

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATIONS ACT

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

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MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
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By

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

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 act 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.

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

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

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

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

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

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

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico,

United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(8) “Unincorporated nonprofit association” means an unincorporated organization consisting of [two] or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes. The term does not include: (A) a trust; (B) a marriage, domestic partnership, common law domestic relationship, civil union, or other domestic living arrangement; (C) an organization formed under any other statute that governs the organization and operation of unincorporated associations; (D) a joint tenancy, tenancy in common, or tenancy by the entireties even if the co-owners share use of the property for a nonprofit purpose; or (E) a relationship under an agreement in a record that expressly provides that the relationship between the parties does not create an unincorporated nonprofit association.

Comment

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

2. “Governing principles” are the equivalent of the articles of incorporation, bylaws and other documents and established practices that govern the internal affairs of a UNA, sometimes referred to as an entity’s private organic rules. *See* Model Entity Transactions Act (2007) §1-102 (31). The “governing principles” of a UNA do not have to be in a written form. This is consistent with partnership law, the for profit equivalent of a UNA. *See* Uniform Partnership Act (1997) §101(7); Uniform Limited Partnership Act (2001) §102(13); Revised Uniform Limited Liability Act (2006) §102(13). Where there is no clear and oral agreement or record, you would look to the UNAs established practices (subsection (1)). *See* Comment 1. *See also* Comment 8.

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

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

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

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

5. The definition of person in subsection (5) is the standard NCCUSL definition of this term. “Person” instead of individual is used to make it clear that associations covered by this act may have individuals, corporations, and other legal entities as members and managers. Unincorporated nonprofit trade associations, for example, commonly have corporations as members. Some national and regional associations of local government officials and agencies have governmental units or agencies as members.

6. The definition of “record” in subsection (6) is the standard NCCUSL definition of this term, which makes it clear that emails and other forms of electronic communication qualify as writings.

7. The definition of “state” in subsection (7) is the standard NCCUSL definition of this term.

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

“Agreement” rather than “contract” is the appropriate term because the legal requirements for an agreement are less stringent and less formal than for a contract. For example, mutual consent must be present in both but the contractual concept of consideration is not necessary for an agreement. The agreement to form a UNA can be in a “record” (see subsection (6)), or oral, or implied from conduct (e.g., course of performance or course of dealing). The agreement to form a UNA becomes part of the UNA’s overall “governing principles.” “Implied from conduct” rather than “implied from its established practices” (see subsection (2)) is used as the standard because the agreement to form a UNA precedes or is contemporaneous with its existence, and established practices can only exist after the UNA is in existence. (subsection (2)).

Although it is always preferable to have written agreements, most existing UNAs are quite informal and have few, if any, writings setting forth the agreements governing the purpose and operation of the organization. Moreover, most UNAs are formed and operate without independent legal advice. Imposing a statute of frauds or similar writing requirement would, therefore, have the effect of excluding most existing UNAs from being able to qualify under the act. The enacting jurisdiction’s general rules governing the proof and effect of oral agreements and the priority of written provisions over subsequent inconsistent oral provisions apply to UNA governing principles. See section 3.

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

An express provision in a record stating that the parties to a contract do not intend to create an unincorporated nonprofit association, on the other hand, would negate any conclusion that there was an agreement to have a UNA. *See* subsection 8(E). An example is a contractual relationship between two nonprofit organizations where the parties do not want the contract to be subject to this act. An express written provision to that effect in the contract should be upheld.

The members must be joined together for a common purpose. Several states provide that they be “joined together for a **stated** common purpose” (emphasis added). Because of the informality of many ad hoc associations, it is prudent not to impose the requirement that the common purpose be “stated.” Very probably, it is the small, informal, ad hoc associations and those third parties affected by them that most need this act.

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

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

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

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

SECTION 3. RELATION TO OTHER LAW.

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

(b) A statute governing a specific type of unincorporated nonprofit association prevails

over an inconsistent provision in this [act], to the extent of the inconsistency.

(c) This [act] supplements the law of this state that applies to nonprofit associations operating in this state. If a conflict exists, that law applies.

***Legislative Note:** 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.*

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.

