

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

Unincorporated Associations

September 2003

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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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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September 19, 2003

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

The Law Revision Commission recommends a number of improvements to the law governing unincorporated associations, including the following:

- (1) Reorganize and revise Title 3 of the Corporations Code (“Unincorporated Associations”) to improve its structure and clarify its relation to other law.
- (2) Replace the patchwork of existing rules governing the liability of a member of a nonprofit association with a set of clear and comprehensive provisions based on the principle that a member is not liable for an obligation of the association solely as a consequence of being a member.
- (3) Simplify existing law governing ownership and transfer of property by an unincorporated association.

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

Respectfully submitted,

Frank Kaplan
Chairperson

UNINCORPORATED ASSOCIATIONS

Many private associations are not organized as corporations. An unincorporated association may be a for-profit or nonprofit group, such as a partnership, social club, charitable group, mutual aid society, homeowners association, labor union, political group, or religious society. Although some unincorporated associations are legally sophisticated, others are small, informal groups, without legal counsel. It is important that the law governing unincorporated associations be clear and understandable to a layperson.

Historically, an unincorporated association was not considered to be a legal entity separate from its members. It was treated as an aggregation of individuals.¹ An unincorporated association could not own or transfer property and could not sue or be sued in its own name. Members of an unincorporated association could be held jointly and severally liable for the liabilities of the group.

In 1996, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Unincorporated Nonprofit Association Act (“Uniform Act”) to address some of the problems that result from the historical view of unincorporated associations. The Uniform Act is narrow in its scope, focusing on three basic subjects: “authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.”²

1. “Associations ... are not bodies politic or corporations; nor are they recognized by the law as persons. They are mere aggregates of individuals called for convenience, like partnerships, by a common name.” *Grand Grove of United Ancient Order of Druids of California v. Garibaldi Grove*, 130 Cal. 116, 119, 62 P. 486 (1900).

2. Unif. Unincorporated Nonprofit Ass’n Act (1996) (prefatory note).

The Law Revision Commission has conducted a study to determine whether the Uniform Act should be adopted in California.³ The Commission recommends against adoption of the Uniform Act. Most of the issues that are addressed in the Uniform Act have already been addressed by statute in California.⁴ Adoption of the Uniform Act in California would unsettle existing law without providing significant substantive benefit. Interstate uniformity of law is not a significant advantage in this context because (1) the need to preserve aspects of California law that differ from the Uniform Act would make complete uniformity impossible to achieve,⁵ and (2) the Uniform Act has not been adopted in most states.⁶

3. See 2003 Cal. Stat. res. ch. 92.

4. Many of the prior reforms were enacted on the recommendation of the Law Revision Commission, after careful study. See *Suit by or Against an Unincorporated Association*, 8 Cal. L. Revision Comm'n Reports 901 (1966); *Service of Process on Unincorporated Associations*, 8 Cal. L. Revision Comm'n Reports 1403 (1967); *Service of Process on Unincorporated Associations*, 13 Cal. L. Revision Comm'n Reports 1657 (1976).

5. For example, California case law provides that, on dissolution, the remaining assets of an unincorporated association are disposed of according to the association's governing documents or, if the governing documents are silent as to the disposition of assets, are to be divided pro rata among the association's members. *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180 (1967). Section 9 of the Uniform Act governs distribution of the assets of a nonprofit association. However, it does not address voluntary dissolution, for-profit associations, or distribution of assets to members. If Section 9 of the Uniform Act were adopted in California, it would need to be significantly modified in order to preserve the full scope of existing law, thereby undermining interstate uniformity. Note that the proposed law would provide rules for distribution of assets that are generally consistent with case law and the law governing nonprofit corporations. See proposed Corp. Code §§ 18130-18135.

6. The Uniform Act has been adopted in Alabama, Arkansas, Colorado, District of Columbia, Delaware, Hawaii, Idaho, Texas, West Virginia, Wisconsin, and Wyoming. See Uniform Unincorporated Nonprofit Association Act Fact Sheet, <www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-uunaa.asp> (10/9/03).

The Commission recommends a number of improvements to existing California law governing unincorporated associations.

ORGANIZATION OF EXISTING LAW

The proposed law would recast existing law to improve its accessibility. Sections would be organized into a logical order, with appropriate headings, to better reflect the legal principles they address. Important terms would be defined and those definitions would be applied consistently.⁷

RELATION TO OTHER LAW

The proposed law includes provisions detailing its relation to other law. Corporations, government entities, partnerships, joint ventures, and limited liability companies are expressly excluded from application of the proposed law.⁸ Those entities are subject to comprehensive regulation by other statutes. The proposed law also includes a provision subordinating it to any inconsistent statute governing a specific type of association.⁹ Thus, the proposed law provides default rules that apply to the extent an association is not governed by other law.

PROPERTY POWERS

Under existing law, an unincorporated association can own and transfer property in its own name.¹⁰ The proposed law

7. Under existing law there are gaps and inconsistencies in the application of defined terms. For example, Corporations Code Section 24000 defines “unincorporated association” but that definition does not apply to other sections that use the same term (such as Corporations Code Section 20001).

8. See proposed Corp. Code § 18055 *infra*.

9. See proposed Corp. Code § 18060 *infra*.

10. See Corp. Code § 20001.

would simplify the existing provisions relating to property ownership and transfer by eliminating antiquated distinctions that developed as application of the law was incrementally extended to the various types of unincorporated association.¹¹

The proposed law would add a provision governing the disposition of an unincorporated association's assets on dissolution of the association. Under the proposed law, assets would be disposed of pursuant to the following priorities: first according to any applicable condition requiring that an asset be returned or transferred, then according to the terms of any applicable trust. Assets that are not subject to a condition or a trust would be distributed pursuant to the association's governing principles. If the association's governing principles are silent on distribution of assets on dissolution, the assets would be divided pro rata among the existing members.¹² This is consistent with case law¹³ and the law governing nonprofit corporations.¹⁴

Under the proposed law, within four years after distribution a creditor of a dissolved unincorporated association could recover assets distributed to a member.¹⁵ That is analogous to the right of a creditor of a dissolved nonprofit corporation to recover assets distributed on dissolution.¹⁶

11. See proposed Corp. Code §§ 18105, 18115, 18120 *infra*.

12. See proposed Corp. Code § 18130 *infra*.

13. See *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180 (1967) ("It is the general rule that upon the dissolution of a voluntary association its property should be distributed pro-rata among its members unless otherwise provided by its constitution or by-laws.") (citations omitted). See also *Lynch v. Spilman*, 67 Cal. 2d 251, 260, 431 P.2d 636, 62 Cal. Rptr. 12 (1967) ("property transferred to a corporation or other institution organized for a charitable purpose without a declaration of the use to which the property is to be put, is received and held by it 'in trust to carry out the objects for which the organization was created.'") (citations omitted).

14. See, e.g., Corp. Code §§ 8715-8717.

15. See proposed Corp. Code § 18135 *infra*.

16. See Corp. Code § 8723.

LIABILITY FOR OBLIGATION OF NONPROFIT ASSOCIATION

Contract Liability

*Security-First National Bank of Los Angeles v. Cooper*¹⁷ held that a person is not liable for a contractual obligation of an unincorporated association merely because the person is a member of the association. However, a member is liable if the member “expressly or impliedly authorizes or ratifies the contract.” In that case, authorization of a lease was inferred from the fact that members had signed the association’s bylaws.

In response to that decision, the Legislature enacted three rules that limit the liability of a member of a nonprofit association. Under these rules: (1) a member is not individually liable for an association debt or obligation relating to real property,¹⁸ (2) no presumption or inference of consent or agreement to a nonprofit association incurring an obligation may be drawn from the fact that a person is a member of the association or has signed its bylaws,¹⁹ and (3) a member can only assume responsibility for an association obligation in a signed writing that identifies the specific contract for which responsibility is assumed.²⁰

These rules are both too broad and too narrow. They are too broad because they seem to preclude member liability on a real property contract even where liability should properly be imposed (e.g., where the member has expressly assumed responsibility for the contract). They are too narrow because the principal limit on liability only applies to a limited class

17. 62 Cal. App. 2d 653, 145 P.2d 722 (1944).

