

**AMENDMENTS TO THE
PENNSYLVANIA CONSOLIDATED STATUTES
WITH
OFFICIAL SOURCE NOTES AND
COMMITTEE COMMENTS**

ADOPTING

**UNIFORM UNINCORPORATED NONPROFIT
ASSOCIATION ACT**

AS CHAPTER 91 OF TITLE 15

PREPARED BY THE
TITLE 15 / BUSINESS ASSOCIATIONS COMMITTEE
OF THE
SECTION ON BUSINESS LAW
OF THE
PENNSYLVANIA BAR ASSOCIATION

To Accompany Senate Bill 944 (P.N. 1129)

(Comments Approved by the
Committee on March 7, 2009)

**PENNSYLVANIA BAR ASSOCIATION
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Introduction

For a number of years the Title 15 / Business Associations Committee (the “Committee”) of the Section on Business Law of the Pennsylvania Bar Association has been engaged in a project looking to enactment of a complete Title 15 of the Pennsylvania Consolidated Statutes dealing with corporations, partnerships and unincorporated associations. As part of that project, the Committee has prepared legislation that will enact the Uniform Unincorporated Nonprofit Association Act (“UUNAA”) as part of Title 15.

This document includes the commentary of the Committee on the provisions of UUNAA as proposed to be adopted in Pennsylvania. The comments on UUNAA contained herein are intended to form a legislative history that will be available for citation under 1 Pa.C.S. § 1939 (relating to use of comments and reports). Where appropriate, the comments on UUNAA adopt those portions of the comments of the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) on UUNAA applicable to the corresponding Pennsylvania provision. Thus the comments contained herein supersede the comments of NCCUSL on UUNAA.

Amendments to Title 15 other than the adoption of UUNAA as Chapter 91 are shown in this document by underlining text to be added and **[bracketing text to be deleted]**.

**TITLE 15
CORPORATIONS AND
UNINCORPORATED ASSOCIATIONS**

**Part I
Preliminary Provisions**

**Chapter 1
General Provisions**

**Subchapter A
Preliminary Provisions**

1 **§ 153. Fee schedule.***
2
3 (a) General rule. – The fees of the bureau, including fees for the public acts and
4 transactions of the Secretary of the Commonwealth administered through the bureau,
5 shall be as follows:
6
7 (1) Domestic corporations:
8
9 (i) Articles of incorporation, letters patent or
10 similar instruments incorporating a corporation or
11 association\$125
12
13 (ii) Articles or agreement or similar instrument of
14 merger, consolidation or division70
15
16 (iii) Additional fee for each association which is a
17 party to a merger or consolidation40
18
19 (iv) Additional fee for each new association resulting
20 from a division 125
21
22 (v) Articles of conversion or a similar instrument70
23
24 (vi) Each ancillary transaction70

* The Committee has proposed separate legislation that has been introduced as 2009 Senate Bill 351, which will add section 153 to Title 15. This document assumes that SB 351 will be enacted before the legislation proposed herein.

25	
26	(2) Foreign corporations:
27	
28	(i) Certificates of authority or similar qualifications to
29	do business.....250
30	
31	(ii) Amended certificate of authority or similar change
32	in qualification to do business250
33	
34	(iii) Domestication125
35	
36	(iv) Statement of merger or consolidation or similar
37	instrument reporting occurrence of merger or consolidation
38	not effected by a filing in the department.....70
39	
40	(v) Additional fee for each qualified foreign
41	corporation which is named in a statement of merger or
42	consolidation or similar instrument40
43	
44	(vi) Each ancillary transaction.....70
45	
46	(3) Partnerships and limited liability companies:
47	
48	(i) Certificate of limited partnership or certificate of
49	organization of a limited liability company or similar
50	instrument forming a limited partnership or organizing a
51	limited liability company125
52	
53	(ii) Certificate of merger, consolidation or division.....70
54	
55	(iii) Additional fee for each association which is a
56	party to a merger or consolidation40
57	
58	(iv) Additional fee for each new association resulting
59	from a division.....125
60	
61	(v) Application for registration of foreign limited
62	partnership or limited liability company.....250
63	
64	(vi) Certificate of amendment of registration of foreign
65	limited partnership or limited liability company250
66	
67	(vii) Statement of registration of registered limited
68	liability partnership or statement of election as an electing
69	partnership125
70	

71	(viii) Domestication of foreign limited liability	
72	company	125
73		
74	(ix) Each ancillary transaction.....	70
75		
76	(4) Business trusts:	
77		
78	(i) Deed of trust or other initial instrument for a	
79	business trust.....	125
80		
81	(ii) Each ancillary transaction.....	70
82		
83	(5) Fictitious names:	
84		
85	(i) Registration.....	70
86		
87	(ii) Each ancillary transaction.....	70
88		
89	(6) Service of process:	
90		
91	(i) Each defendant named or served	70
92		
93	(ii) (Reserved)	
94		
95	(7) Trademarks, emblems, union labels, description of	
96	bottles and similar matters:	
97		
98	(i) Trademark registration.....	50
99		
100	(ii) Each ancillary trademark transaction.....	50
101		
102	(iii) Any other registration under this paragraph	70
103		
104	(iv) Any other ancillary transaction under this	
105	paragraph	70
106		
107	(8) Uniform Commercial Code: As provided in 13 Pa.C.S.	
108	§ 9525 (relating to fees).	
109		
110	(9) Copy fees, including copies furnished under the	
111	Uniform Commercial Code:	
112		
113	(i) Each page of photocopy furnished	3
114		
115	(ii) (Reserved)	
116		

117	(10) Certification fees:	
118		
119	(i) For certifying copies of any document or paper on	
120	file, the fee specified in paragraph (9), if the department	
121	furnished the copy, plus.....	40
122		
123	(ii) (Reserved)	
124		
125	(iii) For issuing any other certificate of the Secretary of	
126	the Commonwealth or the department (other than an	
127	engrossed certificate).....	40
128		
129	(11) Report of record search other than a search under	
130	paragraph (8):	
131		
132	(i) For preparing and providing a report of a record	
133	search, the fee specified in paragraph (9), if any, plus	15
134		
135	(ii) (Reserved)	
136		
137	(12) Reservation and registration of names:	
138		
139	(i) Reservation of association name	70
140		
141	(ii) Registration of foreign or other corporation name	70
142		
143	(13) Change of registered office or address:	
144		
145	(i) Each statement of change of registered office by	
146	agent	5
147		
148	(ii) Each statement or certificate of change of	
149	registered office	5
150		
151	(iii) Each statement of change of address	5
152		
153	(14) Contingent domestication:	
154		
155	(i) Statement of contingent domestication.....	125
156		
157	(ii) Each year, or portion of a year, during which a	
158	contingent domestication or temporary domiciliary status is in	
159	effect	1,500
160		
161	(15) Expedited service:	
162		

163 (i) For the processing of any filing under this title or
164 Title 13 which is received by the bureau before 4 p.m. and is
165 requested to be completed within one hour, an additional fee
166 of 1,000
167

168 (ii) For the processing of any filing under this title or
169 Title 13 which is received by the bureau before 2 p.m. and is
170 requested to be completed within three hours, an additional
171 fee of 300
172

173 (iii) For processing of any filing under this title or Title
174 13 which is received by the bureau before 10 a.m. and is
175 requested to be completed the same day, an additional fee of 100
176

177 (16) Unincorporated nonprofit associations:

178

179 (i) Statement appointing an agent to receive service
180 of process 70
181

182 (ii) Resignation of appointed agent 40
183

184 (iii) Amendment or cancellation of statement
185 appointing an agent 70
186

187 (b) Daily listings. – The bureau may provide listings or copies of microfilm, or
188 both, of complete daily filings of any class of documents or papers for a fee of 25¢ per
189 filing listed or set forth therein.
190

191 (c) Other services. – The bureau may charge equivalent fees for any like service
192 not specified in subsections (a) or (b).
193

194 (d) Restriction. – UCC revenue received by a county recorder of deeds under 13
195 Pa.C.S. § 9525 (relating to fees) after June 30, 2001, shall be restricted for use by the
196 county recorder of deeds and the county prothonotary. The revenue shall be credited to
197 the offices of the county recorder of deeds and the county prothonotary on the basis of
198 the amount collected in each office in calendar year 2000, excluding any amounts paid
199 to the Commonwealth. Revenue received in excess of the total amount received by
200 each office during the year 2000, excluding amounts paid to the Commonwealth, shall
201 be distributed pro rata to the county recorder of deeds and the county prothonotary. In a
202 county without a recorder of deeds or a prothonotary, the provisions of this subsection
203 shall apply to the equivalent county officials.
204
205

206 **Part IV**
207 **Unincorporated Associations**
208

209 Chapter 91
210 [Unincorporated Associations Generally]
211 Unincorporated Nonprofit Associations
212

213 § 9101. [Customary parliamentary law applicable.] (Repealed.)
214

215 [Except as otherwise provided by statute or by the organic documents under
216 which an unincorporated association is constituted, each unincorporated
217 association shall be governed by customary usages and principles of parliamentary
218 law and procedure.]
219
220

221 § 9102. [Funeral and similar benefits.] (Repealed.)
222

223 [Members of unincorporated associations paying periodic or funeral benefits
224 shall not be individually liable for the payment of periodic or funeral benefits or
225 other similar liabilities of the association. The liabilities shall be payable only out
226 of the treasury of the association.]
227
228

229 § 9103. [Nontransferable membership interests.] (Repealed.)
230

231 (a) General rule.—For the purpose of encouraging lawful associational
232 activity among agricultural and industrial workers through the organization of
233 unincorporated associations for mutual benefit insurance, saving or other lawful
234 objects where the persons so organizing derive benefits from the preservation and
235 continuance of the membership and interest among persons engaged in a common
236 calling, labor or enterprise, the unincorporated association may provide, in its
237 organic documents, that membership in the association or interest in its funds or
238 property shall be nontransferable without the consent of the association.
239

240 (b) Assignments and pledges.—No attempted assignment, transfer or
241 pledge of a membership or interest made in violation of a transfer restriction
242 adopted pursuant to subsection (a) shall pass any right or interest, legal or
243 equitable, to the person to whom it is attempted to be made if the transfer
244 restriction is brought to the knowledge of that person.
245

246 (c) Knowledge of nontransferability.—Whenever the interest of a member
247 in the funds or property of any unincorporated association subject to subsection
248 (a) is evidenced by a certificate, an endorsement thereon that the certificate is
249 nontransferable shall be conclusive evidence that the person to whom any
250 attempted assignment, transfer or pledge of the certificate is made has knowledge
251 of the nontransferable character of the interest of the member.]
252
253

254	
255	Section
256	9111. Short title and application of chapter.
257	9112. Definitions.
258	9113. Governing law.
259	9114. Entity status.
260	9115. Ownership and transfer of property.
261	9116. Statement of authority as to real property.
262	9117. Liability.
263	9118. Assertion and defense of claims.
264	9119. Effect of judgment or order.
265	9120. Appointment of agent to receive service of process.
266	9121. Action or proceeding not abated by change of members or managers.
267	9122. Member not agent.
268	9123. Approval by members.
269	9124. Action by members.
270	9125. Duties of member.
271	9126. Membership.
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273	9128. Selection and management rights of managers.
274	9129. Duties of managers.
275	9130. Action by managers.
276	9131. Right of member or manager to information.
277	9132. Distributions prohibited; compensation and other permitted payments.
278	9133. Reimbursement, indemnification and advancement of expenses.
279	9134. Dissolution.
280	9135. Winding up and termination.
281	9136. Subordination of chapter to canon law.

