APPENDIX

This Appendix contains examples of existing statutes that an enacting jurisdiction might find useful to include in its UNA statute.

SECTIONS FROM THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT:

SECTION 5. STATEMENT OF AUTHORITY AS TO REAL PROPERTY.

(a) A nonprofit association may execute and [file][record] a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

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

(c) A statement of authority must set forth:

(1) the name of the nonprofit association;

(2) the federal tax identification number, if any, of the nonprofit association;

(3) the address in this State, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this State, its address out of State;

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

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

(d) A statement of authority must be executed in the same manner as [a deed][an affidavit] by a person who is not the person authorized to transfer the estate or interest.

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

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and [filing][recording] of an original statement. Unless canceled earlier, a [filed][recorded] statement of authority or its most recent amendment is canceled by operation of law five years after the date of the most recent [filing][recording].

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is [filed][recorded] in the office of the [county] in which a transfer of real property would be [filed][recorded], the authority of the person named in a statement of authority

to transfer is conclusive in favor of a person who gives value without notice that the person lacks authority.

Comment

1. This section is based on Uniform Partnership Act (1994) Section 303. California Corporations Code, Title 3, Unincorporated Associations, Section 20002 (West 1991), is similar.

2. A statement of authority need not be filed to conclude an acquisition of or to hold real property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate or interest in real property. For this, it should, but need not, be filed. The filing provides important documentation.

3. Inasmuch as the statement relates to the authority of a person to act for the association in transferring real property, subsection (b) requires that the statement be filed or recorded in the officer where a transfer of the real property would be filed or recorded. This is usually the county in which the real estate is situated. This is where a title search concerning the real estate would be conducted. Uniform Partnership Act (1994) Section 303 provides for central filing, such as with the Secretary of State, but its statement of partnership authority concerns authority of partners generally, not just with respect to real estate.

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

5. Subsection (c)(2) deals with the problem caused by the similarity of names of small local nonprofit associations. There is no duplication of federal tax identification numbers. Therefore, any confusion of identity is avoided by this requirement.

Subsection (c)(3) may present a problem for small, ad-hoc nonprofit associations. They may have no fixed office address. They may meet in the homes of their leaders. However, if they distribute literature or file petitions they are likely to have a mailing address.

Subsection (c)(4) informs those relying on the statement of the precise character of the organization. Knowing that the organization is an unincorporated nonprofit association may cause the person dealing with the organization to act differently.

6. Subsection (c)(5) permits the statement to identify as the person who can act for the association one who holds a particular office, such as president. This designation relieves the association from the need to make additional filings on each change of officers. Under local title standards and practices the transferee and filing or recording office are likely to require a certificate of incumbency if the statement designates the holder of an office.

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

8. Subsection (f) makes a statement inoperative five years after its most recent recording or filing. This prevents a statement whose recording or filing is unknown by the association's current leadership from being effective. Reliance on a filing or recording this old is, in effect, not in good faith.

9. Subsection (g) is based on Uniform Partnership Act (1994) Section 303(h). Its obvious purpose is to protect good faith purchasers for value without notice who rely on the statement, including those who acquire a security interest in the real property. If the required signatures on the statement, deed, or both are forgeries, the effect of them is not governed by Section 5(g). Instead, Section 2 applies and would invoke the other law of the State. In many States the deed would be a nullity. See Boyer, Hovenkamp, and Kurtz, *THE LAW OF PROPERTY*, An Introductory Survey (West Pub. Co. 4th ed. 1991).

SECTION 10. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS.

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

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

(1) the name of the nonprofit association;

(2) the federal tax identification number, if any, of the nonprofit association;

(3) the address in this State, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this State, its address out of State; and

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

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

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

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

Comment

1. This section authorizes but does not require a nonprofit association to file a statement authorizing an agent to receive service of process. It is, of course, not the equivalent of filing

articles of incorporation. However, some nonprofit associations may find it prudent to file. Filing may assure that the nonprofit association's leadership gets prompt notice of any lawsuit filed against it. Also, depending upon the jurisdiction's other laws, filing gives some public notice of the nonprofit association's existence and address.

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

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

[SECTION 12. VENUE. For purposes of venue, a nonprofit association is a resident of the [city or] county in which it has an office.]

