

DRAFT

FOR DISCUSSION ONLY

HARMONIZED
REVISED UNIFORM UNINCORPORATED
NONPROFIT ASSOCIATION ACT
(Amendments to Revised Uniform Unincorporated
Nonprofit Association Act (2008))

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For January 28-30, 2011 Drafting Committee Meeting
on Harmonization of Business Entity Acts

Without Comments, but with Reporters' Notes

Strike and Score Version

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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January 19, 2011

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**HARMONIZED REVISED UNIFORM UNINCORPORATED NONPROFIT
ASSOCIATION ACT**

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1 **Introductory Reporters' Note**

2
3 The proposed revisions to the text of the act set forth in this document have been
4 prepared as part of a project that has two purposes: (i) to harmonize the language of all of the
5 unincorporated entity laws, and (ii) to revise the language of each of those acts in a manner that
6 permits their integration into a single code of entity laws.
7

8 The Reporters' Notes in this document are limited to explaining the source of certain of
9 the proposed changes. Following the approval of the changes in this document by the
10 Conference, the Reporters' Notes will be replaced with more usual comments that explain the
11 provisions of the act.
12

13 The harmonization process has involved the revision of the following acts, some of which
14 are referred to in the Reporters' Notes by the abbreviations listed below:
15

16	HUB	Business Organizations Act
17	META	Model Entity Transactions Act
18	MORAA	Model Registered Agents Act
19	UPA	Uniform Partnership Act (1997)
20	ULPA	Uniform Limited Partnership Act (2001)
21	ULLCA	Uniform Limited Liability Company Act (200_)
22	USTEA	Uniform Statutory Trust Entity Act
23	Coop Act	Uniform Limited Cooperative Association Act
24	UUNAA	Uniform Unincorporated Nonprofit Association Act (200_)

25
26 Changes to the currently effective text of the act are shown by ~~striking through text to be~~
27 ~~deleted~~ and underlining text to be added. Changes that adopt language from the HUB, META,
28 or MORAA or are merely relocations of current language or corrections to cross references are
29 shown in black type. **Changes that adopt language from other unincorporated entity laws are**
30 **shown in blue type.** **Changes that do not have a source in one of the existing unincorporated**
31 **entity laws are shown in red type.**
32

1 (6) “Record”, used as a noun, means information that is inscribed on a tangible medium
2 or that is stored in an electronic or other medium and is retrievable in perceivable form.

3 (7) “Sign” means, with present intent to authenticate or adopt a record:

4 (A) to execute or adopt a tangible symbol; or

5 (B) to attach to or logically associate with the record an electronic symbol, sound,
6 symbol, or process.

7 ~~(7)~~(8) “State” means a state of the United States, the District of Columbia, Puerto Rico,
8 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
9 the United States.

10 ~~(8)~~(9) “Unincorporated nonprofit association” means an unincorporated organization
11 consisting of [two] or more members joined under an agreement that is oral, in a record, or
12 implied from conduct, for one or more common, nonprofit purposes. The term does not include:

13 (A) a trust;

14 (B) a marriage, domestic partnership, common law domestic relationship, civil
15 union, or other domestic living arrangement;

16 (C) an organization formed under any other statute that governs the organization
17 and operation of unincorporated associations;

18 (D) a joint tenancy, tenancy in common, or tenancy by the entireties even if the
19 co-owners share use of the property for a nonprofit purpose; or

20 (E) a relationship under an agreement in a record that expressly provides that the
21 relationship between the parties does not create an unincorporated nonprofit association.

22 **Reporters’ Note**

23 “Person.” Conformed to HUB § 1-102 and META § 102.

24 “Sign.” Patterned after HUB § 1-102 and META § 102.
25

1 **SECTION 3. RELATION TO OTHER LAW.**

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

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

6 (c) This [act] supplements the law of this state that applies to nonprofit associations
7 operating in this state. If a conflict exists, that law applies.

