

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

Unincorporated Association Governance

September 2004

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

NOTE

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

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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September 17, 2004

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

Existing law provides rules for the governance, merger, and dissolution of specific types of unincorporated associations (for example, a business partnership or unincorporated homeowners association). However, there are no general rules for the governance of an unincorporated association. In the absence of such rules, the members and officers of an unincorporated association are often unsure of how to address fundamental matters of governance. Burdensome common law procedures may govern these matters. The Law Revision Commission recommends the creation of a set of basic governance rules for an unincorporated association, which would yield when a situation is covered by a more specific statute.

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

Respectfully submitted,

William E. Weinberger,
Chairperson

UNINCORPORATED ASSOCIATION GOVERNANCE

An unincorporated association may be a social club, charitable group, mutual aid society, homeowners association, political group, religious society, or other similar group.¹ Although some unincorporated associations are legally sophisticated, others are small, informal groups, without legal counsel. It is important that the law governing an unincorporated association be clear and understandable to a layperson.

Existing law provides detailed rules for the governance, merger, and dissolution of specific types of unincorporated associations.² However, there are no rules governing unincorporated associations generally. The members and officers of an unincorporated association are often unsure of how to deal with an issue that is not addressed in the governing documents of the association.

The lack of structural guidance can also subject an association to burdensome common law procedures. For example, when an unincorporated association is created its founders may not anticipate and provide rules for its eventual dissolution. In the absence of such rules, unanimous member consent is required to dissolve the association.³ Such a high

1. See Corp. Code §§ 18020 (“nonprofit association” defined), 18035 (“unincorporated association” defined).

2. See, e.g., Corp. Code §§ 16100-16962 (partnership), 17000-17655 (limited liability company).

3. See *Holt v. Santa Clara County Sheriff’s Benefit Ass’n*, 250 Cal. App. 2d 925, 930, 59 Cal. Rptr. 180 (1967).

threshold makes it difficult for a defunct association to wind up its affairs.⁴

The Law Revision Commission recommends that basic governance rules be added to the law of unincorporated associations. In large part, the proposed law would provide default rules that would only apply to the extent that the governing documents of an association are silent. In some cases, the proposed law would provide mandatory rules, either to guarantee minimal fairness⁵ or to standardize relations with other organizations.⁶

Pursuant to existing Corporations Code Section 18060, the proposed law would yield to any statute governing a specific type of unincorporated association.⁷ For example, existing law provides specific rules for amendment of the governing documents of an unincorporated homeowners association.⁸ Those entity-specific rules would control over the general rules for amendment of a governing document provided in the proposed law.⁹

SUMMARY OF PROPOSED LAW

The proposed law would fill gaps in the law governing unincorporated associations, in six areas: (1) director duties,

4. The proposed law would allow dissolution by a majority of the membership, providing a measure of flexibility that an unincorporated association would likely have provided for itself, had it foreseen the need to do so. See proposed Corp. Code § 18410 (dissolution) *infra*.

5. See proposed Corp. Code § 18320 (expulsion or suspension of membership where membership affects economic interest) *infra*.

6. See proposed Corp. Code §§ 18360-18400 (merger) *infra*.

7. Corp. Code § 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.”).

8. See Civ. Code §§ 1355-1356.

9. See proposed Corp. Code §18340 (amendment of governing documents) *infra*.

(2) termination of membership, (3) member voting procedures, (4) amendment of governing documents, (5) merger, and (6) dissolution. The proposed changes in those areas are summarized below.

Director Duties

Existing law does not provide a standard of care for a director of an unincorporated association. This omission leaves a director of an unincorporated association unsure of his or her duties and potential liability. Absent a statutory rule, the courts must decide the applicable standard on a case-by-case basis.

The proposed law would fill the gap in existing law by adding a default standard of care for a director of an unincorporated association. The proposed standard is based on existing standards applicable to similar entities, whether incorporated or unincorporated.¹⁰ It would require that a director act “in good faith, in a manner the director believes to be in the best interests of the association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.”¹¹ An unincorporated association would be allowed to impose a stricter standard of care, but could not set a more lenient standard.

Existing provisions that impose a standard of care on a director of an incorporated or unincorporated entity also provide limited immunity from liability for a director who satisfies the standard. A director is not liable for an alleged failure to discharge that person’s obligations as a director.

