

D R A F T  
FOR APPROVAL

**REVISED UNIFORM UNINCORPORATED  
NONPROFIT ASSOCIATIONS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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**REVISED UNIFORM UNINCORPORATED  
NONPROFIT ASSOCIATIONS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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## **REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATIONS ACT**

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# REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

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# **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 organizational 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.

1       **REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT**

2  
3       **SECTION 1. SHORT TITLE.** This act may be cited as the Revised Uniform  
4       Unincorporated Nonprofit Association [Act.]

5       **SECTION 2. DEFINITIONS.** In this [act]:

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

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

13          (3) “Manager” means a person that is responsible, alone or in concert with others, for the  
14      management of an unincorporated nonprofit association.

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

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

22          (6) “Record” means information that is inscribed on a tangible medium or that is stored in  
23      an electronic or other medium and is retrievable in perceivable form.

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

4 (8) “Unincorporated nonprofit association” means an unincorporated organization,  
5 consisting of [two] or more members joined by mutual consent pursuant to an agreement that is  
6 written, oral, or inferred from conduct, for one or more common, nonprofit purposes that is not:  
7 (A) a trust; (B) a marriage, domestic partnership, common law relationship, or other domestic  
8 living arrangement; (C) an organization that is formed under any other statute that governs the  
9 organization and operation of unincorporated associations; or (D) joint tenancy, tenancy in  
10 common, or tenancy by the entireties even if the co-owners share use of the property for a  
11 nonprofit purpose.

#### 12 **Comment**

13  
14 1. “Established practices” are essentially equivalent to the commercial law concepts of  
15 course of performance and course of dealing. *See* UCC §1-303. Many UNAs operate on a very  
16 informal basis. Often there are no written procedures or bylaws or what writings they have are  
17 very incomplete. Nevertheless, over time they develop and follow various practices. These  
18 practices, if followed consistently for at least five years (or during the entire existence of the  
19 UNA if it has been in existence less than five years), become established practices and therefore  
20 can qualify as part of the UNAs “governing principles.” An example would be an  
21 unincorporated church that has no written bylaws covering the issue of notice of meetings that  
22 for the past five years has printed notice of the annual meeting of its members in the church  
23 bulletin for the three weeks preceding the annual meeting. This established practice would be  
24 part of the church’s governing principles and if followed in the sixth and subsequent years would  
25 be determinative of whether reasonable notice of an annual meeting had been given.

26  
27 2. “Governing principles” are the equivalent of the articles of incorporation, bylaws and  
28 other documents and established practices that govern the internal affairs of a UNA, sometimes  
29 referred to as an entity’s private organic rules. *See* Model Entity Transactions Act (2007) §1-102  
30 (31). The “governing principles” of a UNA do not have to be in a written form. This is  
31 consistent with partnership law, the for profit equivalent of a UNA. *See* Uniform Partnership  
32 Act (1997) §101(7); Uniform Limited Partnership Act (2001) §102(13); Revised Uniform  
33 Limited Liability Act (2006) §102(13). *See also* Comment 8.

34  
35 3. A person is a “manager” of a UNA if the individual fits the definition even if that



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

8  
9 4. The definition of "member" may reach somewhat beyond decisions of some courts.  
10 Either participation in the selection of the management or in the development of policies and  
11 activities of the UNA is enough. Both are not required. This broad definition of member  
12 ensures that the insulation from liability is provided in all cases in which the common law might  
13 have imposed liability on a person, simply because the person was a member.

14  
15 Persons who do not have the right to select a UNA's manager or to approve its governing  
16 policies are not members of the UNA for purposes of this Act even though the UNA may call or  
17 refer to them as members. A fund-raising device commonly used by many nonprofit  
18 organizations is a membership drive. In most cases the contributors are not members for  
19 purposes of this Act. They are not authorized to "participate in the selection of persons  
20 authorized to manage the affairs of the nonprofit association or in the development of policies  
21 and activities of the association." Simply because an association calls a person a member does  
22 not make the person a member under this Act.

23  
24 The role of a member in the affairs of a UNA is described as "may participate in the  
25 selection" instead of "may select or elect" the governing board and officers and "may participate  
26 . . . in the development of policies and activities" instead of "may determine" policies and  
27 activities. This accommodates the Act to a great variation in practices and organizational  
28 structures. For example, some nonprofit associations permit the president or chair to name some  
29 members of the governing board, such as by naming the chairs of principal committees who are  
30 designated ex officio members of the governing board. Similarly, the role in determination of  
31 policy is described in general terms. "Persons authorized to manage the affairs of the  
32 association" is used in the definition instead of president, executive director, officer, member of  
33 governing board, and the like. Given the wide variety of organizational structures of nonprofit  
34 associations to which this Act applies and the informality of many of them, the more generic  
35 term is more appropriate.

36  
37 5. The definition of person in Subsection (5) is the standard NCCUSL definition of this  
38 term. "Person" instead of individual is used to make it clear that associations covered by this Act  
39 may have individuals, corporations, and other legal entities as members and managers.  
40 Unincorporated nonprofit trade associations, for example, commonly have corporations as  
41 members. Some national and regional associations of local government officials and agencies  
42 have governmental units or agencies as members.

43  
44 6. The definition of "record" in Subsection (6) is the standard NCCUSL definition of this  
45 term, which makes it clear that emails and other forms of electronic communication qualify as  
46 writings.

