

D R A F T

FOR APPROVAL

**REVISED UNIFORM UNINCORPORATED
NONPROFIT ASSOCIATIONS ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
BIG SKY, MONTANA
JULY 18 - JULY 25, 2008

**REVISED UNIFORM UNINCORPORATED
NONPROFIT ASSOCIATIONS ACT**

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

Copyright ©2008

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATIONS ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in revising this act consists of the following individuals:

MARILYN E. PHELAN, Texas Tech University, School of Law, 1802 Hartford, Lubbock, TX
79409, *Chair*

DALE G. HIGER, 1302 Warm Springs Ave., Boise, ID 83712

DAVID C. MCBRIDE, 1000 West St., P.O. Box 391, Wilmington, DE 19899

ROBERT L. MCCURLEY, JR., Alabama Law Institute, P.O. Box 861425, Tuscaloosa, AL
35486

JUSTIN L. VIGDOR, 2400 Chase Square, Rochester, NY 14604

HARRY J. HAYNSWORTH, IV, 2200 IDS Center, 80 S. 8th St., Minneapolis, MN 55402,
National Conference Reporter

CANADIAN MEMBERS

ARTHUR L. CLOSE, 234 4th Ave., New Westminster, British Columbia, Canada V3L 1N7

MICHELLE CUMYN, Pavillon Charles-De Koninck, local 1109, Universite Laval, Quebec,
Canada G1K 7P4

JAKE HARMS, Manitoba Justice, 410-405 Broadway, Winnipeg, Manitoba, Canada R3C 3L6

THOMAS TELFER, University of Western Ontario, Faculty of Law, London, Ontario, Canada
N6A 3K7

KEVIN ZAKRESKI, University of British Columbia, 1822 East Mall, Vancouver, British
Columbia, Canada V6T 1Z1

MEXICAN MEMBERS

EDGAR ELIAS AZAR, Rio de la Plata No. 48, Piso 8, Col. Cuauhtemoc, Mexico 06600

CLAUDIA E. DE BUEN UNNA, Mariano Escobedo 353-A Desp. 1402, Polanco, Mexico 11560

ELIAS MANSUR, Socrates 207, Polanco 11560, Mexico City, Mexico

JORGE SANCHEZ CORDERO, Arquimedes 36, Polanco 11560, Mexico City, Mexico 11560

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563,
President

JAMES A. WYNN, JR., NC Court of Appeals, One West Morgan St., P.O. Box 888, Raleigh,
NC 27602, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

LISA A. RUNQUIST, 17554 Community St., Northridge, CA 91325-3922, *ABA Advisor*

LEON E. IRISH, 304 Kyle Road, Crownsville, MD 21032, *ABA International Law Section
Advisor*

KARLA W. SIMON, 620 Michigan Ave. NE, Washington, DC 20064-0001, *ABA International
Law Section Advisor*

JOHN H. SMALL, 1310 King St., Wilmington, DE 19801, *ABA Business Law Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
(312) 450-6600
www.nccusl.org

