See *DeMille v. Radio Artists, Los Angeles Local*, 31 Cal.2d 139, 154-155, 187 P.2d 769, 779 (1947), *cert. denied*, 333 U.S. 876 (1948).

CROSS-REFERENCES

Definitions:

- Action, § 5103
- Articles, § 5112
- Bylaws, § 5121
- Member, § 5148

Partly paid memberships, §§ 5623, 6020-6027

Provisions effective only in bylaws, § 5447

Rules of practice in this division, § 5260

§ 6012. Levy of assessments for capital improvements

6012. (a) As used in this section, "capital improvement assessment" means an assessment levied upon the members or a class for the purpose of making capital improvements or additions to the property or facilities of the nonprofit corporation.

(b) A nonprofit corporation shall deliver written notice of a capital improvement assessment to each member

subject to the assessment at the address of the member appearing in the record of members. The notice shall include a copy of the provision of the articles or bylaws, or resolution of the board or other person authorized by the articles or bylaws, fixing the amount and terms of the assessment.

(c) Any member subject to a capital improvement assessment may resign membership by delivering written notice of resignation to the nonprofit corporation at its principal executive office within 15 days after the delivery of the written notice of assessment by the nonprofit corporation pursuant to subdivision (b). The resignation shall be upon the same terms and conditions as those established by the nonprofit corporation for resignation from membership in the absence of a capital improvement assessment and, upon resignation, the resigning member is not liable for the assessment except that resignation does not extinguish binding contract obligations that run with the land at law.

Comment. Section 6012 is new. Existing law leaves the amount and manner of levying assessments to the discretion of the nonprofit corporation, subject only to the requirements that the corporation's own procedures be followed and that the funds so raised be used for proper purposes. See the last paragraph of former Section 9301. See also *DeMille v. Radio Artists, Los Angeles Local*, 31 Cal.2d 139, 146, 149, 187 P.2d 769, 774, 776 (1947), *cert. denied*, 333 U.S. 876 (1948).

Resignation of membership is not necessarily an effective means to escape liability for an assessment. See *Locust Club v. Einstein*, 129 Pa. Super. 338, 195 A. 432 (1937) (and cases cited therein). Section 6012 protects a member only from liability for assessments for capital improvements and additions. Such protection is appropriate because these assessments cannot yet have benefited the member and may be relatively large. The last sentence of subdivision (c) makes clear, however, that, even in the case of an assessment for a capital improvement or addition, a corporation such as a condominium or homeowners' association is able to limit the effect of resignation of membership in the corporation if there is no transfer of the real property interest.

This section does not prohibit a nonprofit corporation from adopting a provision of the articles or bylaws restricting the right

of a former member, after exercising his withdrawal right, to rejoin the organization. A nonprofit corporation may regulate admission, termination, and withdrawal of membership. See Sections 5442, 5631–5633. In the absence of a provision in the articles or bylaws covering the matter, resignation is governed by Section 5633.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Class, § 5125

Member, § 5148

Person, § 18

Principal executive office, § 5166

Levy of dues and assessments, § 6010

Record of members, § 5960

Time notice given, § 5014

Transition provision, § 6622

Written notice, § 5016

§ 6013. Replacement of lost, stolen, or destroyed instruments

6013. (a) As used in this section, “instrument” means a membership or subvention certificate or a bond or other evidence of indebtedness issued by the nonprofit corporation or by a nonprofit corporation to which it is the lawful successor.

(b) A nonprofit corporation may issue a new instrument to replace an instrument alleged to have been lost, stolen, or destroyed and may require the owner of the instrument or the owner’s legal representative to give the nonprofit corporation a bond or other adequate security sufficient to indemnify it against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft, or destruction of the instrument or the issuance of the new instrument.

(c) If the nonprofit corporation refuses to replace an instrument alleged to have been lost, stolen, or destroyed, the owner of the instrument or the owner’s legal representative may bring an action in the superior court of the proper county to require the nonprofit corporation

to replace the instrument. The court shall make an order requiring the nonprofit corporation to issue and deliver to the plaintiff a replacement instrument if the court is satisfied that (1) the plaintiff is the lawful owner of the instrument described in the complaint, (2) the instrument has been lost, stolen, or destroyed, and (3) no sufficient cause has been shown why a replacement instrument should not be issued. In its order, the court shall direct that, prior to the issuance and delivery to the plaintiff of the new instrument, the plaintiff give the nonprofit corporation a bond or other adequate security that appears to the court sufficient to indemnify the nonprofit corporation against any claim that may be made against it, including any expense or liability, on account of the loss, theft, or destruction of the instrument or the issuance of the new instrument.

Comment. Section 6013 is the same in substance as Section 419 (General Corporation Law). It supersedes the provisions of former Sections 2417-2420, which were applicable to nonprofit corporations through former Section 9002. Enforcement of the right to replace instruments is by action pursuant to the rules of practice that govern civil actions generally. See Section 5260. See also *Gallaher v. Iowa Oil Co.*, 139 Cal. App. 100, 33 P.2d 439 (1934).

CROSS-REFERENCES

Definitions:

Action, § 5103

Proper county, § 5169

Article 2. Liability for Unpaid and Partly Paid Memberships

§ 6020. Definitions

6020. As used in this article:

(a) "Partly paid membership" means a membership for which the full agreed consideration has not been paid to the issuing nonprofit corporation.

(b) "Unpaid balance" means the portion of the full agreed consideration for a membership which has not been paid to the issuing nonprofit corporation.

Comment. Section 6020 is new.

CROSS-REFERENCES

Partly paid memberships, § 5623

§ 6021. Liability of member or subscriber

6021. Every subscriber for a membership and every person to whom a membership is originally issued is liable to the nonprofit corporation for the full consideration agreed to be paid for the membership.

Comment. Section 6021 is the same in substance as Section 410(a) (General Corporation Law). It is comparable to former Section 1300, which was applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Person, § 18

Enforcement of obligations of members, § 6011

Other rights or remedies not affected, § 6027

Partly paid memberships, § 5623

§ 6022. Liability of transferee generally

6022. Except as provided in Section 6023, a transferee of a partly paid membership is personally liable to the issuing nonprofit corporation for installments of the unpaid balance becoming due after the transfer.

Comment. Section 6022 is comparable to the first portion of Section 412 (General Corporation Law) and former Section 1302, which was applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Partly paid membership, § 6020

Unpaid balance, § 6020

Discharge of liability of transferor, § 6024

Enforcement of obligations of members, § 6011

Liability of transferee without knowledge, § 6023

Transfer of membership, § 5630

§ 6023. Liability of transferee without knowledge

6023. (a) A transferee of a partly paid membership is not liable to the issuing nonprofit corporation for the

unpaid balance if the transferee acquired the membership in good faith, without knowledge that it was a partly paid membership.

(b) A holder of a membership who derives title through a transferee described in subdivision (a) and who is not a party to fraud affecting the issuance of the membership is not liable to the issuing nonprofit corporation for the unpaid balance.

Comment. Subdivision (a) of Section 6023 is comparable to a portion of the first sentence of Section 411 (General Corporation Law) and former Section 1301, which was applicable to nonprofit corporations through former Section 9002. A transferee has knowledge that the membership is not paid in full where the partly paid status is indicated on the membership certificate as provided in Section 5623 (partly paid memberships). Subdivision (b) is comparable to the second sentence of Section 411 (General Corporation Law) and the second sentence of former Section 1301, which was applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Partly paid membership, § 6020

Unpaid balance, § 6020

Discharge of liability of transferor, § 6024

Liability of member or subscriber, § 6021

Liability of transferee generally, § 6022

Transfer of membership, § 5630

§ 6024. Discharge of liability of transferor

6024. The transferor of a partly paid membership is not discharged from liability to the nonprofit corporation for the unpaid balance unless otherwise provided in the articles or bylaws or it is otherwise agreed by written contract between the transferor and the nonprofit corporation.

Comment. Section 6024 is comparable to the last portion of the first sentence of Section 411 (General Corporation Law) and a portion of Section 412 (General Corporation Law) and to the first sentence of former Section 1303, which was applicable to nonprofit corporations through former Section 9002. Unlike those sections, Section 6024 does not provide for termination of

a transferor's liability except pursuant to a contractual agreement between the transferor and the corporation or a provision of the articles or bylaws.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Partly paid membership, § 6020

Unpaid balance, § 6020

Liability of member or subscriber, § 6021

Liability of transferee

Generally, § 6022

Without knowledge, § 6023

Partly paid memberships, § 5623

§ 6025. Liability of fiduciaries

6025. A person holding a partly paid membership as pledgee, executor, administrator, guardian, trustee, receiver, or in any other representative or fiduciary capacity is not personally liable to the issuing nonprofit corporation for the unpaid balance because the membership is so held, but the estate and funds in the hands of the fiduciary or representative are liable for the unpaid balance and the membership is subject to sale therefor.

Comment. Section 6025 is the same in substance as Section 413 (General Corporation Law), derived from former Section 1304, which was applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Definitions:

Partly paid membership, § 6020

Person, § 18

Unpaid balance, § 6020

Partly paid memberships, § 5623

§ 6026. Creditor's remedy

6026. (a) No action may be brought by or on behalf of a creditor of a nonprofit corporation to reach and apply the liability, if any, of a holder or transferor of a partly paid membership to the nonprofit corporation to pay the unpaid balance unless (1) final judgment has been

rendered in favor of the creditor against the nonprofit corporation and (2) execution has been returned unsatisfied in whole or in part or unless such proceedings would be useless.

(b) A creditor of the nonprofit corporation, with or without reducing its claim to judgment, may intervene in another creditor's action to reach and apply liability for an unpaid balance, and any or all holders or transferors of partly paid memberships may be joined in the action. Several judgments may be rendered for or against the parties to the action or in favor of a receiver for the benefit of the respective parties thereto.

(c) All amounts paid by a holder or transferor in an action under this section shall be credited on the unpaid balance due the nonprofit corporation for the membership.

Comment. Section 6026 is comparable to Section 414 (General Corporation Law) and former Section 1306, which was applicable to nonprofit corporations through former Section 9002. The liabilities of holders, transferees, and transferors are established pursuant to Sections 6020–6025. This section is not intended to preclude the availability of other remedies to the creditor, for example, under the Uniform Fraudulent Conveyance Act (Civil Code §§ 3439–3439.12). See Section 6027. It should be noted that intervention under this section is subject to Section 387 of the Code of Civil Procedure (intervention). See Section 5260 (rules of practice under this division).

CROSS-REFERENCES

Definitions:

Action, § 5103

Partly paid membership, § 6020

Unpaid balance, § 6020

Partly paid memberships, § 5623

§ 6027. Effect of provisions

6027. Nothing in this division shall be construed as in derogation of any rights or remedies which a creditor or member has against a member, director, officer, or the nonprofit corporation because of participation in any fraud or illegality practiced upon the creditor or member in connection with the issuance or sale of memberships

or other securities or in derogation of any rights that the nonprofit corporation may have by rescission, cancellation, or otherwise because of any fraud or illegality practiced on it in connection with the issue or sale of memberships or other securities.

Comment. Section 6027 is the same in substance as Section 415 (General Corporation Law) and former Section 1310, which was applicable to nonprofit corporations through former Section 9002.

CROSS-REFERENCES

Civil liability, §§ 25500–25510

Criminal penalties, § 5227

Definitions:

Director, § 5133

Member, § 5148

Fraudulent and prohibited practices, §§ 25400–25402

Partly paid memberships, § 5623

Article 3. Subventions

Comment. This article establishes for California nonprofit corporations a new concept for long-term investment combining elements of equity and debt financing. The subvention device first appeared in Section 504 of New York's Not-for-Profit Corporation Law and later in Section 7542 of Pennsylvania's Nonprofit Corporation Law of 1972. A nonprofit corporation may receive subvention funds which are to be repaid only upon the occurrence of a specified event, such as the accomplishment of the purpose for which the funds were contributed or the lapse of a specified period of time, subject always to the prior rights of creditors and the financial health of the nonprofit corporation. Issuance of subventions may be subject to regulation under the Corporate Securities Law. See Section 25100(j) (exemption).

§ 6030. Subventions authorized

6030. (a) The articles or bylaws may provide that a nonprofit corporation, pursuant to resolution of the board, may accept subventions under this article from members or nonmembers on terms and conditions not inconsistent with this article and issue subvention certificates therefor.

(b) Nothing in this article limits any other authority a nonprofit corporation may have to issue debt instruments of any type, including but not limited to subordinated debts.

Comment. Subdivision (b) of Section 6030 makes clear that the subvention provisions apply only to instruments issued pursuant to this article and designated as subvention certificates issued under this article. See Section 6039(b). A nonprofit corporation may issue other types of debt instruments, including other types of subordinated debt. See Sections 5312, 6040–6041.

CROSS-REFERENCES

Definitions:

Articles, § 5112
Board, § 5115
Bylaws, § 5121
Member, § 5148

§ 6031. Consideration

6031. A subvention may consist of such consideration in cash or property as is specified in the articles or bylaws or as is determined pursuant to authority contained in the articles or bylaws. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the nonprofit corporation is conclusive.

Comment. Section 6031 is similar to Section 5620 defining valid consideration for the issuance of memberships.

CROSS-REFERENCES

Definitions:

Articles, § 5112
Board, § 5115
Bylaws, § 5121

§ 6032. Subordination

6032. The rights of holders of subvention certificates are at all times subordinate to the rights of creditors of the nonprofit corporation.

Comment. Section 6032 establishes the subordinated character of subventions. The fact of subordination must appear on the subvention certificate. Section 6039.

§ 6033. Interest payments

6033. The resolution of the board authorizing acceptance of subventions may provide that the holders of subvention certificates are entitled to fixed or contingent interest payments from the assets of the nonprofit corporation.

Comment. Interest payments pursuant to Section 6033 are subject to the requirements of Section 6041.

CROSS-REFERENCES**Definitions:**

Board, § 5115

§ 6034. Redemption at option of nonprofit corporation

6034. The resolution of the board authorizing acceptance of subventions may provide:

(a) That subventions are redeemable, in whole or in part, at the option of the nonprofit corporation.

(b) The redemption price, which shall not exceed the original amount or value of the subventions plus any interest payments due or accrued thereon.

(c) The redemption period.

(d) Other terms and conditions of redemption, not inconsistent with this article.

Comment. For a provision comparable to Section 6034, see Section 402(b) (General Corporation Law). See also former Section 1101. Redemption payments pursuant to Section 6034 are subject to the requirements of Section 6064. See Section 6035.

CROSS-REFERENCES**Definitions:**

Board, § 5115

§ 6035. Solvency requirement for redemption

6035. A nonprofit corporation may not redeem a subvention certificate under this article, whether or not the holder of the certificate is a member, if the redemption would not satisfy the requirements of Section 6064.

Comment. Section 6035 incorporates the requirement of Section 6064 (purchase or redemption of memberships) that a nonprofit corporation may not make a payment that would cause it to be unable to meet its liabilities (except those whose payment is otherwise adequately provided for) as they mature. It makes the requirement applicable to all redemptions of subventions, held by both members and nonmembers.

§ 6036. Redemption at option of holder

6036. (a) The resolution of the board authorizing acceptance of subventions may provide that holders of all or some subvention certificates have the right to require the nonprofit corporation after a specified period of time to redeem the certificates, in whole or in part, at a price that does not exceed the original amount or value of the subventions plus any interest payments due or accrued thereon. The right to require redemption may in addition be conditioned upon the occurrence of a specified event.

(b) A holder of a subvention certificate, whether or not a member, may not require that the certificate be redeemed if the redemption would not satisfy the requirements of Section 6062.

(c) For the purpose of enforcing rights under this section, the holder of a subvention certificate has the same right as a member to inspect the books and records of the nonprofit corporation.

Comment. Payments to holders of certificates pursuant to Section 6036 are subject to the requirements of Section 6062 (liquidity) as well as Section 6064 (solvency). See Section 6035. In addition, a nonprofit corporation may, for its own protection, place additional limitations on call of subvention certificates. Redemption of a subvention certificate at the option of its holder is consistent with the partial debt character of this device and with the concept of a subvention as a means of financing particular projects. This procedure is inconsistent with normal rules for redemption of equity interests. See Section 402 (General Corporation Law) and former Section 1101.

CROSS-REFERENCES

Definitions:

Board, § 5115

Inspection of financial records, § 5971

§ 6037. Payment upon dissolution

6037. Upon dissolution of the nonprofit corporation, the holder of a subvention certificate is entitled, after satisfaction of the claims of creditors, to repayment of the original amount or value of the subvention plus any interest payments due or accrued thereon unless a lesser sum is specified in the resolution of the board authorizing acceptance of the subvention.

Comment. Section 6037 establishes a general rule for repayment of subventions upon dissolution, subject to contrary provisions in the authorizing resolution of the board.

CROSS-REFERENCES**Definitions:**

Board, § 5115

Distribution of assets on dissolution after payment of debts and liabilities, § 6570

§ 6038. Transfer

6038. Subvention certificates are not transferable inter vivos unless the resolution of the board authorizing acceptance of the subventions provides that they are transferable, either at will or subject to specified restrictions.

Comment. Section 6038 establishes the control of the nonprofit corporation over the transferability of subvention certificates, which are nontransferable in the absence of a specific resolution to the contrary.

CROSS-REFERENCES**Definitions:**

Board, § 5115

Transfer of membership, § 5630

§ 6039. Contents of certificate

6039. The following information shall appear upon the face of each subvention certificate:

(a) That the issuer is a nonprofit corporation and that the subvention was accepted under and is governed by Article 3 (commencing with Section 6030) of Chapter 10 of Division 2 of Title 1 of the Corporations Code.

(b) That the certificate is subordinated and where the terms of subordination may be found.

(c) Whether the certificate is transferable and, if so, whether at will or subject to specified restrictions.

(d) That the certificate is redeemable, if applicable.

(e) That interest payments may be made thereon, if applicable.

Comment. For provisions comparable to Section 6039, see Section 418(a) (General Corporation Law) and former Sections 2401 and 2403.

Article 4. Debt

§ 6040. Consideration

6040. (a) A nonprofit corporation shall not issue bonds or other evidences of indebtedness except in exchange for consideration consisting of any or all of the following:

(1) Money paid.

(2) Labor done.

(3) Services actually rendered to or for the benefit of the nonprofit corporation, including but not limited to services actually rendered in formation, merger, consolidation, division, or conversion.

(4) Debts or securities canceled.

(5) Tangible or intangible property actually received by the nonprofit corporation.

(b) In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the nonprofit corporation is conclusive.

Comment. Section 6040 is adapted in part from Section 409(a) (General Corporation Law), a revision of the provisions of former Section 1109 and, in part, from Section 506 of the New York Not-for-Profit Corporation Law and Section 7543 of the Pennsylvania Nonprofit Corporation Law of 1972.

CROSS-REFERENCES

Bylaws relating to voting rights, § 5444

Consideration, §§ 5620, 6031

Definitions:

Board, § 5115

Powers of nonprofit corporation, § 5312

§ 6041. Interest

6041. A nonprofit corporation may pay interest on, issue at a discount, and pay a premium for redemption prior to maturity of, its bonds or other evidences of indebtedness held by members or other persons, but the amount of the interest, discount, or premium received by holders of the bonds or other evidences of indebtedness shall not be determined by or contingent upon the income or gain of the nonprofit corporation, nor shall the holders receive at maturity more than the principal sum plus interest due and accrued.

Comment. Section 6041 is new. It is derived from Section 506 of the New York Not-for-Profit Corporation Law. Payments to members under Section 6041 are permissible distributions to members. Section 5316(b). It should be noted that the restrictions of Sections 6060–6067 do not apply to debt payments to members.

CROSS-REFERENCES

Definitions:

Member, § 5148

Person, § 18

Interest payments, subventions, § 6033

Powers of nonprofit corporation, § 5312

Article 5. Redemption Procedure

Comment. Article 5 (commencing with Section 6050) provides procedural rules for redemption. It is an adaptation of Sections 180 and 509 (General Corporation Law) which continue the requirements for redemption of shares stated in former Sections 113 and 1700–1703. Whether a certificate is redeemable and, if so, upon what terms and conditions must be determined from the articles, bylaws, or agreement under which the certificate was issued.

§ 6050. Definitions

6050. As used in this article:

(a) “Certificate” means a membership or subvention, whether or not a certificate has been issued therefor.

(b) “Redemption price” means the amount or amounts (in cash, property, securities, or any combination thereof) payable on the redemption of a certificate.

Except to the extent otherwise provided in the articles or bylaws, the redemption price is payable in cash.

Comment. See the Comment to this article.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Redeemable memberships, § 5622

Subventions

Authorized, § 6030

Redemption, §§ 6034-6036

§ 6051. Method of redemption

6051. Except to the extent otherwise provided in the articles, bylaws, or resolution of the board authorizing issuance of the certificate, a nonprofit corporation may redeem a certificate that is subject to redemption by giving notice of redemption and paying or depositing the redemption price in the manner provided in this article.

Comment. See the Comment to this article.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Board, § 5115

Bylaws, § 5121

Certificate, § 6050

Redemption price, § 6050

Deposit of redemption price, § 6054

Memberships, redeemable, § 5622

Notice of redemption, §§ 6052-6053

Subvention, redemption, §§ 6034-6036

§ 6052. Contents of notice of redemption

6052. The notice of redemption shall set forth all of the following:

(a) The certificates to be redeemed.

(b) The date fixed for redemption.

(c) The redemption price.

(d) The place at which payment of the redemption price will be made upon surrender of the certificates.

Comment. See the Comment to this article.

CROSS-REFERENCES

Articles or bylaws may provide redemption procedure, § 6051

Definitions:

Certificate, § 6050

Redemption price, § 6050

Mailing of notice, § 6053

§ 6053. Mailing of notice

6053. (a) The nonprofit corporation shall mail notice of redemption to each holder of record of a certificate to be redeemed as of the record date, addressed to the holder at the address of the holder appearing in the record of members or given by the holder to the nonprofit corporation for the purpose of notice. If no such address appears or has been given, the notice shall be posted and shall be available at the principal executive office of the nonprofit corporation.

(b) The notice shall be given not less than 20 nor more than 60 days before the date fixed for redemption.

(c) Failure to comply with this section does not invalidate the redemption of the certificate.

Comment. See the Comment to this article.

CROSS-REFERENCES

Articles or bylaws may provide redemption procedure, § 6051

Definitions:

Certificate, § 6050

Mailing, § 5015

Member, § 5148

Principal executive office, § 5166

Notice of redemption, contents, § 6052

Record date, §§ 5640-5644

Record of members, § 5960

Time notice given, § 5014

§ 6054. Deposit of redemption price

6054. (a) This section applies if, not later than the date fixed for redemption of a redeemable certificate, the nonprofit corporation deposits with a bank or trust company in this state as a trust fund a sum sufficient to

redeem the certificate, on the date fixed for redemption, with irrevocable instructions and authority to the bank or trust company to give notice of redemption on its behalf and to pay, at any time, the redemption price to the holder upon the surrender of the certificate.

(b) On and after the date of the deposit described in subdivision (a) (even if prior to the date fixed for redemption) the certificate is redeemed, and interest payments on the certificate, if any, cease to accrue.

(c) The deposit described in subdivision (a) constitutes full payment to the holder for the certificate. On and after the date of the deposit, the certificate is no longer outstanding and the holder has no rights with respect to it except the right to receive from the bank or trust company payment of the redemption price without interest upon surrender of the certificate.

Comment. See the Comment to this article.

CROSS-REFERENCES

Articles or bylaws may provide redemption procedures, § 6051

Definitions:

Certificate, § 6050

Redemption price, § 6050

Notice of redemption, contents, § 6052

Payments to redeem memberships, §§ 6060-6067

Payments to redeem subventions, §§ 6035-6036

Article 6. Payments to Purchase or Redeem Memberships

CROSS-REFERENCES

Transition provision, § 6623

§ 6060. Payments to members

6060. Subject to the provisions of this article, a nonprofit corporation may make payments to members pursuant to its articles or bylaws in order to purchase or redeem memberships.

Comment. Section 6060 provides for the purchase or redemption of memberships only upon authority of the articles or bylaws. See Sections 5442(g) and 5447. These payments are

permissible distributions to members. Section 5316(b). It should be noted that the provisions of this article are not applicable to payments to members as holders of corporate indebtedness. See Section 6041. They are, however, applicable to purchase of memberships under Sections 6540-6546 (avoidance of dissolution by purchase).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Member, § 5148

Redemption procedure, §§ 6050-6054

§ 6061. Time of payment

6061. (a) For the purposes of this article, the time of a payment to purchase or redeem memberships is the date cash or property is transferred by the nonprofit corporation, whether or not pursuant to a contract of an earlier date.

(b) A promissory note of a nonprofit corporation, other than a negotiable debt security (as defined in paragraph (1) of Section 8102 of the Commercial Code), shall not be deemed cash or property for the purposes of subdivision (a).

Comment. Section 6061 is comparable to a portion of Section 166 (General Corporation Law). Under subdivision (b), a negotiable debt instrument is treated as cash or property for purposes of subdivision (a) so that the limitations of this article apply at the time of the issuance of the instrument and not at the time of payments pursuant thereto. A promissory note (other than a negotiable debt instrument) is not considered cash or property and need not satisfy the requirements of this article at the time of issuance. However, any payments thereunder would, by virtue of subdivision (a), be required to satisfy this article at the time they are made. See discussion in Ackerman & Sterrett, *California's New Approach to Dividends and Reacquisitions of Shares*, 23 U.C.L.A. L. Rev. 1052, 1087-1090 (1976).

§ 6062. Requirement for payments

6062. A nonprofit corporation may not make payments to purchase or redeem memberships unless one of the following requirements is satisfied:

(a) The fund balance of excess of revenues over expenditures immediately prior to the time of the proposed payment equals or exceeds the amount of the proposed payment.

(b) Immediately after giving effect to the proposed payment:

(1) The sum of the assets (exclusive of goodwill, capitalized research and development expenses, and deferred charges) would be at least equal to $1\frac{1}{4}$ times liabilities (not including deferred taxes, deferred revenues, and other deferred credits); and

(2) The current assets would be at least equal to current liabilities or, if the average of the excess of revenues over expenses before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense for such fiscal years, at least equal to $1\frac{1}{4}$ times current liabilities. This paragraph is not applicable to a nonprofit corporation that does not classify its assets as current or fixed.

Comment. Section 6062 is adapted from the first portion of Section 500 (General Corporation Law). Section 6063 provides rules for determining the amount of the assets for the purposes of Section 6062.

Former Sections 1706 through 1708 generally required (with some exceptions) the existence of a surplus as a condition of making redemption payments to shareholders. Section 500 now requires a business corporation to have retained earnings or meet certain net worth and liquidity standards before making payments to shareholders. The standards contained in Sections 6062 and 6063 have been adapted from Section 500 to conform to accounting principles applicable to nonprofit corporations. These standards are augmented by the general solvency requirements of Section 6064.

CROSS-REFERENCES

Presentation of accounting items, § 5013

§ 6063. Determining amount of assets for purposes of Section 6062

6063. In determining the amount of the assets of the nonprofit corporation for the purposes of Section 6062:

(a) No appreciation in value not yet realized shall be included, except with respect to readily marketable securities; and profits derived from an exchange of assets shall not be included unless the assets received are currently realizable in cash.

(b) Current assets may include net amounts that the board has determined in good faith may reasonably be expected to be received during the 12-month period used in calculating current liabilities pursuant to existing contractual relationships obligating the parties to the contracts to make fixed or periodic payments during the term of the contracts, or, in the case of a public utility, pursuant to service connections with customers, after in each case giving effect to future costs not then included in current liabilities but reasonably expected to be incurred in performing the contracts or providing service to utility customers.

(c) The amount of a payment in the form of property shall be determined on the basis of the value at which the property is carried on the nonprofit corporation's financial statements.

Comment. Section 6063 is adapted from the last portion of Section 500 (General Corporation Law). It provides rules for determining the amount of the assets for purposes of Section 6062. See Section 6062 and Comment thereto.

CROSS-REFERENCES

Definitions:

Board, § 5115

Presentation of accounting items, § 5013

§ 6064. Inability to meet liabilities as they mature

6064. A nonprofit corporation shall not make a payment to purchase or redeem memberships if the nonprofit corporation is, or as a result of the payment would be, likely to be unable to meet its liabilities (except those whose payment is otherwise adequately provided for) as they mature.

Comment. Section 6064 is comparable to Section 501 (General Corporation Law). It continues the substance of former

Section 1708, which was applicable to nonprofit corporations through Section 9002.

CROSS-REFERENCES

Payments to purchase or redeem memberships, § 6060

Requirement for payments, § 6062

§ 6065. Protection of liquidation preference

6065. A nonprofit corporation shall not make a payment to purchase or redeem memberships of a class which is junior to another class with respect to a liquidation preference if, after making the payment, the excess of the corporate assets (exclusive of goodwill, capitalized research and development expenses, and deferred charges) over liabilities (not including deferred taxes, deferred revenues, and other deferred credits) would be less than the liquidation preference of all classes to which the class is junior.

Comment. Section 6065 is the same in substance as Section 502 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Class, § 5125

Distribution of assets among members, § 6574

Presentation of accounting items, § 5013

Redemption of memberships, §§ 6050-6054, 6060-6067

§ 6066. Prohibited plan of distribution

6066. No payments to purchase or redeem memberships may be made in furtherance of a plan for the distribution of gains, profits, or dividends to members.

Comment. Section 6066 is a new restriction. While payments to members pursuant to this article are generally excepted from the prohibition on distributions to members (Section 5316(b)), this exception does not apply when such payments are part of a plan or scheme to utilize a nonprofit corporation as a device to earn and distribute gains or profits.

CROSS-REFERENCES

Definitions:

Member, § 5148

Payments to purchase or redeem memberships, § 6060

§ 6067. Additional restrictions on purchase or redemption permitted

6067. Nothing in this article precludes a nonprofit corporation from imposing additional restrictions on payments to purchase or redeem memberships in the articles or bylaws or in an indenture or other agreement entered into by the nonprofit corporation.

Comment. Section 6067 is the same in substance as Section 505 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

Article 7. Charitable Property

§ 6070. Management of charitable property

6070. (a) As used in this section, “property received for charitable purposes” means both of the following:

(1) All property received for charitable purposes by a nonprofit corporation.

(2) All property received by a nonprofit corporation organized for charitable purposes unless the donor or the instrument transferring the property specifies otherwise.

(b) In acquiring, purchasing, investing, reinvesting, exchanging, selling, and otherwise managing property received for charitable purposes, a nonprofit corporation and its directors are not liable for either of the following:

(1) An action reasonably required to comply with the terms of a transfer of property for charitable purposes to the nonprofit corporation.

(2) An action reasonably required to carry out the charitable purposes of the nonprofit corporation.

Comment. Section 6070 is new. It does not prescribe the duty of care of directors in the management of charitable property. This is a matter left to case law development. See, e.g., *Lynch v. John M. Redfield Foundation*, 9 Cal. App.3d 293, 88 Cal. Rptr. 86 (1970). Section 6070 does make clear, however, that—regardless of the duty of care generally imposed on directors of a nonprofit

corporation in the management of charitable property—the directors and the nonprofit corporation may comply with the charitable purposes even though such compliance might otherwise violate the duty of care. This protection is provided to enable full participation in what might otherwise be economically marginal activities—such as support of business ventures by the economically disadvantaged, construction of low-income housing, establishment of mission churches, and the like—which may be the very purpose of the charitable corporation or the very object of a charitable trust.

CROSS-REFERENCES

Attorney General supervision, § 6074

Definitions:

Director, § 5133

Nonprofit corporation organized for charitable purposes, § 5154

Duty of care of directors, § 5570

Institutional trustee, liability of board, § 6072

§ 6071. Indefinite purposes

6071. No bequest, devise, gift, or transfer of property for charitable purposes to a nonprofit corporation is invalid because of indefiniteness or uncertainty as to the purposes or the beneficiaries thereof, but, to the extent to which such indefiniteness or uncertainty exists, it shall be resolved by the nonprofit corporation in the manner that, in its judgment, is most consonant with the purpose of the donor and most conducive to the public welfare.

Comment. Section 6071 continues the substance of a portion of former Section 10206(b) and expands its scope to include charitable transfers to all nonprofit corporations. The section establishes the principle that charitable gifts do not fail because of uncertainty as to the donor's intentions and establishes the authority of a nonprofit corporation to resolve any such ambiguities. A nonprofit corporation may receive an indefinite gift or administer a general charitable trust only in a manner consistent with the charitable purposes and the purposes of the nonprofit corporation. Charitable purposes are not defined by statute but are left to judicial development. *Cf. Lynch v. Spilman*, 67 Cal.2d 251, 431 P.2d 636, 62 Cal. Rptr. 12 (1967) (discussion of what constitutes charitable purposes).

CROSS-REFERENCES

Attorney General supervision, § 6074

§ 6072. Institutional trustee

6072. (a) As used in this section, "institutional trustee" means an entity entitled under Section 1500 or 1502 of the Financial Code to engage in the trust business.

(b) A nonprofit corporation may transfer for purposes of investment and reinvestment, by appropriate action of the board, any or all of its assets (including assets held on a charitable trust) to an institutional trustee, as trustee subject to any investment restrictions on the assets.

(c) Upon the transfer, the board is relieved of all liability for the administration of the assets for as long as the assets are administered by the institutional trustee.

(d) Except to the extent that reasonable accumulation of income is required by the terms of a transfer by which the nonprofit corporation received assets, the institutional trustee shall pay periodically, not less frequently than annually, the net income from the transferred assets, which may include so much of the realized appreciation of principal as the board of the nonprofit corporation determines to be prudent, to the nonprofit corporation for use and application to the corporate purposes.

Comment. Section 6072 is derived from and is similar in substance to provisions of the nonprofit corporation laws of Pennsylvania and New York. See 15 Pa. Cons. Stat. Ann. § 7551 (Purdon Cum. Supp. 1976-1977); N.Y. Not-for-Profit Corp. Law § 514 (McKinney 1970, Supp. 1975). See also Civil Code § 2290.5 (delegation of authority). Nothing in Section 6072 precludes a nonprofit corporation from purchasing custodial services, investment advice, or other investment services that do not contemplate total management of funds by a trustee.

Subdivisions (a) and (b) limit the choice of institutional trustee to an entity qualified under Section 1500 or 1502 of the Financial Code, which involves approval of the Superintendent of Banks, certain capital and surplus requirements, and a required deposit with the State Treasurer. This continues former Section 10204.

Subdivision (c) exempts the directors from further liability for mismanagement of such transferred assets. This protection does not relieve the directors from their duty to exercise due care in the selection of the institutional trustee. See Section 5570.

Subdivision (d) requires the institutional trustee to pay over income periodically to the nonprofit corporation, consistent with the general policy against excessive accumulation of income in charitable trusts.

CROSS-REFERENCES

Definitions:

Board, § 5115

Private foundations, distribution of income, § 6073(b)

§ 6073. Private foundations

6073. (a) This section applies to a nonprofit corporation during any period the nonprofit corporation is deemed to be a "private foundation" as defined in Section 509 of the Internal Revenue Code of 1954, and any provision contained in its articles or other governing instrument inconsistent with this section is without effect.

(b) A nonprofit corporation described in subdivision (a) shall distribute its income (and principal, if necessary) for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954 (as modified by paragraph (3) of subsection (1) of Section 101 of the Tax Reform Act of 1969).

(c) A nonprofit corporation described in subdivision (a) shall not do any of the following:

(1) Engage in any act of self-dealing as defined in subsection (d) of Section 4941 of the Internal Revenue Code of 1954 (as modified by paragraph (2) of subsection (1) of Section 101 of the Tax Reform Act of 1969).

(2) Retain any excess business holdings as defined in subsection (c) of Section 4943 of the Internal Revenue Code of 1954.

(3) Make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954.

(4) Make any taxable expenditure as defined in subsection (d) of Section 4945 of the Internal Revenue Code of 1954 (as modified by paragraph (5) of subsection (1) of Section 101 of the Tax Reform Act of 1969).

Comment. Section 6073 is the same in substance as former Section 9501.1.

CROSS-REFERENCES

Definitions:
Articles, § 5112

§ 6074. Attorney General supervision

6074. A nonprofit corporation that holds assets on a charitable trust or is organized for charitable purposes is subject at all times to examination by the Attorney General, on behalf of the state, to ascertain the condition of its affairs and to what extent, if at all, it has failed to comply with trusts which it has assumed or has departed from the general purposes for which it is formed. In case of any such failure or departure, the Attorney General shall take appropriate action and may institute, in the name of the state, the proceedings necessary to correct the failure or departure.

Comment. Section 6074 continues the substance of former Section 9505. *Cf.* former Section 10207 (supervision of charitable corporations). The language of former Section 9505 has been revised to conform to general usage in the Nonprofit Corporation Law and to eliminate the reference to a “public” trust, which was unnecessary in view of the broad meaning of “charitable.” No substantive change is intended by this revision. The provision has also been expanded to authorize the Attorney General to take any appropriate action as well as to institute proceedings. This will enable flexibility by the Attorney General to employ devices other than court proceedings to obtain compliance.

The Attorney General has inherent power at common law to superintend the management of all charities. See *People v. Cogswell*, 113 Cal. 129, 136, 45 P. 270, 271 (1896). Additional procedures for supervision by the Attorney General are available under the Uniform Supervision of Trustees for Charitable Purposes Act (Govt. Code §§ 12580–12597).

Interested individuals other than the Attorney General may also have standing to compel proper utilization of charitable assets held by a nonprofit corporation. See Section 5314 (enjoining ultra vires acts of charitable corporation); *Holt v. College of Osteopathic Physicians & Surgeons*, 61 Cal.2d 750, 394 P.2d 932, 40 Cal. Rptr. 244 (1964) (action by trustees); *San Diego*

County Council, Boy Scouts of America v. City of Escondido, 14 Cal. App.3d 189, 92 Cal. Rptr. 186 (1971) (action by potential beneficiary).

CROSS-REFERENCES

Definitions:

Nonprofit corporation organized for charitable purposes, § 5154

Rules of practice applicable to this division, § 5260

§ 6075. General charitable trust

6075. A nonprofit corporation organized for charitable purposes may receive property and funds upon a general charitable trust (not inconsistent with the charitable purposes of the nonprofit corporation) that the property and funds, either as to principal or income or both, shall be held, managed, administered, and expended for the assistance and support of such charitable institutions or objects as, and at such times and to such extent as, the nonprofit corporation in its judgment deems most conducive to the public welfare.

Comment. Section 6075 continues the substance of the first sentence of subdivision (b) of former Section 10206 and applies it to all nonprofit corporations organized for charitable purposes.

CROSS-REFERENCES

Articles of charitable corporation, delivery of copy to Attorney General, § 5323

Definitions:

Nonprofit corporation organized for charitable purposes, § 5154

Indefinite purposes, § 6071

Notice to Attorney General, sale or disposition of assets, § 6112

Powers of nonprofit corporation, § 5312

Article 8. Common Trust Funds**§ 6080. Establishment**

6080. If authorized to do so by its articles or bylaws, a nonprofit corporation organized for charitable purposes may establish one or more common trust funds for the purpose of furnishing investments to the nonprofit corporation and to any other nonprofit corporation or organization organized for charitable purposes affiliated with it or to any organization, society, nonprofit

corporation, or business corporation holding funds or property for the benefit of any of the foregoing, whether holding such funds or property as fiduciary or otherwise.