18. See Corp. Code § 21100.

19. See Corp. Code § 21102.

20. See Corp. Code § 21101.

of contracts (e.g., a member would not be shielded from personal liability for a contract to purchase a vehicle).

The proposed law would replace existing statutory limits on contract liability with a more comprehensive and generally applicable set of rules:

- (1) A member, director, officer, or agent of a nonprofit association would not be liable for a debt, obligation, or liability of the association solely by reason of being a member, director, officer, or agent.²¹
- (2) A member of a nonprofit association would not be liable unless the member expressly assumes liability, expressly authorizes or ratifies a specific contract, or with knowledge of a contract, receives benefits under that contract. Liability on the basis of a received benefit would be limited to the value of the benefit received.²²
- (3) A director, officer, or agent of a nonprofit association would not be liable unless the director, officer, or agent expressly assumes liability, executes a contract without disclosing that the director, officer, or agent is acting as an agent of the association, or executes a contract without authority to do so.²³ The latter two grounds for liability are specific applications of general agency law.²⁴

Tort Liability

In *Orser v. George*,²⁵ the court considered whether the members of an unincorporated hunting club were liable for

21. See proposed Corp. Code § 18605 *infra*.

22. See proposed Corp. Code § 18610 *infra*.

23. See proposed Corp. Code § 18615 *infra*.

24. See Civ. Code §§ 2342 (warranty of authority), 2343(2) (bad faith representation of authority); 2 B. Witkin, Summary of California Law Agency §§ 144-48, at 141-44 (9th ed. 1987).

25. 252 Cal. App. 2d 660, 60 Cal. Rptr. 708 (1967).

one member's accidental shooting of a non-member. The court noted:

It has been held that an unincorporated association is bound to use the same care as a natural person; but that mere membership does not make all members liable for unlawful acts of other members without their participation, knowledge or approval. Vicarious liability may exist, however, based upon ... personal participation in an unlawful activity or setting it in motion.²⁶

In *Steuer v. Phelps*,²⁷ the court considered whether the members of a small unincorporated church group, with no officers or management, were liable for one member's negligence while driving on group business. The court noted:

There is evidence that each individual member, rather than an officer, manager, or committee, participated directly in entrusting the car to Mrs. Henry to operate exclusively for purposes of the association. Under the doctrine of respondeat superior, it is elemental that one who entrusts another with the operation of his automobile is liable for the negligent operation of the vehicle, even though he neither authorized nor approved the driving in a negligent manner. ... Mere authorization to Mrs. Henry to operate the car fastens liability upon the individual members who gave that authorization.²⁸

Thus, it appears that a member of a nonprofit association may be vicariously liable for the tortious conduct of an agent or other member of the association, if the member personally participates in the tort (in which case the member is probably liable for the member's own conduct, rather than vicariously liable for the agent's conduct), or authorizes or "sets in motion" the agent's actions.

26. *Id.* at 670-71.

27. 41 Cal. App. 3d 468, 116 Cal. Rptr. 61 (1974).

28. *Id.* at 472.

Generally, the law does not hold a person liable for the wrongs of another. However, vicarious liability has been justified as a deliberate allocation of risk to the party best able to bear it:

Although earlier authorities sought to justify the respondeat superior doctrine on such theories as “control” by the master of the servant, the master’s “privilege” in being permitted to employ another, the third party’s innocence in comparison to the master’s selection of the servant, or the master’s “deep pocket” to pay for the loss, “the modern justification for vicarious liability is a rule of policy, a deliberate allocation of risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer’s enterprise, are placed upon that enterprise itself, as a required cost of doing business. They are placed upon the employer because, having engaged in an enterprise which will, on the basis of past experience, involve harm to others through the torts of employees, and sought to profit by it, it is just that he, rather than the innocent injured plaintiff, should bear them; and because he is better able to absorb them, and to distribute them, through prices, rates or liability insurance, to the public, and so to shift them to society, to the community at large.”²⁹

This rationale is less persuasive when the principal is a nonprofit group, which does not “profit” by its activity and has little opportunity to spread risk to society at large by raising prices on goods or services. Extending vicarious liability to individual members of the group would be even harder to justify.

The proposed law would provide that a member, director, officer, or agent of a nonprofit association is not liable for the torts of an agent or member of the association unless (1) the

29. *Hinman v. Westinghouse Elec. Co.*, 2 Cal. 3d 956, 959-60, 471 P.2d 988, 88 Cal. Rptr. 188 (1970) (quoting Prosser, *Law of Torts* 471 (3d. ed. 1964)).

member, director, officer, or agent expressly assumes liability for any injury caused by the activity, or (2) the tortious conduct of the member, director, officer, or agent causes the injury.³⁰ In other words, a member, director, officer, or agent of a nonprofit association would not be vicariously liable for the torts of the association.

Alter Ego Liability

The proposed law provides that a member of a nonprofit association may be subject to liability for a debt, obligation, or liability of the association under common law principles governing alter ego liability of shareholders of a corporation, taking into account differences in form between a nonprofit association and a corporation.³¹ This would allow a court to disregard a nonprofit association's form if a member is misusing that form to defraud others or work an injustice.

30. See proposed Corp. Code § 18620 *infra*.

31. See proposed Corp. Code § 18630 *infra*.

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PROPOSED LAW
CORPORATIONS CODE
TITLE 3. UNINCORPORATED
ASSOCIATIONS

Corp. Code §§ 18000-18270 (added). General Provisions

SEC. _____. Part 1 (commencing with Section 18000) is added to Title 3 of the Corporations Code, to read:

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

§ 18000. Application of definitions

18000. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this title.

Comment. Section 18000 is new.

§ 18005. Director

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

Comment. Section 18005 is new. See also Sections 8 (“writing” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

§ 18010. Governing principles

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

members. If there is no written provision governing an issue, the association's governing principles regarding that issue may be inferred from its established practices. For the purpose of this section, "established practices" means the practices used by an unincorporated association without material change or exception during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.

Comment. Section 18010 is new. See also Sections 8 ("writing" defined), 18015 ("member" defined), 18035 ("unincorporated association" defined).

§ 18015. Member

18015. (a) If the governing principles of an unincorporated association define the membership of the association, "member" has the meaning provided by the governing principles.

(b) If the governing principles of an unincorporated association do not define the membership of the association, "member" means a person who, pursuant to the governing principles of the unincorporated association, has a right to participate in the selection of persons authorized to manage the affairs of the unincorporated association or in the development of policy of the unincorporated association, but does not include a person who participates solely as director, officer, or agent of the association.

Comment. Section 18015 is new. Subdivision (a) recognizes the authority of an unincorporated association to determine its own membership requirements. Nothing in this subdivision is intended to authorize unlawful discrimination by an unincorporated association in its membership policy.

Subdivision (b) is drawn from Section 1(1) of the Uniform Unincorporated Nonprofit Association Act (1996). However, subdivision (b) adds an exception for a person who participates in association decisionmaking solely as a director, officer, or agent of the association. This does not preclude a director, officer, or agent from being a member, if that person qualifies as a member for another reason. For example, if

an association's employee assists in developing association policy, that participation does not make the employee a member of the association. However, the fact that the employee serves as an agent of the association does not preclude the employee from being a member under subdivision (a).

See also Sections 18005 ("director" defined), 18010 ("governing principles" defined), 18025 ("officer" defined), 18030 ("person" defined), 18035 ("unincorporated association" defined).

§ 18020. Nonprofit association

18020. (a) "Nonprofit association" means an unincorporated association with a primary common purpose other than to operate a business for profit.

(b) A nonprofit association may carry on a business for profit and apply any profit that results from the business activity to any activity in which it may lawfully engage.

Comment. Subdivision (a) of Section 18020 defines "nonprofit association" for the purpose of this title. See Section 18035 ("unincorporated association" defined). *Cf.* Sections 16101(7) ("partnership" defined), 16202 (formation of partnership). Unincorporated associations organized primarily to carry on a business for profit include a business trust, real estate investment trust, and joint stock association.

Subdivision (b) recognizes that a nonprofit entity may carry on some for-profit business activity. See, e.g., Sections 5140(*l*) (powers of nonprofit public benefit corporation), 7140(*l*) (powers of nonprofit mutual benefit corporation).

