

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Unincorporated Associations

March 2003

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

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN June 30, 2003.

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

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SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission has conducted a study to determine whether the Uniform Unincorporated Nonprofit Association Act should be adopted in California. The Commission recommends against adoption of the Uniform Act. Most of the issues addressed in the Uniform Act are already addressed by California law. Adoption of the Uniform Act would disrupt existing law without offering any significant offsetting benefit.

Instead, the Commission recommends that the following improvements be made to existing law:

- (1) Reorganize 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 member liability with a set of clear and comprehensive provisions. The proposed provisions would be based on the principle that a member of a nonprofit association should not be 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.
- (4) Add a provision governing distribution of the assets of an unincorporated association on dissolution.
- (5) Make other minor substantive and technical revisions.

This recommendation was prepared pursuant to Resolution Chapter 166 of the Statutes of 2002.

UNINCORPORATED ASSOCIATIONS

1 Many private associations are not organized as corporations. These
2 unincorporated associations include both for-profit and nonprofit groups (such as
3 partnerships, social clubs, charitable groups, mutual aid societies, labor unions,
4 political groups, and religious societies). While some unincorporated associations
5 are legally sophisticated, others are small, informal groups, without legal counsel.

6 Historically, an unincorporated association was not considered to be a legal
7 entity separate from its members. Instead, it was treated as an aggregation of
8 individuals.¹ An unincorporated association could not own or transfer property and
9 could not sue or be sued in its own name. In addition, members of an
10 unincorporated association could be held jointly and severally liable for the
11 liabilities of the group.

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

19 The Law Revision Commission has conducted a study to determine whether the
20 Uniform Act should be adopted in California.³ The Commission recommends
21 against adoption of the Uniform Act. Most of the issues addressed in the Uniform
22 Act are already addressed by California law. Many of the existing improvements
23 to the law governing unincorporated associations in California were enacted on the
24 recommendation of the Law Revision Commission, after careful study.⁴ Adoption
25 of the Uniform Act would disrupt existing law without offering any significant
26 offsetting benefit.

27 However, California law governing unincorporated associations could be
28 improved by a number of further substantive reforms and by reorganizing existing
29 law to improve its clarity and accessibility. The Commission recommends the
30 revisions described below.

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).

3. See 2002 Cal. Stat. res. ch. 166.

4. See *Suit by or Against an Unincorporated Association*, 8 Cal. L. Revision Comm’n 901 (1966); *Service of Process on Unincorporated Associations*, 8 Cal. L. Revision Comm’n 1403 (1967); *Service of Process on Unincorporated Associations*, 13 Cal. L. Revision Comm’n 1657 (1976).

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ORGANIZATION OF PROPOSED LAW

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Existing law is not well organized. General provisions governing all unincorporated associations are intermingled with provisions relating only to nonprofit associations, or unique to a particular type of association (i.e., a fraternal society, nonprofit medical association, joint stock association, or real estate investment trust).

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The proposed law would reorganize existing law into a more coherent scheme, with separate parts for general provisions, provisions affecting nonprofit associations, and provisions affecting business associations. Important terms would be defined and existing definitions would be refined to improve the clarity of the law and simplify the drafting of new provisions. One goal of the proposed reorganization is to make the law more accessible to lay persons who serve as members or officers of unincorporated associations.

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RELATION TO OTHER LAW

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The proposed law includes provisions detailing its relation to other law. Corporations, government entities, partnerships, and limited liability companies are expressly excluded from application of the proposed law.⁵ 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.⁶ Thus, the proposed law would provide a default that applies to the extent an association is not governed by other law.

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PROPERTY POWERS

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Existing law provides that an unincorporated association can own and transfer property in its own name.⁷ The proposed law would simplify the existing provisions relating to property ownership and transfer.⁸

The proposed law would add a provision governing the disposition of an unincorporated association's assets on dissolution of the association. In general, it provides for disposition first pursuant to the doctrine of charitable trusts. If the association is not a charitable trust, the assets are distributed according to any applicable governing documents. If there are no applicable governing documents, the assets are divided pro rata among the existing members.⁹ This is consistent with case law¹⁰ and is similar to the Uniform Act.¹¹

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

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

7. Corp. Code § 20001.

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

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

10. 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

1 Under the proposed law, a creditor of a dissolved unincorporated association
2 could recover assets distributed to a member within four years after distribution.¹²
3 That is analogous to the right of a creditor of a dissolved nonprofit corporation to
4 recover assets distributed on dissolution.¹³

5 PERSONAL LIABILITY FOR OBLIGATION OF
6 NONPROFIT ASSOCIATION

7 **Contract Liability**

8 In *Security First National Bank of Los Angeles v. Cooper*,¹⁴ the court held that a
9 person is not liable for a contractual obligation of an unincorporated association
10 merely because the person is a member of the association. However, a member is
11 liable if the member “expressly or impliedly authorizes or ratifies the contract.” In
12 that case, authorization of a lease was inferred from the fact that members had
13 signed the association’s bylaws.

14 In direct response to that decision, the Legislature enacted three rules that limit
15 the liability of a member of a nonprofit association. Under these rules: (1) a
16 member is not individually liable for an association debt or obligation relating to
17 real property,¹⁵ (2) no presumption or inference of consent or agreement to a
18 nonprofit association incurring an obligation may be drawn from the fact that a
19 person is a member of the association or has signed its bylaws,¹⁶ and (3) a member
20 can only assume responsibility for an association obligation in a signed writing
21 that identifies the specific contract for which responsibility is assumed.¹⁷

22 These rules are both too broad and too narrow — too broad because they seem to
23 preclude member liability on a real property contract even where liability should
24 properly be imposed (e.g., where the member has expressly assumed responsibility
25 for the contract); too narrow because the principal limit on liability only applies to
26 a limited class of contracts (e.g., a member would not be shielded from personal
27 liability for a contract to purchase a vehicle).

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

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).

11. Unif. Unincorporated Nonprofit Ass’n Act § 9 (1996).

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

13. Corp. Code § 8723.

14. 62 Cal. App. 2d 653, 145 P.2d 722 (1944).

15. Corp. Code § 21100.

16. Corp. Code § 21102.

17. Corp. Code § 21101.

- 1 (1) A judgment against a nonprofit association would be enforced first against
2 the assets of the association, before the assets of an individual member,
3 officer, or agent could be reached.¹⁸
- 4 (2) A member, officer, or agent of a nonprofit association would not be
5 personally liable for a debt, obligation, or liability of the association solely
6 by reason of being a member, officer, or agent.¹⁹
- 7 (3) A member of a nonprofit association could be held personally liable if the
8 member expressly assumes liability, expressly authorizes or ratifies the
9 contract, or with knowledge of the contract, personally receives benefits
10 under the contract. Liability on the basis of a received benefit would be
11 limited to the value of the benefit received.²⁰
- 12 (4) An officer or agent of a nonprofit association could be held personally liable
13 if the officer or agent expressly assumes liability, executes the contract
14 without disclosing that the officer or agent is acting as an officer or agent of
15 the association, or executes the contract without authority to do so.²¹ The
16 latter two grounds for liability are specific applications of general agency
17 law.²²

18 In addition, the proposed law expressly applies the alter ego doctrine to
19 nonprofit associations, to prevent fraudulent use of the nonprofit association form
20 as a shield against personal liability.²³

21 Under these rules, the association itself would be primarily responsible for its
22 own contractual obligations. However, if the association lacks the resources to
23 satisfy its obligations under the contract, responsibility would fall on those
24 members who approved the contract.

25 **Tort Liability**

26 In *Orser v. George*,²⁴ the court considered whether the members of an
27 unincorporated hunting club were liable for one member's accidental shooting of a
28 non-member. The court noted:

29 It has been held that an unincorporated association is bound to use the same
30 care as a natural person; but that mere membership does not make all members
31 liable for unlawful acts of other members without their participation, knowledge
32 or approval. Vicarious liability may exist, however, based upon ... personal
33 participation in an unlawful activity or setting it in motion.²⁵

18. See proposed Corp. Code § 18635 *infra*.

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

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

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

22. 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).

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

24. 252 Cal. App. 2d 660, 60 Cal. Rptr. 708 (1967).

25. *Id.* at 670-71.