Comment. Section 6080 continues in substance a portion of former Section 10250(a), authorizing a nonprofit corporation with charitable purposes to create one or more common trust funds. The former definition of organizations which may also invest in the fund has been simplified to include any affiliated organization with charitable purposes and any organizations holding funds for such entities. See also Sections 10006 (corporations sole) and 10200 (charitable and eleemosynary corporations).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Business corporation, § 5118

Bylaws, § 5121

Nonprofit corporation organized for charitable purposes, § 5154

§ 6081. Investment

6081. (a) Notwithstanding the provisions of any law in any way limiting the right of any organization, society, nonprofit corporation, or business corporation described in Section 6080, or the directors or officers thereof, as fiduciary or otherwise, to invest the funds or property held by them, it shall be lawful for them to invest any or all of the funds or property held by them in shares or interests of common trust funds established pursuant to this article.

(b) Subdivision (a) does not apply in the case of funds or property held as fiduciary if the investment is prohibited by the wording of the will, deed, or other instrument creating the fiduciary relationship.

Comment. Section 6081 continues the substance of a portion of former Section 10250(a).

CROSS-REFERENCES

Definitions:

Business corporation, § 5118

Director, § 5133

§ 6082. Administration

6082. The trustees of a common trust fund established pursuant to this article may do all of the following:

(a) Employ officers or agents, define their duties, and fix their compensation.

(b) Appoint as custodian of the trust estate an entity entitled under Section 1500 or 1502 of the Financial Code to engage in the trust business.

(c) Employ investment advisers, define their duties, and fix their compensation.

(d) Deposit securities which constitute part or all of the trust estate in a securities depository (as defined in Section 30004 of the Financial Code), which is licensed under Section 30200 of the Financial Code or exempted from licensing thereunder by Section 30005 or 30006 of the Financial Code. The securities may be held by the securities depository in the manner authorized by Section 775 of the Financial Code.

Comment. Section 6082 is the same in substance as former Section 10250(b). General authority to convey charitable assets to an institutional trustee is contained in Section 6072.

§ 6083. Dividends

6083. The trustees of a common trust fund established pursuant to this article shall pay periodically, not less frequently than annually, ratably among the holders of shares or beneficial certificates then outstanding, dividends which shall approximately equal, in each fiscal year, the net income of the trust.

Comment. Section 6083 is the same in substance as former Section 10250(c). Unlike former Section 10250, which required "semiannual dividends," dividends may be paid under Section 6083 on a monthly, quarterly, semiannual, or annual basis or any other basis so long as the dividends satisfy the requirement that they be paid at least annually.

§ 6084. Educational institution defined

6084. As used in Sections 6085 and 6086, "educational institution" means both:

(a) A nonprofit corporation formed pursuant to Chapter 3 (commencing with Section 94300) of Part 59 of Division 10 of Title 3 of the Education Code, or under this division, for the purpose of establishing, conducting, or

maintaining an institution offering courses beyond high school and issuing or conferring a diploma or for the purpose of offering or conducting private school instruction on the high school or elementary school level, whether or not providing a full-time course of instruction, and any charitable trust organized for such purpose.

(b) The University of California, the state colleges, the state community colleges, and any auxiliary organization, as defined in Section 89901 of the Education Code, established for the purpose of receiving gifts, property, and funds to be used for the benefit of a state college.

Comment. Section 6084 is the same in substance as former Section 10251(a) except that the language "whether or not providing a full-time course of instruction" has been added.

§ 6085. Membership in nonprofit corporation for maintenance of common trust fund

6085. (a) An educational institution may become a member of a domestic or foreign nonprofit corporation incorporated for the purpose of maintaining a common trust fund or similar common fund in which nonprofit organizations may commingle their funds and property for investment.

(b) An educational institution described in subdivision (a) may invest any and all of its funds, whenever and however acquired, in the common fund unless, in the case of funds or property held as fiduciary, such investment is prohibited by the wording of the will, deed, or other instrument creating the fiduciary relationship.

Comment. Section 6085 is the same as former Section 10251(b).

CROSS-REFERENCES

Definitions:

Educational institution, § 6084

Member, § 5148

§ 6086. Distributions to educational institution

6086. An educational institution electing to invest in a common fund under the provisions of this article may:

(a) Elect to receive distributions from each such fund in an amount not to exceed for each fiscal year the greater of the income, as defined in Section 730.03 of the Civil Code, accrued on its interest in the fund or 10 percent of the value of its interest in the fund as of the last day of its next preceding fiscal year.

(b) Expend the distribution for any lawful purpose notwithstanding the provisions of any law characterizing the distribution, or any part thereof, as principal or income unless, in the case of funds or property invested as fiduciary, the expenditure is prohibited by the wording of the will, deed, or other instrument creating the fiduciary relationship. No prohibition of expenditure shall be deemed to exist solely because a will, deed, or other such instrument, whether executed or in effect before or after the effective date of this section, directs or authorizes the use of only the "income," or "interest," or "dividends," or "rents, issues, or profits," or contains words of similar import.

Comment. Section 6086 is the same in substance as former Section 10251(c).

CROSS-REFERENCES

Definitions:

Educational institution, § 6084

§ 6087. Application of Corporate Securities Law

6087. The provisions of the Corporate Securities Law of 1968, Division 1 (commencing with Section 25000) of Title 4, do not apply to the creation, administration, or termination of a common trust fund under this article or to participation therein.

Comment. Section 6087 is the same in substance as former Sections 10250(d) and 10251(d).

CHAPTER 11. SALES OF ASSETS

Comment. Chapter 11 (commencing with Section 6110) supersedes a portion of former Section 9800, which made applicable the provisions of the former General Corporation Law.

CROSS-REFERENCES

Transition provision, § 6624

§ 6110. Hypothecation of property to secure corporate obligation

6110. A mortgage, deed of trust, pledge or other hypothecation of all or part of a nonprofit corporation's property, real or personal, may be approved by the board for the purpose of securing the payment or performance of a contract or other obligation. Except to the extent otherwise provided in the articles or bylaws, no approval of the members is necessary.

Comment. Section 6110 is the same in substance as Section 1000 (General Corporation Law) and former Section 3900 except that bylaws as well as articles may require approval of the members.

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109
Approved by the board, § 5106
Articles, § 5112
Bylaws, § 5121

§ 6111. Sale or transfer of all or substantially all of assets; approval of members

6111. (a) A nonprofit corporation may not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets unless the principal terms of the transaction are approved by the board and either (1) the transaction is in the usual and regular course of its activities or (2) the principal terms of the transaction are approved by the members holding a majority of the votes entitled to be cast thereon, whether such approval occurs before or after approval of the board or before or after the transaction.

(b) Notwithstanding subdivision (a), a nonprofit corporation may not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its corporate assets to a subsidiary or to another nonprofit corporation having a common parent with the nonprofit corporation unless the principal terms of the transaction are approved by the members by at least 90 percent of the votes entitled to be cast thereon.

(c) Subject to any limitations applicable to assets held on condition or on a charitable trust, a transaction authorized by this section may be upon such terms and conditions and for consideration in an amount and in a form the board deems in the best interests of the nonprofit corporation.

Comment. Subdivision (a) of Section 6111 is the same in substance as the first sentence of subdivision (a) of Section 1001 (General Corporation Law). It is derived from former Sections 3901 and 3902.

Subdivision (b) is derived from Section 1001(d) (General Corporation Law) but applies to all transfers or dispositions of all or substantially all of the corporate property and not merely to sales. Subdivision (b) applies to both transactions under subdivision (a) and, in some cases, to transactions under Section 6551(c)(7) (powers of board on dissolution).

Subdivision (c) is the same in substance as subdivision (c) of Section 1001 (General Corporation Law) and former Section 3903 except that it is made expressly subject to any limitations applicable to assets held on condition or on a charitable trust. *Cf.* Sections 6074 (Attorney General supervision of trust property), 6573 (disposition of assets held on trust or by charitable corporation).

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
Approved by the members, § 5109
Board, § 5115
Parent, § 5163
Subsidiary, § 5184
Vote, § 5190

Notice required, § 5728

Persons entitled to take member action, § 5812

§ 6112. Notice to Attorney General required in certain cases

6112. A nonprofit corporation organized for charitable purposes or holding assets on a charitable trust shall give written notice to the Attorney General before selling, leasing, conveying, exchanging, transferring, or otherwise disposing of all or substantially all of its assets if the transaction is not in the usual and regular course of the activities of the nonprofit corporation.

Comment. Section 6112 imposes a new requirement designed to facilitate performance of the Attorney General's duty to supervise property subject to a charitable trust. See Section 6074. The notice required by this section is limited to cases where the transfer of assets is not in the usual and regular course of activities. Thus, such transfers as an annual turnover of funds by a family foundation organized for that purpose does not fall within the notice requirement.

CROSS-REFERENCES

Definitions:

Nonprofit corporation organized for charitable purposes, § 5154

Time notice given, § 5014

Written notice, §§ 8, 5016

§ 6113. Abandonment of proposed transaction

6113. Notwithstanding the approval of the members, the board may abandon a transaction described in Section 6111 without further action by the members, subject to the contractual rights, if any, of third parties.

Comment. Section 6113 is the same in substance as subdivision (b) of Section 1001 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109

Board, § 5115

Member, § 5148

§ 6114. Certificate of resolution and approval; effect as evidence

6114. (a) A deed or instrument conveying or otherwise transferring assets of a nonprofit corporation may have annexed to it the certificate of the secretary or an

assistant secretary of the nonprofit corporation, stating that the transaction has been validly approved by the board and stating either of the following:

(1) That the assets described in the deed or instrument are less than substantially all of the assets of the nonprofit corporation or that the transfer is in the usual and regular course of the activities of the nonprofit corporation, if such is the case.

(2) That the transfer has been approved by the members pursuant to Section 6111 and notice given to the Attorney General pursuant to Section 6112, if applicable.

(b) The certificate is:

(1) Prima facie evidence of the existence of the facts authorizing the conveyance or other transfer of the assets. The presumption created by this paragraph is a presumption affecting the burden of producing evidence.

(2) Conclusive evidence of the existence of the facts authorizing the conveyance or other transfer of the assets in favor of an innocent purchaser or encumbrancer for value.

Comment. Section 6114 is the same in substance as Section 1002 (General Corporation Law) and former Section 3904 except that reference to notice to the Attorney General has been added as has the language classifying the presumption created by subdivision (b) as a presumption affecting the burden of producing evidence.

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106

Approved by the members, § 5109

Presumption affecting burden of producing evidence, effect of, Evid. Code § 604

Time notice given, § 5014

CHAPTER 12. MERGER AND CONSOLIDATION

Comment. Chapter 12 (commencing with Section 6210) supersedes former Section 9700, which incorporated the merger and consolidation provisions of the General Corporation Law except to the extent modified by the provisions of former Sections 9701–9703. See Article 5 (commencing with Section 6250) for special provisions applicable where one of the constituent nonprofit corporations is a foreign nonprofit corporation.

Chapter 12 authorizes merger and consolidation only among nonprofit corporations and not with business corporations. However, a nonprofit corporation may convert to a business corporation pursuant to Chapter 14 (commencing with Section 6410) (conversion) and subsequently merge with other business corporations under the General Corporation Law.

CROSS-REFERENCES

Transition provision, § 6624

Article 1. Agreement of Merger or Consolidation

§ 6210. Merger or consolidation authorized

6210. Two or more nonprofit corporations may be merged into one nonprofit corporation, or consolidated to form another nonprofit corporation, as provided in this chapter.

Comment. Section 6210 is similar to former Section 4100. For a comparable provision, see Section 1100 (General Corporation Law).

§ 6211. Contents of agreement

6211. An agreement of merger or consolidation shall be prepared which states the following:

(a) The terms and conditions of the merger or consolidation.

(b) The name and state or place of incorporation of each constituent nonprofit corporation and, in the case of a merger, which of the constituent nonprofit corporations is to be the surviving nonprofit corporation.

(c) The manner of converting the memberships in each of the constituent nonprofit corporations into memberships in the surviving or consolidated nonprofit corporation.

(d) Other details and provisions as are desired and appropriate.

Comment. Section 6211 is derived from Section 1101 (General Corporation Law) and former Section 4103. The name of the surviving nonprofit corporation may be the same as or similar to the name of a constituent nonprofit corporation. See Section 6214. It should be noted that the agreement may not provide for the distribution of assets to members upon merger or consolidation because to permit such a distribution would contravene the policy against permitting the distribution of gains, profits, or dividends except upon dissolution. See Section 5316.

CROSS-REFERENCES

Articles and amendments of articles part of agreement, §§ 6212, 6213

Definitions:

Consolidated nonprofit corporation, § 5127

Constituent nonprofit corporation, § 5129

Surviving nonprofit corporation, § 5187

Equal treatment of members, § 6215

§ 6212. Amendment of articles by agreement of merger

6212. In the case of a merger, if the articles of the surviving nonprofit corporation are to be amended, a certificate of amendment shall be attached to the agreement of merger and shall be considered a part of the agreement.

Comment. Section 6212 is comparable to subdivision (e) of Section 905 (General Corporation Law) and supersedes a portion of former Section 4105 which required the agreement of merger to state any amendments to the articles of the surviving corporation. Section 6212 provides for the separate statement of proposed amendments to the articles of the surviving nonprofit corporation so that they are distinct from the other matters required to be stated in the agreement. However, for the purposes of approval and filing, the amendments are considered to be part of the agreement of merger. In this connection, see Section 6221 (vote required for approval of agreement of merger).

CROSS-REFERENCES

Certificate of amendment, §§ 5425-5428

Definitions:

Articles, § 5112

Surviving nonprofit corporation, § 5187

§ 6213. Articles of consolidated corporation

6213. In the case of a consolidation, the articles of the consolidated nonprofit corporation shall be attached to the agreement of consolidation and shall be considered a part of the agreement.

Comment. Section 6213 is comparable to subdivision (e) of Section 905 (General Corporation Law) which pertains to merger. Section 6213 provides for the separate statement of the proposed articles of the consolidated nonprofit corporation so that they are distinct from the other matters required to be stated in the agreement. However, for the purposes of approval and filing, the articles are considered to be part of the agreement of consolidation.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Consolidated nonprofit corporation, § 5127

§ 6214. Name of surviving or consolidated corporation

6214. Subject to Section 5222, the name of the surviving or consolidated nonprofit corporation may be the same as or similar to the name of a domestic or foreign disappearing nonprofit corporation.

Comment. Section 6214 is the same in substance as a portion of subdivision (b) of Section 1101 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Consolidated nonprofit corporation, § 5127

Disappearing nonprofit corporation, § 5136

Surviving nonprofit corporation, § 5187

§ 6215. Equal treatment of memberships

6215. Each membership of the same class of a constituent nonprofit corporation shall be treated equally with respect to the manner of converting the membership into a membership in the surviving or

consolidated nonprofit corporation unless a different treatment is approved by the members of the class by unanimous vote.

Comment. Section 6215 is comparable to a portion of Section 1101 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109
Class, § 5125
Consolidated nonprofit corporation, § 5127
Constituent nonprofit corporation, § 5129
Surviving nonprofit corporation, § 5187
Vote, § 5190

Article 2. Approval of Agreement

§ 6220. Approval of board

6220. The agreement of merger or consolidation shall be approved by the board of each constituent nonprofit corporation. Upon approval, the agreement shall be signed by the officers as specified in Section 5181 on behalf of each constituent nonprofit corporation.

Comment. Section 6220 is comparable to a portion of Sections 1101, 1102, and 1200(a) (General Corporation Law) and a portion of former Section 4103 and former Section 4106.

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
Constituent nonprofit corporation, § 5129
Signed by the officers, § 5181

§ 6221. Approval of members

6221. (a) The agreement of merger or consolidation shall be approved by the members of each constituent nonprofit corporation holding a majority of the votes entitled to be cast thereon.

(b) In the case of a merger, if the articles of the surviving nonprofit corporation are to be amended and amendment of the articles of that nonprofit corporation requires approval by the members by a greater vote than otherwise would be required under subdivision (a), the

agreement of merger shall be approved by the members of the surviving nonprofit corporation by such greater vote.

Comment. Section 6221 supersedes former Section 9701; compare Section 1201(a) (General Corporation Law). Section 6221 requires as a minimum that the agreement be approved by persons holding a majority of the votes entitled to be cast. Former law required a two-thirds vote where members acted by written consent and required approval of the members entitled to vote regardless of limitations or restrictions on the voting power of any class. See former Section 9701.

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109
 Articles, § 5112
 Constituent nonprofit corporation, § 5129
 Surviving nonprofit corporation, § 5187
 Vote, § 5190

Notice required, §§ 5728, 6224

Persons entitled to take member action, § 5812

§ 6222. Members' approval before or after board's approval

6222. The approval of the members of the agreement of merger or consolidation may be given either before or after the approval of the board.

Comment. Section 6222 is the same in substance as the first sentence of subdivision (f) of Section 1201 (General Corporation Law) and former Section 4108.

CROSS-REFERENCES

Definitions:

Approval of the board, § 5106
 Approval of the members, § 5109

§ 6223. Officers' certificate of approval

6223. After the agreement of merger or consolidation has been approved by the board and approved by the members of each constituent nonprofit corporation, the officers of each constituent nonprofit corporation shall execute an officers' certificate of approval that states that the agreement of merger or consolidation was approved by the board of that nonprofit corporation and was approved by the members of that nonprofit corporation.

Comment. Section 6223 is the same in substance as a portion of Section 1103 (General Corporation Law) and is comparable to former Section 4110. After being executed, the officers' certificates of approval are filed separately or along with the certified copy of the agreement of merger or consolidation as provided by Section 6240.

CROSS-REFERENCES

Definitions:

- Approved by the board, § 5106
- Approved by the members, § 5109
- Constituent nonprofit corporation, § 5129
- Officers' certificate, § 5157

§ 6224. Notice to members

6224. When the agreement of merger or consolidation has been approved by the board and approved by the members of a constituent nonprofit corporation, the constituent nonprofit corporation shall give notice of the approval to each of its members entitled to vote on the agreement. The notice shall be given in the manner provided for giving notice of meetings.

Comment. Section 6224 is similar to former Section 4109.

CROSS-REFERENCES

Definitions:

- Approved by the board, § 5106
- Approved by the members, § 5109
- Constituent nonprofit corporation, § 5129
- Member, § 5148
- Vote, § 5190

Manner of giving notice of meetings, §§ 5720-5728

Time notice given, § 5014

Article 3. Amendment of Agreement; Abandonment of Merger or Consolidation

§ 6230. Amendment of agreement

6230. (a) At any time before the merger or consolidation is effective, an amendment to the agreement of merger or consolidation may be adopted and approved in the same manner as the original agreement.

(b) The agreement as amended shall be signed and the approval of the board and the approval of the members shall be certified in the same manner as the original agreement.

(c) If the agreement is amended by each constituent nonprofit corporation, the agreement as so amended constitutes the agreement of merger or consolidation.

Comment. Section 6230 is the same in substance as Section 1104 (General Corporation Law) and former Section 4111.

CROSS-REFERENCES

Approval of agreement, §§ 6220-6224

Definitions:

Approval of the board, § 5106

Approval of the members, § 5109

Constituent nonprofit corporation, § 5129

§ 6231. Abandonment of merger or consolidation

6231. At any time before the merger or consolidation is effective, the board of a constituent nonprofit corporation may, in its discretion and without further approval of the members, abandon a merger or consolidation, subject to the contractual rights, if any, of third parties, including other constituent nonprofit corporations.

Comment. Section 6231 is the same in substance as Section 1105 (General Corporation Law) and former Section 4112.

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109

Board, § 5115

Constituent nonprofit corporation, § 5129

Article 4. Filing and Effect of Agreement and Certificates

§ 6240. Filing copy of agreement and officers' certificates

6240. (a) A copy of the agreement of merger or consolidation and the officers' certificates of approval of each constituent nonprofit corporation shall be filed. In the case of a merger, the nonprofit corporation that is to

be the surviving nonprofit corporation shall file the copy of the agreement of merger and the officers' certificates of approval of each of the constituent nonprofit corporations.

(b) Subject to subdivision (c) of Section 110 and to Section 6255, the merger or consolidation is effective upon the filing of both the copy of the agreement and the officers' certificates of approval.

(c) The Secretary of State may certify a copy of the agreement of merger or consolidation separate from any officers' certificates attached thereto.

Comment. Section 6240 is based on portions of Section 1103 (General Corporation Law). Compare former Sections 4110 and 4113. See also Sections 6211 (agreement of merger or consolidation), 6223 (officers' certificate of approval). Subdivision (b) makes clear that the merger or consolidation is effective upon filing, subject to a delayed effective date as provided in Section 110(c). See Section 5228(f). The Secretary of State will file the agreement of merger or consolidation only if the requirements of Sections 6241 (Franchise Tax Board certificate of satisfaction) and 6242 (notice to Attorney General) have been satisfied. Any amendments to articles of a surviving nonprofit corporation, and the articles of a consolidated nonprofit corporation, are filed as a part of the agreement of merger or consolidation. See Sections 6212 and 6213.

CROSS-REFERENCES

Definitions:

Constituent nonprofit corporation, § 5129

Filed, § 5142

Officers' certificate, § 5157

Surviving nonprofit corporation, § 5187

Evidentiary effect of filed agreement of merger or consolidation, § 5242

§ 6241. Franchise Tax Board certificate of satisfaction

6241. Each disappearing nonprofit corporation that is subject to the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) shall file a certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The Secretary of State shall not file

the agreement of merger or consolidation until the certificate of satisfaction has been filed.

Comment. Section 6241 is the same in substance as a portion of Section 1103 (General Corporation Law) and former Section 4113.

CROSS-REFERENCES

Definitions:

Disappearing nonprofit corporation, § 5136
Filed, § 5142

§ 6242. Notice to Attorney General

6242. (a) If a constituent nonprofit corporation holds assets on a charitable trust or is a nonprofit corporation organized for charitable purposes:

(1) Notice of the agreement of merger or consolidation shall be given to the Attorney General before the agreement is filed.

(2) An officers' certificate that notice has been given to the Attorney General shall be filed.

(b) The Secretary of State shall not file the agreement of merger or consolidation until the officers' certificate required by this section has been filed.

Comment. Section 6242 imposes a new requirement. By requiring notice to the Attorney General of the proposed merger or consolidation of a nonprofit corporation that holds assets on a charitable trust or is organized for charitable purposes, Section 6242 enables the Attorney General to enforce the supervisory responsibilities over charitable trusts. See Section 6074; Govt. Code §§ 12580–12597 (Uniform Supervision of Trustees for Charitable Purposes Act).

CROSS-REFERENCES

Definitions:

Constituent nonprofit corporation, § 5129
Filed, § 5142
Nonprofit corporation organized for charitable purposes, § 5154
Officers' certificate, § 5157

Time notice given, § 5014

§ 6243. Effect of merger

6243. On the effective date of a merger:

(a) The separate existence of each of the disappearing nonprofit corporations ceases.

(b) The surviving nonprofit corporation succeeds, without other transfer, to all the rights and property of each of the disappearing nonprofit corporations.

(c) The surviving corporation is subject to all the debts and liabilities of each disappearing nonprofit corporation in the same manner as if the surviving nonprofit corporation had itself incurred them.

(d) The provisions of the agreement of merger, including any amendment of the articles of the surviving nonprofit corporation, are effective according to their terms.

Comment. Subdivisions (a), (b), and (c) of Section 6243 are the same in substance as subdivision (a) of Section 1107 (General Corporation Law) and the first paragraph of former Section 4116. Subdivision (d) makes clear that, upon filing or at a later effective date, the agreement of merger is effective in the manner therein provided. See Section 6240(b).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Disappearing nonprofit corporation, § 5136

Surviving nonprofit corporation, § 5187

Evidence of record ownership after merger, § 5243

§ 6244. Effect of consolidation

6244. On the effective date of a consolidation:

(a) The separate existence of each of the disappearing nonprofit corporations ceases.

(b) The consolidated nonprofit corporation succeeds, without other transfer, to all the rights and property of each of the disappearing nonprofit corporations.

(c) The consolidated nonprofit corporation is subject to all the debts and liabilities of each disappearing nonprofit corporation in the same manner as if the consolidated nonprofit corporation had itself incurred them.

(d) The provisions of the agreement of consolidation, including the articles of the consolidated nonprofit corporation, are effective according to their terms.

Comment. Subdivisions (a), (b), and (c) of Section 6244 continue the substance of the first paragraph of former Section

4116. It should be noted that, in the case of a consolidation, all the constituent nonprofit corporations are disappearing nonprofit corporations. Subdivision (d) makes clear that, upon filing or at a later effective date, the agreement of consolidation is effective in the manner therein provided. See Section 6240(b).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Consolidated nonprofit corporation, § 5127

Disappearing nonprofit corporation, § 5136

Evidence of record ownership after consolidation, § 5243

§ 6245. Rights of creditors and liens preserved

6245. Rights of creditors against, and liens upon the property of, each of the constituent nonprofit corporations are preserved unimpaired against the surviving or consolidated nonprofit corporation and its assets.

Comment. Section 6245 is the same in substance as a portion of subdivision (b) of Section 1107 (General Corporation Law) and a portion of the second paragraph of former Section 4116.

CROSS-REFERENCES

Definitions:

Consolidated nonprofit corporation, § 5127

Constituent nonprofit corporation, § 5129

Surviving nonprofit corporation, § 5187

§ 6246. Effect on bequest, devise, gift, etc.

6246. 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 nonprofit corporation and which takes effect or remains payable after the merger or consolidation, inures to the surviving or consolidated nonprofit corporation.

Comment. Section 6246 continues the substance of former Section 10206.1.

CROSS-REFERENCES

Definitions:

Consolidated nonprofit corporation, § 5127

Constituent nonprofit corporation, § 5129

Surviving nonprofit corporation, § 5187

§ 6247. Effect on pending actions

6247. An action pending by or against a disappearing nonprofit corporation may be prosecuted to judgment, which binds the surviving or consolidated nonprofit corporation, and the surviving or consolidated nonprofit corporation may be proceeded against or substituted in place of the disappearing nonprofit corporation.

Comment. Section 6247 is the same in substance as subdivision (c) of Section 1107 (General Corporation Law) and the last paragraph of former Section 4116. See also Code Civ. Proc. § 385 (substitution).

CROSS-REFERENCES**Definitions:**

Action, § 5103

Consolidated nonprofit corporation, § 5127

Disappearing nonprofit corporation, § 5136

Surviving nonprofit corporation, § 5187

Article 5. Merger or Consolidation Involving Foreign Corporation**§ 6250. Merger or consolidation involving foreign corporation**

6250. The merger or consolidation of a domestic nonprofit corporation with a foreign nonprofit corporation may be effected if the foreign nonprofit corporation is authorized by the laws under which it is formed to effect such a merger or consolidation.

Comment. Section 6250 is the same in substance as the first sentence of subdivision (a) of Section 1108 (General Corporation Law) and the first paragraph of former Section 4118.

§ 6251. Law governing surviving corporation

6251. In the case of the merger of a domestic and a foreign nonprofit corporation, the surviving nonprofit corporation may be either of the constituent nonprofit corporations. The surviving nonprofit corporation continues to exist under the laws of the state or place of its incorporation.

Comment. Section 6251 is the same in substance as the second sentence of subdivision (a) of Section 1108 (General Corporation Law) and the second sentence of the second paragraph of former Section 4118.

CROSS-REFERENCES

Definitions:

Constituent nonprofit corporation, § 5129

Surviving nonprofit corporation, § 5187

§ 6252. Law governing consolidated corporation

6252. In the case of the consolidation of a domestic and a foreign nonprofit corporation, the consolidated nonprofit corporation may be a nonprofit corporation organized under the laws of the state or place under which either of the constituent nonprofit corporations is incorporated.

Comment. Section 6252 continues the substance of the first sentence of the second paragraph of former Section 4118.

CROSS-REFERENCES

Definitions:

Consolidated nonprofit corporation, § 5127

Constituent nonprofit corporation, § 5129

§ 6253. Law controlling merger or consolidation

6253. (a) If the surviving nonprofit corporation or the consolidated nonprofit corporation is to be a domestic nonprofit corporation, the merger or consolidation proceedings with respect to the nonprofit corporation and any domestic disappearing nonprofit corporation shall conform to the provisions of this chapter.

(b) If the surviving nonprofit corporation or the consolidated nonprofit corporation is to be a foreign nonprofit corporation, the merger or consolidation proceedings may be in accordance with the laws of the state or place of incorporation of the surviving nonprofit corporation or of proposed incorporation of the consolidated nonprofit corporation. The requirements of Sections 6215, 6221, 6241, and 6242, and subdivision (a) of Section 6255 shall be satisfied with respect to any domestic disappearing nonprofit corporation.

Comment. Section 6253 is the same in substance as subdivision (b) of Section 1108 (General Corporation Law) and the third paragraph of former Section 4118.

Subdivision (b) makes clear that, even where the merger or consolidation is to be governed by the law of another state, the provisions concerning equal treatment of members (Section 6215) and membership approval (Section 6221) apply to a disappearing domestic nonprofit corporation and that the papers filed in the other state must also be filed in this state pursuant to subdivision (a) of Section 6255. Sections 6241 and 6242 also must be complied with in cases where those sections apply.

CROSS-REFERENCES

Definitions:

- Consolidated nonprofit corporation, § 5127
- Disappearing nonprofit corporation, § 5136
- Surviving nonprofit corporation, § 5187

§ 6254. Filing for domestic surviving or consolidated corporation

6254. (a) If the surviving nonprofit corporation or the consolidated nonprofit corporation is to be a domestic nonprofit corporation, a copy of the agreement of merger or consolidation and the officers' certificate of approval of each domestic or foreign constituent nonprofit corporation shall be filed.

(b) Subject to subdivision (c) of Section 110, upon the filing of all instruments required to be filed by this section:

(1) The merger or consolidation is effective as to the domestic nonprofit corporation.

(2) Each foreign disappearing nonprofit corporation which is qualified for the transaction of intrastate business shall by virtue of the filing automatically surrender its right to transact intrastate business.

Comment. Section 6254 is based on subdivision (c) of Section 1108 (General Corporation Law) and a portion of the first paragraph of former Section 4119. Compliance with all the provisions of this chapter, including those relating to the Franchise Tax Board certificate of satisfaction (Section 6241) and an officers' certificate of notice to the Attorney General (Section 6242), is required in cases where those provisions apply. See Section 6253 (a).

CROSS-REFERENCES

Definitions:

- Consolidated nonprofit corporation, § 5127
- Constituent nonprofit corporation, § 5129
- Filed, § 5142
- Officers' certificate, § 5157
- Surviving nonprofit corporation, § 5187
- Foreign nonprofit corporations, § 5226
- Officers' certificate of approval, § 6223

§ 6255. Filing for foreign surviving or consolidated corporation

6255. (a) If the surviving or consolidated nonprofit corporation is to be a foreign nonprofit corporation, there shall be filed in this state as to any domestic disappearing nonprofit corporation a copy of the agreement, certificate, or other document filed by the surviving or consolidated foreign nonprofit corporation in the state or place of its incorporation for the purpose of effecting the merger or consolidation. The copy shall be certified by the public officer having official custody of the original or, in lieu thereof, an executed counterpart of the agreement, certificate, or other document may be filed.

(b) Upon the filing in this state required by subdivision (a):

(1) The merger or consolidation is effective as to the domestic disappearing nonprofit corporation as of the time it is effective in the foreign jurisdiction.

(2) Each foreign disappearing nonprofit corporation which is qualified for the transaction of intrastate business shall automatically by such filing surrender its right to transact intrastate business as of the time the merger or consolidation is effective in the foreign jurisdiction.

Comment. Section 6255 is based on subdivision (d) of Section 1108 (General Corporation Law) and a portion of the second paragraph of former Section 4119. Compliance with the provisions relating to the Franchise Tax Board certificate of satisfaction (Section 6241) and an officers' certificate of notice to the Attorney General (Section 6242) is required in cases where those provisions apply. Section 6253(b).

CROSS-REFERENCES

Definitions:

Consolidated nonprofit corporation, § 5127

Disappearing nonprofit corporation, § 5136

Filed, § 5142

Surviving nonprofit corporation, § 5187

Foreign nonprofit corporations, § 5226

Article 6. Action Relating to Validity of Merger or Consolidation

§ 6260. Limitation of actions

6260. Except as provided in this article, no member of a nonprofit corporation has a right at law or in equity to attack the validity of a merger or consolidation or to have the merger or consolidation set aside or rescinded.

Comment. Section 6260 is derived from a portion of subdivision (a) of Section 1312 (General Corporation Law) and a portion of former Section 4123. This article provides limited rights to attack a merger or consolidation. There is no right to require the nonprofit corporation to purchase the memberships of dissenting members. Such a right would be contrary to the policy against distribution of gains, profits, or dividends to members. See Section 5316. This article applies only to actions by members; nothing in this article limits, restricts, or otherwise affects any right of action the Attorney General may have by statute or otherwise.

CROSS-REFERENCES

Definitions:

Member, § 5148

§ 6261. Action to test required vote

6261. A member of a nonprofit corporation may bring an action to test whether the number of votes required to approve the agreement of merger or consolidation have been legally cast in favor thereof.

Comment. Section 6261 is derived from a portion of subdivision (a) of Section 1312 (General Corporation Law) and a portion of former Section 4123.

CROSS-REFERENCES

Definitions:

Action, § 5103
Member, § 5148
Vote, § 5190

§ 6262. Action to enjoin or rescind unfair merger or consolidation

6262. (a) A member of a nonprofit corporation may bring an action to enjoin or rescind a merger or consolidation that is unfair to the property rights of the member or class if the member satisfies both of the following requirements:

(1) The membership was held of record on the date for the determination of memberships entitled to be voted on the agreement of merger or consolidation.

(2) The membership was entitled to be voted on the agreement of merger or consolidation and was not voted in favor thereof.

(b) The merger or consolidation may be enjoined or rescinded only if the member establishes by clear and convincing evidence that the merger or consolidation is unfair to the property rights of the member or class.

(c) An action pursuant to this section may not be commenced more than 30 days after notice is given pursuant to Section 6224.

Comment. Section 6262 is new. Corporations involved in a merger or consolidation may desire to specify an effective date at least 30 days after notice of approval is given in order to avoid complications that might result from an action under this section to rescind a merger or consolidation that has already become effective.

CROSS-REFERENCES

Definitions:

Action, § 5103
Class, § 5125
Member, § 5148
Vote, § 5190

CHAPTER 13. DIVISION

Article 1. Plan of Division

§ 6310. Division of nonprofit corporation authorized

6310. A nonprofit corporation may be divided into two or more nonprofit corporations as provided in this chapter.

Comment. Chapter 13 (commencing with Section 6310) is based in large part on Sections 7941-7946 of the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. §§ 7941-7946 (Purdon Cum. Supp. 1976-1977). Prior law did not provide for division of corporations.

Where a nonprofit corporation organized for charitable purposes or holding assets on a charitable trust divides, the charitable assets continue to be impressed with a trust for charitable purposes.

§ 6311. Contents of plan of division

6311. A plan of division shall be prepared which states the following:

- (a) The terms and conditions of the division.
- (b) Whether the dividing nonprofit corporation is to be a surviving nonprofit corporation.
- (c) The name of the dividing nonprofit corporation and the names of the resulting nonprofit corporations.
- (d) The manner of converting memberships and obligations of the dividing nonprofit corporation into memberships and obligations of the resulting nonprofit corporations.
- (e) Other details and provisions as are desired and appropriate.

Comment. Section 6311 is based on portions of the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. §§ 7942, 7943 (Purdon Cum. Supp. 1976-1977), and is analogous to Section 6211 (contents of agreement of merger or consolidation).

CROSS-REFERENCES

Articles and amendments of articles part of plan, §§ 6312, 6313

Definitions:

- Dividing nonprofit corporation, § 5139
- Resulting nonprofit corporation, § 5178
- Surviving nonprofit corporation, § 5187

Name, § 6314

§ 6312. Articles of new corporation

6312. The articles of each new nonprofit corporation shall be attached to the plan of division and shall be considered a part of the plan.

Comment. Section 6312 is based on the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7942(b) (Purdon Cum. Supp. 1976-1977), and is analogous to Section 6213 (articles of consolidated nonprofit corporation).

CROSS-REFERENCES

Definitions:

- Articles, § 5112
- New nonprofit corporation, § 5151

§ 6313. Amendment of articles of surviving corporation

6313. If the articles of a surviving nonprofit corporation are to be amended, a certificate of amendment shall be attached to the plan of division and shall be considered a part of the plan.

Comment. Section 6313 is analogous to Section 6212 (amendment of articles in merger). Compare 15 Pa. Cons. Stat. Ann. § 7946(d) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

- Articles, § 5112
- Surviving nonprofit corporation, § 5187

§ 6314. Name of new corporation

6314. Subject to Section 5222, the name of a new nonprofit corporation may be the same as or similar to the name of the disappearing nonprofit corporation.

Comment. Section 6314 is comparable to Section 6214 (name of surviving or consolidated corporation).

CROSS-REFERENCES

Definitions:

- Disappearing nonprofit corporation, § 5136
- New nonprofit corporation, § 5151

Article 2. Approval of Plan

§ 6320. Approval of board

6320. The plan of division shall be approved by the board of the dividing nonprofit corporation. Upon approval, the plan shall be signed by the officers as specified in Section 5181 on behalf of the dividing nonprofit corporation.

Comment. Section 6320 is analogous to Section 6220 (approval of agreement of merger or consolidation). Compare 15 Pa. Cons. Stat. Ann. § 7942(c) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
Dividing nonprofit corporation, § 5139
Signed by the officers, § 5181

§ 6321. Approval of members

6321. (a) The plan of division shall be approved by the members of the dividing nonprofit corporation holding a majority of the votes entitled to be cast thereon.

(b) If the dividing nonprofit corporation is to be a surviving nonprofit corporation and its articles are to be amended and amendment of its articles requires approval by a greater vote than otherwise would be required under subdivision (a), the plan of division shall be approved by the members by such greater vote.

Comment. Section 6321 is analogous to Section 6221 (approval of agreement of merger or consolidation). Compare 15 Pa. Cons. Stat. Ann. § 7942(c) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109
Articles, § 5112
Dividing nonprofit corporation, § 5139
Surviving nonprofit corporation, § 5187
Vote, § 5190

Notice required, §§ 5728, 6324

Persons entitled to take member action, § 5812

§ 6322. Members' approval before or after board's approval

6322. The approval of the members of the plan of division may be given either before or after the approval of the board.

Comment. Section 6322 is analogous to Section 6222 (approval of agreement of merger or consolidation).

CROSS-REFERENCES

Definitions:

Approval of the board, § 5106
Approval of the members, § 5109

§ 6323. Officers' certificate of approval

6323. After the plan of division has been approved by the board and approved by the members, the officers shall execute an officers' certificate of approval that states that the plan of division was approved by the board and approved by the members.

Comment. Section 6323 is analogous to Section 6223 (certificate of approval of merger or consolidation).