§ 9111. Short title and application of chapter.

(a) Short title.—This chapter shall be known and may be cited as the Pennsylvania Uniform Unincorporated Nonprofit Association Law.

(b) Transitional provisions concerning property.—

(1) If, before {the Legislative Reference Bureau shall insert here the effective date of this chapter}, an interest in property was by the terms of a transfer purportedly transferred to a nonprofit association but under the law of this Commonwealth the interest did not vest in the nonprofit association, or in one or more persons on behalf of the nonprofit association under paragraph (2), on {the Legislative Reference Bureau shall insert here the effective date of this chapter}, the interest vests in the nonprofit association, unless the parties to the transfer have treated the transfer as ineffective.

299 (2) If, before {the Legislative Reference Bureau shall insert here the
300 effective date of this chapter}, an interest in property was by the terms of a
301 transfer purportedly transferred to a nonprofit association but the interest was
302 vested in one or more persons to hold the interest for the nonprofit association, its
303 members or both, on or after {the Legislative Reference Bureau shall insert here
304 the effective date of this chapter}, the persons, or their successors in interest, may
305 transfer the interest to the nonprofit association in its name; or the nonprofit
306 association may require that the interest be transferred to it in its name.

307
308 (c) Savings provisions.—
309

310 (1) This chapter supplements the law of this Commonwealth that applies
311 to nonprofit associations operating in this Commonwealth, but if a conflict exists
312 between this chapter and other law, the other law applies.
313

314 (2) Nothing in this chapter shall be deemed to repeal or supersede any
315 provision in section 7 of the act of April 26, 1855 (P.L.328, No.347), entitled “An
316 act relating to Corporations and to Estates held for Corporate, Religious and
317 Charitable uses.”
318

319 (d) Cross reference.—See section 5331 (relating to incorporation of
320 unincorporated associations).^{*}
321

322 **Official Source Note:**
323

324 15 Pa.C.S. § 9111: Subsection (a) patterned after Uniform Unincorporated
325 Nonprofit Association Act (2008) § 1. Subsection (b) patterned after Uniform
326 Unincorporated Nonprofit Association Act (2008) § 31. Subsection (c)(1) patterned
327 after Uniform Unincorporated Nonprofit Association Act (2008) § 3(c). Subsection
328 (c)(2) patterned after 15 Pa.C.S. § 5106(b)(4).[†]
329

330 **Committee Comment:**
331

332 1. A nonprofit association is a nonprofit organization that is not a charitable
333 trust or a nonprofit corporation or any other type of association organized under
334 statutory law that is authorized to engage in nonprofit activities. A nonprofit

* The Committee has proposed separate legislation that has been introduced as 2009 Senate Bill 351, which will amend the title of section 5331 of Title 15. This document assumes that SB 351 will be enacted before the legislation proposed herein.

† The Committee has proposed separate legislation that has been introduced as 2009 Senate Bill 351, which will add section 5106(b)(4) to Title 15. This document assumes that SB 351 will be enacted before the legislation proposed herein.

335 association is thus a default organization and, as such, it is the nonprofit equivalent of a
336 general partnership, which is the default form of for-profit organization.

337
338 At common law, a nonprofit association was seen as merely an aggregate of
339 individuals and not a legal entity. Thus, a nonprofit association could not hold or
340 convey property in its own name or sue or be sued in its own name. This chapter
341 reverses the common law view and treats nonprofit associations as entities. Building on
342 that basic change, this chapter is intended to regularize the affairs of nonprofit
343 associations in a manner consistent with the laws applicable to other forms of entities.

344
345 2. A delayed effective date has not been provided for this chapter because the
346 Committee concluded that the chapter provides a nonprofit association and its members
347 with a legal structure that conforms to the expectations of many of them. Therefore, the
348 need by a nonprofit association for additional time to revise procedures and forms to
349 conform to a significant change in the law was not considered necessary. It is
350 conceivable, however, that the chapter could materially affect third parties, particularly
351 creditors of nonprofit associations. Anecdotal evidence suggests that many creditors
352 place little reliance on their rights against members in extending credit. If they have
353 any reservations about the creditworthiness of a nonprofit association they obtain
354 guarantees from creditworthy members or insist on cash. To the extent that this is true,
355 no change in credit policies is needed and so no extra planning time is needed.

356
357 3. Subsection (b) brings to fruition the parties' expectations that previous law
358 frustrated. Inasmuch as the common law did not consider a nonprofit association to be
359 a legal entity, it could not acquire property. A gift of real or personal property thus
360 failed unless it was made to trustees for the benefit of the nonprofit association with
361 legal title vesting in the trustees. *See generally*, P.L.E.2d Associations and Clubs § 5.
362 Reference in subsection (b)(1) to the transfer as "purportedly" made identifies the
363 document of transfer as one not effective under the law. Subsection (b)(1) gives effect
364 to the gift. However, if parties were informed about the common law they may have
365 treated the gift as ineffective. In that case, the final clause of subsection (b)(1) provides
366 that the gift does not become effective when this act takes effect. The unless clause
367 would apply, for example, if the residual beneficiaries of the donor's will, knowing that
368 the devise of Blackacre to the nonprofit association was ineffective under the law,
369 continued to use Blackacre as their summer home with the approval and acquiescence
370 of members and representatives of the nonprofit association.

371
372 Subsection (b)(1) is not a retroactive rule. It applies to the facts existing when this
373 chapter took effect. At that time, subsection (b)(1) applies to a purported transfer of
374 property that under prior law could not be given effect at the time it was made.
375 Subsection (b)(1) belatedly makes it effective when this subchapter took effect and not
376 when made. The practical result of this difference in when the purported transfer is
377 effective is that the transfer is subject to interests in the property that came into being in
378 the interim. The interest of the nonprofit association is subject, for example, to a tax or
379 judgment lien that became effective in the interim. An intervening transfer by the initial
380 transferor may simply be evidence that the "parties had treated the transfer as

381 ineffective.” If so, subsection (b)(1) by its terms does not vest ownership in the
382 nonprofit association.

383
384 Subsection (b)(2) addresses the situation of a gift of property to a nonprofit
385 association in trust for the benefit of the association and its members. It authorizes the
386 fiduciary to transfer the property to the nonprofit association. If the fiduciary is
387 unwilling or reluctant, the nonprofit association may require the fiduciary to transfer the
388 property to the nonprofit association. In either case, the nonprofit association will get a
389 deed transferring the property to it which, in the case of real property, the nonprofit
390 association may record.

391
392 4. The statute cited in subsection (c)(2) provides that:

393
394 “Whensoever any property, real or personal, has heretofore been or shall
395 hereafter be bequeathed, devised, or conveyed to any ecclesiastical corporation,
396 bishop, ecclesiastic, or other person, for the use of any church, congregation, or
397 religious society, for or in trust for religious worship or sepulture, or for use by
398 said church, congregation, or religious society, for a school, educational
399 institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of
400 any of these, the same shall be taken and held subject to the control and
401 disposition of such officers or authorities of such church, congregation, or
402 religious society, having a controlling power according to the rules, regulations,
403 usages, or corporate requirements of such church, congregation, or religious
404 society, which control and disposition shall be exercised in accordance with and
405 subject to the rules and regulations, usages, canons, discipline and requirements of
406 the religious body, denomination or organization to which such church,
407 congregation, or religious society shall belong, but nothing herein contained shall
408 authorize the diversion of any property from the purposes, uses, and trusts to
409 which it may have been heretofore lawfully dedicated, or to which it may
410 hereafter, consistently herewith, be lawfully dedicated: And provided, All charters
411 heretofore granted for any church, congregation, or religious society, without
412 incorporating therein the requirement that the property, real and personal, of such
413 corporation, shall be taken, held, and enure subject to the control and disposition
414 as herein provided, but which are in other respects good and valid, and shall be in
415 all respects as good and valid, for all purposes, as if the said requirement had been
416 inserted therein when the said charters were originally granted; and the title to all
417 property, real and personal, heretofore bequeathed, devised, or conveyed to such
418 church, congregation, or religious society, or which may have heretofore been
419 granted or conveyed by such corporation, shall be firm and stable forever, with
420 like effect as though the said requirements had been contained in the charter of
421 such corporation when the same was originally granted: Provided, That all
422 property, real and personal, held by such existing corporation, shall enure, and be
423 taken and held, subject to the control and disposition as herein provided, with like
424 effect as though such provision had been inserted in the charter of such
425 corporation when originally granted, any other or different provision therein
426 notwithstanding.”

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5. The Committee Comments to this chapter are intended to form part of the legislative history of the chapter and to be citable as such under 1 Pa.C.S. § 1939. The Committee Comments have been adapted from the commentary to the Uniform Unincorporated Nonprofit Association Act (2008) (the “Uniform Act”) and are intended to supersede that commentary.

6. Section 34 of the Uniform Act has been omitted from this chapter. That section provides that “[the Uniform Act] does not affect an action or proceeding commenced or right accrued before [the Uniform Act] takes effect.” Section 34 is not needed in this chapter because 1 Pa.C.S. § 1926 provides as a general rule that “[n]o statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly.” Consistent with the comment above that a delayed effective date was not needed for this chapter, the Committee concluded that a special savings clause was also not needed because the provisions of the subchapter are generally consistent with existing expectations. *But see* 15 Pa.C.S. §§ 9111(b), 9117(c), and 9127 which provide special transitional rules.

The following terms used in this section are defined in 15 Pa.C.S. § 9112:

- “member”
- “nonprofit association”

§ 9112. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Governing principles.” The agreements, whether oral, in record form or implied from course of conduct, that govern the purpose or operation of a nonprofit association and the rights and obligations of its members and managers. The term includes any amendment or restatement of the agreements constituting the governing principles.

“Manager.” A person that is responsible, alone or in concert with others, for the management of a nonprofit association.

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

“Nonprofit association.” An unincorporated organization consisting of two or more members joined together for one or more common, nonprofit and lawful purposes. The term does not include:

- (1) a trust;

473
474 (2) a marriage, domestic partnership, common law domestic relationship,
475 civil union or other domestic living arrangement;

476
477 (3) an organization formed under any other statute that governs the
478 organization and operation of unincorporated associations;

479
480 (4) a professional association subject to Chapter 93 (relating to
481 professional associations);

482
483 (5) a limited liability company operating or formed for a nonprofit
484 purpose;

485
486 (6) a joint tenancy, tenancy in common or tenancy by the entirety, even if
487 the co-owners share use of the property for a nonprofit purpose; or

488
489 (7) a relationship under an agreement in record form that expressly
490 provides that the relationship between the parties does not create a nonprofit
491 association.

492
493 **Official Source Note:**

494
495 15 Pa.C.S. § 9112: Patterned after Uniform Unincorporated Nonprofit
496 Association Act (2008) § 2.