§ 18025. Officer

18025. "Officer" means a natural person serving as an unincorporated association's chair, president, secretary, chief financial officer, or other position of authority that is established pursuant to the association's governing principles.

Comment. Section 18025 is new. See also Sections 18010 ("governing principles" defined), 18035 ("unincorporated association" defined).

§ 18030. Person

18030. “Person” includes a natural person, corporation, partnership or other unincorporated organization, government or governmental subdivision or agency, or any other entity.

Comment. Section 18030 continues and generalizes former Section 24000(b). See also Section 18 (“person” defined for purposes of code).

§ 18035. Unincorporated association

18035. (a) “Unincorporated association” means an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not.

(b) Joint tenancy, tenancy in common, community property, or other form of property tenure does not by itself establish an unincorporated association, even if coowners share ownership of the property for a common purpose.

(c) Marriage or creation of a registered domestic partnership does not by itself establish an unincorporated association.

Comment. Subdivision (a) of Section 18035 is drawn from former Section 24000. Subdivision (b) is drawn from Section 16202(c)(1). Subdivision (c) makes clear that marriage or creation of a registered domestic partnership does not by itself create an unincorporated association. This does not prevent spouses or domestic partners from forming an unincorporated association for any purpose beyond the purposes inherent in marriage or registered domestic partnership. See also Sections 18030 (“person” defined), 18055 (exempt persons), 18060 (relation to other law).

CHAPTER 2. APPLICATION OF TITLE

§ 18055. Exempt persons

18055. This title does not apply to any of the following persons:

- (a) A corporation.
- (b) A government or governmental subdivision or agency.
- (c) A partnership or joint venture.
- (d) A limited liability company.

Comment. Section 18055 lists entities that are not subject to this title because they are governed by other law. Subdivision (b) is drawn from former Section 24000. Section 18200(g) provides an exception to the general rule provided in this section.

§ 18060. Relation to other law

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.

Comment. Section 18060 is new. It makes clear that the general provisions of this title are subordinate to entity-specific statutes. For example, Section 18105 authorizes an unincorporated association to own property. Insurance Code Section 9089 provides a more restrictive property ownership rule specific to a fraternal fire insurer. An unincorporated fraternal fire insurer would be subject to both sections. To the extent they are inconsistent, Insurance Code Section 9089 would prevail. See also Section 18035 (“unincorporated association” defined).

§ 18065. Relation to law of agency

18065. Except to the extent this title provides a specific rule, the general law of agency, including Article 2 (commencing with Section 2019) of Chapter 2 of Title 6 of, and Title 9 (commencing with Section 2295) of, Part 4 of Division 3 of the Civil Code, applies to an unincorporated association.

Comment. Section 18065 is new. See also Sections 18035 (“unincorporated association” defined), 18615 (contract liability of agent of nonprofit association), 18620 (tort liability).

§ 18070. Continuation and restatement of prior law

18070. A provision of this title, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment, and a reference in a statute to the provision shall be deemed to

include a reference to the previously existing provision unless a contrary intent appears.

Comment. The first part of Section 18070 is drawn from Section 2. The last clause makes clear that a statutory reference to a new provision of this title includes a reference to the former law from which it is drawn. *Cf.* Gov't Code § 9604 (reference to previously existing provision deemed reference to restatement or continuation).

CHAPTER 3. PROPERTY

§ 18100. Membership interest is personal property

18100. The interest of a member in an unincorporated association is personal property.

Comment. Section 18100 continues former Section 20000 without substantive change. A member has no property interest in association assets that are dedicated to a public or charitable purpose. See also Sections 18015 (“member” defined), 18035 (“unincorporated association” defined).

§ 18105. Property powers

18105. An unincorporated association may, in its name, acquire, hold, manage, encumber, or transfer an interest in real or personal property.

Comment. Section 18105 continues the substance of former Section 20001, except that the limitation on the permissible purpose for which property is acquired, held, managed, encumbered, or transferred is not continued. Under this section, an unincorporated association has all of the powers granted under former Section 20001, including the power to purchase, receive, own, hold, lease, mortgage, pledge, or encumber, by deed of trust or otherwise, manage, and sell property. See also Section 18035 (“unincorporated association” defined).

§ 18110. Association property

18110. Property acquired by or for an unincorporated association is property of the unincorporated association and not of the members individually, regardless of how title is held.

Comment. Section 18110 is new. See also Sections 18015 (“member” defined), 18035 (“unincorporated association” defined).

§ 18115. Execution of real property acquisition, transfer, or encumbrance

18115. The acquisition, transfer, or encumbrance of an interest in real property by an unincorporated association shall be executed by its president and secretary or other comparable officers, or by a person specifically designated by a resolution adopted by the association, or by a committee or other body or person authorized to act by the governing principles of the association.

Comment. Section 18115 continues the first paragraph of former Section 20002 without substantive change, except that the special, more restrictive, rule for fraternal or benevolent societies and labor organizations has not been continued. These organizations are now subject to the same rule as any other form of unincorporated association. See also Sections 18025 (“officer” defined), 18030 (“person” defined), 18035 (“unincorporated association” defined).

§ 18120. Statement of authority

18120. (a) An unincorporated association may record in a county in which it has an interest in real property a verified and acknowledged statement of authority stating the name of the association, and the names, title, or capacity of its officers and other persons who are authorized on its behalf to acquire, transfer, or encumber real property. For the purposes of this section, “statement of authority” includes a certified copy of a statement recorded in another county.

(b) An unincorporated association may revoke a statement of authority by recording either of the following documents in the county in which the statement of authority is recorded:

(1) A new statement of authority that satisfies the requirements of subdivision (a). The new statement supersedes the revoked statement.

(2) A verified and acknowledged document that expressly revokes the statement of authority.

(c) It shall be conclusively presumed in favor of a bona fide transferor, purchaser or encumbrancer for value of real property of the association located in the county in which a statement of authority has been recorded pursuant to subdivision (a), that a person designated in the statement is authorized to acquire, transfer, or encumber real property on behalf of the association.

(d) The presumption provided in subdivision (c) does not apply if, before the acquisition, transfer, or encumbrance, either of the following occurs:

(1) The statement of authority is revoked by the unincorporated association.

(2) A person claiming to be a member, director, or officer of the unincorporated association records, in the county in which the property is located, a verified and acknowledged document stating that the statement of authority is erroneous or unauthorized.

Comment. Section 18120 continues the substance of the second paragraph of former Section 20002. Subdivision (b) is new.

Former Section 20002 incorporated definitions set out in former Section 15010.5. The obsolete definitions have not been continued. See also Sections 18005 (“director” defined), 18015 (“member” defined), 18025 (“officer” defined), 18030 (“person” defined), 18035 (“unincorporated association” defined).

§ 18125. Limit on assertion of unauthorized action

18125. No limitation on the power of an unincorporated association to acquire, hold, manage, pledge, encumber, or transfer an interest in real or personal property, or the manner of exercise of those powers, shall be asserted as between the unincorporated association or a member of the unincorporated association and a third person, except in the following proceedings:

(a) A proceeding to enjoin an unauthorized act, or the continuation of an unauthorized act, where a third person has not yet acquired rights that would be adversely affected by the injunction, or where, at the time of the unauthorized act, the third person had actual knowledge that the act was unauthorized.

(b) A proceeding to dissolve the unincorporated association.

(c) A proceeding against a director, officer, or agent of the unincorporated association for violation of that person's authority.

Comment. Section 18125 is drawn from Section 208(a). It protects third parties from claims that an action of an unincorporated association is unauthorized or improperly executed. See also Sections 18005 ("director" defined), 18015 ("member" defined), 18025 ("officer" defined), 18035 ("unincorporated association" defined).

§ 18130. Disposition of assets of dissolved association

18130. After all of the known debts and liabilities of an unincorporated association in the process of winding up its affairs have been paid or adequately provided for, the assets of the association shall be distributed in the following manner:

(a) Assets held upon a valid condition requiring return, transfer, or conveyance of the assets, which condition has occurred or will occur, shall be returned, transferred, or conveyed in accordance with the condition.

(b) After complying with subdivision (a), any remaining assets that are held in trust shall be distributed in accordance with the trust.