10. See, e.g., Civ. Code § 13657.7 (homeowners association, whether incorporated or unincorporated); Corp. Code §§ 309 (general corporation), 5231 (nonprofit public benefit corporation), 7231 (nonprofit mutual benefit corporation), 9241 (nonprofit religious corporation), 24001.5 (unincorporated nonprofit medical association).

11. See proposed Corp. Code § 18300 *infra*.

That is appropriate for a director of an unincorporated association as well. A person who has satisfied the governing standard of care should not be subject to a claim that the person has not fulfilled his or her obligation to the association. The proposed law includes protection against such a claim.

Termination or Suspension of Membership

Existing law is silent on what events will terminate membership within an unincorporated association. In case of a dispute, it can be unclear whether a person continues to be entitled to membership benefits and subject to member duties. The proposed law would add a default rule on what events terminate a membership and what effect termination of a membership has on rights and duties that arose before termination.¹²

Nonprofit corporation law requires basic procedural fairness before a membership can be suspended or terminated.¹³ The proposed law includes a similar requirement.¹⁴ In order to avoid state interference with free association, the scope of the proposed requirement would be limited. It would not apply to a religious association and would only apply to a non-religious association if termination or suspension of membership would affect a property right or an “important, substantial economic interest.”¹⁵

12. See proposed Corp. Code § 18310 *infra*.

13. See Corp. Code § 7341.

14. See proposed Corp. Code § 18320 *infra*.

15. See generally *Potvin v. Metropolitan Life Ins. Co.*, 22 Cal. 4th 1060, 997 P.2d 1153, 95 Cal. Rptr. 2d 496 (2000) (expulsion of doctor from list of insurance company’s preferred providers could impair ability of competent physician to practice medicine and affected “important, substantial economic interest”). See also *Swital v. Real Estate Comm’r*, 116 Cal. App. 2d 677, 254 P.2d 587 (1953) (member may not be expelled from local realty board without fair procedure).

Voting Procedure

Existing law does not provide a procedure for conducting a vote of the membership of an unincorporated association. If a vote is contested, there are no clear standards for determining its validity. The proposed law provides a default voting procedure. Advance notice of a vote would be required. Voting could be by written ballot or by vote at a member meeting. Approval of a measure would require the affirmative votes of a majority of a quorum of the membership.¹⁶

Amendment of Governing Documents

Existing law does not specify a procedure for amending the governing documents of an unincorporated association. This can lead to a dispute about whether an attempted amendment is effective. The proposed law provides a default rule, requiring that a proposed amendment be approved by a vote of the membership.¹⁷

Merger

Existing law provides rules for the merger of various types of entities, whether with another entity of the same type, or with an entity of a different type.¹⁸ These rules govern the consequences of a merger and provide procedures for approval of a merger.

There are no general merger rules for an unincorporated association. As a result, the members and officers of an unincorporated association may be unsure whether a merger is permitted and, if so, how it should be conducted.

16. See proposed Corp. Code § 18330 *infra*.

17. See proposed Corp. Code § 18340 *infra*.

18. See, e.g., Corp. Code §§ 8010-8022 (nonprofit mutual benefit corporation), 16901-16917 (partnership), 17550-17556 (limited liability company).

The proposed law would expressly authorize merger¹⁹ and would provide basic rules for the merger of an unincorporated association with another entity.²⁰ The proposed rules are drawn from existing law governing the merger of other types of entities.

Dissolution

Under existing law, if the governing documents of an unincorporated association do not provide a procedure for dissolving the association, a decision to dissolve must be made by a unanimous vote of the membership.²¹ This can create a significant problem for an association that did not have the foresight to include a procedure for dissolution in its governing documents. A single hold-out could prevent dissolution even though the association no longer serves a useful purpose.

The proposed law provides a default rule for making a decision to dissolve an unincorporated association.²² If the association does not have its own procedure for dissolution, the association could be dissolved by a majority vote of the total membership. If the association has been inactive for at least three years, it could be dissolved by a vote of its board of directors or by court order.

