

1-1-2006

Chapter 116: Statutory Guidance for Unincorporated Associations

Zebulon J. Young

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

Part of the [Business Commons](#), and the [Legislation Commons](#)

Recommended Citation

Zebulon J. Young, *Chapter 116: Statutory Guidance for Unincorporated Associations*, 37 MCGEORGE L. REV. 223 (2006).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol37/iss2/11>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Chapter 116: Statutory Guidance for Unincorporated Associations

Zebulon J. Young

Code Sections Affected

Corporations Code §§ 18003, 18008, 18300, 18310, 18320, 18330, 18340, 18350, 18360, 18370, 18380, 18390, 18400, 18410, 18420, 18620 (new); §§ 18005, 18010 (amended).
SB 702 (Ackerman); 2005 Stat. Ch. 116.

TABLE OF CONTENTS

I. INTRODUCTION.....	224
II. LEGAL BACKGROUND.....	225
A. <i>Internal Governance</i>	226
1. <i>Termination or Suspension of Membership</i>	226
2. <i>Member Voting</i>	227
3. <i>Amendment of Governing Documents</i>	227
4. <i>Merger</i>	228
5. <i>Dissolution</i>	229
B. <i>Nonprofit Association Liability</i>	229
III. CHAPTER 116.....	230
A. <i>Internal Governance</i>	230
1. <i>Termination or Suspension of Membership</i>	230
2. <i>Member Voting</i>	231
3. <i>Amendment of Governing Documents</i>	232
4. <i>Merger</i>	232
5. <i>Dissolution</i>	233
B. <i>Nonprofit Association Tort Liability</i>	233
IV. ANALYSIS OF CHAPTER 116.....	234
A. <i>Scope and Applicability</i>	234
B. <i>Comparison to Prior Legal Precedent</i>	235
1. <i>Suspension, Expulsion, and Termination of Membership</i>	235
2. <i>Amendment of Governing Documents</i>	236
3. <i>Dissolution</i>	237
V. CONCLUSION.....	237

I. INTRODUCTION

In 1964, the members of the Santa Clara County Sheriff's Benefit Association elected to dissolve their association and distribute its remaining property.¹ The motion passed with the approval of more than two-thirds of the members present at the regular meeting.² However, responding to the complaint of a dissenting member of the association, the Court of Appeals for the First District of California found the vote to be invalid.³ Established precedent held that where no method for dissolution is provided in the association's governing documents, dissolution of an unincorporated association requires the unanimous consent of the members.⁴ In the context of internal governance of unincorporated associations, this case is illustrative of an area of California law historically characterized by sparse statutory provisions and scattered judicial decisions.⁵

Under the California Corporations Code ("Code"), the label "unincorporated association"⁶ identifies a broadly inclusive category of organizations: running the gamut from large, legally sophisticated associations to small, informal groups, often without legal counsel.⁷ While the Code provided comprehensive regulation for particular types of unincorporated associations,⁸ prior to enactment of Chapter 116, general rules for unincorporated associations were often found only in case law, if at all.⁹ Large associations with legal counsel were generally able to cope

1. *Holt v. Santa Clara County Sheriff's Benefit Assoc.*, 250 Cal. App. 2d 925, 927-28, 59 Cal. Rptr. 180, 182 (1967).

2. *Id.*

3. *Id.* at 930, 59 Cal. Rptr. at 184.

4. *Id.* at 929-30, 59 Cal. Rptr. at 183-84 ("Where no provision is made in the association's constitution or by-laws as to the method of dissolution, . . . an unincorporated association may only be dissolved by the unanimous consent of its members, by the decision of some superior organization, or by a court decree.") (citing *Subsidiary High Court of the Ancient Order of Foresters v. Pestarino*, 41 Cal. App. 712, 714, 183 P. 297, 297-98 (1919)).

5. See Letter from Larry Doyle, Chief Legis. Counsel, Bus. Law Section, State Bar of Cal., to Governor Arnold Schwarzenegger, State of Cal. (July 21, 2005) (on file with the *McGeorge Law Review*) (expressing the support of the Nonprofit & Unincorporated Organizations Committee of the Business Law Section of the State Bar of California, for SB 702).

6. CAL. CORP. CODE § 18035(a) (West 2006) (defining an unincorporated association as an "unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not").

7. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 4 (Apr. 19, 2005) (describing the range of unincorporated associations); *Unincorporated Association Governance*, 34 CAL. L. REVISION COMM'N REPS. 231, 235 (2004) (listing social clubs, charitable organizations, mutual aid societies, homeowners associations, political groups, and religious societies as examples of entities classified as unincorporated associations).

8. See *Unincorporated Association Governance*, *supra* note 7, at 235 (referring to the regulation of partnerships and limited liability companies under the Code, sections 16100 through 16962 and 17000 through 17655 respectively).

