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FOR DISCUSSION ONLY

REVISED
UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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WITH PREFATORY NOTE AND COMMENTS

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATIONS ACT

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REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

TABLE OF CONTENTS

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

PREFATORY NOTE

An unincorporated nonprofit association (UNA) is a nonprofit organization that is not a charitable trust or a nonprofit corporation or any other type of association organized under statutory law that is authorized to engage in nonprofit activities. A UNA is, thus, a default organization. As such, it is the nonprofit equivalent of a general partnership, which is the default for profit organization.

In the United States UNAs are governed by a hodgepodge of common law principles and statutes governing some of their legal aspects. Many of the existing statutes are designed to ameliorate some of the legal problems that arise from the basic common law concept that UNAs are merely aggregates of individuals and not legal entities. Under the traditional common law aggregate theory, for example, a UNA could not hold or convey property in its own name or sue or be sued in its own name. These statutes are for the most part (California is a notable exception) not comprehensive or integrated.

NCCUSL promulgated the Uniform Unincorporated Nonprofit Association Act (UUNAA) in 1996. UUNAA, which has been adopted in 12 states, deals with only a limited number of issues—tort and contract liability of members, owning and conveying of property and suits by and against a UNA.

In 2005, NCCUSL decided that UUNAA needed to be updated and made more comprehensive and entered into a joint project with the Uniform Law Conference of Canada and the Mexican Center on Uniform Laws to create a harmonized legal framework for UNAs in the United States, Canada and Mexico. The Drafting Committee for this project developed a Statement of Principles that each participating country has used as the basis for its UNA statute. The Revised Uniform Unincorporated Nonprofit Association Act (RUUNAA) is the American version of this harmonization project.

RUUNAA governs all UNAs that are formed or operate in a state that adopts the Act. UNAs are often classified as public benefit, mutual benefit or religious organizations and may or may not be tax-exempt. There are probably hundreds of thousands of UNAs in the United States including unincorporated nonprofit philanthropic, educational, scientific and literary clubs, sporting organizations, unions, trade associations, political organizations, churches, hospitals, and condominium and neighborhood associations. Their members may be individuals, corporations, other legal entities or a mix.

RUUNAA deals with the following basic issues: (1) definition of the types of organizations covered; (2) the relation of the principles to other existing laws; (3) the recognition that a UNA is a legal entity and the legal implications flowing from this status, including the ability of a UNA to own and dispose of property and to sue and be sued in its own name; (4) the contract and tort liability of a UNA and its members and managers; (5) internal governance, fiduciary duties, and agency authority; and (6) dissolution and merger.

RUUNAA is not nearly as comprehensive as the American Bar Association Model Nonprofit Corporation Act (ABA Model Act) promulgated in 1952 and most recently revised in 2008, some version of which has been adopted in most states. RUUNAA merely provides a basic legal framework for UNAs and is not intended to be a substitute for organizing a UNA as a nonprofit corporation under state law.

RUUNAA was drafted with small informal associations in mind. These informal organizations are likely to have no legal advice and so fail to consider legal and organization questions, including whether to incorporate. The Act provides better answers than the common law for a limited number of legal problems. Its answers are more in accord with the expectations of those participating in the work of a UNA and third parties dealing with a UNA than the common law.

To the extent an enacting jurisdiction decides to retain statutes dealing with specific kinds of nonprofit associations, this Act will supplement existing legislation. Many states have statutes on special kinds of unincorporated nonprofit associations, such as churches, mutual benefit societies, social clubs, and veteran's organizations. A state electing to adopt this Act will need to examine carefully its existing statutes to determine which it wants to repeal, which to amend, and which to retain.

It should be noted, too, that many of the provisions are intended to be supplemented by a jurisdiction's existing law. For example, Section 7 which provides for the filing of a statement of association authority, does not provide details concerning the filing process. It leaves to other law such details as whether the filing officer returns a copy marked "filed" and stamps the hour and date thereof, and the amount of the filing fee.

Finally, most jurisdictions regulate solicitations and other activities of charitable organizations regardless of their organization form and allow for exemption from most state and local taxes. These statutes will be applicable to all UNAs formed or operating in a state that adopts RUUNAA. It may be necessary in some states to modify the language of these existing statutes to be certain that they apply to UNAs after RUUNAA is enacted.

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

SECTION 1. SHORT TITLE. This act may be cited as the Revised Unincorporated Nonprofit Association Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Established practices" means the practices used by an unincorporated nonprofit association without material change during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.

(2) "Governing principles" means all the agreements, whether oral, in a record, implied from its established practices, or in any combination thereof, that govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers. The term includes any amendment or restatement of the agreements constituting the governing principles.

(3) "Manager" means a person that is responsible, alone or in concert with others, for the management functions of an unincorporated nonprofit association as stated in Section 22.

(4) "Member" means a person that, under the governing principles of an unincorporated nonprofit association, may participate in the selection of persons authorized to manage the affairs of the association or in the development of the policies and activities of the association.

(5) "Person" means an individual, corporation, business trust, statutory entity trust, estate, trust, partnership, limited liability company, cooperative, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in

an electronic or other medium and is retrievable in perceivable form.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(8) "Unincorporated nonprofit association" means an unincorporated organization, consisting of [two] or more members joined by mutual consent pursuant to an agreement written, oral, or inferred from conduct, for one or more common, nonprofit purposes that is not a trust, a marriage, domestic partnership, common law relationship or other domestic living arrangement, or that is formed under any other statute that governs the organization and operation of unincorporated associations. The term does not include joint tenancy, tenancy in common, or tenancy by the entireties even if the co-owners share use of the property for a nonprofit purpose. An association may engage in profit-making activities but any profits from such activities must be used or set aside for the association's nonprofit purposes.

Comment

1. "Established practices" are essentially equivalent to the commercial law concepts of course of performance and course of dealing. *See* UCC §1-303. Many UNAs operate on a very informal basis. Often there are no written procedures or bylaws or what writings they have are very incomplete. Nevertheless, over time they develop and follow various practices. These practices, if followed consistently for at least five years (or during the entire existence of the UNA if it has been in existence less than five years), become established practices and therefore can qualify as part of the UNAs "governing principles." An example would be an unincorporated church that has no written bylaws covering the issue of notice of meetings that for the past five years has printed notice of the annual meeting of its members in the church bulletin for the three weeks preceding the annual meeting. This established practice would be part of the church's governing principles and if followed in the sixth and subsequent years would be determinative of whether reasonable notice of an annual meeting had been given.

2. "Governing principles" are the equivalent of the articles of incorporation, bylaws and other documents and established practices that govern the internal affairs of a UNA, sometimes referred to as an entity's private organic rules. *See* Model Entity Transactions Act (2007) §1-102 (31). The "governing principles" of a UNA do not have to be in a written form. This is consistent with partnership law, the for profit equivalent of a UNA. *See* Uniform Partnership

Act (1997) §101(7); Uniform Limited Partnership Act (2001) §102(13); Revised Uniform Limited Liability Act (2006) §102(13). *See also* Comment 8.

3. A person is a "manager" of a UNA if the individual fits the definition even if that person's designation might usually be associated with another type of organization. Many UNAs refer to members of their governing boards as "directors" or "trustees." These designations do not disqualify the organization from being a UNA even though the term "director" is commonly associated with corporations and the term "trustee" is commonly associated with trusts. A manager may, but need not be, a member of the UNA (*see* Section 22(a)); and may, and, in fact in most cases will be an individual, but various types of entities can also be managers of a UNA (*see* Subsection (5)—definition of person).

4. The definition of "member" may reach somewhat beyond decisions of some courts. Either participation in the selection of the management or in the development of policies and activities of the UNA is enough. Both are not required. This broad definition of member ensures that the insulation from liability is provided in all cases in which the common law might have imposed liability on a person, simply because the person was a member.

Persons who do not have the right to select a UNA's manager or to approve its governing policies are not members of the UNA for purposes of this Act even though the UNA may call or refer to them as members. A fund-raising device commonly used by many nonprofit organizations is a membership drive. In most cases the contributors are not members for purposes of this Act. They are not authorized to "participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policies and activities of the association." Simply because an association calls a person a member does not make the person a member under this Act.

The role of a member in the affairs of a UNA is described as "may participate in the selection" instead of "may select or elect" the governing board and officers and "may participate . . . in the development of policies and activities" instead of "may determine" policies and activities. This accommodates the Act to a great variation in practices and organizational structures. For example, some nonprofit associations permit the president or chair to name some members of the governing board, such as by naming the chairs of principal committees who are designated ex officio members of the governing board. Similarly, the role in determination of policy is described in general terms. "Persons authorized to manage the affairs of the association" is used in the definition instead of president, executive director, officer, member of governing board, and the like. Given the wide variety of organizational structures of nonprofit associations to which this Act applies and the informality of many of them, the more generic term is more appropriate.

5. The definition of person in Subsection (5) is the standard NCCUSL definition of this term. "Person" instead of individual is used to make it clear that associations covered by this Act may have individuals, corporations, and other legal entities as members and managers. Unincorporated nonprofit trade associations, for example, commonly have corporations as members. Some national and regional associations of local government officials and agencies have governmental units or agencies as members.