8 **SECTION 4. GOVERNING LAW.**

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

12 (b) Unless the governing principles specify a different jurisdiction, the law of the
13 jurisdiction in which an unincorporated nonprofit association has its main place of activities
14 governs the internal affairs of the association.

15 **SECTION 5. LEGAL ENTITY; PERPETUAL EXISTENCE; POWERS.**

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

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

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

22 (d) An unincorporated nonprofit association may engage in profit-making activities but
23 profits from any activities must be used or set aside for the association's nonprofit purposes.

1 **SECTION 6. OWNERSHIP AND TRANSFER OF PROPERTY.**

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

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

6 **SECTION 7. STATEMENT OF AUTHORITY AS TO REAL PROPERTY.**

7 (a) In this section, “statement of authority” means a statement authorizing a person to
8 transfer an interest in real property held in the name of an unincorporated nonprofit association.

9 (b) An interest in real property held in the name of an unincorporated nonprofit
10 association may be transferred by a person authorized to do so in a statement of authority [filed]
11 [recorded] by the association in the office in the [county] in which a transfer of the property
12 would be [filed] [recorded].

13 (c) A statement of authority must set forth:

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

15 (2) the address in this state, including the street address, if any, of the association
16 or, if the association does not have an address in this state, its out-of-state address;

17 (3) that the association is an unincorporated nonprofit association; and

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

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

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

24 (f) A document amending, revoking, or canceling a statement of authority or stating that

1 the statement is unauthorized or erroneous must meet the requirements for executing and [filing]
2 [recording] an original statement.

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

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

10 **SECTION 8. LIABILITY.**

11 (a) A debt, obligation, or other liability of an unincorporated nonprofit association,
12 ~~whether arising in contract, tort, or otherwise:~~

13 ~~(1) is solely the debt, obligation, or other liability of the association; and~~

14 ~~(2) does not become a debt, obligation, or other liability of a member or manager~~
15 ~~solely because the member acts as a member or the manager acts as a manager.~~

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

19 **Reporters' Note**

20 Changes to subsection (a) conform to harmonized ULLCA § 304(a).

21
22

23 **SECTION 9. ASSERTION AND DEFENSE OF CLAIMS.**

24 (a) An unincorporated nonprofit association may sue or be sued in its own name.

25 (b) A member or manager may assert a claim the member or manager has against the

1 unincorporated nonprofit association. An association may assert a claim it has against a member
2 or manager.

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

6 **Reporters' Note**

7
8 The rule of this section follows from the fact that a nonprofit association is a separate
9 entity. See Section 5(a). For the same reason, a provision analogous to this section was
10 considered unnecessary in the other unincorporated entity laws, but this section has been
11 included in this act because it emphasizes an important change from the common law treatment
12 of nonprofit associations.
13

14
15 **SECTION 11. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF**
16 **PROCESS.**

17 (a) An unincorporated nonprofit association may ~~file in the office of~~deliver to the
18 [Secretary of State] for filing a statement appointing an agent authorized to receive service of
19 process.

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

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

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

24 (c) A statement appointing an agent must be signed ~~and [acknowledged] [sworn to]~~ by a
25 person authorized to manage the affairs of the unincorporated nonprofit association and by the
26 person appointed as the agent. ~~By signing and [acknowledging] [swearing to] the statement the~~
27 person becomes the agent. The signing of the statement is an affirmation of fact that the person is
28 authorized to manage the affairs of the unincorporated nonprofit association and that the agent

1 has consented to serve.

2 (d) An amendment to or cancellation of a statement appointing an agent to receive service
3 of process must meet the requirements for ~~executing or signing~~ an original statement. An agent
4 may resign by ~~filing~~delivering a resignation ~~into~~ the office of the [Secretary of State] for filing
5 and giving notice to the association.

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

9 (f) A statement appointing an agent to receive service of process takes effect on filing by
10 the [Secretary of State] and is effective for five years after the date of filing unless canceled or
11 terminated earlier.

