A Legal Framework for
Decentralized Autonomous Organizations

Part III: Model Decentralizxed Unincorporated Nonprofit Association Act[1]

Introduction

The blockchain technology underpinning web3 is fundamentally changing how the internet can be used, enabling the creation of decentralized digital services and providing a settlement layer capable of nearly instantaneous transfers of value. What began as a single decentralized blockchain network has grown into the decentralized products and services known as "DeFi" and is now expanding to create a version of the internet built on decentralized public infrastructure whose maintenance is not dependent on the powers or interests of an individual or primary leadership group.[2] Although the realization of blockchain's potential is well underway, it remains to be seen what role the United States will have in this innovation.

Alarmingly, an increasing number of indicators portend a future where the United States falls behind in this developing sector, with growth in web3 developers outside the United States now outpacing growth within it.[3] U.S. projects have overwhelmingly offshored the decentralized autonomous organizations ("DAOs") tasked with overseeing the networks and protocols originally developed in the United States. Much of this exodus can be traced to regulatory uncertainty stemming from a lack of guidance and an inconsistent application of U.S. securities laws, as well as a lack of clarity in the available domestic legal entity structures for the organizations themselves. Despite these trends, the historical stability of the U.S. legal system, the number of developers in the United States and the need for a system where individuals can control their own data all uniquely position the United States to lead in web3 and benefit from supporting its growth.

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[1] This proposal was prepared by David Kerr (Principal at Cowrie, LLC) and Miles Jennings (Head of Decentralization & General Counsel at a16z crypto).

Tremendous appreciation is expressed for the diligent and thoughtful efforts of the Uniform Law Commission in drafting and advancing the Uniform Unincorporated Nonprofit Association Act, which was relied upon heavily in the construction of the Model DUNAA. This appreciation extends to the thought leaders who advanced how unincorporated nonprofit associations should be treated under the law through public studies (like California's two year inquiry into consideration of unincorporated association, http://www.clrc.ca.gov/B501.html), scholastic work (like Prof. Elizabeth Miller's law review article analyzing the Uniform Unincorporated Nonprofit Association Acts, https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1446&context=wmlr), and the consideration of how laws should be designed to serve the best interest of its constituents taken by state legislative bodies in the adoption of UNA and DUNA statutes.

Nothing gets built in a vacuum and we thank the many professionals and organizations who contributed to the development of the Model DUNAA for their time, efforts and insights, particularly Christina Houston (Partner at DLA Piper) for her meticulous feedback and abundant enthusiasm to delve into the details.

[2] An abundance of use cases already exists for the tokenization of assets, streamlining of processes and expansion of automation through utilization of blockchain technology, s*ee generally* Blockchain Solutions – IBM Blockchain, *available at* https://www.ibm.com/blockchain?utm_content=SRCWW&p1=Search&p4=43700068512464068&p5=p&gclid=3b75ec747eda139f8c628f383de9df46&gclsrc=3p.ds; Blockchain – Deloitte US Perspectives, Insights, and Analysis, *available at* https://www2.deloitte.com/us/en/pages/consulting/topics/blockchain.html; and Blockchain solutions; and EY US Platforms, insights & services, *available at* https://www.ey.com/en_us/blockchain-platforms.

[3] Electric Capital Developer Report 2023, *available at* https://www.developerreport.com/developer-report-geography.

Various members of Congress and even the White House have already contributed to this effort with several promising legislative proposals and an executive order.[4] However, regardless of whether web3 achieves success at the federal level, the United States will not continue as a jurisdictional center for the developing technology unless state legislatures support the use of domestic legal entity structures by DAOs formed around network and smart contract protocols. **Part I**[5] and **Part II**[6] of The Legal Framework for Decentralized Autonomous Organizations series provided a detailed analysis of the challenges DAOs currently face with respect to adopting legal entity forms (e.g., attaining limited liability, the circumstances resulting in informational reporting of members and the payment of taxes). **Part II** ultimately concluded that in a majority of circumstances, the unincorporated nonprofit association ("UNA") provides the best domestic entity structure template for solving substantially all the legal entity-related issues facing DAOs.

As a general principle, state UNA laws were designed to be particularly flexible in accommodating *ad hoc* structures and significant informalities, making the UNA well-situated to accommodate decentralized organizations. While this flexibility allows for many types of DAOs to organize as UNAs, existing UNA statutes do not provide clarity as to whether they were intended to be utilized for this purpose and the degree to which UNA laws can be relied upon as a long-term solution creates uncertainty in planning. As a result, the UNA entity structure has not widely been adopted by DAOs.

However, many states are enthusiastic about supporting decentralization and are actively looking to implement legal entity forms that support the development of web3.[7] Pairing existing legislative efforts with the most effective legal entity template presents a tremendous opportunity to create impactful legislation that would relieve state jurisdictions of having to apply laws to activities not contemplated when they were created, allow for the introduction of effective regulation within the legislation and provide clarity to the entity selection process for decentralized organizations.

This **Part III** proposes to do just that by introducing the Model Decentralized Unincorporated Nonprofit Association Act ("Model DUNAA") for consideration by U.S. states. Adoption of the bill by a state would establish the decentralized unincorporated nonprofit association ("DUNA") as a category within existing

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[4] *See* S.4356 - 117th Congress (2021-2022): Lummis-Gillibrand Responsible Financial Innovation Act, *available at* https://www.congress.gov/bill/117th-congress/senate-bill/4356 and Updated 2023 Fact Sheet, *available at* https://www.lummis.senate.gov/wp-content/uploads/Whats-New-in-Lummis-Gillibrand-2023-Final.pdf; H.R.4766 - 118th Congress (2023-2024): Clarity for Payment Stablecoins Act of 2023, *available at* https://www.congress.gov/bill/118th-congress/house-bill/4766; S.4760 - 117th Congress (2021-2022): Digital Commodities Consumer Protection Act of 2022, *available at* https://www.congress.gov/bill/117th-congress/senate-bill/4760; and FACT SHEET: President Biden to Sign Executive Order on Ensuring Responsible Development of Digital Assets - The White House, *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/.

[5] David Kerr and Miles Jennings, A Legal Framework for Decentralized Autonomous Organizations, a16z (October 2021), *available at* https://a16zcryptocms.wpengine.com/wp-content/uploads/2022/06/dao-legal-framework-part-1.pdf.

[6] Miles Jennings and David Kerr, A Legal Framework for Decentralized Autonomous Organizations - Part II - Entity Selection Framework, a16z (June 2022), *available at* https://a16zcryptocms.wpengine.com/wp-content/uploads/2022/06/dao-legal-framework-part-2.pdf.