6. The definition of “record” in Subsection (6) is the standard NCCUSL definition of this term, which makes it clear that emails and other forms of electronic communication qualify as writings.

7. The definition of “state” in Subsection (7) is the standard NCCUSL definition of this term.

8. “Unincorporated Nonprofit Association.” An organization cannot be a UNA if it is organized as a corporation or is a for profit unincorporated entity, e.g., a partnership. On the other hand, not every form of unincorporated nonprofit organization should automatically become a UNA and therefore be able to have limited liability and the other benefits of this statute. That is the reason for the language excluding trusts, domestic living arrangements including marriages and domestic partnerships, and agreements merely to hold title to property as co-owners. The laws governing the rights of creditors, trustees and beneficiaries of trusts are well developed and therefore the legal principles in this Act are unnecessary. Domestic relations law provides property rights for adults co-habiting together after a legal marriage or in a long-term unmarried status such as what is frequently referred to as a "common law marriage" or the spate of recently enacted domestic partnership statutes. Living together in any of these domestic living arrangements can probably qualify as an association having a nonprofit purpose, but for public policy reasons these arrangements should not be able to qualify as a UNA and therefore avoid individual liability for taxes and other liabilities. For similar reasons, mere co-ownership of property, even if for nonprofit purposes, should not automatically result in the applicability of this Act. An enacting jurisdiction can choose to expand or reduce the number of types of exclusions consistent with the concept that a UNA is a default form of organization for unincorporated nonprofit entities.

“Agreement” rather than “contract” is the appropriate term because the legal requirements for an agreement are less stringent and less formal than for a contract. The agreement to form a UNA can be in writing, or oral, or inferred from conduct (e.g., course of performance or course of dealing). The term “writing” is to be broadly construed to include any form that constitutes a “writing” under the laws of the enacting jurisdiction, including electronically communicated documents such as e-mail communications. The agreement to form a UNA is part of the UNA’s overall “governing principles.” Although it is always preferable to have written agreements, most existing UNAs are quite informal and have few, if any, writings setting forth the agreements governing the purpose and operation of the organization. Moreover, most UNAs are formed and operate without independent legal advice. Imposing a statute of frauds or similar writing requirement would, therefore, have the effect of excluding most existing UNAs from being able to qualify under the Act. The enacting jurisdiction’s general rules governing the proof and effect of oral agreements and the priority of written provisions over subsequent inconsistent oral provisions apply to UNA governing principles. *See* Section 3.

Although the agreement to form a UNA can be quite informal and sketchy, there must be some tangible, objective data such as the use of the organization’s name in communications to its members or third parties, or the existence of a bank account or of a mailing (or internet) address in the name of the UNA indicating that, in fact, there is an actual agreement.

The members must be joined together for a common purpose. Several states provide that they be "joined together for a **stated** common purpose" (emphasis added). Because of the informality of many ad hoc associations, it is prudent not to impose the requirement that the common purpose be "stated." Very probably, it is the small, informal, ad hoc associations and those third parties affected by them that most need this Act.

The best reference point for what constitutes a nonprofit purpose is probably the enacting state's Nonprofit Corporation Act. The nonprofit purpose requirement carries with it the implicit understanding that the purpose is not a criminal activity and is otherwise lawful. Each enacting jurisdiction needs to determine whether these limitations need to be set forth explicitly in the Act.

Many existing unincorporated nonprofit organizations engage in activities that are intended to produce a profit, e.g., a bingo parlor operated by a church where the profits are used to buy food for a homeless shelter. It is easy to understand why this type of profit-making endeavor should not disqualify the organization from being a UNA if it otherwise qualifies. A for profit activity might endanger the tax-exempt status of the organization or may generate taxable income, but these are separate issues and should not affect the organizational status of a UNA or the rights and liabilities of its members and managers.

The fact that some or all of the members receive some direct or indirect benefit from a UNA's profit-making activities will not disqualify an unincorporated nonprofit organization from being a UNA under this Act so long as the benefit is in furtherance of the UNA's nonprofit purposes. The distribution of any profits to the members for the members' own use, e.g., a dividend distribution to members, would, however, disqualify the organization from being a UNA because the distribution is not made in furtherance of the UNA's nonprofit purposes. *See* Section 26. The organization would be a general partnership, the default organizational form for a for profit organization. An unincorporated investment club that distributes its profits to its members would be a general partnership and not a UNA even though its stated purpose is to educate its members about investments.

The two–person requirement for forming a UNA is quite minimal, assuming the standard broad definition of person (Subsection (5)) incorporated into the Act. At least two persons are required because that is the minimum number necessary to have an agreement under general legal principles. If one person wants to create a nonprofit organization, it is possible to do so by means of a trust, a nonprofit corporation, or in many states, a single member limited liability company. A few states currently require more than two members at the time of formation. New Jersey, for example, requires seven or more.

Nonprofit corporation statutes typically allow a nonprofit corporation to be formed by one or more incorporators but to operate without members and therefore to be governed by a self-perpetuating board of directors. *See* Model Nonprofit Corporation Act-Third Edition (2008) §§ 2.02(4), 6.01. A UNA, however, must always have at least two members. The definition of a UNA states that it is an organization "consisting" of [two] or more members…."

The Act applies to all UNAs, whether they be classified as religious, public benefit or mutual benefit or whether they are classified as tax-exempt under the laws of the enacting jurisdiction. Therefore, the Act will cover unincorporated philanthropic, educational, scientific, social and literary clubs, unions, trade associations, political organizations, churches, hospitals, neighborhood and property owner associations, and sports organizations such as Little League baseball teams. If the enacting jurisdiction decides to exempt one or more types of UNAs from the Act, it needs to draft specific provisions listing the exemptions.

Derivation: "established practices" – Principle #2; "governing principles" – Principle #2; "member" – Principle #3; "manager" – Principle #4; "unincorporated nonprofit association" – Principles #1 and 5.

SECTION 3. RELATION TO OTHER LAW.

(a) Principles of law and equity supplement this [act] unless displaced by a particular provision of it.

(b) A provision in a statute in this state governing a particular type of unincorporated nonprofit association prevails over an inconsistent provision in this [act], to the extent of the inconsistency.

(c) This [act] supplements this state's regulatory laws that are applicable to nonprofit organizations operating in this [state]. In the event of a conflict, those other laws prevail.

Comment

1. *Subsection (a).* Examples of other laws that apply to UNAs are general principles of contracts, agency, fraud, estoppel, the priority of written provisions of an agreement over prior inconsistent oral provisions or subsequent oral amendments (and any exceptions), civil and criminal procedural rules, and rules for enforcing judgments.

Drafting conventions as to whether these general principles of law should be set forth in separate provisions in an act like this one vary greatly. NCCUSL Acts, as a general rule, do not have provisions other than what is stated in Subsection (a).

2. *Subsection (b).* Many jurisdictions have existing statutes governing particular types of UNAs, *e.g.*, churches. Subsection (b) establishes the rule that in the event of an inconsistency between this Act and the statute governing a specific type of UNA, the latter will control. Under generally accepted statutory interpretation principles, there is a strong presumption against inconsistency, i.e., the presumption is that the provisions of the two acts are not inconsistent.

3. *Subsection (c).* Most jurisdictions have statutory provisions giving the chief legal officer of the jurisdiction oversight supervisory powers over nonprofit organizations, including the power to enjoin or prohibit various activities. Most jurisdictions also have statutes that require registration, permits or advance notice to engage in certain activities, *e.g.*, fundraising from the public, and the filing of reports, e.g., assumed name filings, tax forms, and the like. All of these existing and future statutes, rules and regulations are applicable to UNAs. Whether specific provisions stating this principle need to be included in the Act depends on the enacting jurisdiction's statutory drafting conventions.

A thorough review of all these other laws should be conducted to be sure they do not need to be amended in order to continue to apply to UNAs after the Act is effective. If amendments to these other laws are necessary, they should be included as trailing amendments in the Bill containing this Act.

Derivation: Subsection (a) Principle #9; Subsection (b) – Principle #10; Subsection (c) – Principle #11.

SECTION 4. GOVERNING LAW; TERRITORIAL APPLICATION.

(a) Except as otherwise provided in subsection (b), the law of this state governs all unincorporated nonprofit associations formed or operating in this state.

(b) Unless its governing principles specify a different jurisdiction, the law of the jurisdiction in which an unincorporated nonprofit association has its main place of activities governs relations among members and managers and between members and managers and the unincorporated nonprofit association.

Comment

1. This act applies to pre-existing UNAs formed in the enacting state, as well as to all UNAs formed in the state after the effective date of the Act. This is a standard approach in statutes governing organizational entities. Exempting various types of existing organizations from the new law is not a desirable practice. Because the existing laws governing UNAs are, for the most part, incomplete and the Act may change some of the common understanding of what the law is, an enacting jurisdiction whose standard rule is to have a new statute effective when signed or at the beginning of the next fiscal year after signing may want to have a delayed effective date of 6 or 12 months to provide time to educate the affected organizations and their advisors about the changes. *See* Section 36.