1 In *Steuer v. Phelps*,²⁶ the court considered whether the members of a small
2 church group, with no officers or management, were liable for one member's
3 negligence while driving on group business. The court noted:

4 There is evidence that each individual member, rather than an officer, manager,
5 or committee, participated directly in entrusting the car to Mrs. Henry to operate
6 exclusively for purposes of the association. Under the doctrine of respondeat
7 superior, it is elemental that one who entrusts another with the operation of his
8 automobile is liable for the negligent operation of the vehicle, even though he
9 neither authorized nor approved the driving in a negligent manner. ... Mere
10 authorization to Mrs. Henry to operate the car fastens liability upon the individual
11 members who gave that authorization.²⁷

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

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

21 Although earlier authorities sought to justify the respondeat superior doctrine on
22 such theories as "control" by the master of the servant, the master's "privilege" in
23 being permitted to employ another, the third party's innocence in comparison to
24 the master's selection of the servant, or the master's "deep pocket" to pay for the
25 loss, "the modern justification for vicarious liability is a rule of policy, a
26 deliberate allocation of a risk. The losses caused by the torts of employees, which
27 as a practical matter are sure to occur in the conduct of the employer's enterprise,
28 are placed upon that enterprise itself, as a required cost of doing business. They
29 are placed upon the employer because, having engaged in an enterprise which
30 will, on the basis of past experience, involve harm to others through the torts of
31 employees, and sought to profit by it, it is just that he, rather than the innocent
32 injured plaintiff, should bear them; and because he is better able to absorb them,
33 and to distribute them, through prices, rates or liability insurance, to the public,
34 and so to shift them to society, to the community at large."²⁸

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

39 The proposed law would preclude personal liability of a member, officer, or
40 agent of a nonprofit association for the torts of an agent or member of the

26. 41 Cal. App. 3d 468, 116 Cal. Rptr. 61 (1974).

27. *Id.* at 472.

28. *Hinman v. Westinghouse Elec. Co.*, 2 Cal. 3d 956, 959-60, 471 P.2d 988, 88 Cal. Rptr. 188 (1970).

1 association unless (1) the member, officer, or agent expressly assumes liability for
2 any injury caused by the activity, or (2) the tortious conduct of the member,
3 officer, or agent causes the injury.²⁹ In other words, a member, officer, or agent of
4 a nonprofit association would not be vicariously liable for the torts of the
5 association.

6 Note that the proposed application of the alter ego doctrine to nonprofit
7 associations would extend to tort liability as well as contract liability.³⁰

8 DESIGNATION OF AGENT FOR SERVICE OF PROCESS

9 Corporations Code Section 24003 authorizes any unincorporated association,
10 including a partnership or other for-profit association, to file a statement with the
11 Secretary of State designating an agent for service of process. In addition, most
12 statutes governing specific types of for-profit associations include equivalent agent
13 designation procedures.³¹

14 However, there is no equivalent provision applicable to a general partnership,
15 other than Section 24003. This is potentially a problem, because the proposed law
16 would provide that the unincorporated associations law does not apply to a
17 partnership.³² To ensure that a general partnership can continue to designate an
18 agent for service of process, the proposed law would add a provision specifically
19 authorizing a partnership to designate an agent.³³

20 The proposed law also includes technical revisions to reflect the fact that there
21 are a number of provisions that authorize designation of an agent.³⁴

22 ASSOCIATION GOVERNANCE

23 The proposed law reserves a chapter for possible default rules relating to the
24 governance of an unincorporated association. The Commission is currently
25 considering suggestions that the proposed law should include basic default
26 provisions on such matters as the standard of conduct of governing board
27 members, amendment of governing documents, termination of memberships,
28 mergers, and dissolution. The Commission welcomes comments on whether there
29 is a need for such provisions.

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

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

31. See, e.g., Corp. Code §§ 15621(a)(4) (limited partnership), 16953(a)(3) (limited liability partnership), 17051(a)(4) & 17060(a)(2) (limited liability company).

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

33. See proposed Corp. Code §§ 16309-16310 *infra*.

34. See proposed amendments to Code Civ. Proc. §§ 395.2, 416.40.

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PROPOSED LEGISLATION

1 **Corp. Code §§ 18000-18980 (added). Unincorporated associations**

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

4 TITLE 3. UNINCORPORATED ASSOCIATIONS

5 PART 1. GENERAL PROVISIONS

6 CHAPTER 1. DEFINITIONS

7 **§ 18000. Application of definitions**

8 18000. Unless the provision or context otherwise requires, the definitions in this
9 chapter govern the construction of this title.

10 **Comment.** Section 18000 is new.

11 **§ 18005. “Governing document” defined**

12 18005. “Governing document” means a constitution, articles of association,
13 bylaws, or other writing that governs the purpose or operation of an
14 unincorporated association or the rights or obligations of its members.

15 **Comment.** Section 18005 is new.

16 See also Sections 8 (“writing” defined), 18010 (“member” defined), 18025 (“unincorporated
17 association” defined).

18 **§ 18010. “Member” defined**

19 18010. (a) If the governing documents of an unincorporated association define
20 the membership of the association, “member” has the meaning provided in the
21 governing documents.

22 (b) If the governing documents of an unincorporated association do not define
23 the membership of the association, “member” means a person who, under the rules
24 or practices of the unincorporated association, may participate in the selection of
25 persons authorized to manage the affairs of the unincorporated association or in
26 the development of policy of the unincorporated association, but does not include
27 a person who participates solely as an agent of the association.

28 **Comment.** Section 18010 is new.

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

32 Subdivision (b) is similar to Section 1(1) of the Uniform Unincorporated Nonprofit Association
33 Act (1996). However, subdivision (b) adds an exception for a person who participates in
34 association decisionmaking solely as an agent of the association. This does not preclude an agent
35 from being a member, if the agent qualifies as a member for other reasons. For example, if an
36 association hires a consultant to assist in developing association policy, the consultant’s

1 involvement in policy development does not make the consultant a member of the association.
2 The fact that the consultant is serving as an agent of the association does not prevent the
3 consultant from also being a member of the association under the association's general
4 membership rules and practices.

5 See also Sections 18005 ("governing document" defined), 18020 ("person" defined), 18025
6 ("unincorporated association" defined).

7 **§ 18015. "Nonprofit association" defined**

8 18015. (a) "Nonprofit association" means an unincorporated association with a
9 primary common purpose other than operating a business for profit.

10 (b) A nonprofit association may carry on a business for profit if any profit that
11 results from the business activity is applied to the primary purpose of the
12 association.

13 **Comment.** Subdivision (a) of Section 18015 defines "nonprofit association" for the purpose of
14 this title. See Section 18025 ("unincorporated association" defined). *Cf.* Sections 16101(7), 16202
15 ("partnership" defined). Unincorporated associations organized primarily to carry on a business
16 for profit include a business trust, real estate investment trust, and joint stock association.

17 Subdivision (b) recognizes that a nonprofit entity may carry on for-profit activity in service of
18 its primary purpose. See, e.g., Section 5140(l) (powers of nonprofit public benefit corporation).

19 See also Section 18025 ("unincorporated association" defined).

20 **§ 18020. "Person" defined**

21 18020. "Person" includes a natural person, corporation, partnership or other
22 unincorporated organization, government or governmental subdivision or agency,
23 or any other entity.

24 **Comment.** Section 18020 continues and generalizes former Section 24000(b).

25 **§ 18025. "Unincorporated association" defined**

26 18025. (a) "Unincorporated association" means an unincorporated organization
27 of two or more persons joined by mutual consent for a common lawful purpose
28 and operating under a common name.

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

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

34 **Comment.** Section 18025 is similar to Section 1(2) of the Uniform Unincorporated Nonprofit
35 Association Act (1996). The requirement that an organization operate under a common name is
36 drawn from *Barr v. United Methodist Church*, 90 Cal. App. 3d 259, 266, 153 Cal. Rptr. 322
37 (1979) ("The criteria applied to determine whether an entity is an unincorporated association are
38 no more complicated than (1) a group whose members share a common purpose, and (2) who
39 function under a common name under circumstances where fairness requires the group be
40 recognized as a legal entity.").

41 Subdivision (c) makes clear that marriage or creation of a registered domestic partnership does
42 not by itself create an unincorporated association. This does not prevent spouses or domestic
43 partners from forming an unincorporated association for any purpose beyond the purposes
44 inherent in marriage or registered domestic partnership.

1 See also Sections 18020 (“person” defined), 18050 (group subject to title for reasons of
2 fairness), 18055 (exempt entities), 18060 (relation to other law).

3 CHAPTER 2. APPLICATION OF TITLE

4 **§ 18050. Group subject to title for reasons of fairness**

5 18050. Where fairness requires, a court may treat an unincorporated organization
6 as an unincorporated association under this title.