7 For a list of proposed and enacted blockchain laws by state see the National Conference of State Legislatures, Cryptocurrency 2023 Legislation Summary, *available at* https://www.ncsl.org/financial-services/cryptocurrency-2023-legislation.

business organization codes for use by decentralized organizations.[8] States adopting a DUNA entity form based on the Model DUNAA stand to benefit in several ways. First, adoption would provide states with the legal infrastructure necessary to promote innovation in web3. Second, it would make such states an attractive home for international organizations capable of significant growth and economic benefit (particularly in the collection of tax revenue). Third, by participating in the formation of the rules, the states will be able to meaningfully address specific issues necessary to ensure consistency with their existing laws and when necessary, have disputes resolved in the courts of their legal system.

Principles of the Proposal

A DUNA would be an electable form of unincorporated nonprofit association similar in construction to the Uniform Unincorporated Nonprofit Association Act ("UUNAA") contemplating the organizational requirements of decentralized organizations. As detailed herein, the construction of the Model DUNAA has been undertaken in accordance with the following principles:

- **Minimize Deviations from Existing Laws** – The Model DUNAA substantively deviates from existing UNA laws only where necessary to address operational considerations or provide additional clarity. While many changes were made to the default language of the UUNAA and RUUNNA to provide additional detail in how the Model DUNAA would likely be utilized by decentralized organizations – these changes provide no additional benefit from what could already be attained under existing UNA laws.

- **Minimize Conflicts of Law –** The Model DUNAA seeks to minimize potential conflicts with existing state laws. It does not encroach on any existing legal entity forms and it is not a default structure, rather it must be elected and conform to the laws of an adopting state and the act itself. As the Model DUNAA contains restrictions on distributions and minimum membership levels – it presents a clearly defined use case for when it should be utilized.

- **Forgo Special Treatment –** The Model DUNAA is technologically neutral and does not provide organizations electing to form as DUNAs with special treatment under the law or treat particular forms of technology in an inconsistent manner. States wishing to adopt the Model DUNAA must consider any existing UNA laws and relevant existing statutes (i.e., agency laws, registration requirements, books and records requirements, service of process, etc.) to ensure that their DUNA laws are consistent with existing law.

- **Suitability for Decentralized Organizations –** The Model DUNAA is tailored specifically for use by decentralized organizations and contemplates a baseline structure that does not include a management function, instead it allows for the selection of administrators with limited authorization to perform specific tasks authorized by the membership. Implicit in this concept is the idea that the success of decentralized organizations is not dependent on the managerial efforts of an individual person or group of persons. As a result, DUNAs are best suited for organizations formed for the purpose of administering the affairs of an autonomous blockchain network, smart contract protocol or equivalent purpose, and not well-suited for organizations that are reliant on traditional management structures and hierarchies.

- **Maximize Future Structuring Options –** The regulatory and legal regimes applicable to blockchain technology and other technology sectors are in a period of flux. Modernization of existing laws is

[8] Although created to provide a legal entity structure for current applications of decentralized technology, the Model DUNAA's use is not exclusive to DAOs or a particular utilization of technology. Any organization meeting the requirements would be eligible to form as a decentralized unincorporated association under the act.

a necessity, but any such efforts should prioritize flexibility given the rapidly evolving development of blockchain technology and its use cases. The Model DUNAA contemplates the necessity of organizations being able to convert or merge into different structures based on changes in law or changes in operation. This flexibility will provide existing organizations certainty that their selection of the DUNA will not restrict their ability to keep pace with future changes in the law.

States Considering adoption of the Model DUNAA

A number of states are considering adoption of the Model DUNAA in some form – including California, Texas and Wyoming.

California Assembly Bill 1229 was introduced in the 2023-2024 regular session and was passed from the House Banking and Finance Committee to the House Judiciary Committee.[9] From July 2000 through May 2005, the California Legislature performed an extensive inquiry into adoption of the UUNAA, ultimately passing a number of amendments to augment its existing UNA laws.[10] As California's UNA laws are a significant departure from the UUNAA and RUUNAA, particularly in the treatment of for-profit and non-profit organizations, AB 1229 is very dissimilar in presentation from the Model DUNAA proposed herein, as it was drafted as an insert to sit next to California's existing laws pertaining to unincorporated nonprofit associations.

Texas House Bill 3768 was introduced in the 2023-2024 legislative session and was passed from the House to the Senate.[11] It did not receive a vote in the Senate and is expected to be reintroduced in the next legislative session. HB 3768 is substantively similar to the Model DUNAA proposed herein, with differences deriving from conformity to existing Texas law, particularly Chapter 252 of the Texas Business Organization Code governing unincorporated nonprofit associations, enacted in 2003.[12]

Wyoming Bill SF0050 has passed both the House and the Senate in the 2024 legislative session and is pending signature from the Governor to go into effect on July 1, 2024..[13] SF0050 is substantively similar to the Model DUNAA proposed herein, with differences deriving from conformity to existing Wyoming law, particularly Title 17, Chapter 2022, governing unincorporated nonprofit associations enacted in 1993.[14]

Background on the Proposal

[9] CA AB1229 - 2023-2024, Regular Session, LegiScan, a*vailable at* https://legiscan.com/CA/bill/AB1229/2023.

[10] CA Legislature, Unincorporated Associations–Study B-501, a*vailable at* http://www.clrc.ca.gov/B501.html.

[11] TX HB3768, 2023-2024, 88th Legislature, LegiScan. *available at* https://legiscan.com/TX/votes/HB3768/2023.

[12] Acts 2003, 78th Leg., Chapter 182, TX, a*vailable at:* https://www.lrl.texas.gov/scanned/sessionLaws/78-0/HB_1156_CH_182.pdf.

[13] Wyoming Legislature, SF0050 – Unincorporated nonprofit DAO's, a*vailable at* https://wyoleg.gov/Legislation/2024/SF0050.