12 (g) A statement appointing an agent to receive service of process may not be rejected for
13 filing because the name of the unincorporated nonprofit association signing the statement is not
14 distinguishable on the records of the [Secretary of State] from the name of another entity
15 appearing in those records. The filing of such a statement does not make the name of the
16 unincorporated nonprofit association signing the statement unavailable for use by another entity.

17 **Reporters' Note**

18 Changes conform to HUB § 1-411 and MORAA § 12.
19
20

21
22 **[SECTION 12. SERVICE OF PROCESS.** In an action or proceeding against an
23 unincorporated nonprofit association, process may be served on an agent authorized by
24 appointment to receive service of process, on a manager of the association, or in any other
25 manner authorized by the law of this state.]

26 **SECTION 13. ACTION OR PROCEEDING NOT ABATED BY CHANGE.** An

1 action or proceeding against an unincorporated nonprofit association does not abate merely
2 because of a change in its members or managers.

3 **Reporters' Note**

4
5 The rule of this section follows from the fact that a nonprofit association is a separate
6 entity. See Section 5(a). For the same reason, a provision analogous to this section was
7 considered unnecessary in the other unincorporated entity laws, but this section has been
8 included in this act because it emphasizes an important change from the common law treatment
9 of nonprofit associations.

10
11
12 **[SECTION 14. VENUE.** Unless otherwise provided by law other than this [act], venue
13 of an action against an unincorporated nonprofit association brought in this state is determined
14 under the statutes applicable to an action brought in this state against a corporation.]

15 **SECTION 15. MEMBER NOT AGENT.** A member is not an agent of the association
16 solely by reason of being a member.

17 **SECTION 16. APPROVAL BY MEMBERS.**

18 (a) Except as otherwise provided in the governing principles, an unincorporated nonprofit
19 association must have the approval of its members to:

- 20 (1) admit, suspend, dismiss, or expel a member;
- 21 (2) select or dismiss a manager;
- 22 (3) adopt, amend, or repeal the governing principles;
- 23 (4) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the
24 association's property, with or without the association's goodwill, outside the ordinary course of
25 its activities;
- 26 (5) dissolve under section 28(2) or merge under section 30;
- 27 (6) undertake any other act outside the ordinary course of the association's
28 activities; or

1 (7) determine the policy and purposes of the association.

2 (b) An unincorporated nonprofit association must have the approval of the members to do
3 any other act or exercise a right that the governing principles require to be approved by
4 members.

5 **SECTION 17. MEETINGS OF MEMBERS; VOTING, NOTICE, AND**
6 **QUORUMPROCEDURAL REQUIREMENTS.**

7 (a) Unless the governing principles provide otherwise:

8 (1) approval of a matter by members requires an affirmative majority of the votes
9 cast at a meeting of members; and

10 (2) each member is entitled to one vote on each matter that is submitted for
11 approval by members.

12 (b) ~~Notice and quorum requirements for member meetings and the conduct of meetings~~
13 ~~of members are determined by the governing principles. The governing principles may provide~~
14 ~~for the:~~

15 (1) calling, location and timing of meetings of the members;

16 (2) notice and quorum requirements for member meetings;

17 (3) conduct of member meetings;

18 (4) taking of action by the members by consent without a meeting or by ballot;

19 and

20 (5) participation by members in a meeting of the members by telephone or other
21 means of electronic communication.

22 (c) If the governing principles do not provide for a matter described in subsection (b),
23 customary usages and principles of parliamentary law and procedure apply.

24 **Reporters' Note**

1
2 Subsections (b) and (c) clarify the intent of former subsection (b).

3
4
5 **SECTION 18. DUTIES OF MEMBER.**

6 (a) A member does not have ~~any~~ fiduciary duty to an unincorporated nonprofit
7 association or to another member solely ~~by~~reason of being a member.

8 (b) A member shall discharge the duties to the unincorporated nonprofit association and
9 the other members and exercise any rights under this [act] consistent with the governing
10 principles and the contractual obligation of good faith and fair dealing.