7 **Comment.** Section 18050 recognizes that fairness may require that a group be subject to this
8 title, whether or not it meets the definition of an “unincorporated association.” See *Barr v. United*
9 *Methodist Church*, 90 Cal. App. 3d 259, 266-67, 153 Cal. Rptr. 322 (1979) (“Fairness includes
10 those situations where persons dealing with the association contend their legal rights have been
11 violated. Formalities of quasi-corporate organization are not required.”). Fairness may require
12 providing an unincorporated organization and its members, officers, or agents with the benefits
13 provided by this title, as well as protecting others who deal with or have claims against the
14 organization or its members, officers, or agents.

15 See also Section 18025 (“unincorporated association” defined).

16 **§ 18055. Exempt entities**

17 18055. This title does not apply to any of the following groups:

- 18 (a) A corporation.
19 (b) A government or governmental subdivision or agency.
20 (c) A partnership.
21 (d) A limited liability company.

22 **Comment.** Section 18055 lists entities that are not subject to this title because they are
23 governed by other law. Subdivision (b) is drawn from former Section 24000.

24 **§ 18060. Relation to other law**

25 18060. If a statute that is specific to a particular type of unincorporated
26 association is inconsistent with a provision of this title, the specific statute prevails
27 to the extent of the inconsistency.

28 **Comment.** Section 18060 is new. It makes clear that the general provisions of this title are
29 subordinate to entity-specific statutes. For example, Section 18105 authorizes an unincorporated
30 association to own property. Insurance Code Section 9089 provides a more restrictive property
31 ownership rule specific to fraternal fire insurers. An unincorporated fraternal fire insurer would be
32 subject to both sections. To the extent they are inconsistent, Insurance Code Section 9089 would
33 prevail.

34 See also Section 18025 (“unincorporated association” defined).

35 **§ 18065. Relation to law of agency**

36 18065. Except where this title provides a specific rule, the general law of
37 agency, including Article 2 (commencing with Section 2019) of Chapter 2 of Title
38 6 of, and Title 9 (commencing with Section 2295) of, Part 4 of Division 3 of the
39 Civil Code, applies to an unincorporated association.

40 **Comment.** Section 18065 makes clear that the general law of agency applies to an
41 unincorporated association.

1 See also Sections 18025 (“unincorporated association” defined), 18615 (contract liability of
2 agent of nonprofit association), 18620 (tort liability).

3 **CHAPTER 3. PROPERTY**

4 **§ 18100. Membership interest is personal property**

5 18100. The interest of a member of an unincorporated association is personal
6 property.

7 **Comment.** Section 18100 continues former Section 20000 without change.

8 See also Sections 18010 (“member” defined), 18025 (“unincorporated association” defined).

9 **§ 18105. Property powers**

10 18105. An unincorporated association in its name may acquire, hold, manage,
11 encumber, or transfer an interest in real or personal property.

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

18 See also Section 18025 (“unincorporated association” defined).

19 ☞ **Note.** Language limiting the property powers of an unincorporated association to those
20 necessary for its “business purposes and objects” has not been continued in proposed Section
21 18105. The Commission would like to receive comments on whether that limitation should be
22 continued.

23 **§ 18110. Association property**

24 18110. Property acquired by an unincorporated association is property of the
25 unincorporated association and not of the members individually, regardless of how
26 title is held.

27 **Comment.** Section 18110 is new.

28 See also Sections 18010 (“member” defined), 18025 (“unincorporated association” defined).

29 **§ 18115. Execution of real property acquisition, transfer, or encumbrance**

30 18115. The acquisition, transfer, or encumbrance of an interest in real property
31 by an unincorporated association shall be executed by its president and secretary
32 or other comparable officers, or by a person specifically designated by a resolution
33 duly adopted by the association or by a committee or other body duly authorized
34 to act by the governing instruments of the association.

35 **Comment.** Section 18115 continues the first paragraph of former Section 20002 without
36 substantive change, except that the special, more restrictive, rule for fraternal or benevolent
37 societies and labor organizations has not been continued. These organizations are now subject to
38 the same rule as any other form of unincorporated association.

39 See also Section 18020 (“person” defined), 18025 (“unincorporated association” defined).

1 **§ 18120. Statement of authority**

2 18120. (a) An unincorporated association may record in any county in which it
3 has an interest in real property a verified and acknowledged statement, or a
4 certified copy of a statement recorded in another county, stating the name of the
5 association, and the names, title, or capacity of its officers and other persons who
6 are authorized on its behalf to acquire, transfer, or encumber real property owned
7 or held by the association. A statement recorded under this section revokes any
8 prior statement recorded under this subdivision.

9 (b) It shall be conclusively presumed in favor of a bona fide purchaser or
10 encumbrancer for value of real property of the association located in the county in
11 which a statement or certified copy has been recorded pursuant to subdivision (a),
12 that the officers and persons designated in the statement are duly authorized to
13 acquire, transfer, or encumber real property.

14 (c) The presumption in subdivision (b) does not apply if either of the following
15 occurs before the transaction at issue is completed:

16 (1) The statement is revoked.

17 (2) A person claiming to be a member of the association records a verified and
18 acknowledged statement that states the name of the association, particularly
19 identifies the recorded statement of the unincorporated association, and states that
20 the previously recorded statement was recorded without authority or that the
21 officers or other persons designated therein are not so authorized.

22 **Comment.** Section 18120 continues the substance of the second paragraph of former Section
23 20002. The second sentence of subdivision (a) and subdivision (c)(1), relating to revocation of a
24 statement, are new.

25 Former Section 20002 incorporated definitions set out in former Section 15010.5. The obsolete
26 definitions have not been continued.

27 See also Sections 18010 (“member” defined), 18020 (“person” defined), 18025
28 (“unincorporated association” defined).

29 ☞ **Note.** Subdivision (c)(2) provides a mechanism for repudiation of a recorded statement of
30 authority. Section 5 of the Uniform Unincorporated Nonprofit Association Act (1996), which is
31 analogous to proposed Section 18120 does not contain such a provision. Section 16303 provides
32 for filing of a statement of partnership authority. It also lacks a “repudiation” provision. Is such a
33 provision actually useful or should it be deleted as unnecessarily complicating the law? The
34 Commission solicits comment on this point.

35 **§ 18125. Limit on assertion of unauthorized action**

36 18125. No limitation on the power of an unincorporated association to acquire,
37 hold, manage, pledge, encumber, or transfer an interest in real or personal
38 property, or the manner of exercise of those powers, shall be asserted as between
39 the unincorporated association or a member of the unincorporated association and
40 a third person, except in the following proceedings:

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

1 (b) A proceeding to dissolve the unincorporated association.

2 (c) A proceeding against an officer or agent of the unincorporated association for
3 violation of the officer's authority.

4 **Comment.** Section 18125 is drawn from Section 208(a). It protects third parties from claims
5 that an action of an unincorporated association is unauthorized or improperly executed.

6 See also Sections 18010 ("member" defined), 18025 ("unincorporated association" defined).

7 **§ 18130. Disposition of assets of dissolved association**

8 18130. After all of the known debts and liabilities of an unincorporated
9 association in the process of winding up its affairs have been paid or adequately
10 provided for, the assets of the association may be distributed as follows:

11 (a) Assets that are held in trust shall be distributed in accordance with the trust.

12 (b) Assets that are not held in trust shall be distributed in accordance with the
13 governing documents of the association. If the governing documents do not
14 provide the manner of distribution of the assets, they shall be distributed pro rata
15 to the current members of the association.

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

19 Subdivision (a) governs distribution of assets held in charitable trust. See *Lynch v. Spilman*, 67
20 Cal. 2d 251, 260, 431 P.2d 636, 62 Cal. Rptr. 12 (1967) ("property transferred to a corporation or
21 other institution organized for a charitable purpose without a declaration of the use to which the
22 property is to be put, is received and held by it 'in trust to carry out the objects for which the
23 organization was created.'") (citations omitted).

24 Subdivision (b) governs assets that are not subject to a trust. It is consistent with the holding in
25 *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 932, 59 Cal. Rptr. 180
26 (1967) ("It is the general rule that upon the dissolution of a voluntary association its property
27 should be distributed pro-rata among its members unless otherwise provided by its constitution or
28 by-laws.") (citations omitted).

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

35 See also Sections 18005 ("governing document" defined), 18010 ("member" defined), 18025
36 ("unincorporated association" defined).

37 **§ 18135. Recovery of distributed assets**

38 18135. (a) Notwithstanding Section 18635, a cause of action against an
39 unincorporated association may be enforced against a person who received assets
40 distributed under Section 18130. Liability under this section shall be limited to the
41 value of the assets distributed to the person or the person's pro rata share of the
42 claim against the unincorporated association, whichever is less.

