

**The Uniform Unincorporated Nonprofit Association Act –
A Vast Improvement
and
A First Attempt at International Collaboration**

by
Lisa A. Runquist

When most people consider possible structures of nonprofit organizations, they think of corporations and trusts. Sometimes they think of limited liability companies. But it is rare that the unincorporated association is considered. The reason is that most unincorporated associations arise without any real consideration being given to their formation at all. They just begin to function, generally without any input from lawyers or accountants. There are some large unincorporated associations that are highly structured (up until a few years ago, the American Bar Association functioned as an unincorporated association, and, indeed, the National Conference of Commissioners on Uniform State Laws continues to be unincorporated). However, the vast majority are small, “garden club” variety nonprofits.

The problem, of course, has been that the common law applicable to unincorporated associations, which require no filing to begin, and indeed, do not even need any paperwork at all, has found unincorporated associations to be simply a collection of members, with each member liable for the debts of the association itself, rather than considering the association to be an entity apart from the members. Even when the nonprofit unincorporated association has functioned with the same limitations as those imposed on nonprofit corporations (including establishing its exempt status with the Internal Revenue Service), it has, in most states, been considered to be more like a partnership than a corporation.¹

In 1996 the National Conference of Commissioners on Uniform State Laws developed its first Uniform Unincorporated Nonprofit Association Act (UUNAA). For various reasons, the Act was not widely adopted.

Several years ago, NCCUSL began a new drafting effort. This time it did several things differently that should be noted. To begin with, the project was a joint effort of the various uniform laws commissions, not only in the United States, but also in Canada and Mexico, to harmonize unincorporated nonprofit association acts throughout North America. Secondly, NCCUSL actively solicited the participation of ABA representatives in the project. Thirdly, this time the drafting committee had the added ability to draw from existing laws, such as those in California and Quebec, in developing an overall approach to the area.

Because the laws are so different in the various jurisdictions (Quebec and Mexico are civil law countries; the United States and English speaking Canada are principally common law

¹ Even in California, which has had an unincorporated association law since the 1940's, it was not clear, until recently, that the unincorporated association had separate entity status.

countries), and because there are different drafting styles used in each jurisdiction, it was agreed that we needed to begin by drafting principles to which everyone would agree, and that each jurisdiction would then use these principles to determine what changes would be necessary to effectuate these principles in each location. We then compared and contrasted the acts, before finalizing them for each jurisdiction. As this was done, we were able to make additional changes in our act, to incorporate better drafting of some provisions by the other jurisdictions. The end result has been the drafting of both common law and civil law statutes that effectuate the same principles.

Several items should be noted. The first, and perhaps the most important, is that this uniform act establishes the unincorporated nonprofit association as an entity apart from any of its members. Along with this, we have attempted to provide the same type of limitation of liability as is present with nonprofit corporations. Because there are differences between the states in this area, it is expected that these differences will continue with unincorporated nonprofit associations as well. Another item of note is that almost all of the provisions contained in the act are default provisions which may be modified by the association. A third item that should be pointed out, is that there has been very little attempt to provide for oversight by the attorney general, or to address tax exempt issues, as most states have a separate charitable organizations law for this purpose. To the extent that there needs to be a reference to those existing provisions, it is expected that the individual states will make the appropriate modifications.

Although there can always be improvements to a law, and although each state will want to customize some of the provisions, this uniform law is a significant step forward in establishing a workable structure for unincorporated nonprofit associations to function. And it is the first attempt to expand the idea of uniformity beyond the United States, into all of North America.

One more item to note: Civil law countries do not generally allow for entities to be formed that are not specifically authorized by statute. As a result, the idea of a separate, stand-alone unincorporated association (or a trust) in a civil law country is an extremely difficult concept to grasp. However, because of the work of our neighbors, both in Quebec and in Mexico, it is possible that we may have developed a method of exporting this idea even beyond our friends in North America, to other parts of the world.