UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT (1996)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FIFTH YEAR
SAN ANTONIO, TEXAS
JULY 12 - JULY 19, 1996

WITH PREFATORY NOTE AND COMMENTS

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PREFATORY NOTE

This Act reforms the common law concerning unincorporated nonprofit associations in three basic areas – authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

A nonprofit organization may take at least three forms, in alphabetical order – charitable trust, corporation, or unincorporated association.

The Uniform Supervision of Trustees for Charitable Purposes Act largely governs the charitable trust form. The Uniform Law Foundation is organized as an Illinois charitable trust. Ill. Ann. Stat. Ch. 14, Sections 51-6g (Smith-Hurd 1992). A nonprofit organization, such as a church, could be two entities – a charitable trust with respect to a building and its use and a nonprofit corporation with respect to its other activities.

The American Bar Association's Model Nonprofit Corporation Act, first issued in 1952 and most recently revised in 1987, has been adopted in most States. Unlike this Act, it deals comprehensively with nonprofit corporations. The Model Act follows the same organization and numbering system as the ABA Model Business Corporation Act and so is equally comprehensive. It regulates both the external and internal relations of a corporation – from a corporation's responsibilities to contractors and public officials to rights and obligations among members and the corporation. It is the form commonly chosen by lawyers in organizing a nonprofit organization. Unlike this Act, the Model Act provides answers to most questions and provides some state regulation.

At common law an unincorporated association, whether nonprofit or for-profit, was not a separate legal entity. It was an aggregate of individuals. In many ways it had the characteristics of a business partnership.

This approach obviously created problems. A gift of property to an unincorporated association failed because no legal entity existed to receive it. For example, a gift of Blackacre to Somerset Social Club (an unincorporated nonprofit association) would fail because in law there is no legal entity to receive title. Some courts in time became uncomfortable with this result. Some construed such a gift as a grant to the officers of the association to hold the real estate in trust and manage it for the benefit of the members of the association. Later, some legislatures provided various solutions, including treating the association for these purposes as an entity.

Proceedings by or against an unincorporated association presented similar problems. If it were not a legal entity, each of the members needed to be joined as party plaintiffs or defendants.

Class action offered another approach. Again courts and legislatures, especially the latter, provided solutions. "Sue and be sued" statutes found their way on the law books of most States.

Unincorporated associations, not being legal entities, could not be liable in tort, contract, or otherwise for conduct taken in their names. On the other hand, their members could be. Courts borrowed from the law of partnership the concept that the members of the association, like partners, were co-principals. As co-principals they were individually liable. Again courts and legislatures, responding to concerns of their constituents about this result, modified these rules. Courts found that, in large membership associations, some members did not have the kind of control or participation in the decision process that made it reasonable and fair to view them as co-principals. Legislatures also took steps. Perhaps the most striking are the statutes adopted in many States in the last decade excusing officers, directors, members, and volunteers of nonprofit organizations from liability for simple negligence. There is great variety in the details; a few statutes condition the immunity on the association carrying appropriate insurance or qualifying under Internal Revenue Code Section 501(c)(3).

Related to liability is the question of enforcement of a judgment obtained against an unincorporated association, its members, and its property. If fewer than all members are liable in contract or tort, the property that members own jointly or in common may not be seized in execution of a judgment without severing the interest of those who are liable from those who are not. Some members may not be liable because the judgment was not rendered against them. Again, courts using "joint debtor," "common property," and "common name" statutes fashioned more workable solutions. Some legislatures have also addressed the problem directly. For these purposes, unincorporated associations have been treated as legal entities – like a corporation.

The unincorporated nonprofit association is now governed by a hodgepodge of common law and state statutes governing some of their legal aspects. No State appears to have addressed the issues in a comprehensive, integrated, and internally consistent manner. This Act deals with a limited number of the major issues relating to unincorporated nonprofit associations in an integrated and consistent manner.

The Uniform Unincorporated Nonprofit Association Act (UUNAA) reforms the common law in three basic and important areas. It was drafted with the small informal associations in mind. These informal organizations are likely to have no legal advice and so fail to consider legal and organization questions, including whether to incorporate. The Act provides better answers than the common law for a limited number of legal problems. Its answers are more in accord with the expectations of those participating in the work of the unincorporated nonprofit association than the common law. While the Act is primarily directed at small nonprofit organizations, it may be surprising that some large nonprofit organizations are or until recently were unincorporated; for example, National Conference of Commissioners on Uniform State Laws, Association of American Law Schools (1900-1972), and American Bar Association (1878-1992). That these three are lawyer organizations may provide further evidence of the vitality of the rule of the shoemaker's children.

The ABA Model Act deals comprehensively with nonprofit corporations, including troublesome questions of governance and membership. UUNAA, on the other hand, does not treat these and other questions. Enactment of UUNAA would leave these matters to a jurisdiction's common law or its statutes on the subject.

This Act applies to all unincorporated nonprofit associations. Nonprofit organizations are often classified as public benefit, mutual benefit, or religious. For purposes of this Act, it is unnecessary to treat differently these three categories of unincorporated nonprofit associations. Unlike some state laws, it is not confined to the nonprofit organizations that are described in Section 501(c)(3), (4), and (6) of the Internal Revenue Code. There is no principled basis for excluding any nonprofit association. Therefore, the Act covers unincorporated philanthropic, educational, scientific, and literary clubs, unions, trade associations, political organizations, cooperatives, churches, hospitals, condominium associations, neighborhood associations, and all other unincorporated nonprofit associations. Their members may be individuals, corporations, other legal entities, or a mix.

The Act is designed to cover all of these associations to the extent possible. To the extent a 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 statutes to determine which it wants to repeal, which to amend, and which to retain.

The basic approach of UUNAA is that an unincorporated nonprofit association is a legal entity for the purposes that the Act addresses. It does not make these associations legal entities for all purposes. It is left to the courts of an adopting State to determine whether to use this Act by analogy to conclude that an association is a legal entity for some other purpose.

It should be noted, too, that many of the provisions are intended to be supplemented by a jurisdiction's existing law. For example, Section 5, 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.

Two sections are bracketed as optional – Section 12 on venue and Section 13 on service of process. A jurisdiction may decide that its present rules are consistent with the entity view of an association and provide the appropriate rule. Therefore, it would not adopt Sections 12 and 13. Both sections deal with only a part of the questions of venue and service of process. This means that if they are adopted they are only a part of the jurisdiction's law on the subject. They should probably be placed in the court rules or statutes on those subjects instead of in the State's code with the other sections of this Act.

There has been concern that this Act may deter nonprofit organizations from incorporating and that failure to incorporate would deprive the public of protections incorporation would provide. Clearly, incorporation does provide governmental involvement that this Act does not.

Most jurisdictions regulate solicitation by charitable organizations. Many of these are comprehensive. See, for example, Ill. Ann. Stat. ch. 23, Sections 5100-5121 (Smith-Hurd 1992); Minn. Stat. Ann. Sections 309. 50-309.61 (West 1992); Uniform Management of Institutional Funds Act. These statutes frequently require, among other things, filing of a comprehensive statement with the attorney general before soliciting funds, including a copy of contracts with any professional fund-raisers, and registration of professional fund-raisers. A range of civil and criminal sanctions are provided. These statutes apply to all persons soliciting for charitable purposes, incorporated or not. In short, this Act's nonprofit associations are covered.