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
Approved by the members, § 5109
Officers' certificate, § 5157

§ 6324. Notice to members

6324. When the plan of division has been approved by the board and approved by the members, notice of the approval shall be given each member entitled to vote on the plan. The notice shall be given in the manner provided for giving notice of meetings.

Comment. Section 6324 is analogous to Section 6224 (notice of approval of agreement of merger or consolidation).

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
Approved by the members, § 5109
Member, § 5148
Vote, § 5190

Manner of giving notice of meetings, §§ 5720-5728

Time notice given, § 5014

Article 3. Amendment of Plan; Abandonment of Division

§ 6330. Amendment of plan

6330. (a) At any time before the division is effective, an amendment to the plan of division may be adopted and approved in the same manner as the original plan.

(b) The plan as amended shall be signed and the approval of the board and the approval of the members shall be certified in the same manner as the original plan.

(c) If the plan is amended, the plan as so amended constitutes the plan of division.

Comment. Section 6330 is analogous to Section 6230 (amendment of agreement of merger or consolidation). Compare 15 Pa. Cons. Stat. Ann. § 7942(c) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Approval of the board, § 5106

Approval of the members, § 5109

§ 6331. Abandonment of division

6331. At any time before the division is effective, the board may, in its discretion and without further approval of the members, abandon a division subject to the contractual rights, if any, of third parties.

Comment. Section 6331 is analogous to Section 6231 (abandonment of merger or consolidation). Compare 15 Pa. Cons. Stat. Ann. § 7942(c) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109

Board, § 5115

Article 4. Filing and Effect of Plan and Certificate

§ 6340. Filing copy of plan and officers' certificate

6340. (a) A copy of the plan of division and the officers' certificate of approval shall be filed.

(b) Subject to subdivision (c) of Section 110, the division is effective upon the filing of both the copy of the plan of division and the officers' certificate of approval.

(c) The Secretary of State may certify a copy of the plan of division separate from the officers' certificate attached thereto.

Comment. Section 6340 is analogous to Section 6240 (filing copy of agreement of merger or consolidation). Compare 15 Pa. Cons. Stat. Ann. § 7944 (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Filed, § 5142

Officers' certificate, § 5157

Evidentiary effect of filed plan of division, § 5242

§ 6341. Franchise Tax Board certificate

6341. A dividing nonprofit corporation which is not a surviving nonprofit corporation and which is subject to the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) shall file a certificate of satisfaction of the Franchise Tax Board to the effect that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The Secretary of State shall not file the plan of division until the certificate of satisfaction has been filed.

Comment. Section 6341 is analogous to Section 6241.

CROSS-REFERENCES

Definitions:

Dividing nonprofit corporation, § 5139

Filed, § 5142

Surviving nonprofit corporation, § 5187

§ 6342. Notice to Attorney General

6342. (a) If a dividing nonprofit corporation holds assets on a charitable trust or is a nonprofit corporation organized for charitable purposes:

(1) Notice of the plan of division shall be given to the Attorney General before the plan is filed.

(2) An officers' certificate that notice has been given to the Attorney General shall be filed.

(b) The Secretary of State shall not file the plan until the officers' certificate required by this section has been filed.

Comment. Section 6342 is analogous to Section 6242. See also Comment to Section 6242.

CROSS-REFERENCES

Definitions:

Dividing nonprofit corporation, § 5139

Filed, § 5142

Nonprofit corporation organized for charitable purposes, § 5154

Officers' certificate, § 5157

Time notice given, § 5014

§ 6343. Effect of division

6343. On the effective date of a division:

(a) The dividing nonprofit corporation is divided into the distinct and independent resulting nonprofit corporations named in the plan of division.

(b) If the dividing nonprofit corporation is not to be a surviving nonprofit corporation, the existence of the dividing nonprofit corporation ceases.

(c) The resulting nonprofit corporations succeed, without other transfer, to the rights and property of the dividing nonprofit corporation in accordance with the plan of division or, if the plan does not specify the distribution of rights and property, as tenants in common.

(d) Subject to Section 6344:

(1) The resulting nonprofit corporations are subject to all the debts and liabilities of the dividing nonprofit corporation in the manner specified in the plan of division or, if no such specification is made, as joint and several obligors.

(2) One or more, but not all, of the resulting nonprofit corporations may, as among themselves, be made free of all debts and liabilities of the dividing nonprofit corporation to the extent, if any, specified in the plan if all other applicable provisions of law are complied with.

(e) The provisions of the plan of division, including the articles of each new nonprofit corporation and any amendments of the articles of a surviving nonprofit corporation, are effective according to their terms.

Comment. Subdivisions (a) through (d) of Section 6343 are derived from the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7946(a), (b) (Purdon Cum. Supp. 1976–1977).

Subdivision (d) permits less than all of the resulting nonprofit corporations to be free from debts and liabilities of the dividing nonprofit corporation so long as other laws, such as those relating to fraudulent conveyances (Civil Code §§ 3439–3440.1) and bulk transfers (Com. Code §§ 6101–6111), are satisfied. However, as Section 6344 makes clear, the rights of creditors may not be impaired by the division.

Subdivision (e) makes clear that, upon filing or at a later effective date, the plan of division is effective in the manner therein provided. See Section 6340(b).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Dividing nonprofit corporation, § 5139

Resulting nonprofit corporation, § 5178

Surviving nonprofit corporation, § 5187

Evidence of record ownership after division, § 5243

§ 6344. Rights of creditors and liens preserved

6344. Rights of creditors against, and liens upon the property of, a dividing nonprofit corporation are preserved unimpaired against each resulting nonprofit corporation and its assets.

Comment. Section 6344 is analogous to Section 6245. Compare 15 Pa. Cons. Stat. Ann. § 7946(b) (Purdon Cum. Supp. 1976–1977). Although the resulting nonprofit corporations may allocate liabilities and indemnification as between themselves (see Section 6343(d)), the rights of creditors are not impaired by the allocation, and a creditor may recover judgment against any or all of the resulting corporations. See also Section 6346 (effect on pending action).

CROSS-REFERENCES

Definitions:

Dividing nonprofit corporation, § 5139

Resulting nonprofit corporation, § 5178

§ 6345. Effect on bequest, devise, gift, etc.

6345. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation,

subscription, or conveyance, which is made to a dividing nonprofit corporation and which takes effect or remains payable after the division, inures to the resulting nonprofit corporations pursuant to the terms of the plan of division or, if the plan of division does not provide for the manner of disposition thereof, to the surviving nonprofit corporation, if any, or, if there is no surviving nonprofit corporation, to the new nonprofit corporations as tenants in common.

Comment. Section 6345 is analogous to Section 6246. It is derived from former Section 10206.1.

CROSS-REFERENCES

Definitions:

- Dividing nonprofit corporation, § 5139
- New nonprofit corporation, § 5151
- Resulting nonprofit corporation, § 5178
- Surviving nonprofit corporation, § 5187

§ 6346. Effect on pending actions

6346. Regardless of any provision in the plan of division apportioning the debts and liabilities of the dividing nonprofit corporation:

(a) An action pending by or against a dividing nonprofit corporation may be prosecuted to judgment, which binds the resulting nonprofit corporations.

(b) The resulting nonprofit corporations may be proceeded against or substituted in place of the dividing nonprofit corporation.

Comment. Section 6346 is derived from the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7946(b) (Purdon Cum. Supp. 1976-1977), and is analogous to Section 6247. See also Code Civ. Proc. § 385 (substitution).

CROSS-REFERENCES

Definitions:

- Action, § 5103
- Dividing nonprofit corporation, § 5139
- Resulting nonprofit corporation, § 5178

Article 5. Division Involving Foreign Corporation

§ 6350. Division involving foreign corporation authorized

6350. (a) If a foreign nonprofit corporation is authorized by the laws under which it is formed to effect such division, the foreign nonprofit corporation may be divided into (1) one or more domestic nonprofit corporations and one or more foreign nonprofit corporations or (2) two or more domestic nonprofit corporations.

(b) If the laws of the foreign jurisdiction authorize such division, a domestic nonprofit corporation may be divided into (1) one or more domestic nonprofit corporations and one or more foreign nonprofit corporations or (2) two or more foreign nonprofit corporations.

Comment. Section 6350 is based on the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7941 (Purdon Cum. Supp. 1976-1977). Compare Article 5 (commencing with Section 6250) of Chapter 12 (merger or consolidation involving foreign nonprofit corporation).

§ 6351. Law controlling division

6351. (a) If the dividing nonprofit corporation is a domestic nonprofit corporation, the division shall be effected pursuant to this chapter.

(b) If the dividing nonprofit corporation is a foreign nonprofit corporation, the division proceedings may be in accordance with the laws of the state or place of incorporation of the dividing nonprofit corporation. A plan of division which satisfies the requirements of Article 1 (commencing with Section 6310) shall be filed in order to incorporate a domestic resulting nonprofit corporation.

Comment. Section 6351 is analogous to Section 6253 (law controlling merger or consolidation). Compare 15 Pa. Cons. Stat. Ann. § 7942(c) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

- Dividing nonprofit corporation, § 5139
- Filed, § 5142
- Resulting nonprofit corporation, § 5178

Article 6. Action Relating to Validity of Division**§ 6360. Limitation of actions**

6360. Except as provided in this article, no member of a nonprofit corporation has a right at law or in equity to attack the validity of a division or to have the division set aside or rescinded.

Comment. Section 6360 is analogous to Section 6260 (merger or consolidation).

CROSS-REFERENCES

Definitions:

- Member, § 5148

§ 6361. Action to test required vote

6361. A member of a nonprofit corporation may bring an action to test whether the number of votes required to approve the plan of division have been legally cast in favor thereof.

Comment. Section 6361 is analogous to Section 6261 (merger or consolidation).

CROSS-REFERENCES

Definitions:

- Action, § 5103
- Member, § 5148
- Vote, § 5190

Persons entitled to take member action, § 5812

§ 6362. Action to enjoin or rescind unfair division

6362. (a) A member of a nonprofit corporation may bring an action to enjoin or rescind a division that is unfair to the property rights of the member or a class if the member satisfies both of the following requirements:

(1) The membership was held of record on the date for the determination of memberships entitled to be voted on the plan of division.

(2) The membership was entitled to be voted on the plan of division and was not voted in favor thereof.

(b) The division may be enjoined or rescinded only if the member establishes by clear and convincing evidence that the division is unfair to the property rights of the member or class.

(c) An action pursuant to this section may not be commenced more than 30 days after notice is given pursuant to Section 6324.

Comment. Section 6362 is analogous to Section 6262 (merger or consolidation).

CROSS-REFERENCES

Definitions:

Action, § 5103

Class, § 5125

Member, § 5148

Vote, § 5190

CHAPTER 14. CONVERSION

Article 1. General Provisions

§ 6410. Conversion authorized

6410. (a) A business corporation may be converted into a nonprofit corporation as provided in this chapter.

(b) A nonprofit corporation may be converted into a business corporation as provided in this chapter.

Comment. Chapter 14 (commencing with Section 6410) is based in large part on Sections 7951–7956 of the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. §§ 7951–7956 (Purdon Cum. Supp. 1976–1977). Prior law did not expressly provide for or prohibit the conversion of corporations.

CROSS-REFERENCES

Definitions:

Business corporation, § 5118

§ 6411. Exclusions from application of chapter

6411. This chapter does not apply to any of the following:

(a) A nonprofit corporation organized for charitable purposes or that holds assets on a charitable trust.

(b) A cooperative or mutual corporation.

(c) A corporation subject to regulation under the Financial Code.

(d) A corporation subject to regulation under the Insurance Code.

(e) A corporation subject to regulation under the Public Utilities Code.

(f) A professional corporation as defined in subdivision (b) of Section 13401.

Comment. Under subdivision (a) of Section 6411, although a nonprofit corporation that holds assets on a charitable trust or is organized for charitable purposes may not convert into a business corporation, a business corporation may convert into a nonprofit corporation that holds assets on a charitable trust or is organized for charitable purposes.

Subdivision (b) makes clear that conversions involving cooperative or mutual corporations are not authorized by this chapter. Hence, this chapter does not apply to producers' and consumers' cooperatives (Corp. Code §§ 12200-12956), fish marketing cooperatives (Corp. Code §§ 13200-13356), agricultural cooperatives (Food & Agri. Code §§ 54001-54294), mutual water companies (Pub. Util. Code §§ 2702, 2705, 2713-2718, 2725), and electrical cooperatives (Pub. Util. Code §§ 2781-2783, as enacted by Cal. Stats. 1975, Ch. 451, § 1). It should be noted, however, that a water company may amend its articles to become a mutual water company (Pub. Util. Code § 2714) and that "[a]ny corporation organized under any other law of this State may bring itself under the provisions of" Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code (producers and consumer cooperatives) by amending its articles. Corp. Code § 12206.

Corporations excluded by subdivision (c) include banks (Fin. Code § 102), savings and loan associations (Fin. Code § 5057), savings and loan holding companies (Fin. Code § 11500), check sellers and cashers (Fin. Code § 12002), credit unions (Fin. Code § 14000), escrow agents (Fin. Code § 17004), industrial loan companies (Fin. Code § 18003), pawnbrokers (Fin. Code § 21000), personal property brokers (Fin. Code § 22009), small loan licensees (Fin. Code § 24009), and securities depositories (Fin. Code § 30004).

Corporations conducting insurance business are excluded by subdivision (d).

CROSS-REFERENCES

Definitions:

Nonprofit corporation organized for charitable purposes, § 5154

§ 6412. Application of definitions

6412. As used in this chapter, terms applied to business corporations have the meaning given them by Division 1 (commencing with Section 100).

Comment. Section 6412 facilitates the operation of this chapter by adopting by reference terms defined in Division 1.

CROSS-REFERENCES

Definitions:

Business corporation, § 5118

Article 2. Plan of Conversion

§ 6420. Plan of conversion

6420. A plan of conversion shall be prepared which states the following:

- (a) The terms and conditions of the conversion.
- (b) The name of the converting corporation.
- (c) The manner of converting memberships into shares or shares into memberships.
- (d) Other details and provisions as are desired, if any.

Comment. Section 6420 is based on the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7952(a) (Purdon Cum. Supp. 1976-1977), and is analogous to Section 6211 (contents of agreement of merger or consolidation of nonprofit corporation) and a portion of Section 1101 (General Corporation Law).

CROSS-REFERENCES

Articles part of plan, § 6421

Definitions:

Converting corporation, § 5131

Shares, § 184

Name, § 6422

§ 6421. Articles of converted corporation

6421. The articles of the converted corporation shall conform to Division 1 (commencing with Section 100) in the case of a business corporation and to this division in the case of a nonprofit corporation, and shall be attached to the plan of conversion and shall be considered a part of the plan.

Comment. Section 6421 is analogous to Section 6213 (articles of consolidated nonprofit corporation).

CROSS-REFERENCES

Definitions:

Articles, §§ 154, 5112

Business corporation, § 5118

Converted corporation, § 5131

§ 6422. Name of converted corporation

6422. Subject to Section 5222, the name of the converted corporation may be the same as or similar to the name of the converting corporation.

Comment. Section 6422 is analogous to Sections 6214 (name of surviving or consolidated nonprofit corporation) and 1101 (b) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Converted corporation, § 5131
 Converting corporation, § 5131

§ 6423. Equal treatment of members and shareholders

6423. Each membership or share of the same class of the converting corporation shall be treated equally with respect to the manner of conversion into shares or memberships in the converted corporation unless a different treatment is approved by the members of the class, or by the outstanding shares (Section 152) of the class, by unanimous vote.

Comment. Section 6423 is analogous to Section 6215 (merger or consolidation of nonprofit corporations) and a portion of Section 1101 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109
 Approved by the outstanding shares, § 152
 Class, § 5125
 Converted corporation, § 5131
 Converting corporation, § 5131
 Shares, § 184
 Vote, §§ 194, 5190

Article 3. Approval of Plan

§ 6430. Approval of board

6430. The plan of conversion shall be approved by the board of the converting corporation. Upon approval, the plan of conversion shall be signed by the officers as specified in Section 5181 on behalf of the converting corporation.

Comment. Section 6430 is analogous to Section 6220 (approval of agreement of merger or consolidation of nonprofit corporation) and portions of Sections 1102 and 1200 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Approved by the board, §§ 151, 5106

Converting corporation, § 5131

Signed by the officers, § 5181

§ 6431. Approval of members or shareholders

6431. (a) The plan of conversion of a nonprofit corporation shall be approved by the members holding a majority of the votes entitled to be cast thereon.

(b) The plan of conversion of a business corporation shall be approved by the outstanding shares (Section 152) of each class.

Comment. Section 6431 is analogous to Sections 6221 (approval of agreement of merger or consolidation) and 1201 (General Corporation Law). Compare 15 Pa. Cons. Stat. Ann. § 7952(b) (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Approved by the members, § 5109

Approved by the outstanding shares, § 152

Business corporation, § 5118

Vote, §§ 194, 5190

Persons entitled to take member action, § 5812

Vote required for member action, § 5814

§ 6432. Members' or shareholders' approval before or after board's approval

6432. The approval of the members or the outstanding shares of the plan of conversion may be given either before or after the approval of the board.

Comment. Section 6432 is analogous to Section 6222 (approval of agreement of merger or consolidation of nonprofit corporation) and the first sentence of Section 1201(f) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Approval of the board, §§ 151, 5106

Approval of the members, § 5109

Approval of the outstanding shares, § 152

§ 6433. Officers' certificate of approval

6433. After the plan of conversion has been approved by the board and approved by the members or the outstanding shares, the officers shall execute an officers' certificate of approval that states that the plan of conversion was approved by the board and was approved by the members or the outstanding shares.

Comment. Section 6433 is analogous to Section 6223 (certificate of approval of merger or consolidation of nonprofit corporation) and the first sentence of Section 1103 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Approved by the board, §§ 151, 5106
 Approved by the members, § 5109
 Approved by the outstanding shares, § 152
 Officers' certificate, §§ 173, 5157

§ 6434. Nonprofit corporation; notice of approval of plan

6434. In the case of a converting nonprofit corporation, when the plan of conversion has been approved by the board and approved by the members, notice of the approval shall be given each member entitled to vote on the plan. The notice shall be given in the manner provided for giving notice of meetings.

Comment. Section 6434 is analogous to Section 6224 (notice to members of nonprofit corporation of approval of agreement of merger or consolidation). This section applies only to a nonprofit corporation that is converting. Section 6435 applies to a business corporation that is converting.

CROSS-REFERENCES

Definitions:

Approved by the board, § 5106
 Approved by the members, § 5109
 Converting corporation, § 5131
 Member, § 5148
 Vote, § 5190

Manner of giving notice of meetings, §§ 5720-5728

Time notice given, § 5014

§ 6435. Rights of dissenting shareholders

6435. (a) In the case of a converting business corporation:

(1) The converting corporation shall follow the applicable procedures provided in Chapter 13 (commencing with Section 1300) of Division 1.

(2) Dissenting shareholders may, by complying with Chapter 13 (commencing with Section 1300) of Division 1, require the converting corporation to purchase the dissenting shares.

(b) For the purposes of this section, "reorganization" as used in Chapter 13 (commencing with Section 1300) of Division 1 means a conversion pursuant to this chapter.

Comment. Section 6435 adopts the principle of the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7952(c) (Purdon Cum. Supp. 1976-1977). Subdivision (a) provides dissenting shareholders with the right to require the converting business to purchase their shares. Subdivision (b) requires the corporation to follow the provisions of Chapter 13 of Division 1 relating, for example, to notice (Section 1301(a)) and to the payment of the agreed price (Section 1303(b)). This section applies only to a business corporation that is converting. Section 6434 applies to a nonprofit corporation that is converting.

CROSS-REFERENCES**Definitions:**

- Business corporation, § 5118
- Converting corporation, § 5131
- Dissenting shares, § 1300(b)
- Shareholder, § 185

**Article 4. Amendment of Plan;
Abandonment of Conversion****§ 6440. Amendment of plan**

6440. (a) At any time before the conversion is effective, an amendment to the plan of conversion may be adopted and approved in the same manner as the original plan.

(b) The plan as amended shall be signed and the approval of the board and the approval of the members or the outstanding shares shall be certified in the same manner as the original plan.

(c) If the plan is amended, the plan as so amended constitutes the plan of conversion.

Comment. Section 6440 is analogous to Section 6230 (amendment of agreement of merger or consolidation of nonprofit corporation) and Section 1104 (General Corporation Law).

CROSS-REFERENCES

Approval of plan, §§ 6430-6435

Definitions:

Approval of the board, §§ 151, 5106

Approval of the members, § 5109

Approval of the outstanding shares, § 152

§ 6441. Abandonment of conversion

6441. At any time before the conversion is effective, the board of the converting corporation may, in its discretion and without further approval of the members or the outstanding shares, abandon the conversion, subject to the contractual rights, if any, of third parties.

Comment. Section 6441 is analogous to Section 6231 (abandonment of merger or consolidation by nonprofit corporation) and Section 1105 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109

Approval of the outstanding shares, § 152

Board, §§ 155, 5115

Converting corporation, § 5131

Effective date, § 6450

Article 5. Filing and Effect of Plan and Certificate

§ 6450. Filing copy of plan and officers' certificate

6450. (a) A copy of the plan of conversion and the officers' certificate of approval shall be filed.

(b) Subject to subdivision (c) of Section 110, the conversion is effective upon the filing of both the copy of the plan of conversion and the officers' certificate of approval.

(c) The Secretary of State may certify a copy of the plan of conversion separate from the officers' certificate attached thereto.

Comment. Section 6450 is analogous to Section 6240 (filing copy of agreement of merger or consolidation by nonprofit corporation) and portions of Section 1103 (General Corporation Law). Compare 15 Pa. Cons. Stat. Ann. §§ 7954, 7955 (Purdon Cum. Supp. 1976-1977).

CROSS-REFERENCES

Definitions:

Filed, §§ 169, 5142

Officers' certificate, §§ 173, 5157

Evidentiary effect of filed plan of conversion, § 5242

§ 6451. Effect of conversion

6451. On the effective date of a conversion:

(a) A corporation which has been a nonprofit corporation ceases to be a nonprofit corporation, becomes a business corporation for all purposes, and is deemed to be organized under Division 1 (commencing with Section 100).

(b) A corporation which has been a business corporation ceases to be a business corporation, becomes a nonprofit corporation for all purposes, and is deemed to be organized under Division 2 (commencing with Section 5000).

(c) The converted corporation succeeds, without other transfer, to all the rights and property of the converting corporation.

(d) The converted corporation is subject to all the debts and liabilities of the converting corporation in the same manner as if the converted corporation had itself incurred them.

(e) The provisions of the plan of conversion, including the articles of the converted corporation, are effective according to their terms.

Comment. Subdivisions (a) and (b) of Section 6451 are derived from the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7956 (Purdon Cum. Supp. 1976-1977). Subdivision (e) makes clear that, upon filing or at a

later effective date, the plan of conversion is effective in the manner therein provided. See Section 6450(b).

CROSS-REFERENCES

Definitions:

Articles, § 5112

Business corporation, § 5118

Converted corporation, § 5131

Converting corporation, § 5131

Evidence of record ownership after conversion, § 5243

§ 6452. Rights of creditors and liens preserved

6452. The rights of creditors against, and liens upon the property of, a converting corporation are preserved unimpaired against the converted nonprofit corporation and its assets.

Comment. Section 6452 is analogous to Section 6245 (preservation of rights of creditors and liens in merger or consolidation of nonprofit corporations) and Section 1107(b) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Converted corporation, § 5131

Converting corporation, § 5131

§ 6453. Effect on bequest, devise, gift, etc.

6453. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a converting corporation and which takes effect or remains payable after the conversion, inures to the converted corporation.

Comment. Section 6453 is analogous to Section 6246; it is derived from former Section 10206.1.

CROSS-REFERENCES

Definitions:

Converted corporation, § 5131

Converting corporation, § 5131

§ 6454. Effect on pending actions

6454. An action pending by or against a converting nonprofit corporation may be prosecuted to judgment,

which binds the converted corporation, and the converted corporation may be proceeded against or substituted in place of the converting corporation.

Comment. Section 6454 is derived from the Pennsylvania Nonprofit Corporation Law of 1972, 15 Pa. Cons. Stat. Ann. § 7946(b) (Purdon Cum. Supp. 1976-1977) and is analogous to Section 6247. See also Code Civ. Proc. § 385 (substitution).

CROSS-REFERENCES

Definitions:

Action, § 5103

Converted corporation, § 5131

Converting corporation, § 5131

Article 6. Action Relating to Validity of Conversion

§ 6460. Limitation of actions

6460. Except as otherwise provided in this article, no member of a nonprofit corporation or shareholder of a business corporation has a right at law or in equity to attack the validity of a conversion or to have the conversion set aside or rescinded.

Comment. Section 6460 is analogous to Section 6260 (merger or consolidation of nonprofit corporations) and a portion of Section 1312(a) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Business corporation, § 5118

Member, § 5148

Shareholder, § 185

§ 6461. Action to test required vote

6461. A member of a nonprofit corporation or shareholder of a business corporation may bring an action to test whether the number of votes or outstanding shares required to approve the plan of conversion have been legally cast or voted in favor thereof.

Comment. Section 6461 is analogous to Section 6261 (merger or consolidation of nonprofit corporation) and a portion of Section 1312(a) (General Corporation Law).

CROSS-REFERENCES

Definitions:

Business corporation, § 5118
Member, § 5148
Shareholder, § 185
Vote, §§ 194, 5190

§ 6462. Action to enjoin or rescind unfair conversion

6462. (a) A member of a nonprofit corporation may bring an action to enjoin or rescind the conversion of a nonprofit corporation into a business corporation that is unfair to the property rights of the member or a class if the member satisfies both of the following requirements:

(1) The membership was held of record on the date for the determination of memberships entitled to be voted on the plan of conversion.

(2) The membership was entitled to be voted on the plan of conversion and was not voted in favor thereof.

(b) The conversion may be enjoined or rescinded only if the member establishes by clear and convincing evidence that the conversion is unfair to the property rights of the member or class.

(c) An action pursuant to this section may not be commenced more than 30 days after notice is given pursuant to Section 6434.

Comment. Section 6462 is analogous to Section 6262 (merger or consolidation of nonprofit corporations). The right to challenge the validity of a conversion under this section applies only to members of a nonprofit corporation that is converting to a business corporation. Dissenting shareholders of a business corporation may require the corporation to purchase their shares as provided in Section 6435.

CROSS-REFERENCES

Definitions:

Action, § 5103
Business corporation, § 5118
Class, § 5125
Member, § 5148
Vote, § 5190

CHAPTER 15. DISSOLUTION

Comment. Chapter 15 (commencing with Section 6510) continues former Sections 4600–5403, which were applicable to nonprofit corporations through former Section 9800. Where a nonprofit corporation organized for charitable purposes or holding assets on a charitable trust dissolves, notice to the Attorney General may be required pursuant to Section 6112.

CROSS-REFERENCES

Transition provision, § 6625

Article 1. Involuntary Dissolution

§ 6510. Action for involuntary dissolution; venue; parties

6510. (a) An action for involuntary dissolution of a nonprofit corporation may be brought in the superior court of the proper county on any one or more of the grounds specified in Section 6511 upon verified complaint by any of the following:

- (1) One-half or more of the directors in office.
- (2) Persons holding one-third or more of the voting power.
- (3) Any other person expressly authorized to do so in the articles or bylaws.

(b) The Attorney General may bring an action pursuant to subdivision (i) of Section 5228 or Section 5250 for involuntary dissolution of a nonprofit corporation.

(c) At any time prior to the trial of the action, any voting member or creditor may intervene in an action for involuntary dissolution.

Comment. Section 6510 supersedes former Sections 4650, 4653, and 4690. Subdivision (a) of Section 6510 is similar in substance to subdivision (a) of Section 1800 (General Corporation Law). The bylaws as well as the articles may authorize an action for involuntary dissolution to be brought by “any other person.” Subdivision (b) recognizes the separate statutory authority for an action for involuntary dissolution by the Attorney General. Subdivision (c) is the same in substance as subdivision (c) of Section 1800 (General Corporation Law) and former Section 4653, and makes intervention by a voting member or creditor a matter of right. See *Hagan v. Superior Court*, 53 Cal.2d 498, 348 P.2d 896, 2 Cal. Rptr. 288 (1960); 3 B.

Witkin, *California Procedure*, Pleading § 194, at 1866 (2d ed. 1971).

CROSS-REFERENCES

Definitions:

- Action, § 5103
- Articles, § 5112
- Bylaws, § 5121
- Director, § 5133
- Person, § 18
- Proper county, § 5169
- Voting members, § 5193
- Voting power, § 5196

§ 6511. Grounds for dissolution action

6511. The grounds for involuntary dissolution in an action brought by a person authorized to do so by subdivision (a) of Section 6510 are:

(a) The nonprofit corporation has abandoned its activities for more than one year.

(b) The directors are equally divided and cannot agree as to the management of the affairs of the nonprofit corporation and, as a result, its activities can no longer be conducted to advantage or there is danger that its property will be impaired or lost or its activities will be impaired.

(c) There is internal dissension and two or more factions of members of the nonprofit corporation are so deadlocked that its activities can no longer be conducted to advantage or there is danger that its property will be impaired or lost or its activities will be impaired.

(d) The members have failed in an election in which all voting power was exercised to elect successors to directors whose terms have expired or would have expired upon election of their successors.

(e) The persons in control of the nonprofit corporation have been guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement, abuse of authority, or persistent unfairness toward any members.

(f) The property of the nonprofit corporation is being misapplied or wasted by the directors or officers.

(g) The liquidation is reasonably necessary for the protection of the rights or interests of a substantial number of the members or of the complaining members.

(h) The period for which the nonprofit corporation was formed has expired without extension.

(i) The nonprofit corporation is a subordinate body whose charter has been surrendered to, taken away, or revoked by the head or national body granting it.

Comment. Subdivisions (a) through (h) of Section 6511 are the same in substance as subdivision (b) of Section 1800 (General Corporation Law) except that subdivision (g) is not limited to nonprofit corporations having 35 or fewer members. Subdivisions (a)–(h) continue former Section 4651. Subdivision (i) is derived from the first sentence of former Section 9802.

CROSS-REFERENCES

Action by Attorney General, grounds, §§ 5228(i), 5250

Definitions:

Action, § 5103

Director, § 5133

Member, § 5148

Person, § 18

Voting power, § 5196

§ 6512. When winding up commences

6512. Involuntary winding up commences when the order for winding up is entered pursuant to Article 3 (commencing with Section 6530).

Comment. Section 6512 is the same in substance as subdivision (a) of Section 1805 (General Corporation Law) and former Section 4660. For some of the consequences of commencement of winding up, see Sections 6550–6552.

Article 2. Voluntary Dissolution

§ 6520. Voluntary dissolution by members

6520. A nonprofit corporation may elect voluntarily to wind up and dissolve by approval of the members holding not less than 50 percent of the votes entitled to be cast thereon.

Comment. Section 6520 is the same in substance as subdivision (a) of Section 1900 (General Corporation Law). The articles or bylaws may require an extraordinary majority for voluntary dissolution. See Section 5813. As to persons entitled to take member action, see Section 5812.

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109

Vote, § 5190

Notice required, § 5728

§ 6521. Voluntary dissolution by board

6521. A nonprofit corporation may elect voluntarily to wind up and dissolve by approval of the board if any of the following conditions is satisfied:

(a) The nonprofit corporation has been adjudicated a bankrupt.

(b) The nonprofit corporation has disposed of all of its assets and has not conducted activities for a period of five years immediately preceding the election.

(c) The nonprofit corporation was formed for a limited period and the term of existence has expired without extension.

(d) The nonprofit corporation is a subordinate body whose charter has been surrendered to, taken away, or revoked by the head or national body granting it.

Comment. Subdivisions (a) and (b) of Section 6521 are the same in substance as paragraphs (1) and (2) of subdivision (b) of Section 1900 (General Corporation Law) and subdivisions (b) and (c) of former Section 4601. Subdivision (c) is comparable to Section 1906 (General Corporation Law) and continues former Section 4602. It parallels subdivision (h) of Section 6511. See also Section 5422 (extension of corporate existence). Subdivision (d) is derived from the first sentence of former Section 9802; it parallels subdivision (i) of Section 6511.

CROSS-REFERENCES

Definitions:

Approval of the board, § 5106

§ 6522. Certificate of election to wind up and dissolve

6522. (a) If a nonprofit corporation has elected to wind up and dissolve, a certificate evidencing the election shall forthwith be filed.

(b) The certificate shall be an officers' certificate, or shall be signed and verified by not less than a majority of the directors then in office or by one or more members

authorized to do so by the members approving the election to wind up and dissolve pursuant to Section 6520, and shall state all of the following:

(1) That the nonprofit corporation has elected to wind up and dissolve.

(2) If the election was made pursuant to Section 6520, that the election was made by the required vote.

(3) If the certificate is executed by a member or members, that the subscribing member or members were authorized to execute the certificate by the members approving the election to wind up and dissolve pursuant to Section 6520.

(4) If the election was made by the board pursuant to Section 6521, the circumstances showing that the nonprofit corporation satisfies one or more of the conditions described in Section 6521.

Comment. Section 6522 is the same in substance as Section 1901 (General Corporation Law) and former Section 4603. It should be noted, however, that the articles or bylaws may require an extraordinary majority for voluntary dissolution. See Section 5813.

CROSS-REFERENCES

Definitions:

Board, § 5115

Director, § 5133

Filed, § 5142

Member, § 5148

Officers' certificate, § 5157

Vote, § 5190

Verification, § 5011

§ 6523. Revocation of election to wind up and dissolve

6523. (a) An election voluntarily to wind up and dissolve may be revoked prior to distribution of any assets by approval of the members holding a majority of the votes entitled to be cast thereon, or by approval of the board if the election was by the board pursuant to Section 6521. Thereupon a certificate evidencing the revocation shall be signed, verified, and filed in the manner prescribed by Section 6522.

(b) The certificate shall state all of the following:

(1) That the nonprofit corporation has revoked its election to wind up and dissolve.

(2) That no assets have been distributed pursuant to the election.

(3) If the revocation was made by approval of the members, that the election was revoked by the required vote.

(4) If the election and revocation were made by approval of the board, that shall be stated.

Comment. Section 6523 is the same in substance as Section 1902 (General Corporation Law) and former Section 4606.

CROSS-REFERENCES

Definitions:

Approval of the board, § 5106

Approval of the members, § 5109

Board, § 5115

Filed, § 5142

Vote, § 5190

Verification, § 5011

§ 6524. When winding up commences

6524. Voluntary winding up commences (1) upon the adoption of the resolution of members or the board electing to wind up and dissolve or (2) upon the receipt by the nonprofit corporation of the written consent of members thereto.

Comment. Section 6524 is the same in substance as subdivision (a) of Section 1903 (General Corporation Law) and the first sentence of former Section 4604. For some of the consequences of commencement of winding up, see Sections 6550-6552.

CROSS-REFERENCES

Definitions:

Board, § 5115

Member, § 5148

§ 6525. Supervision by court upon petition

6525. (a) If a nonprofit corporation is voluntarily winding up and dissolving, the superior court of the proper county may take jurisdiction over the voluntary

winding up and dissolution if that appears necessary for the protection of any parties in interest.

(b) The court may take jurisdiction under subdivision (a) only upon the petition of any of the following:

(1) The nonprofit corporation.

(2) Persons holding five percent or more of the voting power.

(3) Three or more creditors.

(c) Notice of the petition shall be given to:

(1) The nonprofit corporation unless the nonprofit corporation is the petitioner.

(2) Such members and creditors as the court may order.

Comment. Section 6525 is the same in substance as the first sentence of Section 1904 (General Corporation Law) except that no reference is made in Section 6525 to a close corporation since that concept is not part of the Nonprofit Corporation Law. It continues the first paragraph of former Section 4607.

CROSS-REFERENCES

Definitions:

Member, § 5148

Person, § 18

Proper county, § 5169

Voting power, § 5196

Notice to be in writing, § 8

Time notice given, § 5014

§ 6526. Certificate of dissolution

6526. (a) If a nonprofit corporation has been completely wound up without court proceedings, a majority of the directors then in office shall thereupon sign and verify a certificate of dissolution stating:

(1) That the nonprofit corporation has been completely wound up.

(2) That its known debts and liabilities have been paid or adequately provided for, or paid or adequately provided for as far as its assets permitted, as the case may be. If there are known debts or liabilities for which adequate provision has been made, the certificate shall state what provision has been made, setting forth the name and address of the person or governmental agency

that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made, or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) That all known assets have been disposed of in the manner provided in Article 7 (commencing with Section 6570).

(4) That the nonprofit corporation is dissolved.

(b) The certificate of dissolution shall be filed.

Comment. Section 6526 is the same in substance as subdivision (a) and a portion of the first sentence of subdivision (b) of Section 1905 (General Corporation Law) and former Section 5200 and the last paragraph of former Section 5201. Upon filing the certificate of dissolution, the corporate existence ceases. See Section 6581 (a). The board may, in lieu of filing the certificate of dissolution required by this section, petition the superior court of the proper county for an order declaring the corporation duly wound up and dissolved. See Section 6528 (a).

CROSS-REFERENCES

Adequate provision for debts and liabilities, § 6571

Definitions:

Director, § 5133

Filed, § 5142

Person, § 18

Verification, § 5011

§ 6527. Certificate of satisfaction of Franchise Tax Board

6527. A nonprofit corporation that is subject to the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) shall file a certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The Secretary of State shall not file the certificate of dissolution until the certificate of satisfaction has been filed.

Comment. Section 6527 is the same in substance as the second sentence of subdivision (b) of Section 1905 (General

Corporation Law) and the second sentence of the first paragraph of former Section 5201.

CROSS-REFERENCES

Definitions:

Filed, § 5142

§ 6528. Petition to court in lieu of filing certificate of dissolution

6528. (a) The board, in lieu of filing the certificate of dissolution pursuant to Section 6526, may petition the superior court of the proper county for an order declaring the nonprofit corporation duly wound up and dissolved. The petition shall be in the name of the nonprofit corporation.

(b) Upon the filing of the petition, the court shall make an order requiring all persons interested to show cause why an order should not be made declaring the nonprofit corporation duly wound up and dissolved and shall direct that the order be served on all creditors, claimants, voting members, and persons entitled to share in the corporate assets on dissolution, in the same manner as notice given pursuant to Section 6552.

(c) A person claiming to be interested as a creditor, claimant, or otherwise may appear in the action at any time before the expiration of 30 days after service of the order under subdivision (b) to show cause and contest the petition. If the person fails to so appear, the person's claims are barred.

(d) If the court determines that the nonprofit corporation has been duly wound up and dissolved, it shall so order as provided in Section 6580.

Comment. Section 6528 is the same in substance as Section 1907 (General Corporation Law) and former Sections 5202 and 5203 except that the notice given under Section 6528 is by mail unless the court provides for notice other than by mail. Compare Section 1807(b) (General Corporation Law) (notice by publication).

CROSS-REFERENCES

Definitions:

Action, § 5103

Board, § 5115

Person, § 18
Proper county, § 5169
Voting members, § 5193

Article 3. Court Supervision of Dissolution

§ 6530. Application of article

6530. This article applies to:

- (a) An action for involuntary dissolution.
- (b) A voluntary winding up and dissolution if the court takes jurisdiction pursuant to Section 6525.