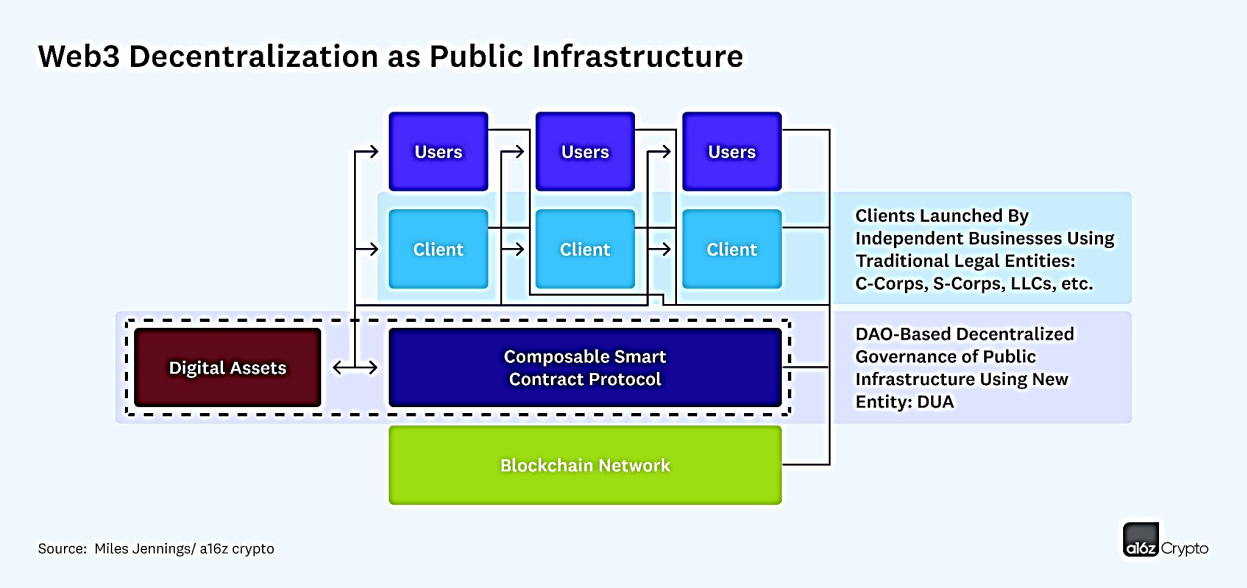
[14] Senate File 066, 52nd WY Legislature, a*vailable at* https://wyomingdigitalcollections.ptfs.com/aw-server/rest/product/purl/WSL/i/3e0deeac-a0d6-402f-b866-3293077fe514.

Unique Characteristics of Web3 Technology[15]

In web2, companies build and operate business models designed to capture the value created by the proprietary technology they have developed and their proprietary network of users. In web3, programmable blockchains make it possible for web3 companies to develop technology that can be utilized as public infrastructure, on top of which anyone can build and offer digital services.

The underlying architecture for web3 is comprised of several layers, which are reflected in the image below:

1. A decentralized and public **blockchain network** (e.g., Ethereum, Solana, Polygon, Avalanche, etc.) that is a permissionless, trustless, and verifiable ecosystem in which value can be transferred and, more importantly, upon which web3 products and services can be built (the "Blockchain Layer").
2. A decentralized and composable **smart contract protocol** (e.g., Uniswap, Compound, Aave, etc.) deployed to a blockchain that enables programmatic execution of promises and commitments (collectively, with the Blockchain Layer, the "Protocol Layer").
3. Proprietary and independent **clients** that act as a gateway for users to interact with the Protocol Layer (e.g., websites like app.uniswap.org, app.compound.finance, app.aave.com, etc.) (the "App Layer" or "Client Layer").



[15] This proposal is focused on the specific legal challenges and uncertainty facing DAOs that govern the operation and ownership of blockchain networks and smart contract protocols.

Many industry participants are exploring the application of DAO models to other traditional operational models, including investment clubs, social clubs and collectives. Where a DAO pursues a traditional operational model that has a real-world analog, it will often be the case that the legal entity form suitable for the traditional operations is also suitable for such DAO. However, there are many cases where this premise fails, especially due to frictions in existing entity laws with centralized management and real-world operations paired with the relative anonymity and trustless nature of DAOs. Those issues would not be resolved by the adoption of the DUNA as those organizations would require significant member involvement in a managerial capacity, which is a question of function, not form.

The underlying technology of blockchain networks and smart contract protocols alone do not give rise to a need for new legal entity structures. For example, there are several open source web1 protocols that are still in use today (e.g., https, smtp, ftp, etc.) that do not require entity structures. Similarly, blockchain networks like bitcoin and ethereum, likely do not require entity structures. However, the picture becomes more complex in situations where a blockchain network or smart contract protocol both conveys governance rights over its underlying technology to the holders of the native digital assets of such technology and gives those holders control over income generated by the technology that does not directly accrue to the original creator or any other readily identifiable taxpayer.

Typically, the decentralized organizations overseeing such technologies are composed of the holders of governance tokens, which are distributed freely to users of a given blockchain or protocol and community participants, as well as to the company or group that developed the technology. The governance tokens enable the members to participate in the operation of the decentralized organization by suggesting and voting on proposals. A significant portion of governance tokens are often also retained by a treasury that is controlled by governance. These tokens can be used to fund the decentralized development and growth of the decentralized ecosystem surrounding the blockchain or protocol. For example, treasury tokens are often used to incentivize and reward protocol user activity (most often through staking or liquidity mining) and by funding ongoing decentralized development efforts, such as the creation of applications to run on top of the blockchain or data analytics tools and new clients/front-end websites for the protocol. These decentralized development efforts are often undertaken by independent third-parties utilizing separate legal entity structures. Additionally, taxable income can be generated from treasury-related activities, including treasury diversification efforts and investment activity.

As a result of these features, three core problems arise for decentralized organizations overseeing blockchain networks and smart contract protocols that jeopardize their viability in web3:

1. they do not have legal existence and are therefore unable to contract with third-parties for ongoing development efforts, easily engage legal or financial advisors (e.g., accountants and bookkeepers) or open bank accounts as required for non-crypto transaction;
2. they are unable to pay taxes; and
3. they potentially expose members to liability.

An appropriate legal entity structure could address all three of these issues and is therefore critical to support the functioning and decentralization of web3.

The importance of decentralization in web3 cannot be understated. The decentralized ownership and operation of the blockchain networks and smart contract protocols of web3 means that such networks and protocols can maintain credible neutrality[16] and function more like public infrastructure than proprietary technology platforms operated by monolithic corporations. This infrastructure can then be built upon by proprietary businesses utilizing traditional entity forms. For example, consider an App Store owned and operated by the public and populated with applications created by independent businesses.

Ultimately, the decentralized organizations of web3 will function much like a city or a homeowners association, administering the affairs of the network or protocol, as opposed to a technology conglomerate building on proprietary systems. This decentralization will also lead to more stakeholder

[16] Credibly neutral systems are those that do not discriminate against any individual stakeholder or any group of stakeholders. This is thought to be critical in web3 in order to incentivize developers to build within ecosystems. *See* Vitalik Buterin, Credible Neutrality as A Guiding Principle, *available at* https://messari.io/report/credible-neutrality-as-a-guiding-principle.

capitalism[17], reduced censorship, greater diversity, enhanced transparency and the promotion of the safety and security of web3 systems.[18]

Problems with Existing Legal Entity Structures

The propagation of DAOs has been accompanied by significant uncertainty regarding what type of legal entity a DAO may be eligible to use under applicable state law. As outlined in **Part I** and **Part II**, the most common domestic U.S. entity legal structures (corporations, partnerships and co-ops) are all unsuitable for use by network and protocol DAOs.