(c) After complying with subdivisions (a) and (b), any remaining assets shall be distributed in accordance with the governing principles of the association. If the governing principles do not provide the manner of distribution of the assets, the assets shall be distributed pro rata to the current members of the association.

Comment. Section 18130 is new. It provides rules for distribution of assets of a dissolving unincorporated association that remain after the association has satisfied its known debts and liabilities.

Subdivision (a) is drawn from Section 8715.

Subdivision (b) governs distribution of assets that are held in trust and are not subject to a valid condition requiring return, transfer, or conveyance. See *Lynch v. Spilman*, 67 Cal. 2d 251, 260, 431 P.2d 636, 62 Cal. Rptr. 12 (1967) (“property transferred to a corporation or other institution organized for a charitable purpose without a declaration of the use to which the property is to be put, is received and held by it ‘in trust to carry out the objects for which the organization was created.’”) (citations omitted).

Subdivision (c) governs assets that are not subject to a valid condition requiring return, transfer, or conveyance, and are not subject to a trust. It is consistent with the holding in *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180 (1967) (“It is the general rule that upon the dissolution of a voluntary association its property should be distributed pro-rata among its members unless otherwise provided by its constitution or by-laws.”) (citations omitted).

Section 18060 provides that a statute specific to a particular type of unincorporated association prevails over a provision of this title, to the extent of any inconsistency. For example, a statutory rule governing disposition of the property of a dissolved cemetery association would prevail over provisions of this section, to the extent of any inconsistency. See, e.g., Health & Safety Code §§ 7925 (limitation on proceeds of sale of cemetery land), 8825-8829 (dedication of pioneer memorial park).

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

§ 18135. Recovery of distributed assets

18135. (a) Notwithstanding Section 18260, a cause of action against an unincorporated association may be enforced against a person who received assets distributed under Section 18130. Liability under this section shall be limited to the value of the assets distributed to the person or the person's pro rata share of the claim against the unincorporated association, whichever is less.

(b) An action under this section shall be commenced before the earlier of the following dates:

(1) Expiration of the statute of limitations applicable to the cause of action.

(2) Four years after dissolution of the unincorporated association. This paragraph does not apply in a quiet title action.

Comment. Section 18135 is new. See also Sections 18015 (“member” defined), 18030 (“person” defined), 18035 (“unincorporated association” defined).

CHAPTER 4. DESIGNATION OF AGENT FOR SERVICE OF PROCESS

§ 18200. Statement of unincorporated association

18200. (a) An unincorporated association may file with the Secretary of State, on a form prescribed by the Secretary of State, a statement containing either of the following:

(1) A statement designating the location and complete address of the unincorporated association’s principal office in this state. Only one place may be designated.

(2) A statement (i) designating the location and complete address of the unincorporated association’s principal office in this state in accordance with paragraph (1) or, if the unincorporated association does not have an office in this state, designating the complete address of the unincorporated association to which the Secretary of State shall send any notices required to be sent to the association under Sections 18210 and 18215, and (ii) designating as agent of the association for service of process any natural person residing in this state or any corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated.

(b) If a natural person is designated as agent for service of process, the statement shall include the person’s complete business or residence address. If a corporate agent is designated, no address for it shall be included.

(c) Filing is deemed complete on acceptance by the Secretary of State of the statement, a copy of the statement, and the filing fee. The Secretary of State shall return the copy of the statement to the unincorporated association, with notations that indicate the file number and filing date of the original.

(d) At any time, an unincorporated association that has filed a statement under this section may file a new statement superseding the last previously filed statement. If the new statement does not designate an agent for service of process, the filing of the new statement shall be deemed to revoke the designation of an agent previously designated. A statement filed under this section expires five years from December 31 following the date it was filed in the office of the Secretary of State, unless previously superseded by the filing of a new statement.

(e) Delivery by hand of a copy of any process against the unincorporated association (1) to any natural person designated by it as agent, or (2) if the association has designated a corporate agent, to any person named in the last certificate of the corporate agent filed pursuant to Section 1505 at the office of the corporate agent shall constitute valid service on the association.

(f) For filing a statement as provided in this section, the Secretary of State shall charge and collect the fee provided in paragraph (1) of subdivision (b) of Section 12191 of the Government Code for filing a designation of agent.

(g) Notwithstanding Section 18055, a statement filed by a partnership under former Section 24003 is subject to this chapter until the statement is revoked or expires.

Comment. Section 18200 continues former Section 24003 without substantive change. Subdivision (g) is added as a transitional provision to make clear that this chapter applies to a statement filed by a partnership under former Section 24003, despite language in Section 18055 providing that this title does not apply to a partnership. See Sections

16309-16310 (partnership's designation of agent for service of process). See also Section 18035 ("unincorporated association" defined).

§ 18205. Numbering, filing, and indexing of statements

18205. (a) The Secretary of State shall mark each statement filed under Section 18200 with a consecutive file number and the date of filing. In lieu of retaining the original statement, the Secretary of State may retain a copy in accordance with Section 14756 of the Government Code.

(b) The Secretary of State shall index each statement filed under Section 18200 according to the name of the unincorporated association as set out in the statement and shall enter in the index the file number and the address of the association as set out in the statement and, if an agent for service of process is designated in the statement, the name of the agent and, if a natural person is designated as the agent, the address of that person.

(c) Upon request of any person, the Secretary of State shall issue a certificate showing whether, according to the Secretary of State's records, there is on file on the date of the certificate, any presently effective statement filed under Section 18200 for an unincorporated association using a specific name designated by the person making the request. If a statement is on file, the certificate shall include the information required by subdivision (b) to be included in the index. The fee for the certificate is the fee provided in Section 12183 of the Government Code.

(d) When a statement has expired under subdivision (d) of Section 18200, the Secretary of State shall enter that fact in the index together with the date of the expiration.

(e) Four years after a statement has expired, the Secretary of State may destroy or otherwise dispose of the statement and delete information concerning that statement from the index.

Comment. Section 18205 continues former Section 24004 without substantive change. See also Section 18030 (“person” defined), 18035 (“unincorporated association” defined).

§ 18210. Revocation or resignation of agency

18210. (a) An agent designated by an unincorporated association for the service of process may file with the Secretary of State a signed and acknowledged written statement of resignation as agent of the unincorporated association. The resignation is effective when filed. The Secretary of State shall mail written notice of the filing to the unincorporated association at its address set out in the statement filed by the association.

(b) An unincorporated association may at any time file with the Secretary of State a revocation of a designation of an agent for service of process. The revocation is effective when filed.

(c) Notwithstanding subdivisions (a) and (b), service made on an agent designated by an unincorporated association for service of process in the manner provided in subdivision (e) of Section 18200 is effective if made within 30 days after the statement of resignation or the revocation is filed with the Secretary of State.

Comment. Section 18210 continues former Section 24005 without substantive change. See also Section 18035 (“unincorporated association” defined).

§ 18215. Notice of expiration

18215. Between the first day of October and the first day of December immediately preceding the expiration date of a statement filed under Section 18200, the Secretary of State shall send by first class mail a notice, indicating the date on which the statement will expire and the file number assigned to the statement, to the unincorporated association at its address as set out in the statement. Neither the failure of the Secretary of State to mail the notice as provided in this

section nor the failure of the notice to reach the unincorporated association shall continue the statement in effect after the date of its expiration. Neither the state nor any officer or employee of the state is liable for damages for failure to mail the notice as required by this section.

Comment. Section 18215 continues former Section 24006 without substantive change. See also Section 18035 (“unincorporated association” defined).

§ 18220. Service of process on unincorporated associations in certain cases

18220. If designation of an agent for the purpose of service of process has not been made as provided in Section 18200, or if the agent designated cannot with reasonable diligence be found at the address specified in the index referred to in Section 18205 for delivery by hand of the process, and it is shown by affidavit to the satisfaction of a court or judge that process against an unincorporated association cannot be served with reasonable diligence upon the designated agent by hand or the unincorporated association in the manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or subdivision (a) of Section 415.20 of the Code of Civil Procedure, the court or judge may make an order that service be made upon the unincorporated association by delivery of a copy of the process to one or more of the association’s members designated in the order and by mailing a copy of the process to the association at its last known address. Service in this manner constitutes personal service upon the unincorporated association.