Comment. Section 6530 makes clear that this article applies both to involuntary dissolution proceedings and to voluntary proceedings over which the court has taken jurisdiction, as in the General Corporation Law (see Sections 1806 and 1904).

CROSS-REFERENCES

Definitions:
Action, § 5103

§ 6531. Power of court in conduct of action

6531. The court may:

- (a) Appoint a receiver, subject to Chapter 5 (commencing with Section 564) of Title 7 of Part 2 of the Code of Civil Procedure, to take over and manage the affairs of the nonprofit corporation and to preserve its property (whether before or after the hearing and determination of the action for involuntary dissolution), or to conduct the winding up, if the court has reasonable grounds to believe that unless a receiver is appointed the interests of the nonprofit corporation and its members will suffer.
- (b) Appoint a commissioner to hear and determine any or all questions and matters, with such power or authority as the court deems proper, subject to Chapter 2 (commencing with Section 259) of Title 3 of Part 1 of the Code of Civil Procedure.
- (c) Appoint a referee in the manner and with the powers provided in Chapter 6 (commencing with Section 638) of Title 8 of Part 2 of the Code of Civil Procedure.

(d) Order such new parties to be brought in as the court deems proper for the determination of all questions and matters.

(e) After a hearing and if cause therefor is shown, order the nonprofit corporation to be wound up or order such other or partial relief as justice and equity require.

Comment. Subdivision (a) of Section 6531 is comparable to Section 1803 (General Corporation Law) and a portion of the second sentence of subdivision (c) of Section 1801 (General Corporation Law). It continues former Section 4656. Subdivision (a) recognizes the inherent power of a court of equity to appoint a receiver with notice, or without notice if imperative necessity is shown, either to wind up the affairs of the corporation or to preserve its properties and, where possible, continue its corporate functions. See *Misita v. Distillers Corp.*, 54 Cal. App.2d 244, 128 P.2d 888 (1942). If a receiver is appointed ex parte, the court must require the applicant to furnish an undertaking as prescribed in Section 566 of the Code of Civil Procedure. Before entering upon the duties, the receiver must furnish an undertaking as prescribed in Section 567 of the Code of Civil Procedure.

Subdivision (b), authorizing the court to appoint a commissioner, is comparable to Section 1806(e) (General Corporation Law).

Subdivision (c), authorizing the appointment of a referee, continues former Section 4612.

Subdivision (d) is the same in substance as Section 1806(l) (General Corporation Law) and the last sentence of former Section 4609.

Subdivision (e) is the same in substance as a portion of Section 1804, the first sentence of subdivision (c) of Section 1801, and a portion of Section 1904(a) (General Corporation Law) and former Section 4657 and a portion of former Section 4654, but authorizes other or partial relief in all appropriate cases, not merely those brought by the Attorney General. An order made pursuant to subdivision (e) that the nonprofit corporation shall be wound up and dissolved is appealable. See *Reynolds v. Special Projects, Inc.*, 260 Cal. App.2d 496, 67 Cal. Rptr. 374 (1968).

CROSS-REFERENCES

Definitions:

Action, § 5103

Member, § 5148

§ 6532. Power of court concerning directors or persons appointed to conduct winding up

6532. The court may:

(a) Appoint persons other than the board, for good cause shown, to conduct the winding up, or order that the nonprofit corporation be wound up by the board subject to the supervision of the court.

(b) If the action is for involuntary dissolution and the ground for the complaint is that there is a deadlock in the board as provided in subdivision (b) of Section 6511, appoint a provisional director. The provisions of Article 4 (commencing with Section 5540) of Chapter 5 apply to a provisional director so appointed.

(c) Fill any vacancies on the board that the directors or members are unable to fill.

(d) Remove a director if the director is unable to act or has been guilty of dishonesty, misconduct, neglect, or abuse of trust in conducting the winding up.

(e) Enjoin for such time as the court considers proper the reelection of a director who has been removed.

(f) Order an election to fill the vacancy caused by removal of a director.

(g) Appoint a director in lieu of ordering an election to fill the vacancy caused by removal of a director.

Comment. Subdivision (a) of Section 6532 is the same in substance as a portion of the first sentence of subdivision (b) of Section 1805 (General Corporation Law).

Subdivision (b) is the same in substance as the first sentence of Section 1802 (General Corporation Law). It continues former Section 4655. If the court appoints a provisional director pursuant to subdivision (b), the director is subject to Sections 5542 (qualifications of provisional director), 5543 (rights and powers of provisional director), and 5544 (compensation of provisional director).

Subdivision (c) is the same in substance as Section 1806(f) (General Corporation Law). It continues former Section 4613.

Subdivisions (d)–(g) are the same in substance as the first two sentences of Section 1806(g) (General Corporation Law). They continue the first two sentences of former Section 4614.

CROSS-REFERENCES

Definitions:

Action, § 5103
Board, § 5115
Director, § 5133
Member, § 5148

§ 6533. Power of court concerning presentation and proof of claims

6533. The court may:

(a) Require presentation and proof of all claims and demands against the nonprofit corporation, whether due or not yet due, contingent, unliquidated, or sounding only in damages, and bar from participation creditors and claimants failing to make and present claims and proof as required by any order.

(b) Determine or compromise all claims of every nature against the nonprofit corporation or any of its property and determine the amount of money or assets required to be retained to pay or provide for the payment of claims.

(c) Stay the prosecution of any action against the nonprofit corporation and require the parties to present and prove their claims in the manner required of other creditors.

Comment. Subdivision (a) of Section 6533 is the same in substance as Section 1806(a) (General Corporation Law); it continues the first paragraph of former Section 4608 and the last portion of former Section 4654. Subdivision (b) is the same in substance as Section 1806(b); it continues a portion of the first sentence of former Section 4609. Subdivision (c) is the same in substance as Section 1806(h); it continues former Section 4616.

CROSS-REFERENCES

Definitions:

Action, § 5103

§ 6534. Power of court concerning payment of debts and liabilities and distribution of assets

6534. The court may:

(a) Determine whether adequate provision has been made for payment or satisfaction of all debts and liabilities not actually paid.

(b) Determine the rights of persons in and to the assets of the nonprofit corporation.

Comment. Subdivision (a) of Section 6534 is the same in substance as Section 1806(i) (General Corporation Law); it continues former Section 4617. Subdivision (b) is the same in substance as Section 1806(c) (General Corporation Law); it continues former Section 4610.

CROSS-REFERENCES

Definitions:

Person, § 18

§ 6535. Power of court concerning termination of winding up

6535. The court may:

(a) Require the presentation and filing of, hold hearings on, and allow, disallow, or settle intermediate or final accounts of the board or other persons appointed to conduct the winding up.

(b) Discharge from their duties and liabilities the board or other persons appointed to conduct the winding up.

(c) Order the withdrawal or termination of an action for involuntary dissolution, subject to such conditions for the protection of members and creditors as the court deems proper.

(d) Order, upon the allowance or settlement of the final accounts of the board or other persons appointed to conduct the winding up and upon the determination that the affairs of the nonprofit corporation are in condition for it to be dissolved, that the nonprofit corporation has been duly wound up and is dissolved as provided in Section 6580.

Comment. Subdivisions (a) and (b) of Section 6535 are the same in substance as Section 1806(d) (General Corporation Law); they continue former Section 4611. Subdivision (c) is the same in substance as Section 1806(j) (General Corporation Law); it continues former Section 4618. Subdivision (d) is the same in substance as Sections 1806(k) and 1808(a) (General Corporation Law); it continues the first sentence of former Section 4619.

CROSS-REFERENCES

Definitions:

Action, § 5103
Board, § 5115
Member, § 5148

§ 6536. Power of court not limited

6536. The court may, in addition to the authority granted in this article, make such other orders and grant such further relief as the court deems proper.

Comment. Section 6536 is the same in substance as a portion of Section 1804 and the last sentence of subdivision (a) of Section 1808 (General Corporation Law). It continues a portion of former Section 5204.

Article 4. Avoidance of Dissolution by Purchase**§ 6540. Definitions**

6540. As used in this article:

(a) "Moving party" means both (1) a member initiating a voluntary or involuntary dissolution and (2) a member described in subdivision (d) of Section 6542.

(b) "Purchasing party" means the nonprofit corporation or, if it does not elect to purchase, a member who purchases memberships owned by moving parties.

Comment. Section 6540 is new.

CROSS-REFERENCES

Definitions:

Member, § 5148

§ 6541. Application of article

6541. (a) This article does not apply to a nonprofit corporation organized for charitable purposes.

(b) A nonprofit corporation that holds assets on a charitable trust shall give written notice to the Attorney General before making any payment to purchase memberships pursuant to this article.

Comment. Section 6541 is new. It is designed to prevent charitable assets from being diverted from charitable purposes. See Section 6573.

CROSS-REFERENCES

Definitions:

Nonprofit corporation organized for charitable purposes, § 5154

§ 6542. Avoidance of dissolution by purchase

6542. (a) Except to the extent otherwise provided in the articles or bylaws, in the case of a voluntary or involuntary dissolution initiated by persons holding a majority of the voting power, the purchasing parties may avoid the dissolution of the nonprofit corporation by purchasing for cash, at their fair value, the memberships owned by the moving parties.

(b) The fair value of the memberships shall be determined on the basis of their liquidation value, taking into account the possibility, if any, of sale of any business conducted by the nonprofit corporation as a going concern in a liquidation. In fixing the fair value, the amount of any resulting damages if the initiation of the dissolution is a breach by a moving party of an agreement with the purchasing party may be deducted from the amount payable to the moving party unless the ground for dissolution is that specified in subdivision (e) of Section 6511.

(c) The election of the nonprofit corporation to purchase shall be made by approval of the members holding a majority of the votes entitled to be cast thereon, excluding the votes held by moving parties other than members described in subdivision (d).

(d) If the nonprofit corporation elects to purchase, the members who did not approve the purchase may elect to have their memberships purchased pursuant to this article.

Comment. Subdivisions (a)-(c) of Section 6542 are similar in substance to subdivision (a) of Section 2000 (General Corporation Law) and the first paragraph of former Section 4658. However, subdivision (a) of Section 6542 limits the availability of the buy-out procedure to those instances where the proceedings for winding up and dissolution—including an involuntary dissolution proceeding—have been initiated by the vote of members holding a majority of the voting power. This will minimize the possibility of a minority commencing involuntary

dissolution proceedings as a means of circumventing the general prohibition against distribution of gains, profits, or dividends to members. See Section 5316. It should be noted that the election of the nonprofit corporation to purchase the memberships is made by approval of the majority of votes entitled to be cast thereon, excluding the votes of the members initiating the dissolution proceeding. See subdivision (c). If the nonprofit corporation does not elect to purchase the memberships of the moving parties, the purchase may be made by any member. Contrast Section 2000(a) (purchase may be made by holders of half or more of the outstanding voting shares). Under subdivision (a), the buy-out procedure may be restricted or eliminated by the bylaws as well as by the articles.

Under subdivision (d), if the nonprofit corporation elects to purchase the memberships of the moving parties, the members who dissented from the corporate purchase or who abstained may elect to have their memberships purchased by the nonprofit corporation in the same manner as the memberships of the moving parties.

If the nonprofit corporation elects to purchase the memberships of the moving parties, the limitations of Sections 6060–6067 on the impairment of corporate capital must be observed. See Article 6 (commencing with Section 6060) of Chapter 10.

CROSS-REFERENCES

Definitions:

- Approval of the members, § 5109
- Articles, § 5112
- Bylaws, § 5121
- Member, § 5148
- Moving party, § 6540
- Person, § 18
- Purchasing party, § 6540
- Vote, § 5190
- Voting power, § 5196

Persons entitled to take member action, § 5812

§ 6543. Stay of court proceedings and valuation of memberships

6543. (a) If the purchasing parties elect to purchase the memberships of the moving parties but are unable to agree with the moving parties upon the fair value of the memberships, the court, upon application of the purchasing parties and the giving of a bond in a sufficient

amount to pay the recoverable expenses (including reasonable attorney's fees) of the moving parties if such expenses are recoverable under Section 6544 or 6545, shall stay the winding up and dissolution and shall ascertain and fix the fair value of the memberships of the moving parties.

(b) The purchasing parties may make application under this section either in the pending action for dissolution or, in the case of a voluntary dissolution over which the court has not taken jurisdiction, in an action initiated in the superior court of the proper county.

Comment. Section 6543 is the same in substance as subdivision (b) of Section 2000 (General Corporation Law) and the second paragraph of former Section 4658.

CROSS-REFERENCES

Definitions:

Action, § 5103

Moving party, § 6540

Proper county, § 5169

Purchasing party, § 6540

§ 6544. Appraisal of memberships

6544. In an action under Section 6543:

(a) The court shall appoint one or three disinterested appraisers to appraise the fair value of the memberships of the moving parties, and shall make an order referring the matter to the appraiser or appraisers so appointed for the purpose of ascertaining the fair value. The order shall prescribe the time and manner of producing evidence before the appraiser or appraisers, if evidence is required.

(b) The award of the appraiser or of a majority of the appraisers, when confirmed by the court, is final and conclusive upon all parties.

(c) The purchasing parties shall pay the appraisers' fees and other costs of the appraisal, if any, unless the court for good cause orders otherwise.

Comment. Subdivisions (a) and (b) of Section 6544 are the same in substance as the first three sentences of subdivision (c) of Section 2000 (General Corporation Law). They continue a portion of former Section 4659. Subdivision (c) is new.

CROSS-REFERENCES

Definitions:

Action, § 5103

Moving party, § 6540

Purchasing party, § 6540

§ 6545. Alternative decree; appeal**6545.** In an action under Section 6543:

(a) The court shall make an order that provides in the alternative for winding up and dissolution of the nonprofit corporation unless payment is made for the memberships of the moving parties within the time specified in the order.

(b) If the purchasing parties do not make payment for the memberships of the moving parties within the time specified, judgment shall be entered against the purchasing parties and the surety on the bond for the amount of the expenses (including reasonable attorney's fees) of the moving parties. The court may render such a judgment whether or not the pending action for dissolution is dismissed.

(c) A member aggrieved by the judgment of the court may appeal therefrom.

Comment. Section 6545 is the same in substance as the last three sentences of subdivision (c) of Section 2000 (General Corporation Law) except that the last sentence of subdivision (b) is new. It continues a portion of former Section 4659. See also Code Civ. Proc. § 1032(b) (costs allowable to defendant as to whom action is dismissed).

CROSS-REFERENCES

Definitions:

Action, § 5103

Member, § 5148

Moving party, § 6540

Purchasing party, § 6540

§ 6546. Purchase and transfer of memberships

6546. (a) If the purchasing parties desire to prevent the winding up and dissolution, they shall pay to the moving parties the value of their memberships agreed upon or ordered. Unless otherwise agreed, payment shall be

made within the time specified pursuant to Section 6545 or, in case of an appeal, as fixed on appeal.

(b) On receiving payment or the tender thereof, the moving parties shall transfer their memberships to the purchasing parties.

Comment. Section 6546 is the same in substance as subdivision (d) of Section 2000 (General Corporation Law). It continues a portion of former Section 4659.

CROSS-REFERENCES

Definitions:

Moving party, § 6540

Purchasing party, § 6540

Article 5. Corporate Activities During Winding Up

§ 6550. Cessation of corporate activities; exceptions

6550. Upon commencement of winding up, the nonprofit corporation shall cease to conduct activities except to the extent necessary for the beneficial winding up thereof and except during such period as the board or other persons appointed to conduct the winding up may deem necessary to preserve the nonprofit corporation's goodwill or going concern value pending a sale, in whole or in part, of its assets or of any business conducted by it.

Comment. Section 6550 is the same in substance as the first sentence of subdivision (c) of Section 1805, the first sentence of subdivision (c) of Section 1903, and a portion of Section 1906 (General Corporation Law). It continues the first sentence of former Section 4605 and the first sentence of former Section 4661.

Involuntary proceedings for winding up commence when the order that the nonprofit corporation shall be wound up and dissolved is entered (Section 6512), and voluntary proceedings for winding up commence upon the adoption of the resolution to dissolve or the filing of members' consent thereto (Section 6524).

CROSS-REFERENCES

Definitions:

Board, § 5115

§ 6551. Powers of the board and officers

6551. (a) Upon commencement of winding up, the board shall continue to act as a board and shall conduct the winding up of the affairs of the nonprofit corporation unless the court appoints other persons to conduct the winding up. The board is subject to the supervision of the court in an action for involuntary dissolution or in the case of a voluntary dissolution when the court has taken jurisdiction pursuant to Section 6525.

(b) The board or other persons appointed to conduct the winding up may, subject to any restrictions imposed by the court, exercise all their powers through the executive officers without any order of court.

(c) The board or other persons appointed to conduct the winding up have full power to wind up, settle, and liquidate the affairs of the nonprofit corporation, both before and after the filing of the certificate or order of dissolution. The powers include, but are not limited to, the following acts in the name of and on behalf of the nonprofit corporation:

(1) To choose officers and employ agents and attorneys to wind up, settle, and liquidate its affairs.

(2) To continue to conduct the activities of the nonprofit corporation insofar as necessary for the winding up thereof.

(3) To make and carry out contracts and to collect, pay, compromise, and settle debts and claims for or against the nonprofit corporation.

(4) To defend actions brought against the nonprofit corporation.

(5) To bring actions in the name of the nonprofit corporation for all sums due or owing to the nonprofit corporation or to recover any of its property.

(6) To collect any amounts remaining unpaid on memberships, fees, dues, assessments, or other obligations of members and to recover unlawful distributions.

(7) To sell at public or private sale, exchange, convey, or otherwise dispose of all or any part of the assets of the nonprofit corporation for cash in an amount deemed

reasonable without compliance with the provisions of Section 6111 (except subdivision (c) thereof), or, subject to compliance with the provisions of Section 6111, upon such other terms and conditions and for such other consideration deemed expedient, and to execute bills of sale and deeds of conveyance in the name of the nonprofit corporation.

(8) In general, to do any and all things in the name of the nonprofit corporation that may be proper or convenient for the purpose of winding up, settling, and liquidating the affairs of the nonprofit corporation.

Comment. Section 6551 continues former Sections 4800-4802.

Subdivision (a) is the same in substance as a portion of subdivision (b) of Section 1903 (General Corporation Law) and the first sentence of subdivision (b) of Section 1805 (General Corporation Law). Proceedings for winding up commence upon the adoption of the resolution for voluntary dissolution or the receipt by the nonprofit corporation of the written consent of members (Section 6524) or when the order for involuntary dissolution is entered (Section 6512).

Subdivision (b) is the same in substance as the second sentence of subdivision (b) of Section 1805 (General Corporation Law).

The first sentence of subdivision (c) is the same in substance as a portion of subdivision (b) of Section 1903 (General Corporation Law) except that it is made clear in subdivision (c) of Section 6551 that the board's power continues before and after the filing of a decree of dissolution as well as before and after the filing of a certificate of dissolution. The second sentence of subdivision (c) is the same in substance as Section 2001 (General Corporation Law) except for the omission of various cross-references to provisions that have not been included in the Nonprofit Corporation Law. It supersedes the third sentence of former Section 9802.

CROSS-REFERENCES

Definitions:

Action, § 5103

Board, § 5115

Filed, § 5142

Member, § 5148

Filing of order or certificate of dissolution, §§ 6526, 6585

§ 6552. Notice of winding up

6552. (a) Written notice of the commencement of winding up shall be given by mail to all voting members and persons entitled to share in the distribution of corporate assets upon dissolution, and to all known creditors and claimants whose addresses appear on the records of the nonprofit corporation, subject to the following exceptions:

(1) Notice need not be given to members who voted in favor of voluntary dissolution.

(2) Upon application and good cause shown in an action for involuntary dissolution or in the case of voluntary dissolution over which the court has taken jurisdiction pursuant to Section 6525, the court may provide for notice to be given other than by mail.

(3) If the order for winding up has been stayed by appeal therefrom or otherwise, or the action or the execution of the order has been enjoined, notice need not be given.

(b) In the case of voluntary dissolution, or in an action for involuntary dissolution where the court has made an order that the nonprofit corporation shall be wound up, the written notice may direct creditors and claimants to make and present claims and proofs to the person, at the place, and within the time specified in the notice.

Comment. Subdivision (a) of Section 6552 is the same in substance as the second sentence of subdivision (c) of Section 1805 (General Corporation Law) and the second sentence of subdivision (c) of Section 1903 (General Corporation Law) except that subdivision (a)(2) gives the court the authority to provide for notice other than by mail. Section 6552(a) continues the second sentence of former Section 4605 and the second sentence of former Section 4661.

Subdivision (b) is based on a portion of the first sentence of subdivision (b) of Section 1807 (General Corporation Law). Subdivision (b) is permissive. If the notice provided by Section 6552 does not contain a direction for presentation of claims, such direction must be later provided in a separate notice. See Section 6560.

CROSS-REFERENCES

Definitions:

- Action, § 5103
- Person, § 18
- Vote, § 5190
- Voting members, § 5193

Mailing, § 5015

Time allowed for presenting claims, § 6561

Written notice, §§ 8, 5016

§ 6553. Filling a vacancy on board of directors

6553. A vacancy on the board may be filled during winding up in the manner provided in Section 5526.

Comment. Section 6553 is the same in substance as Section 2002 (General Corporation Law) and continues the substance of former Section 4803.

CROSS-REFERENCES

Definitions:

- Board, § 5115

§ 6554. Petition to determine or appoint directors

6554. When the identity of the directors or their right to hold office is in doubt, or if they are dead or unable to act, or if they fail or refuse to act or their whereabouts cannot be ascertained, any interested person may petition the superior court of the proper county to determine the identity of the directors or, if there are no directors, to appoint directors to wind up the affairs of the nonprofit corporation, after hearing upon such notice to such persons as the court may direct.

Comment. Section 6554 is the same in substance as Section 2003 (General Corporation Law) and supersedes former Sections 4804-4808.

CROSS-REFERENCES

Court determination of persons entitled to vote, §§ 5880-5883

Definitions:

- Director, § 5133
- Person, § 18
- Proper county, § 5169

Article 6. Presentation of Claims

§ 6560. Notice to creditors and claimants

6560. If the notice of winding up given pursuant to Section 6552 did not contain the statement provided in subdivision (b) of Section 6552, separate written notice shall be given by mail or by such other method as the court may order. The notice shall direct creditors and claimants to make claims and proofs to the person, at the place, and within the time specified in the notice. The notice shall be given to each person shown as a creditor or claimant on the books of the nonprofit corporation, at the person's last known address.

Comment. Section 6560 is comparable to a portion of Section 1807 (b) (General Corporation Law). Under Section 6552 (b), the written notice of the commencement of the proceeding (given by mail to members and creditors unless the court provides for notice other than by mail) may direct creditors and claimants to present claims at the time and place specified in the notice. If the notice to creditors and claimants is not included in the notice under Section 6552 (b), the notice concerning the presentation of claims must be given separately under Section 6560.

CROSS-REFERENCES

Definitions:

Person, § 18

Mailing, § 5015

Time allowed to present claims, § 6561

Written notice, §§ 8, 5016

§ 6561. Time to present claims; notice to creditors and claimants

6561. (a) A creditor or claimant may be barred from participation in the distribution of assets if claim and proof is not made within such time as the court may direct.

(b) The time specified for making claims and proofs shall be not less than four nor more than six months after notice has first been given to creditors and claimants pursuant to Section 6552 or Section 6560 unless it appears

by affidavit that there are no claims, in which case the time may be three months.

(c) If it is shown that a creditor or claimant did not receive notice because of absence from the state or other cause, the court may allow a claim to be made at any time before distribution is completed.

Comment. Section 6561 is comparable to subdivision (a) of Section 1807 (General Corporation Law) and continues the second paragraph of former Section 4608.

CROSS-REFERENCES

Declaration under penalty of perjury permitted, § 5012

Time notice given, § 5014

§ 6562. Holders of secured claims

6562. The holder of a secured claim may claim and prove the whole debt in order to realize any deficiency. If such a claimant fails to present a claim, the claimant shall be barred only as to a right to claim against the corporate assets for any deficiency in the amount realized on the security.

Comment. Section 6562 is the same in substance as subdivision (c) of Section 1807 (General Corporation Law) and the fourth paragraph of former Section 4608.

§ 6563. Unmatured, contingent, or disputed claims

6563. (a) Before any distribution of assets is made, the amount of any unmatured, contingent, or disputed claim against the nonprofit corporation that has been presented and has not been disallowed, or the part of any such claim the claimant would be entitled to if the claim were due, established, or absolute, shall be paid into court, or such other provision for the payment of the claim, if and when established, shall be made as the court deems adequate.

(b) The amount paid into court pursuant to subdivision (a) shall remain to be paid to the claimant when the claimant becomes entitled thereto or, if the claimant fails to establish the claim, to be distributed with the other assets of the nonprofit corporation to the persons entitled thereto.

(c) A creditor whose claim has been allowed but which is not yet due is entitled to its present value upon distribution.

Comment. Section 6563 is the same in substance as subdivision (d) of Section 1807 (General Corporation Law) and the fifth paragraph of former Section 4608.

CROSS-REFERENCES

Definitions:

Person, § 18

§ 6564. Time to commence suits on rejected claims

6564. An action against the nonprofit corporation on a claim that has been rejected shall be commenced within 30 days after written notice of rejection thereof is given to the claimant.

Comment. Section 6564 is the same in substance as subdivision (e) of Section 1807 (General Corporation Law) and the sixth paragraph of former Section 4608.

CROSS-REFERENCES

Definitions:

Action, § 5103

Time notice given, § 5014

Written notice, §§ 8, 5016

Article 7. Distribution of Assets

§ 6570. Distribution after payment of debts

6570. (a) After determining that all the known debts and liabilities of a nonprofit corporation in the process of winding up have been paid or adequately provided for, the board or other persons appointed to conduct the winding up shall distribute all the remaining corporate assets in the manner provided in this article.

(b) If the winding up is by court proceeding or subject to court supervision, the distribution shall not be made until after the expiration of any period for the presentation of claims that has been prescribed by order of the court.

Comment. Subdivision (a) of Section 6570 is the same in substance as the first sentence of Section 2004 (General Corporation Law). It continues the portion of the first paragraph of former Section 9801 and the second sentence of former Section 9802 that related to payment or adequate provision for debts and obligations of the nonprofit corporation. See also former Section 5000. Payment of a debt or liability has been adequately provided for if the conditions of Section 6571 are satisfied. For recovery of assets distributed to members without compliance with this section, see Section 6577.

Subdivision (b) is the same in substance as the second sentence of Section 2004 (General Corporation Law).

Distribution of assets of a nonprofit corporation on dissolution may be made only after the requirements of Section 6570 are satisfied. Distribution of assets generally is provided for in Section 6574 (distribution among members or in accordance with articles and bylaws). There are special rules for assets held on condition requiring return (Section 6572) and assets held on trust or by a charitable corporation (Section 6573). For payment of subvention certificates on dissolution, see Section 6037. For a special rule applicable to citrus fruit fair associations, see Food & Agri. Code § 4702.

CROSS-REFERENCES

Definitions:

Board, § 5115

§ 6571. Adequate provision for payment of debts and liabilities

6571. (a) The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(1) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision (including the financial responsibility of such persons) was made in good faith and with reasonable care by the board or other persons appointed to conduct the winding up to be adequate at the time of any distribution of the assets pursuant to this article.

(2) The amount of the debt or liability has been deposited as provided in Section 6576.

(b) This section does not prescribe the exclusive means of making adequate provision for debts and liabilities.

Comment. Section 6571 is the same in substance as Section 2005 (General Corporation Law). It continues the provisions of former Section 5001. "Financially responsible persons" includes financially responsible corporations. See Section 18.

CROSS-REFERENCES

Definitions:
Board, § 5115

§ 6572. Return of assets held on condition

6572. Assets held upon a valid condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the requirement.

Comment. Section 6572 is new. It is comparable to Section 46(b) of the ALI-ABA Model Nonprofit Corporation Act and is consistent with the common law in California. See, e.g., *In re Los Angeles County Pioneer Society*, 40 Cal.2d 852, 865-866, 257 P.2d 1, 9, cert. denied, 346 U.S. 888 (1953) (distribution of assets upon dissolution of corporation holding assets for charitable purposes in absence of condition requiring return to donor).

§ 6573. Disposition of assets held on trust or by charitable corporation

6573. (a) Except as provided in Section 6572, those assets held by a nonprofit corporation on a charitable trust and all of the assets held by a nonprofit corporation organized for charitable purposes shall be disposed of on dissolution in conformity with the purposes of the charitable trust or the charitable purposes for which the nonprofit corporation was organized.

(b) Except as provided in subdivision (c), the disposition required in subdivision (a) shall be made by decree of the superior court of the proper county in proceedings to which the Attorney General is a party. The decree shall be made upon petition therefor by the

Attorney General or, upon thirty days' notice to the Attorney General, by any person concerned in the dissolution.

(c) The disposition required in subdivision (a) may be made without the decree of the superior court, subject to the rights of persons concerned in the dissolution, if the Attorney General makes a written waiver of objections to the disposition.

Comment. Subdivisions (a) and (b) of Section 6573 continue the substance of the second paragraph of former Section 9801. The disposition of assets provided in Section 6573 applies only where the assets are not held on condition requiring return, transfer, or conveyance. See Section 6572.

Subdivision (a) applies both to assets received in trust for charitable purposes and to assets received by a charitable corporation. A nonprofit corporation organized exclusively for charitable purposes holds its assets in trust for the purposes enumerated in its articles of incorporation even though they were not otherwise expressly designated for charitable trust purposes when acquired by the corporation. *E.g., Pacific Home v. County of Los Angeles*, 41 Cal.2d 844, 852, 264 P.2d 539, 543 (1953). Whether a nonprofit corporation is deemed to be a charitable corporation for the purposes of subdivision (a) is a question of fact to be determined by reference not only to its articles of incorporation but also to the manner of conducting its activities. See, *e.g., Lynch v. Spilman*, 67 Cal.2d 251, 264, 431 P.2d 636, 645, 62 Cal. Rptr. 12, 21 (1967). Charitable purposes are not defined by statute but are left to judicial development.

Subdivision (a) does not preclude application of the doctrine of *cy pres*. Former Section 9801 was silent as to this point, but case law required application of the *cy pres* doctrine. See, *e.g., In re Metropolitan Baptist Church of Richmond, Inc.*, 48 Cal. App.3d 850, 857-858, 121 Cal. Rptr. 899, 903 (1975); *In re Veterans' Industries, Inc.*, 8 Cal. App.3d 902, 917-919, 88 Cal. Rptr. 303, 311-313 (1970).

Subdivision (b) continues the provision of former Section 9801 that required a court decree of distribution. The decree is made upon petition therefor by the Attorney General or by an interested party after 30 days' notice to the Attorney General. It should be noted that, although the Attorney General must be made a party, the Attorney General need not appear as a prerequisite to a court order. Moreover, although the Attorney

General is a party to the court proceeding, the ultimate responsibility for the proper application of the standard of subdivision (a) rests with the court. See *In re Veterans' Industries, Inc.*, *supra* at 920, 88 Cal. Rptr. at 313.

Subdivision (c) is new. It permits disposition of charitable assets without court decree upon waiver of objections by the Attorney General. A nonprofit corporation may seek a court decree even though the Attorney General has waived objections, and the waiver of objections binds only the Attorney General and not other interested parties such as the donor or potential distributees.

CROSS-REFERENCES

Definitions:

Nonprofit corporation organized for charitable purposes, § 5154

Person, § 18

Proper county, § 5169

Notice to Attorney General of transfer of assets, § 6112

Time notice given, § 5014

Written notice required, § 8

§ 6574. Distribution in accordance with articles or bylaws or to members

6574. Except as otherwise provided in this article, assets held by a nonprofit corporation shall be disposed of on dissolution as follows:

(a) If the articles or bylaws provide the manner of disposition, the assets shall be disposed of in that manner.

(b) If the articles or bylaws do not provide the manner of disposition, the assets shall be distributed among the members in accordance with their respective rights therein.

Comment. Section 6574 continues the substance of that portion of the first paragraph of former Section 9801 that related to distribution of assets to members or as otherwise provided in the articles, with the addition of a provision permitting the bylaws also to provide otherwise. For a comparable provision, see Section 2004 (General Corporation Law) (distribution of remaining corporate assets among shareholders according to their respective rights and preferences). Section 6574 governs distribution of the remaining assets of a nonprofit corporation on dissolution unless the assets fall within the terms of Section 6572 (return of assets held on condition) or 6573 (disposition of assets

held on trust or by charitable corporation). Section 6574 supersedes the last sentence of former Section 9802.

The respective rights of the members are determined by reference to the articles and bylaws. Absent relevant classifications, the property rights of members are equal. See Section 5611(b). The articles or bylaws may, however, provide for a disposition of assets other than by distribution to members.

It should be noted that, if assets of a nonprofit corporation are distributable to members on dissolution, the nonprofit corporation will not qualify for income tax exemption under Revenue and Taxation Code Section 23701d or Internal Revenue Code Section 501(c)(3). Moreover, the memberships are "securities" within the meaning of the Corporate Securities Law of 1968, which may not be exempt from the qualification requirements of that law. See Sections 25019 and 25100(j); California Corporations Commissioner, Release 15-C (Rev. Oct. 7, 1970); *California Securities Law Notebook* (Cal. Cont. Ed. Bar 1973).

CROSS-REFERENCES

Definitions:

- Articles, § 5112
- Bylaws, § 5121
- Member, § 5148

§ 6575. Manner of distribution

6575. (a) Except to the extent otherwise provided in the articles or bylaws, distribution of assets may be made either in money or in property or securities and either in installments from time to time or as a whole, if this can be done fairly and ratably and in conformity with the rights of the distributees.

(b) Distribution of assets shall be made as soon as reasonably consistent with the beneficial liquidation of corporate assets.

Comment. Section 6575 is the same in substance as Section 2006 (General Corporation Law) except that the section is subject to the bylaws as well as the articles. It continues the provisions of former Sections 5002 and 5003. Section 6575 applies only to distributions among members or other distributees where there are no contrary requirements in the articles or bylaws. Where the articles or bylaws provide otherwise, the distribution is not made pursuant to Section 6575 but is made in accordance with the requirements of the articles and bylaws.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Bylaws, § 5121

§ 6576. Deposit of distribution in trust

6576. (a) This section applies to a creditor, member, or other person entitled to assets of a nonprofit corporation in any of the following cases:

(1) The person is unknown or fails to accept a payment or distribution.

(2) The person cannot be found after diligent inquiry.

(3) The existence or amount of the person's claim is contingent, contested, or not determined.

(4) The ownership of the person's membership is in dispute.

(b) In cases described in subdivision (a), the nonprofit corporation may deposit the payment or distribution or the maximum amount of the claim with the State Treasurer or with a bank or trust company in this state in trust for the benefit of the person lawfully entitled thereto. The payment or distribution shall be paid over by the depository to the lawful owner or the owner's representative or assigns upon satisfactory proof of title.

(c) For the purpose of providing for the transmittal, receipt, accounting for, claiming, management, and investment of all amounts deposited in the State Treasury under this section, the deposit shall be deemed to be paid or delivered for deposit in the State Treasury under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and may be recovered in the manner prescribed therein.

Comment. Section 6576 is the same in substance as Section 2008 (General Corporation Law). Subdivisions (a) and (b) continue the provisions of former Sections 5009 and 5010. Subdivision (c) continues provisions of former Section 5011.

CROSS-REFERENCES

Definitions:

Member, § 5148

Person, § 18

§ 6577. Recovery of improper distribution to members

6577. (a) As used in this section, "process of winding up" includes proceedings under this chapter and also any other distribution of assets to members made in contemplation of termination or abandonment of the corporate activities.

(b) If in the process of winding up a distribution of assets to members is made, other than under an order of court, without prior payment or adequate provision for payment of any of the debts and liabilities of the nonprofit corporation, the amount distributed to members may be recovered by the nonprofit corporation. Any of such members may be joined as defendants in the same action or brought in on the motion of any other defendant.

(c) An action may be brought in the name of the nonprofit corporation by one or more creditors of the nonprofit corporation, whether or not they have reduced their claims to judgment, to enforce the liability under subdivision (b) against any or all members receiving the distribution.

(d) A member who satisfies any liability under this section has the right of ratable contribution from other members similarly liable. A member who has been compelled to return to the nonprofit corporation more than the member's ratable share of the amount needed to pay the debts and liabilities of the nonprofit corporation may require that the nonprofit corporation recover from any or all of the other members such proportion of the amounts received by them upon the distribution as to give contribution to those held liable under this section and make the distribution of assets fair and ratable.

Comment. Section 6577 is the same in substance as Section 2009 (General Corporation Law). It continues provisions of former Section 5012. Although a nonprofit corporation may make distributions to persons or groups other than members (see Sections 6572-6574), Section 6577 is limited to recovery of distributions made to members.

The remedy provided in subdivision (c)—allowing creditors to sue in the name of the nonprofit corporation for improper distribution to members—is not exclusive, and the creditors may pursue any other remedies afforded by law.

The directors may be liable under Section 5574 for improper distributions to members or other distributees. For the obligation to pay or adequately to provide for debts and liabilities prior to distribution, see Section 6570. Adequate provision for debts and liabilities is delineated in Section 6571.

CROSS-REFERENCES

Definitions:

Action, § 5103

Member, § 5148

Article 8. Cessation of Corporate Existence

§ 6580. Order declaring corporation wound up and dissolved

6580. A court order that the nonprofit corporation is duly wound up and dissolved shall declare:

(a) That the nonprofit corporation has been completely wound up.

(b) That all taxes imposed by the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) have been paid or secured.

(c) That the known debts and liabilities have been paid or adequately provided for, or paid or adequately provided for as far as its assets permitted, as the case may be. If there are known debts or liabilities for which adequate provision has been made, the order shall state what provision has been made, setting forth the name and address of the person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made, or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(d) That all known assets have been distributed in the manner provided in Article 7 (commencing with Section 6570).

(e) That the accounts of directors or other persons appointed to conduct the winding up have been settled and that they are discharged from their duties and liabilities to creditors and members.

(f) That the nonprofit corporation is dissolved.

Comment. Section 6580 is the same in substance as paragraphs (1) through (4) of subdivision (a) of Section 1808 (General Corporation Law) and former Section 5204. The order referred to in this section is authorized by Sections 6528(d) and 6535(d).

There should be no tax or penalty due under subdivision (b) for nonprofit corporations which have timely obtained a tax exemption pursuant to Section 23701 of the Revenue and Taxation Code.

CROSS-REFERENCES

Definitions:

Director, § 5133

Member, § 5148

Person, § 18

§ 6581. Cessation of corporate existence; continued existence for some purposes

6581. (a) Except as provided in this section, corporate existence ceases (1) upon the making of the order pursuant to Section 6580 declaring that the nonprofit corporation is duly wound up and dissolved or (2) upon the filing of the certificate of dissolution pursuant to Section 6526.

(b) A nonprofit corporation that is dissolved nevertheless continues to exist, if necessary, for the purpose of winding up its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, and collecting and dividing its assets.

(c) A nonprofit corporation that is dissolved continues to exist indefinitely for the purpose of being sued in any quiet title action.

(d) No action to which a nonprofit corporation is a party abates by reason of the winding up or dissolution.