Comment

1. Venue, unlike service of process, is treated by statute. See for example Mont. Code Ann. Section 25-2-118(1) (1991); 28 USCA 1391. A criterion used by all States for fixing venue is the county of residence of the defendant. 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.

2. 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 12 rejects the common law view.

This section is bracketed because some States have already satisfactorily solved this problem.

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).

3. Section 12 makes a nonprofit association a resident of any county (or city) in which it has an office. If it has an office in five counties, for example, it may be sued in any of the five counties.

4. "City," in brackets, is for use by those States, such as Virginia, in which there is territory that is not in a county but in a city only.

[SECTION 13. SUMMONS AND COMPLAINT; SERVICE ON WHOM. In an action or proceeding against a nonprofit association a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, managing or general agent,

or a person authorized to participate in the management of its affairs. If none of them can be served, service may be made on a member.]

Comment

1. In most States the law with respect to service of process is in court rules. Where that is the case, this section, if adopted, should be placed in these rules.

2. Some States have expressly addressed service of process on a nonprofit association. Those States may wish to continue their rules and so should not adopt this section. For this reason this section is bracketed.

Section 13 adapts Rule 4 of the Federal Rules of Civil Procedure to this setting. However, it leaves to other applicable law details concerning service, such as who may make service and the kind of the mailing. It specifies only to or on whom the service of process must be addressed.

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

[SECTION 19. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY.

Alternative 1

If, before the effective date of this [Act], an estate or interest in real or personal property was by terms of the transfer purportedly transferred to a nonprofit association but under the law the estate or interest did not vest in the nonprofit association, on the effective date of this [Act] the estate or interest vests in the nonprofit association, unless the parties have treated the transfer as ineffective.

Alternative 2

If, before the effective date of this [Act], an estate or interest in real or personal property was by terms of the transfer purportedly transferred to a nonprofit association but under the law the estate or interest was vested in a fiduciary, such as officers of the nonprofit association, to hold the estate or interest for members of the nonprofit association, on or after the effective date of this [Act] the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association may, by appropriate proceedings, require that the estate or interest be transferred to it in its name.]

Comment

1. Two versions of Section 19 are offered. This 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 has that rule, it should adopt the first alternative. 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 the second alternative.

If a State has by statute made transfers effective to some classes of nonprofit associations but not all, it should adopt the appropriate alternative to those not covered. If a State has made all transfers to all unincorporated nonprofit associations effective, it does not need Section 19.

2. Section 19 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. The first alternative 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 Alternative 1 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 19 is not a retroactive rule. It applies to the facts existing when this Act takes effect. At that time Alternative 1 applies to a purported transfer of property that under the law of the jurisdiction that could not be given effect at the time it was made. The first alternative belatedly makes it effective – effective when this Act takes effect and not when made. The practical result of this difference is that when the purported transfer is effective, the transfer is subject to interests in the property that came into being in the interim. The nonprofit association's interest is subject, for example, to a tax or judgment lien that became effective in the interim. An intervening transfer by the initial transferor may simply be evidence that the "parties had treated the transfer as ineffective." If so, Alternative 1 by its terms does not vest ownership in the nonprofit association.

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

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

SECTIONS FROM THE CALIFORNIA CORPORATION CODE:

§ 18310. Termination of membership

18310.

(a) Unless otherwise provided by an unincorporated association's governing principles, membership in the unincorporated association is terminated by any of the following events:

(1) Resignation of the member.

(2) Expiration of the fixed term of the membership, unless the membership is renewed before its expiration.

(3) Expulsion of the member.

(4) Death of the member.

(5) Termination of the legal existence of a member that is not a natural person.

(b) Termination of membership does not relieve a person from an obligation incurred as a member before termination.

(c) Termination of membership does not affect the right of an unincorporated association to enforce an obligation against a person incurred as a member before termination, or to obtain damages for its breach.

Comment

Section 18310 is new. Subdivision (b) makes clear that termination of membership does not relieve a former member from an obligation incurred before termination of membership. Such an obligation might include an obligation for a charge, assessment, fee, or dues, or an obligation for a service or benefit rendered before termination. See also Sections 18015 ("member" defined), 18035 ("unincorporated association" defined).

§ 18320. Expulsion or suspension of membership

18320.

(a) This section only applies if membership in an unincorporated association includes a property right or if expulsion or suspension of a member would affect an important, substantial economic interest. This section does not apply to an unincorporated association that has a religious purpose.