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 has its main place of activities. 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 place of 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 place of activities" seems 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 will be a rare case when it will be necessary to determine which of two or more states' laws govern a UNA's internal affairs.

3. Since the laws governing UNAs in the enacting jurisdiction govern UNAs formed in

other jurisdictions that are conducting activities (except for internal affairs issues in the enacting jurisdiction), a foreign-formed UNA could not conduct activities in the enacting jurisdiction that a UNA formed in this jurisdiction could not conduct, even if the activity were legal in the foreign jurisdiction in which the UNA was formed or has its main place of activities.

SECTION 5. LEGAL ENTITY; PERPETUAL EXISTENCE; POWERS.

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

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

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

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

Comment

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

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

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

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, for example, would be a general partnership and not a UNA even though its stated purpose is to educate its members about investments.

SECTION 6. OWNERSHIP AND TRANSFER OF PROPERTY.

(a) An unincorporated nonprofit association may acquire, hold, encumber, or transfer in its name an interest in real or personal property.

(b) An unincorporated nonprofit association may be a beneficiary of a trust or contract, a legatee or a devisee.

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

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

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

Section 31 deals with attempted transfers of real and personal property to a UNA that were made before the effective date of this act where under the current law title did not vest in the UNA.

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

SECTION 7. STATEMENT OF AUTHORITY AS TO REAL PROPERTY.

(a) In this section, “statement of authority” means a statement authorizing a person to transfer an interest in real property held in the name of an unincorporated nonprofit association.

(b) An interest in real property held in the name of an unincorporated nonprofit association may be transferred by a person authorized to do so in a statement of authority [filed] [recorded] by the association 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 unincorporated nonprofit association;
- (2) the address in this state, including the street address, if any, of the association or, if the association does not have an address in this state, its out-of-state address;
- (3) that the association is an unincorporated nonprofit association; and
- (4) the name, title, or position of a person authorized to transfer an estate or interest in real property held in the name of the association.

(d) A statement of authority must be executed in the same manner as [a deed] [an affidavit] by a person other than the person authorized in the statement to transfer the 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) A document amending, revoking, or canceling a statement of authority or stating that the statement is unauthorized or erroneous must meet the requirements for executing and [filing] [recording] an original statement.

(g) Unless canceled earlier, a [filed] [recorded] statement of authority and its most recent amendment expire [five] years after the date of the most recent [filing] [recording].

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

Comment

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

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, however, provides important documentation. As a general rule a statement of authority will only be filed at the time of a conveyance of an interest in real estate as a means of establishing in the title records who has authority to execute a deed or other instrument conveying an interest in real estate.

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 office 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 (1997) §303 also 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) 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 of some kind, e.g., the mailing address of a member or manager.

6. Subsection (c)(3) 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.

7. Subsection (c)(4) permits the statement to identify as the person who can act for the association someone 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.

8. 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 conform to those of a deed or an affidavit is left for each state to determine.

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

10. Subsection (h) is based on Uniform Partnership Act (1997) §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 7(h). Instead, section 3 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 8. LIABILITY.

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

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

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

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

Comment

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

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

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

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

In 1997 Congress enacted the Volunteer Protection Act, 42 U.S.C.A. §§ 14501-14505. This statute, which preempts state laws to the extent of any inconsistency with the Volunteer Protection Act except to the extent the state law provides additional protections from liability,

insulates directors, officers, trustees and direct service volunteers of nonprofit organizations who receive no compensation (other than reasonable reimbursement of expenses) from liability for harm that “was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious or flagrant indifference to the rights or safety of the individual harmed by the volunteer.” 42 U.S.C.A. §14503(a)(3). Damages caused by operation of “a motor vehicle, vessel, aircraft, or other vehicle” for which a license or insurance is required to be maintained, are not covered. 42 U.S.C.A. §14503(4).

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

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

3. “Solely” as used in section 8 is intended to make it clear that a member or manager is not vicariously liable for the liabilities of the UNA or the liabilities of another member or manager merely because of that person’s status as a member or manager. A member or manager may, however, have personal liability as a result of his or her own actions. A member or manager will be personally liable, for example, for his or her own tortious acts, or for breach of a contract binding on the UNA which the member or manager is a party to or has guaranteed. This personal liability is imposed by other law (*see* subsection (b) of section 8 and section 3(a)) and not because of his or her status as a member or manager.