(e) Any assets omitted from the winding up continue in the dissolved nonprofit corporation for the benefit of the persons entitled thereto upon dissolution of the nonprofit corporation and on realization shall be distributed accordingly.

Comment. Subdivision (a) of Section 6581 is the same in substance as the second sentence of subdivision (k) of Section 1806 (General Corporation Law), a portion of subdivision (b) of Section 1808 (General Corporation Law), and a portion of the first sentence of subdivision (b) of Section 1905 (General Corporation Law). Subdivision (b) is the same in substance as subdivision (a) of Section 2010 (General Corporation Law). Subdivision (c) is the same in substance as the first sentence of subdivision (c) of Section 2011 (General Corporation Law) and former Section 5400. Subdivision (d) is the same in substance as subdivision (b) of Section 2010 (General Corporation Law) and former Section 5401. Subdivision (e) is the same in substance as subdivision (c) of Section 2010 (General Corporation Law) and former Section 5402.

CROSS-REFERENCES

Definitions:

Action, § 5103

Filed, § 5142

Person, § 18

Quiet title action against dissolved nonprofit corporation, § 6584

§ 6582. Discharge of directors or other persons appointed to conduct winding up

6582. Upon the making of the order pursuant to Section 6580, the directors or other persons appointed to conduct the winding up are discharged from their duties and liabilities except in respect to completion of the winding up, if necessary.

Comment. Section 6582 is the same in substance as a portion of Section 1808(b) (General Corporation Law) and former Section 5205.

CROSS-REFERENCES

Definitions:

Director, § 5133

§ 6583. Actions against dissolved corporation

6583. (a) If a nonprofit corporation is dissolved, the members may be sued in the corporate name upon a cause of action against the nonprofit corporation arising prior to its dissolution.

(b) Summons or other process may be served against the nonprofit corporation by delivering a copy to an officer, director, or person having charge of its assets or, if no such person can be found, to any agent upon whom process might be served at the time of dissolution.

(c) If no persons described in subdivision (b) can with reasonable diligence be found and it is so shown by affidavit to the satisfaction of the court, the court may make an order that summons or other process be served by delivering a copy, together with a copy of the order, to the Secretary of State. Service in this manner is deemed complete on the tenth day after delivery to the Secretary of State. Upon receipt of process and the fee therefor prescribed in the Government Code, the Secretary of State forthwith shall give notice to the nonprofit corporation as provided in Chapter 17 (commencing with Section 1700) of Division 1.

Comment. Section 6583 is procedural only and is not intended to determine liability. Subdivision (a) is the same in substance as the first sentence of subdivision (a) of Section 2011 (General Corporation Law) and former Section 3305.2. Subdivisions (b) and (c) are the same in substance as subdivisions (b) and (d) of Section 2011 (General Corporation Law) and former Section 3305. The Secretary of State's fee for acceptance of copies of process is prescribed in Section 12206 of the Government Code.

CROSS-REFERENCES**Definitions:**

Director, § 5133

Member, § 5148

Person, § 18

Service on dissolved corporation, Code Civ. Proc. § 416.20

§ 6584. Quiet title action

6584. When a nonprofit corporation that is dissolved is sued in a quiet title action:

(a) The quiet title action has the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure.

(b) Service of summons or other process in the action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in Section 6583.

(c) Judgment in the action binds all of the members of the nonprofit corporation and other persons having any interest in the nonprofit corporation to the extent of their interests.

Comment. Section 6584 is the same in substance as the second and third sentences of subdivision (c) of Section 2011 (General Corporation Law) and the second, third, and fourth sentences of former Section 3305.1. A dissolved nonprofit corporation continues to exist indefinitely for the purpose of being sued in any quiet title action. See Section 6581(c).

CROSS-REFERENCES

Definitions:

Action, § 5103

Member, § 5148

Person, § 18

§ 6585. Filing of copy of decree of dissolution

6585. If a nonprofit corporation is dissolved or its existence annulled, vacated, or forfeited by order, decree, or judgment of a court, a copy of the order, decree, or judgment, certified by the clerk of court, shall forthwith be filed.

Comment. Section 6585 is the same in substance as the first sentence of Section 1809 (General Corporation Law) (involuntary dissolution) and subdivision (d) of Section 1907 (General Corporation Law) (voluntary dissolution) and a portion of former Section 5206.

CROSS-REFERENCES

Definitions:

Filed, § 5142

Article 9. Conditions for Dissolution of Regulated Corporation

§ 6590. Conditions for dissolution of regulated corporation

6590. (a) A nonprofit corporation that is subject to the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code) may not be wound up and dissolved under this chapter unless an order is obtained from the Public Utilities Commission authorizing the nonprofit corporation either (1) to dispose of its assets as provided in Section 851 of the Public Utilities Code or (2) to dissolve.

(b) A nonprofit corporation that is subject to the provisions of Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 of the Insurance Code may not be wound up and dissolved under this chapter when the application authorized by Section 1011 of the Insurance Code has been filed by the Insurance Commissioner unless the consent of the Insurance Commissioner has been obtained.

Comment. Section 6590 supersedes the provisions of former Section 4650 which authorized proceedings for involuntary dissolution of a corporation "other than" one subject to the regulatory provisions of certain enumerated statutes. Compare Section 1800(d) (General Corporation Law). Nothing in this section affects any other applicable requirements relating to dissolution.

Subdivision (a) restates existing law. A nonprofit corporation which is operating a public utility business may not dispose of such business without the consent of the Public Utilities Commission. See Pub. Util. Code § 851; *Grover v. Sharp & Fellows Contracting Co.*, 82 Cal. App.2d 515, 186 P.2d 682 (1947); *Slater v. Shell Oil Co.*, 39 Cal. App.2d 535, 103 P.2d 1043 (1940). Once such consent has been obtained, however, the nonprofit corporation may dissolve in the same manner as any other corporation. See *Slater v. Shell Oil Co.*, *supra*.

Subdivision (b) applies a similar rule to a nonprofit corporation operating an insurance business when the Insurance Commissioner has commenced a proceeding to obtain control of its assets as provided in Section 1011 of the Insurance Code.

When the conditions specified in Section 1011 exist, the Insurance Commissioner is empowered to commence a court proceeding, to take possession of all of the property of the corporation, and to apply for an order, which the court "shall make," dissolving the nonprofit corporation. Ins. Code §§ 1011, 1017. Under subdivision (b), when such proceedings have been commenced, the Insurance Commissioner's consent must be obtained before the nonprofit corporation may undertake voluntary or involuntary dissolution proceedings under this chapter.

CHAPTER 16. TRANSITION PROVISIONS

Comment. This division becomes operative January 1, 1979. See Section 6611(a). This chapter provides exceptions to application of this division on January 1, 1979, to existing nonprofit corporations in order to facilitate orderly compliance.

§ 6610. Definitions

6610. As used in this chapter:

(a) "Applicable date" means the date this division becomes applicable to an existing nonprofit corporation pursuant to subdivision (b) of Section 6611.

(b) "Existing nonprofit corporation" means a nonprofit corporation formed prior to January 1, 1979.

(c) "Prior law" means the applicable law as in effect prior to January 1, 1979.

Comment. Section 6610 is comparable to Section 2300 (General Corporation Law).

§ 6611. Operative date; delayed application of division to existing corporations

6611. (a) This division becomes operative on January 1, 1979.

(b) Notwithstanding subdivision (a), an existing nonprofit corporation is governed by prior law until the earlier of the following dates:

(1) January 1, 1980.

(2) The date on or after January 1, 1979, the existing nonprofit corporation elects to be governed by this division. The election shall be made by amending the articles to state that the existing nonprofit corporation elects to be governed by this division.

Comment. Subdivision (a) of Section 6611 defers the operative date of this division for one year in order to allow sufficient time for interested persons to become familiar with the new law. Nonprofit corporations formed after the operative date are governed by the new law.

Subdivision (b) postpones the application of this division for existing nonprofit corporations for an additional year in order to make any changes in their articles or bylaws that may be appropriate. It should be noted that Section 5410 (required

contents of articles) does not apply to an existing nonprofit corporation unless the corporation elects to be governed by this division prior to January 1, 1980, or thereafter files an amendment to its articles. See Section 6616. Under subdivision (b), an existing nonprofit corporation may elect in its articles to be governed by this division before January 1, 1980. The election is made by amending the articles of incorporation of the particular nonprofit corporation. See Section 5428 (amendment effective upon filing with Secretary of State). Subdivision (b) does not authorize an election to make applicable only selected portions of this division; the election is that the nonprofit corporation be governed by the entire division.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Existing nonprofit corporation, § 6610

Prior law, § 6610

§ 6612. General rule concerning application of division to existing corporation

6612. Except as otherwise expressly provided in this chapter, acts, contracts, or other transactions by an existing nonprofit corporation or its directors, officers, or members:

(a) If occurring prior to the applicable date, are governed by prior law.

(b) If occurring on or after the applicable date, are governed by this division.

Comment. Section 6612 is the same in substance as subdivision (b) of Section 2301 (General Corporation Law). The succeeding sections of this chapter are express exceptions to the general rule stated in this section that actions taken by an existing nonprofit corporation, members, and directors are governed by prior law if taken prior to the applicable date (defined in subdivision (a) of Section 6610) and are governed by this division if taken after the applicable date.

CROSS-REFERENCES

Definitions:

Director, § 5133

Member, § 5148

Prior law, § 6610

§ 6613. Instrument relating to vote prior to applicable date

6613. If a certificate or document that is required to be filed relates to a vote by the directors or members of an existing nonprofit corporation prior to the applicable date in accordance with prior law, the vote is effective and the certificate or document may be filed on or after the applicable date in accordance with prior law.

Comment. Section 6613 is the same in substance as the last portion of Section 2301(c) (General Corporation Law). For other provisions relating to the effect of votes, see Section 6619.

CROSS-REFERENCES**Definitions:**

Applicable date, § 6610
Director, § 5133
Existing nonprofit corporation, § 6610
Filed, § 5142
Member, § 5148
Prior law, § 6610
Vote, § 5190

§ 6614. Derivative actions

6614. Section 5223 applies to an action by a member in the right of an existing nonprofit corporation commenced on or after the applicable date, and prior law governs such an action commenced prior to the applicable date.

Comment. Section 6614 is the same in substance as Section 2312 (General Corporation Law).

CROSS-REFERENCES**Definitions:**

Action, § 5103
Applicable date, § 6610
Existing nonprofit corporation, § 6610
Prior law, § 6610

§ 6615. Annual statements

6615. An existing nonprofit corporation shall file the statement required by Section 5224 within 90 days after the applicable date.

Comment. Section 6615 is new.

CROSS-REFERENCES

Definitions:

Applicable date, § 6610

Existing nonprofit corporation, § 6610

§ 6616. Required contents of articles of incorporation

6616. Prior law governs the required contents of articles of an existing nonprofit corporation until the earlier of the following dates, and thereafter Section 5410 applies:

(a) The effective date of an amendment of articles filed by the existing nonprofit corporation on or after January 1, 1980.

(b) The date on or after January 1, 1979, the existing nonprofit corporation elects to be governed by this division pursuant to paragraph (2) of subdivision (b) of Section 6611.

Comment. Section 6616 defers the application of Section 5410 (required contents of articles) until the articles are amended on or after the applicable date unless the corporation elects to be governed by this division under Section 6611. Unlike Sections 2302 and 2303 (General Corporation Law), Section 6616 does not defer indefinitely (until the corporation specifically elects to be governed by them) the provisions relating to required contents of articles. For the prior law, see former Section 9300.

CROSS-REFERENCES

Definitions:

Articles, § 5112

Existing nonprofit corporation, § 6610

Filed, § 5142

Prior law, § 6610

§ 6617. Certain amendments of articles may be adopted by approval of board alone

6617. Notwithstanding Section 5423, an amendment of the articles of an existing nonprofit corporation may be adopted by approval of the board alone to delete the reference to the county in this state where the principal office for the transaction of the business of the existing nonprofit corporation is located.

Comment. Section 6617 is intended to enable the board alone to remove from the articles unnecessary verbiage that was included pursuant to former Section 9300(d).

CROSS-REFERENCES

Definitions:

Approval of the board, § 5106
 Articles, § 5112
 Existing nonprofit corporation, § 6610

§ 6618. Indemnification provisions

6618. (a) Article 8 (commencing with Section 5580) of Chapter 5 applies to any proposed indemnification by an existing nonprofit corporation on or after the applicable date, regardless of when the events upon which the indemnification is based occurred.

(b) A statement relating to indemnification contained in the articles or bylaws of an existing nonprofit corporation on the applicable date shall not be construed as limiting the indemnification permitted by Article 8 (commencing with Section 5580) of Chapter 5 unless it is expressly stated as so intended.

Comment. Section 6618 is the same in substance as Section 2306 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Applicable date, § 6610
 Articles, § 5112
 Bylaws, § 5121
 Existing nonprofit corporation, § 6610

§ 6619. Members' meetings and written consents

6619. Chapter 7 (commencing with Section 5710) and Chapter 8 (commencing with Section 5810), other than Articles 3 (commencing with Section 5830) (proxies) and 5 (commencing with Section 5850) (voting agreements), apply to:

(a) A meeting of members of an existing nonprofit corporation held on or after the applicable date and any vote cast at the meeting except that prior law applies if the meeting was initially called for a date prior to the

applicable date and notice of the meeting was given to persons entitled to vote at the meeting.

(b) A written consent given by members of an existing nonprofit corporation that becomes effective on or after the applicable date, whether or not the consent was executed prior to the applicable date.

Comment. Section 6619 is the same in substance as Section 2310 (General Corporation Law) except that (1) it does not apply to proxies (governed by Section 6620) and voting agreements (governed by Section 6621) and (2) prior law applies to a properly noticed meeting called for a date prior to the applicable date (as defined in Section 6610(a)).

CROSS-REFERENCES

Definitions:

Existing nonprofit corporation, § 6610

Member, § 5148

Person, § 18

Prior law, § 6610

Proxy, § 5172

Vote, § 5190

Time notice given, § 5014

§ 6620. Proxies

6620. Prior law applies to a proxy in an existing nonprofit corporation executed prior to the applicable date.

Comment. Section 6620 makes clear that a proxy validly executed prior to the applicable date (defined in Section 6610) continues in effect in accordance with prior law notwithstanding any possible noncompliance with the provisions of Article 3 (commencing with Section 5830) of Chapter 8.

CROSS-REFERENCES

Definitions:

Existing nonprofit corporation, § 6610

Prior law, § 6610

Proxy, § 5172

§ 6621. Voting agreements

6621. Prior law applies to a voting agreement or voting trust in an existing nonprofit corporation entered into prior to the applicable date unless such agreement or trust is amended or is extended on or after the applicable

date, in which event Article 5 (commencing with Section 5850) of Chapter 8 applies.

Comment. Section 6621 is the same in substance as Section 2311 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Applicable date, § 6610

Existing nonprofit corporation, § 6610

Prior law, § 6610

§ 6622. Capital improvement assessments

6622. Subdivision (c) of Section 6012 does not apply to a capital improvement assessment levied by an existing nonprofit corporation prior to the applicable date.

Comment. Section 6622 makes clear that, in the case of an assessment levied before the applicable date (defined in Section 6610), a member may not, after the applicable date, exercise the statutory resignation right under Section 6012(c) to avoid a capital improvement assessment.

CROSS-REFERENCES

Definitions:

Existing nonprofit corporation, § 6610

§ 6623. Payments to purchase or redeem memberships

6623. (a) Article 6 (commencing with Section 6060) of Chapter 10 applies to payments to purchase or redeem memberships made on or after the applicable date by an existing nonprofit corporation.

(b) A payment to purchase or redeem a membership made by an existing nonprofit corporation on or after the applicable date pursuant to a contract for the purchase or redemption of memberships entered into by the existing nonprofit corporation prior to the applicable date may be made if permissible under Article 6 (commencing with Section 6060) of Chapter 10 or under prior law at the time the contract was entered into.

Comment. Section 6623 is comparable to Section 2308 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Applicable date, § 6610
Existing nonprofit corporation, § 6610
Prior law, § 6610

§ 6624. Sales of assets; mergers and consolidations

6624. (a) Except as provided in subdivision (b):

(1) Chapter 11 (commencing with Section 6110) applies to a transaction by an existing nonprofit corporation consummated on or after the applicable date.

(2) Chapter 12 (commencing with Section 6210) applies to a merger or consolidation of an existing nonprofit corporation if a copy of the agreement of merger or consolidation is filed on or after the applicable date.

(b) Prior law applies to a transaction, merger, or consolidation described in subdivision (a) if a required approval of the members has been given either prior to the applicable date or on or after the applicable date but at a meeting of members initially called for a date prior to the applicable date.

Comment. Section 6624 same in substance as Section 2313 (General Corporation Law) except that (1) the time of "consummation" of a merger or consolidation is specified as the time of filing of a copy of the agreement and (2) prior law applies to a described transaction, merger, or consolidation if approval occurs after the applicable date (as defined in Section 6610(a)) at a meeting initially called for a date prior to the applicable date.

CROSS-REFERENCES

Definitions:

Approval of the members, § 5109
Existing nonprofit corporation, § 6610
Filed, § 5142
Member, § 5148
Prior law, § 6610

§ 6625. Dissolution

6625. (a) Chapter 15 (commencing with Section 6510) applies to an action for involuntary dissolution of an existing nonprofit corporation commenced on or after

the applicable date, and prior law applies to such an action commenced prior to the applicable date.

(b) Chapter 15 (commencing with Section 6510) applies to voluntary dissolution of an existing nonprofit corporation if the certificate evidencing the election to wind up and dissolve is filed on or after the applicable date, and prior law applies to such a dissolution if the certificate is filed prior to the applicable date, except that, if an existing nonprofit corporation has been completely wound up without court proceedings therefor, a majority of the directors then in office may sign and verify the certificate of dissolution.

Comment. Subdivision (a) of Section 6625 is the same in substance as Section 2314 (General Corporation Law). Subdivision (b) is the same in substance as Section 2315 (General Corporation Law) with the exception of the "except" clause, which is intended to permit an expiring nonprofit corporation in the process of voluntary dissolution to avoid the need to fill vacancies on the board in order to comply with formalities of prior law.

CROSS-REFERENCES

Definitions:

Action, § 5103
 Applicable date, § 6610
 Director, § 5133
 Existing nonprofit corporation, § 6610
 Filed, § 5142
 Prior law, § 6610

Verification, § 5011

§ 6626. Revivor of suspended rights

6626. If the corporate rights, privileges, and powers of an existing nonprofit corporation have been suspended and are still suspended immediately prior to the applicable date pursuant to Sections 5700 to 5908, inclusive, of the prior law and statutes there referred to, the prior law and statutes continue to apply to the existing nonprofit corporation until restoration by the Controller pursuant to prior law.

Comment. Section 6626 is the same in substance as Section 2319 (General Corporation Law).

CROSS-REFERENCES

Definitions:

Applicable date, § 6610

Existing nonprofit corporation, § 6610

Prior law, § 6610

PARTIAL INVALIDITY PROVISION

SEC. 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

MANDATED LOCAL COSTS PROVISION

SEC. 4. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be an appropriation made by this act because the Legislature recognizes that, during any legislative session, a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local governmental entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

OPERATIVE DATE

SEC. 5. This act becomes operative on January 1, 1979.

DOUBLE JOINTING PROVISION

SEC. 6. This act shall become operative only if Senate Bill _____ is chaptered and becomes effective January 1, 1978, and, in such case, shall become operative at the same time as Senate Bill _____.

CONFORMING REVISIONS

NONPROFIT CORPORATIONS FOR MEDICAL SERVICES

Business & Professions Code

§ 700 (added)

§ 701 (added)

NONPROFIT CORPORATIONS FOR LEGAL SERVICES

Business & Professions Code

§ 6175 (added)

§ 6176 (added)

WATER COMPANIES

Civil Code §§ 330.24–331 (repealed)

SOCIETIES FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS

Civil Code §§ 607d–607g (repealed)

LIMITATIONS ON ACTIONS AGAINST DIRECTORS, SHAREHOLDERS, OR MEMBERS

Code of Civil Procedure § 359 (technical amendment)

CORPORATIONS CODE—GENERAL PROVISIONS

Corporations Code

§ 9 (amended)

§ 10 (amended)

CORPORATIONS CODE—GENERAL CORPORATION LAW

Corporations Code

§ 602 (amended)

§ 708 (amended)

CHAMBERS OF COMMERCE, BOARDS OF TRADE, MECHANICS' INSTITUTES, ETC.

Corporations Code §§ 12000–12006 (repealed)

CORPORATIONS SOLE

Corporations Code

§ 10000 (added)

§ 10001 (added)

§ 10002 (added)

§ 10003 (added)

§ 10004 (added)

§ 10005 (added)

§ 10006 (added)

§ 10007 (added)

§ 10008 (added)

§ 10009 (added)

§ 10010 (added)

§ 10012 (added)

§ 10013 (added)

§ 10014 (added)

§ 10015 (added)

CORPORATIONS FOR CHARITABLE OR ELEEMOSYNARY PURPOSES

Corporations Code § 10200 (added)

CHAMBERS OF COMMERCE, BOARDS OF TRADE, MECHANICS' INSTITUTES, ETC.

Corporations Code § 12000 (added)

COOPERATIVE CORPORATIONS

Corporations Code

§ 12205 (technical amendment)

§ 12206 (technical amendment)

CALIFORNIA JOB CREATION CORPORATIONS

Corporations Code § 14080 (technical amendment)

CORPORATIONS TO ADMINISTER LIBRARIES

Education Code

§§ 19800-19811 (repealed)

§ 19800 (added)

LEASE OF SCHOOL BUILDINGS TO NONPROFIT CORPORATIONS

Education Code § 39315 (technical amendment)

PAYROLL DEDUCTIONS FOR SCHOOL DISTRICT EMPLOYEES

Education Code § 44041 (technical amendment)

LEASE OF COMMUNITY COLLEGE BUILDINGS TO NONPROFIT CORPORATIONS

Education Code § 81345 (technical amendment)

PAYROLL DEDUCTIONS FOR COMMUNITY COLLEGE EMPLOYEES

Education Code § 87040 (technical amendment)

PRIVATE EDUCATIONAL INSTITUTIONS

Education Code

§ 94306 (amended)

§ 94307 (amended)

CONSOLIDATION OF PRIVATE COLLEGES

Education Code

§ 94406 (technical amendment)

§ 94407 (technical amendment)

CHECK SELLERS AND CASHERS

Financial Code § 12100 (technical amendment)

THRIFT GUARANTY CORPORATION

Financial Code § 18475 (technical amendment)

FEEES FOR FILING CORPORATE DOCUMENTS

Government Code

§ 12202 (amended)

§ 12203.5 (added)

§ 12203.7 (added)

§ 12210 (technical amendment)

§ 12210.5 (technical amendment)

SALE OR LEASE OF SURPLUS CITY OR COUNTY PROPERTY TO NONPROFIT CORPORATIONS

Government Code § 50568 (technical amendment)

PORT AND TERMINAL PROTECTION AND DEVELOPMENT CORPORATIONS

Harbors & Navigation Code

§ 2000 (added)

§ 2001 (added)

§ 2002 (added)

§ 2003 (added)

§ 2004 (added)

§ 2005 (added)

§ 2006 (added)

HEALTH FACILITY CONSTRUCTION LOAN INSURANCE

Health & Safety Code § 436.2 (technical amendment)

PRIVATE CEMETERIES

Health & Safety Code §§ 8800–8806 (repealed)

SOCIETIES FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS

Health & Safety Code

§ 20700 (added)

§ 20701 (added)

§ 20702 (added)

§ 20710 (added)

§ 20711 (added)

§ 20712 (added)

§ 20713 (added)

§ 20714 (added)

§ 20720 (added)

§ 20721 (added)

§ 20722 (added)

§ 20723 (added)

§ 20724 (added)

COMMUNITY LAND CHEST LAW

Health & Safety Code § 35131 (technical amendment)

NONPROFIT HOSPITAL SERVICE CORPORATIONS

Insurance Code § 11496 (technical amendment)

AUTHORITY OF HUMANE OFFICERS

Penal Code

§ 597d (technical amendment)

§ 597z (technical amendment)

WATER COMPANIES

Public Utilities Code

§ 2713 (added)

§ 2714 (added)

§ 2715 (added)

§ 2716 (added)

§ 2717 (added)

§ 2718 (added)

UNEMPLOYMENT INSURANCE

Unemployment Insurance Code § 1116 (technical amendment)

VESSEL REGISTRATION AND TRANSFER FEE EXEMPTION

Vehicle Code § 9870 (technical amendment)

APPLICATION OF OLD GENERAL CORPORATION LAW

Cal. Stats. 1975, Ch. 682, § 16 (amended)

PAYMENT FOR SERVICES PERFORMED UNDER DIRECTION OF RELIGIOUS ORGANIZATION

PARTIAL INVALIDITY PROVISION

OPERATIVE DATE

DOUBLE JOINTING PROVISION

CONFORMING REVISIONS

An act to add Article 9 (commencing with Section 700) to Chapter 1 of Division 2 of, to add Article 10.5 (commencing with Section 6175) to Chapter 4 of Division 3 of, the Business and Professions Code, to repeal Title 1 (commencing with Section 330.24) and Title 12a (commencing with Section 670d) of Part 4 of Division 1 of the Civil Code, to amend Section 359 of the Code of Civil Procedure, to amend Sections 9, 10, 602, 708, 12205, 12206, and 14080 of, to add Part 1 (commencing with Section 10000), Part 1.3 (commencing with Section 10200), and Part 1.5 (commencing with Section 12000) to Division 3 of Title 1 of, and to repeal Part 1 (commencing with Section 12000) of Division 3 of Title 1 of, the Corporations Code, to amend Sections 39315, 44041, 81345, 87040, 94306, 94307, 94406, and 94407 of, to add Chapter 10 (commencing with Section 19800) to Part 11 of Division 1 of Title 1 of, and to repeal Chapter 10 (commencing with Section 19800) of Part 11 of Division 1 of Title 1 of, the Education Code, to amend Sections 12100 and 18475 of the Financial Code, to amend Sections 12202, 12210, 12210.5, and 50568 of, and to add Sections 12203.5 and 12203.7 to, the Government Code, to add Part 1 (commencing with Section 2000) to Division 6 of the Harbors and Navigation Code, to amend Sections 436.2 and 35131 of, to add Division 15 (commencing with Section 20700) to, and to repeal Chapter 6 (commencing with Section 8800) of Part 3 of Division 8 of, the Health and Safety Code, to amend Section 11496 of the Insurance Code, to amend Sections 597d and 597z of the Penal Code, to add Sections 2713, 2714, 2715, 2716, 2717, and 2718 to the Public Utilities Code, to amend Section 1116 of the Unemployment Insurance Code, to amend Section 9870 of the Vehicle Code, and to amend Section 16 of Chapter 682 of the Statutes of 1975, relating to corporations.

The people of the State of California do enact as follows:

Nonprofit Corporations for Medical Services

Business & Professions Code §§ 700–701 (added)

SECTION 1. Article 9 (commencing with Section 700) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 9. Nonprofit Corporations for Medical Services

Business & Professions Code § 700 (added)

700. (a) A nonprofit corporation may be formed under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) for the purposes of defraying or assuming the cost of professional services of licentiates under any chapter of this division or of rendering any such services, but it may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(1) At least one-fourth of all licentiates of the particular profession residing in California become members.

(2) Membership in the nonprofit corporation and an opportunity to render professional services upon a uniform basis are available to all licensed members of the particular profession.

(3) Voting by proxy and cumulative voting are prohibited, and no member may hold more than one membership.

(4) A certificate is issued to the nonprofit corporation by the particular professional board whose licentiates have become members, finding compliance with the requirements of paragraphs (1), (2), and (3).

(b) The nonprofit corporation shall be subject to supervision by the particular professional board under which its members are licensed and shall also be subject to Section 6074 of the Corporations Code.

Comment. Section 700 continues former Corporations Code Section 9201, with the addition of the limitation of one membership per member, which preserves the effect of former Corporations Code Section 9602.

Business & Professions Code § 701 (added)

701. Any nonprofit corporation described in Section 700 which defrays or assumes some portion or all of the costs of refractions or eye appliances shall offer an equal opportunity to render professional services upon a uniform basis to all licentiates expressly authorized by law to render such services.

Comment. Section 701 continues former Corporations Code Section 9201.1.

Nonprofit Corporations for Legal Services

Business & Professions Code §§ 6175–6176 (added)

SEC. 2. Article 10.5 (commencing with Section 6175) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 10.5. Nonprofit Corporations for Legal Services

Business & Professions Code § 6175 (added)

6175. (a) A nonprofit corporation may be formed under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) for the purposes of administering a system or systems of defraying the cost of professional services of attorneys, but it may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(1) The attorneys furnishing professional services pursuant to such system or systems are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such system or systems.

(2) Membership in the nonprofit corporation and an opportunity to render professional services upon a uniform basis are available to all active members of the State Bar of California.

(3) Voting by proxy and cumulative voting are prohibited, and no member may hold more than one membership.

(4) A certificate is issued to the nonprofit corporation by the State Bar of California finding compliance with the requirements of paragraphs (1), (2), and (3).

(b) The nonprofit corporation shall be subject to supervision by the State Bar of California and shall also be subject to Section 6074 of the Corporations Code.

Comment. Section 6175 continues former Corporations Code Section 9201.2, with the addition of the limitation of one membership per member, which preserves the effect of former Corporations Code Section 9602.

Business & Professions Code § 6176 (added)

6716. Nothing in Section 6715 shall be construed to prohibit the formation and conduct of any group, prepaid, or other legal service arrangement organized as an unincorporated association or pursuant to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code), which arrangement need not comply with Section 6715 so long as the attorneys furnishing legal services thereunder are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such arrangements.

Comment. Section 6176 codifies Cal. Stats. 1972, Ch. 894, § 1.5, at 1589.

Water Companies

Civil Code §§ 330.24–331 (repealed)

SEC. 3. Title 1 (commencing with Section 330.24) of Part 4 of Division 1 of the Civil Code is repealed.

Comment. The disposition of the sections in Title 1 (commencing with Section 330.24) is shown in the table:

<i>Civil Code Section</i>	<i>Disposition</i>
330.24	Pub. Util. Code § 2713
330.25	Pub. Util. Code § 2714
330.26	Pub. Util. Code § 2715
331, subdivision (1)	Not continued, superseded by Corp. Code §§ 6010-6012
331, subdivision (2)	Pub. Util. Code § 2716

**Societies for the Prevention of Cruelty
to Children and Animals**

Civil Code §§ 607d-607g (repealed)

SEC. 4. Title 12a (commencing with Section 607d) of Part 4 of Division 1 of the Civil Code is repealed.

Comment. The substance of former Title 12a is continued in Division 15 (commencing with Section 20700) of the Health and Safety Code. The disposition of the sections in former Title 12a is shown in the table:

<i>Civil Code Section</i>	<i>Health & Safety Code Section</i>
607d	Not continued
607e	20711
607f	
First and second paragraphs	20720
Third, fourth, and fifth paragraphs ..	20721
Sixth and seventh paragraphs	20722
Eighth paragraph and first sentence of ninth paragraph	20723
Remainder of ninth paragraph	20724
Tenth paragraph.....	Not continued
607g	20713

**Limitations on Actions Against Directors,
Shareholders, or Members**

Code of Civil Procedure § 359 (technical amendment)

SEC. 5. Section 359 of the Code of Civil Procedure is amended to read:

359. This title does not affect actions against ~~Directors or stockholders~~ *directors, shareholders, or members* of a corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

Comment. Section 359 is amended to make clear its application to directors and members of a nonprofit corporation and to reflect the terminology used in the General Corporation Law.

Corporations Code—General Provisions

Corporations Code § 9 (amended). References to statutes SEC. 6. Section 9 of the Corporations Code is amended to read:

9. ~~Whenever~~ *Unless otherwise expressly provided, whenever* reference is made to any portion of this code or ~~of any other law of this State, to any other state or federal statute,~~ the reference applies to all amendments and additions now or hereafter made.

Comment. Section 9 is amended to make clear that, where expressly provided, references to portions of the Corporations Code do not include subsequent amendments. See, *e.g.*, Cal. Stats. 1975, Ch. 682, § 16, *as amended by* Cal. Stats. 1976, Ch. 641, § 43.5 ("All references in any such other statute to any sections or portions of the General Corporation Law shall, until such amendment, continue to be references to Division 1 (commencing with Section 100) of Title 1 of the Corporations Code as in effect immediately prior to the effective date of this act.").

Section 9 is also amended to make clear that a reference to a federal statute includes amendments and additions to the statute. See also Section 104 (General Corporation Law).

Corporations Code § 10 (amended). Definitions

SEC. 7. Section 10 of the Corporations Code is amended to read:

10. *Unless otherwise expressly stated:*

(a) *“Chapter” means a chapter of the division, or if none the part, or if none the title, in which the term appears.*

(b) *“Article” means an article of the chapter in which the term appears.*

(c) *“Section” means a section of this code unless some other statute is specifically mentioned. code.*

(d) *“Subdivision” means a subdivision of the section in which the term appears unless some other section is expressly mentioned. appears.*

(e) *“Paragraph” means a paragraph of the subdivision in which the term appears.*

Comment. Section 10 is amended to accommodate terminology used in Division 2 (commencing with Section 5000) of Title 1. For a comparable provision, see Evidence Code Section 7. See also Section 157 (General Corporation Law) (“chapter” defined).

Corporations Code—General Corporation Law

Corporations Code § 602 (amended). Quorum; mutual water companies

SEC. 8. Section 602 of the Corporations Code is amended to read:

602. (a) Unless otherwise provided in the articles, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third ~~(or, in the case of a mutual water company, 20 percent)~~ of the shares entitled to vote at the meeting or, except in the case of a close corporation, of more than a majority of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this division or the articles and except as provided in subdivision (b).

(b) The shareholders present at a duly called or held meeting at which a quorum is present may continue to

transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

(c) In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (b).

Comment. Subdivision (a) of Section 602 is amended to delete the reference to mutual water companies. The substance of the deleted language is continued in Public Utilities Code Section 2717.

Corporations Code § 708 (amended). Cumulative voting; mutual water companies

SEC. 9. Section 708 of the Corporations Code is amended to read:

708. (a) Every shareholder complying with subdivision (b) and entitled to vote at any election of directors may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are entitled, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit.

(b) No shareholder shall be entitled to cumulate votes (i.e., cast for any one or more candidates a number of votes greater than the number of the shareholder's shares) unless such candidate or candidates' names have been placed in nomination prior to the voting and the shareholder has given notice at the meeting prior to the voting of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given such notice, all shareholders may cumulate their votes for candidates in nomination.

(c) In any election of directors, the candidates receiving the highest number of votes of the shares

entitled to be voted for them up to the number of directors to be elected by such shares are elected.

~~(d) Subdivision (a) applies to the shareholders of any mutual water company organized or existing for the purpose of delivering water to its shareholders at cost on lands located within the boundaries of one or more reclamation districts now or hereafter legally existing in this state and created by or formed under the provisions of any statute of this state, but does not otherwise apply to the shareholders of mutual water companies unless their articles or bylaws so provide.~~

~~(e) (d) Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins or unless the bylaws so require.~~

Comment. Section 708 is amended to delete subdivision (d) relating to mutual water companies. The substance of the deleted provision is continued as Public Utilities Code Section 2718.

Chambers of Commerce, Boards of Trade, Mechanics' Institutes, Etc.

Corporations Code §§ 12000–12006 (repealed)

SEC. 10. Part 1 (commencing with Section 12000) of Division 3 of Title 1 of the Corporations Code is repealed.

Comment. Sections 12000 to 12006, providing for the formation of chambers of commerce, boards of trade, mechanics' institutes, and other similar organizations, are superseded by provisions of the General Corporation Law, Division 1 (commencing with Section 100), and the Nonprofit Corporation Law, Division 2 (commencing with Section 5000). The repeal of Sections 12000 to 12006 has no effect on the opportunity to form corporations for such purposes since they may still be incorporated under either the General Corporation Law or the Nonprofit Corporation Law. In addition, new Part 1.5 (commencing with Section 12000) makes clear that corporations formed or existing under this part continue to exist under either the General Corporation Law or the Nonprofit Corporation Law, as they have in the past. The provisions of the General

Corporation Law and the Nonprofit Corporation Law that supersede the provisions of former Part 1 are indicated below.

Section 12000. Formation; purposes; applicable law. The first sentence of the first paragraph of former Section 12000, which provided for the formation of chambers of commerce and like corporations by 20 or more persons, is superseded by the provisions of Sections 200 and 5321 which permit the formation of corporations by one or more persons. The substance of the second sentence of the first paragraph is continued in new Section 12000.

The second paragraph of former Section 12000, which provided that no corporation formed thereunder shall engage in any mercantile, commercial, or mechanical business, is not continued. Chambers of commerce and like corporations which were not formed under this part were not formerly subject to this restriction. Of course, such a limitation may be stated in the articles of a corporation formed under Division 1 or Division 2. See Sections 204(a)(6) and 5411.

Section 12001. Articles; board; executive committee. Section 12001 is superseded by Sections 300(a) and 5510 (authority of the board) and by Section 311(a)-(g) and Article 5 (commencing with Section 5550) of Chapter 5 of Division 2 (committees of the board).

Section 12002. Required provisions of bylaws. Section 12002 is superseded by Section 212 and Article 4 (commencing with Section 5440) of Chapter 4 of Division 2, relating to the contents of the bylaws.

Section 12003. Admittance and expulsion of members; appointment of officers and employees; effect of bylaws. Section 12003 is superseded by Sections 5442 (bylaws relating to members) and 5446 (bylaws relating to selection of officers). See also Article 6 (commencing with Section 5560) of Chapter 5 of Division 2 (provisions for officers). The last sentence of Section 12003 has not been continued because it is unnecessary in light of case law. See *Casady v. Modern Metal Spinning & Mfg. Co.*, 188 Cal. App.2d 728, 732-734, 10 Cal. Rptr. 790, 793-794 (1961).

Section 12004. Penalty for violation of bylaws. Section 12004, limiting penalties for a violation of the bylaws to not exceeding \$100, is not continued. See Sections 212(b) and 5441 (bylaws may contain any provision not in conflict with law or the articles for conduct of the affairs of the corporation). See also Section 5443 (bylaws may provide penalty for their violation).

Section 12005. Assessments. Section 12005 is superseded by Sections 423, 5442, and 6010–6012 (levy of assessments).

Section 12006. Election to continued existence under part; vote of members; notice of meeting; certificate of election; execution; filing. Section 12006 is repealed and is not continued elsewhere because its purpose could not be achieved in light of the repeal of Sections 12000 to 12005. All incorporated chambers of commerce, boards of trade, mechanics' institutes, and the like, whether organized pursuant to a law in existence prior to May 20, 1905, or thereafter, or pursuant to repealed Part 1, are governed by the provisions of Division 1 (commencing with Section 100) or Division 2 (commencing with Section 5000). See new Section 12000 and the Comment thereto.

Corporations Sole

Corporations Code §§ 10000–10015 (added)

SEC. 11. Part 1 (commencing with Section 10000) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 1. CORPORATIONS SOLE

Comment. Part 1 (commencing with Section 10000) reenacts the substance of former Part 2 (commencing with Section 10000) of Division 2, relating to corporations sole.