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

TABLE OF CONTENTS

PREFATORY NOTE..... 1

SECTION 1. SHORT TITLE. 3

SECTION 2. DEFINITIONS..... 3

SECTION 3. RELATION TO OTHER LAW..... 7

SECTION 4. GOVERNING LAW..... 8

SECTION 5. LEGAL ENTITY; PERPETUAL EXISTENCE; POWERS. 10

SECTION 6. OWNERSHIP AND TRANSFER OF PROPERTY..... 11

SECTION 7. STATEMENT OF AUTHORITY AS TO REAL PROPERTY. 12

SECTION 8. LIABILITY..... 15

SECTION 9. ASSERTION AND DEFENSE OF CLAIMS. 17

SECTION 10. EFFECT OF JUDGMENT OR ORDER. 18

SECTION 11. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS. 19

[SECTION 12. SERVICE OF PROCESS 20

SECTION 13. ACTION OR PROCEEDING NOT ABATED BY CHANGE. 20

[SECTION 14. VENUE..... 21

SECTION 15. MEMBER NOT AN AGENT..... 21

SECTION 16. APPROVAL BY MEMBERS. 22

SECTION 17. MEMBER MEETING, VOTING, NOTICE, AND QUORUM
REQUIREMENTS..... 23

SECTION 18. DUTIES OF MEMBER..... 24

SECTION 19. ADMISSION, SUSPENSION, DISMISSAL, OR EXPULSION OF
MEMBERS..... 25

SECTION 20. MEMBER’S RESIGNATION..... 25

SECTION 21. MEMBERSHIP INTEREST NOT TRANSFERABLE..... 26

SECTION 22. SELECTION OF MANAGERS; MANAGEMENT RIGHTS OF
MANAGERS. 26

SECTION 23. DUTIES OF MANAGERS..... 27

SECTION 24. NOTICE AND QUORUM REQUIREMENTS FOR MANAGER
MEETING..... 29

SECTION 25. RIGHT OF A MEMBER OR MANAGER TO INFORMATION..... 30

SECTION 26. DISTRIBUTIONS PROHIBITED; COMPENSATION AND OTHER
PERMITTED PAYMENTS..... 31

SECTION 27. INDEMNIFICATION; ADVANCEMENT OF EXPENSES..... 32

SECTION 28. DISSOLUTION. 33

SECTION 29. WINDING UP AND TERMINATION. 34

SECTION 30. MERGERS..... 35

[SECTION 31. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY..... 39

SECTION 32. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... 41

SECTION 33. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT..... 41

SECTION 34. SAVINGS CLAUSE..... 41

SECTION 35. REPEALS. 42

SECTION 36. EFFECTIVE DATE..... 43

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

PREFATORY NOTE

An unincorporated nonprofit association (UNA) is a nonprofit organization that is not a charitable trust or a nonprofit corporation or any other type of association organized under statutory law that is authorized to engage in nonprofit activities. A UNA is, thus, a default organization. As such, it is the nonprofit equivalent of a general partnership, which is the default for profit organization.

In the United States UNAs are governed by a hodgepodge of common law principles and statutes governing some of their legal aspects. Many of the existing statutes are designed to ameliorate some of the legal problems that arise from the basic common law concept that UNAs are merely aggregates of individuals and not legal entities. Under the traditional common law aggregate theory, for example, a UNA could not hold or convey property in its own name or sue or be sued in its own name. These statutes are for the most part (California is a notable exception) not comprehensive or integrated.

NCCUSL promulgated the Uniform Unincorporated Nonprofit Association Act (UUNAA) in 1996. UUNAA, which has been adopted in 12 states, deals with only a limited number of issues—tort and contract liability of members, owning and conveying of property and suits by and against a UNA.

In 2005, NCCUSL decided that UUNAA needed to be updated and made more comprehensive and entered into a joint project with the Uniform Law Conference of Canada and the Mexican Center on Uniform Laws to create a harmonized legal framework for UNAs in the United States, Canada and Mexico. The Drafting Committee for this project developed a Statement of Principles that each participating country has used as the basis for its UNA statute. The Revised Uniform Unincorporated Nonprofit Association Act (RUUNAA) is the American version of this harmonization project.

RUUNAA governs all UNAs that are formed or operate in a state that adopts the Act. UNAs are often classified as public benefit, mutual benefit or religious organizations and may or may not be tax-exempt. There are probably hundreds of thousands of UNAs in the United States including unincorporated nonprofit philanthropic, educational, scientific and literary clubs, sporting organizations, unions, trade associations, political organizations, churches, hospitals, and condominium and neighborhood associations. Their members may be individuals, corporations, other legal entities or a mix.

RUUNAA deals with the following basic issues: (1) definition of the types of organizations covered; (2) the relation of the principles to other existing laws; (3) the recognition that a UNA is a legal entity and the legal implications flowing from this status, including the ability of a UNA to own and dispose of property and to sue and be sued in its own name; (4) the contract and tort liability of a UNA and its members and managers; (5) internal governance, fiduciary duties, and agency authority; and (6) dissolution and merger.

RUUNAA is not nearly as comprehensive as the American Bar Association Model Nonprofit Corporation Act (ABA Model Act) promulgated in 1952 and most recently revised in 2008, some version of which has been adopted in most states. RUUNAA merely provides a basic legal framework for UNAs and is not intended to be a substitute for organizing a UNA as a nonprofit corporation under state law.

RUUNAA was drafted with small informal associations in mind. These informal organizations are likely to have no legal advice and so fail to consider legal and organizational questions, including whether to incorporate. The Act provides better answers than the common law for a limited number of legal problems. Its answers are more in accord with the expectations of those participating in the work of a UNA and third parties dealing with a UNA than the common law.

To the extent an enacting jurisdiction decides to retain statutes dealing with specific kinds of nonprofit associations, this Act will supplement existing legislation. Many states have statutes on special kinds of unincorporated nonprofit associations, such as churches, mutual benefit societies, social clubs, and veteran's organizations. A state electing to adopt this Act will need to examine carefully its existing statutes to determine which it wants to repeal, which to amend, and which to retain.