2. This Act's applicability to UNAs formed in other jurisdictions that are operating in this state is necessary because in all other types of entities the internal affairs rules of the jurisdiction

of the entity's formation (e.g., the governance rules and duties and responsibilities of the owners and managers to each other and the entity) control; but it is difficult to determine the jurisdiction of a UNA's formation since it does not, in most jurisdictions, file any public document upon its formation. Some mechanism for choosing the internal affairs jurisdiction is therefore necessary. The default rule in this Act is the jurisdiction in which the UNA conducts the main part of its operations. A UNA can, however, designate the internal affairs jurisdiction in its governing principles, subject to applicable conflicts of laws substantial contact rules. *See* Restatement (Second) of Conflict of Laws §187(2) (1971).

The term "main part of its activities" is not defined but should not be difficult to determine in most cases. The Revised Uniform Partnership Act (1997) §106(a) uses the term "chief executive office" in the equivalent section. The Comment to §106(a) states that "chief executive office" is also used to determine the proper place for filing a financing statement under UCC §9-103(3)(d) and it is not defined in the UCC either. Paragraph 5 of the Comment to UCC §9-103(3)(d) states that the:

> "Chief executive office" . . . means the place from which in fact the debtor manages the main part of his business operations . . . Doubt may arise as to which is the "chief executive office" of a multi-state enterprise, but it would be rare that there could be more than two possibilities . . . [The rule] will be simple to apply in most cases . . . .

The term "main part of its activities" seemed to be a more apt term for UNAs since many of them are quite informal and probably do not have what are commonly thought of as "executive offices." In any case, most UNAs conduct operations in only one state and those that have operations in more than one state can designate the state that will govern its internal affairs so it will be a rare case when it will be necessary to determine which of two or more states' laws govern a UNA's internal affairs.

3. Since the laws governing UNAs in the enacting jurisdiction govern UNAs formed in other jurisdictions that are conducting activities (except for internal affairs issues in the enacting jurisdiction), a foreign-formed UNA could not conduct activities in the enacting jurisdiction that a UNA formed in this jurisdiction could not conduct, even if the activity were legal in the foreign jurisdiction in which the UNA was formed or conducts its main activities.

Derivation: Principle #6.

SECTION 5. LEGAL ENTITY; PERPETUAL EXISTENCE; POWERS.

(a) An unincorporated nonprofit association is a legal entity distinct from its members and managers.

(b) An unincorporated nonprofit association has perpetual duration unless its governing principles otherwise specify.

(c) An unincorporated nonprofit association has the same powers as an individual to do all things necessary or convenient to carry on its activities.

Comment

1. The separate legal status of a UNA is a fundamental concept that undergirds all the principles that allow a UNA to hold and dispose of property in its own name and to sue and be sued in its own name and that insulates the assets of the members from claims against the UNA. This is a reversal of traditional common law principles that treat partnerships and other unincorporated entities under an aggregate theory.

2. Subsection (b) providing for perpetual existence of a UNA is one of the key aspects of its separate entity status. Under the traditional common law aggregate theory, a UNA's existence would end with any change in the membership and if the UNA continued in operation it was deemed to be a new UNA.

The members can agree to a limited term and a UNA can, of course, terminate by being dissolved and winding up. *See* Sections 28 and 29.

3. Subsection (c) is a standard general powers clause. *See e.g.*, Revised Uniform Limited Liability Company Act §105 (2006).

Derivation: Principles #7 and 8.

SECTION 6. OWNERSHIP AND TRANSFER OF PROPERTY.

(a) An unincorporated nonprofit association may acquire, hold, encumber, or transfer in its name an estate or interest in real or personal property.

(b) An unincorporated nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

Comment

1. Subsection (a) is based on Section 3-102(8), Uniform Common Interest Act. It reverses the common law rule. Inasmuch as an unincorporated nonprofit association was not a legal entity at common law, it could not acquire, hold, or convey real or personal property. Harold J. Ford, Unincorporated Non-Profit Associations, 1-45 (Oxford Univ. Press (1959); 15 A.L.R. 2d 1451 (1951); Warburton, The Holding of Property by Unincorporated Associations, Conveyancer 318 (September-October 1985).

2. This strict common law rule has been modified in various ways in most jurisdictions by courts and statutes. For example, courts have held that a gift by will or inter vivos transfer of

real property to a nonprofit association is not effective to vest title in the nonprofit association but is effective to vest title in the officers of the association to hold as trustees for the members of the association. Matter of Anderson's Estate, 571 P. 2d 880 (Okla. App. 1977).

A New York statute specifies that a grant by will of real or personal property to an unincorporated association is effective if within three years after probate of the will the association incorporates. McKinney's N.Y. Estates, Powers, & Trust Law, Section 3-1.3 (1981).

As is the case with many of the problems created by the view that an unincorporated association is not an entity, the statutory solutions are often partial – limited to special circumstances and associations. Subsection (a) solves this problem for all nonprofit associations, for all kinds of transactions, and for both real and personal property.

3. Subsection (b) is a necessary corollary of subsection (a) and, thus, it may be unnecessary. However, several states currently have statutes which expressly provide that an unincorporated, nonprofit association may be a legatee, devisee, or beneficiary. *See*, for example, Md. Estates & Trusts Code Ann. Section 4-301 (1991). Therefore, it is desirable to continue this as an express rule. Subsection (b) applies to both trusts and contracts. Not all existing state statutes apply expressly to both.

Derivation: Subsection (a) – Principle #7 and Subsection (b) – Principle #8 Principle #12.

SECTION 7. STATEMENT OF AUTHORITY AS TO REAL PROPERTY.

(a) In this section, "statement of authority" means a statement authorizing a person to transfer an estate or interest in real property in the name of an unincorporated nonprofit association.

(b) An estate or interest in real property in the name of an unincorporated nonprofit association may be transferred by a person so authorized in a statement of authority [filed] [recorded] by the association in the office in the [county] in which a transfer of the property would be [filed] [recorded].

(c) A statement of authority must set forth:

(1) the name of the unincorporated nonprofit association;

(2) the address in this state, including the street address, if any, of the association,

or, if the association does not have an address in this state, its address out of state;

(3) that it is an unincorporated nonprofit association; and

(4) the name, title or capacity of a person authorized to transfer an estate or interest in real property held in the name of the association.

(d) A statement of authority must be executed in the same manner as [a deed] [an affidavit] by a person other than the person authorized in the statement of authority to transfer the estate or interest.

(e) A filing officer may collect a fee for [filing] [recording] a statement of authority in the amount authorized for [filing] [recording] a transfer of real property.

(f) A document effecting an amendment, revocation or cancellation of a statement of authority, or stating that the statement of authority is unauthorized or erroneous, must meet the requirements for execution and [filing] [recording] of an original statement.

(g) Unless canceled earlier, a [filed] [recorded] statement of authority and its most recent amendment is canceled by operation of law [five] years after the date of the most recent [filing] [recording].

(h) If the record title to real property is in the name of an association and the statement of authority is [filed] [recorded] in the office of the [county] in which a transfer of real property would be [filed] [recorded], the authority of the person named in the statement of authority to transfer is conclusive in favor of a person that gives value without notice that the person lacks authority.

Comment

1. This section is based on Uniform Partnership Act (1997) §303.

2. A statement of authority need not be filed to conclude an acquisition of or to hold real property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate

or interest in real property. For this, it should, but need not, be filed. The filing provides important documentation. As a general rule a statement of authority will only be filed at the time of a conveyance of an interest in real estate as a means of establishing in the title records who has authority to execute a deed or other instrument conveying an interest in real estate.

3. Inasmuch as the statement relates to the authority of a person to act for the association in transferring real property, subsection (b) requires that the statement be filed or recorded in the office where a transfer of the real property would be filed or recorded. This is usually the county in which the real estate is situated. This is where a title search concerning the real estate would be conducted. Uniform Partnership Act (1997) §303 provides for central filing, such as with the Secretary of State, but its statement of partnership authority concerns authority of partners generally, not just with respect to real estate.

4. "Filed" and "recorded" are bracketed to direct an enacting state to choose. In most jurisdictions "recorded" will be the appropriate choice.

5. Subsection (c)(2) may present a problem for small, ad-hoc nonprofit associations. They may have no fixed office address. They may meet in the homes of their leaders. However, if they distribute literature or file petitions they are likely to have a mailing address of some kind, e.g., the mailing address of a member or manager.

6. Subsection (c)(3) informs those relying on the statement of the precise character of the organization. Knowing that the organization is an unincorporated nonprofit association may cause the person dealing with the organization to act differently.

7. Subsection (c)(4) permits the statement to identify as the person who can act for the association someone who holds a particular office, such as president. This designation relieves the association from the need to make additional filings on each change of officers. Under local title standards and practices the transferee and filing or recording office are likely to require a certificate of incumbency if the statement designates the holder of an office.

8. Subsection (d) is designed to reduce the risk of fraud and to reflect law and practice applicable to other organizations. It requires someone other than the person authorized to deal with the real property to execute the statement of authority on behalf of the nonprofit association. Whether the formalities of execution must conform to those of a deed or an affidavit is left for each state to determine.

9. Subsection (g) makes a statement inoperative five years after its most recent recording or filing. A new statement of authority can be filed before or after the expiration of the five year limitation.