Corporations Code § 10000 (added). Application of part

10000. The provisions of this part apply to all corporations sole organized either before or after March 30, 1878, whether or not the corporations organized before have elected to continue their existence under the Civil Code or elect to continue their existence under this code except that Sections 10002, and 10012 to 10015, inclusive, do not apply to corporations sole formed before March 30, 1878, unless they have elected to continue their existence under the Civil Code or under this code.

Comment. Section 10000 continues former Section 10000.

Corporations Code § 10001 (added). Election to exist under this part

10001. Any corporation sole formed prior to March 30, 1878, and existing under the laws of this state may elect to continue its existence under this part by filing a certificate to that effect, under its corporate seal, if any, signed by its chief officer, or by filing amended articles of incorporation in the form required in this part.

Comment. Section 10001 continues former Section 10001.

Corporations Code § 10002 (added). Formation

10002. A corporation sole may be formed under this part by the bishop, chief priest, presiding elder, or other presiding officer of any religious denomination, society, or church for the purpose of administering and managing the affairs, property, and temporalities thereof.

Comment. Section 10002 continues former Section 10002.

Corporations Code § 10003 (added). Required contents of articles

10003. The articles of incorporation shall state:

(a) The name of the corporation.

(b) That the officer forming the corporation is duly authorized by the rules, regulations, or discipline of the religious denomination, society, or church to take such action.

(c) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer is required to be filled by the rules, regulations, or constitution of the denomination, society, or church.

Comment. Section 10003 continues former Section 10003 except that it does not require that the county in which the principal office of the corporation is located be set forth in the articles. This conforms with Section 5410 (Nonprofit Corporation Law).

CROSS-REFERENCES

Changing name, § 10010

Permissible name, §§ 5222, 10006

Corporations Code § 10004 (added). Permitted contents of articles

10004. The articles of incorporation may state any desired provision for the regulation of the affairs of the corporation in a manner not in conflict with law, including restrictions upon the power to amend all or any part of the articles of incorporation.

Comment. Section 10004 continues former Section 10004.

Corporations Code § 10005 (added). Execution of articles; filing

10005. The articles shall be signed and verified by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation and shall be submitted to the Secretary of State for filing. Upon the filing of the articles with the Secretary of State, the corporation sole is formed.

Comment. Section 10005 continues former Section 10005 except that it does not contain directions to the Secretary of State regarding the filing of the articles. This is provided in Sections 10006(b)(5) and 5228(f) (Nonprofit Corporation Law).

Corporations Code § 10006 (added). Application of General Corporation Law and Nonprofit Corporation Law

10006. (a) Except as otherwise expressly provided in this section, the provisions of the General Corporation Law (Division 1 (commencing with Section 100) of this title) and the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of this title) do not apply to a corporation sole.

(b) The following provisions of the Nonprofit Corporation Law apply to a corporation sole to the extent they can be made applicable:

(1) Chapter 1 (commencing with Section 5000) (preliminary provisions and definitions) to the extent necessary to implement the provisions of this subdivision.

(2) Section 5222 (permissible corporate name).

(3) Section 5224 (annual statement of officers, office, and agent for service).

- (4) Section 5225 (service of process).
 - (5) Section 5228 (miscellaneous general provisions).
 - (6) Article 3 (commencing with Section 5230) of Chapter 2 (execution of written documents).
 - (7) Article 4 (commencing with Section 5240) of Chapter 2 (evidentiary effect of corporate documents and instruments).
 - (8) Article 5 (commencing with Section 5250) of Chapter 2 (enforcement by Attorney General).
 - (9) Sections 5313 and 5314 (defense of ultra vires).
 - (10) Article 8 (commencing with Section 6080) of Chapter 10 (common trust funds).
- (c) For the purposes of subdivision (b), a corporation sole is deemed to be a nonprofit corporation organized for charitable purposes.

Comment. Section 10006 supersedes former Section 10006. The requirement of former Section 10006 that articles be filed with the clerk of the county in which the principal office of the corporation sole is located is not continued, consistent with the policy of the General Corporation Law and the Nonprofit Corporation Law. The effect of a certified copy of the articles as evidence of the formation and existence of a corporation provided in former Section 10006 is continued in this section and Section 5240 (Nonprofit Corporation Law).

Section 10006 makes clear that the corporations sole provisions are independent of the General Corporation Law and the Nonprofit Corporation Law except to the extent expressly provided in this section. Subdivision (b) (3) continues a portion of former Section 3301. Subdivision (b) (10) continues a portion of former Section 10250. The remaining provisions of subdivision (b) continue provisions of general application to corporations sole through former Section 119 (provisions of former General Corporation Law apply to every private corporation, profit or nonprofit, stock or nonstock, now existing or hereafter formed unless there is a special provision applicable to the corporation inconsistent therewith).

Corporations Code § 10007 (added). Powers

10007. Every corporation sole may:

- (a) Sue and be sued, and defend, in all courts and places, in all matters and proceedings whatever.

(b) Contract in the same manner and to the same extent as a natural person, for the purposes of the trust.

(c) Borrow money, and give promissory notes therefor, and secure the payment thereof by mortgage or other lien upon property, real or personal.

(d) Buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, without the order of any court.

(e) Receive bequests and devises for its own use or upon trusts to the same extent as natural persons may, subject, however, to the laws regulating the transfer of property by will.

(f) Appoint attorneys in fact.

Comment. Section 10007 continues former Section 10007.

CROSS-REFERENCES

Service of process, §§ 5225, 10006

Corporations Code § 10008 (added). Continuity of existence

10008. Every corporation sole has perpetual existence and also has continuity of existence notwithstanding vacancies in the incumbency thereof. During the period of any such vacancy, the corporation sole has the same capacity and right to receive and take any gift, bequest, devise, or conveyance of property, either as grantee for its own use, or as trustee, and to be or be made the beneficiary of a trust, as though there were no vacancy. No agency created by a corporation sole by a written instrument which in express terms provides that the agency thereby created shall not be terminated by a vacancy in the incumbency of the corporation is terminated or affected by the death of the incumbent of the corporation or by a vacancy in the incumbency thereof, however caused.

Comment. Section 10008 continues former Section 10008.

Corporations Code § 10009 (added). Inspection of books by superior court

10009. Any judge of the superior court in the county in which a corporation sole has its principal executive office

shall at all times have access to the books of the corporation.

Comment. Section 10009 continues former Section 10009.

CROSS-REFERENCES

Principal executive office, designation of, §§ 5224, 10006

Corporations Code § 10010 (added). Amendment of articles

10010. (a) The chief officer of a corporation sole may at any time amend the articles of incorporation to change the name of the corporation, the term of its existence, its territorial jurisdiction, or the manner of filling any vacancy in the office thereof and may by amended articles of incorporation make provision for any act or thing for which provision is authorized in original articles of incorporation of corporations sole.

(b) The chief officer of the corporation shall sign and verify a statement setting forth the provisions of the amendment and stating that it has been duly authorized by the religious organization governed by the corporation.

(c) The statement shall be submitted to the Secretary of State for filing. Upon the filing of the amendment with the Secretary of State, the articles are amended in the manner set forth in the statement.

Comment. Section 10010 continues former Section 10010 except that it does not contain directions to the Secretary of State regarding the filing of amended articles. This is provided in Sections 10006(b) (5) and 5228(f) (Nonprofit Corporation Law).

CROSS-REFERENCES

Permissible name, §§ 5222, 10006

Corporations Code § 10011. [Reserved]

Comment. The requirement of former Section 10011 that amendments of the articles be filed with the clerk of the county in which the principal office of the corporation sole is located and in which it holds real property is not continued, consistent with the policy of the General Corporation Law and the Nonprofit Corporation Law. The effect of a certified copy of an amendment

of the articles is provided in Sections 10006(b)(7) and 5244 (Nonprofit Corporation Law).

Corporations Code § 10012 (added). Dissolution

10012. A corporation sole may be dissolved and its affairs wound up voluntarily by filing with the Secretary of State a declaration of dissolution executed, signed, and verified by the chief officer of the corporation.

Comment. Section 10012 continues former Section 10012.

Corporations Code § 10013 (added). Contents of declaration of dissolution

10013. The declaration of dissolution shall set forth all of the following:

- (a) The name of the corporation.
- (b) The reason for its dissolution or winding up.
- (c) That dissolution of the corporation has been duly authorized by the religious organization governed by the corporation sole.
- (d) The names and addresses of the persons who are to supervise the winding up of the affairs of the corporation.

Comment. Section 10013 continues former Section 10013.

Corporations Code § 10014 (added). Filing with Secretary of State; cessation of business

10014. The declaration shall be submitted to the Secretary of State for filing. Upon the filing of the declaration with the Secretary of State, the corporation shall cease to carry on business except for the purpose of adjusting and winding up its affairs.

Comment. Section 10014 continues former Section 10014 except that the declaration is filed only with the Secretary of State. Provisions regarding the filing duties of the Secretary of State are in Sections 10006(b)(5) and 5228(f) (Nonprofit Corporation Law). The requirement formerly found in Section 10014 that a copy of the declaration of dissolution be filed in the office of the county clerk is not continued, consistent with the policy of the General Corporation Law and the Nonprofit Corporation Law.

Corporations Code § 10015 (added). Disposition of assets 10015. After the debts and obligations of the corporation are paid or adequately provided for, any assets remaining shall be transferred to the religious organization governed by the corporation sole, or to trustees in its behalf, or disposed of as may be decreed by the superior court of the county in which the dissolved corporation had its principal executive office upon petition therefor by the Attorney General or any person connected with the organization.

Comment. Section 10015 continues former Section 10015.

CROSS-REFERENCES

Principal executive office, designation of, §§ 5224, 10006

Corporations for Charitable or Eleemosynary Purposes

Corporations Code § 10200 (added)

SEC. 12. Part 1.3 (commencing with Section 10200) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 1.3. CORPORATIONS FOR CHARITABLE OR ELEEMOSYNARY PURPOSES

10200. Every corporation organized or existing under Part 3 (commencing with Section 10200) of Division 2 in effect on December 31, 1978, is subject to and deemed to be a nonprofit corporation organized for charitable purposes under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of this title).

Comment. Former Sections 10200-10208, relating to corporations for charitable or eleemosynary purposes, are not continued. New Section 10200 prescribes the law applicable to such corporations existing under the former sections as of December 31, 1978. Corporations for charitable or eleemosynary purposes may now be formed under the Nonprofit Corporation Law—Division 2 (commencing with Section 5000) of Title 1. The disposition of the former sections is indicated below.

Section 10200. Organization; purposes. Former Section 10200 is superseded by Section 5310 which permits the formation of a nonprofit corporation “for any lawful purposes other than the distribution of gains, profits, or dividends to members.” The requirement of 25 or more incorporators is not continued. See Section 5321 (one or more persons as initial directors).

Section 10201. Required provisions of articles. Former Section 10201 is superseded by the simpler provisions of Section 5410.

Section 10202. Selection of trustees. Former Section 10202 is superseded by Section 5520 providing for the manner of selecting directors of a nonprofit corporation.

Section 10203. Board; membership. Former Section 10203 is superseded by Sections 5442 (bylaws may provide for qualifications of members), 5611 (membership and membership classes), and 5612 (directors as members).

Section 10204. Investments; finance committee; delegation to bank or trust company. The manner of managing investments may be stated in the articles as was permitted by former Section 10204. See Section 5441 (bylaws may contain any provision not in conflict with law or the articles). A finance committee consisting of two or more directors may be established by resolution, unless the bylaws provide otherwise, pursuant to Sections 5550–5554; however, the requirement that a finance committee have three members of the board and that their manner of appointment be specified in the articles is not continued. The provision in former Section 10204 relating to delegation of the management of the corporation’s property is continued in Section 6072.

Section 10205. Powers of board; delegation. Former Section 10205 is superseded by Section 5510.

Section 10206. Powers of corporation. The repeal of former Section 10206 does not in any way restrict the powers that may be exercised by corporations formed under repealed Part 3 (commencing with Section 10200) or such corporations formed under the Nonprofit Corporation Law. Provisions of the Nonprofit Corporation Law relating to or continuing the subject matter of the several subdivisions of former Section 10206 are shown in the following table.

<i>Former Section 10206</i>	<i>Nonprofit Corporation Law</i>
Subdivision (a)	5312
Subdivision (b)	6071, 6075

Subdivision (c)	5312, 6071, 6075
Subdivision (d)	5312
Subdivision (e)	5312
Subdivision (f)	5312
Subdivision (g)	5440-5447
Subdivision (h)	5312

Section 10206.1. Effect of merger or consolidation on bequest, etc. The substance of former Section 10206.1 is continued in Section 6246.

Section 10207. Supervision by Attorney General; corrective proceedings accumulating income. The first and second sentences of former Section 10207 relating to examination by the Attorney General and the institution of proceedings to correct a departure from the corporation's purpose are continued in Section 6074. The third sentence relating to accumulation of income is not continued.

Section 10208. Apportionment of expenses. The provisions of former Section 10208 relating to apportionment of expenses are unnecessary in light of the repeal of former Section 10206, subdivision (c) of which allowed a corporation organized under former Part 3 of Division 2 of Title 1 to hold property only for charitable purposes.

Chambers of Commerce, Boards of Trade, Mechanics' Institutes, Etc.

Corporations Code § 12000 (added). Law applicable to existing chambers of commerce, boards of trade, mechanics' institutes, etc.

SEC. 13. Part 1.5 (commencing with Section 12000) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 1.5. CHAMBERS OF COMMERCE, BOARDS OF TRADE, MECHANICS' INSTITUTES, ETC.

12000. Every corporation organized or existing under Part 1 (commencing with Section 12000) in effect on December 31, 1978, is subject to and deemed to be organized under:

(a) The General Corporation Law (Division 1 (commencing with Section 100) of this title) if the corporation is organized with capital stock.

(b) The Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of this title) if the corporation is organized without capital stock.

Comment. Section 12000 prescribes the law applicable to chambers of commerce, boards of trade, mechanics' institutes, and the like, which were existing under Part 1 (commencing with Section 12000) before its repeal, making the General Corporation Law, Division 1 (commencing with Section 100), applicable to such corporations organized with capital stock and the Nonprofit Corporation Law, Division 2 (commencing with Section 5000), applicable to such corporations organized without capital stock. This is consistent with former Section 12000. Corporations may now be formed for such purposes under either the General Corporation Law or the Nonprofit Corporation Law.

Cooperative Corporations

Corporations Code § 12205 (technical amendment)

SEC. 14. Section 12205 of the Corporations Code is amended to read:

12205. The provisions of ~~Division 2 of Title 1 of this code, relating to nonprofit corporations; the General Nonprofit Corporation Law (Part 1 (commencing with Section 9000) of Division 2)~~ in effect on December 31, 1978, apply to cooperative corporations formed under this part, except where such provisions are in conflict with those of this part. Corporations formed under this part have and enjoy all rights, powers, and privileges granted generally to corporations by the laws of this state, except as may be inconsistent with the provisions of this part.

Comment. Section 12205 is amended to make clear that the former General Nonprofit Corporation Law continues to apply to cooperative corporations formed under this part to the extent previously applicable.

Corporations Code § 12206 (technical amendment). Bringing corporation under provisions of part; law applicable to nonprofit cooperative corporations organized under Civil Code

SEC. 15. Section 12206 of the Corporations Code is amended to read:

12206. (a) Any corporation organized under any other law of this State may bring itself under the provisions of this part by amending its articles of incorporation in the manner prescribed by the General Corporation Law to conform to the provisions of this part. Whenever any corporation has amended its articles of incorporation to conform to the provisions of this part, it shall be deemed to be then organized and existing under, and entitled to the benefit of, and subject to the provisions of, this part for all purposes as fully as though originally organized under this part.

(b) *Nonprofit cooperative corporations organized pursuant to Title 22 (commencing with Section 653t) of Part 4 of Division 1 of the Civil Code prior to August 14, 1931, which have not elected pursuant to subdivision (a) to be governed by this part, are governed by the General Nonprofit Corporation Law (Part 1 (commencing with Section 9000) of Division 2 of this title) as in effect on December 31, 1978.*

Comment. Subdivision (b), added to Section 12206, makes clear that the former General Nonprofit Corporation Law governs certain nonprofit cooperative corporations. Subdivision (b) codifies the substance of an uncodified provision in Cal. Stats. 1976, Ch. 641, § 43.5 (amending Cal. Stats. 1975, Ch. 682, § 16).

California Job Creation Corporations

Corporations Code § 14080 (technical amendment)

SEC. 16. Section 14080 of the Corporations Code is amended to read:

14080. The provisions of the General Nonprofit Corporation Law (~~Part 1 (commencing with Section 9000); Division 2 of this title~~) relative to nonprofit corporations (*Division 2 (commencing with Section*

5000) of this title) apply to corporations formed under this chapter, except as to matters otherwise provided for in this chapter.

Comment. Section 14080 is amended to refer to the Nonprofit Corporation Law (Corp. Code §§ 5000–6626).

Corporations to Administer Libraries

Education Code §§ 19800–19811 (repealed)

SEC. 17. Chapter 10 (commencing with Section 19800) of Part 11 of Division 1 of Title 1 of the Education Code is repealed.

Comment. Chapter 10 (commencing with Section 19800), providing for corporations to administer libraries, is not continued. A nonprofit corporation may be formed for the purpose of administering a library pursuant to the Nonprofit Corporation Law, Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code. Inasmuch as former Chapter 10 was not the exclusive statutory authority for forming nonprofit corporations for library purposes, the apparent purpose of the restrictive and special provisions of Chapter 10 could not be uniformly achieved. For the law governing corporations formed or existing under the former chapter, see new Section 19800. The provisions of the Nonprofit Corporation Law that supersede the provisions of former Sections 19800–19811 are indicated below.

Section 19800. Authority to incorporate; articles. The first sentence of former Section 19800, which provided for the incorporation of a library to be conducted without pecuniary profit by three or more persons, is superseded by the provisions of Corporations Code Sections 5320 and 5321 which permit the formation of a corporation by one or more persons. Corporations Code Section 5310 permits the formation of a nonprofit corporation for any lawful purpose other than the distribution of gains, profits, or dividends to members. The second sentence of former Section 19800, providing for the contents of the articles, is superseded by Corporations Code Section 5410 (required contents of articles). See also Corp. Code § 5412 (permitted contents of articles).

Section 19801. Corporation without stock; no business for profit; capacity to receive gifts. The prohibition against issuance of capital stock, contained in the first sentence of former

Section 19801, is not specifically stated in the Nonprofit Corporation Law. However, Corporations Code Section 5316 prohibits the distribution of gains, profits, or dividends to members. The prohibition against carrying on its business for profit has not been continued. See Corp. Code § 5315 and former Corp. Code § 9200. The second sentence of former Section 19801, providing for the capacity to receive gifts and act as a trustee, is superseded by Corporations Code Section 5312.

Section 19802. Trustees or directors. The provisions concerning directors are superseded by Corporations Code Sections 5510-5564. The provision of the first sentence of Section 19802 that the trustees or directors compose the members of the corporation is not mandated but is permitted by the Nonprofit Corporation Law. See Corp. Code § 5612. The unenforced provision of the second sentence of Section 19802 requiring the approval of the Commissioner of Corporations for the filling of any vacancy in the board of directors is not continued. The portion of the second sentence of Section 19802 providing that the directors have the power to fix charges for the use of corporate property is unnecessary. See Corp. Code §§ 5312 (powers of nonprofit corporation), 5315 (power to engage in business activity).

Section 19803. Powers of corporation. Former Section 19803 is superseded by Corporations Code Section 5312.

Section 19804. Agents and officers. Former Section 19804 is superseded by Corporations Code Section 5312.

Section 19805. Powers relating to property. Former Section 19805 is superseded by Corporations Code Section 5312.

Section 19806. Business transactions. Former Section 19806 is superseded by Corporations Code Section 5312.

Section 19807. Issuance of securities. Former Section 19807, which forbids the issuance of securities without the authorization of the Commissioner of Corporations and makes corporations to administer libraries subject to the provisions of the Corporate Securities Law (Corp. Code §§ 25000-25804), is unnecessary because, where appropriate, the Corporate Securities Law applies to such corporations by its own terms.

Section 19808. Adoption of bylaws. The requirement of the first sentence of former Section 19808 that the corporation adopt bylaws within one month after filing articles is not continued in the Nonprofit Corporation Law. The remainder of former Section 19808 is superseded by Corporations Code Sections 5440-5447.

Section 19809. Provisions of bylaws. Subdivision (a) of former Section 19809 is superseded by subdivision (a) of Corporations Code Section 5446. Subdivisions (b) and (c) of former Section 19809 are superseded by Corporations Code Section 5441.

Section 19810. Inquiry into right to do business. Former Section 19810 is superseded by Corporations Code Section 6074. See also Corp. Code § 5250 (enforcement of certain provisions by Attorney General).

Section 19811. Approval of Attorney General before filing articles. Former Section 19811, requiring the approval of the Attorney General before the articles of a corporation to administer a library can be accepted for filing, is not continued.

Education Code § 19800 (added). Law applicable to existing corporations to administer libraries

SEC. 18. Chapter 10 (commencing with Section 19800) is added to Part 11 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 10. CORPORATIONS TO ADMINISTER LIBRARIES

19800. Every corporation organized or existing under Chapter 10 (commencing with Section 19800) in effect on December 31, 1978, is subject to and deemed to be organized under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code).

Comment. Section 19800 prescribes the law applicable to corporations to administer libraries that were organized or existing under former Chapter 10 (commencing with Section 19800) before its repeal. Nonprofit corporations may be formed for identical purposes under the Nonprofit Corporation Law. See Corp. Code § 5310 (nonprofit corporation may be formed for any lawful purpose other than distribution of gains, profits, or dividends to members).

Lease of School Buildings to Nonprofit Corporations

Education Code § 39315 (technical amendment)

SEC. 19. Section 39315 of the Education Code is amended to read:

39315. As an alternative to obtaining sealed proposals as required by Sections 39306 and 39314, the governing board may, in a public meeting, adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article with a nonprofit corporation organized under ~~Part 1 (commencing with Section 9000) of Division 2~~ *the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code Code)* if the articles of incorporation or bylaws of the nonprofit corporation provide: (1) that no person shall be eligible to serve as a member or director of the nonprofit corporation except a person initially approved by resolution of the governing board of the school district, and (2) that no part of the net earnings of the nonprofit corporation shall inure to the benefit of any member, private shareholder, individual, person, firm or corporation excepting only the school district. The resolution shall describe, in such manner as to identify it, the available site upon which the building to be used by the district shall be constructed, shall generally describe the building to be constructed and state that the building shall be constructed pursuant to the plans and specifications adopted by the governing board therefor, shall, if such is the case, state the minimum yearly rental at which the governing board will lease real property belonging to the district upon which the building is to be constructed, and shall state the maximum number of years for which the school district will lease the building, or building and site, as the case may be.

Any building constructed by a nonprofit corporation pursuant to a lease or agreement entered into pursuant to this section shall be constructed under a contract awarded to the lowest responsible bidder pursuant to

Chapter 3.5 (commencing with Section 4220) of Division 5 of Title 1 of the Government Code. Section ~~15716~~ 39321 of this code shall apply to such contract.

Comment. Section 39315 is amended to refer to the Nonprofit Corporation Law (Corp. Code §§ 5000-6626).

Payroll Deductions for School District Employees

Education Code § 44041 (technical amendment)

SEC. 20. Section 44041 of the Education Code is amended to read:

44041. The governing board of each school district when drawing an order for the salary payment due to employees of the district shall, without charge, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for any or all of the following purposes: participating in a deferred compensation program offered by the school district which provides for investments in corporate stocks, bonds, securities, mutual funds, or annuities, except as prohibited by the Constitution, or paying premiums on any policy or certificate of group life insurance for the benefit of the employee or for group disability insurance, or legal expense insurance, or any of them, for the benefit of the employee or his dependents issued by an admitted insurer on a form of policy or certificate approved by the Insurance Commissioner, or paying rates, dues, fees, or other periodic charges on any hospital service contract for the benefit of the employee, or his dependents, issued by a nonprofit hospital service corporation on a form approved by the Insurance Commissioner pursuant to the provisions of Chapter 11A (*commencing with Section 11491* of Part 2 of Division 2 of the Insurance Code, or paying periodic charges on any medical and hospital service agreement or contract for the benefit of the employee, or his dependents, issued by a nonprofit **membership** corporation **lawfully operating under**

~~Section 9200 or Section 9201~~ *subject to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, Code)*, or paying periodic charges on any legal services contract for the benefit of the employee, or his dependents issued by a nonprofit ~~membership~~ corporation ~~lawfully operating under Section 9200 or 9201.2~~ *subject to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, Code)*. The governing board of the district shall, beginning with the month designated by the employee and each month thereafter until authorization for the deduction is revoked, draw its order upon the funds of the district in favor of the insurer which has issued the policies or certificates or in favor of the nonprofit hospital service corporation which has issued hospital service contracts, or in favor of the nonprofit ~~membership~~ corporation which has issued medical and hospital service or legal service agreements or contracts, for an amount equal to the total of the respective deductions therefor made during the month. The governing board may require that the employee submit his authorization for the deduction up to one month in advance of the effective date of coverage.

“Group insurance” as used in this section shall mean only a bona fide group program of life or disability or life and disability insurance where a master contract is held by the school district or an employee organization but it shall, nevertheless, include annuity programs authorized by Section 403(b) of the Internal Revenue Code when approved by the governing board.

Comment. Section 44041 is amended to reflect the enactment of the Nonprofit Corporation Law (Corp. Code §§ 5000–6626). This amendment makes no substantive change. The references to former Section 9201 (nonprofit corporation for medical services) and Section 9201.2 (nonprofit corporation for legal services) have been deleted as unnecessary because such corporations are formed under the Nonprofit Corporation Law. See Bus. & Prof. Code §§ 700 (nonprofit corporations for medical services) and 6175 (nonprofit corporations for legal services).

Lease of Community College Buildings to Nonprofit Corporations

Education Code § 81345 (technical amendment)

SEC. 21. Section 81345 of the Education Code is amended to read:

81345. As an alternative to obtaining sealed proposals as required by Sections 81336 and 81344, the governing board may, in a public meeting, adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article with a nonprofit corporation organized under ~~Part 1 (commencing with Section 9000) of Division 2~~ *the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code Code)* if the articles of incorporation or bylaws of the nonprofit corporation provide: (1) that no person shall be eligible to serve as a member or director of the nonprofit corporation except a person initially approved by resolution of the governing board of the community college district, and (2) that no part of the net earnings of the nonprofit corporation shall inure to the benefit of any member, private shareholder, individual, person, firm or corporation excepting only the district. The resolution shall describe, in such manner as to identify it, the available site upon which the building to be used by the district shall be constructed, shall generally describe the building to be constructed and state that the building shall be constructed pursuant to the plans and specifications adopted by the governing board therefor, shall, if such is the case, state the minimum yearly rental at which the governing board will lease real property belonging to the district upon which the building is to be constructed, and shall state the maximum number of years for which the community college district will lease the building, or building and site, as the case may be.

Any building constructed by a nonprofit corporation pursuant to a lease or agreement entered into pursuant to this section shall be constructed under a contract awarded to the lowest responsible bidder pursuant to

Chapter 3.5 (commencing with Section 4220) of Division 5 of Title 1 of the Government Code. Section 81350 of this code shall apply to such contract.

Comment. Section 81345 is amended to refer to the Nonprofit Corporation Law (Corp. Code §§ 5000-6626).

Payroll Deductions for Community College Employees

Education Code § 87040 (technical amendment)

SEC. 22. Section 87040 of the Education Code is amended to read:

87040. The governing board of each community college district when drawing an order for the salary payment due to employees of the district shall, without charge, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for any or all of the following purposes: participating in a deferred compensation program offered by the district which provides for investments in corporate stocks, bonds, securities, mutual funds, or annuities, except as prohibited by the Constitution, or paying premiums on any policy or certificate of group life insurance for the benefit of the employee or for group disability insurance, or legal expense insurance, or any of them, for the benefit of the employee or his dependents issued by an admitted insurer on a form of policy or certificate approved by the Insurance Commissioner, or paying rates, dues, fees, or other periodic charges on any hospital service contract for the benefit of the employee, or his dependents, issued by a nonprofit hospital service corporation on a form approved by the Insurance Commissioner pursuant to the provisions of Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or paying periodic charges on any medical and hospital service agreement or contract for the benefit of the employee, or his dependents, issued by a nonprofit membership corporation lawfully operating under

~~Section 9200 or Section 9201~~ *subject to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, Code)*, or paying periodic charges on any legal services contract for the benefit of the employee, or his dependents issued by a nonprofit ~~membership~~ corporation ~~lawfully operating under Section 9200 or 9201.2~~ *subject to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, Code)*. The governing board of the district shall, beginning with the month designated by the employee and each month thereafter until authorization for the deduction is revoked, draw its order upon the funds of the district in favor of the insurer which has issued the policies or certificates or in favor of the nonprofit hospital service corporation which has issued hospital service contracts, or in favor of the nonprofit ~~membership~~ corporation which has issued medical and hospital service or legal service agreements or contracts, for an amount equal to the total of the respective deductions therefor made during the month. The governing board may require that the employee submit his authorization for the deduction up to one month in advance of the effective date of coverage.

“Group insurance” as used in this section shall mean only a bona fide group program of life or disability or life and disability insurance where a master contract is held by the community college district or an employee organization but it shall, nevertheless, include annuity programs authorized by Section 403(b) of the Internal Revenue Code when approved by the governing board.

Comment. Section 87040 is amended to reflect the enactment of the Nonprofit Corporation Law (Corp. Code §§ 5000-6626). This amendment makes no substantive change. The references to former Section 9201 (nonprofit corporation for medical services) and Section 9201.2 (nonprofit corporation for legal services) have been deleted as unnecessary because such corporations are formed under the Nonprofit Corporation Law. See Bus. & Prof. Code §§ 700 (nonprofit corporations for medical services) and 6175 (nonprofit corporations for legal services).

Private Educational Institutions

Education Code § 94306 (amended)

SEC. 23. Section 94306 of the Education Code is amended to read:

94306. A corporation formed pursuant to this article *which is to be authorized to issue shares of stock* shall comply with Chapter 1 (commencing with Section 300) of Part 2, Division 1, Title 1 of the Corporations Code, except that in lieu of the requirements of Sections 301 to 305, inclusive, the articles of incorporation shall state:

(a) The name of the corporation.

(b) The purpose for which it is organized.

(c) The county in this state where the principal office for the transaction of the business of the corporation is to be located.

(d) The names, residence address and number of its directors at the time of its incorporation. Provision may be made that the number of directors may be established by the bylaws; provided, that the number of directors may not be less than five.

Comment. Section 94306 is amended to make clear that it applies only to stock corporations. For the law applicable to nonprofit corporations, see Section 94307(b).

Education Code § 94307 (amended)

SEC. 24. Section 94307 of the Education Code is amended to read:

94307. (a) If a corporation formed pursuant to this article is to be authorized to issue shares of stock, the articles of incorporation shall state the total number of shares which the corporation shall have authority to issue and (1) the aggregate par value, if any, of all shares, and the par value of each of the shares, or (2) a statement that all the shares are to be without par value and except as herein provided shall be treated for all purposes as being incorporated pursuant to Division 1 (commencing with Section 300) of Title 1 of the Corporations Code.

(b) If a corporation formed pursuant to this article is to be authorized as a nonprofit corporation without

authority to issue shares of stock, the articles of incorporation shall so state ~~and~~ *and*, except as herein provided, such corporation shall be treated for all purposes as being incorporated pursuant to ~~Part 1 (embracing Sections 9000 to 9802, inclusive) of Division 2 to, and be subject to, the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code and shall have the general powers granted by Section 10206 of the Corporations Code. Code); provided, that the number of directors may not be less than five.~~

Comment. Section 94307 is amended to refer to the Nonprofit Corporation Law and to delete the reference to former Section 10206 of the Corporations Code. The provisions of former Section 10206 are superseded by various sections in the Nonprofit Corporation Law. For a disposition table, see the Comment to new Section 10200.

Consolidation of Private Colleges

Education Code § 94406 (technical amendment)

SEC. 25. Section 94406 of the Education Code is amended to read:

94406. Bylaws may be adopted and amended by the trustees except as otherwise provided in the articles or the bylaws. The bylaws may set forth the particular officers or persons in the grand lodge, conference, assembly, or other legislative or representative head entitled to vote as members of the corporation, and also the manner and method by which the voting is had. The bylaws may limit or restrict the power of the trustees to adopt, amend, or repeal bylaws. After the limitation or restriction is made it shall be complied with unless it is removed with the consent of the officers or persons entitled to vote as members. Where applicable the provisions of ~~Sections 9400 to 9404, inclusive, Article 4 (commencing with Section 5440) of Chapter 4 of Division 2 of Title 1 of the Corporations Code~~ apply to the bylaws.

Comment. Section 94406 is amended to substitute a reference to the relevant provisions of the Nonprofit Corporation Law.

Education Code § 94407 (technical amendment)

SEC. 26. Section 94407 of the Education Code is amended to read:

94407. Except as otherwise provided in Section 94406, in the articles of incorporation, or the bylaws, the board of trustees of the new corporation have all of the powers granted to boards of trustees by and enumerated in Section ~~9501~~ **5312** of the Corporations Code, ~~and in Sections 19803 to 19808, inclusive.~~ *Code.*

Comment. Section 94407 is amended to substitute a reference to the relevant provision of the Nonprofit Corporation Law.

Check Sellers and Cashers

Financial Code § 12100 (technical amendment)

SEC. 27. Section 12100 of the Financial Code is amended to read:

12100. The provisions of this division do not apply to any of the following:

(a) Persons or their authorized agents doing business under license and authority of the Superintendent of Banks of the State of California, or under any law of this state or of the United States relating to banks, trust companies, building or savings and loan associations, industrial loan companies, personal property brokers, credit unions, title insurance companies or underwritten title companies (as defined in Section 12402 of the Insurance Code), escrow agents subject to Division 6 of the Financial Code, or California small loan companies.

(b) Persons or their authorized agents engaged in the business of paying to others bills, invoices, or accounts of an obligor, or of selling or cashing checks, including travelers' checks, drafts, or money orders issued by a person who has been licensed under and complied with,

and continues to be licensed under and complies with, Article 3 of Chapter 14 of Division 1 of this code.

(c) The services of a person licensed to practice law in this state, when such person renders services in the course of his practice as an attorney at law, and the fees and disbursements of such person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, such fees and disbursements shall not be shared, directly or indirectly with the prorater, check seller or cashier.

(d) Any transaction in which money or other property is paid to a "joint control agent" for dispersal or use in payment of the cost of labor, materials, services, permits, fees, or other items of expense incurred in construction of improvements upon real property.

(e) A merchant-owned credit or creditors association, or a member-owned or a member-controlled or -directed association whose principal function is that of servicing the community as a reporting agency.

(f) Any person licensed under Chapter 1 of Part 6, Division 2 of the Labor Code, when acting in any capacity for which he is licensed under such part.

(g) Any person licensed under Part 1, Division 4, of the Business and Professions Code, when acting in any capacity for which he is licensed under that part.

(h) A common law or statutory assignment for the benefit of creditors or the operation or liquidation of property or a business enterprise under supervision of a creditor's committee.

(i) The services of a person licensed as a certified public accountant or a public accountant in this state, when such person renders services in a course of his practice as a certified public accountant or a public accountant, and the fees and disbursements of such person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, such fees and disbursements shall not be shared, directly or indirectly, with the prorater, check seller or cashier.

(j) Nonprofit community service organizations that ~~have been incorporated under the General~~ *are governed by the Nonprofit Corporation Law of the State of California (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code)* and whose membership consists exclusively of retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employers or employees organizations, and related groups, if the principal functions of such organizations are: (1) consumer credit education; (2) counseling on consumer credit problems and family budgets; and (3) arranging, and in certain cases administering, debt settlement plans, for which a charge for administrative services only may be made of 5 percent of the money disbursed monthly, or ten dollars (\$10) per month, whichever is the lesser, to offset expenses; provided essential records are kept in accordance with sound accounting practices, consumer funds are banked in a trust account and appropriate fidelity bond and insurance are maintained, that reports are made to debtors, and independent audits made; and further provided, however, that this subdivision shall exempt such organizations from this division only with respect to those activities described in Section 12002.1 and not with respect to those activities described in Section 12002.

Comment. Section 12100 is amended to reflect the enactment of the Nonprofit Corporation Law (Corp. Code §§ 5000-6626) which governs all nonprofit corporations.

Thrift Guaranty Corporation

Financial Code § 18475 (technical amendment)

SEC. 28. Section 18475 of the Financial Code is amended to read:

18475. "Guaranty Corporation" means Thrift Guaranty Corporation of California which ~~was formed under General Nonprofit Corporation Law, Part 1 (commencing with Section 9000), Division 2, Title 1,~~

Corporations Code. *exists under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code).*

Comment. The amendment to Section 18475 makes clear that the Thrift Guaranty Corporation, formed under the former General Nonprofit Corporation Law, exists under the new Nonprofit Corporation Law (Corp. Code §§ 5000-6626).

Fees for Filing Corporate Documents

Government Code § 12202 (amended). Agreement of merger

SEC. 29. Section 12202 of the Government Code is amended to read:

12202. ~~The (a) Except as provided in subdivision (b), the fee for filing an agreement of merger is sixty-five dollars (\$65). This section does not apply where the articles of incorporation of each domestic corporation party to the merger do not provide for shares.~~

(b) Where the articles of incorporation of each domestic corporation party to the merger do not provide for shares, the fee for filing an agreement of merger is fifteen dollars (\$15).

Comment. Section 12202 is amended to replace the second sentence with subdivision (b) which prescribes a \$15 fee for filing an agreement of merger involving domestic corporations whose articles do not provide for shares. The \$15 fee is the same as the fee for filing an agreement of consolidation for a nonprofit corporation (see Section 12200).

Government Code § 12203.5 (added). Plan of division

SEC. 30. Section 12203.5 is added to the Government Code, to read:

12203.5. The fee for filing a plan of division of a nonprofit corporation is fifteen dollars (\$15).

Comment. The fee prescribed by Section 12203.5 for filing a plan of division of a nonprofit corporation is the same as the fee applicable for filing an agreement of merger or consolidation for a nonprofit corporation (see Sections 12200 and 12202(b)).

Government Code § 12203.7 (added). Plan of conversion
SEC. 31. Section 12203.7 is added to the Government Code, to read:

12203.7. (a) The fee for filing a plan of conversion of a nonprofit corporation into a business corporation is sixty-five dollars (\$65).

(b) The fee for filing a plan of conversion of a business corporation into a nonprofit corporation is fifteen dollars (\$15).

Comment. The fee prescribed by Section 12203.7 for filing a plan of conversion is the same as the fee applicable for filing an agreement of merger for a business corporation (see Section 12202(a)) or an agreement of merger or consolidation for a nonprofit corporation (see Sections 12200 and 12202(b)).

Government Code § 12210 (technical amendment). Statement of corporate officers, office, and agent

SEC. 32. Section 12210 of the Government Code is amended to read:

12210. (a) The fee for filing the statement pursuant to Section 1502 of the Corporations Code is five dollars (\$5) for a stock corporation and there is no fee for a nonstock corporation.