It should be noted, too, that many of the provisions are intended to be supplemented by a jurisdiction's existing law. For example, Section 7 which provides for the filing of a statement of association authority, does not provide details concerning the filing process. It leaves to other law such details as whether the filing officer returns a copy marked "filed" and stamps the hour and date thereof, and the amount of the filing fee.

Finally, most jurisdictions regulate solicitations and other activities of charitable organizations regardless of their organization form and allow for exemption from most state and local taxes. These statutes will be applicable to all UNAs formed or operating in a state that adopts RUUNAA. It may be necessary in some states to modify the language of these existing statutes to be certain that they apply to UNAs after RUUNAA is enacted.

1 **REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT**

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

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

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

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

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

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

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

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

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

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

12 **Comment**
13

14 1. “Established practices” are essentially equivalent to the commercial law concepts of
15 course of performance and course of dealing. *See* UCC §1-303. Many UNAs operate on a very
16 informal basis. Often there are no written procedures or bylaws or what writings they have are
17 very incomplete. Nevertheless, over time they develop and follow various practices. These
18 practices, if followed consistently for at least five years (or during the entire existence of the
19 UNA if it has been in existence less than five years), become established practices and therefore
20 can qualify as part of the UNAs “governing principles.” An example would be an
21 unincorporated church that has no written bylaws covering the issue of notice of meetings that
22 for the past five years has printed notice of the annual meeting of its members in the church
23 bulletin for the three weeks preceding the annual meeting. This established practice would be
24 part of the church’s governing principles and if followed in the sixth and subsequent years would
25 be determinative of whether reasonable notice of an annual meeting had been given.
26

27 2. “Governing principles” are the equivalent of the articles of incorporation, bylaws and
28 other documents and established practices that govern the internal affairs of a UNA, sometimes
29 referred to as an entity’s private organic rules. *See* Model Entity Transactions Act (2007) §1-102
30 (31). The “governing principles” of a UNA do not have to be in a written form. This is
31 consistent with partnership law, the for profit equivalent of a UNA. *See* Uniform Partnership
32 Act (1997) §101(7); Uniform Limited Partnership Act (2001) §102(13); Revised Uniform
33 Limited Liability Act (2006) §102(13). *See also* Comment 8.
34

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

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

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

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

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

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

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

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

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

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

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

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

1 common purpose be “stated.” Very probably, it is the small, informal, ad hoc associations and
2 those third parties affected by them that most need this Act.
3

4 The best reference point for what constitutes a nonprofit purpose is probably the enacting
5 state’s Nonprofit Corporation Act. The nonprofit purpose requirement carries with it the implicit
6 understanding that the purpose is not a criminal activity and is otherwise lawful. Each enacting
7 jurisdiction needs to determine whether these limitations need to be set forth explicitly in the
8 Act.
9

10 The two–person requirement for forming a UNA is quite minimal, assuming the standard
11 broad definition of person (Subsection (5)) incorporated into the Act. At least two persons are
12 required because that is the minimum number necessary to have an agreement under general
13 legal principles. If one person wants to create a nonprofit organization, it is possible to do so by
14 means of a trust, a nonprofit corporation, or in many states, a single member limited liability
15 company. A few states currently require more than two members at the time of formation. New
16 Jersey, for example, requires seven or more.
17

18 Nonprofit corporation statutes typically allow a nonprofit corporation to be formed by
19 one or more incorporators but to operate without members and therefore to be governed by a
20 self-perpetuating board of directors. *See* Model Nonprofit Corporation Act-Third Edition (2008)
21 §§ 2.02(4), 6.01. A UNA, however, must always have at least two members. The definition of a
22 UNA states that it is an organization “consisting” of [two] or more members....”
23

24 The Act applies to all UNAs, whether they be classified as religious, public benefit or
25 mutual benefit or whether they are classified as tax-exempt under the laws of the enacting
26 jurisdiction. Therefore, the Act will cover unincorporated philanthropic, educational, scientific,
27 social and literary clubs, unions, trade associations, political organizations, churches, hospitals,
28 neighborhood and property owner associations, and sports organizations such as Little League
29 baseball teams. If the enacting jurisdiction decides to exempt one or more types of UNAs from
30 the Act, it needs to draft specific provisions listing the exemptions.
31

32 Derivation: “established practices” – Principle #2; “governing principles” – Principle #2;
33 “member” – Principle #3; “manager” – Principle #4; “unincorporated nonprofit association” –
34 Principles #1 and 5.
35

36 SECTION 3. RELATION TO OTHER LAW.

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

39 (b) A statute governing a type of unincorporated nonprofit association prevails over an
40 inconsistent provision in this [act], to the extent of the inconsistency.