SECTION 9. ASSERTION AND DEFENSE OF CLAIMS.

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

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

Comment

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

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

3. The enacting state's general civil procedure law will be applicable to UNAs. *See* section 3(a). These statutes and court rules will deal with issues such as standing of a UNA to sue on behalf of its members, joinder, counterclaims and the like. Most will also cover issues such as pleadings and service of pleadings and venue. That is why Sections 12 and 14 are bracketed and should not be enacted in a state if the existing statutes and court rules are sufficient. Sections 9, 10, 11, and 13 should be enacted as part of this act, however, because there is a body of inconsistent case law or gaps in the existing statutes or rules on the issues dealt with in these sections.

4. Subsection (b) is another aspect of a UNA under the act being a separate legal entity. Under the common law aggregate theory, since a UNA was not an entity separate from its members, a member could not assert a claim against the UNA since there is technically no legal entity, and the member would be both a claimant and the defendant and personally liable for any judgment obtained in the action. For the same reason, a UNA could not assert a claim against a member (e.g., for unpaid dues) because the UNA technically does not exist. This subsection only allows a member to assert that member's claim against the UNA. It does not authorize a member to file a derivative action. The enacting jurisdiction's civil procedure law may, however, authorize derivative actions.

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

Comment

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

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

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

4. That a judgment against a UNA is not also a judgment against one authorized to manage the affairs of the association recognizes fully the entity status of a nonprofit association. An obvious corollary of this section is that a judgment against a nonprofit association may not be

satisfied against a member unless there is also a judgment against the member. The one exception to this rule would be an injunction issued against a UNA. Federal Rules of Civil Procedure 65(d) provides that every injunction and restraining order is binding not only on the named parties but also on “the parties’ officers, agents, servants, employees, and attorneys . . . who receive actual notice of it by personal notice or otherwise.”

SECTION 11. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS.

(a) An unincorporated 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 unincorporated nonprofit association; and

(2) 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 unincorporated nonprofit association and by the person appointed as the agent. By signing and [acknowledging] [swearing to] the statement the person becomes the agent.

(d) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for executing of an original statement. An agent may resign by filing a resignation in the office of the [Secretary of State] and giving notice to the association.

(e) The [Secretary of State] 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.

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 management 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 its address.

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

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

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

Comment

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

2. 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, a corporation, seem most appropriate.

3. "Manager" is a defined term. *See* section 2(3). Service on a member of a UNA (also a defined term – *see* section 2(4)) would not be effective under this section unless the member was also a manager of the UNA.

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

Comment

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

[**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. Many 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 office 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.

SECTION 15. MEMBER NOT AGENT. A member 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 authority to bind is not solely because of the member’s status as a member.

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

SECTION 16. APPROVAL BY MEMBERS.

(a) Except as otherwise provided in the governing principles, an unincorporated nonprofit association must have the approval of its members to:

(1) admit, suspend, dismiss, or expel a member;

(2) select or dismiss a manager;

(3) adopt, amend, or repeal the governing principles;

(4) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the association’s property, with or without the association’s goodwill, outside the ordinary course of its activities;

(5) dissolve under section 28(2) or merge under section 30;

(6) undertake any other act outside the ordinary course of the association’s activities; or

(7) determine the policy and purposes of the association.

(b) An unincorporated nonprofit association must have the approval of the members to do any other act or exercise a right that the governing principles require to be approved by members.

Comment

1. Sections 16-27 deal with governance issues and are often referred to as internal affairs

rules. They establish the rules governing the relation of the members and managers to each other and to the UNA. Many but not all of these provisions are default rules that can be varied by the UNA's governing principles. Liability to third parties is covered by other provisions of this act. *See* section 8. The internal affairs rules in sections 17-27 apply to UNAs formed in the enacting state. The internal rules of UNAs formed in other jurisdictions are determined under section 4(b).

SECTION 17. MEETINGS OF MEMBERS; VOTING, NOTICE, AND QUORUM REQUIREMENTS.