1  
2 7. The definition of “state” in Subsection (7) is the standard NCCUSL definition of this  
3 term.  
4

5 8. “Unincorporated Nonprofit Association.” An organization cannot be a UNA if it is  
6 organized as a corporation or is a for profit unincorporated entity, e.g., a partnership. On the  
7 other hand, not every form of unincorporated nonprofit organization should automatically  
8 become a UNA and therefore be able to have limited liability and the other benefits of this  
9 statute. That is the reason for the language excluding trusts, domestic living arrangements  
10 including marriages and domestic partnerships, and agreements merely to hold title to property  
11 as co-owners. The laws governing the rights of creditors, trustees and beneficiaries of trusts are  
12 well developed and therefore the legal principles in this Act are unnecessary. Domestic relations  
13 law provides property rights for adults co-habiting together after a legal marriage or in a long-  
14 term unmarried status such as what is frequently referred to as a “common law marriage” or the  
15 spate of recently enacted domestic partnership statutes. Living together in any of these domestic  
16 living arrangements can probably qualify as an association having a nonprofit purpose, but for  
17 public policy reasons these arrangements should not be able to qualify as a UNA and therefore  
18 avoid individual liability for taxes and other liabilities. For similar reasons, mere co-ownership  
19 of property, even if for nonprofit purposes, should not automatically result in the applicability of  
20 this Act. An enacting jurisdiction can choose to expand or reduce the number of types of  
21 exclusions consistent with the concept that a UNA is a default form of organization for  
22 unincorporated nonprofit entities.  
23

24 “Agreement” rather than “contract” is the appropriate term because the legal  
25 requirements for an agreement are less stringent and less formal than for a contract. The  
26 agreement to form a UNA can be in writing, or oral, or inferred from conduct (e.g., course of  
27 performance or course of dealing). The term “writing” is to be broadly construed to include any  
28 form that constitutes a “writing” under the laws of the enacting jurisdiction, including  
29 electronically communicated documents such as e-mail communications. The agreement to form  
30 a UNA is part of the UNA’s overall “governing principles.” Although it is always preferable to  
31 have written agreements, most existing UNAs are quite informal and have few, if any, writings  
32 setting forth the agreements governing the purpose and operation of the organization. Moreover,  
33 most UNAs are formed and operate without independent legal advice. Imposing a statute of  
34 frauds or similar writing requirement would, therefore, have the effect of excluding most  
35 existing UNAs from being able to qualify under the Act. The enacting jurisdiction’s general  
36 rules governing the proof and effect of oral agreements and the priority of written provisions  
37 over subsequent inconsistent oral provisions apply to UNA governing principles. *See* Section 3.  
38

39 Although the agreement to form a UNA can be quite informal and sketchy, there must be  
40 some tangible, objective data such as the use of the organization’s name in communications to its  
41 members or third parties, or the existence of a bank account or of a mailing (or internet) address  
42 in the name of the UNA indicating that, in fact, there is an actual agreement.  
43

44 The members must be joined together for a common purpose. Several states provide that  
45 they be “joined together for a **stated** common purpose” (emphasis added). Because of the  
46 informality of many ad hoc associations, it is prudent not to impose the requirement that the

1 common purpose be “stated.” Very probably, it is the small, informal, ad hoc associations and  
2 those third parties affected by them that most need this Act.

3  
4 The best reference point for what constitutes a nonprofit purpose is probably the enacting  
5 state’s Nonprofit Corporation Act. The nonprofit purpose requirement carries with it the implicit  
6 understanding that the purpose is not a criminal activity and is otherwise lawful. Each enacting  
7 jurisdiction needs to determine whether these limitations need to be set forth explicitly in the  
8 Act.

9  
10 The two–person requirement for forming a UNA is quite minimal, assuming the standard  
11 broad definition of person (Subsection (5)) incorporated into the Act. At least two persons are  
12 required because that is the minimum number necessary to have an agreement under general  
13 legal principles. If one person wants to create a nonprofit organization, it is possible to do so by  
14 means of a trust, a nonprofit corporation, or in many states, a single member limited liability  
15 company. A few states currently require more than two members at the time of formation. New  
16 Jersey, for example, requires seven or more.

17  
18 Nonprofit corporation statutes typically allow a nonprofit corporation to be formed by  
19 one or more incorporators but to operate without members and therefore to be governed by a  
20 self-perpetuating board of directors. *See* Model Nonprofit Corporation Act-Third Edition (2008)  
21 §§ 2.02(4), 6.01. A UNA, however, must always have at least two members. The definition of a  
22 UNA states that it is an organization “consisting” of [two] or more members....”

23  
24 The Act applies to all UNAs, whether they be classified as religious, public benefit or  
25 mutual benefit or whether they are classified as tax-exempt under the laws of the enacting  
26 jurisdiction. Therefore, the Act will cover unincorporated philanthropic, educational, scientific,  
27 social and literary clubs, unions, trade associations, political organizations, churches, hospitals,  
28 neighborhood and property owner associations, and sports organizations such as Little League  
29 baseball teams. If the enacting jurisdiction decides to exempt one or more types of UNAs from  
30 the Act, it needs to draft specific provisions listing the exemptions.

31  
32 Derivation: “established practices” – Principle #2; “governing principles” – Principle #2;  
33 “member” – Principle #3; “manager” – Principle #4; “unincorporated nonprofit association” –  
34 Principles #1 and 5.

### 35 36 **SECTION 3. RELATION TO OTHER LAW.**

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

39 (b) A statute governing a type of unincorporated nonprofit association prevails over an  
40 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 associations operating in this state. If a conflict exists, 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.

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

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

1 will be a rare case when it will be necessary to determine which of two or more states' laws  
2 govern a UNA's internal affairs.

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

8  
9 Derivation: Principle #6.  
10

## 11 **SECTION 5. LEGAL ENTITY; PERPETUAL EXISTENCE; POWERS.**

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

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

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

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

### 20 **Comment**

21  
22 1. Subsection (a). The separate legal status of a UNA is a fundamental concept that  
23 undergirds all the principles that allow a UNA to hold and dispose of property in its own name  
24 and to sue and be sued in its own name and that insulates the assets of the members from claims  
25 against the UNA. This is a reversal of traditional common law principles that treat partnerships  
26 and other unincorporated entities under an aggregate theory.

27  
28 2. Subsection (b) Providing for perpetual existence of a UNA is one of the key aspects of  
29 its separate entity status. Under the traditional common law aggregate theory, a UNA's  
30 existence would end with any change in the membership and if the UNA continued in operation  
31 it was deemed to be a new UNA.

32  
33 The members can agree to a limited term and a UNA can, of course, terminate by being  
34 dissolved and winding up. *See* Sections 28 and 29.  
35

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

4. Subsection (d). 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. 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.

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 legatee, a devisee, or a beneficiary of a trust or contract.