(b) *There is no fee for filing the statement pursuant to Section 5224 of the Corporations Code.*

Comment. Section 12210 is amended to make clear that there is no fee for an annual statement filed pursuant to the Nonprofit Corporation Law.

Government Code § 12210.5 (technical amendment). Copy of statement of corporate officers, office, and agent

SEC. 33. Section 12210.5 of the Government Code is amended to read:

12210.5. The fee for furnishing a copy of a statement filed pursuant to Section 1502 or 5224 of the Corporations Code or Section 3301 of the Corporations Code as in effect prior to January 1, 1977, is one dollar (\$1).

Comment. Section 12210.5 is amended to make clear that the fee for furnishing a copy of the annual statement filed pursuant to the Nonprofit Corporation Law is one dollar.

Sale or Lease of Surplus City or County Property to Nonprofit Corporations

Government Code § 50568 (technical amendment)

SEC. 34. Section 50568 of the Government Code is amended to read:

50568. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Persons and families of low and moderate income" means persons and families financially eligible for admission to developments assisted by the Federal Department of Housing and Urban Development Section 235 and 236 programs.

(b) "Limited dividend housing corporation" means any joint venture, partnership, limited partnership, trust or corporation organized or existing under the laws of this state or authorized to do business in this state and subject to the restrictions of Division 24 of the Health and Safety Code.

(c) "Housing corporation" means a corporation organized pursuant to the community land chest law in Division 24 of the Health and Safety Code.

(d) "Nonprofit corporation" means a nonprofit corporation incorporated pursuant to the provisions of the ~~General~~ Nonprofit Corporation Law (*Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code*) and whose articles of incorporation provide that the corporation has been organized exclusively to provide housing facilities for persons of low and moderate income.

Comment. Section 50568 is amended to refer to the Nonprofit Corporation Law (Corp. Code §§ 5000-6626).

Port and Terminal Protection and Development Corporations

Harbors & Navigation Code §§ 2000–2006 (added)

SEC. 35. Part 1 (commencing with Section 2000) is added to Division 6 of the Harbors and Navigation Code, to read:

PART 1. PORT AND TERMINAL PROTECTION AND DEVELOPMENT CORPORATIONS

Harbors & Navigation Code § 2000 (added). Public agency

2000. As used in this part, “public agency” includes every port district, river port district, harbor district, harbor improvement district, board of harbor commissioners, board of port commissioners, city, county, and city and county in this state.

Comment. Section 2000 is the same in substance as former Section 10700 of the Corporations Code. The listing of public agencies has been revised to reflect the repeal of Parts 1 (Municipal Port Districts) and 1.5 (Joint Harbor Improvement Districts) of Division 8 and Part 1 (San Francisco Harbor) of Division 6 of the Harbors and Navigation Code.

Harbors & Navigation Code § 2001 (added). Formation under Nonprofit Corporation Law

2001. Every public agency owning or operating any port or marine terminal and every public agency organized for such purposes may associate itself with other public agencies, private corporations or individuals owning or operating, or organized for the purpose of owning or operating, ports or marine terminals located on the same harbor, bay, or other waterway or on communicating or related waterways, of this state and with other public agencies and with private corporations and individuals, or any of them, in the formation under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the

Corporations Code) of a nonprofit corporation organized for the purpose specified in Section 2003.

Comment. Section 2001 is the same in substance as a portion of the first sentence of former Section 10701 of the Corporations Code.

Harbors & Navigation Code § 2002 (added). Membership by public agencies

2002. Every public agency described in Section 2001 may become and remain a member of a nonprofit corporation under this part.

Comment. Section 2002 is the same in substance as a portion of the first sentence of former Section 10701 of the Corporations Code.

Harbors & Navigation Code § 2003 (added). Purposes and powers

2003. A nonprofit corporation under this part may be formed for the purpose of, or including the principal powers and purposes of, carrying on a program of nonregulatory activities in the common interests of its members, including but not limited to any or all of the following activities:

(a) Studies and research into traffic conditions, cargo volume, rate structures, cost factors, commercial transportation practices, and similar fields.

(b) The acquisition and dissemination of information relative to the fields specified in subdivision (a) and similar subjects.

(c) The representation of the common interests of its members before federal, state, and local legislative and administrative authorities.

(d) Service as a facility for the cooperation of its members and the coordination of their activities toward the maintenance and improvement of the commercial welfare and competitive position of the ports and terminals owned or operated by its members, the maintenance of equitable and nondiscriminatory rate structures, and the elimination of inequitable, unfair, or

discriminatory trade practices adversely affecting the interests of its members.

(e) The undertaking or coordination of any other program of related activities or in related fields for the mutual benefit of its members as may be desired by the membership.

Comment. Section 2003 is the same in substance as a portion of the first sentence of former Section 10701 of the Corporations Code.

Harbors & Navigation Code § 2004 (added). Participation by public agency

2004. Every public agency which is a member of a nonprofit corporation under this part may do all the following:

(a) Pay out of any funds available to it for that purpose or for its support the dues and assessments required of its members by the nonprofit corporation.

(b) Make contracts.

(c) Enter into agreements.

(d) Appoint an individual as its representative to the nonprofit corporation to exercise the voting power of the public agency and to act in its behalf with respect to the nonprofit corporation.

(e) Do or perform all acts necessary and proper to carry out the purposes of this part.

Comment. Section 2004 is the same in substance as a portion of the second sentence of former Section 10701.

Harbors & Navigation Code § 2005 (added). Limitation of liability

2005. No public agency may become or remain a member of any nonprofit corporation under this part unless the articles of incorporation or bylaws of the nonprofit corporation include at all times a provision limiting the liability of members to assessments to a specified or ascertainable amount.

Comment. Section 2005 is the same in substance as a portion of the second sentence of former Section 10701 of the Corporations Code.

Harbors & Navigation Code § 2006 (added). Exemptions

2006. If, when, and during such times as public agencies or individuals duly authorized to represent them and act in their behalf constitute a majority of the directors and are entitled to exercise a majority of the voting power of a nonprofit corporation under this part:

(a) The Corporate Securities Law shall not apply to memberships nor to membership certificates issued by the nonprofit corporation; and

(b) The nonprofit corporation shall be exempt from payment of any taxes under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) except as provided in Article 2 (commencing with Section 23731) of Chapter 4 thereof.

Comment. Section 2006 is the same in substance as former Section 10703 of the Corporations Code. The provision of former Section 10703 relating to incorporators has not been continued because the Nonprofit Corporation Law no longer provides for incorporators.

**Health Facility Construction
Loan Insurance****Health & Safety Code § 436.2 (technical amendment)**

SEC. 36. Section 436.2 of the Health and Safety Code is amended to read:

436.2. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter and of Section 32127.2.

(a) "Bondholder" means the legal owner of a bond or other evidence of indebtedness issued by a political subdivision or a nonprofit corporation.

(b) "Borrower" means a political subdivision or nonprofit corporation which has secured or intends to secure a loan for the construction of a health facility.

(c) "Construction" includes construction of new buildings, expansion, modernization, renovation, remodeling and alteration of existing buildings, and initial or additional equipping of any such buildings.

“Construction” also includes consulting, financing, architectural, and engineering costs and fees, cost of land acquisition and site development, including parking facilities, and all other costs necessary or incidental to construct a new building or to expand, modernize, renovate, remodel or alter an existing building.

(d) “Council” means the Advisory Health Council.

(e) “Debenture” means any form of written evidence of indebtedness issued by the State Treasurer pursuant to this chapter, as authorized by Article XIII, Section 21.5 of the California Constitution.

(f) “Department” means the State Department of Health.

(g) “Fund” means the Health Facility Construction Loan Insurance Fund.

(h) “Health facility” means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including but not limited to public health centers, community mental health centers, facilities for the mentally retarded, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to mentally impaired persons, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses’ home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. Except for facilities for the mentally retarded, “health facility” does not include any institution furnishing primarily domiciliary care.

(i) “Lender” means the provider of a loan and its successors and assigns.

(j) “Loan” means money or credit advanced for the construction costs of the health facility, and includes both initial loans and loans secured upon refinancing and may include both interim, or short-term loans, and long-term loans. A duly authorized bond or bond issue may constitute a “loan.”

(k) "Maturity date" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for by the terms of the loan.

(l) "Mortgage" means a first mortgage on real estate. "Mortgage" includes a first deed of trust.

(m) "Mortgagee" includes a lender whose loan is secured by a mortgage. "Mortgagee" includes a beneficiary of a deed of trust.

(n) "Mortgagor" includes a borrower, a loan to whom is secured by a mortgage, and the trustor of a deed of trust.

(o) "Nonprofit corporation" means any corporation organized under the ~~General~~ Nonprofit Corporation Law ~~(Part 1 (commencing with Section 9000); Division 2 (Division 2 (commencing with Section 5000)) of Title 1 of the Corporations Code)~~ or its equivalent under the laws of the state of incorporation, organized for the purpose of owning and operating a health facility.

(p) "Political subdivision" means any city, county, city and county, joint powers entity, or local hospital district.

(q) "Project property" means the real property upon which the health facility is, or is to be, constructed, the health facility, and the initial equipment in such health facility.

(r) "Public health facility" means any health facility which is or will be constructed for and operated and maintained by any city, county, city and county, or local hospital district.

Comment. Section 436.2 is amended to refer to the Nonprofit Corporation Law (Corp. Code §§ 5000-6626).

Private Cemeteries

Health & Safety Code §§ 8800-8806
(repealed). Reincorporation of Cemetery Associations

SEC. 37. Chapter 6 (commencing with Section 8800) of Part 3 of Division 8 of the Health and Safety Code is repealed.

Comment. Former Sections 8800–8806 are superseded by Corporations Code Section 5422 (extension of corporate existence of nonprofit corporations).

Societies for the Prevention of Cruelty to Children and Animals

Health & Safety Code §§ 20700–20724 (added)

SEC. 38. Division 15 (commencing with Section 20700) is added to the Health and Safety Code, to read:

DIVISION 15. SOCIETIES FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS

Article 1. Organization

Health & Safety Code § 20700 (added). Formation

20700. Corporations for the prevention of cruelty to children or animals, or both, may be formed under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) by 20 or more persons, who shall be citizens and residents of this state.

Comment. Section 20700 is the same as former Section 10400 of the Corporations Code.

Health & Safety Code § 20701 (added). Endorsement of articles

20701. All articles of incorporation of corporations for the prevention of cruelty to children or animals, or both, filed with the Secretary of State shall first be endorsed by the Department of Justice or by a judge of the superior court of the county in which the principal office of the corporation is located, as evidence of necessity.

Comment. Section 20701 is the same in substance as former Section 10401 of the Corporations Code.

Health & Safety Code § 20702 (added). Endorsement by judge

20702. (a) The endorsement of a judge of the superior court pursuant to Section 20701 shall not be granted unless the endorsement of the Department of Justice has been first refused or withheld for more than 90 days. If the endorsement of the Department of Justice is withheld for more than 90 days or is refused, application may be made to the judge of the superior court of the county in which the principal office of the corporation is to be located.

(b) If, after giving due consideration to the necessity for the corporation and being assured that the persons forming the corporation are acting in good faith, the judge so desires, the judge may endorse the articles.

Comment. Section 20702 is the same in substance as former Section 10402 of the Corporations Code.

Article 2. Powers

Health & Safety Code § 20710 (added). Limit on realty holdings

20710. A corporation for the prevention of cruelty to children or animals, or both, shall not hold real property the annual income of which exceeds fifty thousand dollars (\$50,000).

Comment. Section 20710 continues the limitation on realty holdings contained in the latter part of former Section 10403 of the Corporations Code. The remaining provisions of former Section 10403, relating to the general power to take and hold property, are not continued because they are superfluous. See Corp. Code § 5312 (powers of nonprofit corporation).

Health & Safety Code § 20711 (added). Compensation by city or county

20711. (a) A corporation for the prevention of cruelty to children or animals, or both, may in each city or county where the corporation exists, while actively engaged in enforcing the provisions of the laws of this state, now or hereafter enacted, for the prevention of cruelty to

animals or children or arresting or prosecuting offenders thereunder or preventing cruelty to animals or children, be paid as compensation therefor from the city or county general fund, by the board of supervisors or other governing body thereof, a sum not exceeding five hundred dollars (\$500) per calendar month in the same manner as other claims against the city or county are paid.

(b) As used in this section, "city" includes "city and county."

Comment. Section 20711 continues in substance the provisions of former Section 607e of the Civil Code. State laws relating to the prevention of cruelty to animals and children are located in the Penal Code (Sections 270, 271, 271a-273g, 597-599d).

Health & Safety Code § 20712 (added). Power to prefer complaints

20712. A corporation for the prevention of cruelty to children or animals, or both, or any member or officer thereof, may prefer a complaint against any person, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children or animals and may aid in the prosecution of any such offender before such court or magistrate.

Comment. Section 20712 is the same in substance as former Section 10404 of the Corporations Code.

Health & Safety Code § 20713 (added). Issuance of notices to appear

20713. (a) The governing body of a local agency, by ordinance, may authorize qualified employees to issue notices to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code for violations of state or local animal control laws. The employees shall not be authorized to take any person into custody even though the person to whom the notice is delivered does not give his written promise to appear in court. The authority of the

employees is to be limited to the jurisdiction of the local agency authorizing the employees.

(b) The following definitions govern the construction of this section:

(1) "Local agency" means a county, city, city and county, or an agency of the state for the local performance of governmental functions within limited boundaries.

(2) "Qualified employees" means employees of public pounds, humane societies, and corporations for the prevention of cruelty to animals or for the prevention of cruelty to animals and children who have qualified as humane officers pursuant to Article 3 (commencing with Section 20720), and which pounds, societies, or corporations have contracted with the local agency to provide animal care or protection services.

Comment. Section 20713 is the same in substance as former Section 607g of the Civil Code.

Health & Safety Code § 20714 (added). Official assistance in enforcement of laws

20714. All magistrates, constables, sheriffs, and officers of police shall, as occasion may require, aid any corporation for the prevention of cruelty to children or animals, or both, and its officers, members, and agents, in the enforcement of all laws relating to or affecting children or animals.

Comment. Section 20714 is the same in substance as former Section 10405 of the Corporations Code.

Article 3. Humane Officers

Health & Safety Code § 20720 (added). Appointment

20720. (a) A corporation for the prevention of cruelty to animals may by resolution of its board of directors or trustees duly entered on its minutes appoint any number of its members, who shall be citizens of the State of California, as humane officers. Each appointment of a humane officer shall be by separate resolution, which shall state all of the following:

(1) The full name and place of residence of the appointee.

(2) The business or occupation of the appointee.

(3) That the appointee is a citizen of the State of California.

(4) The number of the badge to be allotted to the appointee.

(b) The corporation shall recommend the appointee to the judge of the superior court in and for the county or city and county in which the appointee resides and shall deliver to the judge a copy of the resolution appointing such person, duly certified to be correct by the president and secretary of the corporation, together with the fingerprints of such appointee taken on standard 8 x 8-inch cards.

Comment. Section 20720 is the same in substance as the first two paragraphs of former Section 607f of the Civil Code. The former requirement that the appointing resolution be attested by the seal of the corporation has not been continued.

Health & Safety Code § 20721 (added). Confirmation

20721. (a) The judge shall send a copy of the resolution, together with the fingerprints of the appointee, to the Department of Justice, which shall thereupon submit to the judge, in writing, a report of the record in its possession, if any, of the appointee. If the Department of Justice has no record of the appointee, it shall so report to the judge in writing.

(b) Upon receipt of the report, the judge shall review the matter of the appointee's qualifications and fitness to act as a humane officer and, if the judge reaffirms such appointment, shall so state in a court order confirming the appointment. The appointee shall thereupon file a certified copy of the court order in the office of the county clerk of county or city and county in which the appointee resides and shall at the same time take and subscribe the oath of office prescribed for constables or other peace officers.

(c) The county clerk shall thereupon immediately enter in a book to be kept in the clerk's office and

designated "Record of Humane Officers" the name of the officer, the number of the officer's badge, the name of the judge appointing the officer, and the date of the filing. At the time of the filing, the county clerk shall collect from such officer a fee of fifty cents (\$.50), which shall be payment in full for all services to be performed by the county clerk under the provisions of this section.

Comment. Section 20721 is the same in substance as the third, fourth, and fifth paragraphs of former Section 607f of the Civil Code.

Health & Safety Code § 20722 (added). Expiration and revocation

20722. (a) All appointments of humane officers automatically expire within three years from the date on which the certified copy of the court order was filed with the county clerk. Officers may only be reappointed in the same manner as provided in this article for new appointments.

(b) The corporation appointing a humane officer may revoke the appointment at any time by filing in the office of the county clerk in which the appointment of the officer is recorded a copy of the revocation in writing under the letterhead of the corporation and duly certified by its executive officer. Upon the filing, the county clerk shall enter the fact of the revocation and the date of the filing opposite the name of the officer in the "Record of Humane Officers."

Comment. Section 20722 is the same in substance as the sixth and seventh paragraphs of former Section 607f of the Civil Code.

Health & Safety Code § 20723 (added). Powers

20723. (a) After qualifying as provided in this article, a humane officer has the following powers:

(1) Lawfully to interfere at all places within the state to prevent the perpetration of any act of cruelty upon any dumb animal.

(2) To use such force as may be necessary to prevent any act described in paragraph (1) and to that end to summon to the officer's aid any bystander.

(3) To make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as a constable or other peace officer.

(4) To carry weapons while engaged in duties as a humane officer, upon satisfactory completion of training, as approved by the Commission on Peace Officer Standards and Training, in the use of weapons.

(b) Except as provided in subdivision (c), a humane officer may serve only in the county in which the officer is appointed.

(c) A humane officer may serve in a county other than that in which the officer is appointed if the officer first informs the sheriff of the county that the officer intends to serve in such county.

(d) When making an arrest pursuant to subdivision (a), a humane officer shall exhibit and expose a suitable badge. The badge shall be one adopted by the corporation for prevention of cruelty to animals of which the officer is a member and shall bear the name of the corporation and a number.

Comment. Section 20723 continues the substance of the eighth paragraph and the first sentence of the ninth paragraph of former Section 607f of the Civil Code.

Health & Safety Code § 20724 (added). Crimes

20724. (a) Any person who resists a humane officer in the performance of the officer's duty as provided in this article is guilty of a misdemeanor.

(b) Any person who has not been appointed and qualified as a humane officer, or whose appointment has been revoked, or whose appointment has expired and has not been renewed, who represents himself to be or attempts to act as a humane officer is guilty of a misdemeanor.

Comment. Section 20724 continues the substance of the last two sentences of the ninth paragraph of former Section 607f of the Civil Code.

Community Land Chest Law

Health & Safety Code § 35131 (technical amendment)

SEC. 39. Section 35131 of the Health and Safety Code is amended to read:

35131. The ~~laws relating to nonprofit corporations generally apply~~ *Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code)* applies to corporations formed under this chapter, except where inconsistent with the provisions of this chapter.

Comment. Section 35131 is amended to refer to the Nonprofit Corporation Law (Corp. Code §§ 5000–6626).

Nonprofit Hospital Service Corporations

Insurance Code § 11496 (technical amendment)

SEC. 40. Section 11496 of the Insurance Code is amended to read:

11496. Persons desiring to form a nonprofit hospital service corporation shall incorporate pursuant to the provisions of this chapter and the provisions of ~~Part 1 (commencing at Section 9000), Division 2, the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, Code)~~, so far as the provisions of ~~said Corporations Code~~ *the Nonprofit Corporation Law* are applicable and not inconsistent with this chapter.

Comment. Section 11496 is amended to refer to the Nonprofit Corporation Law (Corp. Code §§ 5000–6626).

Authority of Humane Officers

Penal Code § 597d (technical amendment)

SEC. 41. Section 597d of the Penal Code is amended to read:

597d. Any sheriff, constable, police, or peace officer, or officer qualified as provided in ~~section six hundred and~~

~~seven f of the Civil Code, Article 3 (commencing with Section 20720) of Division 15 of the Health and Safety Code~~, may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons there present.

Comment. The amendment of Section 597d replaces the cross-reference to former Section 607f of the Civil Code, the provisions of which are now in Sections 20720–20724 of the Health and Safety Code.

Penal Code § 597z (technical amendment)

SEC. 42. Section 597z of the Penal Code is amended to read:

597z. A humane officer appointed under ~~Section 607f of the Civil Code Article 3 (commencing with Section 20720) of Division 15 of the Health and Safety Code~~ or the State Sealer may enter any facility utilizing a high-altitude decompression or carbon monoxide chamber or nitrogen gas cabinet for the purpose of inspecting the operation of such facility to determine whether there is compliance with Sections 597u, 597v, 597w, and 597x.

Comment. The amendment of Section 597z replaces the cross-reference to former Section 607f of the Civil Code, the provisions of which are now in Sections 20720–20724 of the Health and Safety Code.

Water Companies

Public Utilities Code § 2713 (added)

SEC. 43. Section 2713 is added to the Public Utilities Code, to read:

2713. Any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or for domestic use may provide in its articles or bylaws that water shall be sold, distributed, supplied, or delivered only to owners of its

shares and that such shares shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate is so issued and a certified copy of such articles or bylaws recorded in the office of the county recorder in the county where such lands are situated the shares of stock shall become appurtenant to the said lands and shall only be transferred therewith, except after sale or forfeiture for delinquent assessments thereon as provided in Section 2716. Notwithstanding such provision in its articles or bylaws, any such corporation may sell water to the state, or any department or agency thereof, or to any school district, or to any public agency, or to any other mutual water company, or, during any emergency resulting from fire or other disaster involving danger to public health or safety, to any person at the same rates as to holders of shares of such corporations; and provided further, that any such corporation may enter into a contract with a county fire protection district to furnish water to fire hydrants and for fire suppression or fire prevention purposes at a flat rate per hydrant or other connection. In the event lands to which any such stock is appurtenant are owned or purchased by the state, or any department or agency thereof, or any school district, or public agency, such stock shall be canceled by the secretary, but shall be reissued to any person later acquiring title to such land from the state department or agency thereof, or school district, or public agency.

Comment. Section 2713 is substantively identical to former Civil Code Section 330.24.

Public Utilities Code § 2714 (added)

SEC. 44. Section 2714 is added to the Public Utilities Code, to read:

2714. (a) Any corporation, including a nonprofit corporation organized for or engaged in the business of developing, distributing, supplying, or delivering water for irrigation or domestic use or both, may provide in its articles, or may amend its articles to provide, that its only purpose shall be to develop, distribute, supply, or deliver

water for irrigation or domestic use or both to its members or shareholders, at actual cost plus necessary expenses.

(b) The amendment of the articles may be accomplished by:

(1) The passage by a three-fourths vote of the members of the board of directors of the corporation of a resolution adopting as the purpose of the corporation the purpose set forth in this section.

(2) The signing, verification, and filing in the manner prescribed in Chapter 9 (commencing with Section 900) of Division 1 of Title 1 of the Corporations Code or Article 2 (commencing with Section 5420) of Chapter 4 of Division 2 of Title 1 of the Corporations Code, whichever is applicable, of a certificate setting forth the resolution and the manner of its adoption.

(c) Such corporation shall not distribute any gains, profits, or dividends to its members or shareholders except upon the dissolution of the corporation.

Comment. Section 2714 is the same in substance as former Civil Code Section 330.25. Subdivision (b) (2) provides that the signing, verification, and filing of the certificate of amendment shall be accomplished in the manner provided by the General Corporation Law or the Nonprofit Corporation Law, depending on which provisions apply to the water company amending its articles.

Public Utilities Code § 2715 (added)

SEC. 45. Section 2715 is added to the Public Utilities Code, to read:

2715. Whenever the owner of real property to which water stock by the terms of the certificate thereof is attached or appurtenant at the time of conveyance, by properly executed conveyance, transfers to another the real property with the appurtenances belonging to the property, or whenever title to the property passes by execution sale or by foreclosure or probate proceedings, the secretary of the water company which issued the stock shall, upon exhibition of a deed of the land duly recorded or the necessary court order duly recorded,

issue to the grantee named in the conveyance a new certificate of stock for the number of shares attached or appurtenant to the land as shown by the books and records of the company. The secretary of the water company shall enter the name of the grantee upon the books of the company as the owner of the shares of stock and shall cancel on the books the number of former shares of stock so attached or appurtenant to the land though the land stands in the name of the grantor or of any previous owner of the land or of any other person.

Comment. Section 2715 is substantively identical to former Civil Code Section 330.26.

Public Utilities Code § 2716 (added)

SEC. 46. Section 2716 is added to the Public Utilities Code, to read:

2716. Any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or domestic use and not as a public utility may levy assessments upon its shares, whether or not fully paid, unless otherwise provided in its articles or bylaws. If any shares of any such corporation which have been made appurtenant to any land as provided in Section 2713 become delinquent in the payment of assessments, the right to receive water or dividends thereon may be denied, and the shares may be sold and transferred without the land as if not appurtenant thereto and the purchaser shall acquire the right to receive water as provided in the articles or bylaws of the corporation, or the shares may be forfeited to the corporation.

Comment. Section 2716 is substantively identical to subdivision (2) of former Civil Code Section 331.

Public Utilities Code § 2717 (added)

SEC. 47. Section 2717 is added to the Public Utilities Code, to read:

2717. Except to the extent otherwise provided in the articles or bylaws, a quorum is present at a meeting of shareholders or members of a mutual water company if

a majority of the votes entitled to be cast on the business to be transacted are represented at the meeting; provided, however, the articles or bylaws may not provide a quorum of less than 20 percent of the votes entitled to be cast at the meeting.

Comment. Section 2717 continues the substance of former Corporations Code Section 2211 and a provision formerly found in Corporations Code Section 602(a) (General Corporation Law).

Public Utilities Code § 2718 (added)

SEC. 48. Section 2718 is added to the Public Utilities Code, to read:

2718. The right of cumulative voting provided in Section 708 of the Corporations Code applies to the shareholders or members of any mutual water company organized or existing for the purpose of delivering water to its shareholders or members at cost on lands located within the boundaries of one or more reclamation districts now or hereafter legally existing in this state and created by or formed under the provisions of any statute of this state but does not otherwise apply to the shareholders or members of mutual water companies unless their articles or bylaws so provide.

Comment. Section 2718 is substantively identical to a portion of former Corporations Code Section 2235 and to former subdivision (d) of Corporations Code Section 708 (General Corporation Law).

Unemployment Insurance

Unemployment Insurance Code § 1116 (technical amendment)

SEC. 49. Section 1116 of the Unemployment Insurance Code is amended to read:

1116. (a) (1) Every employing unit except a domestic or foreign corporation shall, within 10 days of quitting business, file with the director a final return and report of wages of its workers, in such form and containing such information as the director prescribes.

(2) Every domestic corporation shall, within 10 days of quitting business or within 10 days of the commencement of proceedings to wind up its affairs and voluntarily ~~dissolve in accordance with Sections 1900 through 1907 of the Corporations Code~~, *dissolve*, whichever expires the earlier, file with the director a return and a report of wages of its workers, in such form and containing such information as the director prescribes.

(3) Every foreign corporation shall, within 10 days of quitting business or within 10 days of the surrender of its right to engage in business in this state in accordance with Sections 6700 and 6701 of the Corporations Code, whichever expires the earlier, file with the director a final return and report of wages of its workers, in such form and containing such information as the director prescribes.

(4) As used in this section, "quitting business" does not include any change in the form or membership of an employing unit if before and after such change 50 percent or more of the control of management is held by the same individual, or is held by an individual before death and after the individual's death by the individual's estate or heirs.

(b) Contributions with respect to a return required under subdivision (a) are due and payable on the first day of the applicable 10-day period established pursuant to subdivision (a) and shall become delinquent if not paid within 10 days of the due date.

(c) The director for good cause may extend for not to exceed 30 days the time for making a return or paying without penalty or interest any amount required to be paid under this section.

Comment. Subdivision (a) (2) of Section 1116 is amended to delete the reference to Corporations Code Sections 1900-1907 because it was unnecessarily restrictive in view of other statutory provisions for the voluntary dissolution of corporations. See, *e.g.*, former Corp. Code §§ 4600-4619 (repealed by Cal. Stats. 1975, Ch. 682, § 6, but still effective as to certain corporations pursuant to Cal. Stats. 1975, Ch. 682, § 16, *as amended by* Cal. Stats. 1976, Ch. 641, § 43.5); Corp. Code §§ 6520-6528 (voluntary dissolution

of nonprofit corporations); Fin. Code §§ 3150 (voluntary liquidation of bank), 15650-15660 (voluntary dissolution of credit union).

Vessel Registration and Transfer Fee Exemption

Vehicle Code § 9870 (technical amendment)

SEC. 50. Section 9870 of the Vehicle Code is amended to read:

9870. A nonprofit corporation organized solely for charitable purposes pursuant to ~~Part 1 (commencing with Section 9000)~~ or ~~Part 3 (commencing with Section 10200)~~, ~~Division 2, the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, Code)~~, which purposes relate to promoting the ability of boys and girls to do things for themselves, to train them in scoutcraft and camping, and to teach them patriotism, courage, self-reliance and kindred virtues, shall not be required to pay the fees provided for in Sections 9853, 9855, 9860, and 9867.

Comment. Section 9870 is amended to refer to the Nonprofit Corporation Law (Corp. Code §§ 5000-6626). The reference to Part 3 (commencing with Section 10200) of Division 2 of Title 1 of the Corporations Code has been deleted because that part is repealed. Corporations organized pursuant to the repealed Part 3 are deemed organized pursuant to the Nonprofit Corporation Law. Corp. Code § 10200.

Application of Old General Corporation Law

SEC. 51. Section 16 of Chapter 682 of the Statutes of 1975, as amended by Section 43.5 of Chapter 641 of the Statutes of 1976, is amended to read:

Sec. 16. (a) Section 119 of the Corporations Code as in effect ~~immediately prior to the effective date of this act, on December 31, 1976,~~ to the extent that it makes applicable the General Corporation Law to private corporations organized under other laws, shall continue in effect notwithstanding its repeal by the provisions

~~hereof, of Chapter 682 of the Statutes of 1975; but it shall refer to the provisions of Division 1 (commencing with Section 100) of Title 1 of the Corporations Code as in effect immediately prior to the effective date of this act, on December 31, 1976, unless and until the provisions of any other statute permitting the incorporation of private corporations shall be amended to incorporate by reference in such other statute specific sections or portions of Division 1 (commencing with Section 100) of Title 1 of the Corporations Code as amended hereby enacted by Chapter 682 of the Statutes of 1975. All references in any such other statute to any sections or portions of the General Corporation Law shall, until such amendment, continue to be references to Division 1 (commencing with Section 100) of Title 1 of the Corporations Code as in effect immediately prior to the effective date of this act. on December 31, 1976. Nonprofit cooperative corporations organized pursuant to Title 22 (commencing with Section 653t) of Part 4 of Division First of the Civil Code prior to August 14, 1931 which have not elected to be governed by Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code pursuant to Section 12206 of the Corporations Code, and existing as nonprofit cooperative corporations on January 1, 1977, shall be governed on and after such date by the General Nonprofit Corporation Law.~~

(b) Notwithstanding subdivision (a), subdivision (b) of Section 201 of the Corporations Code as in effect on January 1, 1977, and as subsequently amended, shall apply to all corporations.

(c) *This section does not apply to corporations to which the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) applies.*

Comment. The first two sentences of subdivision (a) of Section 16 of Chapter 682 of the Statutes of 1975, as amended, are amended to eliminate any ambiguity in the references to the 1975 legislation and pertinent dates. The third sentence is continued in Corporations Code Section 12206(b).

Subdivision (c) is added to make clear that nonprofit corporations are no longer governed by the old General Corporation Law. See Corp. Code § 5220 (Nonprofit Corporation Law).

Payment for Services Performed Under Direction of Religious Organization

SEC. 52. A nonprofit corporation may pay the reasonable value of services rendered in this state to the nonprofit corporation before January 1, 1975, and not previously paid, by any person who performed such services on a full-time basis under the direction of a religious organization in connection with the religious tenets of the organization. Such person shall have relied solely on the religious organization for his or her financial support for a minimum of five years. A payment shall not be made if such person or religious organization waives the payment or receipt of compensation for such services in writing. Payment may be made to such religious organization to reimburse it for maintenance of any person who rendered such services and to assist it in providing future support and maintenance; however, payment shall not be made from any funds or assets acquired with funds donated by or traceable to gifts made to the nonprofit corporation by any person, organization, or governmental agency, other than the members, immediate families of members, and affiliated religious organizations of the religious organization under whose direction the services were performed. Nothing in this section shall be construed to limit any of the powers of a nonprofit corporation under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code).

Comment. This section preserves the substance of subdivision (g) of former Section 9501 of the Corporations Code. The last sentence is added to make clear that the provision is intended as supplementary rather than restrictive in nature.

Partial Invalidity Provision

SEC. 53. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Operative Date

SEC. 54. This act becomes operative on January 1, 1979.

Double Jointing Provision

SEC. 55. This act shall become operative only if Senate Bill _____ is chaptered and becomes effective January 1, 1978, and in such case, shall become operative at the same time as Senate Bill _____.

APPENDIX

DISPOSITION OF EXISTING GENERAL NONPROFIT CORPORATION LAW

Note. The text of each section of the existing General Nonprofit Corporation Law (Part 1 (commencing with Section 9000) of Division 2 of Title 1 of the Corporations Code) is set out below. The existing General Nonprofit Corporation Law will be repealed when the new Nonprofit Corporation Law is enacted. The disposition of each of the sections in the existing statute is indicated in the Comment which follows the text of the section.

CHAPTER 1. GENERAL PROVISIONS

§ 9000 (repealed)

9000. This part shall be known and may be cited as the General Nonprofit Corporation Law.

Comment. Former Section 9000 is superseded by Section 5000.

§ 9001 (repealed)

9001. The provisions of this part apply to every nonprofit corporation now existing or hereafter formed, unless the corporation is expressly exempted from the operation thereof, or there is a special provision applicable to the corporation inconsistent with the provisions of this part, in which case the special provision prevails.

Comment. Former Section 9001 is continued in Section 5210.

§ 9002 (repealed)

9002. The provisions of the General Corporation Law, Division 1 of this title, apply to corporations formed under this part, except as to matters specifically otherwise provided for in this part.

Comment. Former Section 9002 is superseded by Section 5220. The new Nonprofit Corporation Law, Division 2 (commencing with Section 5000) of Title 1, provides a complete set of rules governing nonprofit corporations and does not incorporate by reference the General Corporation Law except as expressly provided. See Sections 5220-5228.

CHAPTER 2. FORMATION AND BY-LAWS

Article 1. Purposes

§ 9200 (repealed)

9200. A nonprofit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to the members thereof and for which individuals lawfully may associate themselves, such as religious, charitable, social, educational, or cemetery purposes, or for rendering services, subject to laws and regulations applicable to particular classes of nonprofit corporations or lines of activity. Carrying on business at a profit as an incident to the main purposes of the corporation and the distribution of assets to members on dissolution are not forbidden to nonprofit corporations, but no corporation formed or existing under this part shall distribute any gains, profits, or dividends to any of its members as such except upon dissolution or winding up.

Comment. The portion of the first sentence of former Section 9200 relating to the purposes for which a nonprofit corporation may be formed is superseded by Section 5310. The portion relating to the number of incorporators is superseded by Sections 5320 and 5321.

The portion of the second sentence of former Section 9200 permitting carrying on business at a profit is superseded by Section 5315. The portion precluding distribution to members of gains, profits, or dividends as such is continued in Section 5316(a). The portion permitting distribution of assets on dissolution or winding up is continued in Section 5316(b) (3).

§ 9201 (repealed)

9201. A nonprofit corporation may be formed under this part for the purposes of defraying or assuming the cost of professional services of licentiates under any chapter of Division 2 (commencing with Section 500) of the Business and Professions Code or of rendering any such services, but it may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(a) At least one-fourth of all licentiates of the particular profession residing in California become members.

(b) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all licensed members of the particular profession.

(c) Voting by proxy and cumulative voting are prohibited.

(d) A certificate is issued to the corporation by the particular professional board whose licentiates have become members, finding compliance with the requirements of subdivisions (a), (b), and (c).

Any such nonprofit corporation shall be subject to supervision by the particular professional board under which its members are licensed and shall also be subject to Section 9505.

Comment. Former Section 9201 is continued in Business and Professions Code Section 700.

§ 9201.1 (repealed)

9201.1. Any nonprofit corporation formed under Section 9201 which defrays or assumes some portion or all of the costs of refractions or eye appliances shall offer an equal opportunity to render professional services upon a uniform basis to all licentiates expressly authorized by law to render such services.

Comment. Former Section 9201.1 is continued in Business and Professions Code Section 701.

§ 9201.2 (repealed)

9201.2. Nonprofit corporations may be formed under this part for the purposes of administering a system or systems of defraying the cost of professional services of attorneys, but any such corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(a) The attorneys furnishing professional services pursuant to such system or systems are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such system or systems.

(b) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all active members of the State Bar.

(c) Voting by proxy and cumulative voting are prohibited.

(d) A certificate is issued to the corporation by the State Bar of California, finding compliance with the requirements of subdivisions (a), (b) and (c).

Any such nonprofit corporation shall be subject to supervision by the State Bar of California and shall also be subject to Section 9505.

Comment. Former Section 9201.2 is continued in Business and Professions Code Section 6175.

§ 9202 (repealed)

9202. A nonprofit corporation may be formed for the purpose of incorporating any existing unincorporated association or organization. As used in this part "unincorporated association" includes but is not limited to society, library, school, college, club, church, trustees of a charitable trust, and chamber of commerce.

Comment. Former Section 9202 is continued in Section 5311.

§ 9203 (repealed)

9203. A nonprofit corporation may be formed for the purpose of incorporating any subordinate body instituted or created under the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, labor union, foundation, federation, or any other society, organization, or association. The fact that the head or national body is unincorporated does not prevent the incorporation of the subordinate body.

The rules governing the incorporation and operation of unincorporated associations govern the incorporation of any subordinate body.

The seal of the subordinate body shall be its corporate seal.

Comment. Former Section 9203 is continued in Section 5311, with the exception of the last sentence which is not continued. See Comment to Section 5311.

Article 2. Articles of Incorporation

§ 9300 (repealed)

9300. The articles of incorporation shall set forth:

- (a) The name of the corporation.
- (b) The specific and primary purposes for which it is formed. This requirement shall not be deemed to preclude a statement of general purposes or powers or to restrict the right of the corporation to engage in any other lawful activity.
- (c) That the corporation is organized pursuant to the General Nonprofit Corporation Law or pursuant to Part 1 of Division 2 of Title 1 of the Corporations Code.
- (d) The county in this state where the principal office for the transaction of the business of the corporation is located.
- (e) The names and addresses of three or more persons who are to act in the capacity of directors until the selection of their successors. These persons may be given such titles as are deemed appropriate, but they shall be subject to all laws of this state relating to directors except as otherwise provided in this part. The number of persons so named constitutes the number of directors of the corporation, until changed by an amendment to the articles or, unless the articles otherwise provide, by a bylaw adopted by the members. However, the articles or, unless the articles provide otherwise, a bylaw duly adopted by the members, may state that the number of directors shall be not less than a stated minimum (which in no case shall be less than five) nor more than a stated maximum (which in no case shall exceed such stated minimum by more than three); and in the event that the articles or bylaws permit such an indefinite number of directors, the exact number of directors shall be fixed, within the limits specified in the articles or bylaws, by a bylaw or amendment thereof duly adopted by the members or by the board of directors. In the event the articles provide for an indefinite number of directors, unless the articles provide otherwise, such indefinite number may be changed, or a definite number fixed without provision for an indefinite number, by a bylaw duly adopted by the members.
- (f) If an existing unincorporated association is being

incorporated, the name of the existing unincorporated association.