1 (c) This [act] supplements this state’s regulatory laws that are applicable to nonprofit
2 associations operating in this state. If a conflict exists, those other laws prevail.

3 **Comment**
4

5 1. *Subsection (a)*. Examples of other laws that apply to UNAs are general principles of
6 contracts, agency, fraud, estoppel, the priority of written provisions of an agreement over prior
7 inconsistent oral provisions or subsequent oral amendments (and any exceptions), civil and
8 criminal procedural rules, and rules for enforcing judgments.
9

10 Drafting conventions as to whether these general principles of law should be set forth in
11 separate provisions in an act like this one vary greatly. NCCUSL Acts, as a general rule, do not
12 have provisions other than what is stated in Subsection (a).
13

14 2. *Subsection (b)*. Many jurisdictions have existing statutes governing particular types of
15 UNAs, *e.g.*, churches. Subsection (b) establishes the rule that in the event of an inconsistency
16 between this Act and the statute governing a specific type of UNA, the latter will control. Under
17 generally accepted statutory interpretation principles, there is a strong presumption against
18 inconsistency, *i.e.*, the presumption is that the provisions of the two acts are not inconsistent.
19

20 3. *Subsection (c)*. Most jurisdictions have statutory provisions giving the chief legal
21 officer of the jurisdiction oversight supervisory powers over nonprofit organizations, including
22 the power to enjoin or prohibit various activities. Most jurisdictions also have statutes that
23 require registration, permits or advance notice to engage in certain activities, *e.g.*, fundraising
24 from the public, and the filing of reports, *e.g.*, assumed name filings, tax forms, and the like. All
25 of these existing and future statutes, rules and regulations are applicable to UNAs. Whether
26 specific provisions stating this principle need to be included in the Act depends on the enacting
27 jurisdiction’s statutory drafting conventions.
28

29 A thorough review of all these other laws should be conducted to be sure they do not
30 need to be amended in order to continue to apply to UNAs after the Act is effective. If
31 amendments to these other laws are necessary, they should be included as trailing amendments in
32 the Bill containing this Act.
33

34 Derivation: Subsection (a) Principle #9; Subsection (b) – Principle #10; Subsection (c) –
35 Principle #11.
36

37 **SECTION 4. GOVERNING LAW.**

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

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

4 **Comment**

5
6 1. This act applies to pre-existing UNAs formed in the enacting state, as well as to all
7 UNAs formed in the state after the effective date of the Act. This is a standard approach in
8 statutes governing organizational entities. Exempting various types of existing organizations
9 from the new law is not a desirable practice. Because the existing laws governing UNAs are, for
10 the most part, incomplete and the Act may change some of the common understanding of what
11 the law is, an enacting jurisdiction whose standard rule is to have a new statute effective when
12 signed or at the beginning of the next fiscal year after signing may want to have a delayed
13 effective date of 6 or 12 months to provide time to educate the affected organizations and their
14 advisors about the changes. *See* Section 36.

15
16 2. This Act's applicability to UNAs formed in other jurisdictions that are operating in this
17 state is necessary because in all other types of entities the internal affairs rules of the jurisdiction
18 of the entity's formation (e.g., the governance rules and duties and responsibilities of the owners
19 and managers to each other and the entity) control; but it is difficult to determine the jurisdiction
20 of a UNA's formation since it does not, in most jurisdictions, file any public document upon its
21 formation. Some mechanism for choosing the internal affairs jurisdiction is therefore necessary.
22 The default rule in this Act is the jurisdiction in which the UNA conducts the main part of its
23 operations. A UNA can, however, designate the internal affairs jurisdiction in its governing
24 principles, subject to applicable conflicts of laws substantial contact rules. *See* Restatement
25 (Second) of Conflict of Laws §187(2) (1971).

26
27 The term "main part of its activities" is not defined but should not be difficult to
28 determine in most cases. The Revised Uniform Partnership Act (1997) §106(a) uses the term
29 "chief executive office" in the equivalent section. The Comment to §106(a) states that "chief
30 executive office" is also used to determine the proper place for filing a financing statement under
31 UCC §9-103(3)(d) and it is not defined in the UCC either. Paragraph 5 of the Comment to UCC
32 §9-103(3)(d) states that the:

33 "Chief executive office" . . . means the place from which in fact the debtor
34 manages the main part of his business operations . . . Doubt may arise as to which
35 is the "chief executive office" of a multi-state enterprise, but it would be rare that
36 there could be more than two possibilities . . . [The rule] will be simple to apply in
37 most cases

