

**NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
UNIFORM LAW CONFERENCE OF CANADA
MEXICAN CENTER ON UNIFORM LAW
JOINT PROJECT TO CREATE A HARMONIZED LEGAL FRAMEWORK FOR
UNINCORPORATED NONPROFIT ASSOCIATIONS IN NORTH AMERICA**

TENTATIVE LIST OF PRINCIPLES

1. Except as otherwise specified, the Act will apply to all unincorporated nonprofit associations formed or operated in the enacting jurisdiction.

2. An unincorporated nonprofit association (UNA) is formed by two or more persons pursuant to an agreement, written or oral, under which (1) the persons who form the UNA agree to pursue lawful common goals other than the making of profits that are to be distributed to its members, managers or agents and which (2) is not a corporation or a charitable trust.

Comment: The following terms should be defined in the Act:

(a) “Agreement” rather than “contract” is the appropriate term because the legal requirements for an agreement are less stringent. Many existing UNAs are quite informal and do not have written or signed governing principles.

(b) The agreement forming the UNA becomes part of the UNA’s “governing principles,” an important term that should be defined in the Act. Governing principles are all the agreements that govern the purpose or operation of a UNA and the rights and obligations of its members. If written, they are usually found in the UNA’s constitution, articles of association, bylaws or regulations. If unwritten, they would be established practices, which should also be a defined term (*see* Calif. Corp. Code §18010 (“established practices” means the practices used by an unincorporated association without material change or exception during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.”))

(c) The term “person” rather than “individual” or “party” is used to make it clear that founders and members can be entities of all types as well as individuals. The definition of “person” in the NCCUSL uniform unincorporated association acts could be the model for this definition. (“Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint ventures, government, governmental subdivision, agency, or instrumentality, or any other legal or community entity.)

(d) “Members” of a UNA are the equivalent of shareholders in a corporation or partners in a partnership. They are the persons who under the governing principles of a UNA are entitled to participate in the selection of persons who are authorized to manage the affairs of the UNA or in the development of the UNA’s policies. Persons who do not have these rights are not “members” under this Act, even though they may be called or designated as members by the UNA, e.g., individuals whose only connection with the UNA is a gift of money that are listed as members of a group who have given a similar range of gifts.

(e) “Managers” are all those persons who have managerial responsibility within the UNA. The term would include directors, trustees and officers and anyone else (e.g., the minister of a church that is a UNA) who has been authorized to exercise managerial authority. A manager may or may not be a member of the UNA.

3. A UNA can engage in for profit activities but all of its income over and above its operating and capital expenses must be used or set aside for the goals for which the UNA was established.

4. Once formed, a UNA continues in existence until it is dissolved and its activities have been wound up.

5. Dissolution, winding up, and termination of a UNA must proceed as follows:
- (a) All known debts and liabilities of the UNA must be paid or adequately provided for;
 - (b) Any assets subject to a reversion requiring return to the person designated by the donor should be transferred to that person;
 - (c) Any assets subject to a trust (e.g., endowment or restricted gifts) must be distributed in accordance with the trust agreement; and
 - (d) Any remaining net assets must be distributed as follows:
 - (i) As required by other law (e.g., tax law) that requires assets of a nontaxable UNA to be distributed to another nontaxable UNA with similar purposes;
 - (ii) In accordance with the UNA's governing principles; and in the absence of applicable governing principles, to the current members of the association pro rata; or
 - (iii) If neither 1 or 2 apply, the net assets will escheat to the enacting jurisdiction by the means generally provided for escheated property in the enacting jurisdiction's law.

Comment:

Under Paragraph 15, the vote required for dissolution would be a majority vote of the members, unless the enacting jurisdiction requires a higher vote. Consideration should also be given to how an inactive UNA can be dissolved. *See* Calif. Corp. Code §18410 (vote by the board or court order if the UNA has been inactive for three or more years).

6. A UNA cannot distribute any assets to its members, managers or agents other than compensation, reimbursement of expenses incurred on behalf of the UNA or indemnification except by way of a liquidating distribution in accordance with Paragraph 4.