43 (b) To enforce a cause of action under this section, a claimant must commence a
44 proceeding to enforce the cause of action before expiration of the statute of

1 limitations applicable to the cause of action and within four years after dissolution
2 of the unincorporated association.

3 **Comment.** Section 18135 is new.

4 See also Sections 18005 (“governing document” defined), 18010 (“member” defined), 18020
5 (“person” defined), 18025 (“unincorporated association” defined).

6 ☞ **Note.** Proposed Section 18135 is drawn from Corporations Code Section 8723. That section
7 imposes a time limit for recovery of assets from a distributee, but creates an exception to the time
8 limit for a quiet title action. The Commission would like to receive comments on whether such an
9 exception should be added to Section 18135.

10 CHAPTER 4. DESIGNATION OF AGENT FOR SERVICE OF
11 PROCESS

12 **§ 18200. Statement of unincorporated association**

13 18200. (a) An unincorporated association may file with the Secretary of State on
14 a form prescribed by the Secretary of State a statement containing either of the
15 following:

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

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

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

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

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

41 (e) Delivery by hand of a copy of any process against the unincorporated
42 association (1) to any natural person designated by it as agent, or (2) if the

1 association has designated a corporate agent, to any person named in the last
2 certificate of the corporate agent filed pursuant to Section 1505 at the office of the
3 corporate agent shall constitute valid service on the association.

4 (f) For filing a statement as provided in this section, the Secretary of State shall
5 charge and collect the fee prescribed in paragraph (1) of subdivision (b) of Section
6 12191 of the Government Code for filing a designation of agent.

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

10 **Comment.** Section 18200 continues former Section 24003 without substantive change.
11 Subdivision (g) is added as a transitional provision to make clear that this chapter applies to a
12 statement filed by a partnership under former Section 24003, despite language in Section 18055
13 providing that this title does not apply to a partnership. See Sections 16309-16310 (partnership's
14 designation of agent for service of process).

15 See also Section 18025 ("unincorporated association" defined).

16 § 18205. Numbering, filing, and indexing of statements

17 18205. (a) The Secretary of State shall mark each statement filed under Section
18 18200 with a consecutive file number and the date of filing. The Secretary of State
19 may destroy or otherwise dispose of any such statement four years after the
20 statement expires. In lieu of retaining the original statement, the Secretary of State
21 may retain a copy thereof in accordance with Section 14756 of the Government
22 Code.

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

29 (c) Upon request of any person, the Secretary of State shall issue a certificate
30 showing whether, according to the records of the office of the Secretary of State,
31 there is on file on the date and hour stated therein, any presently effective
32 statement filed under Section 18200 for an unincorporated association using a
33 specific name designated by the person making the request. If such a statement is
34 on file, the certificate shall include the information required by subdivision (b) to
35 be included in the index. The fee for the certificate is as set forth in Section 12182
36 of the Government Code.

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

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

42 **Comment.** Section 18205 continues former Section 24004 without substantive change.

43 See also Section 18020 ("person" defined), 18025 ("unincorporated association" defined).

1 **§ 18210. Revocation or resignation of agency**

2 18210. (a) An agent designated by an unincorporated association for the service
3 of process may file with the Secretary of State a written statement of resignation as
4 agent which shall be signed and execution thereof shall be duly acknowledged by
5 the agent. Thereupon the authority of the agent to act in such capacity shall cease
6 and the Secretary of State forthwith shall give written notice of the filing of the
7 statement by mail to the unincorporated association at its address as set out in the
8 statement filed by the association.

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

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

17 **Comment.** Section 18210 continues former Section 24005 without substantive change.
18 See also Section 18025 (“unincorporated association” defined).

19 **§ 18215. Notice of expiration**

20 18215. Between the first day of October and the first day of December
21 immediately preceding the expiration date of a statement filed under Section
22 18200, the Secretary of State shall send by first class mail a notice, indicating the
23 date on which the statement will expire and the file number assigned to the
24 statement, to the unincorporated association at its address as set out in the
25 statement. Neither the failure of the Secretary of State to mail the notice as
26 provided in this section nor the failure of the notice to reach the unincorporated
27 association shall continue the statement in effect after the date of its expiration.
28 Neither the state nor any officer or employee of the state is liable for damages for
29 failure to mail the notice as required by this section.

30 **Comment.** Section 18215 continues former Section 24006 without substantive change.
31 See also Section 18025 (“unincorporated association” defined).

32 **§ 18220. Service of process on unincorporated associations in certain cases**

33 18220. If designation of an agent for the purpose of service of process has not
34 been made as provided in Section 18200, or if the agent designated cannot with
35 reasonable diligence be found at the address specified in the index referred to in
36 Section 18205 for delivery by hand of the process, and it is shown by affidavit to
37 the satisfaction of a court or judge that process against an unincorporated
38 association cannot be served with reasonable diligence upon the designated agent
39 by hand or the unincorporated association in the manner provided for in Section
40 415.10 or 415.30 of the Code of Civil Procedure or subdivision (a) of Section
41 415.20 of the Code of Civil Procedure, the court or judge may make an order that

1 service be made upon the unincorporated association by delivery of a copy of the
2 process to any one or more of the association’s members designated in the order
3 and by mailing a copy of the process to the association at its last known address.
4 Service in this manner constitutes personal service upon the unincorporated
5 association.

6 **Comment.** Section 18220 continues former Section 24007 without substantive change.
7 See also Sections 18010 (“member” defined), 18025 (“unincorporated association” defined).

8 CHAPTER 5. LIABILITY

9 § 18250. Liability of unincorporated association

10 18250. Except as otherwise provided by law, an unincorporated association is
11 liable for its act or omission and for the act or omission of its officer, agent, or
12 employee, acting within the scope of the office, agency, or employment, to the
13 same extent as if the association were a natural person.

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

16 (1) Language providing that former Section 24001 did not affect the liability of an association
17 to a member of the association has not been continued. It is now clear that an unincorporated
18 association may be liable to a member of the association. See *Marshall v. ILWU*, 57 Cal. 2d 781,
19 371 P.2d 987, 22 Cal. Rptr. 211 (1962) (member can sue labor union for negligent acts which
20 member neither participated in nor authorized), *White v. Cox*, 17 Cal. App. 3d 824, 827, 95 Cal.
21 Rptr. 259 (1971) (“unincorporated associations are now entitled to general recognition as separate
22 legal entities and ... as a consequence a member of an unincorporated association may maintain a
23 tort action against his association.”).

24 (2) The phrase “except as otherwise provided by statute” has been broadened. Both statutory
25 and common law limitations on the liability of an unincorporated association should govern. For
26 example, in *Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n*, 21 Cal. 4th 249, 253,
27 980 P.2d 940, 87 Cal. Rptr. 237 (1999), the court held that courts should defer to a decision of a
28 duly-constituted community association board, where the board, “upon reasonable investigation,
29 in good faith, and with regard for the best interests of the community association and its
30 members, exercises discretion within the scope of its authority under relevant statutes, covenants
31 and restrictions to select among means for discharging an obligation to maintain and repair a
32 development’s common areas....” Section 18250 does not override the rule stated in that case.

33 CHAPTER 6. GOVERNANCE [RESERVED]

34 PART 2. NONPROFIT ASSOCIATIONS

35 CHAPTER 1. LIABILITY

36 § 18605. No liability based solely on membership or agency

37 18605. A member, officer, or agent of a nonprofit association is not personally
38 liable for a debt, obligation, or liability of the association solely by reason of being
39 a member, officer, or agent.

40 **Comment.** Section 18605 codifies the general rule that a member of an unincorporated
41 nonprofit association is not personally liable for the association’s debts, obligations, or liabilities

1 solely by reason of membership. See *Security First National Bank of Los Angeles v. Cooper*, 62
2 Cal. App. 2d 653, 666, 145 P.2d 722 (1945) (“membership, as such, imposes no personal liability
3 for the debts of the association”); *Orser v. George*, 252 Cal. App. 2d 660, 670, 60 Cal. Rptr. 708
4 (1967) (“mere membership does not make all members liable for unlawful acts of other members
5 without their participation, knowledge or approval”).

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

10 See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined).

11 **§ 18610. Contract liability of member of nonprofit association**

12 18610. A member of a nonprofit association may not be held personally liable
13 for a contractual obligation of the association, except in one of the following
14 circumstances:

- 15 (a) The member expressly assumes personal responsibility for the obligation.
16 (b) The member expressly authorizes or ratifies the specific contract.
17 (c) With notice of the contract, the member receives a benefit under the contract.