(a) Unless the governing principles provide otherwise:

(1) approval of a matter by members requires an affirmative majority of the votes cast at a meeting of members; and

(2) each member is entitled to one vote on each matter that is submitted for approval by members.

(b) Notice and quorum requirements for member meetings and the conduct of meetings of members are determined by the governing principles.

Comment

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

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

3. There is one limitation on the authority to modify member approval rights. A UNA must always have at least two members. *See* section 2(8). Therefore, the governing principles

cannot specify that a UNA have one or no members.

4. A UNA will undoubtedly have some kind of notice and quorum requirements and meeting procedures in its governing principles, which include its established practices. If it does not have any such requirements (e.g., it is newly formed and is holding its initial meeting), it can create them at that meeting and these requirements, even if oral, become over time the UNA's established practices and therefore part of the UNA's governing principles. If the appropriate notice has been given and a quorum is present, the member meeting would be properly called and convened under subsection (a)(1).

SECTION 18. DUTIES OF MEMBER.

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

(b) A member shall discharge the duties to the unincorporated nonprofit association and the other members and exercise any rights under this [act] consistent with the governing principles and the obligation of good faith and fair dealing.

Comment

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

2. While they have no fiduciary duties, members do have the obligation to discharge any duties and any rights they exercise pursuant to this act or pursuant to the UNA's governing principles consistent with the obligation of good faith and fair dealing. *See* Revised Uniform Limited Liability Company Act (2006) §409(d); Revised Uniform Limited Partnership Act (2001) §305(b). A member cannot, for example, disclose confidential information obtained from the UNA to third parties. The obligation of good faith and fair dealing is not strictly speaking a fiduciary duty but rather is a duty that is derived from the consensual or contract nature of a UNA. *See* Restatement (Second) of Contracts (1981) §205. The duty of good faith and fair dealing of a member in a UNA cannot be altered or varied. In this respect, it differs from the similar rule in partnerships and limited liability companies. *See* Uniform Partnership Act (1997) §§ 103(4), 404(c), 603(b)(3); Uniform Limited Liability Company Act (2006) §§ 110(c)(4), 409(c).

SECTION 19. ADMISSION, SUSPENSION, DISMISSAL, OR EXPULSION OF

MEMBERS.

(a) A person becomes a member 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 only 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 provide otherwise, the suspension, dismissal, or expulsion of a member 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.

SECTION 20. MEMBER'S RESIGNATION.

(a) A member may resign as a member 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 provide otherwise, resignation of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before resignation.

Comment

Preventing a member from voluntarily withdrawing from a UNA would be unconstitutional and void on public policy grounds. A UNA should, however, be able to impose reasonable restrictions on withdrawal, for example, requiring 30 days' advance notice. Moreover, as subsection (b) states, a member who resigns remains liable for obligations and

commitments made before the resignation.

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

Comment

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

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

- (1) only the members may select a manager or managers;
- (2) a manager may be a member or a nonmember;
- (3) if a manager is not selected, all members are managers;
- (4) each manager has equal rights in the management and conduct of the association's activities;
- (5) all matters relating to the association's activities are decided by its managers except for 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 (4)(each manager has equal management rights), (5)(managers manage the

UNA's activities), and (6)(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.

SECTION 23. DUTIES OF MANAGERS.

(a) A manager owes to the unincorporated nonprofit association and to its members the fiduciary duties of loyalty and care.

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

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

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

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

(2) is informed with respect to the subject of the business judgment to the extent

the manager reasonably believes to be appropriate under the circumstances; and

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

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

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

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

(3) an intentional violation of criminal law;

(4) breach of the duty of loyalty; or

(5) improper distributions.

Comment

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

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

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

4. Under subsection (c) a potential breach of loyalty claim (*e.g.*, conflict of interest transaction or appropriation of something that falls within what is commonly called the “corporate opportunity” or “enterprise opportunity” doctrine or engaging in competing activities) can be avoided by advance approval or ratification after full disclosure of the facts. Note also

that under subsection (d)(1) having a conflict of interest precludes the application of the business judgment rule.

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

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

SECTION 24. NOTICE AND QUORUM REQUIREMENTS FOR MEETINGS OF MANAGERS. Notice and quorum requirements for meetings of managers and the conduct of meetings of managers are determined by the governing principles.