497
498 **Committee Comment:**

499
500 **“Governing principles.”** Governing principles are the equivalent of the articles
501 of incorporation, bylaws and agreements that govern the internal affairs of a nonprofit
502 association. The governing principles of a nonprofit association do not have to be in a
503 written form. This is consistent with the rule for partnerships, the for-profit equivalent
504 of nonprofit associations. *See, e.g.*, 15 Pa.C.S. §§ 8503 (limited partnership agreement
505 may be “written or oral”) and 8916 (subject to certain exceptions, “operating agreement
506 of a limited liability company need not be in writing”). In addition to oral agreements
507 and agreements in record form, the governing principles of a nonprofit association may
508 be implied from course of conduct.

509
510 **“Manager.”** A person is a “manager” of a nonprofit association if the person fits
511 the definition – even if that person’s designation might usually be associated with
512 another type of organization. Many nonprofit associations refer to members of their
513 governing boards as “directors” or “trustees.” These designations do not disqualify the
514 organization from being a nonprofit association even though the term “director” is
515 commonly associated with corporations and the term “trustee” is commonly associated
516 with trusts. A manager may, but need not be, a member of the nonprofit association
517 (*see* 15 Pa.C.S. § 9128); and may, and in fact in most cases will be, an individual, but

518 various types of entities can also be managers of a nonprofit association since the
519 definition of “manager” uses the term “person” to describe a manager.

520
521 **“Member.”** The definition of “member” may reach somewhat beyond decisions
522 of some courts. Either participation in the selection of the management or in the
523 development of policies and activities of the nonprofit association is enough. Both are
524 not required. This broad definition of member ensures that the insulation from liability
525 in 15 Pa.C.S. § 9117 is provided in all cases in which the common law might have
526 imposed liability on a person, simply because the person was a member.

527
528 Persons who do not have the right to select the managers of a nonprofit
529 association or to approve its governing policies are not members of the nonprofit
530 association for purposes of this chapter even though the nonprofit association may call
531 or refer to them as members. A fund-raising device commonly used by many nonprofit
532 associations is a membership drive. In most cases the contributors are not members for
533 purposes of this subchapter. They are not authorized to “participate in the selection of
534 persons authorized to manage the affairs of the nonprofit association or in the
535 development of policies and activities of the nonprofit association.” Simply because an
536 association calls a person a member does not make the person a member under this
537 chapter.

538
539 The role of a member in the affairs of a nonprofit association is described as “may
540 participate in the selection” instead of “may select or elect” the governing board and
541 officers and “may participate . . . in the development of policies and activities” instead
542 of “may determine” policies and activities. This accommodates the chapter to a great
543 variation in practices and organizational structures. For example, some nonprofit
544 associations permit the president or chair to name some members of the governing
545 board, such as by naming the chairs of principal committees who are designated ex
546 officio members of the governing board. Similarly, the role in determination of policy
547 is described in general terms. “Persons authorized to manage the affairs of the
548 association” is used in the definition instead of president, executive director, officer,
549 member of the governing board, and the like. Given the wide variety of organizational
550 structures of nonprofit associations to which this chapter applies and the informality of
551 many of them, the more generic term is more appropriate.

552
553 “Person” instead of “individual” is used in the definition of “member” to make it
554 clear that associations covered by this subchapter may have individuals, corporations
555 and other legal entities as members. Unincorporated, nonprofit trade associations, for
556 example, commonly have corporations as members. Some national and regional
557 associations of local government officials and agencies have governmental units or
558 agencies as members.

559
560 **“Nonprofit association.”** An organization cannot be a nonprofit association if it
561 is organized as a corporation or is a for-profit unincorporated entity, *e.g.*, a general
562 partnership. On the other hand, not every form of unincorporated nonprofit
563 organization should automatically become a nonprofit association and therefore be able

564 to have limited liability and the other benefits of this chapter. That is the reason for the
565 language excluding trusts, domestic living arrangements including marriages and
566 domestic partnerships, and agreements merely to hold title to property as co-owners.
567 The laws governing the rights of creditors, trustees, and beneficiaries of trusts are well
568 developed and therefore the legal principles in this chapter are unnecessary. Domestic
569 relations law provides property rights for adults co-habiting together after a legal
570 marriage or in a long-term unmarried status such as what is frequently referred to as a
571 “common law marriage” or the spate of recently enacted domestic partnership and civil
572 union statutes. Living together in any of these domestic living arrangements can
573 probably qualify as an association having a nonprofit purpose, but for public policy
574 reasons these arrangements should not be able to qualify as a nonprofit association and
575 therefore avoid individual liability for taxes and other liabilities. For similar reasons,
576 mere co-ownership of property, even if for nonprofit purposes, should not automatically
577 result in the applicability of this chapter.

578
579 “Agreement” rather than “contract” is the appropriate term because the legal
580 requirements for an agreement are less stringent and less formal than for a contract. For
581 example, mutual consent must be present in both but the contractual concept of
582 consideration is not necessary for an agreement. The agreement to form a nonprofit
583 association can be in record form, or oral, or implied from conduct (e.g., course of
584 performance or course of dealing). The agreement to form a nonprofit association
585 becomes part of the overall “governing principles” of the nonprofit association.

586
587 Although it is always preferable to have written agreements, many nonprofit
588 associations are quite informal and have few, if any, writings setting forth the
589 agreements governing the purpose and operation of the organization. Moreover, most
590 nonprofit associations are formed and operate without independent legal advice.
591 Imposing a statute of frauds or similar writing requirement would, therefore, have the
592 effect of excluding many existing nonprofit associations from being able to qualify
593 under this chapter.

594
595 Although the agreement to form a nonprofit association can be quite informal and
596 sketchy, there must be some tangible, objective data such as the use of the
597 organization’s name in communications to its members or third parties, or the existence
598 of a bank account or of a mailing (or internet) address in the name of the nonprofit
599 association or similar “conduct” indicating that, in fact, there is an actual agreement.

600
601 An express provision in record form stating that the parties to a contract do not
602 intend to create a nonprofit association will negate any conclusion that there was an
603 agreement to have a nonprofit association. An example is a contractual relationship
604 between two nonprofit organizations where the parties do not want the contract to be
605 subject to this chapter. An express written provision to that effect in the contract should
606 be upheld. The term “record form” is defined in 15 Pa.C.S. § 102.

607
608 The members must be joined together for a common purpose. Because of the
609 informality of many ad hoc organizations, it was considered appropriate not to impose

610 the requirement that the common purpose be “stated.” Very probably, it is the small,
611 informal, ad hoc organizations and those third parties affected by them that most need
612 this chapter.

613
614 "Nonprofit" is not defined. A definition used in some state statutes--that a
615 nonprofit association is an association whose net gains do not inure to the benefit of its
616 members and which makes no distribution to its members, except on dissolution--does
617 not work for all nonprofit associations. Consumer cooperatives, for example, make
618 distributions to their members; but they are not for-profit associations. Those consumer
619 cooperatives not organized under Chapters 71-75 or specific federal laws need the
620 benefits of this chapter. The best reference point for what constitutes a nonprofit
621 purpose is 15 Pa.C.S. § 5301(a) which provides that nonprofit corporations may be
622 incorporated for:

623
624 “... any one or more of the following or similar purposes: athletic; any lawful
625 business purpose to be conducted on a not-for-profit basis; beneficial; benevolent;
626 cemetery; charitable; civic; control of fire; cultural; educational; encouragement of
627 agriculture or horticulture; fraternal; health; literary; missionary; musical; mutual
628 improvement; patriotic; political; prevention of cruelty to persons or animals;
629 professional, commercial, industrial, trade, service or business associations;
630 promotion of the arts; protection of natural resources; religious; research;
631 scientific and social.”

632
633 The two-person requirement for forming a nonprofit association is quite minimal.
634 At least two persons are required because that is the minimum number necessary to
635 have an agreement under general legal principles. If one person wants to create a
636 nonprofit organization, it is possible to do so by means of a trust, a nonprofit
637 corporation, or in many states, a single member limited liability company.

638
639 Unlike a nonprofit corporation which may operate without members and therefore
640 be governed by a self-perpetuating board of directors, *see* 15 Pa.C.S. § 5751(b), a
641 nonprofit association must always have at least two members. The managers may also
642 be members, but the definition of a nonprofit association states that it is an
643 “organization consisting of two or more members...”

644
645 This chapter applies to all nonprofit associations, whether they be classified as
646 religious, public benefit or mutual benefit or whether they are classified as tax-exempt.
647 Therefore, the chapter covers unincorporated philanthropic, educational, scientific,
648 social and literary clubs, unions, trade associations, political organizations, such as
649 political parties, churches, hospitals, neighborhood and property owner associations,
650 and sports organizations such as Little League baseball teams.

651
652
653
654

§ 9113. Governing law.

655 (a) Operations.—Except as provided in subsection (b), the law of this
656 Commonwealth governs the operation in this Commonwealth of all nonprofit
657 associations formed or operating in this Commonwealth.

658
659 (b) Internal affairs.—Unless the governing principles specify a different
660 jurisdiction, the law of the jurisdiction in which a nonprofit association has its main
661 place of activities governs the internal affairs of the nonprofit association.

662
663 **Official Source Note:**

664
665 15 Pa.C.S. § 9113: Patterned after Uniform Unincorporated Nonprofit
666 Association Act (2008) § 4.

667
668 **Committee Comment:**

669
670 1. This chapter applies to pre-existing nonprofit associations formed in
671 Pennsylvania, as well as to all nonprofit associations formed in Pennsylvania after the
672 effective date of this chapter.

673
674 2. The default rule in this chapter for determining the jurisdiction whose laws
675 govern the internal affairs of a nonprofit association is the jurisdiction in which the
676 nonprofit association has its main place of activities. A nonprofit association can,
677 however, designate the internal affairs jurisdiction in its governing principles, subject to
678 applicable conflicts of laws substantial contact rules. *See* RESTATEMENT (SECOND) OF
679 CONFLICT OF LAWS §187(2) (1971).

680
681 The term “main place of activities” is not defined but should not be difficult to
682 determine in most cases. It is a more apt term than “chief executive office” which is
683 used in the Uniform Commercial Code, *see* 13 Pa.C.S. § 9307(b)(3), since many
684 nonprofit associations are quite informal and probably do not have what are commonly
685 thought of as “executive offices.” In any case, many nonprofit associations conduct
686 operations in only one state and those that have operations in more than one state can
687 designate the state that will govern their internal affairs so it will be a rare case when it
688 will be necessary to determine which of two or more states’ laws govern the internal
689 affairs of a nonprofit association.

690
691 3. Since subsection (a) provides that the laws governing nonprofit associations
692 in Pennsylvania also govern nonprofit associations formed in other jurisdictions that are
693 conducting activities in Pennsylvania (except for internal affairs issues subject to
694 subsection (b)), a nonprofit association formed in another jurisdiction cannot conduct
695 activities in Pennsylvania that a nonprofit association formed in Pennsylvania could not
696 conduct, even if the activity were legal in the foreign jurisdiction in which the nonprofit
697 association was formed or has its main place of activities.