9. See *id.* ("[T]here are no rules governing unincorporated associations generally."); see also SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 2 (Apr. 19, 2005) (describing the general rules applicable to unincorporated associations as "undefined in law"). But see, e.g., *Holt*, 250 Cal. App. 2d 925, 59 Cal. Rptr. 180 (applying common law rules for dissolution); *Potvin v. Metropolitan Life Insurance Co.*, 22 Cal. 4th 1060, 95 Cal. Rptr. 2d 496 (2000) (applying common law rules for expulsion of members).

with the inadequacies in statutory guidance.¹⁰ However, it was not uncommon for small, informal associations to find themselves unexpectedly subjected to “burdensome common-law procedures.”¹¹ Worse yet, poor organizational structure and ad hoc governance jeopardized the stability of these associations.¹²

Based on the recommendations of the California Law Revision Commission (“Commission”),¹³ the California Legislature enacted Chapter 116 to improve the accessibility of the law governing unincorporated associations.¹⁴ Chapter 116 promulgates general rules for the governance of unincorporated associations¹⁵ and clarifies the tort liability of members, directors, officers, and agents of nonprofit associations.¹⁶

II. LEGAL BACKGROUND

Chapter 116 is the second step in an effort to reorganize and revise Title 3 of the California Corporations Code (“Title 3”), which is the title governing unincorporated associations.¹⁷ The revision process began in 2004 with the enactment of Chapter 178.¹⁸ Chapter 178 established a statutory framework for provisions generally applicable to unincorporated associations¹⁹ and promulgated several general provisions within that framework.²⁰ Among those provisions were rules for distribution of assets upon dissolution of an unincorporated

10. See Letter from Larry Doyle to Governor Arnold Schwarzenegger, *supra* note 5 (noting that many “larger and adequately advised” associations adopted detailed governing documents to deal with the inadequacies).

11. See *Unincorporated Association Governance*, *supra* note 7, at 235 (referencing *Holt*, 250 Cal. App. 2d 925, 59 Cal. Rptr. 180, as a case where an unincorporated association was unexpectedly subjected to a burdensome, common law procedure).

12. See ASSEMBLY COMMITTEE ON BANKING AND FINANCE, COMMITTEE ANALYSIS OF SB 702, at 3 (June 20, 2005) (explaining that, in the absence of statutory guidance, “[t]he founders of [unincorporated associations] may not anticipate the need to provide their own rules in the association’s [governing] documents,” and that, in the face of uncertainty, governing on an ad hoc basis “may cast the legitimacy of a governance action into doubt and could lead to litigation”).

13. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 4 (June 28, 2005); *Nonprofit Association Tort Liability*, 34 CAL. L. REVISION COMM’N REPS. 257 (2004).

14. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 4 (Apr. 19, 2005) (declaring the “importan[ce] that the law governing an unincorporated association be clear and understandable to a layperson”).

15. See discussion *infra* Part III.A. It should be noted from the outset that the general rules promulgated by Chapter 116 are of limited applicability. See discussion *infra* Part IV.A.

16. See discussion *infra* Part III.B; see also CAL. CORP. CODE § 18020(a) (West 2006) (defining nonprofit association as a subcategory of unincorporated associations “with a primary common purpose other than to operate a business for profit”).

17. See ASSEMBLY COMMITTEE ON BANKING AND FINANCE, COMMITTEE ANALYSIS OF SB 702 at 4 (June 20, 2005) (noting SB 1746 as prior legislation); ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1746, at 1 (June 23, 2004) (describing initial efforts to reorganize and revise the Code).

18. Letter from Larry Doyle to Governor Arnold Schwarzenegger, *supra* note 5.

19. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1746, at 1-2 (July 2, 2004).

20. *Id.* at 2.

association,²¹ rules governing property ownership by an unincorporated association,²² and rules related to the liability of unincorporated associations and their members, directors, officers, and agents.²³

Despite the substantial contribution to the development of general statutory guidelines for unincorporated associations, made by Chapter 178, the Code still did not address several fundamental issues related to unincorporated associations.²⁴ Prior to the enactment of Chapter 116, unincorporated associations were still governed by scattered case law and sparse statutory provisions.²⁵ The following discussion examines the legal precedents that existed prior to the enactment of Chapter 116.

A. Internal Governance

1. Termination or Suspension of Membership

Prior law did not designate the events that would terminate membership in an unincorporated association or the rights and obligations of a member after termination.²⁶ Consequently, it was unclear whether a person continued to be entitled to the benefits or subject to the duties of membership following an event that would logically sever the relationship between the individual and the association.²⁷ For instance, it might have been unclear whether a resigning member could still be required to pay membership dues.

Although prior law did not designate the events that would terminate membership in an association, the law did address the rights of a member facing suspension or expulsion. Under prior case law, a person facing suspension or expulsion from an unincorporated association could claim a right to fair procedure.²⁸ This common law right was limited to cases where termination of membership would affect an “important, substantial economic interest”²⁹ and

21. *Id.*; CAL. CORP. CODE § 18130 (West 2006).

22. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1746, at 2 (July 2, 2004); CAL. CORP. CODE §§ 18100-35.

23. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1746, at 2 (July 2, 2004); CAL. CORP. CODE §§ 18605-40.

24. *See* Letter from Larry Doyle to Governor Arnold Schwarzenegger, *supra* note 5 (pointing out inadequacies in the law after the passage of Chapter 178).

25. *Id.*

26. *Unincorporated Association Governance*, *supra* note 7, at 238; *cf.* CAL. CORP. CODE § 16601 (providing for the dissociation of a partner from a partnership).

27. *Unincorporated Association Governance*, *supra* note 7, at 238.

28. *See* Potvin v. Metropolitan Life Ins. Co., 22 Cal. 4th 1060, 1066-70, 95 Cal. Rptr. 2d 496, 500-03 (2000) (summarizing the common law development of the right to fair procedure).

29. *Id.* at 1070-72, 95 Cal. Rptr. 2d at 503-05 (limiting the scope of the common law right to cases where termination of membership affects an “important, substantial economic interest” and identifying the involvement of “private entit[ies] affecting the public interest” as a significant factor in cases applying the right).

required the decision-making of a private organization to be both “substantively rational and procedurally fair.”³⁰ As such, an unincorporated association’s procedure for suspension or expulsion of a member was required to include charges, notice, and a hearing—a mandatory requirement that could not be modified by the internal rules of the association.³¹

2. Member Voting

Prior law provided no default procedures or requirements for a vote of the members of an unincorporated association.³² Consequently, there was no clear standard by which a vote could be validated unless the association’s governing documents provided specific standards.³³

3. Amendment of Governing Documents

Under prior case law, amendment of the governing documents of an unincorporated association generally required the unanimous consent of all members, unless otherwise provided by the documents themselves.³⁴ This requirement was based on the court’s recognition of a contractual relationship between members of an unincorporated association, which is an agreement memorialized in the association’s governing documents.³⁵ If it would otherwise impair the obligations of this original contract, amendment of the governing documents required the unanimous consent of all members affected.³⁶ Where the documents themselves provided a method for amendment, no contractual right would be impaired by amendments conforming to that method.³⁷ Because

30. *Id.* at 1066, 95 Cal. Rptr. 2d at 500 (citing *Pinsker v. Pacific Coast Soc’y of Orthodontists*, 12 Cal. 3d 541, 550, 116 Cal. Rptr. 245, 251-52 (1974)).

31. *See Swital v. Real Estate Commissioner*, 116 Cal. App. 2d 677, 679, 254 P.2d 587, 588 (1953) (applying the rule that “[a] member of an unincorporated association may not be suspended or expelled without charges, notice and a hearing, although rules of the association make no provisions therefor[e]”).

32. *Unincorporated Association Governance*, *supra* note 7, at 239; *cf.* CAL. CORP. CODE § 602 (West 2006) (providing quorum and other standards for a vote of the shareholders in a corporation).

33. *See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702*, at 9 (Apr. 19, 2005) (describing the inadequacies in the law prior to enactment of Chapter 116).

34. *See, e.g., Hogan v. Pac. Endowment League*, 99 Cal. 248, 257, 33 P. 924, 927 (1893) (holding that unanimous approval of the members was required where an amendment to the governing documents would “impair” the original contractual obligations of an unincorporated association). *But see Power v. Sheriff’s Relief Ass’n*, 57 Cal. App. 2d 350, 351-52, 134 P.2d 827, 828 (1943) (permitting an amendment where members had consented to be bound by future changes to the governing documents).

35. *Power*, 57 Cal. App. 2d at 352, 134 P.2d at 828 (1943) (“The relationship between its individual members and a voluntary association such as the defendant is contractual in nature and is controlled by the constitution and by-laws”).

36. *Hogan*, 99 Cal. at 257, 33 P. at 927. *But see Schack v. Supreme Lodge of the Fraternal Bhd.*, 9 Cal. App. 584, 587, 99 P. 989, 991 (1908) (acknowledging the rule that an association “may not, by a subsequent change in [its] by-laws, impair the contractual rights of [its] members without their consent,” but holding that the amendment in question had not affected any such right).