### Comment

1. Subsection (a) is based on Section 3-102(8), Uniform Common Interest Ownership 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

1 but is effective to vest title in the officers of the association to hold as trustees for the members  
2 of the association. *Matter of Anderson's Estate*, 571 P. 2d 880 (Okla. App. 1977).

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

7  
8 As is the case with many of the problems created by the view that an unincorporated  
9 association is not an entity, the statutory solutions are often partial – limited to special  
10 circumstances and associations. Subsection (a) solves this problem for all nonprofit associations,  
11 for all kinds of transactions, and for both real and personal property.

12  
13 3. Subsection (b) is a necessary corollary of subsection (a) and, thus, it may be  
14 unnecessary. However, several states currently have statutes which expressly provide that an  
15 unincorporated, nonprofit association may be a legatee, devisee, or beneficiary. *See*, for  
16 example, Md. Estates & Trusts Code Ann. Section 4-301 (1991). Therefore, it is desirable to  
17 continue this as an express rule. Subsection (b) applies to both trusts and contracts. Not all  
18 existing state statutes apply expressly to both.

19  
20 Derivation: Subsection (a) – Principles #5, 7 and 12. Subsection (b) – Principle #8  
21 Principle #12.

## 22 23 24 **SECTION 7. STATEMENT OF AUTHORITY AS TO REAL PROPERTY.**

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

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

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

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

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



1 (3) that the association is an unincorporated nonprofit association; and  
2 (4) the name, title, or capacity of a person authorized to transfer an estate or  
3 interest in real property held in the name of the association.

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

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

9 (f) A document amending, revoking, or canceling a statement of authority or stating that  
10 the statement is unauthorized or erroneous must meet the requirements for execution and [filing]  
11 [recording] of an original statement.

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

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

## 20 **Comment**

21  
22 1. This section is based on Uniform Partnership Act (1997) §303.

23  
24 2. A statement of authority need not be filed to conclude an acquisition of or to hold real  
25 property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate  
26 or interest in real property. For this, it should, but need not, be filed. The filing provides  
27 important documentation. As a general rule a statement of authority will only be filed at the time

1 of a conveyance of an interest in real estate as a means of establishing in the title records who  
2 has authority to execute a deed or other instrument conveying an interest in real estate.

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

11  
12 4. “Filed” and “recorded” are bracketed to direct an enacting state to choose. In most  
13 jurisdictions “recorded” will be the appropriate choice.

14  
15 5. Subsection (c)(2) may present a problem for small, ad-hoc nonprofit associations.  
16 They may have no fixed office address. They may meet in the homes of their leaders. However,  
17 if they distribute literature or file petitions they are likely to have a mailing address of some kind,  
18 e.g., the mailing address of a member or manager.

19  
20 6. Subsection (c)(3) informs those relying on the statement of the precise character of the  
21 organization. Knowing that the organization is an unincorporated nonprofit association may  
22 cause the person dealing with the organization to act differently.

23  
24 7. Subsection (c)(4) permits the statement to identify as the person who can act for the  
25 association someone who holds a particular office, such as president. This designation relieves  
26 the association from the need to make additional filings on each change of officers. Under local  
27 title standards and practices the transferee and filing or recording office are likely to require a  
28 certificate of incumbency if the statement designates the holder of an office.

29  
30 8. Subsection (d) is designed to reduce the risk of fraud and to reflect law and practice  
31 applicable to other organizations. It requires someone other than the person authorized to deal  
32 with the real property to execute the statement of authority on behalf of the nonprofit association.  
33 Whether the formalities of execution must conform to those of a deed or an affidavit is left for  
34 each state to determine.

35  
36 9. Subsection (g) makes a statement inoperative five years after its most recent recording  
37 or filing. A new statement of authority can be filed before or after the expiration of the five year  
38 limitation.

39  
40 10. Subsection (h) is based on Uniform Partnership Act (1997) §303(h). Its obvious  
41 purpose is to protect good faith purchasers for value without notice who rely on the statement,  
42 including those who acquire a security interest in the real property. If the required signatures on  
43 the statement, deed, or both are forgeries, the effect of them is not governed by Section 7(h).  
44 Instead, Section 3 applies and would invoke the other law of the State. In many states the deed  
45 would be a nullity. See Boyer, Hovenkamp, and Kurtz, *THE LAW OF PROPERTY*, An  
46 Introductory Survey (West Pub. Co. 4th ed. 1991).

1  
2 Note: This section has no corresponding Principle.  
3

#### 4 **SECTION 8. LIABILITY.**

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

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

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

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

#### 13 **Comment**

14  
15 1. The effect of Section 8 is to provide members and managers of a UNA with the same  
16 protection against vicarious liability for the debts and obligations of the UNA and tort liability  
17 imposed on the UNA as the members and managers of a nonprofit corporation would have under  
18 the enacting jurisdiction's laws. These principles, taken together, constitute what is known as  
19 the limited liability doctrine under which a member or manager is personally liable for his or her  
20 own tortious conduct under all circumstances and is personally liable for contract liabilities  
21 incurred on behalf of the UNA if the member or manager guarantees or otherwise assumes  
22 personal liability for the contract or fails to disclose that he or she is acting as the agent for the  
23 UNA. A member or manager is not otherwise personally liable for the tort or contract liabilities  
24 imposed upon the UNA. A creditor with a judgment against the UNA must seek to satisfy the  
25 judgment out of the UNA's assets but cannot levy execution against the assets of a member or  
26 manager.  
27

28 The one exception is the alter ego doctrine (also known as the veil piercing doctrine).  
29 Courts have pierced the corporate veil of nonprofit corporations. *See Comment, Piercing the*  
30 *Nonprofit Corporate Veil*, 66 Marq. L. Rev. 134 (1984); *Macaluso v. Jenkins*, 95 Ill.App.3d 461,  
31 420 N.E.2d 251 (1981)(President of nonprofit corporation who commingled funds of the  
32 nonprofit corporation with funds of a corporation he controlled held personally liable for unpaid  
33 debts of the nonprofit corporation under the veil piercing doctrine). The fact that members of  
34 nonprofit corporations for the most part do not have an expectation of financial gain, as  
35 compared to shareholders of a for profit corporation, should mean that there will be fewer types  
36 of cases than those involving for profit corporations where the veil piecing doctrine will be held

1 to be applicable to nonprofit corporations. The same criteria that are applied to pierce the veil of  
2 nonprofit corporations should be applied in UNA veil piercing cases.