698
699 4. The following terms used in this section are defined in 15 Pa.C.S. § 9112:
700

701 “governing principles”
702 “nonprofit association”
703
704

705 **§ 9114. Entity status.**
706

707 (a) Legal entity.—A nonprofit association is a legal entity distinct from its
708 members and managers.
709

710 (b) Perpetual duration.—A nonprofit association has perpetual duration unless
711 the governing principles specify otherwise.
712

713 (c) Powers.—A nonprofit association has the same powers as an individual to
714 do all things necessary or convenient to carry on its purposes.
715

716 (d) Profits.—A nonprofit association may engage in profit-making activities, but
717 profits from any activities must be used or set aside for the nonprofit purposes of the
718 nonprofit association.
719

720 **Official Source Note:**
721

722 15 Pa.C.S. § 9114: Patterned after Uniform Unincorporated Nonprofit
723 Association Act (2008) § 5.
724

725 **Committee Comment:**
726

727 1. The separate legal status of a nonprofit association is a fundamental concept
728 that undergirds all the principles that allow a nonprofit association to hold and dispose
729 of property in its own name and to sue and be sued in its own name and that insulates
730 the assets of the members from claims against the nonprofit association. This is a
731 reversal of traditional common law principles that treat partnerships and other
732 unincorporated entities under an aggregate theory.
733

734 2. Providing for perpetual existence of a nonprofit association is one of the key
735 aspects of its separate entity status. Under the traditional common law aggregate
736 theory, the existence of a nonprofit association would end with any change in the
737 membership and if the nonprofit association continued in operation it was deemed to be
738 a new nonprofit association.
739

740 The members can agree to a limited term and a nonprofit association can, of
741 course, terminate by being dissolved and winding up. *See* 15 Pa.C.S. § 9134 and 9135.
742

743 3. Many unincorporated nonprofit organizations engage in activities that are
744 intended to produce a profit, *e.g.*, a bingo parlor operated by a church where the profits
745 are used to buy food for a homeless shelter. This type of profit-making endeavor should
746 not disqualify the organization from being a nonprofit association if it otherwise

747 qualifies. A for-profit activity might endanger the tax-exempt status of the organization
748 or may generate taxable income, but these are separate issues and should not affect the
749 organizational status of a nonprofit association or the rights and liabilities of its
750 members and managers.

751
752 The fact that some or all of the members receive some direct or indirect benefit
753 from the profit-making activities of a nonprofit organization will not disqualify the
754 organization from being a nonprofit association under this chapter so long as the benefit
755 is in furtherance of the nonprofit purposes of the nonprofit association. The distribution
756 of any profits to the members for the members' own use, *e.g.*, a dividend distribution to
757 members, would, however, disqualify the organization from being a nonprofit
758 association because the distribution is not made in furtherance of the nonprofit purposes
759 of the nonprofit association. *See* 15 Pa.C.S. § 9132. The organization would be a
760 general partnership, the default organizational form for a for-profit organization. An
761 unincorporated investment club that distributes its profits to its members, for example,
762 would be a general partnership and not a nonprofit association even though its stated
763 purpose is to educate its members about investments.

764
765 4. The following terms used in this section are defined in 15 Pa.C.S. § 9112:

766 "governing principles"

767 "manager"

768 "member"

769 "nonprofit association"

770
771
772
773 **§ 9115. Ownership and transfer of property.**

774
775 (a) General rule.—A nonprofit association may acquire, hold, encumber or
776 transfer in its name an interest in real or personal property.

777
778 (b) Testamentary and fiduciary dispositions.—A nonprofit association may be a
779 beneficiary of a trust or contract, a legatee or a devisee.

780
781 **Official Source Note:**

782
783 15 Pa.C.S. § 9115: Patterned after Uniform Unincorporated Nonprofit
784 Association Act (2008) § 6.

785
786 **Committee Comment:**

787
788 Subsection (a) is based on section 3-102(8) of the Uniform Common Interest
789 Ownership Act. It reverses the common law rule. Because a nonprofit association was
790 not a legal entity at common law, it could not acquire, hold, or convey real or personal
791 property. Harold J. Ford, UNINCORPORATED NON-PROFIT ASSOCIATIONS, 1-45 (Oxford

Univ. Press (1959); Warburton, *The Holding of Property by Unincorporated Associations*, CONVEYANCER 318 (September-October 1985).

The strict common law rule has been modified in various ways in most jurisdictions by courts and statutes. For example, courts have held that a gift by will or inter vivos transfer of real property to a nonprofit association is not effective to vest title in the nonprofit association, but is effective to vest title in the officers of the nonprofit association to hold as trustees for the members of the nonprofit association. *Matter of Anderson's Estate*, 571 P. 2d 880 (Okla. App. 1977).

As is the case with many of the problems created by the view that a nonprofit association is not an entity, the statutory solutions are often partial – limited to special circumstances and associations. Subsection (a) solves this problem for all nonprofit associations, for all kinds of transactions, and for both real and personal property. Since Pennsylvania has not modified the common law rule as clearly as other states, subsection (a) is an important advance in Pennsylvania law. *See* 15 Pa.C.S. § 9111(b) with respect to attempted transfers of real and personal property to a nonprofit association that were made before the effective date of this subchapter.

Even if the governing principles of a nonprofit association were to provide that it "may not acquire real property," subsection (a) makes effective a transfer of real property to the nonprofit association. A different result would obviously disrupt real estate titles. The remedy for this violation of an internal governance rule lies not in preventing title from passing but, as with other organizations, in an action by members against their nonprofit association and its appropriate officers to undo the transaction.

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

The term "nonprofit association" used in this section is defined in 15 Pa.C.S. § 9112.

§ 9116. Statement of authority as to real property.

(a) General rule.—An interest in real property held in the name of a nonprofit association may be encumbered or transferred by a person authorized to do so in a statement of authority recorded by the nonprofit association in the office of the recorder of deeds for the county in which a transfer of the property would be recorded.

(b) Contents of statement.—The statement of authority must set forth:

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- (1) the name of the nonprofit association;
- (2) the address in this Commonwealth, including street and number, if any, of the nonprofit association or, if the nonprofit association does not have an address in this Commonwealth, its address outside of this Commonwealth;
- (3) that the association is a nonprofit association; and
- (4) the name, title or position of a person authorized to encumber or transfer an estate or interest in real property held in the name of the nonprofit association.

(c) Execution.—A statement of authority must be executed in the same manner as a deed by a person other than the person authorized in the statement to encumber or transfer an estate or interest.

(d) Recording fee.—The recorder of deeds may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property, but the mere recording of a statement of authority does not constitute a transfer of an interest in the real property for the purpose of the taxation of real property transfers.

(e) Changes.—A document amending, revoking or canceling a statement of authority or stating that the statement is unauthorized or erroneous must meet the requirements for executing and recording an original statement.

(f) Cancellation by operation of law.—Unless canceled earlier, a recorded statement of authority and its most recent amendment expire five years after the date of the most recent recording.

(g) Effect of filing.—If the record title to real property is in the name of a nonprofit association and a statement of authority is recorded in the office of the recorder of deeds for the county in which a transfer of the property would be recorded, the authority of the person named in the statement to encumber or transfer is conclusive in favor of a person that gives value without notice that the person lacks authority.

Official Source Note:

15 Pa.C.S. § 9116: Patterned after Uniform Unincorporated Nonprofit Association Act (2008) § 7.

Committee Comment:

A statement of authority need not be filed in order for a nonprofit association to conclude an acquisition of or to hold real property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate or interest in real property. For this,

884 it should, but need not, be filed. The filing, however, provides important
885 documentation. It is expected that a statement of authority will usually only be filed at
886 the time of a conveyance of an interest in real estate as a means of establishing in the
887 title records who has authority to execute a deed or other instrument conveying an
888 interest in real estate.

889
890 Inasmuch as the statement relates to the authority of a person to act for the
891 nonprofit association in transferring real property, subsection (a) requires that the
892 statement be recorded in the office of the recorder of deeds where a transfer of the real
893 property would be recorded. This is where a title search concerning the real estate
894 would be conducted.

895
896 Subsection (b)(2) may present a problem for some small, ad-hoc nonprofit
897 associations. They may have no fixed office address. They may meet in the homes of
898 their leaders. However, if they distribute literature or file petitions they are likely to
899 have a mailing address of some kind, *e.g.*, the mailing address of a member or manager.

900
901 Subsection (b)(3) informs those relying on the statement of the precise character
902 of the organization. Knowing that the organization is a nonprofit association may cause
903 the person dealing with the organization to act differently.

904
905 Subsection (b)(4) permits the statement to identify as the person who can act for
906 the nonprofit association someone who holds a particular office, such as president. This
907 designation relieves the nonprofit association from the need to make additional filings
908 on each change of officers.

909
910 Subsection (c) is designed to reduce the risk of fraud and to reflect law and
911 practice applicable to other organizations. It requires someone other than the person
912 authorized to deal with the real property to execute the statement of authority on behalf
913 of the nonprofit association.

914
915 Subsection (f) makes a statement inoperative five years after its most recent
916 recording. A new statement of authority can be filed before or after the expiration of
917 the five year limitation.

918
919 The obvious purpose of subsection (g) is to protect good faith purchasers for value
920 without notice who rely on the statement, including those who acquire a security
921 interest in the real property. If the required signatures on the statement, deed, or both
922 are forgeries, the effect of them is not governed by subsection (g). Instead, 15 Pa.C.S. §
923 110 applies and would invoke other Pennsylvania law.

924
925 The term “nonprofit association” used in this section is defined in 15 Pa.C.S. §
926 9112.

927
928
929 **§ 9117. Liability.**

930
931 (a) General rule.—A debt, obligation or other liability of a nonprofit
932 association, whether arising in contract, tort or otherwise:

933
934 (1) is solely the debt, obligation or other liability of the nonprofit
935 association; and

936
937 (2) does not become a debt, obligation or other liability of a member or
938 manager solely:

939
940 (i) because of a person’s status as a member or manager; or

941
942 (ii) because:

943 (A) a member acts as a member; or

944 (B) a manager acts as a manager.
945

946
947
948 (b) Liability for conduct.—A person’s status as a member or manager does not
949 prevent or restrict law other than this chapter from imposing liability on the person or
950 the nonprofit association because of the person’s conduct.

951
952 (c) Agents.—A person that makes a contract or incurs an obligation on behalf of
953 a nonprofit association after {the Legislative Reference Bureau shall insert here the
954 effective date of this chapter} is not liable for performance or breach of the contract or
955 other obligation if the fact that the person was acting for the nonprofit association was
956 disclosed to, was known by or reasonably should have been known by the other party to
957 the contract or to the party owed performance.

958
959 **Official Source Note:**

960
961 15 Pa.C.S. § 9117: Subsections (a) and (b) patterned after Uniform
962 Unincorporated Nonprofit Association Act (2008) § 8.

963
964 **Committee Comment:**

965
966 1. The effect of this section is to provide members and managers of a nonprofit
967 association with the same protection against vicarious liability for the debts and
968 obligations of the nonprofit association and tort liability imposed on the nonprofit
969 association as the members and managers of a nonprofit corporation would have under
970 Pennsylvania law. These principles, taken together, constitute what is known as the
971 limited liability doctrine under which a member or manager is personally liable for his
972 or her own tortious conduct under all circumstances and is personally liable for contract
973 liabilities incurred on behalf of the nonprofit association if the member or manager
974 guarantees or otherwise assumes personal liability for the contract or, under concepts of
975 agency law, the member or manager fails to disclose that he or she is acting as the agent

976 for the nonprofit association and the third party did not know and should not have
977 reasonably known such relationship. A member or manager is not otherwise personally
978 liable for the tort or contract liabilities imposed upon the nonprofit association. A
979 creditor with a judgment against the nonprofit association must seek to satisfy the
980 judgment out of the assets of the nonprofit association but cannot levy execution against
981 the assets of a member or manager.

