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NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association approves the Revised Uniform Unincorporated
- 2 Nonprofit Association Act (2008), promulgated by the National Conference of Commissioners
- 3 on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the
- 4 specific substantive law suggested therein.

REPORT

Revised Uniform Unincorporated Nonprofit Association Act (2008)

There are thousands of unincorporated nonprofit associations in the United States. They range from local neighborhood associations to national associations with large memberships. Their members may be individuals, corporations, other legal entities or a mix. They are all associations that for one reason or another cannot or have not chosen to become a nonprofit corporation.

Under the traditional common law aggregate theory, these associations are not viewed as legal entities but merely as an aggregate of individuals. In the United States, unincorporated nonprofit associations are governed by a hodgepodge of common law principles and statutes governing some of their legal aspects. In an effort to address some of the legal problems that arose under the common law's treatment of such associations, the Uniform Law Commission promulgated the Uniform Unincorporated Nonprofit Association Act (UUNAA) in 1996, which has since been adopted by 12 states. However UUNAA deals with only a limited number of issues - tort and contract liability of members, owning and conveying of property and suits by and against an unincorporated nonprofit association. The Uniform Law Commission decided that UUNAA needed to be updated and promulgated the Revised Uniform Unincorporated Nonprofit Association Act (RUUNAA) in 2008.

RUUNAA (2008) is a comprehensive revision of the UUNAA (1996). While both acts are designed to address the legal problems that may arise in conjunction with an unincorporated nonprofit association, the RUUNAA is more thorough. This is particularly important because an unincorporated association, like a general partnership, is a default organization that can arise without a formal filing or registration.

RUUNAA addresses the following important issues:

- **The definition of the types of organizations covered.** RUUNAA governs all unincorporated nonprofit associations that are formed and operate in a state that adopts the Act. An unincorporated nonprofit association is a nonprofit organization that is not a charitable trust, a nonprofit corporation, or any other type of association that is authorized to engage in nonprofit activities and is organized under other statutory law.
- **The relation of the Act to other existing laws.** Examples of other laws that apply to unincorporated nonprofit associations are general principles of contracts, agency, fraud, estoppel, the priority of written provisions of an agreement over prior inconsistent oral provisions or subsequent oral amendments (and any exceptions), civil and criminal procedural rules, and rules for enforcing judgments. RUUNAA supplements the applicable state laws and if a conflict exists, then other applicable state law applies.
- **The recognition that an unincorporated nonprofit association is a legal entity and the legal implications flowing from this status, including the ability of an unincorporated nonprofit association to own and dispose of property and to sue and be sued in its own name.** An unincorporated nonprofit association is a legal entity distinct from its members and managers. It has the same powers as an individual to do all things necessary or convenient to

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carry on its purposes, including owning and transferring property. It may sue or be sued in its own name. An unincorporated nonprofit association may engage in profit-making activities, with restrictions on how those profits are used, and it may exist in perpetuity.

- **The contract and tort liability of an unincorporated nonprofit association and its members and managers.** A debt, obligation, or other liability of an unincorporated nonprofit association, whether arising from a contract or tort, is solely that of the association and does not become that of its members or managers.
- **Internal governance, fiduciary duties, and agency authority.** RUUNAA makes it clear that a person's status as a member does not by itself make that person an agent of the unincorporated nonprofit association. The Act establishes default rules that can be varied by the unincorporated nonprofit association governing principles, which govern the relation of the members and managers to each other and to the unincorporated nonprofit association. Members of an unincorporated nonprofit association do not have fiduciary duties to the unincorporated nonprofit association or other members by virtue of their status as members. They do however have an obligation of good faith and fair dealing. Only individuals exercising managerial duties in an unincorporated nonprofit association have fiduciary duties.
- **Dissolution and merger.** RUUNAA provides default rules for dissolution of the unincorporated nonprofit association by either a majority vote of the members or of the managers. The Act also sets out rules for distribution of assets after its affairs have been wound up. RUUNAA authorizes an unincorporated nonprofit association to merge into another organization, assuming the law governing the other organization authorizes a merger with an unincorporated nonprofit association.
- **Transition Concerning Real and Personal Property.** RUUNAA provides an optional section in the Act pertaining to the transfer of property. The initial common law rule was that a purported transfer of property to an unincorporated nonprofit association totally failed as the association was not a legal entity. If a state has that rule, it should adopt this optional section in sum or parts.