37. *See Stohr v. S.F. Musical Fund Soc’y*, 82 Cal. 557, 560, 22 P. 1125, 1126 (1890) (holding that a

unanimous consent was the default rule, unincorporated associations that lacked the initial foresight to provide for amendment of their governing documents often found subsequent attempts to do so frustrated by the requirement of unanimous consent.³⁸

4. Merger

Prior law did not provide for mergers involving unincorporated associations generally.³⁹ While the Code expressly authorized several other types of business entities to merge with an unincorporated association,⁴⁰ this authorization was conditioned on independent statutory authorization for the unincorporated association to participate in such a merger.⁴¹ The code, in turn, authorized several specific types of unincorporated associations to effect a merger,⁴² but was silent on the general authority of an unincorporated association to effect a merger.⁴³ Prior law also did not provide general rules for a merger involving an unincorporated association.⁴⁴ Consequently, officers and members of unincorporated associations not governed by specific rules were often uncertain whether a merger was permissible and how to conduct such a merger.⁴⁵

member's right to benefits under the bylaws was a contract right, and was subject to change without consent, because the bylaws provided for amendment); *see also* *Valentine v. Head Camp, Pac. Jurisdiction, Woodmen of the World*, 180 Cal. 192, 198, 180 P. 2, 4-6 (1919) (holding that the members of an unincorporated association are charged with full knowledge of the articles of association and bylaws, and are bound by them). *But see* *Taboada v. Sociedad Espanola De Beneficiencia Mutual*, 191 Cal. 187, 190, 215 P. 673, 674 (1923) (holding that provisions adopted by an unincorporated association prescribing methods for amendment of a governing document are particular to that type of governing document and provisions for amendment of a constitution are not applicable to amendment of bylaws and visa versa).

38. *See Unincorporated Association Governance, supra* note 7, at 239 (indicating there were disputes over the effectiveness of an attempted amendment).

39. *Id.*

40. *See* CAL. CORP. CODE §§ 174.5, 1100, 6010, 8010 (West 2006) (authorizing a corporation, public benefit corporation, or mutual benefit association to merge with an "other business entity," which, under section 174.5, includes an unincorporated association other than a nonprofit association).

41. *See, e.g., id.* § 1113(a)(1), (3) (regarding corporations, making a merger in which an "other business entity" is a party subject to the additional requirement that the "other business entity" be authorized to effect the merger by the laws under which it is organized).

42. *Id.* § 23006 (authorizing a real estate investment trust to merge with another real estate investment trust, or a limited partnership, "provided that the merger is specifically permitted by the declarations of trust, and that procedure is detailed in those declarations"); *id.* § 15678.1 (authorizing a limited partnership to merge with another limited partnership, or "other business entity," subject to the condition that the "other business entity" be authorized to effect the merger by the laws under which it is organized).

43. *See Unincorporated Association Governance, supra* note 7, at 239 (juxtaposing the lack of general merger rules for unincorporated associations to existing rules governing the consequences of a merger and providing procedures for approval of a merger involving various other types of entities).

44. *Id.*

45. *Id.*

5. Dissolution

Under prior case law, dissolution of an unincorporated association could be accomplished by the action of a superior organization,⁴⁶ by a court order,⁴⁷ or by the consent of its members.⁴⁸ Similar to common law requirements for the amendment of governing documents, dissolution of an unincorporated association by its members required the unanimous consent of the membership, unless the governing documents of the association provided a procedure for dissolution.⁴⁹ Consequently, “a single hold-out could prevent dissolution.”⁵⁰

B. Nonprofit Association Liability

Although prior statutory law addressed many issues of liability affecting unincorporated associations in general,⁵¹ the Code was silent as to the tort liability of the officers, directors, members, and agents of nonprofit associations in particular.⁵² Under prior case law, liability for the acts or omissions of a nonprofit association could not be imposed on a member, director, officer, or agent of the association merely based on his or her status in relation to the association.⁵³ However, this limitation on liability did not immunize a member, director, officer, or agent of a nonprofit association from liability based on grounds other than mere status.⁵⁴ A member, director, officer, or agent of a nonprofit association remained liable for his or her own tortious conduct, as well as the tortious conduct of others under certain conditions.⁵⁵

46. *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925, 929-30, 59 Cal. Rptr. 180, 183 (1967).

47. *Id.* at 929-30, 59 Cal. Rptr. at 183-84 (clarifying that, as a general rule, dissolution by court order is limited to cases where the operations of the association have been discontinued).

48. *Id.*, 59 Cal. Rptr. at 183.

49. *See Unincorporated Association Governance*, *supra* note 7, at 240 (citing *Holt*, 250 Cal. App. 2d at 930, 59 Cal. Rptr. at 183-84).

50. *Id.*

51. *See generally* CAL. CORP. CODE §§ 18250, 18260, 18270 (West 2006) (limiting liability of, and enforcement of a judgment against, unincorporated associations and their members, directors, officers, and agents); *id.* §§ 18605, 18610, 18615, 18630, 18640 (limiting the liability of nonprofit associations and their members, directors, officers, and agents).

52. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 2 (Apr. 19, 2005); *see Nonprofit Association Tort Liability*, *supra* note 13 (recommending enactment of the tort liability provisions omitted from Chapter 178).

53. CAL. CORP. CODE § 18605; *Nonprofit Association Tort Liability*, *supra* note 13, at 259; SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 5 (Apr. 19, 2005); *see also* Orser v. George, 252 Cal. App. 2d 660, 670-71, 60 Cal. Rptr. 708, 715-16 (1967) (adopting the rule that “mere membership does not make all members liable for unlawful acts of other members without their participation, knowledge or approval”).