982
983 2. An exception to limited liability is the doctrine of piercing the veil which
984 may be applied to a nonprofit association under 15 Pa.C.S. § 110. Courts have pierced
985 the corporate veil of nonprofit corporations. *See Comment, Piercing the Nonprofit*
986 *Corporate Veil*, 66 Marq. L. Rev. 134 (1984); *Macaluso v. Jenkins*, 95 Ill.App.3d 461,
987 420 N.E.2d 251 (1981) (president of nonprofit corporation who commingled funds of
988 the nonprofit corporation with funds of a corporation he controlled held personally
989 liable for unpaid debts of the nonprofit corporation under the veil piercing doctrine).
990 The veil piercing doctrine as applied to nonprofit associations should be limited by the
991 fact that members of a nonprofit association do not have an expectation of financial
992 gain, as compared to shareholders of a for-profit corporation or partners in a
993 partnership, and by the informal organizational requirements of nonprofit associations.
994

995 If the piercing doctrine is found to be applicable, the separate entity status of a
996 nonprofit association would be disregarded and the assets of the nonprofit association
997 and its members and managers would be aggregated and subject to the claims of a
998 creditor of the nonprofit association in the same manner that a judgment creditor
999 collects a judgment against the assets of a general partner in a general partnership.
1000

1001 3. In Pennsylvania, volunteers who participate in sports programs sponsored by
1002 nonprofit associations are protected from personal liability by 42 Pa.C.S. § 8332.1. In
1003 addition, persons who serve as officers, directors or trustees without compensation,
1004 other than expense reimbursements, of certain nonprofit associations are protected from
1005 personal liability in the performance of their duties by 42 Pa.C.S. § 8332.2. This
1006 section does not affect those statutes. This section deals only with vicarious liability
1007 while those statutes concern liability for one's own conduct.
1008

1009 4. The liability of the managers of a nonprofit association for breach of the
1010 duties of due care, good faith and loyalty to the nonprofit association and the ability of
1011 the governing principles of a nonprofit association to limit or eliminate this liability as
1012 far as monetary damages are concerned is a separate subject which is dealt with in 15
1013 Pa.C.S. § 9129(d).
1014

1015 5. "Solely" as used in this section is intended to make it clear that a member or
1016 manager is not vicariously liable for the liabilities of the nonprofit association or the
1017 liabilities of another member or manager merely because of that person's status as a
1018 member or manager. A member or manager may, however, have personal liability as a
1019 result of his or her own actions. A member or manager will be personally liable, for
1020 example, for his or her own tortious acts, or for breach of a contract binding on the
1021 nonprofit association which the member or manager is a party to or has guaranteed.

1022 This personal liability is imposed by other law and not because of his or her status as a
1023 member or manager.

1024
1025 6. An agent with authority from a nonprofit association who negotiates a
1026 contract without disclosing the agent's representative status is liable on the contract,
1027 unless the third party knew or reasonably should have known the agent's representative
1028 status. Under agency law an agent acting within the agent's scope of authority for an
1029 undisclosed or partially disclosed principal is personally liable on the contract along
1030 with the principal, unless the other contracting party agrees not to hold the agent liable.
1031 RESTATEMENT (SECOND) OF AGENCY 320-322; Reuschlein and Gregory, AGENCY &
1032 PARTNERSHIP 161-163 (West 2d ed. 1990). Subsection (c) rejects certain old
1033 Pennsylvania cases that held agents for a disclosed nonprofit association personally
1034 liable on a contract or other obligation. Compare *Ash v. Guie*, 97 Pa. 493 (1881), and
1035 *Irwin v. McCullough*, 97 Pa. Super. 602 (1929) (imposing liability on those persons
1036 assenting to a contract), with *McGhee v. Lose*, 22 Pa. Cty. 371 (Clinton Cty. C.P. 1894)
1037 (holding contracting parties not liable). Subsection (c) has been added to the Uniform
1038 Unincorporated Nonprofit Association Act to make clear that an agent for a disclosed
1039 nonprofit association will not be personally liable on the contract or obligation.
1040 Limiting the application of subsection (c) to contracts made and obligations incurred
1041 after the effective date of this chapter is not intended as a statement of what the law in
1042 Pennsylvania was with respect to such contracts and obligations before the effective
1043 date.

1044
1045 7. The following terms used in this section are defined in 15 Pa.C.S. § 9112:

1046 “manager”

1047 “member”

1048 “nonprofit association”
1049

1050
1051
1052 **§ 9118. Assertion and defense of claims.**

1053
1054 (a) General rule.—A nonprofit association may sue or be sued in its own name.

1055
1056 (b) Permissible claims.—A member or manager may assert a claim the member
1057 or manager has against the nonprofit association. A nonprofit association may assert a
1058 claim it has against a member or manager.

1059
1060 (c) Representational status.—A nonprofit association may assert a claim in its
1061 name on behalf of its members if one or more members of the nonprofit association
1062 have standing to assert a claim in their own right, the interests the nonprofit association
1063 seeks to protect are germane to its purposes and neither the claim asserted nor the relief
1064 requested requires the participation of a member.

1065
1066 **Official Source Note:**
1067

1068 15 Pa.C.S. § 9118: Subsections (a) and (b) patterned after Uniform
1069 Unincorporated Nonprofit Association Act (2008) § 9. Subsection (c) patterned after
1070 Uniform Unincorporated Nonprofit Association Act (1996) § 7(b).
1071

1072 **Committee Comment:**
1073

1074 1. Under traditional common law doctrine, a nonprofit association was
1075 considered to be an aggregate of members and therefore it could not sue or be sued in
1076 its own name. Only the members could sue or be sued and some state court cases held
1077 that all of the members had to be named plaintiffs in a suit brought on behalf of the
1078 nonprofit association, and that all the members had to be named and served with
1079 process in a suit against a nonprofit association. Many states have enacted statutes in
1080 recent years granting nonprofit associations the status of an entity for the purpose of
1081 suits by and against the nonprofit association. This section follows the modern rule and
1082 is consistent with the concept built into this chapter that a nonprofit association is a
1083 separate entity for many more purposes than existed under traditional common law
1084 principles. Subsection (a) is consistent with existing Pa.R.Civ.P. 2153.
1085

1086 This section is intended to apply to all types of judicial, administrative and
1087 governmental proceedings and all types of alternative dispute resolution proceedings
1088 such as arbitration and mediation.
1089

1090 2. Subsection (b) is another aspect of a nonprofit association being a separate
1091 legal entity under this chapter. Under the common law aggregate theory, since a
1092 nonprofit association was not an entity separate from its members, a member could not
1093 assert a claim against the nonprofit association since there was technically no legal
1094 entity, and the member would be both a claimant and the defendant and personally
1095 liable for any judgment obtained in the action. For the same reason, a nonprofit
1096 association could not assert a claim against a member (e.g., for unpaid dues) because
1097 the nonprofit association technically did not exist. Subsection (b) only allows a member
1098 to assert that member's claim against the nonprofit association. It does not authorize a
1099 member to file a derivative action.
1100

1101 Subsection (b) is substantive in that it gives statutory sanction to the provisions of
1102 Pa.R.Civ.P. 2154. *See* P.L.E.2d Associations and Clubs § 9.
1103

1104 3. Subsection (c) describes the standing of a nonprofit association to represent
1105 the interests of its members in a proceeding. It is the federal standing rule. *Hunt v.*
1106 *Washington Apple Advertising Commn*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d
1107 383 (1977). A nonprofit association must meet the three requirements only if it seeks to
1108 represent the interests of its members. If the suit concerns only the interests of the
1109 nonprofit association, subsection (c) does not apply.
1110

1111 If participation of individual members is required, the nonprofit association does
1112 not have standing. If the injury for which a claim is made or the remedy sought is
1113 different for different members, their participation through testimony and presenting

1114 other evidence is required. The typical case in which a nonprofit association has
1115 standing is where it seeks only a declaration, injunction or some form of prospective
1116 relief for injury to its members. *Wadh v. Seldin*, 422 U.S. 490, 515, 95 S.Ct. 2197, 45
1117 L.Ed.2d 343 (1975).

1118
1119 Subsection (c) does not require the nonprofit association to show that it suffered
1120 harm or has some interest to protect to have standing to represent the interests of its
1121 members. *Wayth v. Seld* 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed.2d 943 (1975).
1122 Some states require an association to have an interest to protect that is separate from
1123 that of its members. One court found that the probable loss of members if it did not
1124 take action on their behalf was a sufficient interest to protect to give it standing to
1125 represent its members. This approach certainly diminishes greatly the burden of
1126 satisfying the requirement. States have further modified the old standing rule and many
1127 states have adopted the three-pronged federal rule, which is the rule in subsection (c).

1128
1129 4. Section 12 of the Uniform Unincorporated Nonprofit Association Act (2008)
1130 (the “Uniform Act”), which deals with service of process on nonprofit associations, has
1131 been omitted from this chapter as unnecessary in light of Pa.R.Civ.P. 423. Section 14
1132 of the Uniform Act, which deals with venue in actions involving nonprofit associations,
1133 has been omitted from this chapter as unnecessary in light of Pa.R.Civ.P. 2156.

1134
1135 5. The following terms used in this section are defined in 15 Pa.C.S. § 9112:

1136
1137 “manager”
1138 “member”
1139 “nonprofit association”

1140
1141
1142 **§ 9119. Effect of judgment or order.**

1143
1144 A judgment or order against a nonprofit association is not by itself a judgment or
1145 order against a member or manager.

1146
1147 **Official Source Note:**

1148
1149 15 Pa.C.S. § 9119: Patterned after Uniform Unincorporated Nonprofit
1150 Association Act (2008) § 10.

1151
1152 **Committee Comment:**

1153
1154 This section is consistent with RESTATEMENT (SECOND) OF JUDGMENTS, §61(2),
1155 which provides: “If under applicable law an unincorporated association is treated as a
1156 jural entity distinct from its members, a judgment for or against the association has the
1157 same effects with respect to the association and its members as a judgment for or
1158 against a corporation”
1159

1160 This section applies not only to judgments but also to orders, such as an award
1161 rendered in arbitration or an injunction.

1162
1163 This section reverses the common law rule. Under the common law’s aggregate
1164 view of a nonprofit association, members, as co-principals, were individually liable for
1165 obligations of the nonprofit association.

1166
1167 That a judgment against a nonprofit association is not also a judgment against one
1168 authorized to manage the affairs of the nonprofit association recognizes fully the entity
1169 status of a nonprofit association. An obvious corollary of this section is that a judgment
1170 against a nonprofit association may not be satisfied against a member unless there is
1171 also a judgment against the member. The one exception to this rule would be an
1172 injunction issued against a nonprofit association. Federal Rule of Civil Procedure 65(d)
1173 provides that every injunction and restraining order is binding not only on the named
1174 parties but also on “the parties’ officers, agents, servants, employees, and attorneys ...
1175 who receive actual notice of it by personal notice or otherwise.”