38 The term "main part of its activities" seemed to be a more apt term for UNAs since many of
39 them are quite informal and probably do not have what are commonly thought of as "executive
40 offices." In any case, most UNAs conduct operations in only one state and those that have
41 operations in more than one state can designate the state that will govern its internal affairs so it

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

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

8
9 Derivation: Principle #6.
10

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

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

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

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

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

20 **Comment**

21
22 1. Subsection (a). The separate legal status of a UNA is a fundamental concept that
23 undergirds all the principles that allow a UNA to hold and dispose of property in its own name
24 and to sue and be sued in its own name and that insulates the assets of the members from claims
25 against the UNA. This is a reversal of traditional common law principles that treat partnerships
26 and other unincorporated entities under an aggregate theory.
27

28 2. Subsection (b) Providing for perpetual existence of a UNA is one of the key aspects of
29 its separate entity status. Under the traditional common law aggregate theory, a UNA's
30 existence would end with any change in the membership and if the UNA continued in operation
31 it was deemed to be a new UNA.
32

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **Comment**

- 21
22 1. This section is based on Uniform Partnership Act (1997) §303.
23
24 2. A statement of authority need not be filed to conclude an acquisition of or to hold real
25 property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate
26 or interest in real property. For this, it should, but need not, be filed. The filing provides
27 important documentation. As a general rule a statement of authority will only be filed at the time

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

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

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

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

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

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

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

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

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

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

4 **SECTION 8. LIABILITY.**

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

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

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

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

13 **Comment**

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

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

1 to be applicable to nonprofit corporations. The same criteria that are applied to pierce the veil of
2 nonprofit corporations should be applied in UNA veil piercing cases.
3

4 If the alter ego doctrine is found to be applicable , the separate entity status of a UNA
5 would be disregarded and the assets of the UNA and its members and managers would be
6 aggregated and subject to a UNA creditor’s claims in the same manner that a judgment creditor
7 of a general partnership collects a judgment against the assets of a general partner in a
8 partnership.
9

10 2. In recent years all states have enacted laws providing unpaid officers, board members
11 and other volunteers some protection from liability for their own negligence (but generally not
12 for conduct that is determined to constitute gross negligence or willful or reckless misconduct).
13 The statutes vary greatly as to who is covered, for what conduct protection is given, and the
14 conditions imposed for the freedom from liability. Some apply only to nonprofit corporations.
15 *State Liability Laws for Charitable Organizations and Volunteers* (Nonprofit Risk Management
16 & Insurance Institute, 1990); *Developments, Nonprofit Corporations*, 105 Harv. L. Rev. 1578,
17 1685-1696 (1992). This means that members and volunteers involved with unincorporated
18 nonprofit associations do not obtain protection under those state statutes. Others may cover the
19 managers of UNAs but only if the UNA qualifies as a tax-exempt entity under federal or state
20 law. *See N.Y. Not For Profit Corporation Law* §§720-a and 721 (federal income tax); Minn.
21 Stat. Ann. 317A.257 (state income tax). Some states have statutes that premise the insulation of
22 liability upon the organizations having specified amounts of liability insurance.
23

24 In 1997 Congress enacted the Volunteer Protection Act, 42 U.S.C.A. §§ 14501-14505.
25 This statute, which preempts state laws to the extent of any inconsistency with the Volunteer
26 Protection Act except to the extent the state law provides additional protections from liability,
27 insulates directors, officers, trustees and direct service volunteers of nonprofit organizations who
28 receive no compensation (other than reasonable reimbursement of expenses) from liability for
29 harm that “was not caused by willful or criminal misconduct, gross negligence, reckless
30 misconduct, or a conscious or flagrant indifference to the rights or safety of the individual
31 harmed by the volunteer.” 42 U.S.C.A. §14503(a)(3). Damages caused by operation of “a motor
32 vehicle, vessel, aircraft, or other vehicle” for which a license or insurance is required to be
33 maintained, are not covered. 42 U.S.C.A. §14503(4).
34

35 The interplay between the Federal Volunteer Protection Act and the existing state statutes
36 that provide liability protection to volunteers of UNAs is a complex matter and must be
37 determined on a state-by-state basis. *See* Subsection (b).
38

39 Finally, the liability of the managers of a UNA for breach of the duties of due care, good
40 faith and loyalty to the UNA and the ability of the governing principles of a UNA to limit or
41 eliminate this liability as far as monetary damages are concerned is a separate subject which is
42 dealt with in Section 23.
43

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

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

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

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

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

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

15 **Comment**

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

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

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

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

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

8
9 Derivation: Principle #13.
10

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

14 **Comment**
15

16 1. This section is consistent with Restatement (Second) of Judgments, §61(2), which
17 provides: “If under applicable law an unincorporated association is treated as a jural entity
18 distinct from its members, a judgment for or against the association has the same effects with
19 respect to the association and its members as a judgment for or against a corporation”
20

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

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

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

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

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

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

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

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

13 **Comment**

14
15 1. Some states have expressly addressed service of process on a nonprofit association in
16 court rules or by statute. Those states may wish to continue their rules and so should not adopt
17 this section. For this reason this section is bracketed.