Comment. Section 18220 continues former Section 24007 without substantive change. See also Sections 18015 (“member” defined), 18035 (“unincorporated association” defined).

CHAPTER 5. LIABILITY AND ENFORCEMENT OF JUDGMENTS

§ 18250. Liability of unincorporated association

18250. Except as otherwise provided by law, an unincorporated association is liable for its act or omission and for the act or omission of its director, officer, agent, or employee, acting within the scope of the office, agency, or employment, to the same extent as if the association were a natural person.

Comment. Section 18250 continues the substance of former Section 24001, with two exceptions:

(1) Language providing that former Section 24001 did not affect the liability of an association to a member of the association has not been continued. It is now clear that an unincorporated association may be liable to a member of the association. See *Marshall v. ILWU*, 57 Cal. 2d 781, 371 P.2d 987, 22 Cal. Rptr. 211 (1962) (member can sue labor union for negligent acts that member neither participated in nor authorized); *White v. Cox*, 17 Cal. App. 3d 824, 828, 95 Cal. Rptr. 259 (1971) (“unincorporated associations are now entitled to general recognition as separate legal entities and ... as a consequence a member of an unincorporated association may maintain a tort action against his association.”).

(2) The phrase “except as otherwise provided by statute” has been broadened. Both statutory and common law limitations on the liability of an unincorporated association should govern. For example, in *Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n*, 21 Cal. 4th 249, 253, 980 P.2d 940, 87 Cal. Rptr. 237 (1999), the court held that courts should defer to a decision of a duly-constituted community association board, where the board, “upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development’s common areas....” Section 18250 does not override the rule stated in that case.

See also Sections 18005 (“director” defined), 18025 (“officer” defined), 18035 (“unincorporated association” defined).

§ 18260. Enforcement of money judgment against unincorporated association

18260. A money judgment against an unincorporated association, whether organized for profit or not, may be enforced only against the property of the association.

Comment. Section 18260 continues former Section 24002 without substantive change. Nothing in the section precludes the plaintiff from also resorting to the individual property of a member of the association to satisfy a judgment against the member in a case where the member was also a party defendant. See also Sections 18035 (“unincorporated association” defined), 18270 (enforcement of judgment against member, officer, or agent of nonprofit association).

§ 18270. Enforcement of judgment against member, officer, or agent

18270. (a) A judgment creditor of a member, director, officer, or agent of an unincorporated association may not levy execution against the assets of the member, director, officer, or agent to satisfy a judgment based on a claim against the unincorporated association unless a judgment based on the same claim has been obtained against the unincorporated association and any of the following conditions is satisfied:

(1) A writ of execution on the judgment against the unincorporated association has been returned unsatisfied in whole or in part.

(2) The unincorporated association is a debtor in bankruptcy.

(3) The member, director, officer, or agent has agreed that the creditor need not exhaust the assets of the unincorporated association.

(4) A court grants permission to the judgment creditor to levy execution against the assets of a member, director, officer, or agent based on a finding that the assets of the unincorporated association subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the unincorporated association is excessively

burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

(b) Nothing in this section affects the right of a judgment creditor to levy execution against the assets of a member, director, officer, or agent of an unincorporated association if the claim against the member, director, officer, or agent is not based on a claim against the unincorporated association.

Comment. Section 18270 is drawn from Section 16307(d). In general, a judgment against an unincorporated association can only be satisfied from the property of the association. See Section 18250. However, if there is also a judgment against a member, officer, or agent of the unincorporated association that is based on the same claim as the judgment against the unincorporated association, the judgment against the member, officer, or agent may be satisfied from that person's assets pursuant to this section. See also Sections 18015 ("member" defined), 18025 ("officer" defined), 18035 ("unincorporated association" defined).

PART 2. NONPROFIT ASSOCIATIONS

Corp. Code §§ 18605-18640 (added). Liability

SEC. ____ Chapter 1 (commencing with Section 18605) is added to Part 2 of Title 3 of the Corporations Code, to read:

CHAPTER 1. LIABILITY

§ 18605. No liability based solely on membership or agency

18605. A member, director, officer, or agent of a nonprofit association is not liable for a debt, obligation, or liability of the association solely by reason of being a member, director, officer, or agent.

Comment. Section 18605 codifies the general rule that a member of an unincorporated nonprofit association is not liable for the association's debts, obligations, or liabilities solely by reason of membership. See *Security-First National Bank of Los Angeles v. Cooper*, 62 Cal. App. 2d 653, 667, 145 P.2d 722 (1944) ("Membership, as such, imposes no personal liability for the debts of the association") (quoting 7 C.J.S. 78);

Orser v. George, 252 Cal. App. 2d 660, 670-71, 60 Cal. Rptr. 708 (1967) (“mere membership does not make all members liable for unlawful acts of other members without their participation, knowledge or approval.”).

The general rule is extended to directors, officers, and agents of an association. This is consistent with existing law providing that an agent is not liable for obligations of a disclosed principal or for torts of the principal, where the agent is personally innocent of wrongdoing. See 2 B. Witkin, *Summary of California Law Agency* § 145, at 141, § 151, at 145 (9th ed. 1987).

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

§ 18610. Contract liability of member of nonprofit association

18610. A member of a nonprofit association is not liable for a contractual obligation of the association unless one of the following conditions is satisfied:

(a) The member expressly assumes personal responsibility for the obligation.

(b) The member expressly authorizes or ratifies the specific contract. This subdivision does not apply if the member authorizes or ratifies a contract solely in the member’s capacity as a director, officer, or agent of the association.

(c) With notice of the contract, the member receives a benefit under the contract. Liability under this subdivision is limited to the value of the benefit received.

Comment. Section 18610 is new. It specifies the scope of personal liability of a member of a nonprofit association for a contractual obligation of the association.

Subdivision (a) provides that a member is liable where the member has personally guaranteed a debt or otherwise assumed responsibility for a contract. A promise to answer for the debt of another is subject to the statute of frauds. Civ. Code § 1624(a)(2).

Subdivision (b) is consistent with the common law rule that a member of a nonprofit association is liable for a contractual obligation that the member has expressly authorized or ratified. See *Security-First National Bank of Los Angeles v. Cooper*, 62 Cal. App. 2d 653, 145 P.2d 722 (1944). Subdivision (b) does not continue the common law rule that a member is liable for a contract that the member has impliedly authorized

or ratified. Authorization and ratification may not be inferred from mere participation in the governance of the association — express approval of the contract is required. For example, approval of bylaws, election of officers, or participation in a vote in which the member votes against authorization or ratification of a contract would not constitute express authorization or ratification of a contract.

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

§ 18615. Contract liability of director, officer, or agent of nonprofit association

18615. A director, officer, or agent of a nonprofit association is not liable for a contractual obligation of the association unless one of the following conditions is satisfied:

(a) The director, officer, or agent expressly assumes responsibility for the obligation.

(b) The director, officer, or agent executes the contract without disclosing that the director, officer, or agent is acting on behalf of the association.

(c) The director, officer, or agent executes the contract without authority to execute the contract.

Comment. Section 18615 is new. It specifies the scope of liability of a director, officer, or agent of a nonprofit association for a contractual obligation of the association.

Subdivision (a) provides that a director, officer, or agent is liable where the director, officer, or agent has guaranteed a debt or otherwise assumed responsibility for a contract. A promise to answer for the debt of another is subject to the statute of frauds. Civ. Code § 1624(a)(2).

Subdivision (b) is consistent with existing law providing that an agent is not liable for a contract entered into on behalf of a disclosed principal. See 2 B. Witkin, *Summary of California Law Agency* §§ 144-48, at 141-44 (9th ed. 1987).

Subdivision (c) provides that a director, officer, or agent is liable for a contract executed on behalf of an association if the director, officer, or agent lacks authority to execute the contract. See Civ. Code §§ 2342 (warranty of authority), 2343(2) (bad faith representation of authority); B. Witkin, *supra* §§ 144-45, at 141-42.

See also Sections 18005 (“director” defined), 18020 (“nonprofit association” defined), 18025 (“officer” defined).