Accordingly, DAOs generally either do not make use of a legal entity (an "entityless" structure) or they adopt an ownerless foreign foundation structure. The entityless structure leaves all three of the issues facing DAOs discussed above (*e.g.*, no legal existence, no ability to pay taxes, and potential unlimited liability) unresolved. The foreign foundation structures solve these three problems, but have their own significant issues, including (i) they require real-world human control, which limits the extent to which they can be truly trustless and decentralized, (ii) they are extremely complicated, costly and difficult to set up, and (iii) they subject the DAO to uncertain tax treatment and could ultimately be challenged by many different jurisdictions. In addition, the use of foreign foundations means that economic activity relating to networks and protocols originally created in the United States is being shipped offshore rather than retained within it.

Unincorporated Associations

Unincorporated associations are a frequently misunderstood topic in legal entity discussions as the term holds a variety of meanings depending on context. A fairly typical state definition of an unincorporated association is "an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not."[19] This wide definition applies to any entity that is not incorporated (e.g., entities besides C Corporations, S Corporations, Nonprofit Corporations and Cooperatives generally) or comprised of more than a single person (e.g., a sole proprietorship).[20]

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[17] Stakeholder capitalism in web3 refers to the goal of designing systems that serve the interests of all stakeholders, rather than a certain subset of stakeholders. For example, in the traditional corporate world, equity holders are prioritized over all other stakeholders, including customers and employees.

[18] *See* Miles Jennings, Principles and Models of Web3 Decentralization, a16z (April 2022), https://a16z.com/wp-content/uploads/2022/04/principles-and-models-of-decentralization_miles-jennings a16zcrypto.pdf. *See also* Bruno Lulinski, David Kerr, The Center Will Not Hold: How Decentralization is Reshaping Technology and Governance, The Defiant (July 2022), https://thedefiant.io/decentralization-upends-governance/.

[19] Section 18025(a) California Corporations Code.

[20] Discussion of trusts, joint tenancy / tenancy in common, or any number of exceptions were excluded for clarity. Rather than lose the forest for the trees including all the history and rich complications – this section is written to simply explain some of the history of unincorporated associations and the evolution in vocabulary around them.

It is exceedingly common for references to unincorporated associations simply to state the common law theory of liability or immediately turn to a discussion of charitable purpose. Like the frequent public references to "incorporating as an LLC" and "Limited Liability Corporations," beyond simply being incorrect – this casual disregard for the role of states in entity formation creates an environment ripe for misunderstanding and potentially costly mistakes.

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Until fairly recently, it was common practice to refer to general partnerships, joint ventures and limited partnerships collectively as unincorporated business associations.[21] These unincorporated business associations shared a commonality of unlimited liability for some or all its members, in contrast to the limited liability available to incorporated entities. However, the past seventy years have seen a seismic shift in the treatment of unincorporated associations, as evidenced by the creation of hybrid entity forms like the limited liability partnership, limited liability corporations, limited cooperative associations and UNAs, which in many ways provide the same legal protections and at times, the same legal standing as incorporated entities.

This change has blurred the historically rigid distinction between incorporated and unincorporated entities, and the relevance of being an unincorporated association became significantly less meaningful, as it is the statutes and case law around these hybrid entity forms that dictate their treatment. For example, while an LLC is an unincorporated association, they are controlled by the state statutes that give rise to the entity form and not the laws pertaining to unincorporated associations generally.[22]

As the usage of these hybrid entity forms increased and case law developed that carved out limited but meaningful reductions in historical liability even for participants in general partnerships and joint ventures – the significance of the distinction between incorporated versus unincorporated entity forms diminished such that modern references to unincorporated associations are usually in reference to a specific entity form (e.g., an unincorporated nonprofit association or a for-profit unincorporated association) and not the classification of incorporated versus unincorporated entities generally.

Unincorporated Nonprofit Associations

Under the common law of many states, when two or more persons engage in an endeavor for a purpose other than to operate a business for-profit, the default structure is that of an unincorporated association. Unincorporated associations reflected the nonprofit version of general partnerships and accordingly, have evolved into being called unincorporated nonprofit associations.

Over the past two-hundred years, many jurisdictions have enacted piecemeal statues around unincorporated nonprofit associations granting varying degrees of legal entity status or near-legal entity status to unincorporated nonprofit associations, with the result being a myriad of common law and state statues governing various legal aspects of the entity form across various jurisdictions. In furtherance of its efforts to bring "clarity and stability to critical areas of state law," the National Conference of Commissioners on Uniform State Laws ("NCCUSL") promulgated the original Uniform Unincorporated Nonprofit Association Act in 1996 and released a significant revision in 2008 that was last amended in 2011.[23]

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[21] *See generally* Richard A. Mann, & Barry S. Roberts, Unincorporated Business Associations: An Overview of Their Advantages and Disadvantages, 14 Tulsa L. J. 1 (2013), *available at* https://digitalcommons.law.utulsa.edu/tlr/vol14/iss1/1.

[22] Setting aside any complexity related to conflicting provisions, gap filling for missing provisions or treatment across courts of various jurisdiction - the above is simply stating that if a jurisdiction has statutes that reference specific rules for unincorporated associations and an LLC law with specific rules for LLCs – most likely, those statutes were constructed in a way that it is the LLC laws that would apply and not the provisions related to unincorporated associations generally.

[23] The 2008 act was referred to as the Revised Uniform Unincorporated Nonprofit Association Act ("RUUNAA") until 2011, when the amended act reverted to the UUNAA (2008) (Last Amended 2011). However, as there are still nine jurisdictions who have adopted the original UUNAA – for clarity and as a reflection that both UUNAA and RUNAA jurisdictions presently exist, this paper continues to distinguish between the UUNAA and RUUNAA.

As discussed in **Part I** and **Part II**, the lack of traditional formalities within the UUNAA provides significant flexibility and the UNA entity form meets the primary needs of many decentralized organizations, including network and protocol DAOs, thereby enabling them to attain legal existence, meet their tax obligations and limit member liability. However, the breadth of organizations whose activities could qualify as UNAs and the need for the entity form to be designed extremely broadly to accommodate any number of scenarios presents an obstacle in providing statutory language around internal rules of governance or even placing prohibitions on distributions (e.g., cooperatives can form as UNAs and do allow for distributions).

However, the current breadth of existing UNA laws is not a protection if a jurisdiction were to enact legislation limiting their applicability to certain forms of technology or use cases in the future. Moreover, there are several aspects of the UUNAA that could be improved for decentralized organizations that would benefit from the clarity in having tailored statutory language.