(b) Expulsion or suspension of a member shall be done in good faith and in a fair and reasonable manner. A procedure that satisfies the requirements of subdivision (c) is fair and

reasonable, but a court may also determine that another procedure is fair and reasonable taking into account the full circumstances of the expulsion or suspension.

(c) A procedure for expulsion or suspension of a member that satisfies the following requirements is fair and reasonable:

(1) The procedure is included in the governing documents of the unincorporated association.

(2) The member to be expelled or suspended is given notice, including a statement of the reasons for the expulsion or suspension. The notice shall be delivered at least 15 days before the effective date of the expulsion or suspension.

(3) The member to be expelled or suspended is given an opportunity to be heard by the person or body deciding the matter, orally or in writing, not less than five days before the effective date of the expulsion or suspension.

(d) A notice pursuant to this section may be delivered by any method reasonably calculated to provide actual notice. A notice delivered by mail shall be sent by first-class, certified, or registered mail to the last address of the member shown on the unincorporated association's records.

(e) A member may commence a proceeding to challenge the expulsion or suspension of the member, including a claim alleging defective notice, within one year after the effective date of the expulsion or suspension. The court may order any relief, including reinstatement, it determines is equitable under the circumstances. A vote of the members or of the board may not be set aside solely because a person was wrongfully excluded from voting by virtue of the challenged expulsion or suspension, unless the court determines that the wrongful expulsion or suspension was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(f) This section governs only the procedure for expulsion or suspension and not the substantive grounds for expulsion or suspension. An expulsion or suspension based on substantive grounds that violate contractual or other rights of the member or are otherwise unlawful is not made valid by compliance with this section.

Comment

Section 18320 is new. It requires good faith and use of a fair procedure before terminating or suspending membership in an unincorporated association, where membership involves a property right or where expulsion or suspension of a member would affect "an important, substantial economic interest," for example, the right to carry on one's trade or profession. See generally *Potvin v. Metropolitan Life Ins. Co.*, 22 Cal. 4th 1060, 997 P.2d 1153, 95 Cal. Rptr. 2d 496 (2000)(expulsion of doctor from list of insurance company's preferred providers could impair ability of competent physician to practice medicine and affected "important, substantial economic interest"). See also *Swital v. Real Estate Comm'r*, 116 Cal. App. 2d 677, 254 P.2d 587 (1953)(member may not be expelled from local realty board without fair procedure).

Nothing in this section affects the common law right of fair procedure as it applies to a decision to exclude a person from membership in a private association. See *Pinsker v. Pacific Coast Soc'y of Orthodontists*, 12 Cal. 3d 541, 550, 116 Cal. Rptr. 245, 526 P.2d 253 (1974)("Taken together, these decisions establish the common law principle that whenever a private association is legally required to refrain from arbitrary action, the association's action must be both substantively rational and procedurally fair."); *Pinsker v. Pacific Coast Soc'y of Orthodontists*, 1 Cal. 3d 160, 81 Cal. Rptr. 623, 460 P.2d 495 (1969).

To avoid state interference with the free exercise of religion, this section does not apply to an unincorporated association with a religious purpose. *Cf.* Section 7341 (expulsion, suspension, or termination of membership in nonprofit mutual benefit corporation). See also Sections 18003 ("board" defined), 18008 ("governing documents" defined), 18015 ("member" defined), 18035 ("unincorporated association" defined).

§ 18410. Dissolution

18410. An unincorporated association may be dissolved by any of the following methods:

(a) If the governing documents of the association provide a method for dissolution, by that method.

(b) If the governing documents of the association do not provide a method for dissolution, by the affirmative vote of a majority of the voting power of the association.

(c) If the association's operations have been discontinued for at least three years, by the board or, if the association has no incumbent board, by the members of its last preceding incumbent board.

(d) If the association's operations have been discontinued, by court order.

Comment

Section 18410 is new. Subdivision (a) is consistent with case law. See *Holt v. Santa Clara County Sheriff's Benefit Ass'n,* 250 Cal. App. 2d 925, 930, 59 Cal. Rptr. 180 (1967). An unincorporated association that is subordinate to another organization may be subject to dissolution by order of the superior organization. *Id.* See also Sections 18003 ("board" defined), 18005 ("director" defined), 18008 ("governing documents" defined), 18015 ("member" defined), 18035 ("unincorporated association" defined), 18330 (member voting procedure).