3  
4 If the alter ego doctrine is found to be applicable, the separate entity status of a UNA  
5 would be disregarded and the assets of the UNA and its members and managers would be  
6 aggregated and subject to a UNA creditor's claims in the same manner that a judgment creditor  
7 of a general partnership collects a judgment against the assets of a general partner in a  
8 partnership.

9  
10 2. In recent years all states have enacted laws providing unpaid officers, board members  
11 and other volunteers some protection from liability for their own negligence (but generally not  
12 for conduct that is determined to constitute gross negligence or willful or reckless misconduct).  
13 The statutes vary greatly as to who is covered, for what conduct protection is given, and the  
14 conditions imposed for the freedom from liability. Some apply only to nonprofit corporations.  
15 *State Liability Laws for Charitable Organizations and Volunteers* (Nonprofit Risk Management  
16 & Insurance Institute, 1990); *Developments, Nonprofit Corporations*, 105 Harv. L. Rev. 1578,  
17 1685-1696 (1992). This means that members and volunteers involved with unincorporated  
18 nonprofit associations do not obtain protection under those state statutes. Others may cover the  
19 managers of UNAs but only if the UNA qualifies as a tax-exempt entity under federal or state  
20 law. See *N.Y. Not For Profit Corporation Law* §§720-a and 721 (federal income tax); Minn.  
21 Stat. Ann. 317A.257 (state income tax). Some states have statutes that premise the insulation of  
22 liability upon the organizations having specified amounts of liability insurance.

23  
24 In 1997 Congress enacted the Volunteer Protection Act, 42 U.S.C.A. §§ 14501-14505.  
25 This statute, which preempts state laws to the extent of any inconsistency with the Volunteer  
26 Protection Act except to the extent the state law provides additional protections from liability,  
27 insulates directors, officers, trustees and direct service volunteers of nonprofit organizations who  
28 receive no compensation (other than reasonable reimbursement of expenses) from liability for  
29 harm that "was not caused by willful or criminal misconduct, gross negligence, reckless  
30 misconduct, or a conscious or flagrant indifference to the rights or safety of the individual  
31 harmed by the volunteer." 42 U.S.C.A. §14503(a)(3). Damages caused by operation of "a motor  
32 vehicle, vessel, aircraft, or other vehicle" for which a license or insurance is required to be  
33 maintained, are not covered. 42 U.S.C.A. §14503(4).

34  
35 The interplay between the Federal Volunteer Protection Act and the existing state statutes  
36 that provide liability protection to volunteers of UNAs is a complex matter and must be  
37 determined on a state-by-state basis. See Subsection (b).

38  
39 Finally, the liability of the managers of a UNA for breach of the duties of due care, good  
40 faith and loyalty to the UNA and the ability of the governing principles of a UNA to limit or  
41 eliminate this liability as far as monetary damages are concerned is a separate subject which is  
42 dealt with in Section 23.

43  
44 3. "Solely" as used in Section 8 is intended to make it clear that a member or manager is  
45 not vicariously liable for the liabilities of the UNA or the liabilities of another member or  
46 manager merely because of that person's status as a member or manager. A member or manager

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

6  
7 Derivation: Principles #s 18-19; and 25.  
8  
9

## 10 **SECTION 9. ASSERTION AND DEFENSE OF CLAIMS.**

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

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

### 15 **Comment**

16  
17 1. Under traditional common law doctrine, a UNA was considered to be an aggregate of  
18 members and therefore it could not sue or be sued in its own name. Only the members could sue  
19 or be sued and some state court cases held that all of the members had to be named plaintiffs in a  
20 suit brought on behalf of the UNA and that all the members had to be named, and served with the  
21 Summons and Complaint in a suit against a UNA. Most states have enacted statutes in recent  
22 years granting a UNA entity status for the purpose of suits by and against the UNA. Section 10  
23 follows the modern rule and is consistent with the concept built into this act that a UNA is a  
24 separate entity for many more purposes than existed under traditional common law principles.  
25

26 2. This section is intended to apply to all types of judicial, administrative and  
27 governmental proceedings and all types of alternative dispute resolution proceedings such as  
28 arbitration and mediation. An enacting state may want to modify this section to make it clear  
29 that this is the case if that is not clear under its current civil procedure law.  
30

31 3. The enacting state's general civil procedure law will be applicable to UNAs. *See*  
32 Section 3(a). These statutes and court rules will deal with issues such as standing of a UNA to  
33 sue on behalf of its members, joinder, counterclaims and the like. Most will also cover issues  
34 such as pleadings and service of pleadings and venue. That is why Sections 12 and 14 are  
35 bracketed and should not be enacted in a state if the existing statutes and court rules are  
36 sufficient. Sections 10, 11, 12 and 14 should be enacted as part of this act, however, because  
37 there is a body of inconsistent case law or gaps in the existing statutes or rules on the issues dealt  
38 with in these sections.  
39

40 4. Subsection (b) is another aspect of a UNA under the Act being a separate legal entity.  
41 Under the common law aggregate theory, since a UNA was not an entity separate from its

1 members, a member could not assert a claim against the UNA since there is technically no legal  
2 entity, and the member would be both a claimant and the defendant and personally liable for any  
3 judgment obtained in the action. For the same reason, a UNA could not assert a claim against a  
4 member (e.g., for unpaid dues) because the UNA technically does not exist. This subsection  
5 only allows a member to assert that member's claim against the UNA. It does not authorize a  
6 member to file a derivative action. The enacting jurisdiction's civil procedure law may,  
7 however, authorize derivative actions.

8  
9 Derivation: Principle #13.  
10

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

#### 14 **Comment**

15  
16 1. This section is consistent with Restatement (Second) of Judgments, §61(2), which  
17 provides: "If under applicable law an unincorporated association is treated as a jural entity  
18 distinct from its members, a judgment for or against the association has the same effects with  
19 respect to the association and its members as a judgment for or against a corporation . . . ."