1176
1177 The following terms used in this section are defined in 15 Pa.C.S. § 9112:

1178
1179 “manager”

1180 “member”

1181 “nonprofit association”

1182
1183
1184 **§ 9120. Appointment of agent to receive service of process.**

1185
1186 (a) General rule.—A nonprofit association may deliver to the department for
1187 filing a statement appointing an agent to receive service of process.

1188
1189 (b) Contents of statement.—A statement appointing an agent to receive service
1190 of process must set forth:

1191
1192 (1) the name of the nonprofit association; and

1193
1194 (2) the name of the person in this Commonwealth authorized to receive
1195 service of process and the person’s address, including street and number, in this
1196 Commonwealth.

1197
1198 (c) Signature of statement.—A statement appointing an agent to receive service
1199 of process must be signed by a person authorized to manage the affairs of the nonprofit
1200 association and by the person appointed as the agent. By signing the statement the
1201 person becomes the agent.

1202
1203 (d) Amendment or cancellation.—An amendment to or cancellation of a
1204 statement appointing an agent to receive service of process must meet the requirements

1205 for signature of an original statement. An agent may resign by delivering a resignation
1206 to the department for filing and giving notice to the nonprofit association.

1207
1208 (e) Cross reference.—See section 135 (relating to requirements to be met by
1209 filed documents).

1210

1211 **Official Source Note:**

1212

1213 15 Pa.C.S. § 9120: Patterned after Uniform Unincorporated Nonprofit
1214 Association Act (2008) § 11.

1215

1216 **Committee Comment:**

1217

1218 This section authorizes, but does not require, a nonprofit association to file a
1219 statement authorizing an agent to receive service of process. It is not the equivalent of
1220 filing a document, such as articles of incorporation, that is required to create an
1221 association, but some nonprofit associations may find it prudent to file. Filing will help
1222 to provide the management of the nonprofit association with prompt notice of any
1223 lawsuit filed against it, although under 15 Pa.C.S. § 106 a statement appointing an agent
1224 to receive service of process is not constructive notice of the appointment of the agent.
1225 Filing also gives some public notice of the nonprofit association’s existence and its
1226 address.

1227

1228 It is intended that the agent named in a statement filed under this section will be
1229 subject to service of process under Pa.R.Civ.P. 423.

1230

1231 Central filing with the Department of State has been provided because that is
1232 where interested parties will seek information of this kind and where such appointments
1233 are commonly publicly filed.

1234

1235 The fee for filing a statement appointing an agent to receive service of process is
1236 set forth in 15 Pa.C.S. § 153(a).

1237

1238 The format of this section is very much like 15 Pa.C.S. § 9116, which concerns a
1239 statement of authority with respect to property. Because one requires local and other
1240 central filing they are not combined.

1241

1242 The term “nonprofit association” used in this section is defined in 15 Pa.C.S. §
1243 9112.

1244

1245

1246 **§ 9121. Action or proceeding not abated by change of members or**
1247 **managers.**

1248

1249 An action or proceeding against a nonprofit association does not abate merely
1250 because of a change in its members or managers.

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Official Source Note:

15 Pa.C.S. § 9121: Patterned after Uniform Unincorporated Nonprofit Association Act (2008) § 13.

Committee Comment:

This provision reverses the common law rule of partnerships, which courts often extended to nonprofit associations. The entity approach of this chapter requires this change to the old common law rule.

The following terms used in this section are defined in 15 Pa.C.S. § 9112:

- “manager”
- “member”
- “nonprofit association”

§ 9122. Member not agent.

A member is not an agent of the nonprofit association solely by reason of being a member.

Official Source Note:

15 Pa.C.S. § 9122: Patterned after Uniform Unincorporated Nonprofit Association Act (2008) § 15.

Committee Comment:

The purpose of this section is to make clear that a person’s status as a member does not by itself make that person an agent of the nonprofit association. This is contrary to partnership law where the general partners are considered to be general agents of the partnership and can bind the partnership for acts in the ordinary course of business. Agency and the power to bind in a nonprofit association are determined under Pennsylvania agency law. Under agency law the managers of a nonprofit association would in most cases be considered as having apparent authority to bind the nonprofit association for acts in the ordinary course of its business. Therefore a member who is also a manager would be considered to be an agent of the nonprofit association but this is because that person is a manager as well as a member of the nonprofit association, and therefore the agency authority is not “solely by reason of being a member.” Under agency law, a member might have actual authority to bind the nonprofit association or might have apparent authority to bind the nonprofit association because of the member’s established course of dealing with third parties or under an estoppel theory.

1296 Again, the member’s agency authority to bind is not solely because of the member’s
1297 status as a member.

1298

1299 A nonprofit association might be directly or vicariously liable for actions of a
1300 member under general law other than agency law. For example, under the doctrine of
1301 respondeat superior, a nonprofit association might be liable for the tortious conduct of a
1302 member who is found to be acting as a servant of the nonprofit association at the time of
1303 the tortious conduct or for negligently supervising a member who is acting on behalf of
1304 the nonprofit association. *See* 15 Pa.C.S. § 9117.

1305

1306 The following terms used in this section are defined in 15 Pa.C.S. § 9112:

1307

1308 “member”

1309 “nonprofit association”

1310

1311

1312 **§ 9123. Approval by members.**

1313

1314 (a) General rule.—Except as provided in the governing principles, a nonprofit
1315 association must have the approval of its members to:

1316

1317 (1) admit, suspend, dismiss or expel a member;

1318

1319 (2) select or dismiss a manager;

1320

1321 (3) adopt, amend or repeal the governing principles;

1322

1323 (4) sell, lease, exchange, or otherwise dispose of all or substantially all, of
1324 the association’s property, with or without the association’s goodwill, outside the
1325 ordinary course of its activities;

1326

1327 (5) dissolve under section 9134 (relating to dissolution);

1328

1329 (6) undertake any other act outside the ordinary course of the association’s
1330 activities; or

1331

1332 (7) determine the policy and purposes of the association.

1333

1334 (b) Other actions.—A nonprofit association must have the approval of the
1335 members to do any other act or exercise a right that the governing principles require to
1336 be approved by members.

1337

1338 **Official Source Note:**

1339

1340 15 Pa.C.S. § 9123: Patterned after Uniform Unincorporated Nonprofit
1341 Association Act (2008) § 16.

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Committee Comment:

The provisions of this section are default rules and may be varied by the governing principles. The internal affairs rules in this section and the following sections apply to nonprofit associations with their main place of business in Pennsylvania. The internal affairs rules of nonprofit associations with their main place of business in other jurisdictions are determined under 15 Pa.C.S. § 9113(b).

The following terms used in this section are defined in 15 Pa.C.S. § 9112:

- “governing principles”
- “manager”
- “member”
- “nonprofit association”

§ 9124. Action by members.

(a) General rule.—Except as provided in the governing principles:

- (1) approval of a matter by the members requires the affirmative vote of at least a majority of the votes cast at a meeting of members; and
- (2) each member is entitled to one vote on each matter that is submitted for approval by the members.

(b) Procedural matters.—The governing principles may provide for the:

- (1) calling, location and timing of meetings of the members;
- (2) notice and quorum requirements for member meetings;
- (3) conduct of member meetings;
- (4) taking of action by the members by consent without a meeting or by ballot; and
- (5) participation by members in a meeting of the members by telephone or other means of electronic communication.

(c) Absence of governing principles.—If the governing principles do not provide for a matter described in subsection (b), customary usages and principles of parliamentary law and procedure apply.

Official Source Note:

1388

1389

1390 15 Pa.C.S. § 9124: Subsections (a) and (b) patterned after Uniform

1391

Unincorporated Nonprofit Association Act (2008) § 17. Subsection (c) derived from
former 15 Pa.C.S. § 9101.

1392

1393

Committee Comment:

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

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There is one limitation on the authority to modify member approval rights. A nonprofit association must always have at least two members. *See* 15 Pa.C.S. § 9112 (“nonprofit association”). Therefore, the governing principles cannot specify that a nonprofit association have one or no members.

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

1419

1420

The following terms used in this section are defined in 15 Pa.C.S. § 9112:

1421

“governing principles”

1422

“member”

1423

“nonprofit association”

1424

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1426

§ 9125. Duties of member.

1427

1428

1429

1430

(a) No fiduciary duties generally.—A member does not have a fiduciary duty to a nonprofit association or to another member solely by being a member.

1431

1432

1433

(b) Discharge of duties and exercise of rights.—A member shall discharge duties to the nonprofit association and the other members under the governing principles and shall exercise any rights under the governing principles and this chapter

1434 consistent with the governing principles and the obligation of good faith and fair
1435 dealing.

1436

1437 **Official Source Note:**

1438

1439 15 Pa.C.S. § 9125: Patterned after Uniform Unincorporated Nonprofit
1440 Association Act (2008) § 18.

1441

1442 **Committee Comment:**

1443

1444 Members of a nonprofit association, like members of a limited liability company
1445 in a manager managed LLC and limited partners in a limited partnership, do not have
1446 fiduciary duties (including a duty of care and a duty of loyalty) to the nonprofit
1447 association or the other members by virtue of their status as members. A member who
1448 undertakes managerial duties, however, would have the fiduciary duties of a manager
1449 (*see* 15 Pa.C.S. § 9129).

1450

1451 While they do not have fiduciary duties, members do have the obligation to
1452 discharge any duties and any rights they exercise pursuant to this chapter or the
1453 governing principles consistent with the obligation of good faith and fair dealing. A
1454 member cannot, for example, disclose confidential information obtained from the
1455 nonprofit association to third parties. The obligation of good faith and fair dealing is
1456 not, strictly speaking, a fiduciary duty but rather is a duty that is derived from the
1457 consensual or contract nature of a nonprofit association. *See* RESTATEMENT (SECOND)
1458 OF CONTRACTS (1981) §205. The duty of good faith and fair dealing of a member in a
1459 nonprofit association cannot be altered or varied.

1460

1461 The following terms used in this section are defined in 15 Pa.C.S. § 9112:

1462

1463 “governing principles”

1464 “member”

1465 “nonprofit association”

1466

1467

1468 **§ 9126. Membership.**

1469

1470 (a) Admission, suspension, dismissal and expulsion of member.—

1471

1472 (1) A person becomes a member and may be suspended, dismissed or
1473 expelled in accordance with the governing principles. If there are no applicable
1474 governing principles, a person may become a member or be suspended, dismissed
1475 or expelled only with the approval of the members. A person may not be admitted
1476 as a member without the person’s consent.

1477

1478 (2) Except as provided in the governing principles, the suspension,
1479 dismissal or expulsion of a member does not relieve the member from any unpaid

1480 capital contribution, dues, assessments, fees or other obligation incurred or
1481 commitment made by the member before the suspension, dismissal or expulsion.