The proposed law also includes basic guidance on the steps to be completed in winding up the affairs of an unincorporated association, including paying any known debts or liabilities and disposing of remaining assets.²³

19. See proposed Corp. Code § 18360 *infra*.

20. See proposed Corp. Code § 18370-18400 *infra*.

21. See *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 930, 59 Cal. Rptr. 180 (1967).

22. See proposed Corp. Code § 18410 *infra*.

23. See proposed Corp. Code § 18420 *infra*.

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PROPOSED LEGISLATION
CORPORATIONS CODE
TITLE 3. UNINCORPORATED
ASSOCIATION

PART 1. GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS

Corp. Code § 18003 (added). Board

SEC. _____. Section 18003 is added to the Corporations Code, to read:

18003. “Board” means the board of directors or other governing body of an unincorporated association.

Comment. Section 18003 is new. See also Sections 18005 (“director” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18005 (amended). Director

SEC. _____. Section 18005 of the Corporations Code is amended to read:

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 amended to make clear that “director” includes a person who serves on a governing body regardless of whether that body is a representative body. For example, a director may be appointed to serve on the governing body rather than elected by the membership of the unincorporated association. See also Section 18035 (“unincorporated association” defined).

Corp. Code § 18008 (added). Governing documents

SEC. _____. Section 18008 is added to the Corporations Code, to read:

18008. “Governing document” means a constitution, articles of association, bylaws, or other writing that governs the purpose or operation of an unincorporated association or the rights or obligations of its members.

Comment. Section 18008 is new. See also Sections 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code § 18010 (amended). Governing principles

SEC. _____. Section 18010 of the Corporations Code is amended to read:

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~~ *the governing documents of an unincorporated association*. ~~If there is no written an association has no governing documents or the governing documents do not include a provision governing an issue, the association’s governing principles relating to 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 amended to reflect the definition of “governing documents” provided in Section 18008. See also Sections 8 (“writing” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

Corp. Code §§ 18300-18410 (added). Governance

SEC. _____. Chapter 6 (commencing with Section 18300) is added to Part 1 of Title 3 of the Corporations Code, to read:

CHAPTER 6. GOVERNANCE

Article 1. Director Duties

§ 18300. Director duties

18300. (a) A director of an unincorporated association shall perform the duties of a director, including duties as a member of a committee of the board, in good faith, in a manner the director believes to be in the best interests of the association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that is prepared or presented by any of the following persons or committees, so long as the director believes that the person or committee is reliable and competent in the matters presented:

(1) An officer or employee of the unincorporated association.

(2) An attorney, independent accountant, or other expert.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority.

(4) If the unincorporated association has a religious purpose, a religious authority, such as a minister, priest, or rabbi, as to matters the director believes to be within that person's designated authority.

(c) The governing documents of an unincorporated association may establish a higher standard of conduct, but shall not establish a lower standard of conduct, than is provided in subdivisions (a) and (b).

(d) A person who performs the duties of a director in accordance with this section is not liable for an alleged failure to discharge that person's obligations as a director, including

any act or omission that exceeds or defeats any purpose to which the unincorporated association, or assets held by it, may be dedicated.

Comment. Section 18300 is new. *Cf.* Sections 309 (general corporation), 5231 (nonprofit public benefit corporation), 7231 (nonprofit mutual benefit corporation), 9241 (nonprofit religious corporation). See also Sections 18003 (“board” defined), 18005 (“director” defined), 18008 (“governing documents” defined), 18025 (“officer” defined), 18035 (“unincorporated association” defined).

A director decision that satisfies the standard provided in this section may be entitled to judicial deference. See, e.g., *Lamden v. La Jolla Shores Clubdominium*, 21 Cal. 4th 249, 265, 980 P.2d 940, 87 Cal. Rptr. 2d 237 (1999) (“[W]here a duly constituted community association 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, courts should defer to the board’s authority and presumed expertise.”).

Article 2. Termination or Suspension of Membership

§ 18310. Termination of membership

18310. (a) Unless otherwise provided by an unincorporated association’s governing principles, membership in the unincorporated association is terminated by any of the following events:

- (1) Resignation of the member.
- (2) Expiration of the fixed term of the membership, unless the membership is renewed before its expiration.
- (3) Expulsion of the member.
- (4) Death of the member.
- (5) Termination of the legal existence of a member that is not a natural person.

(b) Termination of membership does not relieve a person from an obligation incurred as a member before termination.