Comment

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

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

SECTION 25. RIGHT OF MEMBER OR MANAGER TO INFORMATION.

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

principles.

(b) An unincorporated nonprofit association may impose reasonable restrictions on access to and use of information to be furnished under this section, including designating the information confidential and imposing obligations of nondisclosure and safeguarding on the recipient.

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

(d) A former member or manager is entitled to information to which the member or manager was entitled while a member or manager if the information pertains to the period during which the person was a member or manager, the former member or manager seeks the information in good faith, and the former member or manager satisfies subsections (a) through (c).

Comment

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

SECTION 26. DISTRIBUTIONS PROHIBITED; COMPENSATION AND OTHER PERMITTED PAYMENTS.

(a) Except as otherwise provided in subsection (b), an unincorporated nonprofit association may not pay dividends or make distributions to a member or manager.

(b) An unincorporated nonprofit association may:

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

(2) confer benefits on a member or manager in conformity with its nonprofit

purposes;

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

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

Comment

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

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

3. An action to recover improper distributions could be brought by the UNA or by a member as a derivative action, if authorized by state law. The Attorney General may also have authority under state law to bring a disgorgement action.

SECTION 27. REIMBURSEMENT; INDEMNIFICATION; ADVANCEMENT OF EXPENSES.

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

(b) An unincorporated nonprofit association may indemnify a member or manager for any debt, obligation, or other liability incurred in the course of the member's or manager's activities on behalf of the association if the person seeking indemnification has complied with Sections 18 and 23. Governing principles in a record may broaden or limit indemnification.

(c) If a person is made or threatened to be made a party in an action based on that person's activities on behalf of an unincorporated nonprofit association and the person makes a request in a record to the association, a majority of the disinterested managers may approve in a record advance payment, or reimbursement, by the association, of all or a part of the reasonable

expenses, including attorney's fees and costs, incurred by the person before the final disposition of the proceeding. To be entitled to an advance payment or reimbursement, the person must state in a record that the person has a good faith belief that the criteria for indemnification in subsection (b) have been satisfied and that the person will repay the amounts advanced or reimbursed if the criteria for payment have not been satisfied. The governing principles in a record may broaden or limit the advance payments or reimbursements.

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

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

Comment

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

2. The right to reimbursement under subsection (a) is mandatory, unless the governing principles otherwise provide. The right to indemnification under subsection (b) is discretionary; however, a UNA in a record (i.e., a writing of some kind, *see* section (2)(6)), can broaden (e.g. make the right mandatory) or limit (e.g. impose conditions beyond compliance with sections 18 and 23) the right to indemnification. Advancement of litigation expenses under subsection (c) is also discretionary but in addition the request for an advancement, the commitment to repay the amounts advanced if the criteria for payment have not been satisfied, and the approval of an advancement must be in a record. As is the case with indemnifications under subsection (b) the

governing principles of the UNA in a record may broaden or further limit the advancement right. The discretionary nature of both the rights of indemnification and advancement and the record requirements for these rights are appropriate as default rules in order to focus attention on the importance of these decisions. After all many UNAs have very limited financial resources and the first priority for their resources is to fulfill their nonprofit purposes.

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

4. Both current and former members and managers are eligible for these rights of reimbursement, indemnification and advancement of expenses.

SECTION 28. DISSOLUTION.

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

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

(2) if the governing principles do not provide a time or method for dissolution, upon approval by the members;

(3) if no member can be located and the association's operations have been discontinued for at least three years, by the managers or, if the association has no current manager, by its last manager;

(4) by court order; or

(5) under law other than this act.

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

Comment

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

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

3. A UNA that is totally inactive and has no assets is de facto dissolved, even though it is not de jure dissolved. Formal dissolution (and winding up and termination under section 29) is only necessary if the UNA has assets.

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

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

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

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

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

(A) as required by law other than this [act] that requires assets of an association to be distributed to another person with similar nonprofit purposes;

(B) in accordance with the association's governing principles or in the absence of applicable governing principles, to the members of the association per capita or as the members direct; or

(C) if neither subparagraph (A) nor (B) applies, under [cite the unclaimed property law in this state.]