10. Subsection (h) is based on Uniform Partnership Act (1997) §303(h). Its obvious purpose is to protect good faith purchasers for value without notice who rely on the statement, including those who acquire a security interest in the real property. If the required signatures on the statement, deed, or both are forgeries, the effect of them is not governed by Section 7(h). Instead, Section 3 applies and would invoke the other law of the State. In many states the deed

would be a nullity. *See* Boyer, Hovenkamp, and Kurtz, *THE LAW OF PROPERTY*, An Introductory Survey (West Pub. Co. 4th ed. 1991).

Note: This section has no corresponding Principle.

SECTION 8. LIABILITY.

(a) The debts, obligations, or other liabilities of an unincorporated nonprofit association, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the association; and

(2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or the manager acting as a manager.

(b) A person's status as a member or a manager of an unincorporated nonprofit association does not prevent or restrict law other than this [act] from imposing liability on that person or the association because of the person's conduct.

Comment

1. The effect of Section 8 is to provide members and managers of a UNA with the same protection against vicarious liability for the debts and obligations of the UNA and tort liability imposed on the UNA as the members and managers of a nonprofit corporation would have under the enacting jurisdiction's laws. These principles, taken together, constitute what is known as the limited liability doctrine under which a member or manager is personally liable for his or her own tortious conduct under all circumstances and is personally liable for contract liabilities incurred on behalf of the UNA if the member or manager guarantees or otherwise assumes personal liability for the contract or fails to disclose that he or she is acting as the agent for the UNA. A member or manager is not otherwise personally liable for the tort or contract liabilities imposed upon the UNA. A creditor with a judgment against the UNA must seek to satisfy the judgment out of the UNA's assets but cannot levy execution against the assets of a member or manager.

The one exception is the alter ego doctrine (also known as the veil piercing doctrine). Courts have pierced the corporate veil of nonprofit corporations. *See Comment, Piercing the Nonprofit Corporate Veil*, 66 Marq. L. Rev. 134 (1984); *Macaluso v. Jenkins*, 95 Ill.App.3d 461, 420 N.E.2d 251 (1981)(President of nonprofit corporation who commingled funds of the nonprofit corporation with funds of a corporation he controlled held personally liable for unpaid debts of the nonprofit corporation under the veil piercing doctrine). The fact that members of nonprofit corporations for the most part do not have an expectation of financial gain, as

compared to shareholders of a for profit corporation, should mean that there will be fewer types of cases than those involving for profit corporations where the veil piecing doctrine will be held to be applicable to nonprofit corporations. The same criteria that are applied to pierce the veil of nonprofit corporations should be applied in UNA veil piercing cases.

If the alter ego doctrine is found to be applicable , the separate entity status of a UNA would be disregarded and the assets of the UNA and its members and managers would be aggregated and subject to a UNA creditor's claims in the same manner that a judgment creditor of a general partnership collects a judgment against the assets of a general partner in a partnership.

2. In recent years all states have enacted laws providing unpaid officers, board members and other volunteers some protection from liability for their own negligence (but generally not for conduct that is determined to constitute gross negligence or willful or reckless misconduct). The statutes vary greatly as to who is covered, for what conduct protection is given, and the conditions imposed for the freedom from liability. Some apply only to nonprofit corporations. *State Liability Laws for Charitable Organizations and Volunteers* (Nonprofit Risk Management & Insurance Institute, 1990); *Developments, Nonprofit Corporations*, 105 Harv. L. Rev. 1578, 1685-1696 (1992). This means that members and volunteers involved with unincorporated nonprofit associations do not obtain protection under those state statutes. Others may cover the managers of UNAs but only if the UNA qualifies as a tax-exempt entity under federal or state law. *See N.Y. Not For Profit Corporation Law* §§720-a and 721 (federal income tax); Minn. Stat. Ann. 317A.257 (state income tax). Some states have statutes that premise the insulation of liability upon the organizations having specified amounts of liability insurance.

In 1997 Congress enacted the Volunteer Protection Act, 42 U.S.C.A. §§ 14501-14505. This statute, which preempts state laws to the extent of any inconsistency with the Volunteer Protection Act except to the extent the state law provides additional protections from liability, insulates directors, officers, trustees and direct service volunteers of nonprofit organizations who receive no compensation (other than reasonable reimbursement of expenses) from liability for harm that "was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious or flagrant indifference to the rights or safety of the individual harmed by the volunteer." 42 U.S.C.A. §14503(a)(3). Damages caused by operation of "a motor vehicle, vessel, aircraft, or other vehicle" for which a license or insurance is required to be maintained, are not covered. 42 U.S.C.A. §14503(4).

The interplay between the Federal Volunteer Protection Act and the existing state statutes that provide liability protection to volunteers of UNAs is a complex matter and must be determined on a state-by-state basis. *See* Subsection (b).

Finally, the liability of the managers of a UNA for breach of the duties of due care, good faith and loyalty to the UNA and the ability of the governing principles of a UNA to limit or eliminate this liability as far as monetary damages are concerned is a separate subject which is dealt with in Section 23.

3. "Solely" as used in Section 8 is intended to make it clear that a member or manager is

not vicariously liable for the liabilities of the UNA or the liabilities of another member or manager merely because of that person's status as a member or manager. A member or manager may, however, have personal liability as a result of his or her own actions. A member or manager will be personally liable, for example, for his or her own tortious acts, or for breach of a contract binding on the UNA which the member or manager is a party to or has guaranteed. This personal liability is imposed by other law (*see* Subsection (b) of Section 8 and Section 3(a)) and not because of his or her status as a member or manager.

Derivation: Principles #s 18-19; and 25.

SECTION 9. ASSERTION AND DEFENSE OF CLAIMS.

(a) An unincorporated nonprofit association has the capacity to sue and be sued in its own name.

(b) A member or a manager may assert a claim the member or manager has against an unincorporated nonprofit association. An association may assert a claim it has against a member or a manager.

Comment

1. Under traditional common law doctrine, a UNA was considered to be an aggregate of members and therefore it could not sue or be sued in its own name. Only the members could sue or be sued and some state court cases held that all of the members had to be named plaintiffs in a suit brought on behalf of the UNA and that all the members had to be named, and served with the Summons and Complaint in a suit against a UNA. Most states have enacted statutes in recent years granting a UNA entity status for the purpose of suits by and against the UNA. Section 10 follows the modern rule and is consistent with the concept built into this act that a UNA is a separate entity for many more purposes than existed under traditional common law principles.

2. This section is intended to apply to all types of judicial, administrative and governmental proceedings and all types of alternative dispute resolution proceedings such as arbitration and mediation. An enacting state may want to modify this section to make it clear that this is the case if that is not clear under its current civil procedure law.

3. The enacting state's general civil procedure law will be applicable to UNAs. *See* Section 3(a). These statutes and court rules will deal with issues such as standing of a UNA to sue on behalf of its members, joinder, counterclaims and the like. Most will also cover issues such as pleadings and service of pleadings and venue. That is why Sections 13 and 15 are bracketed and should not be enacted in a state if the existing statutes and court rules are sufficient. Sections 10, 11, 12 and 14 should be enacted as part of this act, however, because there is a body of inconsistent case law or gaps in the existing statutes or rules on the issues dealt

with in these sections.

4. Subsection (b) is another aspect of a UNA under the Act being a separate legal entity. Under the common law aggregate theory, since a UNA was not an entity separate from its members, a member could not assert a claim against the UNA since there is technically no legal entity, and the member would be both a claimant and the defendant and personally liable for any judgment obtained in the action. For the same reason, a UNA could not assert a claim against a member (e.g., for unpaid dues) because the UNA technically does not exist. This subsection only allows a member to assert that member's claim against the UNA. It does not authorize a member to file a derivative action. The enacting jurisdiction's civil procedure law may, however, authorize derivative actions.

Derivation: Principles #13 and 17.

SECTION 10. EFFECT OF JUDGMENT OR ORDER. A judgment or order against an unincorporated nonprofit association by itself is not a judgment or order against a member or a manager.

Comment

1. This section is consistent with Restatement (Second) of Judgments, §61(2), which provides: "If under applicable law an unincorporated association is treated as a jural entity distinct from its members, a judgment for or against the association has the same effects with respect to the association and its members as a judgment for or against a corporation . . . ."

2. Section 10 applies not only to judgments but also to orders, such as an award rendered in arbitration or an injunction.

3. This section reverses the common law rule. Under the common law's aggregate view of an unincorporated association, members, as co-principals, were individually liable for obligations of the association.

4. That a judgment against a UNA is not also a judgment against one authorized to manage the affairs of the association recognizes fully the entity status of a nonprofit association. An obvious corollary of this section is that a judgment against a nonprofit association may not be satisfied against a member unless there is also a judgment against the member. The one exception to this rule would be an injunction issued against a UNA. Federal Rules of Civil Procedure 65(d) provides that every injunction and restraining order is binding not only on the named parties but also on "the parties' officers, agents, servants, employees, and attorneys . . . who receive actual notice of it by personal notice or otherwise."

Derivation: Principles #s 16 and 19.

SECTION 11. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS.