7. An unpaid creditor of the UNA can recover the value of assets distributed to members in connection with a liquidation provided the action is commenced before the earlier of the expiration of the statute of limitations applicable to the creditor's cause of action or [] years after the assets are distributed to the member. The recovery is limited to the value of the assets received by the member.

Comment:

The time frame selected for the blank should be the same as the statute of limitations for recovery of liquidating distributions to members of nonprofit corporations in the enacting jurisdiction.

8. The Act shall apply 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, investment 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 have a separate section specifying the organizations that are to be exempt.

9. This Act supplements any other legislation or regulatory law in the enacting jurisdiction that apply to UNAs. In the event of a conflict between this Act and these other laws or regulations, the other laws or regulations will prevail.

Comment:

Most jurisdictions have laws regulating solicitation of charitable donations by any organization. Also many jurisdictions have statutes that give the Chief Legal Officer of the jurisdiction certain supervisory authority over UNAs. These laws and regulations will continue to apply to UNAs. In addition, many jurisdictions have existing statutes dealing with specific types of UNAs, e.g., churches. This Act will supplement those statutes. An enacting jurisdiction should carefully examine these statutes to determine which to retain, to amend, or to repeal. The amendments and repealer provisions should be included as part of this Act.

10. General principles of law and equity supplement the Act, unless displaced by a specific provision in this Act.

Comment:

This Act only deals with a limited number of issues. Other general legal principals of the enacting jurisdiction, such as the law of agency and the enacting jurisdiction's rules of civil procedure continue to apply to UNAs, except to the extent these other laws are modified by specific provisions of this Act.

11. A UNA is a legal entity separate and apart from its members and can acquire, hold, encumber and transfer property in its own name and sue and be sued in its own name in any judicial proceedings.

12. The members in their capacity as members of a UNA have the same immunity from personal liability for the UNA's debt and obligations as the members of a nonprofit corporation under the enacting jurisdiction's laws.

Comment:

Incorporating paragraphs 11 and 12 into appropriate statutory language will require several provisions. *See, e.g.,* Sections 6, 7 and 8 of the Uniform Unincorporated Nonprofit Associations Act (UUNAA). Paragraph 12 is intended to incorporate the limitations on corporate vicarious liability protection, for example, personal liability of corporate shareholders under the veil piercing doctrine, as well as the liability of shareholders when acting as a manager or agent of a corporation.

13. In the absence of provisions to the contrary in the UNA's governing principles, members of a UNA have equal governance rights and a majority of votes cast on a matter by members present and voting at a properly called meeting shall govern as to that matter.

Comment:

(a) The three principles set forth in this paragraph (all members have governing rights, members vote on a per capita basis, and majority vote for approval of 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 (e.g., the board of directors) were 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.

(b) The enacting jurisdiction 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 conversion, or amendment of the UNA's governing principles. The default voting requirements for similar transactions under the enacting jurisdiction's nonprofit corporation law would be an appropriate model for structuring the voting requirements for a UNA.

(c) Query whether default rules for advance notice of meetings, quorum requirements, and proxies should be included in the basic principles. They could be included as optional provisions. *See* Paragraph 26.

14. Members solely in their capacity as members of a UNA are not agents of the UNA and have no power to bind the UNA. Only managers have the power to bind the UNA in accordance with general agency principles.

Comment:

A member is personally liable for his or her own actions. The UNA, however, is not liable for the actions of a member who is not a manager or authorized agent. An exception would be cases where a member is deemed to be a manager or agent under an estoppel or holding out theory. The enacting jurisdiction will have to determine whether this exception needs to be expressed in the statute.

15. Members and managers of a UNA have the same rights to inspect and copy the UNA's records as members of nonprofit corporations have under the enacting jurisdiction's nonprofit corporation code. These rights may be altered but not eliminated by the governing principles of the UNA.