Comment

1. 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.

2. The state's statutes of limitations will determine when an action by a creditor to recover any assets distributed by a UNA upon liquidation will be barred. Many business

organization statutes, however, have provisions that shorten the normal statutes of limitations for known and unknown creditor claims when the organization is liquidated. *See* Model Business Corporation Act, §§ 14.06-.07; Uniform Limited Liability Company Act, (2006) §§ 703-04.

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) “Nonsurviving 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 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 authorized by law to merge with an unincorporated nonprofit association.

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

(1) Each constituent organization shall comply with its governing law.

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

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

(B) the name and form of the surviving organization and, if the surviving

organization is to be created by the merger, a statement to that effect;

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

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

(E) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration except that the plan of merger may not permit members of an unincorporated nonprofit association to receive merger consideration if a distribution of such consideration would not be permitted in the absence of a merger under Sections 26 and 29.

(3) The plan of merger must be approved by the members of each unincorporated nonprofit association that is a constituent organization in the merger. If a plan of merger would impose personal liability for an obligation of a constituent or surviving organization on a member of an association that is a party to the merger, the plan may not take effect unless it is approved in a record by the member.

(4) Subject to the contractual rights of third parties, after a plan of merger is approved and at any time before the merger is effective, a constituent organization may amend the plan or abandon the merger as provided in the plan, or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

(5) Following approval of the plan, a merger under this section is effective:

(A) if a constituent organization is required to give notice to or obtain the approval of a governmental agency or officer in order to be a party to a merger, when the notice

has been given and the approval has been obtained; and

(B) if the surviving organization:

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

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

(d) When a merger becomes effective:

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

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

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

(4) all debts, obligations, or other liabilities of each nonsurviving organization continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any nonsurviving organization may be continued as if the merger had not occurred;

(6) except as prohibited by law other than this [act], all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

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

(8) the merger does not affect the personal liability, if any, of a member or

manager of a constituent organization for a debt, obligation, or other liability incurred before the merger is effective; and

(9) a surviving organization that is not organized in this state is subject to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state for the debt, obligation, or other liability.

(e) Property held for a charitable purpose under the law of this state by a constituent organization immediately before a merger under this section becomes effective may not, as a result of the merger, be diverted from the objects for which it was given, unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the organization obtains an appropriate order of [name of 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 nonsurviving 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 nonsurviving 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.

[SECTION 31. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY.]

(a) If, before [the effective date of this [act]], an interest in property was by terms of a transfer purportedly transferred to an unincorporated nonprofit association but under the law of this state the 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 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 interest in property was by terms of a transfer purportedly transferred to an unincorporated nonprofit association but the interest was vested in one or more persons to hold the interest for members of the association, on or after [the effective date of this [act]] the persons, or their successors in interest, may transfer the interest to the association in its name, or the association may require that the interest be transferred to it in its name.]

Legislative Note: This is an optional section and it may not be necessary to adopt it (or any one of the subsections) in a particular state. 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.

Comment

1. 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.

2. 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 ownership in the nonprofit association.

3. Some courts gave effect to a 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. Subsection (b) 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.

4. 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 31. If so, some modification of section 31 may be required.

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

SECTION 33. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal

Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

Comment

This section responds to specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

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

Comment

1. Section 33 is adapted from Uniform Partnership Act (1997) §1006(c). It continues the prior law after the effective date of this act with respect to a (i) “right accrued” and (ii) pending “action or proceeding.” But for this section the new law of this act would displace the old in some circumstances. The power of a new act to displace the old statute with respect to conduct occurring before the new act’s enactment is substantial. Millard H. Ruud, *The Savings Clause – Some Problems in Construction and Drafting*, 33 Tex. L. Rev. 285, 286-293 (1955). A court generally applies the law that exists at the time it acts.

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

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

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

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

SECTION 35. REPEALS. The following are repealed: _____.

Comment

1. Many states have a patchwork of law relating to unincorporated nonprofit 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.

2. This act supersedes the Uniform Unincorporated Nonprofit Association Act (1996). A state that enacted UUNAA should, therefore, include its version of UUNAA in the list of statutes to be repealed.

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.