(a) An unincorporated nonprofit association may file in the office of the [Secretary of State] a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) the name of the unincorporated nonprofit association; and

(2) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed and [acknowledged] [sworn to] by a person authorized to manage the affairs of the unincorporated nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the [Secretary of State] and giving notice to the association.

(d) The [Secretary of State] may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

Comment

1. This section authorizes but does not require, a nonprofit association to file a statement authorizing an agent to receive service of process. It is, of course, not the equivalent of filing articles of incorporation. However, some nonprofit associations may find it prudent to file. Filing may assure that the nonprofit association's management gets prompt notice of any lawsuit filed against it. Also, depending upon the jurisdiction's other laws, filing gives some public notice of the nonprofit association's existence and its address.

2. Central filing with a state official is provided. This is where parties will seek information of this kind.

3. The format of this section is very much like Section 7, which concerns a statement of authority with respect to property. Because one requires local and other central filing they are not combined.

Note: This section has no corresponding Principle.

[SECTION 12. SERVICE OF PROCESS. In an action or proceeding against an unincorporated nonprofit association, a summons and complaint or other process shall be served on an agent authorized by appointment to receive service of process, a manager of the association or in any other manner authorized by the law of this state.]

Comment

1. Some states have expressly addressed service of process on a nonprofit association in court rules or by statute. Those states may wish to continue their rules and so should not adopt this section. For this reason this section is bracketed.

2. By rule or statute all jurisdictions have extensive law on service of process. The real question for nonprofit associations is which set of these rules should apply. This Act treats a nonprofit unincorporated association as a legal entity. Thus, the rules applicable to another legal entity, a corporation, seem most appropriate.

Derivation: Principle #17.

SECTION 13. CLAIM NOT ABATED BY CHANGE. An action or proceeding against an unincorporated nonprofit association does not abate merely because of a change in its members or managers.

Comment

This provision reverses the common law rule of partnerships, which courts often extended to unincorporated nonprofit associations. Uniform Partnership Act (1914) §§29 and 31(4). This Act's entity approach requires this change to the old common law rule. *See* Uniform Partnership Act (1997) §§603(a) 701, and 801.

Derivation: Principle #14.

[SECTION 14. VENUE. Unless otherwise provided by law, venue of an action against an unincorporated nonprofit association brought in this state is determined under the statutes applicable to an action brought in this state against a corporation.]

Comment

1. This section is bracketed because many states have already satisfactorily solved this issue. A criterion used by all states for fixing venue is the county of residence of the defendant. If an aggregate view of a nonprofit association were taken, the association is resident in any county in which a member resides. *See* Wright, Miller, & Cooper, 15 *Federal Procedure & Practice* 3812 (1986). Conforming to the entity view of an association, Section 15 rejects the common law view. States have by statute modified the common law rule. Illinois, for example, provides that "a voluntary unincorporated association sued in its own name is a resident of any county in which it has an office or if on due inquiry no office can be found, in which any officer resides." Ill. Code Civ. Prac. Section 2-102(c). In many cases, however, a UNA will not have an officer or an officer in the state.

2. Most states specify as many as eight additional grounds for venue, including the county in which the real estate that is the subject of the suit is situated and the county in which the act causing, in whole or in part, the personal injury or other tort occurred. None of these additional criteria present a special problem with respect to an unincorporated nonprofit association.

Derivation: Principle #17.

SECTION 15. MEMBER HAS NO AGENCY POWER. A member of an unincorporated nonprofit association is not an agent of the association solely by reason of being a member.

Comment

1. The purpose of this section is to make it clear that a person's status as a member does not by itself make that person an agent of the UNA. This is contrary to partnership law where the general partners are considered to be general agents of the partnership and can bind the partnership for acts in the ordinary course of business. Agency and the power to bind in a UNA are determined under the enacting state's agency law. *See* Section 3(a). Under agency law the managers of a UNA would in most cases be considered as having apparent authority to bind the UNA for acts in the ordinary course of the UNA's business. Therefore a member who is also a manager would be considered to be an agent of the UNA but this is because that person is a

manager as well as a member of the UNA, and therefore the agency authority is not "solely by reason of being a member." Under agency law, a member might have actual authority to bind the UNA or might have apparent authority to bind the UNA because of the member's established course of dealing with third parties or under an estoppel theory. Again, the member's agency authority to bind is not solely because of the member's status as a member.

2. A UNA might be directly or vicariously liable for actions of a member under general law other than agency law. For example, under the doctrine of respondeat superior, a UNA might be liable for the tortious conduct of a member who is found to be acting as a servant of the UNA at the time of the tortious conduct or for negligently supervising a member who is acting on behalf of the UNA. *See* Section 8.

Derivation: Principle #27 and ULLCA (2006) §301.

SECTION 16. MEMBERS' RIGHTS. Except as otherwise provided in the governing principles of an unincorporated nonprofit association, the following matters require the approval of its members:

(1) admit, suspend, dismiss, or expel members;

(2) select and dismiss managers;

(3) adopt, amend or [repeal] governing principles;

(4) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the association's property, with or without the association's goodwill, outside the ordinary course of its activities;

(5) a dissolution under Section [28] or a merger under Section [30];

(6) undertake any other act outside the ordinary course of the association's activities;

(7) determine the policy and purposes of the association; and

(8) do any other act or right requiring action by members permitted by the association's governing principles.

Comment

1. Sections 16-26 deal with governance issues and are often referred to as internal affairs

rules. They establish the default rules governing the relation of the members and managers to each other and to the UNA. Liability to third parties is covered by other provisions of this act. *See* Sections 8, 9 and 16. The internal affairs rules in Sections 17-27 apply to UNAs formed in the enacting state. The internal rules of UNAs formed in other jurisdictions are determined under Section 4(b).

2. The member governance rights in Section 17 are default rules and can be modified by the UNA's governing principles. The UNA's governing principles could, for example, give the members greater (or lesser) voting rights than are set forth in this Section. There is one limitation on the authority to modify member approval rights. A UNA must always have at least two members. *See* Section 2(8). Therefore, the governing principles cannot specify that a UNA have one or no members.

Derivation: Principle #26.

SECTION 17. MEMBER VOTING; NOTICE OF MEETINGS; QUORUM REQUIREMENTS.

(a) Unless an an unincorporated nonprofit association's governing principles otherwise provide:

(1) Approval of a matter by members of an association requires an affirmative majority of the votes cast at a properly called member meeting at which a quorum is present.

(2) Each member is entitled to one vote on each matter that must be approved by members.

(b) Notice and quorum requirements for meetings and members are determined by the unincorporated nonprofit association's governing principles.

Comment

1. The principles set forth in Section 18—members vote on a per capita basis, notice of meetings and majority quorum and vote for approval actions—are all default rules. They apply unless there are different rules in the UNA's governing principles. Thus, if a UNA's bylaws specified that only some members have voting rights, then only those so designated would have voting rights. Similarly, if the bylaws specified that all members are entitled to vote on specific actions (*e.g.*, election of a board of directors), but a subset of members is the approving authority for all other matters the bylaws would trump the default rules. In addition, bylaw provisions that provided for a higher (or lower) voting percentage rather than the majority vote required by the

statutory default rule would control.

2. An enacting state may decide to require supermajority voting (*e.g.*, two-thirds majority) for transactions that are not in the ordinary course of business such as dissolution, merger, or amendment of the UNA's governing principles. The default voting requirements for similar transactions under the enacting jurisdiction's nonprofit corporation law might be an appropriate model for structuring the voting requirements for a UNA. Because it is often quite difficult to locate and to get a majority of all members together for voting purposes in a UNA, the requirement of a supermajority voting for any issue may not be appropriate.

3. A UNA will undoubtedly have some kind of notice and quorum requirements in its governing principles which include its established practices. If it does not have any such requirements (e.g., it is newly formed and is holding its initial meeting), it can create them at that meeting and these requirements, even if oral, become over time the UNA's established practices and therefore part of the UNA's governing principles.

Derivation: Principle #26.

SECTION 18. DUTIES OF MEMBERS.

(a) A member does not have any fiduciary duty to an unincorporated nonprofit association or to any other member of the association solely by being a member.

(b) A member shall discharge the duties to the unincorporated nonprofit association and the other members under this [act] and exercise any rights consistently with the obligations of good faith and fair dealing.

Comment

1. Members of a UNA, like members of a limited liability company in a manager managed LLC (see Revised Uniform Limited Liability Company Act (2006) §409(g)(5) and limited partners in a limited partnership (see Revised Uniform Limited Partnership Act (2001) §305(a)), do not have fiduciary duties (generally defined as a duty of loyalty and good faith) to the UNA or the other members by virtue of their status as members. A member who undertakes managerial duties, however, would have the fiduciary duties of a manager (see Section 23).

2. While they have no fiduciary duties, members do have the obligation to discharge any duties and any rights they exercise pursuant to this Act or pursuant to the UNA's governing principles consistent with the obligation of good faith and fair dealing. *See* Revised Uniform Limited Liability Company Act (2006) §409(d); Revised Uniform Limited Partnership Act (2001) §305(b). A member cannot, for example, disclose confidential information obtained from the UNA to third parties. The obligation of good faith and fair dealing is not strictly speaking a

fiduciary duty but rather is a duty that is derived from the consensual or contract nature of a UNA. *See* Restatement (Second) of Contracts (1981) §205.