Comment. Former Section 9300 is generally superseded by Section 5410. Subdivision (a) is continued in Section 5410(a). Subdivision (b) is superseded by Section 5411. Subdivision (c) is continued in Section 5410(b). Subdivision (d) is not continued. The first sentence of subdivision (e) is superseded by subdivision (d) of Section 5410. The second sentence of subdivision (e) is continued in Section 5513. The remainder of subdivision (e) is continued in Section 5511. Subdivision (f) is continued in subdivision (c) of Section 5311.

§ 9301 (repealed)

9301. The authorized number and qualifications of members of the corporation, the different classes of membership, if any, the property, voting, and other rights and privileges of members, and their liability to dues or assessments and the method of collection thereof, shall be set forth either in the articles or in the by-laws, which shall not, however, provide for the issuance of more than one membership to any member.

If the voting, property or other rights or interests, or any of them, be unequal, the articles or by-laws shall set forth the rule or rules by which the respective voting, property or other rights or interests of each member or class of members are fixed and determined.

The articles or by-laws may authorize dues or assessments or both to be levied upon all members or classes of membership alike, or in different amounts or proportions or upon a different basis upon different members or classes of membership and may exempt some members or classes of membership from either dues or assessments, or both.

The articles or by-laws may fix the amount and method of collection of dues or assessments or both, or may authorize the board of directors to fix the amount thereof from time to time, and make them payable at such times or intervals, and upon such notice, and by such methods as the directors may prescribe. Dues or assessments or both may be made enforceable by action or by the sale or forfeiture of membership, or both, upon reasonable notice.

Comment. The first two sentences of former Section 9301 are continued in Section 5442 with the exception of the proviso

relating to more than one membership, which is superseded by Section 5610(b). The third and fourth sentences of former Section 9301 are continued in Section 6010. The last sentence of former Section 9301 is continued in Section 6011. See also Sections 5442 and 6012.

§ 9302 (repealed)

9302. The articles or by-laws may provide for the number and tenure of office of the directors and may specify their powers, duties, compensation, and the manner in which they shall be chosen and removed from office.

Comment. Former Section 9302 is continued in Sections 5446, 5511(a), 5512(a), 5520, and 5525(a).

§ 9303 (repealed)

9303. The articles of incorporation may state any desired provision for the regulation of the affairs of the corporation in a manner not in conflict with law, including any restrictions authorized by Article 2, Chapter 1, Part 8, Division 1, Title 1 of this code upon the power to amend the articles of incorporation.

Comment. Former Section 9303 is superseded by Section 5412.

§ 9304 (repealed)

9304. (a) Except in the case of the incorporation of an unincorporated association provided for in subdivision (b) hereof, each person named in the articles to act in the capacity of a first director shall, and any other person desiring to associate with those persons in the formation of the corporation may, personally sign the articles of incorporation. All signatures thereto shall be personally acknowledged before an officer designated by the laws of this State as one before whom an acknowledgment may be made. Any certificate of acknowledgment taken without the State shall be authenticated by the certificate of an officer having the requisite official knowledge of the qualification of the officer before whom the acknowledgment was made when taken before any officer other than a notary public or a judge or clerk of a court of record having an official seal.

(b) In the case of the incorporation of an unincorporated

association, the articles of incorporation shall be subscribed and execution thereof personally acknowledged before an officer authorized to take acknowledgments by the presiding officer or acting presiding officer and the secretary or clerk or similar officer of the association or by at least a majority of its governing board or body, and there shall be attached thereto the affidavit of the subscribing officers, board or body that the association has duly authorized its incorporation and has authorized said officers, board or body to execute the articles of incorporation.

Comment. The first sentence of subdivision (a) of former Section 9304 is superseded by Section 5321. The second and third sentences are not continued, as unnecessary. Subdivision (b) is superseded by Section 5311.

§ 9304.5 (repealed)

9304.5. If the articles conform to law, the Secretary of State shall file them in his office and shall endorse the date of filing thereon. The corporate existence begins upon the filing of the articles and continues perpetually unless otherwise expressly provided by law.

A copy of the articles certified by the Secretary of State and bearing the endorsement of the date of filing in this office shall be filed in the office of the county clerk of the county in which the corporation is to have its principal office and in the office of the county clerk of each county in which the corporation acquires ownership of any real property.

Comment. The first sentence of former Section 9304.5 is continued in Section 5228(f). The second sentence is continued in Section 5322. The third sentence is not continued, as unnecessary.

§ 9305 (repealed)

9305. Articles of incorporation of nonprofit corporations shall be amended in the same manner as provided in Title 1, Division 1, Part 8, Chapter 1 of this code.

Comment. Former Section 9305 is superseded by Sections 5420-5433.

§ 9306 (repealed)

9306. Any nonprofit cooperative corporation formed under former Title 22, Part 4, Division 1, of the Civil Code may amend its articles to provide that the voting power, property rights, and interests of its members shall be equal or unequal, and if unequal, to set forth a general rule by which the voting power and property rights and interests of each member shall be determined and fixed.

Comment. Former Section 9306 is not continued. However, notwithstanding the repeal of this part (General Nonprofit Corporation Law)—including Section 9306—nonprofit cooperative corporations formed under Title 22, Part 4, Division 1, of the Civil Code (repealed by Cal. Stats. 1931, Ch. 869) which have not elected to be governed by Part 2 of Division 3 of Title 1 of the Corporations Code continue to be governed by the General Nonprofit Corporation Law as it was in effect on December 31, 1978. Section 12206(b).

Article 3. Bylaws**§ 9400 (repealed)**

9400. Bylaws may be adopted, amended or repealed by any of the following:

(a) By the written consent of members entitled to exercise a majority of the voting power, or by the vote of a majority of a quorum at a meeting of members duly called for the purpose according to the articles or bylaws.

(b) Except as provided in subdivision (c), by the board of directors, subject to the power of the members to change or repeal the bylaws.

(c) A bylaw or bylaw amendment fixing or changing the authorized number of directors may be adopted only by the members and may not be adopted by the board of directors except where the articles or bylaws provide for an indefinite number of directors pursuant to subdivision (e) of Section 9300.

However, the articles or bylaws may require the vote or written consent of members entitled to exercise a greater fraction or percentage of the voting power for the amendment or repeal of bylaws generally, or of particular bylaws, or for the adoption of new bylaws than would otherwise be required under this section. The articles or a

bylaw adopted by the members may limit or restrict the power of the directors to adopt, amend, or repeal bylaws, or may deprive them of the power.

Comment. Subdivisions (a) and (b) of former Section 9400 are continued in Section 5440(a). Subdivision (c) is continued in Section 5511(d). The first sentence of the last paragraph is continued in Section 5813. The second sentence of the last paragraph is continued in Section 5440(b).

§ 9401 (repealed)

9401. The by-laws of a nonprofit corporation may make provisions for:

(a) The time, place, and manner of calling, giving notice of, and conducting regular and special meetings of members or directors, which may be held outside the State. The by-laws may dispense with notice of all regular members' and directors' meetings.

(b) The requirements of a quorum of directors or members, which may be greater or less than a majority.

(c) Subject to any provisions in the articles, the number, time and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensation of the directors and other officers.

(d) The appointment and authority of executive or other committees of the board of directors.

Comment. The portion of the first sentence of subdivision (a) of former Section 9401 that permitted the bylaws to make provisions for meetings of members and directors is continued in Sections 5445(a), 5530, and 5720. The portion permitting meetings to be held outside the state is continued in Sections 5710 (members' meetings) and 5534 (directors' meetings). The second sentence of subdivision (a) is superseded by Sections 5720(b) (members' meetings) and 5532(a) (directors' meetings).

Subdivision (b) is continued in Sections 5445(b), 5530, 5536, and 5715.

Subdivision (c) is continued in Sections 5446(a), 5511(a), 5512(a), 5520, 5560, and 5563.

Subdivision (d) is continued in Section 5446(b). See also Section 5550.

§ 9402 (repealed)

9402. The by-laws of a nonprofit corporation may make provisions for:

(a) The admission, election, appointment, withdrawal, suspension, and expulsion of members.

(b) The qualifications of members and different classes of memberships, and the property, voting, and other rights, interests, or privileges, or any of them, of members or classes of members.

(c) The transfer, forfeiture, and termination of membership, and whether the property interest of members shall cease at their death or the termination of membership, and the mode of ascertaining the property interest, if any, at death or the termination of membership.

(d) The manner of voting by members and whether cumulative voting and proxy voting shall be allowed.

(e) The making of annual reports and financial statements to the members.

Comment. Subdivision (a) of former Section 9402 is continued in Section 5442(e). Subdivision (b) is superseded by Section 5442(a)-(c). Subdivision (c) is continued in Section 5442(f). Subdivision (d) is continued in Section 5444(a)(1). Subdivision (e) is continued in Section 5443(a).

§ 9403 (repealed)

9403. The by-laws of a nonprofit corporation may make provisions for fees of admission and transfer fees, and, subject to any provisions in the articles, may provide pursuant to Section 9301 for dues and assessments to be paid by members or different classes of members and the methods of collection thereof.

Comment. Former Section 9403 is continued in Section 5442(d).

§ 9404 (repealed)

9404. All by-laws shall be recorded in a book which shall be kept in the principal office of the corporation.

Comment. Former Section 9404 is superseded by Section 5975.

CHAPTER 3. DIRECTORS AND MANAGEMENT

§ 9500 (repealed)

9500. Except as otherwise provided by the articles of incorporation or the by-laws, the powers of a nonprofit corporation shall be exercised, its property controlled, and its affairs conducted by a board of not less than three directors.

Comment. The portion of former Section 9500 vesting control of corporate affairs in the board of directors is continued in Section 5510. The portion specifying a minimum of three directors is superseded by Section 5511(c).

§ 9501 (repealed)

9501. Every nonprofit corporation may:

- (a) Sue and be sued.
- (b) Make contracts.
- (c) Receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and otherwise acquire and hold all property, real or personal, including shares of stock, bonds, and securities of other corporations.
- (d) Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, and expend funds and property subject to such trust.
- (e) Convey, exchange, lease, mortgage, encumber, transfer upon trust, or otherwise dispose of all property, real or personal.
- (f) Borrow money, contract debts, and issue bonds, notes, and debentures, and secure the payment or performance of its obligations.
- (g) Pay the reasonable value of services rendered in this state to the nonprofit corporation before January 1, 1975, and not previously paid, by any person who performed such services on a full-time basis under the direction of a religious organization in connection with the religious tenets of the organization. Such person shall have relied solely on the religious organization for his or her financial support for a minimum of five years. A payment shall not be made if such person or religious organization waives the

payment or receipt of compensation for such services in writing. Payment may be made to such religious organization to reimburse it for maintenance of any person who rendered such services and to assist it in providing future support and maintenance; however, payment shall not be made from any funds or assets acquired with funds donated by or traceable to gifts made to the nonprofit corporation by any person, organization or governmental agency other than the members, immediate families of members and affiliated religious organizations of the religious organization under whose direction the services were performed.

(h) Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

Comment. Former Section 9501 is superseded by Section 5312, with the exception of subdivision (g) which is continued as an uncodified provision.

§ 9501.1 (repealed)

9501.1. Every nonprofit corporation, during any period or periods such corporation is deemed to be a "private foundation" as defined in Section 509 of the Internal Revenue Code of 1954 as amended by Section 101 of the Tax Reform Act of 1969 (all references in this section to the Internal Revenue Code shall refer to such code as amended by such act), shall distribute its income for each taxable year (and principal, if necessary) at such time and in such manner as not to subject such corporation to tax under Section 4942 of such code (as modified by paragraph (3) of subsection (1) of Section 101 of the Tax Reform Act of 1969), and such corporation shall not engage in any act of self-dealing as defined in subsection (d) of Section 4941 of such code (as modified by paragraph (2) of subsection (1) of Section 101 of the Tax Reform Act of 1969), retain any excess business holdings as defined in subsection (c) of Section 4943 of such code, make any investments in such manner as to subject such corporation to tax under Section 4944 of such code, or make any taxable expenditure as defined in subsection (d) of Section 4945 of such code (as modified by paragraph (5) of subsection (1) of Section 101

of the Tax Reform Act of 1969).

This section shall apply to any such corporation and any provision contained in its articles of incorporation or other governing instrument inconsistent with this section or to the contrary thereof shall be without effect.

Comment. The substance of former Section 9501.1 is continued in Section 6073.

§ 9502 (repealed)

9502. Unless otherwise provided in the articles or by-laws, any vacancy in the board of directors caused by death, resignation, or any disability shall be filled by a majority of the remaining members thereof, though less than a quorum.

Comment. Former Section 9502 is continued in Section 5526 (a).

§ 9503 (repealed)

9503. Subject to any provisions of the articles or by-laws, meetings of directors of nonprofit corporations shall be called and held as may be ordered by the directors.

Comment. Former Section 9503 is superseded by Sections 5530 (articles and bylaws control) and 5531 (call of meetings).

§ 9503.1 (repealed)

9503.1. If the articles of incorporation or bylaws so provide, any action required or permitted to be taken by the board of directors under any provision of this division may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board. Such action by written consent shall have the same force and effect as a unanimous vote of such directors. Any certificate or other document filed under any provision of this division which relates to action so taken shall state that the action was taken by unanimous written consent of the board of directors without a meeting, and that the articles of incorporation or bylaws, as the case may be, authorize the directors to so act, and such statement shall be prima facie evidence of such authority.

Comment. Former Section 9503.1 is continued in Section 5539 with the exception of the last sentence, which is not continued in order to eliminate needless complexity in the articles or bylaws.

§ 9504 (repealed)

9504. Directors of a nonprofit corporation are not personally liable for the debts, liabilities, or obligations of the corporation.

Comment. Former Section 9504 is continued in Section 5514.

§ 9505 (repealed)

9505. A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure.

Comment. Section 9505 is continued as Section 6074.

CHAPTER 4. MEMBERS

§ 9600 (repealed)

9600. Subject to any provisions of the articles or by-laws, meetings of members of nonprofit corporations shall be called and held as may be ordered by the directors or by members holding not less than one-tenth of the voting power of members.

Comment. Former Section 9600 is superseded by Section 5714.

§ 9601 (repealed)

9601. Unless the articles or by-laws provide otherwise, every member of a nonprofit corporation is entitled to one vote and may vote or act by proxy. The manner of voting may be by ballot, mail, or any reasonable means provided

in the articles or by-laws. No member may cumulate his votes unless the articles or by-laws so provide.

Comment. The portion of the first sentence of former Section 9601 providing one vote per member is continued in Section 5810. The portion authorizing proxy voting is continued in Section 5830. The second sentence is continued in Section 5811 (c). The last sentence is continued in Section 5520 (c).

§ 9602 (repealed)

9602. A nonprofit corporation shall have such memberships or classes thereof as the articles or by-laws specify, but no member may hold more than one membership, and in the absence of any such classification of members there shall be deemed to be but one class. Unless the articles or by-laws set forth the rule or rules fixing the respective voting, property and other rights and interests of each member or class of members, the rights and interests of members shall be equal as to any right or interest not so fixed.

Comment. The substance of former Section 9602 is continued in Section 5611 with the exception of the prohibition of a member holding more than one membership, which is superseded by Section 5610 (b).

§ 9603 (repealed)

9603. Where neither the articles nor by-laws of a nonprofit corporation provide for members thereof as such, and in any case in which any nonprofit corporation has, in fact, no members other than the persons constituting its board of directors, the persons for the time being constituting its governing body or board are, for the purpose of any statutory provision or rule of law relating to nonprofit corporations, the members of the corporation and shall exercise all the rights and powers of members thereof.

Comment. The substance of former Section 9603 is continued in Section 5612.

§ 9604 (repealed)

9604. If an unincorporated association is incorporated under this part, the members of the association shall be members of the corporation so created, unless they file their dissent in writing with the secretary thereof.

Comment. Former Section 9604 is continued in Section 5311(f) except that, under Section 5311(f), the member of the unincorporated association has 15 days after notice to file a dissent.

§ 9605 (repealed)

9605. If the members of a nonprofit corporation having a stated number of members are reduced below that number by death, withdrawal, or otherwise, the corporation shall not be dissolved for that reason; but the surviving or continuing members, or member, may fill vacancies and continue the corporate existence, unless the articles or by-laws provide otherwise.

Comment. The substance of former Section 9605 is continued in Section 5613.

§ 9606 (repealed)

9606. Every nonprofit corporation shall keep a membership book containing the name and address of each member. Termination of any membership shall be recorded in the book, together with the date on which the membership ceased.

Comment. Former Section 9606 is superseded by Section 5960. Concerning the "membership book" requirement, see Section 5911 and Comment thereto.

§ 9607 (repealed)

9607. Membership in nonprofit corporations may be evidenced by certificates. A statement that the corporation is not one for profit shall be printed in clear type upon the face of each such certificate.

Comment. Former Section 9607 is superseded by Sections 5160 and 5624.

§ 9608 (repealed)

9608. Memberships may be terminated in the manner provided in the articles or by-laws. Unless the articles, the by-laws, or the law under which the corporation was formed provide otherwise, all the rights of a member in the corporation, or in its property, cease on death or other termination of his membership.

Comment. The first sentence of former Section 9608 is continued in Section 5631 (a). The second sentence is continued in Section 5632 (a).

§ 9609 (repealed)

9609. No member may transfer his membership or any right arising therefrom, unless the articles or by-laws so provide.

Comment. The substance of former Section 9609 is continued in Section 5630 (a).

§ 9610 (repealed)

9610. Members of a nonprofit corporation are not personally liable for the debts, liabilities, or obligations of the corporation.

Comment. The substance of former Section 9610 is continued in Section 5614.

§ 9611 (repealed)

9611. Nonprofit corporations may levy dues or assessments or both upon their members pursuant to any provisions of their articles or by-laws authorizing the levy of dues or assessments.

Comment. The substance of former Section 9611 is continued in Sections 5442 (d) and 6010 (a).

CHAPTER 5. MERGER AND CONSOLIDATION**§ 9700 (repealed)**

9700. The provisions of the General Corporation Law contained in Article 1 (commencing with Section 4100) of Chapter 3 of Part 8 of Division 1 of this title, apply to mergers and consolidations of corporations formed under

this part, except as to matters specifically otherwise provided for in this chapter.

Comment. Former Section 9700 is not continued. Chapter 12 (commencing with Section 6210) provides comprehensively for mergers and consolidations of nonprofit corporations. Accordingly, the General Corporation Law provisions are not incorporated by reference.

§ 9701 (repealed)

9701. An agreement to merge or consolidate shall be approved by the members of each corporation. Where the members have equal voting rights, the agreement shall be approved by a resolution adopted by the vote of a majority of the members or be approved by the written consent of two-thirds of the members; or where the members have unequal voting rights, the agreement shall be approved by a resolution adopted by the vote of members entitled to exercise a majority of the voting power or be approved by the written consent of members entitled to exercise two-thirds of the voting power. This section shall be applicable regardless of any limitations or restrictions on the voting power of any class or classes of membership.

Comment. Former Section 9701 is superseded by Section 6221.

§ 9702 (repealed)

9702. Where the members act by vote, such votes shall be cast at a meeting duly called upon notice of the time, place, and purpose thereof, duly given to each member at least 20 days prior to the date of the meeting, except that such notice may be waived as provided in Section 2209. Unless the notice is waived, there shall be mailed with such notice a statement of the general terms of the proposed agreement.

Comment. Former Section 9702 is superseded by Article 2 (commencing with Section 5720) (notice of meetings) of Chapter 7.

§ 9703 (repealed)

9703. The articles of incorporation may require the vote or written consent of a greater percentage or fraction of the

members than would otherwise be required under this chapter, in cases where the members have equal voting rights, or may require the vote or written consent of members entitled to exercise a greater percentage or fraction of the voting power than would otherwise be required under this chapter, in cases where the members have unequal voting rights. In no case may the articles prohibit any merger or consolidation authorized by this chapter or by Chapter 3 (commencing with Section 4100) of Part 8 of Division 1 of this title.

Comment. The first sentence of former Section 9703 is continued by Section 5813. The second sentence is not continued, as unnecessary. *Cf.* Section 6210 (merger and consolidation authorized).

CHAPTER 6. WINDING UP AND DISSOLUTION

§ 9800 (repealed)

9800. A nonprofit corporation may dispose of all or substantially all of its assets, or may be wound up or dissolved, or both, in the same manner and with the same effect as a stock corporation, under the General Corporation Law, subject to the provisions of Section 9801.

Comment. Section 9800 is superseded by Chapters 11 (commencing with Section 6110) (sales of assets) and 15 (commencing with Section 6510) (dissolution).

§ 9801 (repealed)

9801. Upon the dissolution or winding up of a nonprofit corporation, after paying or adequately providing for the debts and obligations of the corporation, the directors or persons in charge of the liquidation shall divide any remaining assets among the members in accordance with their respective rights therein, or dispose of them in such other manner as may be provided in the articles, unless the corporation holds its assets on any trust or is organized for a charitable purpose or purposes.

If the corporation holds its assets on trust, or is organized for a charitable purpose or purposes, the assets shall be

disposed of in such manner as may be directed by decree of the superior court of the county in which the corporation has its principal office, upon petition therefor by the Attorney General or any person concerned in the liquidation, in proceedings to which the Attorney General is a party.

This section does not apply where the charter of an incorporated subordinate body is surrendered to, taken away, or revoked by the head or national body.

Comment. The portion of the first paragraph of former Section 9801 that related to payment or adequate provision for debts and obligations is continued in Section 6570. The portion of the first paragraph that related to distribution of assets to members or as otherwise provided in the articles is continued in Section 6574.

The second paragraph is superseded by Section 6573. The last paragraph is superseded by various provisions. See Comment to former Section 9802.

§ 9802 (repealed)

9802. Whenever the charter of a subordinate body incorporated pursuant to this part is surrendered to, taken away, or revoked by the head or national body granting it, the subordinate body shall dissolve. The subordinate body shall pay its debts and obligations or make adequate provision therefor. The subordinate body may collect obligations owed to it and may sell property which is not designed for the exclusive use of the organization. The subordinate body shall then deliver any remaining property or obligations owed to it and any remaining proceeds of the sale of property to the head or national body, to be disposed of in accordance with the laws of the head or national body.

Comment. The first sentence of former Section 9802 is superseded by Sections 6511(i) and 6521(d). The second sentence is superseded by Section 6570(a). The third sentence is superseded by Section 6551(c). The last sentence is superseded by Section 6574.

TABLE 1

NEW GENERAL CORPORATION LAW TO COMPARABLE PROVISIONS OF PROPOSED NONPROFIT CORPORATION LAW

This table indicates as to each section of the new General Corporation Law that took effect on January 1, 1977, the comparable provisions of the proposed Nonprofit Corporation Law. Where the table indicates that the proposed Nonprofit Corporation Law contains a comparable provision to a section of the new General Corporation Law, the comparable provision may duplicate the section or portion of a section of the new General Corporation Law or may be substantially different. For a discussion of the comparison, see the Comment to the comparable section of the proposed Nonprofit Corporation Law.

In some cases, the table indicates the fact that there is no provision of the proposed Nonprofit Corporation Law that is comparable to a particular section of the new General Corporation Law.

<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
100(a)	5000	114	5013
(b)	5212(a)	115	5145
101	5010, 5100	116	—
102(a)	5210	117	—
(b)	5213	118	5014
(c)	5212(b)	149	—
103	—	150	—
104	Corp. Code § 9	151	5106
105	5228(a)	152	5109
106	5228(b)	153	5109
107	5228(c)	154	5112
108	5228(d)	155	5115
109	5228(e)	156	—
110	5228(f)	157	Corp. Code
111	5444(a)		§ 10
112	5817	158	—
113	5015	159	—

<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
160	—		5813, 5816
161	5129	(b)	—
162	—	(c)	5410(d)
164	5133	(d)	5412
165	5136(a)	205	—
166	6061	206	5315
167	—	207	5233, 5312
168	—	208(a)	5313
169	5142	(b)	5230
170	—	(c)	5234, 5313
171	—	209	5240
172	—	210	—
173	5157, 5181	211	5440
174	5160	212(a)	5511
175	5163	(b)	5441
176	—	213	5975-5977
177	5169	300(a)	5510
178	5172, 5831(a)	(b)	—
179	5175	(c)	—
180	6050(b)	(d)	—
181	—	(e)	—
182	—	301	5512, 5520
183	5125	302	5523
184	—	303(a)	5525(a)
185	—	(b)	5512
186	—	(c)	—
187	—	304	5525(b)
188	—	305(a)	5526(a)
189	5184	(b)	5526(b)
190	5187	(c)	—
191	5226(a)	(d)	5524
192	5522	306	5527
193	5011	307(a)(1)	5530-5531
194	5190	(2)	5532
194.5	5196	(3)	5532
195	5016	(4)	5533
200(a)	5320	(5)	5534
(b)	5321	(6)	5535
(c)	5322	(7)	5536
201(a)	—	(8)	5517, 5537
(b)	5222(a)	(b)	5538
(c)	5222(c)	(c)	5539
202	5410, 5411	(d)	5554
203	5611(b)	308	5540-5544
204(a)	5411, 5444, 5517(b),	309	5570
		310(a)	5571

<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
(b)	5572	417	—
(c)	5571-5572	418	—
311	5550-5553	419	6013
312(a)	5560-5562	420	5634
(b)	5563, 5564	421	—
313	5231	422	5625
314	5241	423	6010
315	5573	500	6062-6063
316	5574	501	6064
317(a)	5580	502	6065
(b)	5581	503	—
(c)	5582	504	—
(d)	5583	505	6067
(e)	5584	506	5615
(f)	5585	507	—
(g)	5586	508	—
(h)	5587	509	6050-6054
(i)	5588	510	—
(j)	5589	600(a)	5710
400(a)	5611	(b)	5711
(b)	5125	(c)	5712
401	—	(d)	5714(a)
402(a)	5622(a)-(b)	601(a)	5720-5723
(b)	5622(c)	(b)	5724
(c)	—	(c)	5723, 5725
(d)	—	(d)	5726
403	—	(e)	5727
404	5621	(f)	5728
405	—	602(a)	—
406	—	(amended)	5715; Pub. Util. Code § 2717
407	—	(b)	5717
408	—	(c)	5716
409(a)	5620, 6040	603(a)	5841
(b)	5620	(b)	—
(c)	—	(c)	5845
(d)	5623(b)	(d)	5842
(e)	—	604	5832, 5843
410(a)	6021	605	—
(b)	5623(a)	700(a)	5810
411	6023-6024	(b)	—
412	6022, 6024	701(a)	5640-5641
413	6025	(b)	5642
414	6026	(c)	5643
415	6027	(d)	5644
416(a)	5624	702(a)	5821
(b)	—		

<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
(b)	—	(c)	—
(c)	5822	(d)	5433
(d)	5823	1000	6110
703(a)	5824	1001(a)	6111(a)
(b)	—	(b)	6113
(c)	—	(c)	6111(c)
704	5825	(d)	6111(b)
705(a)	5830, 5831(c)	1002	6114
(b)	5833-5834	1100	6210
(c)	5834(b)	1101	6211, 6214-6215, 6220
(d)	5836	1102	6220
(e)	5835	1103	6223, 6240
(f)	5835	1104	6230
706(a)	5851, 5854, 5856	1105	6231
(b)	5852-5853, 5855	1106	6242
(c)	—	1107(a)	6243
(d)	—	(b)	6245
707	5860-5865	(c)	6247
708(a)	5520(c)	1108(a)	6250-6251
(b)	—	(b)	6253
(c)	5520(d)	(c)	6254
(d)	—	(d)	6255
(amended)	Pub. Util. Code § 2718	(e)	—
(e)	5520(b)	1109	5243
709	5870-5876	1110	—
800	5223	1111	—
900(a)	5420	1200	6220
(b)	5421	1201(a)	6221
901	—	(b)	—
902(a)	5423	(c)	—
(b)	—	(d)	—
(c)	—	(e)	—
(d)	5421	(f)	6222
(e)	5424	1300	—
(f)	—	1301	—
903	5815	1302	—
904	—	1303	—
905-906	5425-5426, 6212-6213	1304	—
907	5427	1305	—
908	5244, 5428	1306	—
909	5422	1307	—
910(a)	5430-5431	1308	—
(b)	5432	1309	—
		1310	—

<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
1311	—	1805 (a)	6512
1312	6260-6261	(b)	6532 (a), 6551 (a)-(b)
1400-1403	5228 (g)	(c)	6550, 6552 (a)
1500	5911 (a)-(b), 5960, 5961, 5970	1806 (a)	6533 (a)
1501 (a)	5921, 5922 (c)	(b)	6533 (b)
(b)	5940	(c)	6534 (b)
(c)	5910, 5950, 5951 (c), 5954	(d)	6535 (a)-(b)
(d)	5954	(e)	6531 (b)
(e)	5953	(f)	6532 (c)
(f)	5981	(g)	6532 (d)-(g)
(g)	5984	(h)	6533 (c)
(h)	—	(i)	6534 (a)
1502	5224	(j)	6535 (c)
1503	—	(k)	6535 (d), 6581 (a)
1504	—	(l)	6531 (d)
1505	—	1807 (a)	6561
1506	5228 (h)	(b)	6552 (b), 6560
1507	5991	(c)	6562
1508	5250	(d)	6563
1600 (a)	5910, 5963	(e)	6564
(b)	5964	1808 (a)	6535 (d), 6536, 6580
(c)	5962	(b)	6581 (a), 6582
(d)	5912-5913, 5918	1809	5228 (i), 6585
1601 (a)	5918, 5971	1900 (a)	6520
(b)	5912-5913	(b)	6521 (a)-(b)
1602	5912-5913, 5915, 5918	1901	6522
1603	5982	1902	6523
1604	5984	1903 (a)	6524
1605	5911 (c)	(b)	6551 (a), (c)
1700-1702	5225	(c)	6550, 6552 (a), 6560
1800 (a)	6510 (a)	1904	6525, 6531 (e)
(b)	6511	1905	6526-6527, 6581 (a)
(c)	6510 (c)	1906	6521 (c), 6550
(d)	6590	1907	6528, 6585
(e)	—	2000 (a)	6542 (a)-(c)
1801	5228 (i), 6531 (a), 6531 (c)	(b)	6543
1802	6532 (b)	(c)	6544-6545
1803	6531 (a)	(d)	6546
1804	6531 (e), 6536	(e)	—
		2001	6551 (c)
		2002	6553

<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>New General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
2003	6554	2302	6616
2004	6570, 6574	2303	6616
2005	6571	2304	—
2006	6575	2305	—
2007	—	2306	6618
2008	6576	2307	—
2009	6577	2308	6623
2010 (a)	6581 (b)	2309	—
(b)	6581 (d)	2310	6619
(c)	6581 (e)	2311	6621
2011	6581 (c), 6583–6584	2312	6614
2100–2116	5226 (a)	2313	6624
2200–2260	5227, 5992–5993	2314	6625 (a)
2300	6610	2315	6625 (b)
2301 (a)	6612	2316	—
(b)	6612	2317	—
(c)	6613	2318	—
		2319	6626

TABLE 2

**OLD GENERAL CORPORATION LAW TO
COMPARABLE PROVISIONS OF
PROPOSED NONPROFIT
CORPORATION LAW**

This table indicates as to each section of the old General Corporation Law the comparable provisions of the proposed Nonprofit Corporation Law. Where the table indicates that the proposed Nonprofit Corporation Law contains a comparable provision to a section of the old General Corporation Law, the comparable provision may duplicate the section of the old General Corporation Law or may be substantially different. For a discussion of the comparison, see the Comment to the comparable section of the proposed Nonprofit Corporation Law.

In some cases, the table indicates the fact that there is no provision of the proposed Nonprofit Corporation Law that is comparable to a particular section of the old General Corporation Law.

<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
100	5000	112	—
101	5010, 5100	113	6050(b)
102	5112	114	—
103	5221	115	5221
104	—	115.1	—
105	—	116	—
106	5210(c)	117	5125
107	—	118	5163, 5184
108	—	119	5213, 5220
109	—	120	—
110	5133	121	—
111	—		

<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
122	—	816	5536
123	—	817	5517 (a)
124	5228 (d)	818	5533
125	5212	819	5540-5544
126	5212	820	5571-5572
126.1	5228 (b)	821	5560-5561, 5563
127	5228 (e)	822	5550-5554
128	5228 (a)	823-829	5573-5574
129	5228 (c)	830	5580-5590
300	5320-5321	831	—
301	5410, 5511	832	5241
302	—	833	5233
303	—	834	5223
304	—	1100	5622 (a)-(b)
305	5412	1101	5622 (c)
306	5444 (a)	1102	—
307	5321	1103	5621
308	5228 (f), 5322	1104	5621
309	—	1105	—
310	5222	1106	—
311	—	1107	—
312	—	1108	—
313	5240	1109	5620, 5623, 6040
500	5440	1110	—
501	5441	1111	5620
502	5975-5977	1112	5620
800	5510	1113	—
801	5312	1300	6021
802	5312	1301	6023
803	5230, 5234, 5313	1302	6022
804	5446 (a)	1303	6024
805	5512	1304	6025
806	5522	1305	—
807	5523	1306	6026
808	5512, 5526	1307	—
809	5512, 5524, 5526 (b)	1308	5227
809.5	5527	1309	5227
810	5525 (a)	1310	6027
811	5525 (b)	1311	—
812	5531	1500	6060-6063
813	5532-5533	1501	6064
814	5538	1502	6063
814.5	5539	1503	—
815	5534	1504	—
		1505	—

<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
1506	—	2218-2220	5820-5821
1507	—	2221	5823
1508	—	2222	5824
1509	—	2223	5825
1510	5615	2224	—
1511	5227	2225	5830-5831
1700-1703	6050-6054	2226-2228	5833-5834
1704	—	2229	—
1705	—	2230-2231	5850-5857
1706-1708	6062, 6064	2232-2233	5860-5865
1709	—	2234	5520 (b)
1710	—	2235	5520 (c), Pub. Util. Code
1711	—		§ 2718
1712	—	2236-2238	5870-5876
1713	—	2239	5841, 5844
1714	—	2240	5250
1715	—	2400	5624 (a)
1716	—	2401	5624 (b)
1900	—	2402	—
1901	—	2403	—
1902	—	2404	—
1903	—	2405	5623 (b)
1904	—	2406	—
1905	—	2407	5625
1906	—	2413-2415	5634
1907	—	2416	—
1908	—	2417	6013
1909	—	2418	—
1910	—	2419	—
2200	5710, 5711 (b)	2420	6013
2201	5711 (a), 5728	2700	6010
2202	5714	2701	—
2203	5725	2702	—
2204	5723	2703	—
2205	5724	2704	—
2206	5721	2705	—
2207	5722	2706	—
2208	5726	2707	—
2209	5727	2708	—
2210	5710, 5727	2709	—
2211	5817	2710	—
2212	5717	2711	—
2213	5716	2712	—
2214-2215	5640-5644	2713	—
2216	—	2714	6011
2217	5845		

<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
3000	5970	3637	—
3001	5915, 5970	3638	—
3001.1	5228(h)	3639	—
3002	5961	3640	—
3003-3004	5912-5913, 5915, 5918, 5962, 5963	3641	—
3005	5982	3670	5425
3006	5921	3671	5426
3007	5922	3672	5426
3008	—	3673	5244, 5428
3009	5013	3674	—
3010	—	3700-3703	5422
3011-3013	5950	3800	5430-5432
3014	5981	3801	—
3015	5992	3802	5433
3016	—	3900	6110
3017	5993	3901	6111(a)
3018	5991	3902	6111(a)
3019-3022	5227	3903	6111(c)
3300	5225	3904	6114
3301	5224	3905	—
3301.1	—	4100	6210
3301.2	—	4101	5127, 5187
3301.3	5224	4102	5129
3301.5	—	4103	5211, 6220
3301.6	5224	4104	—
3301.7	—	4105	6212
3301.8	—	4106	6220
3302	5525	4107	6221
3303	5525	4108	6222
3305	6583(b)-(c)	4109	6224
3305.1	6584	4110	6223, 6240
3305.2	6583(a)	4111	6230
3306	5525	4112	6231
3600-3602	5420	4113	6240
3603	5421	4114	5243
3604	—	4115	5242
3630	—	4116	6243-6245, 6247
3631	5427	4117	—
3632	5423	4118	6250-6253
3632.5	5818	4119	5243, 6254-6255
3633	—	4120	5242
3634	5815	4121	—
3635	—	4122	5243
3636	—	4123	6260-6261
		4124	—
		4300	—

<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>	<i>Old General Corporation Law (Section)</i>	<i>Proposed Nonprofit Corporation Law (Section)</i>
4301	—		6533 (a)
4302	—	4655	6532 (b)
4303	—	4656	6531 (a)
4304	—	4657	6531 (e)
4305	—	4658	6542-6543
4306	—	4659	6544-6546
4307	—	4660	6512
4308	—	4661	6550, 6552 (a)
4309	—	4662	—
4310	—	4690-4693	5528 (i), 6510
4311	—	4800-4802	6551
4312	—	4803	6553
4313	—	4804-4808	6554
4314	—	5000	6570 (a)
4315	—	5001	6571
4316	—	5002	6575
4317	—	5003	6575
4318	—	5004	—
4400-4405	5228 (g)	5005	—
4600	6520	5006	—
4601	6521 (a)-(b)	5007	—
4602	6521 (c)	5008	—
4603	6522	5009-5010	6576 (a)-(b)
4604	6524	5011	6576 (c)
4605	6550, 6552 (a)	5012	6577
4606	6523	5200	6526
4607	6525	5201	6526-6527
4608	6533 (a), 6561-6564	5201.5	—
4609	6531 (a), 6533 (b)	5202	6528
4610	6534 (b)	5203	6528
4611	6535 (a)-(b)	5204	6536, 6580
4612	6531 (c)	5205	6582
4613	6532 (c)	5206	6585
4614	6532 (d)-(g)	5400	6581 (c)
4615	—	5401	6581 (d)
4616	6533 (c)	5402	6581 (e)
4617	6534 (a)	5403	—
4618	6535 (c)	5700	—
4619	6535 (d)	5701	—
4650	6510, 6590	5702	—
4651	6511	5703	—
4652	5260	5704	—
4653	6510	5705	—
4654	6531 (e),	5706	—
		5707	—
		5708	—

<i>Old General Corporation Law (Section)</i>	—	<i>Proposed Nonprofit Corporation Law (Section)</i>	—	<i>New General Corporation Law (Section)</i>	—	<i>Proposed Nonprofit Corporation Law (Section)</i>
5709	—		—	5905	—	
5900	—		—	5906	—	
5901	—		—	5907	—	
5902	—		—	5908	—	
5903	—		—	6200-6804	—	5226
5904	—		—			

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