

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

Nonprofit Association Tort Liability

November 2004

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

#### NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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CALIFORNIA LAW REVISION COMMISSION

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November 19, 2004

To: The Honorable Arnold Schwarzenegger  
*Governor of California*, and  
The Legislature of California

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

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

Respectfully submitted,

William E. Weinberger  
*Chairperson*



## NONPROFIT ASSOCIATION TORT LIABILITY

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

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

The proposed law would make clear that a member, director, officer, or agent of a nonprofit association may be liable for a tort of the association for reasons other than the person's status as a member, director, officer, or agent. This would provide guidance to a layperson involved in an

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1. See Corp. Code §18605 (added by 2004 Cal. Stat. ch. 178, § 11). See also *Security First National Bank of Los Angeles v. Cooper*, 62 Cal. App. 2d 653, 667, 145 P.2d 722 (1944) (“[M]embership, as such, imposes no personal liability for the debts of the association”); *Orser v. George*, 252 Cal. App. 2d 660, 670-71, 60 Cal. Rptr. 708 (1967) (“[M]ere membership does not make all members liable for unlawful acts of other members without their participation, knowledge or approval”).

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

unincorporated nonprofit association, who might not otherwise understand the scope of potential liability.

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

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## PROPOSED LEGISLATION

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

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

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

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

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

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

Subdivision (c) makes clear that the grounds for liability provided in subdivisions (a) and (b) are not exclusive. Other grounds for liability may exist. For example, the members of an unincorporated homeowners association who own property as tenants in common may be liable in tort for an injury that results from negligent maintenance of that property,

even if the members' own conduct was not responsible for the injury. Such liability derives from the law governing tenancy in common. See *Ruoff v. Harbor Creek Community Ass'n*, 10 Cal. App. 4th 1624, 13 Cal. Rptr. 2d 755 (1992); but see Civ. Code § 1365.9 (tort action arising from common ownership must be brought against association, and not against individual members, if liability insurance is maintained in specified amount).

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

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

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