(c) Termination of membership does not affect the right of an unincorporated association to enforce an obligation against a person incurred as a member before termination, or to obtain damages for its breach.

Comment. Section 18310 is new. Subdivision (b) makes clear that termination of membership does not relieve a former member from an obligation incurred before termination of membership. Such an obligation might include an obligation for a charge, assessment, fee, or dues, or an obligation for a service or benefit rendered before termination. See also Sections 18015 (“member” defined), 18035 (“unincorporated association” defined).

§ 18320. Expulsion or suspension of membership

18320. (a) This section only applies if membership in an unincorporated association includes a property right or if expulsion or suspension of a member would affect an important, substantial economic interest. This section does not apply to an unincorporated association that has a religious purpose.

(b) Expulsion or suspension of a member shall be done in good faith and in a fair and reasonable manner. A procedure that satisfies the requirements of subdivision (c) is fair and reasonable, but a court may also determine that another procedure is fair and reasonable taking into account the full circumstances of the expulsion or suspension.

(c) A procedure for expulsion or suspension of a member that satisfies the following requirements is fair and reasonable:

(1) The procedure is included in the governing documents of the unincorporated association.

(2) The member to be expelled or suspended is given notice, including a statement of the reasons for the expulsion or suspension. The notice shall be delivered at least 15 days before the effective date of the expulsion or suspension.

(3) The member to be expelled or suspended is given an opportunity to be heard by the person or body deciding the

matter, orally or in writing, not less than five days before the effective date of the expulsion or suspension.

(d) A notice pursuant to this section may be delivered by any method reasonably calculated to provide actual notice. A notice delivered by mail shall be sent by first-class, certified, or registered mail to the last address of the member shown on the unincorporated association's records.

(e) A member may commence a proceeding to challenge the expulsion or suspension of the member, including a claim alleging defective notice, within one year after the effective date of the expulsion or suspension. The court may order any relief, including reinstatement, it determines is equitable under the circumstances. A vote of the members or of the board may not be set aside solely because a person was wrongfully excluded from voting by virtue of the challenged expulsion or suspension, unless the court determines that the wrongful expulsion or suspension was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(f) This section governs only the procedure for expulsion or suspension and not the substantive grounds for expulsion or suspension. An expulsion or suspension based on substantive grounds that violate contractual or other rights of the member or are otherwise unlawful is not made valid by compliance with this section.

Comment. Section 18320 is new. It requires good faith and use of a fair procedure before terminating or suspending membership in an unincorporated association, where membership involves a property right or where expulsion or suspension of a member would affect "an important, substantial economic interest," for example, the right to carry on one's trade or profession. See generally *Potvin v. Metropolitan Life Ins. Co.*, 22 Cal. 4th 1060, 997 P.2d 1153, 95 Cal. Rptr. 2d 496 (2000) (expulsion of doctor from list of insurance company's preferred providers could impair ability of competent physician to practice medicine and affected "important, substantial economic interest"). See

also *Swital v. Real Estate Comm'r*, 116 Cal. App. 2d 677, 254 P.2d 587 (1953) (member may not be expelled from local realty board without fair procedure).

Nothing in this section affects the common law right of fair procedure as it applies to a decision to exclude a person from membership in a private association. See *Pinsker v. Pacific Coast Soc’y of Orthodontists*, 12 Cal. 3d 541, 550, 116 Cal. Rptr. 245, 526 P.2d 253 (1974) (“Taken together, these decisions establish the common law principle that whenever a private association is legally required to refrain from arbitrary action, the association’s action must be both substantively rational and procedurally fair.”); *Pinsker v. Pacific Coast Soc’y of Orthodontists*, 1 Cal. 3d 160, 81 Cal. Rptr. 623, 460 P.2d 495 (1969).

To avoid state interference with the free exercise of religion, this section does not apply to an unincorporated association with a religious purpose. *Cf.* Section 7341 (expulsion, suspension, or termination of membership in nonprofit mutual benefit corporation). See also Sections 18003 (“board” defined), 18008 (“governing documents” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

Article 3. Member Voting

§ 18330. Member voting

18330. Except as otherwise provided by statute or by an unincorporated association’s governing principles, the following rules govern a member vote conducted pursuant to this chapter:

(a) A vote may be conducted either at a member meeting at which a quorum is present or by a written ballot in which the number of votes cast equals or exceeds the number required for a quorum. Approval of a matter voted on requires an affirmative majority of the votes cast.