20  
21 2. Section 10 applies not only to judgments but also to orders, such as an award rendered  
22 in arbitration or an injunction.  
23

24 3. This section reverses the common law rule. Under the common law's aggregate view  
25 of an unincorporated association, members, as co-principals, were individually liable for  
26 obligations of the association.  
27

28 4. That a judgment against a UNA is not also a judgment against one authorized to  
29 manage the affairs of the association recognizes fully the entity status of a nonprofit association.  
30 An obvious corollary of this section is that a judgment against a nonprofit association may not be  
31 satisfied against a member unless there is also a judgment against the member. The one  
32 exception to this rule would be an injunction issued against a UNA. Federal Rules of Civil  
33 Procedure 65(d) provides that every injunction and restraining order is binding not only on the  
34 named parties but also on "the parties' officers, agents, servants, employees, and attorneys . . .  
35 who receive actual notice of it by personal notice or otherwise."  
36

37 Derivation: Principles #s 16 and 19.  
38  
39

1           **SECTION 11. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF**  
2           **PROCESS.**

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

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

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

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

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

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

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

19                                   **Comment**

20  
21           1. This section authorizes but does not require, a nonprofit association to file a statement  
22          authorizing an agent to receive service of process. It is, of course, not the equivalent of filing  
23          articles of incorporation. However, some nonprofit associations may find it prudent to file.  
24          Filing may assure that the nonprofit association's management gets prompt notice of any lawsuit  
25          filed against it. Also, depending upon the jurisdiction's other laws, filing gives some public  
26          notice of the nonprofit association's existence and its address.

27  
28           2. Central filing with a state official is provided. This is where interested parties will

1 seek information of this kind and where such appointments are commonly publicly filed.

2  
3 3. The format of this section is very much like Section 7, which concerns a statement of  
4 authority with respect to property. Because one requires local and other central filing they are  
5 not combined.

6  
7 Note: This section has no corresponding Principle.  
8

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

13 **Comment**  
14

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

18  
19 2. By rule or statute all jurisdictions have extensive law on service of process. The real  
20 question for nonprofit associations is which set of these rules should apply. This Act treats a  
21 nonprofit unincorporated association as a legal entity. Thus, the rules applicable to another legal  
22 entity, a corporation, seem most appropriate.

23  
24 Derivation: Principle #17.  
25

26 **SECTION 13. ACTION OR PROCEEDING NOT ABATED BY CHANGE.** An  
27 action or proceeding against an unincorporated nonprofit association does not abate merely  
28 because of a change in its members or managers.

29 **Comment**  
30

31 This provision reverses the common law rule of partnerships, which courts often  
32 extended to unincorporated nonprofit associations. Uniform Partnership Act (1914) §§29 and  
33 31(4). This Act's entity approach requires this change to the old common law rule. *See* Uniform  
34 Partnership Act (1997) §§603(a) 701, and 801.

35  
36 Derivation: Principle #14.  
37



**[SECTION 14. VENUE.** Unless otherwise provided by law other than this [act], 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 NOT AN AGENT.** 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

1 authority to bind is not solely because of the member's status as a member.

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

8  
9 Derivation: Principle #27 and ULLCA (2006) §301.  
10

11 **SECTION 16. APPROVAL BY MEMBERS.** Except as otherwise provided in the  
12 governing principles, an unincorporated nonprofit association must have the approval of its  
13 members to:

- 14 (1) admit, suspend, dismiss, or expel a member;  
15 (2) select and dismiss a manager;  
16 (3) adopt, amend, or repeal the governing principles;  
17 (4) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the  
18 association's property, with or without the association's goodwill, outside the ordinary course of  
19 its activities;  
20 (5) dissolve under Section 28 or merge under Section 30;  
21 (6) undertake any other act outside the ordinary course of the association's activities;  
22 (7) determine the policy and purposes of the association; or  
23 (8) do any other act or exercise a right requiring action by members permitted by the  
24 governing principles.

### 25 **Comment**

26  
27 1. Sections 16-26 deal with governance issues and are often referred to as internal affairs  
28 rules. They establish the default rules governing the relation of the members and managers to  
29 each other and to the UNA. Liability to third parties is covered by other provisions of this act.  
30 *See* Section 8. The internal affairs rules in Sections 17-27 apply to UNAs formed in the enacting  
31 state. The internal rules of UNAs formed in other jurisdictions are determined under Section

1 4(b).

2  
3 Derivation: Principle #26.  
4

5 **SECTION 17. MEMBER MEETING, VOTING, NOTICE, AND QUORUM**  
6 **REQUIREMENTS.**

7 (a) Unless the governing principles otherwise provide:

8 (1) approval of a matter by members of an unincorporated nonprofit association  
9 requires an affirmative majority of the votes cast at a properly called member meeting; and

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

12 (b) Notice and quorum requirements for meetings and members of an unincorporated  
13 nonprofit association are determined by the governing principles.

14 **Comment**  
15

16 1. The principles set forth in Section 17—members vote on a per capita basis, notice of  
17 meetings and majority vote for approval actions—are all default rules. They apply unless there  
18 are different rules in the UNA’s governing principles. Thus, if a UNA’s bylaws specified that  
19 only some members have voting rights, then only those so designated would have voting rights.  
20 Similarly, if the bylaws specified that all members are entitled to vote on specific actions (*e.g.*,  
21 election of a board of directors), but a subset of members is the approving authority for all other  
22 matters the bylaws would trump the default rules. In addition, bylaw provisions that provided  
23 for a higher (or lower) voting percentage rather than the majority vote required by the statutory  
24 default rule would control.  
25

26 2. An enacting state may decide to require supermajority voting (*e.g.*, two-thirds  
27 majority) for transactions that are not in the ordinary course of business such as dissolution,  
28 merger, or amendment of the UNA’s governing principles. The default voting requirements for  
29 similar transactions under the enacting jurisdiction’s nonprofit corporation law might be an  
30 appropriate model for structuring the voting requirements for a UNA. Because it is often quite  
31 difficult to locate and to get a majority of all members together for voting purposes in a UNA,  
32 the requirement of a supermajority voting for any issue may not be appropriate.  
33

34 3. There is one limitation on the authority to modify member approval rights. A UNA  
35 must always have at least two members. *See* Section 2(8). Therefore, the governing principles  
36 cannot specify that a UNA have one or no members.