The Model DUNAA seeks to establish an unincorporated nonprofit association entity form properly tailored for decentralized organizations. For states that have already adopted the UUNAA, the Model DUNAA would only apply to a narrow subset of decentralized UNAs. For states that have not adopted the UUNAA, the Model DUNAA provides a limited application of the unincorporated nonprofit associations entity form that could be adopted for decentralized organizations or extended more broadly with the adoption of the UUNAA.[24]

Reason for the Proposal

The Model DUNAA seeks to establish an entity form properly tailored for decentralized organizations whose operations are impacted by technological function, including DAOs. As the Model DUNAA is an opt-in form of an unincorporated nonprofit association tailored to the needs of such decentralized organizations, it establishes clear intent on the part of states to provide a pathway for legal existence for such decentralized organizations. In addition, as discussed below under the heading "Description of Proposal," the Model DUNAA optimizes the unincorporated form for decentralized organizations.

Even though DAOs are widely referenced in describing the need for this law and drive the intent behind it, the Model DUNAA is written as technologically agnostic to accommodate potential changes in technology that could produce new types of decentralized organizations, in whatever form that may take in the future. However, the Model DUNAA is best suited for an organization formed to administer the affairs of an autonomous blockchain network or smart contract protocol. This is because the Model DUNAA eliminates the utilization of a hierarchy of individuals responsible for managing the enterprise (e.g., directors, officers and managers) and only provides for administrator roles with limited authorization to administer specific tasks authorized by the membership. As a result, the Model DUNAA would not be an option for traditional business structures or organizations with centralized management.[25]

[24] Of the three states that have currently adopted blockchain or decentralized organization laws, only Wyoming has adopted the UUNAA.

[25] Although a DUNA could ostensibly recreate a traditional management structure through enacting governance proposals that reintroduced the concept of management, it would have to construct its governance proposals to a granular level of detail that would basically replicate existing entity forms that are intended to function in this way and there would be no situation where such an entity would not be better served as an UNA or other more appropriate entity form.

Given those parameters, it is most appropriate to characterize the DUNA as being a legal entity wrapper for autonomous software that is administered by a DAO or equivalently decentralized structure, rather than as it being a legal entity wrapper for a web3 company.

Description of Proposal

The construction of the Model DUNAA is closely based on the most recently amended version of UUNAA from 2011, with the intention of clarifying the applicability and application of those statues to decentralized organizations.[26]

It is constructed as a freestanding body of law that sufficiently provides for the organization and operation of DUNAs whether the enacting state has adopted the UUNAA or equivalently protected unincorporated associations through its case law or statutory modifications to the common law. However, if an enacting jurisdiction has adopted the UUNAA, a significantly leaner version of the Model DUNAA could be enacted than the freestanding form contained herein. Equally important, if a jurisdiction has not adopted the UNA or has already developed significant protections for unincorporated associations through other means, the Model DUNAA can still be enacted without widening the existing rules pertaining to unincorporated nonprofit associations.

The Model DUNAA establishes minimal default statutes that set forth the rules on particular matters absent contrary agreement with respect to the topic. However, given the nature of organizations that would adopt the entity, it is expected that a DUNA's governing principles will govern most aspects of its operation. Generally equivalent to a partnership's partnership agreement or an LLC's operating agreement, the governing principles are the agreements of the members as to the purpose and operations of the association. The governing principles may be written or arise from conduct, with consensus formation mechanisms and on-chain governance proposals being specifically enumerated as acceptable forms of member agreement. The association, members and administrators are bound by the "governing principles" of a DUNA.

The critical features of the Model DUNAA are set forth below.

Formation, Purpose & Powers

A DUNA is an opt-in structure that can be utilized through election of the qualifying organization with the intent to form a DUNA and have at least 100 members. A DUNA is considered to be an entity distinct from its members and administrators and enjoys perpetual duration while being vested with all powers necessary or convenient to carrying out its purpose.

While for-profit activities are permitted, the proceeds thereof must be applied to the nonprofit purpose.

Liability for Association Debts & Obligations; Limited Liability; Suits By or Against a DUNA

Upon formation, members and administrators are afforded limited liability for its debts and obligations. A member or administrator is personally liable for his or own tortious conduct under all circumstances and is personally liable for contract liabilities on behalf of a DUNA if the member or administrator guarantees or otherwise assumes personal liability for the contract or fails to disclose that he or she is acting as an agent for a DUNA. A member or administrator is not otherwise personally liable for the tort or contract liabilities imposed upon a DUNA. A creditor with a judgment against the DUNA must seek to

[26] The Model DUNAA also considered various state Unincorporated Associations, Vermont's Blockchain Legislation, Wyoming's DAO law and Tennessee's Decentralized Organization ("DO") law.

satisfy the judgment out of the DUNA's assets but cannot levy execution against the assets of a member or administrator.

The one exception to the foregoing is the *alter ego* doctrine (also known as the veil piercing doctrine), which have been applied to unincorporated entities with liability protection. If the *alter ego* doctrine is found to be applicable, the separate entity status of a DUNA would be disregarded and the assets of the DUNA and its members and administrators would be aggregated and subject to a DUNA creditor's claims in the same manner that a judgment creditor of a general partnership collects a judgment against the assets of a general partner in a partnership.

A DUNA may sue or be sued in its own name. Suit against a DUNA may be initiated on its registered agent or as otherwise provided by the law.

Members

Every DUNA must have one-hundred or more members. The one-hundred-person requirement for forming a DUNA is significantly more than the two-person requirement for the UNA and unincorporated nonprofit associations generally.

While the Model DUNAA is designed as technologically agnostic and does not require a DAO or utilization of distributed ledger technology, the existing use cases for a DUNA almost certainly requires some form of technology to meet the definition of "decentralization" as defined in the Model DUNAA. While decentralization cannot be established through an arbitrary number, the one-hundred-person requirement clearly surpasses any reasonable threshold where an organization, absent a managerial position, could function without a technological layer facilitating decentralized decision-making.

Although placing a one-hundred-person requirement does introduce the risk of inadvertent dissolution, the organizations best suited to utilize the Model DUNAA have memberships that are orders of magnitude larger than those at risk for inadvertent dissolution.

Decentralization

The DUNA is intended to be utilized by decentralized organizations, which are organizations that are not controlled by a person or an affiliated group of persons, organizations whose success or failure does not depend solely on the managerial efforts of any person or affiliated group of persons. As a result, the DUNA contemplates a baseline structure that does not include a management function, but instead allows for the selection of administrators with limited authorization to perform specific tasks authorized by the membership. This categorization aligns the Model DUNAA with applicable standards for decentralization under U.S. securities laws.

As a relative measure of centralization, many entity forms are capable of supporting decentralized operations. General Partnerships, member managed LLCs, LLPS, LCAs are all significantly less centralized than Corporations, traditional Cooperatives and manager managed LLCs, which themselves are significantly less centralized than a sole proprietorship. As such, decentralization itself is not a particularly relevant legal concept as the business formation laws are focused on who within the organization has responsibility of performing management function.