11 **Reporters' Note**

12 Changes to subsection (a) patterned after ULPA § 305(a).

13 Addition of “contractual” in subsection patterned after ULLCA § 409(d).

14
15
16
17
18 **SECTION 19. ADMISSION, SUSPENSION, DISMISSAL, OR EXPULSION OF**
19 **MEMBERS.**

20 (a) A person becomes a member and may be suspended, dismissed, or expelled in
21 accordance with the association’s governing principles. If there are no applicable governing
22 principles, a person may become a member or be suspended, dismissed, or expelled from an
23 association only by a vote of its members. A person may not be admitted as a member without
24 the person’s consent.

25 (b) Unless the governing principles provide otherwise, the suspension, dismissal, or
26 expulsion of a member does not relieve the member from any unpaid capital contribution, dues,
27 assessments, fees, or other obligation incurred or commitment made by the member before the
28 suspension, dismissal, or expulsion.

1 **SECTION 20. MEMBER’S RESIGNATION.**

2 (a) A member may resign as a member in accordance with the governing principles. In
3 the absence of applicable governing principles, a member may resign at any time.

4 (b) Unless the governing principles provide otherwise, resignation of a member does not
5 relieve the member from any unpaid capital contribution, dues, assessments, fees, or other
6 obligation incurred or commitment made by the member before resignation.

7 **SECTION 21. MEMBERSHIP INTEREST NOT TRANSFERABLE.** Except as
8 otherwise provided in the governing principles, a member’s interest or any right under the
9 governing principles is not transferable.

10 **SECTION 22. SELECTION OF MANAGERS; MANAGEMENT RIGHTS OF**
11 **MANAGERS.** Except as otherwise provided in this [act] or the governing principles:

12 (1) only the members may select a manager or managers;

13 (2) a manager may be a member or a nonmember;

14 (3) if a manager is not selected, all members are managers;

15 (4) each manager has equal rights in the management and conduct of the association’s
16 activities;

17 (5) all matters relating to the association’s activities are decided by its managers except
18 for matters reserved for approval by members in section 16; and

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

20 **SECTION 23. DUTIES OF MANAGERS.**

21 (a) A manager owes to the unincorporated nonprofit association and to its members the
22 fiduciary duties of loyalty and care.

23 (b) A manager shall manage the unincorporated nonprofit association in good faith, in a
24 manner the manager reasonably believes to be in the best interests of the association, and with

1 such care, including reasonable inquiry, as a prudent person would reasonably exercise in a
2 similar position and under similar circumstances. A manager may rely in good faith upon any
3 opinion, report, statement, or other information provided by another person that the manager
4 reasonably believes is a competent and reliable source for the information.

5 (c) After full disclosure of all material facts, a specific act or transaction that would
6 otherwise violate the duty of loyalty by a manager may be authorized or ratified by a majority of
7 the members that are not interested directly or indirectly in the act or transaction.

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

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

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

14 (3) believes that the business judgment is in the best interests of the
15 unincorporated nonprofit association and in accordance with its purposes.

16 (e) The governing principles in a record may limit or eliminate the liability of a manager
17 to the unincorporated nonprofit association or its members for damages for any action taken, or
18 for failure to take any action, as a manager, except liability for:

19 (1) the amount of financial benefit improperly received by a manager;

20 (2) an intentional infliction of harm on the association or one or more of its
21 members;

22 (3) an intentional violation of criminal law;

23 (4) breach of the duty of loyalty; or

24 (5) improper distributions.

1 **SECTION 24. ~~NOTICE AND QUORUM~~PROCEDURAL REQUIREMENTS FOR**
2 **MEETINGS OF MANAGERS.**

3 ~~Notice and quorum requirements for meetings of managers and the conduct of meetings~~
4 ~~of managers are determined by the~~(a) The governing principles may provide for the:

5 (1) calling, location and timing of meetings of the managers;

6 (2) notice and quorum requirements for manager meetings;

7 (3) conduct of manager meetings;

8 (4) taking of action by the managers by consent without a meeting; and

9 (5) participation by managers in a meeting of the managers by telephone or other
10 means of electronic communication.