18 Liability under this subdivision is limited to the value of the benefit received.

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

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

24 Subdivision (b) is consistent with the common law rule that a member of a nonprofit
25 association may be personally liable for a contractual obligation that the member has expressly
26 authorized or ratified. See *Security First National Bank of Los Angeles v. Cooper*, 62 Cal. App.
27 2d 653, 145 P.2d 722 (1944). Subdivision (b) does not continue the common law rule that a
28 member may be liable for a contract that the member has impliedly authorized or ratified.
29 Authorization and ratification may not be inferred from mere participation in the governance of
30 the association — express approval of the contract is required. For example, approval of by-laws,
31 election of officers, or participation in a vote in which the member votes against authorization or
32 ratification of a contract would not constitute express authorization or ratification of a contract.

33 See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined).

34 ☞ **Note.** Proposed Section 18610 would not continue existing Section 21100, which provides
35 that a member of an unincorporated nonprofit association is not “individually or personally liable
36 for debts or liabilities contracted or incurred by the association in the acquisition of lands or
37 leases or the purchase, leasing, designing, planning, architectural supervision, erection,
38 construction, repair, or furnishing of buildings or other structures, to be used for the purposes of
39 the association.”

40 It is not clear what purpose is served by this exemption — why should these types of debts and
41 liabilities be treated differently from others? At the time of enactment the distinction was
42 criticized by the Legislative Counsel (Wood, Report on Assembly Bill No. 356 4-5 (April 21,
43 1945)):

44 Those creditors who had contracts of the kinds described in the bill would have a more
45 restricted recourse to members’ property than would those creditors who sold food, an
46 aircraft, a ship or furnishings for it, or musical instruments for a band, or who performed the
47 services of secretaries, janitors or clergymen.

48 ...

1 I have not been able to conceive of a state of facts that would show that the classification of
2 debts and liabilities contained in the bill is founded on a natural, intrinsic or constitutional
3 distinction which reasonably justifies different treatment from that which would be given to
4 debts and liabilities not mentioned in it; although I freely admit that it is hypothetically
5 possible that a court might find such a distinction. It is my opinion that grave doubt exists as
6 to whether a court would find the proposed legislation to be constitutional as far as the
7 classification affects it.

8 The Commission would like to receive input on whether Section 21100 should be continued, and
9 if so, why.

10 **§ 18615. Contract liability of officer or agent of nonprofit association**

11 18615. An officer or agent of a nonprofit association may be held personally
12 liable for a contractual obligation of the nonprofit association if the officer or
13 agent does any of the following:

14 (a) Expressly assumes personal responsibility for the obligation.

15 (b) Executes the contract without disclosing that the officer or agent is acting as
16 an officer or agent of the association.

17 (c) Executes the contract without authority to execute the contract.

18 **Comment.** Section 18615 is new. This section states bases for the liability of an officer or
19 agent of a nonprofit association. Liability of an officer or agent of a nonprofit association is
20 governed by the general law of agency. See Section 18065.

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

24 Subdivision (b) is consistent with existing law providing that an agent is not liable for a
25 contract entered into on behalf of a disclosed principal. See 2 B. Witkin, Summary of California
26 Law Agency §§ 145-48, at 141-44 (9th ed. 1987).

27 Subdivision (c) provides that an officer or agent may be liable for a contract executed on behalf
28 of an association if the officer or agent lacks authority to execute the contract. See Civ. Code §§
29 2342 (warranty of authority), 2343(2) (bad faith representation of authority); 2 B. Witkin,
30 Summary of California Law Agency §§ 144-45, at 141-42 (9th ed. 1987).

31 See also Section 18015 (“nonprofit association” defined).

32 **§ 18620. Tort liability**


33 18620. A member, officer, or agent of a nonprofit association may not be held
34 personally liable for an injury caused by an act or omission of the association or an
35 act or omission of an officer or agent of the association, except in either of the
36 following circumstances:

37 (a) The member, officer, or agent expressly assumes liability for any injury
38 caused by particular conduct and that conduct causes the injury.

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

40 **Comment.** Section 18620 is new. It specifies the scope of personal liability of a member,
41 officer, or agent of a nonprofit association for a tort of the association or of an officer or agent of
42 the association.

43 See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined).

44  **Note.** The proposed law does not continue Section 21100, which provides that a member of a
45 nonprofit association is not personally liable for debts or liabilities contracted or incurred in
46 connection with specified real property matters. Although Section 21100 was enacted in response

1 to a case involving contractual liability, as drafted it also limits liability for torts relating to the
2 specified real property transactions. The Commission would like to receive input on whether
3 there is good justification for such an exemption. See discussion in the note following proposed
4 Section 18610.

5 **§ 18630. Alter ego liability of member of nonprofit association**

6 18630. Notwithstanding any other provision of this chapter, a member of a
7 nonprofit association may be personally liable for a debt, obligation, or liability of
8 the association under common law principles governing alter ego liability of
9 shareholders of a corporation, taking into account differences in form between a
10 nonprofit association and a corporation.

11 **Comment.** Section 18630 is new. It provides that the common law alter ego doctrine applicable
12 to corporations may also be applied to nonprofit associations. The alter ego doctrine is
13 summarized in *Communist Party of the United States v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980,
14 993, 41 Cal. Rptr. 2d 618 (1995) (“In general, the two requirements for applying the alter ego
15 doctrine are that (1) there is such a unity of interest and ownership between the corporation and
16 the individual or organization controlling it that their separate personalities no longer exist, and
17 (2) failure to disregard the corporate entity would sanction a fraud or promote injustice.”).

18 In applying the alter ego doctrine to unincorporated associations, a court should take into
19 account differences in form between a corporation and a nonprofit association. For example,
20 failure to observe corporate formalities may be a factor in a decision to impose alter ego liability
21 on shareholders of a corporation. Although it would be unreasonable to expect a nonprofit
22 association to observe the governance formalities required of a corporation, it might be
23 reasonable to expect that a nonprofit association will follow the governance formalities it has
24 established for itself. Failure to do so may indicate that the personality of a nonprofit association
25 and its members are not truly separate.

26 Failure to provide a corporation with reasonably adequate assets to cover its prospective
27 liabilities may also justify imposing alter ego liability on shareholders of a corporation. In
28 *Automotriz del Golfo de California v. Resnick*, 47 Cal. 2d 792, 797, 306 P.2d 1 (1957), the court
29 relied in part on inadequate capitalization to justify imposing alter ego liability (quoting
30 *Ballantine on Corporations* (1946)):

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

41 This principle could also be applied to a nonprofit association. However, it would be necessary to
42 carefully consider the nature of the association to determine what level of unencumbered capital
43 would be reasonably adequate for the association’s prospective liabilities. For example, a small
44 historical society, operating a museum that is open to the public, should probably insure against
45 liability for any injuries suffered by the public while in the museum. Such insurance might
46 reasonably be considered adequate capitalization. On the other hand, an association that publishes
47 controversial and potentially defamatory commentaries about public figures might reasonably
48 anticipate greater risk of liability. If the association fails to insure against that risk or maintain a
49 cash reserve to satisfy any judgment against it, a court might conclude that the association is
50 inadequately capitalized.

1 See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined).

2 **§ 18635. Enforcement of judgment against nonprofit association**

3 18635. (a) A judgment creditor of a member, officer, or agent of a nonprofit
4 association may not levy execution against the assets of the member, officer, or
5 agent to satisfy a judgment based on a claim against the nonprofit association
6 unless a judgment based on the same claim has been obtained against the nonprofit
7 association and one or more of the following conditions is satisfied:

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

10 (2) The nonprofit association is a debtor in bankruptcy.

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

13 (4) A court grants permission to the judgment creditor to levy execution against
14 the assets of a member, officer, or agent based on a finding that the assets of the
15 nonprofit association subject to execution are clearly insufficient to satisfy the
16 judgment, that exhaustion of the assets of the nonprofit association is excessively
17 burdensome, or that the grant of permission is an appropriate exercise of the
18 court’s equitable powers.

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

23 **Comment.** Section 18635 is drawn from Section 16307(d).

24 See also Sections 18010 (“member” defined), 18015 (“nonprofit association” defined).

25 **§ 18640. Fraudulent transfers**

26 18640. Nothing in this chapter limits application of the Uniform Fraudulent
27 Transfer Act.

28 **Comment.** Section 18640 is new. It makes clear that limits on liability provided in this chapter
29 do not affect the application of the Uniform Fraudulent Transfer Act. See Civ. Code §§ 3439-
30 3439.12. Thus, if an insolvent association transfers assets to a member (e.g., through a general
31 distribution or redemption of membership), those assets may be subject to attachment by a
32 creditor, regardless of whether the member is personally liable for the debt.