Derivation: Principle #31.

SECTION 19. ADMISSION, SUSPENSION, DISMISSAL, OR EXPULSION OF MEMBERS.

(a) A person becomes a member of an unincorporated nonprofit association and may be suspended, dismissed, or expelled in accordance with the association's governing principles. In the absence of applicable governing principles, a person can become a member or be suspended, dismissed or expelled from an association by a vote of its members. A person may not be admitted as a member without the person's consent.

(b) Unless an unincorporated nonprofit association's governing principles otherwise provide, the suspension, dismissal, or expulsion of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before the suspension, dismissal or expulsion.

Comment

1. The default rule for admission, suspension, dismissal, or expulsion of members is a majority vote of members. *See* Section 16. If the UNA's governing principles provide otherwise, the governing principles would be applicable.

2. Subsection (b) makes it clear that suspension, dismissal, or expulsion do not relieve a member of any obligations it owes the UNA.

Derivation: Principle #35.

SECTION 20. MEMBER'S RESIGNATION.

(a) A member may resign from membership in an unincorporated nonprofit association in accordance with the association's governing principles. In the absence of applicable governing principles, a member may resign at any time.

(b) Unless an unincorporated nonprofit association's governing principles otherwise provide, resignation of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before resignation.

Comment

Preventing a member from voluntarily withdrawing from a UNA would be unconstitutional and void on public policy grounds. A UNA should, however, be able to impose reasonable restrictions on withdrawal, for example, requiring 30 days' advance notice. Moreover, as Subsection (b) states, a member who resigns remains liable for obligations and commitments made before the resignation.

Derivation: Principle #36.

SECTION 21. MEMBERSHIP INTEREST NOT TRANSFERABLE. Except as otherwise provided in the unincorporated nonprofit association's governing principles, a member's interest or any right thereunder is not transferable to another person.

Comment

This is a basic common sense rule. A member of a church that is a UNA, for example, should not be able to transfer his or her membership to a third party. There may be situations where a UNA might be willing to allow transfers. In those situations, the transfer could be made in accordance with the UNA's governing principles. Condominium homeowners association bylaws, for example, frequently authorize automatic transfer of membership in the association upon transfer of title in the condominium.

Derivation: Principle #37.

SECTION 22. SELECTION OF MANAGERS; MANAGEMENT RIGHTS OF MANAGERS. Except as otherwise provided in this [act] or the unincorporated nonprofit association's governing principles:

(a) the members of an association may select the association's managers in accordance with Section [16]. A manager may, but does not have to be a member of the association. If no

managers are selected, all the members are the managers.

(b) each manager has equal rights in the management and conduct of the unincorporated nonprofit association's activities;

(c) all matters relating to the unincorporated nonprofit association's activities are decided by its managers except for those matters reserved for approval by members in Section [16]; and

(d) a difference among managers is decided by a majority of the managers.

Comment

1. "Manager" is a defined term. *See* Section 2(3).

2. The default rule is all members are managers. In UNAs such as churches with large numbers of members, this default rule will rarely be applicable because the governing principles will in most situations provide a selection process for managers.

3. Subsections (b)(each manager has equal management rights), (c)(managers manage the UNA's activities), and (d)(differences between the managers are resolved by majority vote) are consistent with the rights of general partners in a partnership and the managers of a limited liability company. *See* Uniform Partnership Act (1997) §401; Revised Uniform Limited Liability Company Act (2006) §407.

4. The rules in this Section are default rules that can be varied by a UNA's governing principles. The intent is to allow maximum flexibility. The UNA's governing principles can provide for any type of managerial structure the UNA wants to have. Choices range from a traditional board of directors or board of trustees, to third parties who manage the UNA under a contract. The managerial responsibilities can be split between the various managers (*e.g.*, one manager in charge of finances, another in charge of programs). Members who are also managers will have a dual status and their duties and liabilities will be based on the capacity in which they are acting at the time an action (or omission) takes place.

Derivation: Principles #s 28 and 29.

SECTION 23. DUTIES OF MANAGERS.

(a) A manager of an unincorporated nonprofit association owes to the association and to the members the duties of loyalty, care and good faith.

(b) A manager of an unincorporated nonprofit association shall perform the management

responsibilities of the association in good faith, in a manner the manager believes to be in the best interests of the association, and with such care, including reasonable inquiry, as an ordinarily prudent person would reasonably exercise in a like position and under similar circumstances. In discharging these duties, a manager may rely in good faith upon opinions, reports, statements, or other information provided by another person that the manager reasonably believes is a competent and reliable source for the information.

(c) After full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty by a manager may be authorized or ratified by approval of the majority of the disinterested members.

(d) A manager who makes a business judgment in good faith satisfies the duties specified in subsection (a) if the manager:

(1) is not interested, directly or indirectly, in the subject of the business judgment and is otherwise able to exercise independent judgment;

(2) is informed with respect to the subject of the business judgment to the extent the manager reasonably believes to be appropriate under the circumstances; and

(3) believes that the business judgment is in the best interests of the unincorporated nonprofit association in the light of its stated purposes.

(e) If in a record, the governing principles of an unincorporated nonprofit association may limit or eliminate the liability of a manager to the association or its members for money damages for any action taken, or for failure to take any action, as a manager except liability for (1) the amount of financial benefit improperly received by a manager; (2) an intentional infliction of harm on the association or its members; (3) an intentional violation of criminal law; (4) breach of the duty of loyalty; or (5) improper distributions.

Comment

1. This Section deals with what are generally referred to as fiduciary duties. Only individuals exercising managerial authority in a UNA have fiduciary duties. This is consistent with U.S. business entity laws. *See, e.g.,* Uniform Limited Liability Company Act (2006) §409; Revised Model Business Corporation Act §§8.30 and 8.31. Thus, members of a UNA do not have any fiduciary duties to the other members or to the managers or to the UNA, unless the member is also a manager. *See* Section 18. In this event that member, in his or her capacity as a manager, would have the fiduciary duties that the other managers of the UNA have.

2. The two fundamental fiduciary duties are due care and loyalty. Good faith is sometimes characterized as a fiduciary duty but with respect to unincorporated business entities is designated as a contract based obligation. See, e.g., Uniform Limited Liability Company Act (2006) §409(d).

3. Subsection (b) describes how a manager exercises due care and good faith in making decisions. Subsection (d) describes what is known as the business judgment rule, which in effect is a defense to a breach of duty claim.

4. Under Subsection (c) a potential breach of loyalty claim (*e.g.*, conflict of interest transaction or appropriation of something that falls within what is commonly called the "corporate opportunity" or "enterprise opportunity" doctrine or engaging in competing activities) can be avoided by advance approval or ratification after full disclosure of the facts. Note also that under Subsection (d)(1) having a conflict of interest precludes the application of the business judgment rule.

5. Subsection (e) states that the governing principles of a UNA can limit or eliminate the monetary liability of a manager who is found to have breached a fiduciary duty except for the five exceptions listed in the subsection. Even if the manager is exempt from monetary damages, he or she could still be bound by an injunction or other equitable remedy granted by a court. This limitation, unlike most governing principles, must be in a record, which means that it must be in some kind of writing.

6. This Section only deals with the liability of a UNA manager to the UNA and its members. Liability of a manager to third parties is dealt with in other sections of this Act. *See* Section 8 and Comment 2 to Section 8 dealing with limitations on liability to third parties under state and federal volunteer protection acts.

Derivation: Principles #s 31 and 33.

SECTION 24. MANAGER MEETING NOTICE AND QUORUM

REQUIREMENTS. Notice and quorum requirements for meetings of managers are determined by the unincorporated nonprofit association's governing principles.

Comment

1. A UNA will undoubtedly have some kind of notice and quorum requirements in its governing principles which include its established practices. If a UNA does not have any such requirements (*e.g.*, it is newly formed and is holding its initial meeting), it can create them at that meeting and those requirements, even if oral, become the established practices and therefore part of the UNA's governing principles.

2. The use of proxies in manager meetings will be determined by other applicable law. *See* Section 3(a). As a general rule, directors or other persons performing managerial responsibilities may, consistent with a UNA's governing principles, delegate one or more duties to another person, but they are not authorized to give another person a proxy to vote on a matter.

Derivation: Principle #30.

SECTION 25. RIGHT OF MEMBERS AND MANAGERS TO INFORMATION.

(a) On reasonable notice, a member or manager of an unincorporated nonprofit association may inspect and copy during the association's regular operating hours, at a reasonable location specified by the association, any record maintained by the association regarding its activities, financial condition, and other circumstances, to the extent the information is material to the member's or manager's rights and duties under the association's governing principles or this [act].

(b) An unincorporated nonprofit association may impose reasonable restrictions on access to and use of information to be furnished under this section, including designating the information confidential and imposing nondisclosure and safeguarding obligations on the recipient.

(c) An unincorporated nonprofit association may charge a person that makes a demand under this section reasonable copying costs, limited to the costs of labor and materials.

(d) A former member or manager may have access to information to which the member or manager was entitled while a member or manager if the information pertains to the period

during which the person was a member or manager, the former member or manager seeks the information in good faith, and the former member or manager satisfies the requirements of Subsections (a)-(c).