54. *Nonprofit Association Tort Liability*, *supra* note 13, at 261.

55. *Id.*; *see also* Orser, 252 Cal. App. 2d at 670-71, 60 Cal. Rptr. at 715-16 (adopting the rule that a member may be liable for “personal participation in an unlawful activity or setting it in motion”); *see also* Ruoff v. Harbor Creek Cmty. Ass'n, 10 Cal. App. 4th 1624, 1630-31, 13 Cal. Rptr. 2d 755, 760 (1992) (holding that

III. CHAPTER 116

In order to make the law governing unincorporated associations more accessible to small, informal groups, without legal counsel,⁵⁶ Chapter 116 first, promulgates general provisions addressing fundamental matters of governance, and second, clarifies the tort liability of members, officers, directors, and agents of nonprofit associations. Although some of these provisions impose mandatory standards or procedures upon unincorporated associations, most act as default rules—yielding to the governing principles of the unincorporated association.⁵⁷

A. *Internal Governance*1. *Termination or Suspension of Membership*

Chapter 116 provides default rules related to termination of membership, and the obligations of a terminated member. Unless otherwise designated by an unincorporated association's governing principles, membership in the association is terminated upon a member's resignation, expulsion, or death; upon expiration of a fixed term membership without renewal; or upon termination of the legal existence of a member that is not a natural person.⁵⁸ Termination of membership does not relieve a member of preexisting obligations to the association, nor does termination limit the rights of the association to enforce a terminated member's obligations or to seek damages for the breach of such obligations.⁵⁹

In cases where membership includes a property right, or where expulsion or suspension would affect an "important, substantial economic interest,"⁶⁰ Chapter 116 mandates adherence to minimum standards of procedural fairness in the

members of an unincorporated homeowners association who own property as tenants in common may be liable in tort for an injury that results from negligent maintenance of that property); *Steuer v. Phelps*, 41 Cal. App. 3d 468, 472, 116 Cal. Rptr. 61, 63 (1974) (holding individual members of an unincorporated church group vicariously liable for the negligent operation of a motor vehicle where they were all found to have "participated directly" in entrusting the vehicle to the driver).

56. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 4 (Apr. 19, 2005) (declaring the "importan[ce] that the law governing an unincorporated association be clear and understandable to a layperson"); *Unincorporated Association Governance*, *supra* note 7, at 236 (describing the nature of the default and mandatory rules promulgated by Chapter 116).

57. See CAL. CORP. CODE § 18010 (amended by Chapter 116) (defining "governing principles"). Governing principles are:

[T]he principles stated in an unincorporated association's governing documents. If an association has no governing documents or the governing documents do not include a provision governing an issue, the association's governing principles regarding that issue may be inferred from its established practices. For the purpose of this section, 'established practices' means the practices used by an unincorporated association without material change or exception during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence. *Id.*

58. *Id.* § 18310(a) (enacted by Chapter 116).

59. *Id.* § 18310(b)-(c); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 6 (Apr. 19, 2005).

60. CAL. CORP. CODE § 18320(a).

expulsion or suspension of a member.⁶¹ However, the procedural fairness required under Chapter 116 does not apply to unincorporated associations that have a religious purpose.⁶² Chapter 116 outlines a procedure that satisfies the requirement of fairness,⁶³ but also provides that a court may find the requirement to be satisfied by alternative procedures.⁶⁴

Chapter 116 provides that in the case of a contested expulsion or suspension, a member may challenge the action of the unincorporated association, in court, within one year.⁶⁵ Subject to minor limitations, a court may grant any relief it determines is equitable under the circumstances.⁶⁶

2. Member Voting

Chapter 116 provides default rules for member voting, which yield to other statutory provisions and to the governing principles adopted by the unincorporated association.⁶⁷ Unless the association's governing principles provide otherwise, a vote by the members may be conducted at either a member meeting or by written ballot and requires an affirmative majority of the votes cast to approve a matter.⁶⁸ The default rules also set quorum requirements⁶⁹ and call for advance notice of a member vote.⁷⁰ The default voting procedures provided by Chapter 116 apply any time a vote is called, unless they are overruled by more specific procedures either provided by statute or adopted by an association.⁷¹

61. *Id.* § 18320(b), (f) (requiring that where procedural fairness is called for, an expulsion or suspension must be conducted in "good faith and in a fair and reasonable manner," but limiting application of this section to the procedure employed in expulsion or suspension).

62. *Id.* § 18320(a). Courts have displayed a general reluctance to become entangled in issues related to the governance of religious associations; *see, e.g.,* *Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar*, 179 F.3d 1244, 1247-48 (1999) ("The First Amendment not only precludes a civil court from determining for itself who is entitled to hold religious office, but also precludes it from determining whether the religious organization followed its own ecclesiastical rules in anointing one of its leaders.").