(b) Notice of the vote shall be delivered to all members entitled to vote on the date of delivery. The notice shall be delivered or mailed or sent electronically to the member addresses shown in the association’s records a reasonable time before the vote is to be conducted. The notice shall state

the matter to be decided and describe how and when the vote is to be conducted.

(c) If the vote is to be conducted by written ballot, the notice of the vote shall serve as the ballot. It shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the unincorporated association.

(d) One-third of the voting power of the association constitutes a quorum.

(e) The voting power of the association is the total number of votes that can be cast by members on a particular issue at the time the member vote is held.

Comment. Section 18330 is new. Subdivision (a) provides a default rule for the number of votes required for approval of a matter. A statute providing a different standard controls over subdivision (a). See, e.g., Sections 18370(c) (unanimous approval required for merger if members of association would become liable for obligations of other constituent entity), 18410(b) (majority of total voting power of association required for dissolution of association).

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

Article 4. Amendment of Governing Documents

§ 18340. Amendment of governing documents

18340. If the governing principles of an unincorporated association do not provide a procedure to amend the governing documents of the association, the governing documents may be amended by a vote of the members.

Comment. Section 18340 is new. See also Sections 18008 (“governing documents” defined), 18010 (“governing principles” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined), 18330 (member voting procedure).

An amendment of the governing documents of an unincorporated association may not impair an existing contract right without the consent of the person whose right would be affected. See *Hogan v. Pacific Endowment League*, 99 Cal. 248, 250, 33 P. 924 (1893). However, if the

governing documents reserve the power to make future changes to member benefits, an association may amend its governing documents in a way that impairs those benefits so long as the change is substantively reasonable. An association cannot use its power of amendment to repudiate its fair and just obligations. See *Power v. Sheriff's Relief Ass'n of Los Angeles County*, 57 Cal. App. 2d 350, 134 P.2d 827 (1943).

Article 5. Merger

§ 18350. Definitions

18350. The following definitions govern the construction of this article:

(a) "Constituent entity" means an entity that is merged with one or more other entities and includes the surviving entity.

(b) "Disappearing entity" means a constituent entity that is not the surviving entity.

(c) "Surviving entity" means an entity into which one or more other entities are merged.

Comment. Subdivision (a) of Section 18350 is drawn from Section 5044. Subdivision (b) is drawn from Section 5048. Subdivision (c) is drawn from Section 5074. See also Section 18035 ("unincorporated association" defined).

§ 18360. Merger authority

18360. An unincorporated association may merge with any other unincorporated association, domestic corporation, foreign corporation, or other business entity that is authorized by law to effect a merger with an unincorporated association. As used in this section, the term "other business entity" has the meaning provided in Section 5063.5.

Comment. Section 18360 is new. An "unincorporated association" includes a nonprofit association. See Sections 18020 ("nonprofit association" defined), 18035 ("unincorporated association" defined).

§ 18370. Merger procedure

18370. A merger involving an unincorporated association is subject to the following requirements:

(a) Each party to the merger shall approve an agreement of merger. The agreement shall include the following provisions:

(1) The terms of the merger.

(2) Any amendments the merger would make to the articles, bylaws, or other governing documents of the surviving entity.

(3) The name, place of organization, and type of entity of each constituent entity.

(4) The name of the constituent entity that will be the surviving entity.

(5) If the name of the surviving entity will be changed in the merger, the new name of the surviving entity.

(6) The disposition of the memberships or ownership interests of each constituent entity.

(7) Other details or provisions, if any, including any details or provisions required by the law under which a constituent entity is organized.

(b) The principal terms of the merger agreement shall be approved by the board, the members, and any person whose approval is required by the governing documents of the association. Unless otherwise provided in the governing documents, the members shall approve the agreement in the manner provided for amendment of the governing documents of the association. The members may approve the agreement before or after the board approves the agreement.

(c) A merger agreement that would cause the members of an unincorporated association to become individually liable for an obligation of a constituent or surviving entity shall be approved by all of the members of the unincorporated association. Approval by all members is not required under this subdivision if the agreement of merger provides for purchase by the surviving entity of the membership interest of a member who votes against approval of the merger agreement.