1482
1483 (b) Resignation of member.—
1484

1485 (1) A member may resign as a member in accordance with the governing
1486 principles. In the absence of applicable governing principles, a member may
1487 resign at any time.
1488

1489 (2) Except as provided in the governing principles, resignation of a
1490 member does not relieve the member from any unpaid capital contribution, dues,
1491 assessments, fees or other obligation incurred or commitment made by the
1492 member before resignation.
1493

1494 **Official Source Note:**
1495

1496 15 Pa.C.S. § 9126: Subsection (a) patterned after Uniform Unincorporated
1497 Nonprofit Association Act (2008) § 19. Subsection (b) patterned after Uniform
1498 Unincorporated Nonprofit Association Act (2008) § 20.
1499

1500 **Committee Comment:**
1501

1502 The default rule for admission, suspension, dismissal, or expulsion of members is
1503 a majority vote of members, but if the governing principles provide otherwise, they will
1504 control. Subsection (a)(2) makes clear that suspension, dismissal, or expulsion does not
1505 relieve a member of any obligations it owes the nonprofit association.
1506

1507 Preventing a member from voluntarily withdrawing from a nonprofit association
1508 would be unconstitutional and void on public policy grounds. A nonprofit association
1509 should, however, be able to impose reasonable restrictions on withdrawal, for example,
1510 requiring 30 days' advance notice. Moreover, as subsection (b)(2) states, a member
1511 who resigns remains liable for obligations and commitments made before the
1512 resignation.
1513

1514 The following terms used in this section are defined in 15 Pa.C.S. § 9112:
1515

1516 “governing principles”

1517 “member”
1518
1519

1520 **§ 9127. Membership interest not transferable.**
1521

1522 (a) General rule.—Except as set forth in subsection (b) or the governing
1523 principles, a member’s interest or any right under the governing principles is not
1524 transferable.
1525

- 1526 (b) Certain nonprofit associations formed prior to effective date.—
1527
1528 (1) This subsection applies to a nonprofit association:
1529
1530 (i) which was formed before {the Legislative Reference Bureau
1531 shall insert here the effective date of this chapter};
1532
1533 (ii) which was formed for the purpose of encouraging lawful
1534 associational activity among agricultural and industrial workers through the
1535 organization of a nonprofit association for mutual benefit insurance, saving
1536 or other lawful objects; and
1537
1538 (iii) in which the persons that organized the nonprofit association
1539 derive benefits from the preservation and continuance of the membership
1540 and interest among persons engaged in a common calling, labor or
1541 enterprise.
1542
1543 (2) For a nonprofit association under paragraph (1), the following apply:
1544
1545 (i) Except as set forth in subparagraph (ii), a member’s interest or
1546 any right under the governing principles is transferable.
1547
1548 (ii) A member’s interest or any right under the governing principles
1549 is nontransferable if the governing principles so provide.
1550
1551 (c) Assignments and pledges.—No legal or equitable right or interest shall pass
1552 as a result of an attempted assignment, transfer or pledge of a membership or an interest
1553 in violation of:
1554
1555 (1) subsection (a); or
1556
1557 (2) a transfer restriction under subsection (b)(2)(ii).
1558
1559 (d) Knowledge of nontransferability.—Whenever the interest of a member in a
1560 nonprofit association is evidenced by a certificate, an endorsement on the certificate that
1561 the certificate is nontransferable shall be conclusive evidence that the person to whom
1562 any attempted assignment, transfer or pledge of the certificate is made has knowledge of
1563 the nontransferable character of the interest of the member.
1564

1565 **Official Source Note:**
1566

1567 15 Pa.C.S. § 9127: Subsection (a) patterned after Uniform Unincorporated
1568 Nonprofit Association Act (2008) § 21. Subsections (b), (c), and (d) derived from
1569 former 15 Pa.C.S. § 9103.
1570

1571 **Committee Comment:**

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

Subsection (b) continues the rule of former 15 Pa.C.S. § 9103 which permitted nonprofit associations of agricultural and industrial workers to restrict the transferability of interests in their nonprofit association. Because subsection (b) in its restatement of former 15 Pa.C.S. § 9103 provides the reverse of the default rule in subsection (a) and requires the nonprofit association to affirmatively restrict the transferability of interests, it has been preserved for those types of nonprofit associations that were formed before the effective date of this chapter.

The following terms used in this section are defined in 15 Pa.C.S. § 9112:

- “governing principles”
- “member”
- “nonprofit association”

§ 9128. Selection and management rights of managers.

Except as provided in this chapter or the governing principles:

- (1) if a manager is not selected, all members are managers;
- (2) only the members may select a manager;
- (3) a manager may be a member or a nonmember; and
- (4) all matters relating to the activities of the nonprofit association are decided by its managers except for matters reserved for approval by the members in section 9123 (relating to approval by members).

Official Source Note:

15 Pa.C.S. § 9128: Patterned after Uniform Unincorporated Nonprofit Association Act (2008) § 22.

Committee Comment:

1617 The default rule is that all members are managers. In nonprofit associations such
1618 as churches with large numbers of members, this default rule will rarely be applicable
1619 because the governing principles will in most situations provide a selection process for
1620 managers.

1621
1622 Paragraph (4) (managers manage the activities of the nonprofit association) is
1623 consistent with the centralized management by general partners in a partnership and
1624 managers of a limited liability company.

1625
1626 The rules in this section are default rules that can be varied by the governing
1627 principles. The intent is to allow maximum flexibility. The governing principles can
1628 provide for any type of managerial structure the nonprofit association wants to have.
1629 Choices range from a traditional board of directors or board of trustees, to third parties
1630 who manage the nonprofit association under a contract. The managerial responsibilities
1631 can be split among the various managers (*e.g.*, one manager in charge of finances,
1632 another in charge of programs). Members who are also managers will have a dual
1633 status and their duties and liabilities will be based on the capacity in which they are
1634 acting at the time an action (or omission) takes place.

1635
1636 The following terms used in this section are defined in 15 Pa.C.S. § 9112:

- 1637
1638 “governing principles”
1639 “manager”
1640 “member”
1641 “nonprofit association”

1642
1643

1644 **§ 9129. Duties of managers.**

1645
1646

(a) Standard of care.—

1647
1648

(1) A manager shall perform the duties for which a manager is responsible
1649 or which the manager undertakes in good faith; in a manner the manager
1650 reasonably believes to be in the best interests of the nonprofit association and in
1651 accordance with its purposes; and with such care, including reasonable inquiry,
1652 skill and diligence, as a person of ordinary prudence would use under similar
1653 circumstances.

1654
1655

(2) A manager may rely in good faith upon any opinion, report, statement
1656 or other information provided by another person that the manager reasonably
1657 believes is a competent and reliable source for the information.

1658
1659

(b) Conflicts of interest.—

1660
1661

(1) A manager owes a duty of loyalty to the nonprofit association with
1662 respect to the responsibilities of the manager.

1663
1664 (2) After full disclosure of all material facts, a specific act or transaction,
1665 that would otherwise violate the duty of loyalty by a manager, may be authorized
1666 or ratified by a majority of the members that are not interested directly or
1667 indirectly in the act or transaction.
1668

1669 (c) Presumption.—A manager that makes a judgment in good faith satisfies the
1670 duties specified in subsection (a) if the manager:

1671
1672 (1) is not interested, directly or indirectly, in the subject of the judgment
1673 and is otherwise able to exercise independent judgment;

1674
1675 (2) is informed with respect to the subject of the judgment to the extent the
1676 manager reasonably believes to be appropriate under the circumstances; and

1677
1678 (3) believes that the judgment is in, or not opposed to, the best interests of
1679 the nonprofit association.
1680

1681 (d) Limitation of liability.—

1682
1683 (1) Except as set forth in paragraph (2), the governing principles in record
1684 form may provide that a manager shall not be personally liable, as a manager, for
1685 monetary damages for any action taken unless:

1686
1687 (i) the manager has breached or failed to perform the manager's
1688 duties under this chapter; and

1689
1690 (ii) the breach or failure to perform constitutes self-dealing, willful
1691 misconduct or recklessness.
1692

1693 (2) Paragraph (1) shall not apply to:

1694
1695 (i) the responsibility or liability of a manager under a criminal
1696 statute; or

1697
1698 (ii) the liability of the manager for the payment of taxes under
1699 Federal, State or local law.
1700

1701 **Official Source Note:**

1702
1703 15 Pa.C.S. § 9129: Patterned after Uniform Unincorporated Nonprofit
1704 Association Act (2008) § 23. Subsection (a) patterned after 15 Pa.C.S. § 1712(a).
1705 Subsection (d) patterned after 15 Pa.C.S. § 1713.
1706

1707 **Committee Comment:**

1709 This section deals with what are generally referred to as fiduciary duties. Only
1710 individuals exercising managerial authority in a nonprofit association have fiduciary
1711 duties. This is consistent with U.S. business entity laws. A member of a nonprofit
1712 association does not have any fiduciary duties to the other members or to the managers
1713 or to the nonprofit association, unless the member is also a manager. *See* 15 Pa.C.S. §
1714 9125. In that event, the member, in the capacity of a manager, would have the fiduciary
1715 duties that the other managers of the nonprofit association have.
1716

1717 The two fundamental fiduciary duties are care and loyalty. Good faith is
1718 sometimes characterized as a fiduciary duty but with respect to unincorporated business
1719 entities is designated as a contract based obligation.
1720

1721 Under subsection (b) the duty of loyalty to a nonprofit association is limited to
1722 circumstances surrounding the responsibilities of a manager. A manager of a nonprofit
1723 does not owe a duty of loyalty in reference to situations that are commonly called the
1724 “business opportunity” doctrine or engaging in competing activities. A potential breach
1725 of the duty of loyalty can be avoided by advance approval or ratification after full
1726 disclosure of the facts. Under subsection (c)(1) having a conflict of interest precludes
1727 the application of the presumption in subsection (c).
1728

1729 Subsection (c) in effect applies the business judgment rule to nonprofit
1730 associations, but does not use the term “business” because of the nonprofit nature of the
1731 activities of nonprofit associations.
1732

1733 Subsection (d) permits the governing principles of a nonprofit association to limit
1734 or eliminate the monetary liability of a manager who is found to have breached a
1735 fiduciary duty except as provided in subsection (d). This limitation, unlike most
1736 governing principles, must be in record form. Even if a manager is exempt from
1737 monetary damages under subsection (d), the manager could still be bound by an
1738 injunction or other equitable remedy granted by a court.
1739

1740 This section only deals with the liability of a manager to the nonprofit association
1741 and its members. The liability of a manager to third parties is dealt with in other
1742 sections of this chapter. *See* 15 Pa.C.S. § 9117 and the Committee Comment to that
1743 section dealing with limitations on liability to third parties under state and federal
1744 volunteer protection acts.
1745

1746 The following terms used in this section are defined in 15 Pa.C.S. § 9112:
1747

1748 “governing principles”

1749 “manager”

1750 “member”

1751 “nonprofit association”
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1754 **§ 9130. Action by managers.**

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- (a) General rule.—Except as provided in the governing principles:
- (1) approval of a matter by the managers requires the affirmative vote of at least a majority of the votes cast at a meeting of managers; and
 - (2) each manager is entitled to one vote on each matter that is submitted for approval by the managers.
- (b) Procedural matters.—The governing principles may provide for the:
- (1) delegation to a manager of authority to act without a meeting of the managers;
 - (2) creation and authority of committees of the managers;
 - (3) calling, location, and timing of meetings of the managers or a committee of the managers;
 - (4) notice and quorum requirements for meetings of the managers or a committee of the managers;
 - (5) conduct of meetings of the managers or a committee of the managers;
 - (6) taking of action by the managers or a committee of the managers by consent without a meeting or by ballot;
 - (7) participation by managers in a meeting of the managers or a committee of the managers by telephone or other means of electronic communication; and
 - (8) taking of action by a manager by proxy.
- (c) Absence of governing principles.—If the governing principles do not provide for a matter described in subsection (b), customary usages and principles of parliamentary law and procedure apply.