33 **CHAPTER 2. INSIGNIA**

34 **§ 18700. “Insignia” defined**

35 18700. As used in this chapter, “insignia” includes a badge, motto, button,
36 decoration, charm, emblem, or rosette.

37 **Comment.** Section 18700 continues former Section 21300(b) without substantive change.

38 ☞ **Note.** Former Section 21300(a) defined the term “association” as “any lodge, order, beneficial
39 association, fraternal or beneficial society or association, historical, military, or veterans
40 organization, labor union, foundation, or federation, or any other society, organization, or
41 association, or degree, branch, subordinate lodge, or auxiliary thereof.” Given the examples cited

1 in that definition, and the fact that the insignia provisions are contained within a part entitled
2 “Nonprofit Associations,” the term appears to be synonymous with the term “nonprofit
3 association” as defined in proposed Section 18015. For the sake of clarity, the term “nonprofit
4 association” has been substituted for the term “association” throughout this chapter. The
5 Commission would like to receive comments on whether that would cause any problems.

6 **§ 18705. Registration of name or insignia**

7 18705. Any nonprofit association, the principles and activities of which are not
8 repugnant to the Constitution or laws of the United States or of this State, may
9 register in the office of the Secretary of State a facsimile or description of its name
10 or insignia and may by reregistration alter or cancel it.

11 **Comment.** Section 18705 continues former Section 21301 without substantive change. Note
12 that the term “association” has been replaced with the term “nonprofit association.” See Section
13 18015 (“nonprofit association” defined).

14 **§ 18710. Deceptively similar name or insignia**

15 18710. A nonprofit association shall not be permitted to register any name or
16 insignia similar to or so nearly resembling another name or insignia already
17 registered as may be likely to deceive.

18 **Comment.** Section 18710 continues former Section 21302 without substantive change. Note
19 that the term “association” has been replaced with the term “nonprofit association.” See Section
20 18015 (“nonprofit association” defined).

21 **§ 18715. Application for registration, alteration, or cancellation**

22 18715. Application for registration, alteration, or cancellation pursuant to this
23 chapter shall be made by the chief officer or officers of the nonprofit association,
24 upon blanks to be provided by the Secretary of State. Such registration shall be for
25 the use and benefit and on behalf of the association, the individual members, and
26 those hereafter to become members thereof.

27 **Comment.** Section 18715 continues former Section 21303 without substantive change. Note
28 that the term “association” has been replaced with the term “nonprofit association.” See Sections
29 Section 18010 (“member” defined), 18015 (“nonprofit association” defined).

30 **§ 18720. Fee**

31 18720. The Secretary of State shall charge and collect a fee as set forth in
32 paragraph (2) of subdivision (b) of Section 12191 of the Government Code for
33 each registration made under this chapter.

34 **Comment.** Section 18720 continues former Section 21304 without change.

35 **§ 18725. Certificate of registration**

36 18725. Upon registration of a nonprofit association under this chapter, the
37 Secretary of State shall issue a certificate setting forth the fact of the registration.

38 **Comment.** Section 18725 continues former Section 21305 without substantive change. Note
39 that the term “association” has been replaced with the term “nonprofit association.” See Section
40 18015 (“nonprofit association” defined).

1 **§ 18730. Indexed record of registrations**

2 18730. The Secretary of State shall keep a properly indexed record of the
3 registrations provided for by this chapter. The record shall also show any altered or
4 canceled registration.

5 **Comment.** Section 18730 continues former Section 21306 without substantive change.

6 **§ 18735. Unauthorized use of registered name or insignia**

7 18735. Any person who willfully wears, exhibits, or uses for any purpose a name
8 or insignia registered under this chapter, who is not entitled to use, wear, or exhibit
9 the name or insignia under the constitution, bylaws, or rules of the nonprofit
10 association that registered it, is guilty of a misdemeanor punishable by fine of not
11 to exceed two hundred dollars (\$200) or by imprisonment in the county jail for a
12 period not to exceed 60 days.

13 **Comment.** Section 18735 continues former Section 21307 without substantive change. Note
14 that the term “association” has been replaced with the term “nonprofit association.” See Section
15 18015 (“nonprofit association” defined).

16 **§ 18740. Injunction to restrain unauthorized use of name or insignia**

17 18740. Any court of competent jurisdiction may restrain by injunction:

18 (a) Wearing or use of the insignia of a nonprofit association, unless the person
19 wearing or using the insignia is entitled to wear or use the insignia under the
20 constitution, by-laws, or rules of the nonprofit association.

21 (b) Use of the name of a nonprofit association in a commercial venture, trade, or
22 business, in the solicitation of subscriptions for or advertising in a newspaper or
23 other publication, or in the solicitation of donations by a person representing
24 directly or indirectly that the commercial venture, trade, or business, newspaper or
25 other publication, or donation or solicitation for donation, is sponsored, endorsed,
26 or being offered by the nonprofit association, unless the person using the name is
27 entitled to do so under the constitution, by-laws, or rules of the nonprofit
28 association or has the written consent of the nonprofit association.

29 **Comment.** Section 18740 continues former Section 21308 without substantive change. Note
30 that the term “association” has been replaced with the term “nonprofit association.” See Section
31 18015 (“nonprofit association” defined).

32 **§ 18745. Damages recoverable in addition to injunctive relief**

33 18745. In an action under Section 18740 it is not necessary to allege or prove
34 actual damages or the threat thereof, or actual injury or the threat thereof to the
35 plaintiff. In addition to injunctive relief a plaintiff in an action under Section
36 18740 is entitled to recover the amount of the actual damages, if any, sustained by
37 the plaintiff.

38 **Comment.** Section 18745 continues former Section 21309 without substantive change.

1 **§ 18750. Evidence of unlawful use of name or insignia**

2 18750. The use of the name or insignia of a nonprofit association by a person not
3 entitled to use the name or insignia under the constitution, by-laws, rules, or
4 regulations of the association or by the written consent of the nonprofit
5 association, is presumptive evidence of the unlawful use of or traffic in the name
6 or insignia.

7 **Comment.** Section 18750 continues former Section 21310 without substantive change. Note
8 that the term “association” has been replaced with the term “nonprofit association.” See Section
9 18015 (“nonprofit association” defined).

10 CHAPTER 3. DEATH BENEFIT PAYMENTS BY
11 FRATERNAL SOCIETIES

12 **§ 18760. Payment of benefits in excess of burial expenses of member**

13 18760. Whenever a fraternal society or lodge, other than a society subject to
14 supervision by the Insurance Commissioner, pays benefits contingent on the death
15 of a member, beneficiaries other than the following relatives by blood, marriage,
16 or adoption shall be paid only the excess of the amount of the benefits over the
17 expense of burial of the member: spouse, relative by blood to the fourth degree,
18 father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother,
19 stepchildren, children by legal adoption, and parents by legal adoption.

20 **Comment.** Section 18760 continues former Section 21400 without substantive change.
21 See also Section 18010 (“member” defined).

22 **§ 18765. Liability of society for burial expenses**

23 18765. Any fraternal society or lodge which makes any payment in violation of
24 this chapter is liable for the expense of burial of the member to the extent of the
25 amount paid in violation thereof.

26 **Comment.** Section 18765 continues former Section 21401 without substantive change.
27 See also Section 18010 (“member” defined).

28 CHAPTER 4. NONPROFIT MEDICAL ASSOCIATIONS

29 Article 1. Definitions

30 **§ 18800. “Nonprofit medical association” defined**

31 18800. As used in this chapter, “nonprofit medical association” means an
32 unincorporated association that is an organized medical society limiting its
33 membership to licensed physicians and surgeons and that has as members at least
34 25 percent of the eligible physicians and surgeons residing in the area in which it
35 functions (which must be at least one county). However, if the association has less
36 than 100 members, it shall have as members at least a majority of the eligible
37 persons or licensees in the geographic area served by the particular association.

1 be in the best interest of the association, and (4) is in the exercise of the person's
2 policymaking judgment.

3 (b) This section does not apply to any volunteer director or officer who receives
4 compensation from the association in any other capacity, including, but not limited
5 to, as an employee.

6 (c) For the purpose of this section, the payment of actual expenses incurred in
7 attending meetings or otherwise in the execution of the duties of a director or
8 officer shall not constitute compensation.

9 **Comment.** Section 18815 continues former Section 24001.5(b), (f), & (i) without substantive
10 change. See Section 18800 ("nonprofit medical association" defined).

11 **§ 18820. Exceptions**

12 18820. Section 18815 does not limit the liability of a director or officer for any
13 of the following:

14 (a) Self-dealing transactions, as described in Sections 5233 and 9182.