1  
2 4. A UNA will undoubtedly have some kind of notice and quorum requirements in its  
3 governing principles which include its established practices. If it does not have any such  
4 requirements (e.g., it is newly formed and is holding its initial meeting), it can create them at that  
5 meeting and these requirements, even if oral, become over time the UNA's established practices  
6 and therefore part of the UNA's governing principles.  
7

8 Derivation: Principle #26.  
9

## 10 **SECTION 18. DUTIES OF MEMBER.**

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

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

### 16 **Comment**

17 1. Members of a UNA, like members of a limited liability company in a manager  
18 managed LLC (see Revised Uniform Limited Liability Company Act (2006) §409(g)(5) and  
19 limited partners in a limited partnership (see Revised Uniform Limited Partnership Act (2001)  
20 §305(a)), do not have fiduciary duties (generally defined as a duty of loyalty and good faith) to  
21 the UNA or the other members by virtue of their status as members. A member who undertakes  
22 managerial duties, however, would have the fiduciary duties of a manager (see Section 23).

23 2. While they have no fiduciary duties, members do have the obligation to discharge any  
24 duties and any rights they exercise pursuant to this Act or pursuant to the UNA's governing  
25 principles consistent with the obligation of good faith and fair dealing. *See* Revised Uniform  
26 Limited Liability Company Act (2006) §409(d); Revised Uniform Limited Partnership Act  
27 (2001) §305(b). A member cannot, for example, disclose confidential information obtained from  
28 the UNA to third parties. The obligation of good faith and fair dealing is not strictly speaking a  
29 fiduciary duty but rather is a duty that is derived from the consensual or contract nature of a  
30 UNA. *See* Restatement (Second) of Contracts (1981) §205.

31 Derivation: Principle #31.  
32

**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. If there are no applicable governing principles, a person may 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 the governing principles otherwise provide, the suspension, dismissal, or expulsion of a member of an unincorporated nonprofit association 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 17. 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 governing principles. In the absence of applicable governing principles, a member may resign at any time.

(b) Unless the governing principles otherwise provide, resignation of a member of an unincorporated nonprofit association does not relieve the member from any unpaid capital

1 contribution, dues, assessments, fees, or other obligation incurred or commitment made by the  
2 member before resignation.

3 **Comment**

4  
5 Preventing a member from voluntarily withdrawing from a UNA would be  
6 unconstitutional and void on public policy grounds. A UNA should, however, be able to impose  
7 reasonable restrictions on withdrawal, for example, requiring 30 days' advance notice.  
8 Moreover, as Subsection (b) states, a member who resigns remains liable for obligations and  
9 commitments made before the resignation.

10  
11 Derivation: Principle #36.  
12  
13

14 **SECTION 21. MEMBERSHIP INTEREST NOT TRANSFERABLE.** Except as  
15 otherwise provided in the governing principles, a member's interest or any right under the  
16 governing principles is not transferable.

17 **Comment**

18  
19 This is a basic common sense rule. A member of a church that is a UNA, for example,  
20 should not be able to transfer his or her membership to a third party. There may be situations  
21 where a UNA might be willing to allow transfers. In those situations, the transfer could be made  
22 in accordance with the UNA's governing principles. Condominium homeowners association  
23 bylaws, for example, frequently authorize automatic transfer of membership in the association  
24 upon transfer of title in the condominium.  
25

26 Derivation: Principle #37.  
27

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

- 30 (1) the members of an association may select the manager, or managers;  
31 (2) a manager may be a member of the association;  
32 (3) if no manager is selected, all members are managers;  
33 (4) each manager has equal rights in the management and conduct of the association's  
34 activities;

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

(6) 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 owes to the unincorporated nonprofit association and to its members the duties of loyalty, care, and good faith.

(b) A manager shall manage the unincorporated nonprofit association in good faith, in a manner the manager reasonably believes to be in the best interests of the association, and with such care, including reasonable inquiry, as a prudent person would reasonably exercise in a similar position and under similar circumstances. A manager may rely in good faith upon any

1 opinion, report, statement, or other information provided by another person that the manager  
2 reasonably believes is a competent and reliable source for the information.

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

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

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

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

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

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

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

19 (2) an intentional infliction of harm on the association or its members;

20 (3) an intentional violation of criminal law;

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

22 (5) improper distributions.



1 **Comment**

2  
3 1. This Section deals with what are generally referred to as fiduciary duties. Only  
4 individuals exercising managerial authority in a UNA have fiduciary duties. This is consistent  
5 with U.S. business entity laws. *See, e.g.*, Uniform Limited Liability Company Act (2006) §409;  
6 Revised Model Business Corporation Act §§8.30 and 8.31. Thus, members of a UNA do not  
7 have any fiduciary duties to the other members or to the managers or to the UNA, unless the  
8 member is also a manager. *See* Section 18. In this event that member, in his or her capacity as a  
9 manager, would have the fiduciary duties that the other managers of the UNA have.

10  
11 2. The two fundamental fiduciary duties are due care and loyalty. Good faith is  
12 sometimes characterized as a fiduciary duty but with respect to unincorporated business entities  
13 is designated as a contract based obligation. *See, e.g.*, Uniform Limited Liability Company Act  
14 (2006) §409(d).

15  
16 3. Subsection (b) describes how a manager exercises due care and good faith in making  
17 decisions. Subsection (d) describes what is known as the business judgment rule, which in effect  
18 is a defense to a breach of duty claim.

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

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

31  
32 6. This Section only deals with the liability of a UNA manager to the UNA and its  
33 members. Liability of a manager to third parties is dealt with in other sections of this Act. *See*  
34 Section 8 and Comment 2 to Section 8 dealing with limitations on liability to third parties under  
35 state and federal volunteer protection acts.

36  
37 Derivation: Principles #s 31 and 33.  
38

39 **SECTION 24. NOTICE AND QUORUM REQUIREMENTS FOR MANAGER**

40 **MEETING.** Notice and quorum requirements for meetings of managers are determined by the  
41 governing principles.