63. CAL. CORP. CODE § 18320(c) (stating that a procedure is fair and reasonable if it (i) is included in the unincorporated associations governing documents, (ii) provides sufficient notice of the pending expulsion or suspension, including a statement of the reasons for the action, and (iii) provides the member an opportunity to be heard).

64. *Id.* § 18320(b).

65. *Id.* § 18320(e).

66. *Id.* (limiting the court's power to set aside a vote of the membership or board of an unincorporated association to cases where the court determines that the expulsion or suspension was in bad faith and for the purpose of affecting the outcome of the subsequent vote).

67. *Id.* § 18330.

68. *Id.* § 18330(a) (requiring that a quorum be present for a vote at a member meeting or that the number of votes cast by written ballot equals or exceeds the number required for a quorum).

69. *Id.* § 18330(d)-(e) (defining a quorum as one-third of the total number of votes that can be cast by the members).

70. *Id.* § 18330(b)-(c) (addressing notice requirements, including content and method of delivery).

71. *Id.* § 18330.

3. Amendment of Governing Documents

Chapter 116 provides a default procedure for amending an unincorporated association's governing documents.⁷² Unless the association's governing principles provide otherwise, its governing documents may be amended by a vote of the members.⁷³ Section 18340 does not provide specific procedures or standards for such a vote.⁷⁴

4. Merger

Chapter 116 provides express authorization for an unincorporated association to merge into any one of several listed entities, each more structured than an unincorporated association.⁷⁵ However, Chapter 116 withholds authorization for an unincorporated association to merge with another unincorporated association⁷⁶ or for another entity to merge into an unincorporated association.⁷⁷

Chapter 116 also provides procedures for the execution of a merger⁷⁸ and dictates the consequences of a merger.⁷⁹ Unless otherwise provided for in the association's governing documents, a merger must be approved by using the same procedure for the amendment of the association's governing documents.⁸⁰ Special approval of the members is required if the merger would cause the members to become individually liable for an obligation of any of the merging

72. *Id.* § 18340.

73. *Id.*

74. *Compare id.* (requiring a "vote of the members") with *id.* § 18410(b) (requiring, specifically, an "affirmative vote of a majority of the voting power" to approve a motion to dissolve an unincorporated association).

75. *Id.* § 18360 (authorizing an unincorporated association to merge into a corporation, general partnership, limited partnership, or limited liability company).

76. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 3 (Apr. 19, 2005). *Compare* CAL. CORP. CODE § 18360, with SB 702, 2005-2006 Leg., Reg. Sess. (Cal. As amended on Mar. 29, 2005, but not enacted) (striking authorization for a merger between two unincorporated associations).

77. *See* Letter from Larry Doyle to Governor Arnold Schwarzenegger, *supra* note 5 (questioning the Legislature's decision to withhold authorization for a more structured entity to merge into an unincorporated association).

78. *See* CAL. CORP. CODE § 18370 (including requirements for an agreement of merger, approval of a merger agreement, amendment of a merger agreement, and abandonment of a merger agreement).

79. *See id.* § 18380 (specifying the consequences of a merger with respect to the rights and obligations of the entities).

80. *Id.* § 18370(b). Note that here Chapter 116 yields to the association's governing *documents*, rather than yielding to the association's governing *principles*. *Id.* *Compare id.* with *id.* § 18310(a) (yielding to the governing *principles* of an unincorporated association for matters related to termination of membership).

entities.⁸¹ Finally, Chapter 116 provides for the disposition of property owned by the disappearing entity upon completion of the merger.⁸²

5. *Dissolution*

Chapter 116 provides that an unincorporated association may be dissolved in any of four ways: (1) by the method provided in the association's governing documents;⁸³ (2) by a majority vote of the voting power if no method is provided in the governing documents;⁸⁴ (3) by the board if the association's operations have been discontinued for three years;⁸⁵ or (4) by a court order if the association's operations have been discontinued.⁸⁶ Chapter 116 also provides that upon dissolution the board or members of the associations must promptly wind up the affairs of the association, which includes paying known debts and distributing remaining assets.⁸⁷

B. *Nonprofit Association Tort Liability*

Chapter 116 clarifies that while a member, director, officer, or agent of a nonprofit association is not liable for the torts of the association or its members simply by virtue of a relationship with the association, liability may attach based on express assumption, tortious conduct, or any other common law and statutory ground.⁸⁸ Chapter 116 does not preclude any existing common law basis for liability.⁸⁹

81. *See id.* 18370(c) (requiring approval by all members if the merger agreement would cause the members to become individually liable for an obligation of any of the merging entities, unless the agreement of merger provides for purchase by the surviving entity of the membership interest of a member who votes against approval of the merger agreement).

82. *See id.* §§ 18390, 18400 (addressing the transfer of title to real property, the future receipt of a bequest, devise, gift, grant, or promise, and the trust obligations associated with such property).