15 (b) Conflicts of interest, as described in Section 7233.

16 (c) Actions described in Sections 5237, 7236, and 9245.

17 (d) In the case of a charitable trust, an action or proceeding against a trustee
18 brought by a beneficiary of that trust.

19 (e) Any action or proceeding brought by the Attorney General.

20 (f) Intentional, wanton, or reckless acts, gross negligence, or an action based on
21 fraud, oppression, or malice.

22 (g) Any action brought under Chapter 2 (commencing with Section 16700) of
23 Part 2 of Division 7 of the Business and Professions Code.

24 **Comment.** Section 18820 continues former Section 24001.5(c) without substantive change.
25 See Section 18800 ("nonprofit medical association" defined).

26 **§ 18825. Tax exempt status**

27 18825. Section 18815 only applies to a nonprofit organization organized to
28 provide charitable, educational, scientific, social, or other forms of public service
29 that is exempt from federal income taxation under Section 501(c)(3) or 501(c)(6)
30 of the Internal Revenue Code.

31 **Comment.** Section 18825 continues former Section 24001.5(d) without substantive change.
32 See Section 18800 ("nonprofit medical association" defined).

33 **§ 18830. Liability insurance**

34 18830 Section 18815 only applies if the nonprofit medical association maintains
35 a general liability insurance policy with an amount of coverage of at least the
36 following amounts:

37 (a) If the association's annual budget is less than fifty thousand dollars
38 (\$50,000), the minimum required amount is five hundred thousand dollars
39 (\$500,000).

1 (b) If the association's annual budget equals or exceeds fifty thousand dollars
2 (\$50,000), the minimum required amount is one million dollars (\$1,000,000).

3 This section applies only if the general liability insurance policy is in force both
4 at the time of injury and at the time that the claim is made, so that the policy is
5 applicable to the claim.

6 **Comment.** Section 18830 continues former Section 24001.5(e) without substantive change.
7 See also Section 18800 ("nonprofit medical association" defined).

8 **§ 18835. Nondiscrimination**

9 18835. Section 18815 does not apply to any association that unlawfully restricts
10 membership, services, or benefits conferred on the basis of race, religious creed,
11 color, national origin, ancestry, sex, marital status, disability, political affiliation,
12 or age.

13 **Comment.** Section 18835 continues former Section 24001.5(g) without substantive change.
14 See Section 18800 ("nonprofit medical association" defined).

15 **§ 18840. Liability of association**

16 18840. Nothing in this article shall be construed to limit the liability of a
17 nonprofit medical association for any negligent act or omission of a director,
18 officer, agent, or employee occurring within the scope of the duties of the director,
19 officer, agent, or employee.

20 **Comment.** Section 18840 continues former Section 24001.5(g) without substantive change.
21 See Section 18800 ("nonprofit medical association" defined).

22 **PART 3. BUSINESS ASSOCIATIONS**

23 **CHAPTER 1. JOINT STOCK ASSOCIATIONS**

24 **§ 18900. Unauthorized use of name in advertising**

25 18900. Every person who, without being authorized so to do, subscribes the
26 name of another to or inserts the name of another in any prospectus, circular, or
27 other advertisement, or announcement of any joint stock association, existing or
28 intended to be formed, with intent to permit the document to be published, and
29 thereby to lead persons to believe that the person whose name is so subscribed is
30 an officer, agent, member, or promoter of such association, is guilty of a
31 misdemeanor.

32 **Comment.** Section 18900 continues former Section 22000 without change.
33 See also Section 18010 ("member" defined).

34 **§ 18905. False statements**

35 18905. Every director, officer, or agent of any joint stock association is guilty of
36 a felony who knowingly concurs in making, publishing, or posting either generally
37 or privately to the stockholders or other persons, any written report, exhibit, or

1 statement of its affairs or pecuniary condition, or book or notice containing any
2 material statement which is false, or any untrue or willfully or fraudulently
3 exaggerated report, prospectus, account, statement of operations, values, business,
4 profits, expenditures, or prospects, or any other paper or document intended to
5 produce or give, or having a tendency to produce or give, the shares of stock in the
6 association a greater value or a less apparent or market value than they really
7 possess.

8 **Comment.** Section 18905 continues former Section 22001 without substantive change.

9 **§ 18910. Fraudulent documents and accounts**

10 18910. (a) Every director, officer, or agent of a joint stock association, who
11 knowingly receives or possesses himself or herself of property of the association,
12 otherwise than in payment of a just demand, and, with intent to defraud, omits to
13 make, or to cause or direct to be made, a full and true entry thereof in the books or
14 accounts of the association, is guilty of a public offense.

15 (b) Every director, officer, agent, or member of a joint stock association who,
16 with intent to defraud, destroys, alters, mutilates, or falsifies any of the books,
17 papers, writings, or securities belonging to the association, or makes or concurs in
18 making false entries, or omits or concurs in omitting to make a material entry in a
19 book of accounts or other record or document kept by the association, is guilty of a
20 public offense.

21 (c) Each public offense specified in this section is punishable by imprisonment
22 in a state prison, or by imprisonment in a county jail not exceeding one year, or a
23 fine not exceeding one thousand dollars (\$1,000), or by both fine and
24 imprisonment.

25 **Comment.** Section 18910 continues former Section 22002 without substantive change.

26 See also Section 18010 (“member” defined).

27 **§ 18915. Presumption of directors’ knowledge of association affairs**

28 18915. For the purposes of this chapter every director of a joint stock association
29 is deemed to possess such knowledge of the affairs of the association as to enable
30 the director to determine whether any act, proceeding, or omission of its directors
31 is a violation of this chapter.

32 **Comment.** Section 18915 continues former Section 22003 without substantive change.

33 **CHAPTER 2. REAL ESTATE INVESTMENT TRUSTS**

34 **§ 18950. “Real estate investment trust” defined**

35 18950. (a) “Real estate investment trust” as used in this chapter means any
36 unincorporated association or trust formed to engage in business and managed by,
37 or under the direction of, one or more trustees for the benefit of the holders or

1 owners of transferable shares of beneficial interest in the trust estate and which
2 meets one of the following two tests:

3 (1) It received, prior to August 28, 1976, an order, permit, or qualification from
4 the Commissioner of Corporations pursuant to the provisions of the Corporate
5 Securities Law of 1968 or any predecessor statute finding that it was a real estate
6 investment trust, notwithstanding the subsequent amendment, suspension, or
7 revocation of any such finding, order, permit, or qualification, and it has for one or
8 more or of the three fiscal years immediately prior to August 28, 1976 complied
9 with, or in good faith filed a federal income tax return on the basis that it has
10 complied with the requirements for real estate investment trusts set forth in Section
11 856 of the Federal Internal Revenue Code.

12 (2) It is formed for the purpose of engaging in business as a real estate
13 investment trust under Part II of Subchapter M of Chapter 1 of Subtitle A of the
14 Federal Internal Revenue Code of 1954, as amended from time to time, the sale of
15 its shares has been qualified at any time by the Commissioner of Corporations
16 pursuant to the Corporate Securities Law of 1968, and it has commenced business
17 as a real estate investment trust in good faith.

18 (b) An unincorporated association or trust which otherwise meets the
19 requirements of this section shall not be affected in its status as a real estate
20 investment trust whether or not it is in fact taxable for any year or years under Part
21 II of Subchapter M of Chapter 1 of Subtitle A of the Federal Internal Revenue
22 Code of 1954, as amended from time to time.

23 **Comment.** Section 18950 continues former Section 23000 without substantive change.
24 Subdivision and paragraph designations have been revised for clarity.

25 ☞ **Note.** Subdivision (a)(1) has been revised to improve its clarity without affecting its
26 substance. References to the “effective date of this part” have been replaced with the date on
27 which former Section 23000 became effective. In addition, the phrase “for one or more or its
28 three fiscal years” has been revised to read “for one or more or of the three fiscal years.” The
29 Commission would like to receive comments on whether these changes would have any
30 substantive effect.

31 **§ 18955. Nonliability of shareowners**

32 18955. No holder or owner of transferable shares of beneficial interest in the
33 trust estate of a real estate investment trust shall be personally liable as such for
34 any liabilities, debts or obligations of, or claims against, the real estate investment
35 trust, whether arising before or after the shareowner became the owner or holder of
36 the shares.

37 **Comment.** Section 18955 continues former Section 23001 without substantive change.