§ 18620. Tort liability

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

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

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

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

§ 18630. Alter ego liability of member of nonprofit association

18630. Notwithstanding any other provision of this chapter, a member of a nonprofit association may be subject to liability for a debt, obligation, or liability of the association under common law principles governing alter ego liability of shareholders of a corporation, taking into account differences in form between a nonprofit association and a corporation.

Comment. Section 18630 is new. It provides that the common law alter ego doctrine applicable to corporations may also be applied to nonprofit associations. The alter ego doctrine is summarized in *Communist Party of the United States v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980, 993, 41 Cal. Rptr. 2d 618 (1995) (“In general, the two requirements for applying the alter ego doctrine are that (1) there is such a unity of interest and ownership between the corporation and the individual or organization controlling it that their separate personalities no longer exist, and (2) failure to disregard the corporate entity would sanction a fraud or promote injustice.”).

In applying the alter ego doctrine to a nonprofit association, a court should take into account differences in form between a nonprofit corporation and a nonprofit association. For example, failure to observe

corporate formalities may be a factor in a decision to impose alter ego liability on shareholders of a corporation. Although it would be unreasonable to expect a nonprofit association to observe the governance formalities required of a corporation, it might be reasonable to expect that a nonprofit association will follow the governance formalities it has established for itself. Failure to do so may indicate that the personality of a nonprofit association and its members are not truly separate.

Failure to provide a corporation with reasonably adequate assets to cover its prospective liabilities may justify imposing alter ego liability on shareholders of a corporation. In *Automotriz del Golfo de California v. Resnick*, 47 Cal. 2d 792, 306 P.2d 1 (1957), the court relied in part on inadequate capitalization to justify imposing alter ego liability:

If a corporation is organized and carries on business without substantial capital in such a way that the corporation is likely to have no sufficient assets available to meet its debts, it is inequitable that shareholders should set up such a flimsy organization to escape personal liability. The attempt to do corporate business without providing any sufficient basis of financial responsibility to creditors is an abuse of the separate entity and will be ineffectual to exempt the shareholders from corporate debts. It is coming to be recognized as the policy of the law that shareholders should in good faith put at the risk of the business unencumbered capital reasonably adequate for its prospective liabilities. If the capital is illusory or trifling compared with the business to be done and the risks of loss, this is a ground for denying the separate entity privilege.

Id. at 797 quoting Ballantine on Corporations (1946). This principle could also be applied to a nonprofit association. However, it would be necessary to carefully consider the nature of the association to determine what level of unencumbered capital would be reasonably adequate for the association's prospective liabilities. For example, a small historical society, operating a museum that is open to the public, should probably insure against liability for any injuries suffered by the public while in the museum. Such insurance might reasonably be considered adequate capitalization. On the other hand, an association that publishes controversial and potentially defamatory commentaries about public figures might reasonably anticipate greater risk of liability. If the association fails to insure against that risk or maintain a cash reserve to satisfy any judgment against it, a court might conclude that the association is inadequately capitalized.

If, as an incident to its nonprofit purpose, a nonprofit association conducts for-profit business activity, the appropriate levels of capitalization and insurance for that activity would be analogous to the

capitalization and insurance that a for-profit entity should carry when conducting similar business activity.

See also Sections 18015 (“member” defined), 18020 (“nonprofit association” defined).

§ 18640. Fraudulent transfers

18640. Nothing in this chapter limits application of the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

Comment. Section 18640 is new. It makes clear that limits on liability provided in this chapter do not affect the application of the Uniform Fraudulent Transfer Act (Civ. Code §§ 3439-3439.12). Thus, if an insolvent association transfers assets to a member (e.g., through a general distribution or redemption of membership), those assets may be recoverable by a creditor, regardless of whether the member is liable for the debt.

CONFORMING REVISIONS AND REPEALS

Bus. & Prof. Code § 17912 (amended). Real estate investment trusts

SEC. _____. Section 17912 of the Business and Professions Code is amended to read:

17912. This chapter does not apply to a real estate investment trust as defined in Section 23000 of the Corporations Code and *that* has a statement on file, pursuant to Section 24003 ~~18200~~ of the Corporations Code, designating an agent for service of process or has qualified to do business under Chapter 21 (commencing with Section 2100) of *Division 1* of the Corporations Code.

Comment. Section 17912 is amended to correct cross-references to former Corporations Code Section 24003 and to correct technical errors.

Code Civ. Proc. § 395.2 (amended). Place of trial in action against unincorporated association

SEC. _____. Section 395.2 of the Code of Civil Procedure is amended to read:

395.2. If an unincorporated association has filed a statement with the Secretary of State pursuant to ~~Section 24003 of the Corporations Code~~ listing *statute, designating* its principal office in this state, the proper county for the trial of an action against ~~sueh~~ *the* unincorporated association is the same as it would be if the unincorporated association were a corporation and, for the purpose of determining ~~sueh~~ *the proper* county, the principal place of business of the unincorporated association shall be deemed to be the principal office in this state listed in the statement.

Comment. Section 395.2 is amended to reflect that an unincorporated association may file a statement designating its principal office under sections other than former Corporations Code Section 24003 (continued without substantive change in Corporations Code Section 18200). See, e.g., Corp. Code §§ 15621(a)(4) (limited partnership), 16309 (general partnership), 16953(a)(3) (limited liability partnership), 17051(a)(4) (limited liability company), 17060(a)(2) (limited liability company).

Code Civ. Proc. § 416.40 (amended). Service on unincorporated association

SEC. _____. Section 416.40 of the Code of Civil Procedure is amended to read:

416.40. A summons may be served on an unincorporated association (including a partnership) by delivering a copy of the summons and of the complaint:

(a) If the association is a general or limited partnership to the person designated as agent for service of process as ~~provided in Section 24003 of the Corporations Code~~ *in a statement filed with the Secretary of State* or to a general partner or the general manager of the partnership;

(b) If the association is not a general or limited partnership, to the person designated as agent for service of process as ~~provided in Section 24003 of the Corporations Code~~ *in a statement filed with the Secretary of State* or to the president or other head of the association, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the association to receive service of process;

(c) When authorized by ~~Section 15700 or 24007~~ *18220* of the Corporations Code, as provided by ~~the applicable~~ *that* section.

Comment. Section 416.40 is amended to reflect that an unincorporated association may designate an agent for service of process under sections other than former Corporations Code Section 24003 (continued without substantive change in Corporations Code Section 18200). See, e.g., Corp. Code §§ 15621(a)(4) (limited partnership), 16309 (general partnership), 16953(a)(3) (limited liability partnership), 17051(a)(4) (limited liability company), 17060(a)(2) (limited liability company).

Corp. Code § 174.5 (amended). “Other business entity” defined

SEC. _____. Section 174.5 of the Corporations Code is amended to read:

174.5. “Other business entity” means a domestic or foreign limited liability company, limited partnership, general

partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (7) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated association” has the meaning set forth in Section 24000 18035.

Comment. Section 174.5 is amended to correct a cross-reference to former Section 24000.

Corp. Code § 5063.5 (amended). “Other business entity” defined

SEC. _____. Section 5063.5 of the Corporations Code is amended to read:

5063.5. “Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (7) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated

association” has the meaning set forth in Section 24000 18035.

Comment. Section 5063.5 is amended to correct a cross-reference to former Section 24000.

Corp. Code § 12242.5 (amended). “Other business entity” defined

SEC. _____. Section 12242.5 of the Corporations Code is amended to read:

12242.5. “Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (7) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated association” has the meaning set forth in Section 24000 18035.

Comment. Section 12242.5 is amended to correct a cross-reference to former Section 24000.

Corp. Code § 15800 (amended). Designation of agent for service of process

SEC. _____. Section 15800 of the Corporations Code is amended to read:

15800. (a) Every partnership, other than a foreign limited partnership subject to Chapter 3 (commencing with Section 15611) or a commercial or banking partnership established and transacting business in a place without the United States,

that is domiciled without this state and has no regular place of business within this state, shall, within 40 days from the time it commences to do business in this state, file a statement in the office of the Secretary of State in accordance with Section 24003 16309 designating some natural person or corporation as the agent of the partnership upon whom process issued by authority of or under any law of this state directed against the partnership may be served. A copy of the designation, duly certified by the Secretary of State, is sufficient evidence of the appointment.