11 (b) If the governing principles do not provide for a matter described in subsection (a),
12 customary usages and principles of parliamentary law and procedure apply.

13 **Reporters's Note**

14 The changes to this section conform to Section 17.

15 **SECTION 25. RIGHT OF MEMBER OR MANAGER TO INFORMATION.**
16

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

23 (b) An unincorporated nonprofit association may impose reasonable restrictions on access
24 to and use of information to be furnished under this section, including designating the

1 information confidential and imposing obligations of nondisclosure and safeguarding on the
2 recipient.

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

5 (d) A former member or manager is entitled to information to which the member or
6 manager was entitled while a member or manager if the information pertains to the period during
7 which the person was a member or manager, the former member or manager seeks the
8 information in good faith, and the former member or manager satisfies subsections (a) through
9 (c).

10 **SECTION 26. DISTRIBUTIONS PROHIBITED; COMPENSATION AND**
11 **OTHER PERMITTED PAYMENTS.**

12 (a) Except as otherwise provided in subsection (b), an unincorporated nonprofit
13 association may not pay dividends or make distributions to a member or manager.

14 (b) An unincorporated nonprofit association may:

15 (1) pay reasonable compensation or reimburse reasonable expenses to a member
16 or manager for services rendered;

17 (2) confer benefits on a member or manager in conformity with its nonprofit
18 purposes;

19 (3) repurchase a membership and repay a capital contribution made by a member
20 to the extent authorized by its governing principles; or

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

1 **SECTION 27. REIMBURSEMENT; INDEMNIFICATION; ADVANCEMENT OF**
2 **EXPENSES.**

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

6 (b) An unincorporated nonprofit association may indemnify a member or manager for
7 any debt, obligation, or other liability incurred in the course of the member's or manager's
8 activities on behalf of the association if the person seeking indemnification has complied with
9 Sections 18 and 23. Governing principles in a record may broaden or limit indemnification.

10 (c) If a person is made or threatened to be made a party in an action based on that
11 person's activities on behalf of an unincorporated nonprofit association and the person makes a
12 request in a record to the association, a majority of the disinterested managers may approve in a
13 record advance payment, or reimbursement, by the association, of all or a part of the reasonable
14 expenses, including attorney's fees and costs, incurred by the person before the final disposition
15 of the proceeding. To be entitled to an advance payment or reimbursement, the person must state
16 in a record that the person has a good faith belief that the criteria for indemnification in
17 subsection (b) have been satisfied and that the person will repay the amounts advanced or
18 reimbursed if the criteria for payment have not been satisfied. The governing principles in a
19 record may broaden or limit the advance payments or reimbursements.

20 (d) An unincorporated nonprofit association may purchase insurance on behalf of a
21 member or manager for liability asserted against or incurred by the member or manager in the
22 capacity of a member or manager, whether or not the association has authority under this [act] to
23 reimburse, indemnify, or advance expenses to the member or manager against the liability.

24 (e) The rights of reimbursement, indemnification, and advancement of expenses under

1 this section apply to a former member or manager for an activity undertaken on behalf of the
2 unincorporated nonprofit association while a member or manager.

3 **SECTION 28. DISSOLUTION.**

4 (a) An unincorporated nonprofit association may be dissolved as follows:

5 (1) if the governing principles provide a time or method for dissolution, at that
6 time or by that method;

7 (2) if the governing principles do not provide a time or method for dissolution,
8 upon approval by the members;

9 (3) if no member can be located and the association's operations have been
10 discontinued for at least three years, by the managers or, if the association has no current
11 manager, by its last manager;

12 (4) by court order; or

13 (5) under law other than this act.

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

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

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

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

21 (3) Any property subject to a trust must be distributed in accordance with the trust
22 agreement.