RUUNAA is the result of a joint project between the Uniform Law Commission, the Uniform Law Conference of Canada and the Mexican Center on Uniform Laws to create a harmonized legal framework for unincorporated nonprofit associations in the United States, Canada and Mexico. To the extent an enacting jurisdiction decides to retain statutes dealing with specific kinds of nonprofit associations, this act will supplement existing legislation. Many of the provisions of the RUUNAA are intended to be supplemented by a jurisdiction's existing law.

This Act will principally benefit the many millions of people who aggregate into thousands of unincorporated nonprofit associations and will provide important protections to community volunteers. It improves upon and expands a beneficial Act.

The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

Respectfully submitted,

Martha Lee Walters
President
National Conference of Commissioners
On Uniform State Laws
February, 2009

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GENERAL INFORMATION FORM

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: Michael Kerr, Legislative Director

1. Summary of Recommendation(s).

The National Conference of Commissioners on Uniform State Laws requests approval of the Revised Uniform Unincorporated Nonprofit Association Act (2008) by the ABA House of Delegates. The Act was approved by the National Conference in 2008.

2. Approval by Submitting Entity.

The National Conference of Commissioners on Uniform State Laws approved it in July, 2008.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No; the prior version of the Act (1996) was not submitted to the House of Delegates.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

None known; the ABA Section of Business Law has published (most recently in 2008) a Model Nonprofit Corporations Act, but it does not appear this model has been submitted for approval by the House of Delegates. In any event, there is no conflict between the two acts – the Uniform Act covers unincorporated associations while the ABA model covers nonprofit corporations. There has been significant cooperation between the drafting committees for the two projects.

5. What urgency exists which requires action at this meeting of the House

Not Applicable

6. Status of Legislation. (If applicable.)

None. The Act has not been introduced in any state legislature as of 11-01-2008.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

The ABA Advisor for the RUUNAA was Lisa A. Runquist of the ABA Business Law and Tax Law Sections. Leon E. Irish and Karla A. Simon of the ABA Section on International Law and John H. Small of the ABA Business Law Section served as ABA Section Advisors.

The Act was referred to the International Law Section and Business Law Section for comment and co-sponsorship.

10. Contact Person (Prior to the meeting.)

John A. Sebert, Executive Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6603

Michael R. Kerr, Legislative Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6620

11. Contact Person. (Who will present the report to the House.)

Martha Lee Walters, President, National Conference of Commissioners on Uniform State Laws, Oregon Supreme Court, 1163 State St., Salem, OR. 97301.

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Revised Uniform Unincorporated Nonprofit Association Act (2008) as “an appropriate Act for those States desiring to adopt the substantive law suggested therein.”

2. Summary of the issue which the recommendation addresses

The Uniform Unincorporated Nonprofit Association Act (originally promulgated in 1996) addressed a key problem in common law – that an unincorporated association was not a separate entity, but rather was an aggregate of individuals with many characteristics of a business partnership. The 1996 Uniform Act reformed the common law in three basic areas – authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

The Revised Act improves upon its predecessor by providing additional guidance, incorporating a number of modern practices, and by eliminating potential conflicts with other bodies of law. The Revised Act extends nature of unincorporated nonprofit associations as distinct entities by allowing qualified association to exist in perpetuity where necessary or convenient to carry out its purposes. RUUNAA distinguishes itself from its predecessor in that it gives greater guidance with respect to a number of member and manager issues (meetings, duties, resignation of members and managers, quorum and notice rules, etc.). Also, RUUNAA addresses a number of financial issues such as prohibited distributions, compensation and other payments, reimbursement and indemnification, and advancement of expenses, as well as dissolution, winding up, and termination of an association.

In short, RUUNAA modernizes the 1996 Uniform Act by addressing significant internal and external issues facing unincorporated nonprofit associations today. The project was executed in close coordination with similar efforts by the Uniform Law Conferences of Canada and Mexico, so widespread adoption of the Revised Act will have the added benefit of functional cross-border harmonization.

3. Please explain how the proposed policy position will address the issue.

Approval of Revised Uniform Unincorporated Nonprofit Association Act (2008) by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.