Administrators

The utilization of "administrator" throughout the Model DUNAA is an intentional distinction from the position of manager in an UNA or LLC where, as a general matter and absent countervailing facts, courts may see the position of manager as clothing its occupants with the apparent authority to take actions that

reasonably appear within the ordinary course of operations. By requiring DUNA's to specifically authorize the scope of authority, rights, and duties for each administrator, much of the confusion regarding management authority that currently exists across other entity forms will be remedied.

The actual authority of a DUNA's administrator or administrators is a question of agency law and depends fundamentally on the governing principles and any separate contract between the DUNA and its administrator or administrators. These agreements are the primary source of the manifestations of the DUNA (as principal) from which an administrator (as agent) will form the reasonable beliefs that delineate the scope of the administrator's actual authority.

Additionally, this limited authorization of authority for specific purposes fulfills the intent of the Model DUNAA to provide an entity form for decentralized organizations that exists without the need for the contractual limitations surrounding fiduciary duties common to entity structures that default to managerial authority and the fiduciary duties that come with it. However, it should be noted that eliminating an assumption of managerial responsibility from the Model DUNAA places a significant burden on DUNAs to narrowly empower the authority of administrators and to consider the obligations and duties arising from the application of agency laws to any authorization of authority. Further, DAOs seeking to pursue activities that necessitate managerial efforts should seek to use alternative legal entities designed to have managers.

Inspection of Books and Records

Members and administrators have the right to inspect association books and records. It should be noted that there is no requirement that any particular records be maintained by the association (including, no requirement that member listings be maintained), so the right of inspection only applies to what records have been maintained and if those records are maintained on distributed ledger technology to which the members and administrators have access – no further obligation to provide records exists.

Former members and administrators retain the right to have access to information to which they were entitled in those roles subject to some restrictions on access and use.

Property; Statement of Authority

A DUNA may hold in its name real, personal and intangible property. With respect to real property, the DUNA may file a "statement of authority" which creates a public record of the capacity for a person to, on the DUNA's behalf, affect a transfer of the real property. There is no requirement of a statute of authority to transfer real property held in the name of the DUNA, but it presents an option to provide clarity of the capacity of the person signing on behalf of the DUNA.

Finance

A DUNA may not pay dividends or make other distributions to its members except for distributions that are allowed upon dissolution. However, a DUNA may pay reasonable compensation (including in exchange for participation in governance of the DUNA), reimburse expenses, confer benefits on its members consistent with its nonprofit purposes, or repurchase membership interests if doing so is authorized by the governing principles.[27]

[27] Reasonable compensation is a somewhat amorphous concept as the standard of review is often defined by the activity itself and the purpose of the evaluative process. However, the general application provides a fairly intuitive measure in which compensation and its appropriateness can be evaluated in regard to payments and their underlying purpose.

A DUNA has the capacity, but not the obligation, to indemnify its members and administrators from debts, obligation or liabilities incurred on behalf of the association. Administrators must have complied with any existing fiduciary obligations, if any, resulting from their role as administrator to be indemnified. If in a record, a DUNA's governing principles may broaden or limit this right of indemnification.

Dissolution

A DUNA may be dissolved upon the satisfaction of certain conditions set forth in the law. It is important to note that dissolution and windup of a DUNA will require a greater degree of centralization than the decentralized operations detailed above to ensure that debts and obligations of the organization are satisfied. Accordingly, the provisions on dissolution and wind-up contemplate the need for decision-makers authorized with wide authority to effectuate the dissolution process.

Mergers and Conversions

The DUNNA provides for mergers and conversion between DUNAs and other organizational forms, assuming the law governing the other organization authorizes a merger or conversion with a DUNA and establishes the requirements for merger and conversion consistent with similar provisions of other business entities.

Relationship to Other Law

Principles of law and equity supplement the DUNAA. As the DUNA is its own freestanding body of law, it is not directed or otherwise indicated that the law of partnerships, corporations (whether for-profit or nonprofit), LLCs (whether for-profit or nonprofit) or any other body of organizational law shall serve as the "gap filler" when either the agreement for a particular organization or the DUNAA is silent. Rather, when the statute and the "governing principles" of a particular association are silent, the general principles of law and equity for the adopting state would control.

Tax Treatment

Questions involving federal and state income tax of a DUNA are not substantively discussed herein, as they are not a matter of state entity law.

However, it is important to note that if a DUNA were not already classified as a corporation for federal tax purposes at formation, it would be able to elect treatment corporate tax treatment by filing a Form 8832, *Entity Classification Election*. It is expected that every DUNA would operate as a corporation for federal tax purposes because it is operationally consistent and provides a better path to meet compliance obligations regarding the payment of any tax owed than pass-through taxation.

Additionally, one often misunderstood aspect of nonprofit organizations generally is that they are automatically treated as, or seeking to be treated as, tax exempt entities under IRC Section 501(c). Although some nonprofit entity forms are required to attain tax exempt status under 501(c) as a requirement to existence and 501(c)3 organizations are often granted particular benefits in areas like liability protections of volunteers - in general, tax exemption is simply a classification that qualifying organizations can attain, but it is not a requirement.

Model DUNAA Proposal

Attached hereto as **Exhibit A** is an annotated draft of the Model DUNNA, which contains commentary on the reasoning behind the construction of the various provisions. This proposal has been prepared in collaboration with industry experts from a range of organizations and is intended to be a starting point

from which further input can be sought and obtained prior to formal law proposals being made to state legislatures across the United States.

EXHIBIT A
ANNOTATED DRAFT MODEL DUNAA

SECTION 1: Short title.

This model law may be cited as the Model Decentralized Unincorporated Nonprofit Association Act ("Model DUNAA").

SECTION 2: Definitions. In this [act]:

(1) "Administrator" means a member authorized by vote of the membership to fulfill administrative or operational tasks.

(2) "Decentralized Unincorporated Nonprofit Association" means an unincorporated nonprofit association:

(A) consisting of at least 100 members joined by mutual consent under an agreement that may be in writing or implied from conduct, for a common nonprofit purpose;

(B) that has elected to be organized under this [act]; and

(C) is not formed under any other statute that governs its organization and operation.

(3) "Digital asset" means a representation of economic, proprietary or access rights stored in a computer readable format. This does not include any underlying asset unless the asset itself is an electronic record.

(4) "Distributed ledger technology" means a software protocol that:

(A) governs the rules, operations, and communications between intersection and connection points in a telecommunications network and supporting infrastructure;

(B) includes the computer software, hardware, or collections of computer software and hardware, which use or enable a distributed ledger, including blockchain; and

(C) uses a distributed, shared, and replicated ledger, which may:

(i) be public or private;

(ii) be permissioned or permissionless; and

(iii) include the use of a digital asset as a medium of electronic exchange.

(5) "Distribution" means the payment of a dividend or any part of the income or profit of a decentralized unincorporated nonprofit association to its members or administrators.