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

23
24 Derivation: Principle #17.
25

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

29 **Comment**

30
31 This provision reverses the common law rule of partnerships, which courts often
32 extended to unincorporated nonprofit associations. Uniform Partnership Act (1914) §§29 and
33 31(4). This Act's entity approach requires this change to the old common law rule. *See* Uniform
34 Partnership Act (1997) §§603(a) 701, and 801.

35
36 Derivation: Principle #14.
37

1 authority to bind is not solely because of the member’s status as a member.
2

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

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

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

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

15 (2) select and dismiss a manager;

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

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

20 (5) dissolve under Section 28 or merge under Section 30;

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

22 (7) determine the policy and purposes of the association; or

23 (8) do any other act or exercise a right requiring action by members permitted by the
24 governing principles.

25 **Comment**

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

1 4(b).

2

3 Derivation: Principle #26.

4

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

6 **REQUIREMENTS.**

7 (a) Unless the governing principles otherwise provide:

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

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

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

14 **Comment**

15

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

25

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

33

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

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

7
8 Derivation: Principle #26.
9

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

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

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

16 **Comment**

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

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

31 Derivation: Principle #31.
32

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

3 **Comment**

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

10
11 Derivation: Principle #36.

12
13
14 **SECTION 21. MEMBERSHIP INTEREST NOT TRANSFERABLE.** Except as
15 otherwise provided in the governing principles, a member's interest or any right under the
16 governing principles is not transferable.

17 **Comment**

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

25
26 Derivation: Principle #37.

27
28 **SECTION 22. SELECTION OF MANAGERS; MANAGEMENT RIGHTS OF**
29 **MANAGERS.** Except as otherwise provided in this [act] or the governing principles:

30 (1) the members of an association may select the manager, or managers;

31 (2) a manager may be a member of the association;

32 (3) if no manager is selected, all members are managers;

33 (4) each manager has equal rights in the management and conduct of the association's
34 activities;

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

3 (6) a difference among managers is decided by a majority of the managers.

4 **Comment**

5
6 1. “Manager” is a defined term. *See* Section 2(3).
7

8 2. The default rule is all members are managers. In UNAs such as churches with large
9 numbers of members, this default rule will rarely be applicable because the governing principles
10 will in most situations provide a selection process for managers.
11

12 3. Subsections (b)(each manager has equal management rights), (c)(managers manage the
13 UNA’s activities), and (d)(differences between the managers are resolved by majority vote) are
14 consistent with the rights of general partners in a partnership and the managers of a limited
15 liability company. *See* Uniform Partnership Act (1997) §401; Revised Uniform Limited
16 Liability Company Act (2006) §407.
17

18 4. The rules in this Section are default rules that can be varied by a UNA’s governing
19 principles. The intent is to allow maximum flexibility. The UNA’s governing principles can
20 provide for any type of managerial structure the UNA wants to have. Choices range from a
21 traditional board of directors or board of trustees, to third parties who manage the UNA under a
22 contract. The managerial responsibilities can be split between the various managers (*e.g.*, one
23 manager in charge of finances, another in charge of programs). Members who are also managers
24 will have a dual status and their duties and liabilities will be based on the capacity in which they
25 are acting at the time an action (or omission) takes place.
26

27 Derivation: Principles #s 28 and 29.
28

29 **SECTION 23. DUTIES OF MANAGERS.**

30 (a) A manager owes to the unincorporated nonprofit association and to its members the
31 duties of loyalty, care, and good faith.

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

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

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

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

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

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

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

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

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

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

20 (3) an intentional violation of criminal law;

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

22 (5) improper distributions.

1 **Comment**

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

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

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

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

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

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

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

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

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

1 **Comment**

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

8
9 2. The use of proxies in manager meetings will be determined by other applicable law.
10 *See* Section 3(a). As a general rule, directors or other persons performing managerial
11 responsibilities may, consistent with a UNA’s governing principles, delegate one or more duties
12 to another person, but they are not authorized to give another person a proxy to vote on a matter.