83. *Id.* § 18410(a).

84. *Id.* § 18410(b); *see also id.* § 18330(e) (defining "voting power" as "the total number of votes that can be cast by members on a particular issue at the time the member vote is held").

85. *Id.* § 18410(c) (allowing dissolution by the board or, "if the association has no incumbent board, by the members of its last preceding incumbent board").

86. *Id.* § 18410(d).

87. *Id.* § 18420; SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 702, at 3 (Apr. 19, 2005); *see also id.* § 18130 (West 2006) (providing for the distribution of assets in the process of winding up the affairs of the association).

88. CAL. CORP. CODE § 18620 (enacted by Chapter 116).

89. *Nonprofit Association Tort Liability*, *supra* note 13, at 262.

IV. ANALYSIS OF CHAPTER 116

Chapter 116 does not purport to be a strict codification of prior case law, but a comparison reveals that it is largely consistent with established legal precedents. Nonetheless, in some areas Chapter 116 diverges from established precedent. The following analysis will (a) examine the scope and applicability of Chapter 116, within the existing statutory framework and (b) highlight the areas in which Chapter 116 may diverge from prior case law.

A. *Scope and Applicability*

The general provisions of Chapter 116 are not uniformly applicable to all unincorporated associations. The provisions of Chapter 116 are organized under Title 3, along with other statutory provisions generally applicable to unincorporated associations.⁹⁰ Within this statutory framework, the scope and applicability of Chapter 116 are limited in two ways.

First, several types of business entities—including specific types of unincorporated associations—are categorically exempt from application of the provisions of Title 3.⁹¹ Consequently, the provisions of Chapter 116 are not applicable to partnerships or limited liability companies.⁹² Nor are they applicable to labor organizations governed by a constitution or bylaws.⁹³ Partnerships and limited liability companies are each governed by their own comprehensive statutory scheme⁹⁴ and are not likely to suffer the lack of guidance that prompted the enactment of Chapter 116.⁹⁵ On the other hand, if a labor organization—which can be “any organization of any kind” so long as its purpose is to deal with labor issues—⁹⁶ is not governed by a comprehensive statutory scheme, it will not benefit from the guidance provided by Chapter 116. If a labor organization’s constitution and bylaws do not provide for a fundamental matter of governance, that gap will not be filled by the provisions of Chapter 116.

90. See generally *id.* §§ 18000-270 (West 2006) (Part 1 of Title 3: providing general rules related to unincorporated associations); *id.* §§ 18605-21401 (Part 2 of Title 3: providing general rules related to nonprofit associations).

91. See *id.* § 18055 (listing corporations, government, government subdivisions, agencies, partnerships, joint ventures, limited liability companies, and labor organizations governed by a constitution or bylaws, as persons to whom the provisions of Title 3 do not apply); see also *Unincorporated Associations*, 33 CAL. L. REVISION COMM’N REP. 729, 735 (2003) (describing the function of the statutory framework).

92. CAL. CORP. CODE § 18055.

93. *Id.* § 18055(e) (defining labor organizations as “any organization of any kind, or any agency or employee representation committee or plan, where employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work”).

94. See generally *id.* §§ 16100-962, 17000-656 (governing partnerships and limited liability companies respectively).

95. See *supra* text accompanying notes 8-12.

96. CAL. CORP. CODE § 18055.

Second, the general provisions of Title 3 are subordinate to statutes specifically applicable to a particular type of unincorporated association.⁹⁷ Thus, the provisions of Chapter 116 act as default rules or gap fillers in relation to more specific statutory provisions. In the event that a general provision is inconsistent with a specific statute, the specific statute prevails “to the extent of the inconsistency.”⁹⁸

Finally, many of the provisions of Chapter 116 also act as default rules when applied to individual unincorporated associations. While Chapter 116 does include a few mandatory standards and procedures, most of the provisions of Chapter 116 yield to the association’s governing principles.⁹⁹ In this way, the general provisions of Chapter 116 provide guidance without restricting associations that carefully adopt their own rules of internal governance.¹⁰⁰

B. Comparison to Prior Legal Precedent

1. Suspension, Expulsion, and Termination of Membership

Chapter 116 creates a statutory right to fair procedure during the suspension or expulsion of members of an unincorporated association that closely resembles the existing common law right to fair procedure. However, the scope of this statutory right may differ from that of the common law right. Under the common law, procedural fairness was required where suspension or expulsion would affect an “important, substantial economic interest.”¹⁰¹ Chapter 116 incorporates this right to fair procedure,¹⁰² expanding it to include cases where membership includes a property right.¹⁰³ At the same time, Chapter 116 makes the new statutory right inapplicable to unincorporated associations that have a religious purpose.¹⁰⁴

97. *Id.* § 18060.

98. *Id.*

99. *Unincorporated Association Governance*, *supra* note 7, at 239.