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

(7) "Governing principles" means all agreements (e.g., articles of association, consensus formation algorithms, or enacted governance proposals), whether in a record, implied from its established practices, or in any combination thereof, that govern the purpose or operation of a decentralized unincorporated nonprofit association and the rights and obligations of its members and administrators. The term includes any amendment or restatement of the agreements constituting the governing principles of a decentralized unincorporated nonprofit association.

(8) "Member" means a person that, under the governing principles of a decentralized unincorporated nonprofit association, may participate in the development of the policies and activities of the association and/or the selection of administrators.

(9) "Membership interest" means a member's voting right in a decentralized unincorporated nonprofit association as determined by the association's governing principles.

(10) “Person” means a natural person, partnership (whether general or limited), limited liability company, trust (including a common law trust, business trust, statutory trust, voting trust or any other form of trust), estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

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

(12) "Smart contract" means a computational process that executes on distributed ledger technology used to automate transactions, including, but not limited to:

(A) facilitating or instructing transfers of assets;

(B) creating and transmitting digital assets;

(C) synchronizing information;

(D) authenticating user rights and conveying access to software applications; or

(E) effectuating membership votes within an organization.

(13) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

Comment: Section 2

“Administrator” [1] – An administrator of a DUNA is distinguished from a manager fulfilling a traditional management function because administrators only possess the power to administer those affairs authorized through a vote of the membership per its governing principles (e.g., signing a contract, creating an email account to communicate with service providers, signing tax returns, opening a bank account, etc.). Absent specific authorization from the DUNA in accordance with its governing principles, an administrator has no authority to bind the DUNA to legal agreements or act on its behalf. An administrator, by definition, is a member of the DUNA acting as an agent; and may be an individual or an entity. Selection of administrators and the rights and duties of administrators is contained in Section 24.

The organizations best suited to be DUNAs are formed to administer the affairs of autonomous blockchain networks or smart contract protocols, and therefore are likely to have very limited centralized operations but numerous stakeholders actively overseeing the limited governance decisions necessary to maintain such blockchain networks or smart contract protocols. These organizations are categorically different from the technology companies that create blockchain networks and smart contract protocols, as well as businesses organized for-profit to provide services or products built on top of the decentralized infrastructure. DUNAs would not be a viable legal entity for organizations with significant or extensive operational obligations because those organizations convey ownership in the organization itself and/or inherently require centralized decisionmakers in the form of managers, board of directors, or equivalents.

“Decentralized Unincorporated Association” [2] – This [act] builds upon examples of the legal entity status unincorporated nonprofit associations (“UNAs”) have attained in many jurisdictions through evolutions in case law, statutory rules and/or adoption of the Uniform Unincorporated Nonprofit Association Act (“UUNAA”) or Revised Uniform Unincorporated Nonprofit Association Act (“RUNNAA”).

Like an UNA, a DUNA cannot be utilized if it is organized as a corporation or is a for-profit unincorporated entity (e.g., a partnership under the common law of most states). A DUNA may engage in profit-making activities, but any profits from such activities must be used or set aside in furtherance of the association’s primary nonprofit purposes. *See* Section 5(c). An enacting state can choose to expand or

reduce the number or types of exclusions regarding profit-making activity a DUNA may perform or the manner in which those proceeds can be distributed. *See* Section 6.

Subsection (2)(A) references "agreement" rather than "contract" because the legal requirements for an agreement are less stringent and less formal than for a contract. For example, mutual consent must be present in both, but the contractual concept of consideration is not necessary for an agreement. The agreement to form a DUNA can be in writing or inferred from conduct (i.e., course of performance or course of dealing), with the agreement to form a DUNA becoming part of the association's overall "governing principles."

"Implied from conduct" rather than "implied from its established practices" is used as the standard because the agreement to form a DUNA precedes or is contemporaneous with its existence, and established practices can only exist after the DUNA is in existence.

Although most aspects of the mutual consent of the members for a common nonprofit purpose can be implied from conduct, Section 4(b) requires that a DUNA's governing principles identify the jurisdiction in which the DUNA is formed and enacting states have the option of making the appointment of agent for service of process mandatory in Section 12. Absent the completion of those requirements, an otherwise qualifying nonprofit association would not have elected to be formed as a DUNA the laws of the enacting state.

The one-hundred-person requirement for forming a DUNA is significantly more than the two-person requirement for most UNAs. However, this requirement is still minimal when considering the size of the organizations expected to make use of this [act]. Nevertheless, enacting states will need to consider how the Model DUNAA works in conjunction with existing laws regarding UNAs because DUNAs that fail to meet the one-hundred-person requirement would most likely meet all elements of the existing default UNA statutes, allowing for an automatic conversion and not immediate dissolution. However, enacting states without existing UNA legislation that do not enact UNA statues in conjunction with the adoption of this [act] may consider adding periods of time in which the DUNA can exist below 100 members to prevent inadvertent dissolution of the DUNA. The most likely scenario where member requirements would be at issue is in the initial formation of the DUNA, thus allowing for a 30-day window upon initial formation for the membership meet the one-hundred-person requirement would provide a reasonable time frame for a DUNA to organize.

This [act] is designed as technologically agnostic and is not limited to Decentralized Autonomous Organizations ("DAOs") or require the utilization of distributed ledger technology. Although not proscriptive regarding the particular technology utilized, DUNAs are best suited for organizations formed to administer the affairs of organizations like autonomous blockchain networks or smart contract protocols, as opposed to traditional businesses, which are unlikely to have autonomous operations and would likely require managers or some equivalent centralized decision-makers (e.g., board of directors, leadership councils, etc.) to function. Decentralization cannot be established through an arbitrary number; however, the one-hundred-person requirement clearly surpasses any reasonable threshold where an organization could avoid being reliant on a managerial layer or a technological layer that facilitates decentralized decision-making.

This act applies only to the unincorporated nonprofit associations who elect to be treated as a DUNA and does not prevent any organization from forming as an UNA, partnership, cooperative, LLC or any other applicable entity form.

"Digital assets" [3] – Digital assets broadly include anything that can be created, stored or shared in a digital environment. However, with the emergence of distributed ledger technology, the definition has evolved to include assets that are created or transferred through the addition of new information to a blockchain, allowing for the creation of new digital assets and the exchange of existing digital assets. DAOs

most commonly utilize digital assets in the form of governance tokens to provide voting rights and facilitate interaction with smart contracts.

"Distributed ledger technology" [4] – Distributed ledger technology is a broad term for systems that rely on a shared database to process, record and verify transactions within an open network. Most commonly, this refers to a specific type of distributed ledger technology referred to as "blockchain," which is a shared public database, duplicated across computer systems, where new entries can be added but existing entries cannot be altered, allowing for information to be securely timestamped in a decentralized and immutable manner.