Comment

The act does not require a UNA to keep any books and records, but if it does have them, they must be made available to the members and managers pursuant to this Section. The term books and records is intended to cover all types and forms of data, including electronic data. An enacting jurisdiction may want to include a definition of books and records in the act if there is any uncertainty about what is included in this term in the state's existing laws.

Derivation: Principle #32 and ULLCA (2006) Section 410.

SECTION 26. DISTRIBUTIONS PROHIBITED; COMPENSATION AND OTHER PERMITTED PAYMENTS.

(a) Except as otherwise provided in subsection (b), an unincorporated nonprofit association may not pay dividends or distribute any part of its income or profits to its members or managers.

(b) An unincorporated nonprofit association may:

(1) pay reasonable compensation or reimburse reasonable expenses to its members or managers for services rendered;

(2) confer benefits on its members or managers in conformity with its nonprofit purposes;

(3) repurchase memberships and repay capital contributions made by its members to the extent authorized by its governing principles; and

(4) make distributions of property to members upon winding up and termination to the extent permitted by Section 29.

Comment

1. A distribution by a UNA to members in violation of this Section would disqualify it from continuing to be a UNA. *See* Section 2(8) and Comment 8 to Section 2.

2. The permitted distributions authorized by Subsection (b) are derived from Sections 6.40 and 6.41 of the Proposed Model Nonprofit Corporation Act-Third Edition (2008).

Derivation: Principle #5.

SECTION 27. INDEMNIFICATION; ADVANCEMENT OF EXPENSES.

(a) Except as otherwise provided in an unincorporated nonprofit association's governing principles, an unincorporated nonprofit association shall reimburse a member or manager for authorized expenses reasonably incurred on behalf of the association;

(b) An unincorporated nonprofit association may indemnify a member or manager for any debt, obligation, or other liability incurred in the course of the member or manager's activities on behalf of the association. To be eligible for indemnification, a manager must have complied with the duties stated in Section 23. If in a record, an association's governing principles may broaden or limit this right of indemnification.

(c) If a person is made or threatened to be made a party in a proceeding based on that person's conduct of the affairs of an unincorporated nonprofit association, that person is entitled, upon written request to the association, and approval, in a record, by a disinterested majority of the managers of the association, may receive payment of or reimbursement by the association, of reasonable expenses, including attorney's fees and disbursements, incurred by that person in advance of the final disposition of the proceeding. To be entitled to these payments or advances, the person making the request must make a written affirmation that the person has a good faith belief that the criteria for indemnification in subsection (a) have been satisfied and that the person will repay the amounts paid or reimbursed if it is determined that the criteria for

reimbursement have not been satisfied.

(d) An unincorporated nonprofit association may purchase and maintain insurance on behalf of a member or manager for liability asserted against or incurred by the member or manager in that capacity, whether or not the association would have the power to indemnify or advance expenses to the member or manager against the same liability under this [act].

(e) These rights of reimbursement, indemnification and advancement of expenses apply to former members or managers for activities undertaken on behalf of the unincorporated nonprofit association while they were members or managers.

Comment

1. The rights to reimbursement of expenses indemnification (Subsection (a)) and advancement of litigation expenses and attorneys' fees in business entity statutes varies greatly from jurisdiction to jurisdiction. The rights of reimbursement of expenses indemnification in Subsections (a) and (b) are similar to that found in other business entity statutes. *See* Uniform Limited Liability Company Act (2006) §408; Model Nonprofit Corporation Act-Third Edition (2008) §§8.50-8.58. The right to advancement of litigation expenses in Subsection (c) is derived from the Minnesota Nonprofit Corporation Act MSA § 317A.257. Many existing state statutes only allow reimbursement of litigation expenses after the conclusion of the litigation and a finding of nonliability. Given the fact that most members and managers of UNAs are unpaid volunteers, the advancement of litigation expenses on a discretionary basis authorized by Subsection (c) seems appropriate.

2. Directors and officers insurance and errors and omissions insurance for managers of UNAs is expensive but because of potential liability, directors and other managers of UNAs are increasingly demanding that it be maintained on their behalf. Subsection (d) makes it clear that the purchase of such insurance is authorized.

Derivation: Principle #34.

SECTION 28. DISSOLUTION; CONTINUATION OF EXISTENCE.

(a) An unincorporated nonprofit association may be dissolved by any of the following methods:

(1) if the governing principles of the association provide a time or method for dissolution, by that method;

(2) if the governing principles of the association do not provide a method for dissolution, upon approval by the members;

(3) if no members can be identified and the association's operations have been discontinued for at least three years, by the managers or, if the unincorporated nonprofit association has no incumbent managers, by its last preceding incumbent managers; or

(4) by court order.

(b) After dissolution an unincorporated nonprofit association continues in existence until its activities have been wound up and it is terminated pursuant to Section 29.

Comment

1. The vote required for dissolution under Subsection (2) would be a majority vote of the members and under Subsection (3) by a majority of the managers, unless the governing principles require a higher vote. *See* Sections 16(5) and 22(d).

2. As a general rule, a court order dissolving a UNA would be appropriate if (1)-(3) are inapplicable. It should also be appropriate if it is impossible or impracticable to continue the UNA for example, because of a deadlock or in other circumstances where the doctrine of cypres is deemed to be applicable.

Derivation: Principle #38, Calif. Corp. Code § 18410.

SECTION 29. WINDING UP AND TERMINATION. Winding up and termination of an unincorporated nonprofit association must proceed in accordance with the following rules:

(1) All known debts and liabilities must be paid or adequately provided for.

(2) Any property subject to a condition requiring return to the person designated by the donor must be transferred to that person.

(3) Any property subject to a trust, such as endowment or restricted gifts, must be distributed in accordance with the trust agreement.

(4) Any remaining property must be distributed as follows:

(A) as required by law other than this [act] that requires assets of an association to

be distributed to another entity or person with similar nonprofit purposes;

(B) in accordance with the association's governing principles; and in the absence of applicable governing principles, to the current members of the association per capita or as the current members direct; or

(C) If neither subparagraph (A) or (B) applies, the law of unclaimed property in the enacting state.

Comment

This Section sets out the rules for distribution of UNAs assets after its affairs have been wound up. It is derived from the California Unincorporated Nonprofit Association statute. *See* Calif. Corp. Code §18410.

Derivation: Principle #39.

SECTION 30. MERGERS.

(a) The following definitions govern the construction of this section:

(1) "Constituent organization" means an organization that is merged with one or more other organizations and includes the surviving organization.

(2) "Disappearing organization" means a constituent organization that is not the surviving organization.

(3) "Organization" means an unincorporated nonprofit association, a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business or statutory trust, corporation, or any other legal or commercial entity having a statute governing its formation and operation. The term includes a domestic or foreign organization regardless of whether organized for profit.

(4) "Surviving organization" means an organization into which one or more other organizations are merged.

(b) An unincorporated nonprofit association may merge with any organization that is authorized by law to effect a merger with an unincorporated nonprofit association.

(c) A merger involving an unincorporated nonprofit association is subject to the following requirements:

(1) Each of the constituent merging organizations complies with its governing law.

(2) Each party to the merger shall approve a plan of merger. The plan, which must be in a record, must include the following provisions:

(A) The name and form of each organization that is a party to the merger;

(B) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(C) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(D) If the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(E) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

(3) The plan of merger must be approved by the members of each unincorporated nonprofit association that is a constituent organization in the merger. If a member of an association that is a party to a merger will have personal liability with respect to an obligation of a constituent or a surviving organization, the consent in a record of that member to the plan of

merger must also be obtained.

(4) Subject to the contractual rights of third parties, after a plan of merger is approved and at any time before the merger is effective, a constituent organization may amend the plan or abandon the merger as provided in the plan, or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

(5) Following approval of the plan, a merger under this section is effective:

(A) if a constituent organization is required to give notice to or obtain the approval of a governmental agency or officer in order to be a party to a merger, the notice has been given and the approval has been obtained; and

(B) if the surviving organization is an unincorporated nonprofit association, as specified in the plan of merger and upon compliance by any constituent organization that is not an association with any requirements, including any required filings in the [office of the Secretary of State], of the organization's governing statute; or

(C) if the surviving organization is not an unincorporated nonprofit association, as provided by the statute governing the surviving organization.

(d) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) the merger does not affect the personal liability, if any, of a member or manager of a constituent association for a debt, liability or obligation of the association incurred before the merger is effective; and

(9) a surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the [Secretary of State] as its agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection.

(e) Property held for a charitable purpose under the law of this state by a domestic or foreign organization immediately before a merger under this section becomes effective may not, as a result of the merger, be diverted from the objects for which it was donated, granted, or devised, unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the organization obtains an appropriate order of [name of court] [the attorney general] specifying the disposition of the

property.