(b) The process may be served in the manner provided in subdivision (e)-(b) of Section 24003 16310 on the person so designated, or, in the event that no such person has been designated, or if the agent designated for the service of process is a natural person and cannot be found with due diligence at the address stated in the designation, or if the agent is a corporation and no person can be found with due diligence to whom the delivery authorized by subdivision (e)-(b) of Section 24003 16310 may be made for the purpose of delivery to the corporate agent, or if the agent designated is no longer authorized to act, then service may be made by personal delivery to the Secretary of State, Assistant Secretary of State, or a Deputy Secretary of State of the process, together with a written statement signed by the party to the action seeking the service, or by the party's attorney, setting forth the last known address of the partnership and a service fee as set forth in Section 12197 of the Government Code. The Secretary of State shall immediately give notice of the service to the partnership by forwarding the process to it by registered mail, return receipt requested, at the address given in the written statement.

(c) Service on the person designated, or personal delivery of the process and statement of address together with a service fee as set forth in Section 12197 of the Government Code to

the Secretary of State, Assistant Secretary of State, or a Deputy Secretary of State, pursuant to this section is a valid service on the partnership. The partnership so served shall appear within 30 days after service on the person designated or within 30 days after delivery of the process to the Secretary of State, Assistant Secretary of State, or a Deputy Secretary of State.

Comment. Section 15800 is amended to correct cross-references to former Section 24003. Subdivision designations have been added for ease of reference.

Corp. Code § 16309 (added). Designation of agent for service of process

SEC. _____. Section 16309 is added to the Corporations Code, to read:

16309. (a) The statement of partnership authority may designate an agent for service of process. The agent may be an individual residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If an individual is designated, the statement shall include that person's complete business or residence address in this state.

(b) An agent designated for service of process may file with the Secretary of State a signed and acknowledged written statement of resignation as an agent. On filing of the statement of resignation, the authority of the agent to act in that capacity shall cease and the Secretary of State shall give written notice of the filing of the statement of resignation by mail to the partnership, addressed to its principal executive office.

(c) If an individual who has been designated agent for service of process dies or resigns or no longer resides in the state, or if the corporate agent for that purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers,

and privileges suspended, or ceases to exist, the partnership or foreign partnership shall promptly file an amended statement of partnership authority, designating a new agent.

Comment. Section 16309 is new. Similar provisions govern designation of an agent for service of process by other types of unincorporated business entities. See Sections 15627(d) (limited partnership), 16962(a) (limited liability partnership), 17061(d) (limited liability company).

Corp. Code § 16310 (added). Service of process on designated agent

SEC. _____. Section 16310 is added to the Corporations Code, to read:

16310. (a) If a partnership has designated an agent for service of process, process may be served on the partnership as provided in this section and in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(b) Personal service of a copy of any process against the partnership by delivery to an individual designated by it as agent, or if the designated agent is a corporation, to a person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of the corporate agent, shall constitute valid service on the partnership.

(c) No change in the address of the agent for service of process or appointment of a new agent for service of process shall be effective until an amendment to the statement of partnership authority is filed.

(d)(1) If an agent for service of process has resigned and has not been replaced, or if the designated agent cannot with reasonable diligence be found at the address designated for personal delivery of the process, and it is shown by affidavit to the satisfaction of the court that process against a partnership cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20, or

subdivision (a) of Section 415.30 of the Code of Civil Procedure, the court may make an order that the service shall be made on a partnership by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing the service. Service in this manner shall be deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the copy of process and the fee for service, the Secretary of State shall give notice of the service of the process to the partnership, at its principal executive office, by forwarding to that office, by registered mail with request for return receipt, the copy of the process.

(3) The Secretary of State shall keep a record of all process served on the Secretary of State under this section and shall record therein the time of service and the action taken by the Secretary of State. A certificate under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice to the partnership, and the forwarding of the process pursuant to this section, shall be competent and prima facie evidence of the service of process.

Comment. Section 16310 is new. Similar provisions govern service of process on other types of unincorporated business entities. See Sections 15627(a)-(b) (limited partnership), 16962(b)-(f) (limited liability partnership), 17061(a)-(c) (limited liability company).

Corp. Code §§ 20000-20003 (repealed). In General

SEC. _____. Part 1 (commencing with Section 20000) of Title 3 of the Corporations Code is repealed.

Corp. Code § 21000 (repealed). Definition

SEC. _____. Chapter 1 (commencing with Section 21000) of Part 2 of Title 3 of the Corporations Code is repealed.

Corp. Code §§ 21100-21103 (repealed). Liability of members

SEC. _____. Chapter 2 (commencing with Section 21100) of Part 2 of Title 3 of the Corporations Code is repealed.

Corp. Code § 21200 (amended). Nonprofit medical association

SEC. _____. Section 21200 of the Corporations Code is amended to read:

21200. Any unincorporated association that is an organized medical society limiting its membership to licensed physicians and surgeons and that has as members at least 25 percent of the eligible physicians and surgeons residing in the area in which it functions (which must be at least one county) may, without incorporation, purchase, receive, own, hold, lease, mortgage, pledge, or encumber by deed of trust or otherwise, manage and sell all the real estate and other property as may be convenient for the purposes and objects of the association. However, if the association has less than 100 members, it shall have as members at least a majority of the eligible persons or licensees in the geographic area served by the particular association. The members of that unincorporated association are not individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, construction, repairing or furnishing of buildings or other structures to be used for the purposes of the association or for debts or liabilities contracted or incurred by the association in the carrying out or performance of any of its purposes; provided, that the purposes are within the purposes stated in Section 21000 of this part 18020.

Comment. Section 21200 is amended to correct a cross-reference to former Section 21000.

Heading of Part 5 (commencing with Section 24000) (amended)

SEC. _____. The heading of Part 5 (commencing with Section 24000) of Title 3 of the Corporations Code is amended to read:

~~PART 5. LIABILITY; LEVIES AGAINST
PROPERTY; DESIGNATION OF AGENT FOR
SERVICE AND OF PRINCIPAL OFFICE
LIABILITY OF DIRECTOR OR OFFICER OF
NONPROFIT MEDICAL ASSOCIATION~~

Corp. Code § 24000 (repealed). Definitions

SEC. _____. Section 24000 of the Corporations Code is repealed.

~~24000. (a) As used in this part, "unincorporated association" means any partnership or other unincorporated organization of two or more persons, whether organized for profit or not, but does not include a government or governmental subdivision or agency.~~

~~(b) As used in this section, "person" includes a natural person, corporation, partnership or any other unincorporated organization, limited liability company, and a government or governmental subdivision or agency.~~

Comment. Subdivision (a) of former Section 24000 is continued without substantive change in Sections 18035(a) and 18055(b).

Subdivision (b) is continued without substantive change in Section 18030.

Corp. Code § 24001 (repealed). Liability

SEC. _____. Section 24001 of the Corporations Code is repealed.

~~24001. (a) Except as otherwise provided by statute, an unincorporated association is liable to a person who is not a member of the association for an act or omission of the association, and for the act or omission of its officer, agent, or~~

~~employee acting within the scope of his office, agency, or employment, to the same extent as if the association were a natural person.~~

~~(b) Nothing in this section in any way affects the rules of law which determine the liability between an association and a member of the association.~~

Comment. Subdivision (a) of former Section 24001 is continued without substantive change in Section 18250.

Subdivision (b) is not continued. An unincorporated association may be liable to a member of the association. See *Marshall v. ILWU*, 57 Cal. 2d 781, 371 P.2d 987, 22 Cal. Rptr. 211 (1962) (member can sue labor union for negligent acts which member neither participated in nor authorized); *White v. Cox*, 17 Cal. App. 3d 824, 828, 95 Cal. Rptr. 259 (1971) (“unincorporated associations are now entitled to general recognition as separate legal entities and ... as a consequence a member of an unincorporated association may maintain a tort action against his association.”).

Corp. Code § 24002 (repealed). Enforcement of money judgment

SEC. _____. Section 24002 of the Corporations Code is repealed.

~~24002. A money judgment against an unincorporated association may be enforced only against the property of the association.~~

Comment. Former Section 24002 is continued without substantive change in Section 18260.