(d) A merger agreement may be amended by the board, unless the amendment would change a principal term of the agreement, in which case it shall be approved as provided in subdivision (b).

(e) Subject to the contractual rights of third parties, the board may abandon a merger without the approval of the members.

Comment. Section 18370 is new. *Cf.* Sections 8011-8019 (merger of nonprofit mutual benefit corporation). See also Sections 18003 (“board” defined), 18005 (“director” defined), 18008 (“governing documents” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).

§ 18380. Effect of merger

18380. (a) Merger pursuant to this article has the following effect:

(1) The separate existence of the disappearing entity ceases.

(2) The surviving entity succeeds, without other transfer, to the rights and property of the disappearing entity.

(3) The surviving entity is subject to all the debts and liabilities of the disappearing entity. A trust or other obligation governing property of the disappearing entity applies as if it were incurred by the surviving entity.

(b) All rights of creditors and all liens on or arising from the property of each of the constituent entities are preserved unimpaired, provided that a lien on property of a disappearing entity is limited to the property subject to the lien immediately before the merger is effective.

(c) An action or proceeding pending by or against a disappearing entity or other party to the merger may be prosecuted to judgment, which shall bind the surviving entity, or the surviving entity may be proceeded against or substituted in its place.

(d) Merger does not affect an existing liability of a member, director, officer, or agent of a constituent unincorporated

association for an obligation of the unincorporated association.

Comment. Subdivisions (a)-(c) of Section 18380 are drawn from Section 8020. Subdivision (d) is new. See also Sections 18005 (“director” defined), 18015 (“member” defined), 18025 (“officer” defined), 18035 (“unincorporated association” defined).

§ 18390. Record ownership of real property

18390. If, as a consequence of merger, a surviving entity succeeds to ownership of real property located in this state, the surviving entity’s record ownership of that property may be evidenced by recording in the county in which the property is located a copy of the agreement of merger that is signed by the president and secretary or other comparable officers of the constituent entities and is verified and acknowledged as provided in Sections 149 and 193.

Comment. Section 18390 is drawn from Section 8021.

§ 18400. Future transfers

18400. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a disappearing entity and that takes effect or remains payable after the merger inures to the benefit of the surviving entity. A trust obligation that would govern property if transferred to the disappearing entity applies to property that is instead transferred to the surviving entity under this section.

Comment. Section 18400 is drawn from Section 8022. The second sentence is added to make clear that property that would be impressed with a trust if transferred to a disappearing entity does not avoid that trust as a result of transfer to a surviving entity under this section. See *Lynch v. Spilman*, 67 Cal. 2d 251, 260, 431 P.2d 636, 62 Cal. Rptr. 12 (1967) (“[P]roperty 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).

Article 6. Dissolution

§ 18410. Dissolution

18410. An unincorporated association may be dissolved by any of the following methods:

(a) If the governing documents of the association provide a method for dissolution, by that method.

(b) If the governing documents of the association do not provide a method for dissolution, by the affirmative vote of a majority of the voting power of the association.

(c) If the association's operations have been discontinued for at least three years, by the board or, if the association has no incumbent board, by the members of its last preceding incumbent board.

(d) If the association's operations have been discontinued, by court order.

Comment. Section 18410 is new. Subdivision (a) is consistent with case law. See *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 930, 59 Cal. Rptr. 180 (1967). An unincorporated association that is subordinate to another organization may be subject to dissolution by order of the superior organization. *Id.* See also Sections 18003 ("board" defined), 18005 ("director" defined), 18008 ("governing documents" defined), 18015 ("member" defined), 18035 ("unincorporated association" defined), 18330 (member voting procedure).

§ 18420. Procedure on dissolution

18420. Promptly after commencement of dissolution of an unincorporated association, the board or, if none, the members shall promptly wind up the affairs of the association, pay or provide for its known debts or liabilities, collect any amounts due to it, take any other action as is necessary or appropriate for winding up, settling, and liquidating its affairs, and dispose of its assets as provided in Section 18130.

Comment. Section 18420 is new. See also Sections 18003 (“board” defined), 18015 (“member” defined), 18035 (“unincorporated association” defined).