1 **Comment**

2  
3 1. A UNA will undoubtedly have some kind of notice and quorum requirements in its  
4 governing principles which include its established practices. If a UNA does not have any such  
5 requirements (*e.g.*, it is newly formed and is holding its initial meeting), it can create them at that  
6 meeting and those requirements, even if oral, become the established practices and therefore part  
7 of the UNA's governing principles.  
8

9 2. The use of proxies in manager meetings will be determined by other applicable law.  
10 *See* Section 3(a). As a general rule, directors or other persons performing managerial  
11 responsibilities may, consistent with a UNA's governing principles, delegate one or more duties  
12 to another person, but they are not authorized to give another person a proxy to vote on a matter.  
13

14 Derivation: Principle #30.  
15

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

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

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  
25 information confidential and imposing nondisclosure and safeguarding obligations on the  
26 recipient.

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

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

1 during which the person was a member or manager, the former member or manager seeks the  
2 information in good faith, and the former member or manager satisfies subsections (a) through  
3 (c).

#### 4 **Comment**

5  
6 The act does not require a UNA to keep any books and records, but if it does have them,  
7 they must be made available to the members and managers pursuant to this Section. The term  
8 books and records is intended to cover all types and forms of data, including electronic data. An  
9 enacting jurisdiction may want to include a definition of books and records in the act if there is  
10 any uncertainty about what is included in this term in the state's existing laws.

11  
12 Derivation: Principle #32 and ULLCA (2006) Section 410.  
13

### 14 **SECTION 26. DISTRIBUTIONS PROHIBITED; COMPENSATION AND** 15 **OTHER PERMITTED PAYMENTS.**

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

19 (b) An unincorporated nonprofit association may:

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

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

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

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

#### 28 **Comment**

1  
2 1. A distribution by a UNA to members in violation of this Section would disqualify it  
3 from continuing to be a UNA. *See* Section 2(8) and Comment 8 to Section 2.  
4

5 2. The permitted distributions authorized by Subsection (b) are derived from Sections  
6 6.40 and 6.41 of the Proposed Model Nonprofit Corporation Act-Third Edition (2008).  
7

8 Derivation: Principle #5.  
9

## 10 **SECTION 27. INDEMNIFICATION; ADVANCEMENT OF EXPENSES.**

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

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

19 (c) If a person is made or threatened to be made a party in an action or based on that  
20 person's conduct of the affairs of an unincorporated nonprofit association, the person must make  
21 a request in a record to the association, and on approval in a record by a disinterested majority of  
22 the managers, may receive payment of or reimbursement by the association, of reasonable  
23 expenses, including attorney's fees and costs, incurred by the person before the final disposition  
24 of the proceeding. To be entitled to an advance payment or reimbursement, the person must state  
25 in a record that the person has a good faith belief that the criteria for indemnification in  
26 subsection (b) have been satisfied and that the person will repay the amounts advanced or  
27 reimbursed if the criteria for payment have not been satisfied.

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

6 (e) The rights of reimbursement, indemnification, and advancement of expenses under  
7 this Section apply to a former member or manager for an activity undertaken on behalf of the  
8 unincorporated nonprofit association while a member or manager.

### 9 **Comment**

10  
11 1. The rights to reimbursement of expenses indemnification (Subsection (a)) and  
12 advancement of litigation expenses and attorneys' fees in business entity statutes varies greatly  
13 from jurisdiction to jurisdiction. The rights of reimbursement of expenses and indemnification in  
14 Subsections (a) and (b) are similar to that found in other business entity statutes. *See* Uniform  
15 Limited Liability Company Act (2006) §408; Model Nonprofit Corporation Act-Third Edition  
16 (2008) §§8.50-8.58. The right to advancement of litigation expenses in Subsection (c) is derived  
17 from the Minnesota Nonprofit Corporation Act MSA § 317A.257. Many existing state statutes  
18 only allow reimbursement of litigation expenses after the conclusion of the litigation and a  
19 finding of nonliability. Given the fact that most members and managers of UNAs are unpaid  
20 volunteers, the advancement of litigation expenses on a discretionary basis authorized by  
21 Subsection (c) seems appropriate.

22  
23 2. Directors and officers insurance and errors and omissions insurance for managers of  
24 UNAs is expensive but because of potential liability, directors and other managers of UNAs are  
25 increasingly demanding that it be maintained on their behalf. Subsection (d) makes it clear that  
26 the purchase of such insurance is authorized.

27 Derivation: Principle #34.  
28

## 29 **SECTION 28. DISSOLUTION.**

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

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

33 (2) if the governing principles do not provide a time or method for dissolution,

1 upon approval by the members;

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

5 (4) by court order.

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

### 8 **Comment**

9  
10 1. The vote required for dissolution under Subsection (2) would be a majority vote of the  
11 members and under Subsection (3) by a majority of the managers, unless the governing  
12 principles require a higher vote. *See* Sections 16(5) and 22(d).

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

17 Derivation: Principle #38, Calif. Corp. Code § 18410.  
18

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

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

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

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

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

27 (A) as required by law other than this [act] that requires assets of an association to  
28 be distributed to another 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) nor (B) applies, under [cite the unclaimed property law in this 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) In this section:

(1) “Constituent organization” means an organization that is merged with one or more other organizations including 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 for-profit or nonprofit domestic or foreign organization.

(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

1 authorized by law to effect a merger with an unincorporated nonprofit association.

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

4 (1) Each of the constituent merging organizations shall comply with its governing  
5 law.

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

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

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

11 (C) if the surviving organization is to be created by the merger, the  
12 surviving organization's organizational documents that are proposed to be in a record;

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

16 (E) the terms and conditions of the merger, including the manner and basis  
17 for converting the interests in each constituent organization into any combination of money,  
18 interests in the surviving organization, and other consideration.