16. Members and managers of a UNA have the same duties of loyalty, good faith and care that members and managers of a nonprofit corporation have under the enacting jurisdiction's nonprofit corporation code.

17. Members and managers of a UNA are liable for breaches of the duties specified in paragraph 16 to the same extent as members and managers of a nonprofit corporation have under the enacting jurisdiction's nonprofit corporation code.

Comment:

(a) The ability to limit the liability for monetary damages in an enacting jurisdiction's nonprofit corporation code, if it exists, should be included in this Act.

(b) Members and managers of a UNA should have the same defenses (e.g., the business judgment rule) to liability as members and managers of nonprofit corporations in the enacting jurisdiction's nonprofit corporation code.

18. A person becomes a member of a UNA and can be dismissed or expelled from a UNA in accordance with the UNA's governing principles. In the absence of applicable governing principles, an individual can become a member or be dismissed or expelled from a UNA by majority vote of the members.

Comment:

Some jurisdictions have existing statutes governing expulsion of a member. If those statutes continue in effect, they would trump this principle. *See* Paragraph 9. *See also* Calif. Corp. Code, §§18310, 18320.

19. A member may voluntarily withdraw from membership in a UNA in accordance with the UNA's governing principles. In the absence of applicable governing principles, a member may withdraw at any time but shall remain liable for any monetary obligation the member owes to the UNA at the time of withdrawal.

20. A member can bring an action against a UNA for any violation of a right or duty owed to the member in the member's capacity as a member or manager of the UNA.

Comment:

Should specific authority for a member to bring a derivative action be included in the Act? Alternatively, should derivative actions be prohibited?

21. Provisions for mergers of UNAs with or into any other type of legal entity, and for conversion (transformation) of a UNA into another type of legal entity should be specifically authorized by the Act, unless authority for these types of transactions already exists in the enacting jurisdiction's other statutes. The provisions should contain the types and contents of documents (e.g., plan of merger or conversion), the required vote to approve the transaction and the legal effect of the transaction. *See Model Entity Transactions Act Articles 2 and 5.*

Comment:

(a) These types of transactions are increasingly common. There is no important policy reason for limiting a merger or conversion of a UNA into another UNA or other type of nonprofit organization.

(b) Any applicable approval or review of these transactions by various governmental agencies, e.g., the enacting jurisdiction's Chief Legal Officer, or legal restrictions on these types of transactions will continue to exist. *See Paragraphs 9 and 10.*

22. The act should provide that any UNA formed in a jurisdiction other than the enacting jurisdiction can operate in the enacting jurisdiction without restriction and the liability of the members and the internal affairs governance rules (voting rights, fiduciary duties, etc.) of the foreign UNA will be the same as the UNA has in the jurisdiction where it is formed.

Comment:

This principal guarantees that the limited liability shield and internal affairs of a foreign formed UNA will apply to a UNA operating in another jurisdiction that has adopted this Act.

23. The Act should contain a provision stating that the Act will not impair any contract right or liability or adversely affect any cause of action against the UNA that exists prior to its enactment.

24. The Act should contain a delayed effective date of at least [6 months] after enactment.

Comment:

A delayed effective date will allow time for UNAs and their legal advisors and creditors to become educated about the Act.

25. The Act should have a provision stating what acts in the enacting jurisdiction are repealed or amended.

26. The Act can contain other provisions that the enacting jurisdiction deems appropriate to facilitate the operation of UNAs. Examples are:

(a) A Statement of Authority filed in the enacting jurisdiction's real estate title records specifying who in the UNA has authority to transfer interests in the UNA's real property (*see* UUNAA Section 5);

(b) Appointment of a statutory agent to receive service of process on behalf of a UNA (*see* UUNAA Section 10); service of a Summons and complaint against a UNA (*see* UUNAA Section 13) and the proper venue for actions against UNAs (*see* UUNAA Section 12); and

(c) Provisions for transferring title to UNA property held in the name of trustees or others for the benefit of a UNA at the time of enactment of this Act into the name of the UNA (*see* UUNAA Section 19).