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

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

1 be distributed to another person with similar nonprofit purposes;

2 (B) in accordance with the association’s governing principles or in the absence of
3 applicable governing principles, to the members of the association per capita or as the members
4 direct; or

5 (C) if neither subparagraph (A) nor (B) applies, under [cite the unclaimed
6 property law in this state.]

7 **SECTION 30. MERGERS.**

8 (a) In this section:

9 ~~(1) “Constituent organization” means an organization that is merged with one or
10 more other organizations including the surviving organization.~~

11 ~~(2) “Nonsurviving organization” means a constituent organization that is not the
12 surviving organization.~~

13 ~~(3) “Organization” means an unincorporated nonprofit association, a general
14 partnership, including a limited liability partnership, limited partnership, including a limited
15 liability limited partnership, limited liability company, business or statutory trust, corporation, or
16 any other legal or commercial entity having a statute governing its formation and operation. The
17 term includes a for-profit or nonprofit organization.~~

18 ~~(4) “Surviving organization” means an organization into which one or more other
19 organizations are merged.~~

20 (1) “Entity” means a person that has a statute governing its formation and
21 operation or that has the power to acquire an interest in real property in its own name other than:

22 (A) an individual;

23 (B) a testamentary, inter vivos, or charitable trust, except a statutory trust,
24 business trust or common-law business trust;

1 (C) an association or relationship that is not a partnership solely by reason
2 of [Section 202(c) of the Uniform Partnership Act (1997)] or a similar provision of the law of
3 another jurisdiction;

4 (D) a decedent’s estate; or

5 (E) a government or a governmental subdivision, agency, or
6 instrumentality.

7 (2) “Merging entity” means an entity that is a party to a merger and exists
8 immediately before the merger becomes effective.

9 (3) “Organic rules” means the public organic record and private organic rules of
10 an entity.

11 (4) “Private organic rules” means the rules, whether or not in a record, that govern
12 the internal affairs of an entity, are binding on all of its interest holders, and are not part of its
13 public organic record, if any.

14 (5) “Public organic record” means the record the filing of which by the [Secretary
15 of State] forms an entity; and any amendment to or restatement of that record.

16 (6) “Surviving entity” means the entity that continues in existence after or is
17 created by a merger.

18 (7) “Transfer” includes an assignment, conveyance, sale, lease, encumbrance,
19 including by mortgaging or granting a security interest, gift, and transfer by operation of law.

20 (b) An unincorporated nonprofit association may ~~merge~~ be a merging entity or surviving
21 entity in a merger with any ~~organization~~ entity that is authorized by law to merge with an
22 unincorporated nonprofit association.

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

1 (1) Each constituent ~~organization~~entity shall comply with its governing law.

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

4 (A) the name and form of each ~~organization~~entity that is a party to the
5 merger;

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

8 (C) if the surviving ~~organization~~entity is to be created by the merger, the
9 surviving ~~organization's organizational documents~~entity's organic rules that are proposed to be
10 in a record;

11 (D) if the surviving ~~organization~~entity is not to be created by the merger,
12 any amendments to be made by the merger to the surviving ~~organization's organizational~~
13 ~~documents~~entity's organic rules that are, or are proposed to be, in a record; and

14 (E) the terms and conditions of the merger, including the manner and basis
15 for converting the interests in each ~~constituent organization~~merging entity into any combination
16 of money, interests in the surviving ~~organization~~entity, and other consideration except that the
17 plan of merger may not permit members of an unincorporated nonprofit association to receive
18 merger consideration if a distribution of such consideration would not be permitted in the
19 absence of a merger under Sections 26 and 29.

20 (3) The plan of merger must be approved by the members of each unincorporated
21 nonprofit association that is a ~~constituent organization in the merger~~merging entity. If a plan of
22 merger would impose personal liability for an obligation of a ~~constituent or surviving~~
23 ~~organization~~an entity on a member of an association that is a ~~party to the merger~~merging entity,
24 the plan may not take effect unless it is approved in a record by the member.