19 (3) The plan of merger must be approved by the members of each unincorporated  
20 nonprofit association that is a constituent organization in the merger. If a plan of merger would  
21 impose personal liability for an obligation of a constituent on surviving organization on a  
22 member of an association that is a party to the merger, the plan may not take effect unless it is  
23 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 may amend  
3 the plan or abandon the merger as provided in the plan, or except as otherwise prohibited in the  
4 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 is required to give notice to or obtain the  
7 approval of a governmental agency or officer in order to be a party to a merger, when the notice  
8 has been given and the approval has been obtained; and

9                   (B) if the surviving organization:

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

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

16           (d) When a merger becomes effective:

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

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

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

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

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

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

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

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

11                   (9) a surviving organization that is a foreign organization is subject to the  
12 jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a  
13 constituent organization, if before the merger the constituent organization was subject to suit in  
14 this state for the debt, obligation, or other liability; and

15                   (10) the [Secretary of State] is the agent for service of process for the purposes of  
16 enforcing a debt, obligation, or other liability under this subsection of a surviving organization  
17 that is a foreign organization and not authorized to transact business in this state.

18                   (e) Property held for a charitable purpose under the law of this state by a domestic or  
19 foreign organization immediately before a merger under this section becomes effective may not,  
20 as a result of the merger, be diverted from the objects for which it was given, unless, to the extent  
21 required by or pursuant to the law of this state concerning cy pres or other law dealing with  
22 nondiversion of charitable assets, the organization obtains an appropriate order of [name of  
23 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 surviving organization. A trust obligation that would govern property if transferred to the disappearing organization applies to property that is 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. Conversion provisions are not, however 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. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY.]**

(a) If, before [the effective date of this [act]], an estate or interest in property was by terms of a 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 to the transfer have treated the transfer as ineffective.

(b) If, before [the effective date of this [act]], an estate or interest in property was by terms of a 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 require that the estate or interest be transferred to it in its name.]

**Legislative Note:**

*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 31.*

*2. Section 31 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 31 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*

1 ownership in the nonprofit association.

2  
3 4. Some courts gave effect to a gift of property to an unincorporated nonprofit  
4 association by determining that the gift lodged title in someone, often officers of the association,  
5 to hold the property in trust for the benefit of the association's members. Subsection (b)  
6 addresses this situation. When the Act takes effect it authorizes the fiduciary to transfer the  
7 property to the association. If the fiduciary is unwilling or reluctant, the association may  
8 require the fiduciary to transfer the property to the association. In either case, the association  
9 will get a deed transferring the property to it which, in the case of real property, the association  
10 may record.

11  
12 5. Jurisdictions that have a statute like New York's concerning grants of property by will  
13 have a problem that needs special attention. The New York statute provides that a grant by will  
14 of real or personal property to an unincorporated association is effective only if the association  
15 incorporates within three years after probate of the will. McKinney's N.Y. Estates, Powers &  
16 Trust Law Section 3-1.3 (1991). The grants by will that need attention are those that have not  
17 become effective by incorporation of the association and have not become ineffective by the  
18 running of the three year period. These grants seem entitled to the benefits of Section 31. If so,  
19 some modification of Section 31 may be required.

20  
21 **SECTION 32. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
22 applying and construing this uniform act, consideration must be given to the need to promote  
23 uniformity of the law with respect to its subject matter among states that enact it.

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

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

## 32 **Comment**

33  
34 1. Section 33 is adapted from Uniform Partnership Act (1997) §1006(c). It continues the  
35 prior law after the effective date of this Act with respect to a (i) "right accrued" and (ii) pending

1 “action or proceeding.” But for this section the new law of this Act would displace the old in  
2 some circumstances. The power of a new act to displace the old statute with respect to conduct  
3 occurring before the new act’s enactment is substantial. Millard H. Ruud, *The Savings Clause –*  
4 *Some Problems in Construction and Drafting*, 33 Tex. L. Rev. 285, 286-293 (1955). A court  
5 generally applies the law that exists at the time it acts.  
6

7 2. Almost all states have general savings statutes, usually as a part of their statutory  
8 construction acts. These are often very broad. See, for example, Model Statutory Construction  
9 Act, Section 53. As this Act is remedial, the more limited savings provisions in Section 33 are  
10 more appropriate than the broad savings provisions of the usual general savings clause. Section  
11 33 and not a jurisdiction’s general savings clause applies to the Act.  
12

13 3. “Right Accrued.” It is not always clear whether an alleged right has “accrued.” Some  
14 courts have interpreted the phrase to mean that a “matured cause of action or legal authority to  
15 demand redress” exists. *Estates of Hoover v. Iowa Dept. of Social Services*, 299 Iowa 702, 251  
16 N.W. 2d 529 (1977). In *Nielsen v. State of Wisconsin*, 258 Wis. 1110, 141 N.W. 2d 194 (1966),  
17 a landowner brought suit after the repeal of an act granting a landowner the right to recover from  
18 the state for damages to her land caused by the State’s failure to install necessary culverts and the  
19 like to prevent flooding. Before the act’s repeal the landowner’s land had been damaged by  
20 flooding caused by the State’s failures. The court held that the statutory saving of “rights of  
21 action accrued” saved her cause of action. In both of these cases, conduct that gave rise to a  
22 cause of action had occurred before the act was repealed. It is said that it is not enough that there  
23 is an inchoate right.  
24

25 Apparently, there is no “accrued right” under a contract until there is a breach.  
26

27 4. “Action or Proceeding” Pending. The principal question is what is an “action or  
28 proceeding” for this purpose. “Action” refers to a judicial proceeding. “Proceeding” alone,  
29 especially when used with “action,” is broader and so includes administrative and other  
30 governmental proceedings. It has been given the broader meaning. For example, in *State ex rel.*  
31 *Carmean v. Board of Education of Hardin County*, 170 Ohio 2d 415, 165 N.E. 2d 918 (1960) a  
32 petition to transfer certain land from one school district to another filed before a change in the  
33 law was a “pending proceeding” to be decided under the old law. Similarly, a request for  
34 permission to petition for an election to consolidate school districts was held to be a “proceeding  
35 commenced” so that the substance and procedure of the old law, which was materially different  
36 from the new, was preserved. *Grant v. Norris*, 249 Iowa 236, 85 N.W. 2d 261 (1957).  
37

38 Derivation: Principle #15.

39  
40 **SECTION 35. REPEALS.** The following acts and parts of acts are repealed:

41 \_\_\_\_\_.

42 **Comment**  
43

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.