Corp. Code § 24003 (repealed). Statement of unincorporated association

SEC. _____. Section 24003 of the Corporations Code is repealed.

~~24003. (a) An unincorporated association may file with the Secretary of State on a form prescribed by the Secretary of State a statement containing either of the following:~~

~~(1) A statement designating the location and complete address of the association's principal office in this state. Only one such place may be designated.~~

~~(2) A statement (i) designating the location and complete address of the association's principal office in this state in accordance with paragraph (1) or, if the association does not have an office in this state, designating the complete address of the association to which the Secretary of State shall send any notices required to be sent to the association under Sections 24005 and 24006, and (ii) designating as agent of the association for service of process any natural person residing in this state or any corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated.~~

~~(b) If a natural person is designated as agent for service of process, the statement shall set forth the person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.~~

~~(c) Presentation for filing of a statement and one copy, tender of the filing fee, and acceptance of the statement by the office of the Secretary of State constitutes filing under this section. The Secretary of State shall note upon the copy of the statement the file number and the date of filing the original and deliver or send the copy to the unincorporated association filing the statement.~~

~~(d) At any time, an unincorporated association that has filed a statement under this section may file a new statement superseding the last previously filed statement. If the new statement does not designate an agent for service of process, the filing of the new statement shall be deemed to revoke the designation of an agent previously designated. A statement filed under this section expires five years from December 31 following the date it was filed in the office of the Secretary of State, unless previously superseded by the filing of a new statement.~~

~~(e) Delivery by hand of a copy of any process against the unincorporated association (1) to any natural person~~

~~designated by it as agent, or (2) if the association has designated a corporate agent, to any person named in the last certificate of the corporate agent filed pursuant to Section 1505 at the office of the corporate agent shall constitute valid service on the association.~~

~~(f) For filing a statement as provided in this section, the Secretary of State shall charge and collect the fee prescribed in paragraph (1) of subdivision (b) of Section 12191 of the Government Code for filing a designation of agent.~~

Comment. Former Section 24003 is continued without substantive change in Section 18200.

Corp. Code § 24004 (repealed). Numbering, filing, and indexing of statements

SEC. _____. Section 24004 of the Corporations Code is repealed.

~~24004. (a) The Secretary of State shall mark each statement filed under Section 24003 with a consecutive file number and the date of filing. He or she may destroy or otherwise dispose of any such statement four years after the statement expires. In lieu of retaining the original statement, the Secretary of State may retain a copy thereof in accordance with Section 14756 of the Government Code.~~

~~(b) The Secretary of State shall index each statement filed under Section 24003 according to the name of the unincorporated association as set out in the statement and shall enter in the index the file number and the address of the association as set out in the statement and, if an agent for service of process is designated in the statement, the name of the agent and, if a natural person is designated as the agent, the address of that person.~~

~~(c) Upon request of any person, the Secretary of State shall issue a certificate showing whether, according to the records of the office of the Secretary of State, there is on file on the date and hour stated therein, any presently effective statement~~

~~filed under Section 24003 for an unincorporated association using a specific name designated by the person making the request. If such a statement is on file, the certificate shall include the information required by subdivision (b) to be included in the index. The fee for the certificate is as set forth in Section 12183 of the Government Code.~~

~~(d) When a statement has expired under subdivision (d) of Section 24003, the Secretary of State shall enter that fact in the index together with the date of the expiration.~~

~~(e) Four years after a statement has expired, the Secretary of State may delete the information concerning that statement from the index.~~

Comment. Former Section 24004 is continued without substantive change in Section 18205.

Corp. Code § 24005 (repealed). Revocation or resignation of agency

SEC. _____. Section 24005 of the Corporations Code is repealed.

~~24005. (a) An agent designated by an unincorporated association for the service of process may file with the Secretary of State a written statement of resignation as such agent which shall be signed and execution thereof shall be duly acknowledged by the agent. Thereupon the authority of the agent to act in such capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement by mail to the unincorporated association at its address as set out in the statement filed by the association.~~

~~(b) Any unincorporated association may at any time file with the Secretary of State a revocation of a designation of an agent for service of process. The revocation is effective when filed.~~

~~(c) Notwithstanding subdivisions (a) and (b), service made on an agent designated by an unincorporated association for service of process in the manner provided in subdivision (e) of Section 24003 is effective if made within 30 days after the~~

~~statement of resignation or the revocation is filed in the office of the Secretary of State.~~

Comment. Former Section 24005 is continued without substantive change in Section 18210.

Corp. Code § 24006 (repealed). Notice of expiration

SEC. _____. Section 24006 of the Corporations Code is repealed.

~~24006. Between the first day of October and the first day of December immediately preceding the expiration date of a statement filed under Section 24003, the Secretary of State shall send by first class mail a notice, indicating the date on which the statement will expire and the file number assigned to the statement, to the unincorporated association at its address as set out in the statement. Neither the failure of the Secretary of State to mail the notice as provided in this section nor the failure of the notice to reach the unincorporated association shall continue the statement in effect after the date of its expiration. Neither the state nor any officer or employee of the state is liable for damages for failure to mail the notice as required by this section.~~

Comment. Former Section 24006 is continued without substantive change in Section 18215.

Corp. Code § 24007 (repealed). Service of process on unincorporated association in certain cases

SEC. _____. Section 24007 of the Corporations Code is repealed.

~~24007. If designation of an agent for the purpose of service of process has not been made as provided in Section 24003, or if the agent designated cannot with reasonable diligence be found at the address specified in the index referred to in Section 24004 for delivery by hand of the process, and it is shown by affidavit to the satisfaction of a court or judge that process against an unincorporated association cannot be~~

~~served with reasonable diligence upon the designated agent by hand or the unincorporated association in the manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or subdivision (a) of Section 415.20 of the Code of Civil Procedure, the court or judge may make an order that service be made upon the unincorporated association by delivery of a copy of the process to any one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address. Service in this manner constitutes personal service upon the unincorporated association.~~

Comment. Former Section 24007 is continued without substantive change in Section 18220.

Gov't Code § 50089 (amended). Service of process on designated agent

SEC. _____. Section 50089 of the Government Code is amended to read:

50089. (a) Any employee organization primarily comprised of peace officers, as described by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, that is a chapter of, or affiliated directly or indirectly in any manner with, a general nonprofit corporation formed for the specific and primary purpose to act as an employee organization for peace officers in this state that directly or indirectly represents less than 7,000 retired or active peace officers, that has not filed with the Secretary of State an agent of the employee organization who has been designated for purposes of service of process as described in Section 1701, 6410, 8210, 9670, 12610, 24003 18200, or 25550 of the Corporations Code by the effective date of this section, shall not be qualified to be the exclusive or majority bargaining agent, as described in subdivision (a) of Section 3502.5, until January 1, 2007.

(b) Any general nonprofit corporation formed for the specific and primary purpose to act as a recognized employee organization, as defined in subdivision (b) of Section 3501, for peace officers in this state that directly or indirectly represents less than 7,000 retired or active peace officers, that has any affiliate, chapter, or member that has failed to file with the Secretary of State an agent who has been designated for purposes of service of process by the effective date of this section, shall be prohibited from establishing or recognizing any member, affiliate, or chapter that was not a bona fide member, affiliate, or chapter of the nonprofit corporation as of January 1, 2003, until January 1, 2007.

(c) This section shall not apply to any national organization that directly or indirectly represents retired or active peace officers.

Comment. Section 50089 is amended to correct a cross-reference to former Corporations Code Section 24003.

DISPOSITION TABLE

The following table shows the disposition of each section that would be repealed by the proposed law. Except as indicated, all references are to the Corporations Code.

Former Section	Disposition
20000	§ 18100
20001	§ 18105
20002 (1st para.)	§ 18115
20002 (2d para.)	§ 18120
20003	repealed
21000	repealed; but see § 18020
21100	repealed
21101	repealed; but see Civ. Code § 1624
21102	repealed; but see § 18610(b)
21103	repealed
24000	§ 18035(a), 18055(b)
24001	§ 18250
24002	§ 18260
24003	§ 18200
24004	§ 18205
24005	§ 18210
24006	§ 18215
24007	§ 18220