13
14 Derivation: Principle #30.
15

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

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

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

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

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

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

4 **Comment**

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

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

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

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

19 (b) An unincorporated nonprofit association may:

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

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

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

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

28 **Comment**

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

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

8 Derivation: Principle #5.
9

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

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

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

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

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

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

9 **Comment**

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

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

27 Derivation: Principle #34.
28

29 **SECTION 28. DISSOLUTION.**

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

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

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

1 upon approval by the members;

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

5 (4) by court order.

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

8 **Comment**
9

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

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

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

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

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

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

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

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

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

1 (B) in accordance with the association’s governing principles; and in the absence
2 of applicable governing principles, to the current members of the association per capita or as the
3 current members direct; or

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

6 **Comment**

7
8 This Section sets out the rules for distribution of UNAs assets after its affairs have been
9 wound up. It is derived from the California Unincorporated Nonprofit Association statute. *See*
10 Calif. Corp. Code §18410.

11 Derivation: Principle #39.
12
13

14 **SECTION 30. MERGERS.**

15 (a) In this section:

16 (1) “Constituent organization” means an organization that is merged with one or
17 more other organizations including the surviving organization.

18 (2) “Disappearing organization” means a constituent organization that is not the
19 surviving organization.

20 (3) “Organization” means an unincorporated nonprofit association, a general
21 partnership, including a limited liability partnership, limited partnership, including a limited
22 liability limited partnership, limited liability company, business or statutory trust, corporation, or
23 any other legal or commercial entity having a statute governing its formation and operation. The
24 term includes a for-profit or nonprofit domestic or foreign organization.

25 (4) “Surviving organization” means an organization into which one or more other
26 organizations are merged.

27 (b) An unincorporated nonprofit association may merge with any organization that is

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

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

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

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

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

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

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

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

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

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

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

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

6 (A) if a constituent organization is required to give notice to or obtain the
7 approval of a governmental agency or officer in order to be a party to a merger, when the notice
8 has been given and the approval has been obtained; and

9 (B) if the surviving organization:

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

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

16 (d) When a merger becomes effective:

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

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

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

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

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

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

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

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

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

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

18 (e) Property held for a charitable purpose under the law of this state by a domestic or
19 foreign organization immediately before a merger under this section becomes effective may not,
20 as a result of the merger, be diverted from the objects for which it was given, unless, to the extent
21 required by or pursuant to the law of this state concerning cy pres or other law dealing with
22 nondiversion of charitable assets, the organization obtains an appropriate order of [name of
23 court] [the attorney general] specifying the disposition of the property.

1 (f) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
2 donation, subscription, or conveyance that is made to a disappearing organization and that takes
3 effect or remains payable after the merger inures to the surviving organization. A trust
4 obligation that would govern property if transferred to the disappearing organization applies to
5 property that is transferred to the surviving organization under this section.

6 **Comment**

7
8 1. This Section authorizes a UNA to merge into another UNA or into another
9 organization, assuming the law governing the other organization authorizes a merger with a
10 UNA; and then sets forth the requirements for the merger—the plan of merger (Subsection
11 (c)(2)); approval of the merger (Subsections (c)(3) and (4)); compliance with all applicable laws
12 (Subsections (c)(1) and (5); and the legal effect of the merger (Subsection (d)). The
13 requirements in this Section are consistent with merger provisions of other business entity laws.
14 The Uniform Limited Liability Act (2006) Sections 1001-09 were used as a guide with the
15 following modifications: (1) majority vs. unanimous vote for approval, and (2) no filing required
16 if all the entities involved are UNAs.

17 2. Subsections (e) and (f) prevent property held in trust or for charitable purposes before
18 the merger from being diverted from purposes as a result of the merger.

19 Derivation: Principle #40. Note: Principle #40 calls for conversion as well as merger
20 provisions. Conversion provisions are not, however necessary. A UNA can organize a new
21 entity and merge into it, or merge another type of entity into the UNA, thereby achieving the
22 same result as a conversion.

23 **[SECTION 31. TRANSITION CONCERNING REAL AND PERSONAL** 24 **PROPERTY.**

25 (a) If, before [the effective date of this [act]], an estate or interest in property was by
26 terms of a transfer purportedly transferred to an unincorporated nonprofit association but under
27 the law of this state the estate or interest did not vest in the association, or in one or more persons
28 on behalf of the association under subsection (b), on [the effective date of this [act]] the estate or
29 interest vests in the association, unless the parties to the transfer have treated the transfer as
30 ineffective.
31