Official Source Note:

15 Pa.C.S. § 9130: Patterned in general after Uniform Unincorporated Nonprofit Association Act (2008) § 24.

Committee Comment:

A nonprofit association will usually have some kind of notice and quorum requirements and meeting procedures in its governing principles. If a nonprofit association does not have any such requirements (*e.g.*, it is newly formed and is holding

1801 its initial meeting), it can create them at that meeting and those requirements, even if
1802 oral or shown through the course of conduct over time, become part of the governing
1803 principles.

1804
1805 In subsection (a)(1), “votes cast” is intended to exclude abstentions or other forms
1806 of refraining from a positive or negative vote. *Cf.* the definition of “voting” or “casting
1807 a vote” in 15 Pa.C.S. § 1103.

1808
1809 Because managers of nonprofit associations have more limited fiduciary duties
1810 than their counterparts in other business entities, the governing principles are given the
1811 flexibility under subsection (b)(8) to authorize the use of proxies by the managers.
1812 Subsection (b)(8) has been added to the Uniform Unincorporated Nonprofit Association
1813 Act (2008) § 24 to reverse the commentary to that section of the Uniform Act which
1814 states that “[a]s a general rule, directors or other persons performing managerial
1815 responsibilities may, consistent with a UNA’s governing principles, delegate one or
1816 more duties to another person, but they are not authorized to give another person a
1817 proxy to vote on a matter.”

1818
1819 The following terms used in this section are defined in 15 Pa.C.S. § 9112:

1820
1821 “governing principles”

1822 “manager”

1823 “member”

1824 “nonprofit association”

1825

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1827 **§ 9131. Right of member or manager to information.**

1828

1829 (a) Inspection.—On reasonable notice, a member or manager of a nonprofit
1830 association may inspect and copy, at a reasonable time and location specified by the
1831 nonprofit association, any record maintained by the nonprofit association regarding its
1832 activities, financial condition and other circumstances, to the extent the information is
1833 material to the rights and duties of the member or manager under the governing
1834 principles.

1835

1836 (b) Restrictions.—A nonprofit association may impose reasonable restrictions
1837 on access to and use of information to be furnished under this section, including
1838 designating the information confidential and imposing on the recipient obligations of
1839 nondisclosure and safeguarding.

1840

1841 (c) Costs.—A nonprofit association may charge a person that makes a demand
1842 under this section reasonable copying costs.

1843

1844 (d) Former member or manager.—A former member or manager is entitled to
1845 information to which the member or manager was entitled while a member or manager
1846 if:

- 1847
1848 (1) the information pertains to the period during which the person was a
1849 member or manager;
1850
1851 (2) the former member or manager seeks the information in good faith;
1852 and
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1854 (3) the former member or manager satisfies subsections (a), (b) and (c).
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1856 **Official Source Note:**
1857

1858 15 Pa.C.S. § 9131: Patterned after Uniform Unincorporated Nonprofit
1859 Association Act (2008) § 25.
1860

1861 **Committee Comment:**
1862

1863 This subchapter does not require a nonprofit association to keep any books and
1864 records, but if it does have them, they must be made available to the members and
1865 managers pursuant to this section. The term books and records is intended to cover all
1866 types and forms of data, including electronic data.
1867

1868 A member who has been suspended retains the right to information under
1869 subsection (a). But the information available to a suspended member will be affected
1870 by the member's status.
1871

1872 The following terms used in this section are defined in 15 Pa.C.S. § 9112:
1873

1874 “governing principles”

1875 “manager”

1876 “member”

1877 “nonprofit association”
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1880 **§ 9132. Distributions prohibited; compensation and other permitted**
1881 **payments.**
1882

1883 (a) General rule.—Except as provided in subsection (b), a nonprofit association
1884 may not pay dividends or make distributions to a member or manager.
1885

1886 (b) Permitted payments.—A nonprofit association may:
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1888 (1) pay reasonable compensation or reimburse reasonable expenses to a
1889 member or manager for services rendered;
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1891 (2) confer benefits on or make contributions to a member or manager in
1892 conformity with its nonprofit purposes;

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

(4) repay indebtedness to a member or manager; and

(5) make distributions of property to members upon winding up and termination to the extent permitted by section 9135 (relating to winding up and termination).

Official Source Note:

15 Pa.C.S. § 9132: Patterned after Uniform Unincorporated Nonprofit Association Act (2008) § 26.

Committee Comment:

A distribution by a nonprofit association to its members is inconsistent with the nonprofit nature of the organization. Thus this section prohibits distributions generally, subject to the exceptions in subsection (b), in a manner similar to the restrictions applicable to nonprofit corporations. *See* 15 Pa.C.S. § 5551.

The following terms used in this section are defined in 15 Pa.C.S. § 9112:

“governing principles”

“manager”

“member”

“nonprofit association”

§ 9133. Reimbursement, indemnification and advancement of expenses.

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

(b) Indemnification and advancement of expenses.—

(1) A nonprofit association is subject to Ch. 57 Subch. D (relating to indemnification).

(2) For purposes of applying Ch. 57 Subch. D, references to the “articles” or “bylaws,” “directors” and “members” shall mean the “governing principles,” “managers” and “members,” respectively.

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Official Source Note:

15 Pa.C.S. § 9133: Subsection (a) patterned after Uniform Unincorporated Nonprofit Association Act (2008) § 27(a).

Committee Comment:

The right to reimbursement under subsection (a) is mandatory, unless the governing principles otherwise provide. The rights to indemnification and advancement of expenses under subsection (b) are discretionary, except that 15 Pa.C.S. § 5743 requires indemnification under certain circumstances.

The following terms used in this section are defined in 15 Pa.C.S. § 9112:

- “governing principles”
- “manager”
- “member”
- “nonprofit association”

§ 9134. Dissolution.

(a) General rule.—A nonprofit association may be dissolved as follows:

- (1) if the governing principles provide a time or method for dissolution, at that time or by that method;
- (2) if the governing principles do not provide a time or method for dissolution, upon approval by the members;
- (3) if no member can be located and the operations of the nonprofit association have been discontinued for at least three years, by:
 - (i) the managers; or
 - (ii) if the nonprofit association has no current manager, its last manager;
- (4) by court order; or
- (5) under law other than this chapter.

(b) Continuation during winding up.—After dissolution, a nonprofit association continues in existence until its activities have been wound up and it is terminated under section 9135 (relating to winding up and termination).

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Official Source Note:

15 Pa.C.S. § 9134: Patterned after Uniform Unincorporated Nonprofit Association Act (2008) § 28.

Committee Comment:

The vote required for dissolution under subsection (a)(2) would be a majority vote of the members and under subsection (a)(3) would be a majority of the managers, unless the governing principles require a higher vote. *See* 15 Pa.C.S. §§ 9124(a) and 9130.

Subsection (a)(4) provides a means for the dissolution of a nonprofit association where it is impossible or impracticable to continue the nonprofit association and subsections (a)(1) – (a)(3) do not apply, for example because of a deadlock or in other circumstances where the doctrine of cy pres is deemed to be applicable.

A nonprofit association that is totally inactive and has no assets or that has decreased its membership below the two member minimum requirement is *de facto* dissolved, even though it is not *de jure* dissolved. Formal dissolution (and winding up and termination under 15 Pa.C.S. § 9135) is only necessary if the nonprofit association has assets.

The following terms used in this section are defined in 15 Pa.C.S. § 9112:

- “governing principles”
- “manager”
- “member”
- “nonprofit association”

§ 9135. Winding up and termination.

Winding up and termination of a nonprofit association must proceed in accordance with the following rules:

- (1) All known debts and liabilities must be paid or adequately provided for.
- (2) Any property subject to a condition requiring return to the person designated by the donor must be transferred to that person.
- (3) Any property subject to a trust must be distributed in accordance with the trust agreement.

2030 (4) Any property committed to a charitable purpose shall be distributed in
2031 accordance with that purpose unless the nonprofit obtains a court order under 20
2032 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.
2033

2034 (5) Any remaining property shall be distributed as follows:
2035

2036 (i) Distribution shall be made:
2037

2038 (A) in accordance with the governing principles of the nonprofit
2039 association; or
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2041 (B) in the absence of applicable governing principles, to the
2042 members of the nonprofit association:
2043

2044 (I) per capita; or
2045

2046 (II) as the members direct.
2047

2048 (ii) If subparagraph (i) does not apply, distribution shall be made
2049 under Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as
2050 The Fiscal Code.
2051

2052 **Official Source Note:**
2053

2054 15 Pa.C.S. § 9135: Patterned after Uniform Unincorporated Nonprofit
2055 Association Act (2008) § 29. Subsection (a)(4) patterned in part after 15 Pa.C.S. §
2056 5547(b).
2057

2058 **Committee Comment:**
2059

2060 This section sets out the rules for distribution of the assets of a nonprofit
2061 association after its affairs have been wound up.
2062

2063 Unlike other organic laws in Title 15 which provide a statute of limitations for
2064 claims by creditors of an entity, this chapter does not specify the time within which a
2065 creditor of a nonprofit association may bring a claim against the dissolved nonprofit
2066 association. As a result, the otherwise applicable statute of limitations will determine
2067 when an action by a creditor to recover any assets distributed by a nonprofit association
2068 upon liquidation will be barred.
2069

2070 The following terms used in this section are defined in 15 Pa.C.S. § 9112:
2071

2072 “governing principles”
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2074 “member”
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2075 “nonprofit association”

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2077 **§ 9136. Subordination of chapter to canon law.**

2078

2079 If and to the extent canon law or similar principles applicable to a nonprofit
2080 association organized for religious purposes sets forth provisions relating to the
2081 government and regulation of the affairs of the nonprofit association that are
2082 inconsistent with the provisions of this chapter on the same subject, the provisions of
2083 canon law or similar principles shall control except to the extent prohibited by the
2084 Constitution of the United States or the Constitution of Pennsylvania.

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2086 **Official Source Note:**

2087

2088 15 Pa.C.S. § 9136: Patterned after 15 Pa.C.S. § 5107.

2089

2090 **Committee Comment (2009):**

2091

2092 This section extends to nonprofit associations a provision of the Nonprofit
2093 Corporation Law of 1988 that subordinates that statute to applicable canon law. *See* 15
2094 Pa.C.S. § 5107. Both sections are consistent with prevailing decisions of the U.S.
2095 Supreme Court that prohibit civil courts from making judgments regarding purely
2096 ecclesiastical matters. *See, e.g., Serbian Eastern Orthodox Diocese for the United*
2097 *States of America and Canada, et al. v. Milivojevich, et al.*, 426 U.S. 696 (1976);
2098 *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1951); and *Watson v. Jones*, 80 U.S. (13
2099 Wall.) 679 (1871).