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

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

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

9 (B) if the surviving ~~organization~~entity:

10 (i) is an unincorporated nonprofit association, as specified in the
11 plan of merger and upon compliance by any ~~constituent organization~~merging entity that is not an
12 association with any requirements, including any required filings in the [office of the Secretary
13 of State], of the ~~organization~~entity's governing statute; or

14 (ii) is not an unincorporated nonprofit association, as provided by
15 the statute governing the surviving ~~organization~~entity.

16 (d) When a merger becomes effective:

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

18 (2) each ~~constituent organization that merges into the surviving~~
19 ~~organization~~merging entity that is not the surviving entity ceases to exist ~~as a separate entity~~;

20 (3) all property ~~owned by each constituent organization that ceases to exist~~of each
21 merging entity vests in the surviving ~~organization~~entity without transfer, reversion, or
22 impairment;

23 (4) all debts, obligations, or other liabilities of each ~~nonsurviving~~
24 ~~organization~~merging entity continue as debts, obligations, or other liabilities of the surviving

1 ~~organization~~entity;

2 (5) ~~an action or proceeding pending by or against any nonsurviving organization~~
3 ~~may be continued as if the merger had not occurred~~the name of the surviving entity may be
4 substituted for the name of any merging entity that is a party to any pending action or
5 proceeding;

6 (6) except as ~~prohibited~~otherwise provided by law other than this [act], all of the
7 rights, privileges, immunities, powers, and purposes of each ~~constituent organization that ceases~~
8 ~~to exist~~merging entity vest in the surviving ~~organization~~entity;

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

11 (8) the merger does not affect the personal liability, if any, of a member or
12 manager of a ~~constituent organization~~merging entity for a debt, obligation, or other liability
13 incurred before the merger is effective; and

14 (9) a surviving ~~organization~~entity that is not organized in this state is subject to
15 the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed
16 by a ~~constituent organization~~merging entity, if before the merger the ~~constituent~~
17 ~~organization~~merging entity was subject to suit in this state for the debt, obligation, or other
18 liability.

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

1 specifying the disposition of the property.

2 (f) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
3 donation, subscription, or conveyance that is made to a ~~nonsurviving organization~~merging entity
4 that is not the surviving entity and that takes effect or remains payable after the merger inures to
5 the surviving ~~organization~~entity. A trust obligation that would govern property if transferred to
6 the nonsurviving ~~organization~~entity applies to property that is transferred to the surviving
7 ~~organization~~entity under this section.

8 **Reporters' Note**

9 *Subsection (a).* Definitions of “entity,” “organic rules,” “private organic rules,” and
10 “public organic record” patterned after MORAA § 2. Definitions of “merging entity,”
11 “surviving entity,” and “transfer” patterned after META § 102.
12
13

14 **[SECTION 31. TRANSITION CONCERNING REAL AND PERSONAL**
15 **PROPERTY.**

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

21 (b) If, before [the effective date of this [act]], an interest in property was by terms of a
22 transfer purportedly transferred to an unincorporated nonprofit association but the interest was
23 vested in one or more persons to hold the interest for members of the association, on or after [the
24 effective date of this [act]] the persons, or their successors in interest, may transfer the interest to
25 the association in its name, or the association may require that the interest be transferred to it in
26 its name.]

1 **SECTION 32. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
2 applying and construing this uniform act, consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among states that enact it.

4 **SECTION 33. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
5 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
6 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but
7 does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or
8 authorize electronic delivery of any of the notices described in section 103(b) of that act, 15
9 U.S.C. section 7003(b).

10 **SECTION 34. SAVINGS CLAUSE.** This [act] does not affect an action or proceeding
11 commenced or right accrued before this [act] takes effect.

12 **SECTION 35. REPEALS.** The following are repealed: _____.

13 **SECTION 36. EFFECTIVE DATE.** This [act] takes effect _____.