100. Letter from Larry Doyle to Governor Arnold Schwarzenegger, *supra* note 5.

101. *See supra* notes 28-31 and accompanying text.

102. *See Unincorporated Association Governance*, *supra* note 7, at 248-49 (explaining the codified requirement of fair procedure, in the official comment to section 18320, by reference to *Potvin v. Metro. Life Ins. Co.*, 22 Cal. 4th 1060, 95 Cal. Rptr. 2d 496 (2000) and *Swital v. Real Estate Comm’r*, 116 Cal. App. 2d 677, 679, 254 P.2d 587, 588 (1953); with emphasis on the “important, substantial economic interest”). Commission materials are “declarative of legislative intent, and are entitled to great weight in construing statutes.” *2004-2005 Annual Report*, 34 CAL. L. REV. COMM’N REP. 1, 20-21 (2004) (discussing the use of Commission materials to determine legislative intent and citing several cases to support the assertion that courts at all levels depend on Commission materials to interpret statutes enacted on Commission recommendations).

103. *See supra* notes 60-64 and accompanying text.

104. *See supra* note 62.

Chapter 116 is consistent with established precedent in that its requirements are limited to the procedural aspect of suspensions and expulsions, affecting neither the exclusion of persons from membership in private associations¹⁰⁵ nor the substantive grounds for suspension or expulsion.¹⁰⁶ It remains to be seen whether the scope of the statutory right will differ in application from that of the common law right and, if so, whether the statutory right will supersede the common law right.

2. Amendment of Governing Documents

In providing for the amendment of an unincorporated association's governing documents, Chapter 116 likely codifies existing case law. However, ambiguity in the provisions related to amendment of governing documents may be misleading to small, informal associations. When read in conjunction with the default voting procedures of section 18330, which provide that a matter shall be approved by an affirmative majority of the votes cast,¹⁰⁷ section 18340, which provides no specific requirements for a vote to amend the governing documents,¹⁰⁸ suggests that an unincorporated association's governing documents can be amended by an affirmative majority of the votes cast. Allowing amendment by less than unanimous consent where the governing principles do not provide a procedure for amendment would conflict with prior case law.¹⁰⁹ It is unlikely that the Legislature intended to overrule prior case law in this regard. Rather, it is likely that Chapter 116 incorporates the requirements of existing case law: calling for unanimous consent of the members where amendment would affect an existing contractual right and the governing documents provide no mechanism for amendment.¹¹⁰

105. See *Unincorporated Association Governance*, *supra* note 7, at 249 (stating, in the official comment to section 18320, that "nothing in this section affects the common law right of fair procedure as it applies to a decision to exclude a person from membership in a private association,").

106. CAL. CORP. CODE § 18320(f) (enacted by Chapter 116).

107. See *supra* notes 67-71 and accompanying text.

108. See *supra* notes 72-74 and accompanying text.

109. See *supra* notes 34-38 and accompanying text.

110. See *Unincorporated Association Governance*, *supra* note 7, at 250 ("[An] amendment of the governing documents of an unincorporated association may not impair an existing contract right without the consent of the person whose right would be affected.") (citing *Hogan v. Pacific Endowment League*, 99 Cal. 248, 257, 33 P. 924, 927 (1893)); see also *2004-2005 Annual Report*, *supra* note 102, at 21-22 (indicating that Commission materials may demonstrate, by their silence, the Legislature's intent not to change the law). Silence in the Commission's reports indicated that the Legislature had no intent to "abolish or emasculate [a] well-settled rule." *Id.* (citing *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 84 Cal. Rptr. 742 (1970)).

3. *Dissolution*

Chapter 116 likely overrules prior case law regarding a vote to dissolve an unincorporated association. Under prior case law, unanimous approval of the members was required where the governing documents of an association did not provide for dissolution.¹¹¹ Chapter 116 explicitly provides that the dissolution of a functioning unincorporated association may be approved by a majority vote of the total membership.¹¹²

V. CONCLUSION

Chapter 116 completes a modest statutory framework providing clarity and guidance to unincorporated associations.¹¹³ Practitioners anticipate that this clarity and guidance will be greatly beneficial to small, informal unincorporated associations.¹¹⁴ By providing default rules for internal governance, Chapter 116 provides guidance to associations that lack detailed governing documents, without restricting associations that carefully adopt their own rules of internal governance.¹¹⁵ Where Chapter 116 provides mandatory rules, it does so to guarantee minimal fairness or to standardize relations with other organizations.¹¹⁶ But for a few notable exceptions, the provisions codified by Chapter 116 are consistent with existing case law.¹¹⁷

111. *See supra* notes 46-50 and accompanying text.

112. *See supra* note 84 and accompanying text.

113. Letter from Larry Doyle to Governor Arnold Schwarzenegger, *supra* note 5.

114. *Id.*

115. *Id.*

116. *Unincorporated Association Governance*, *supra* note 7, at 240.

117. *See* discussion *supra* Part IV.B.

* * *