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

Comment

1. This Section authorizes a UNA to merge into another UNA or into another organization, assuming the law governing the other organization authorizes a merger with a UNA; and then sets forth the requirements for the merger—the plan of merger (Subsection (c)(2)); approval of the merger (Subsections (c)(3) and (4)); compliance with all applicable laws (Subsections (c)(1) and (5); and the legal effect of the merger (Subsection (d)). The requirements in this Section are consistent with merger provisions of other business entity laws. The Uniform Limited Liability Act (2006) Sections 1001-09 were used as a guide with the following modifications: (1) majority vs. unanimous vote for approval, and (2) no filing required if all the entities involved are UNAs.

2. Subsections (e) and (f) prevent property held in trust or for charitable purposes before the merger from being diverted from purposes as a result of the merger.

Derivation: Principle #40. [Note: Principle #40 calls for conversion as well as merger provisions. Are conversion provisions really necessary? A UNA can organize a new entity and merge into it, or merge another type of entity into the UNA, thereby achieving the same result as a conversion.

SECTION 31. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 32. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or

authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

[Note: Comment from the Floor: We need to include a comment setting forth the statutory sections referred to.]

SECTION 33. SAVINGS CLAUSE. This [act] does not affect an action or proceeding commenced or right accrued before this [act] takes effect.

Comment

1. Section 33 is adapted from Uniform Partnership Act (1997) §1006(c). It continues the prior law after the effective date of this Act with respect to a (i) "right accrued" and (ii) pending "action or proceeding." But for this section the new law of this Act would displace the old in some circumstances. The power of a new act to displace the old statute with respect to conduct occurring before the new act's enactment is substantial. Millard H. Ruud, *The Savings Clause – Some Problems in Construction and Drafting*, 33 Tex. L. Rev. 285, 286-293 (1955). A court generally applies the law that exists at the time it acts.

2. Almost all states have general savings statutes, usually as a part of their statutory construction acts. These are often very broad. See, for example, Model Statutory Construction Act, Section 53. As this Act is remedial, the more limited savings provisions in Section 33 are more appropriate than the broad savings provisions of the usual general savings clause. Section 33 and not a jurisdiction's general savings clause applies to the Act.

3. "Right Accrued." It is not always clear whether an alleged right has "accrued." Some courts have interpreted the phrase to mean that a "matured cause of action or legal authority to demand redress" exists. *Estates of Hoover v. Iowa Dept. of Social Services*, 299 Iowa 702, 251 N.W. 2d 529 (1977). In *Nielsen v. State of Wisconsin*, 258 Wis. 1110, 141 N.W. 2d 194 (1966), a landowner brought suit after the repeal of an act granting a landowner the right to recover from the state for damages to her land caused by the State's failure to install necessary culverts and the like to prevent flooding. Before the act's repeal the landowner's land had been damaged by flooding caused by the State's failures. The court held that the statutory saving of "rights of action accrued" saved her cause of action. In both of these cases, conduct that gave rise to a cause of action had occurred before the act was repealed. It is said that it is not enough that there is an inchoate right.

Apparently, there is no "accrued right" under a contract, for example, until there is a breach.

4. "Action or Proceeding" Pending. The principal question is what is an "action or proceeding" for this purpose. "Action" refers to a judicial proceeding. "Proceeding" alone, especially when used with "action," is broader and so includes administrative and other

governmental proceedings. It has been given the broader meaning. For example, in *State ex rel. Carmean v. Board of Education of Hardin County*, 170 Ohio 2d 415, 165 N.E. 2d 918 (1960) a petition to transfer certain land from one school district to another filed before a change in the law was a "pending proceeding" to be decided under the old law. Similarly, a request for permission to petition for an election to consolidate school districts was held to be a "proceeding commenced" so that the substance and procedure of the old law, which was materially different from the new, was preserved. *Grant v. Norris*, 249 Iowa 236, 85 N.W. 2d 261 (1957).

Derivation: Principle #15.

[SECTION 34. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY.

(a) If, before the effective date of this [act], an estate or interest in real or personal property was by terms of the transfer purportedly transferred to an unincorporated nonprofit association but under the law of this state the estate or interest did not vest in the association, or in one or more persons on behalf of the association under subsection (b), on the effective date of this [act] the estate or interest vests in the association, unless the parties have treated the transfer as ineffective.

(b) If, before the effective date of this [act], an estate or interest in real or personal property was by terms of the transfer purportedly transferred to an unincorporated nonprofit association but under the law the estate or interest was vested in one or more persons to hold the estate or interest for members of the association, on or after the effective date of this [act] those persons (or their successors in interest) may transfer the estate or interest to the association in its name, or the association may, by appropriate proceedings, require that the estate or interest be transferred to it in its name.]

Comment

1. The initial common law rule was that a purported transfer of property to an unincorporated nonprofit association totally failed as the association was not a legal entity. If a state currently has that rule, it should adopt Subsection (a). If, on the other hand, its rule is that

title does not pass to the association in its name but passes instead to a fiduciary, such as its officers, to hold the property for the benefit of the members, a state should adopt Subsection (b).

If a state has by statute made transfers effective to some classes of nonprofit associations but not all, it should probably adopt both Subsections (a) and (b). On the other hand, if a state has made all transfers to all unincorporated nonprofit associations effective, it does not need Section 34.

2. Section 34 brings to fruition the parties' expectations that previous law frustrated. Inasmuch as the common law did not consider an unincorporated nonprofit association to be a legal entity, it could not acquire property. A gift of real or personal property thus failed. Reference to the transfer as "purportedly" made identifies the document of transfer as one not effective under the law. Subsection (a) gives effect to the gift. However, if parties were informed about the common law they may have treated the gift as ineffective. In that case, the final clause of Subsection (a) provides that the gift does not become effective when this Act takes effect. The unless clause would apply, for example, if the residual beneficiaries of the donor's will, knowing that the devise of Blackacre to the nonprofit association was ineffective under the law, continued to use Blackacre as their summer home with the approval and acquiescence of members and representatives of the nonprofit association.

3. Section 34 is not a retroactive rule. It applies to the facts existing when this Act takes effect. At that time Subsection (a) applies to a purported transfer of property that under the law of the jurisdiction that could not be given effect at the time it was made. The first alternative belatedly makes it effective – effective when this Act takes effect and not when made. The practical result of this difference is that when the purported transfer is effective, the transfer is subject to interests in the property that came into being in the interim. The nonprofit association's interest is subject, for example, to a tax or judgment lien that became effective in the interim. An intervening transfer by the initial transferor may simply be evidence that the "parties had treated the transfer as ineffective." If so, Alternative 1 by its terms does not vest ownership in the nonprofit association.

4. Some courts gave effect to a gift of property to an unincorporated nonprofit association by determining that the gift lodged title in someone, often officers of the association, to hold the property in trust for the benefit of the association's members. Subsection (b) addresses this situation. When the Act takes effect it authorizes the fiduciary to transfer the property to the association. If the fiduciary is unwilling or reluctant, the association may require the fiduciary to transfer the property to the association. In either case, the association will get a deed transferring the property to it which, in the case of real property, the association may record.

5. Jurisdictions that have a statute like New York's concerning grants of property by will have a problem that needs special attention. The New York statute provides that a grant by will of real or personal property to an unincorporated association is effective only if the association incorporates within three years after probate of the will. McKinney's N.Y. Estates, Powers & Trust Law Section 3-1.3 (1991). The grants by will that need attention are those that have not become effective by incorporation of the association and have not become ineffective by the

running of the three year period. These grants seem entitled to the benefits of Section 34. If so, some modification of Section 34 may be required.

SECTION 35. REPEALS. The following acts and parts of acts are repealed:

_____.

Comment

This Act is not a comprehensive revision of the law of unincorporated nonprofit associations. It is, however, designed to apply to all unincorporated nonprofit associations to the extent of its coverage.

Many states have a patchwork of law relating to these associations. Some laws apply to a specific kind of association, such as a denominational church or medical society. See, for example, California Corporations Code, Title 3, Unincorporated Associations, Section 21200 (West 1991) (County and Regional Medical Societies); Minn. Stat. Ann. Section 315.01 et seq. (West 1992) (religion societies). Other law deals with a very specific subjects, such as legal protection of an association's insignia. Some go beyond a subject's treatment in this Act, such as the recently enacted charitable immunity and liability acts that relieve individuals acting for an association from liability for simple negligence.

In preparing a bill for the enactment of this Act careful attention should be given to determining the appropriate relationship of this Act to existing statutes. It may be wise to repeal expressly certain laws and to specify that certain others are not repealed. While it is unusual to include a provision that certain statutes are not repealed, doing so in this situation will relieve courts of difficult questions of repeal by implication.

SECTION 36. EFFECTIVE DATE. This [Act] takes effect _____.

Comment

Unless a jurisdiction's usual effective date rule provides little time for affected parties to learn of a new law, a delayed effective date is probably not necessary.

This Act provides an unincorporated, nonprofit association and its members with a legal structure that conforms to the expectations of many of them. Therefore, the need by UNAs for additional time to revise procedures and forms to conform to a significant change in the law is not necessary. However, this Act materially changes the common law rules regarding third parties, particularly creditors of nonprofit associations. Anecdotal evidence suggests that many creditors place little reliance on their rights against members in extending credit. If they have any reservations about the creditworthiness of a nonprofit association they obtain guarantees from creditworthy members or insist on cash. To the extent that this is true, no change in credit policies is needed and so no extra planning time is needed.