38 **§ 18960. Claims**

39 18960. Section 18955 shall apply to any real estate investment trust organized
40 under the laws of this state with respect to liabilities, debts, obligations, and claims
41 wherever arising, and to any real estate investment trust organized under the laws

1 of a foreign jurisdiction with respect to liabilities, debts, obligations and claims
2 arising in this state.

3 **Comment.** Section 18960 continues former Section 23002 without change.

4 **§ 18965. Prohibition against issuance of security redeemable at holder's option**

5 18965. A real estate investment trust shall not issue any security redeemable at
6 the option of the holder of the security.

7 **Comment.** Section 18965 continues former Section 23003 without change.

8 **§ 18970. Application of Section 18955**

9 18970. Section 18955 shall apply with respect to all liabilities, debts, obligations
10 of, and claims against, a real estate investment trust arising after August 28, 1976,
11 and prior law shall continue to govern with respect to liabilities, debts, obligations,
12 and claims existing on August 28, 1976. No implication shall be created by the
13 adoption of this chapter or the adoption of former Part 5 (commencing with
14 Section 23000) of this title, which this chapter continues, that the holders or
15 owners of shares of beneficial interest in business trusts which do not meet the
16 definition of real estate investment trust in Section 18950 are, or are not, as such,
17 personally liable for the liabilities, debts or obligations of, or claims against, any
18 such trust.

19 **Comment.** Section 18970 continues former Section 23004 without substantive change. To
20 avoid ambiguity, the date August 28, 1976, has been substituted for references to “the effective
21 date of this part” as it was originally enacted. A reference to “adoption of this part” has been
22 expanded to make clear that the reference includes adoption of this chapter as well as adoption of
23 the former part that it continues.

24 **§ 18975. Bankruptcy**

25 18975. The provisions of Sections 1400 and 1402 governing bankruptcy
26 reorganizations and arrangements for corporations also apply to real estate
27 investment trusts. Where the term “corporation” is used in those sections it shall
28 also include the term “real estate investment trust”, the terms “director” or “board
29 of directors” shall include “trustee” or “board of trustees”, the term “articles” shall
30 include “declaration of trust” and the term “capital stock” shall include “shares of
31 beneficial interest.”

32 **Comment.** Section 18975 continues former Section 23005 without substantive change.

33 **§ 18980. Merger**

34 18980. (a) The following entities may be merged pursuant to this article:

35 (1) Any two or more real estate investment trusts into one real estate investment
36 trust, provided that the merger is specifically permitted by the declarations of trust,
37 and that procedure is detailed in those declarations.

38 (2) One or more real estate investment trusts with one or more limited
39 partnerships into one limited partnership, provided that the merger is specifically

1 permitted by the declarations of trust, and that procedure is detailed in those
2 declarations.

3 (3) One or more real estate investment trusts with one or more limited
4 partnerships into one real estate investment trust, provided that the merger is
5 specifically permitted by the declarations of trust, and that procedure is detailed in
6 those declarations.

7 (b) Any merger under this section shall only be effective upon the approval of
8 the holders of a majority of the shares of beneficial interest of the real estate
9 investment trust.

10 **Comment.** Section 18980 continues former Section 23006 without change.

11 **Corp. Code §§ 20000-24007 (repealed). Unincorporated associations**

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

CONFORMING REVISIONS

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

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

4 395.2. If an unincorporated association has filed a statement with the Secretary
5 of State pursuant to ~~Section 24003 of the Corporations Code listing statute,~~
6 designating its principal office in this state, the proper county for the trial of an
7 action against such unincorporated association is the same as it would be if the
8 unincorporated association were a corporation and, for the purpose of determining
9 such county, the principal place of business of the unincorporated association shall
10 be deemed to be the principal office in this state listed in the statement.

11 **Comment.** Section 395.2 is amended to reflect the fact that an unincorporated association may
12 file a statement designating its principal office under sections other than former Corporations
13 Code Section 24003 (continued without substantive change in Corporations Code Section 18200).
14 See, e.g., Corp. Code §§ 15621(a)(4) (limited partnership), 16309 (general partnership),
15 16953(a)(3) (limited liability partnership), 17051(a)(4) & 17060(a)(2) (limited liability company).

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

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

18 416.40. A summons may be served on an unincorporated association (including
19 a partnership) by delivering a copy of the summons and of the complaint:

20 (a) If the association is a general or limited partnership to the person designated
21 as agent for service of process as ~~provided in Section 24003 of the Corporations~~
22 ~~Code~~ or to a general partner or the general manager of the partnership;

23 (b) If the association is not a general or limited partnership, to the person
24 designated as agent for service of process as ~~provided in Section 24003 of the~~
25 ~~Corporations Code~~ or to the president or other head of the association, a vice
26 president, a secretary or assistant secretary, a treasurer or assistant treasurer, a
27 general manager, or a person authorized by the association to receive service of
28 process;

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

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

36 **Code Civ. Proc. § 695.080 (added). Enforcement of money judgment against unincorporated**
37 **association**

38 695.080. A money judgment against an unincorporated association, whether
39 organized for profit or not, may be enforced only against the property of the
40 association.

1 **Comment.** Section 695.080 continues former Corporations Code Section 24002 without
2 substantive change.

3 **Corp. Code § 16202 (amended). Formation of partnership**

4 SEC. _____. Section 16202 of the Corporations Code is amended to read:

5 16202. (a) Except as otherwise provided in subdivision (b), the association of
6 two or more persons to carry on as coowners a business for profit forms a
7 partnership, whether or not the persons intend to form a partnership.

8 (b) An association formed under a statute other than this chapter, a predecessor
9 statute, or a comparable statute of another jurisdiction is not a partnership under
10 this chapter. An association formed pursuant to case law governing a specific type
11 of association is not a partnership under this chapter.

12 (c) In determining whether a partnership is formed, the following rules apply:

13 (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property,
14 common property, or part ownership does not by itself establish a partnership,
15 even if the coowners share profits made by the use of the property.

16 (2) The sharing of gross returns does not by itself establish a partnership, even if
17 the persons sharing them have a joint or common right or interest in property from
18 which the returns are derived.

19 (3) A person who receives a share of the profits of a business is presumed to be a
20 partner in the business, unless the profits were received for any of the following
21 reasons:

22 (A) In payment of a debt by installments or otherwise.

23 (B) In payment for services as an independent contractor or of wages or other
24 compensation to an employee.

25 (C) In payment of rent.

26 (D) In payment of an annuity or other retirement benefit to a beneficiary,
27 representative, or designee of a deceased or retired partner.

28 (E) In payment of interest or other charge on a loan, even if the amount of
29 payment varies with the profits of the business, including a direct or indirect
30 present or future ownership of the collateral, or rights to income, proceeds, or
31 increase in value derived from the collateral.

32 (F) In payment for the sale of the goodwill of a business or other property by
33 installments or otherwise.

34 **Comment.** Section 16202 is amended to make clear that an unincorporated business
35 association formed pursuant to case law authority is not a partnership. For example, a business
36 trust is not a partnership. See *Goldwater v. Oltman*, 210 Cal. 408, 292 P. 624 (1930).

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

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

39 16309. (a) The statement of partnership authority may designate an agent for
40 service of process. The agent may be an individual residing in this state or a
41 corporation that has complied with Section 1505 and whose capacity to act as an

1 agent has not terminated. If an individual is designated, the statement shall include
2 that person's complete business or residence address in this state.

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

9 (c) If an individual who has been designated agent for service of process dies or
10 resigns or no longer resides in the state, or if the corporate agent for that purpose
11 resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate
12 business, has its corporate rights, powers, and privileges suspended, or ceases to
13 exist, the partnership or foreign partnership shall promptly file an amended
14 statement of partnership authority, designating a new agent.

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

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

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

20 16310. (a) If a partnership has designated an agent for service of process,
21 process may be served on the partnership as provided in this section and in
22 Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of
23 Civil Procedure.

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

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

32 (d)(1) If an agent for service of process has resigned and has not been replaced,
33 or if the designated agent cannot with reasonable diligence be found at the address
34 designated for personal delivery of the process, and it is shown by affidavit to the
35 satisfaction of the court that process against a partnership cannot be served with
36 reasonable diligence upon the designated agent by hand in the manner provided in
37 Section 415.10, subdivision (a) of Section 415.20, or subdivision (a) of Section
38 415.30 of the Code of Civil Procedure, the court may make an order that the
39 service shall be made on a partnership by delivering by hand to the Secretary of
40 State, or to any person employed in the Secretary of State's office in the capacity
41 of assistant or deputy, one copy of the process for each defendant to be served,
42 together with a copy of the order authorizing the service. Service in this manner

1 shall be deemed complete on the 10th day after delivery of the process to the
2 Secretary of State.

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

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

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