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

7 **Legislative Note:**

8
9 *1. The initial common law rule was that a purported transfer of property to an*
10 *unincorporated nonprofit association totally failed as the association was not a legal entity. If a*
11 *state currently has that rule, it should adopt Subsection (a). If, on the other hand, its rule is that*
12 *title does not pass to the association in its name but passes instead to a fiduciary, such as its*
13 *officers, to hold the property for the benefit of the members, a state should adopt Subsection (b).*
14

15 *If a state has by statute made transfers effective to some classes of nonprofit associations*
16 *but not all, it should probably adopt both Subsections (a) and (b). On the other hand, if a state*
17 *has made all transfers to all unincorporated nonprofit associations effective, it does not need*
18 *Section 31.*

19
20 *2. Section 31 brings to fruition the parties' expectations that previous law frustrated.*
21 *Inasmuch as the common law did not consider an unincorporated nonprofit association to be a*
22 *legal entity, it could not acquire property. A gift of real or personal property thus failed.*
23 *Reference to the transfer as "purportedly" made identifies the document of transfer as one not*
24 *effective under the law. Subsection (a) gives effect to the gift. However, if parties were informed*
25 *about the common law they may have treated the gift as ineffective. In that case, the final clause*
26 *of Subsection (a) provides that the gift does not become effective when this Act takes effect. The*
27 *unless clause would apply, for example, if the residual beneficiaries of the donor's will, knowing*
28 *that the devise of Blackacre to the nonprofit association was ineffective under the law, continued*
29 *to use Blackacre as their summer home with the approval and acquiescence of members and*
30 *representatives of the nonprofit association.*

31
32 *3. Section 31 is not a retroactive rule. It applies to the facts existing when this Act takes*
33 *effect. At that time Subsection (a) applies to a purported transfer of property that under the law*
34 *of the jurisdiction that could not be given effect at the time it was made. The first alternative*
35 *belatedly makes it effective – effective when this Act takes effect and not when made. The*
36 *practical result of this difference is that when the purported transfer is effective, the transfer is*
37 *subject to interests in the property that came into being in the interim. The nonprofit*
38 *association's interest is subject, for example, to a tax or judgment lien that became effective in*
39 *the interim. An intervening transfer by the initial transferor may simply be evidence that the*
40 *"parties had treated the transfer as ineffective." If so, Alternative 1 by its terms does not vest*

1 *ownership in the nonprofit association.*

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

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

20
21 **SECTION 32. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

22 applying and construing this uniform act, consideration must be given to the need to promote
23 uniformity of the law with respect to its subject matter among states that enact it.

24 **SECTION 33. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

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

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

32 **Comment**

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

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

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

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

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

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

38 Derivation: Principle #15.

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

41 _____.

42 **Comment**
43

1 This Act is not a comprehensive revision of the law of unincorporated nonprofit
2 associations. It is, however, designed to apply to all unincorporated nonprofit associations to the
3 extent of its coverage.
4

5 Many states have a patchwork of law relating to these associations. Some laws apply to a
6 specific kind of association, such as a denominational church or medical society. See, for
7 example, California Corporations Code, Title 3, Unincorporated Associations, Section 21200
8 (West 1991) (County and Regional Medical Societies); Minn. Stat. Ann. Section 315.01 et seq.
9 (West 1992) (religion societies). Other law deals with a very specific subjects, such as legal
10 protection of an association's insignia. Some go beyond a subject's treatment in this Act, such as
11 the recently enacted charitable immunity and liability acts that relieve individuals acting for an
12 association from liability for simple negligence.
13

14 In preparing a bill for the enactment of this Act careful attention should be given to
15 determining the appropriate relationship of this Act to existing statutes. It may be wise to repeal
16 expressly certain laws and to specify that certain others are not repealed. While it is unusual to
17 include a provision that certain statutes are not repealed, doing so in this situation will relieve
18 courts of difficult questions of repeal by implication.
19

20 **SECTION 36. EFFECTIVE DATE.** This [act] takes effect _____.

21 **Comment**

22
23 Unless a jurisdiction's usual effective date rule provides little time for affected parties to
24 learn of a new law, a delayed effective date is probably not necessary.
25

26 This Act provides an unincorporated, nonprofit association and its members with a legal
27 structure that conforms to the expectations of many of them. Therefore, the need by UNAs for
28 additional time to revise procedures and forms to conform to a significant change in the law is
29 not necessary. However, this Act materially changes the common law rules regarding third
30 parties, particularly creditors of nonprofit associations. Anecdotal evidence suggests that many
31 creditors place little reliance on their rights against members in extending credit. If they have
32 any reservations about the creditworthiness of a nonprofit association they obtain guarantees
33 from creditworthy members or insist on cash. To the extent that this is true, no change in credit
34 policies is needed and so no extra planning time is needed.