"Distribution" [5] – A DUNA may engage in profit-making activities, but any profits from such activities must be used or set aside in furtherance of the association's primary nonprofit purposes. *See* Section 5(c). An enacting state can choose to expand or reduce the number or types of exclusions regarding profit-making activity a DUNA may perform or the manner in which distributions are permissible. *See* Section 6.

"Established practices" [6] – The established practices are essentially equivalent to the commercial law concepts of "course of performance" and "course of dealing." *See* UCC §1-303.

In the context of unincorporated nonprofit associations generally, many operate on an informal basis without written procedures or bylaws and to the degree such documents exist, they are often incomplete. Nevertheless, over time they develop and follow various practices through their interactions (i.e., if a particular method for noticing annual meetings were utilized for five years without any other establishment of notice in the governing principles, then conforming to that particular method in the sixth year would be determinative of whether reasonable notice had been given).

The decentralized nature of the organizations best suited to be DUNAs (i.e., limited centralized operations with numerous stakeholders actively overseeing the organization's affairs) means that they are likely to rely on technological mechanisms to coordinate their activity, and that in-person activity like annual meetings will be greatly reduced or eliminated. Best practices would entail DUNAs drafting articles of association and bylaws (including the utilization of distributed ledger technology as described in Sections 18 and 19) to provide definite and clear governing principles, largely eliminating the inclusion of established practices within an organization's governing principles.

"Governing principles" [7] – Governing principles are the equivalent of the articles of organization, operating agreements and other documents and established practices that govern the internal affairs of a DUNA, sometimes referred to as an entity's private organic rules. *See* Model Entity Transactions Act (2007) (Last Amended 2013) §1-102 (33).

The governing principles of a DUNA do not have to be in a written form and can come from established practices. However, the organizations best suited to be DUNAs are likely to utilize technological mechanisms to establish an immutable record of the organization's governing principles and decisions that might otherwise be found in the articles of association, bylaws and other documents of a UNA, partnership, cooperative, LLC or any other applicable entity form. For example, many DAOs utilize consensus formation algorithms, most commonly in the form of smart contracts, to establish the governing principles of the DAO and to enable decentralized member decision-making in accordance with such governing principles, all of which are recorded on distributed ledger technology, thereby establishing an immutable record of the governing principles and organizational activities that historically could only have been found in an organization's organizational document and records, including voting rules, process of making proposals, process of membership voting and enacted proposals.

As the governance of DAOs is conducted through, and defined by, membership decision-making interactions with its smart contracts (or any other viable technological method), these interactions are sufficient to provide a determinative and reasonable measure to establish governing principles. Accordingly, the ordering of authority for governing principles is this [act] supplemented by existing state

law, any technological mechanisms that define the governing principles of an organization and record its activities on distributed ledger technology (including validly enacted changes in governance), and then the articles of association and bylaws. Where there is no clear record, the governing principles would come from the DUNA's established practices.

Oral agreements were excluded from consideration of sources contributing to governing principles because the nature of decentralized organization and the member levels required by this [act] would make effective oral agreements impractical to the point of being impossible.

"Member" [8] – "Member" is defined broadly as the ability to participate in the selection of administrators or in the development of policies and activities of the DUNA. Both are not required, nor is actual participation: just the ability to participate. This broad definition of member ensures that the insulation from liability is provided in all cases in which the common law might have imposed liability on a person simply because the person was a member.

"Membership interest" [9] – As there is no equity interest, right of redemption or ownership interests associated with membership in a DUNA, a membership interest is defined solely through member voting rights as established in the association's governing principles.

"Person" [10] – "Person" instead of individual is used to make it clear that associations covered by this [act] may have individuals, corporations, and other legal entities as members and administrators.

"Record" [11] – The definition of "record" is consistent with the standard NCCUSL definition of this term. It makes clear that emails and other forms of electronic communication qualify as writings.

"Smart contracts" [12] – "Smart contract" are computational processes whose data, representation, transformations, and execution are linked to the operational codes and semantics of distributed ledger technology, or similar analog, evidenced by associated timestamps, public addresses, permissioned accounts, and cryptographic signatures used to automate transactions. A smart contract executes upon the occurrence of events that can be designed and built into the smart contract.

"State" [13] – The definition of "state" is the standard NCCUSL definition of this term.

SECTION 3: Relation to other law.

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

(b) This act does not repeal or modify a statute or rule for organizations that do not elect to become decentralized unincorporated nonprofit associations.

Comment: Section 3

Subsection (a) – Examples of other laws that apply to DUNAs are general principles of contracts, agency, fraud, estoppel, the priority of written provisions of an agreement over prior inconsistent, civil and criminal procedural rules, and rules for enforcing judgments.

Subsection (b) – As this [act] is not a default entity form, but rather, an electable entity form, no provisions of this [act] are applicable to associations that do not elect treatment as DUNAs under this [act], nor is any provision of this [act] applicable to unincorporated nonprofit associations or other entity forms.

SECTION 4: Governing law.

(a) The law of this state governs any decentralized unincorporated nonprofit association that is formed in this state.

(b) A decentralized unincorporated nonprofit association's governing principles must identify the jurisdiction in which the association is formed.

Comment: Section 4

This [act] applies to all qualifying decentralized unincorporated organizations formed as a DUNA in the state after the effective date of the [act]. Prior to the effective date of this [act], no qualifying decentralized unincorporated organizations could have existed and the enactment of this [act] does not automatically confer that treatment onto any existing organization, as making an election to utilize this [act] is a requirement for creating a DUNA.

Subsection (b) requires that the governing principles of a DUNA must identify the jurisdiction in which the DUNA was formed for the purposes of designating the jurisdiction of its internal affairs, subject to applicable conflicts of laws and substantial contacts rules. *See* Restatement (Second) of Conflict of Laws §187(2) (1971). This is consistent with how most types of entity's establish their internal affairs rules (e.g., governance rules and duties of owners, members and managers), but is a deviation from some unincorporated associations, like general partnerships and unincorporated nonprofit associations, where it is difficult to determine the jurisdiction of formation absent requiring written documentation or the filings of public documentation upon formation.

While those unincorporated entities do allow for the governance principles to determine the internal affairs jurisdiction, they are not required to do so, and in the absence of identifying such jurisdiction, determine the location based off the "main part of its activities." Because these entities traditionally generally share close geographic connections with their members or have a base of management operations that is easily identified, they rarely result in a situation where it is necessary to determine who of two or more states' laws would govern the entities' internal affairs. However, as the organizations utilizing DUNAs are likely to operate without a centralized management location and have widely divergent geographical locations of members, utilizing the location of the "main part of its activities" would be inadequate. Unlike those unincorporated associations, the DUNA cannot be formed absent election and designating in what jurisdiction the association is formed is a requirement to making a valid election when forming as a DUNA.

Section 5: Legal Entity; Perpetual Existence; Powers.

(a) A decentralized unincorporated nonprofit association is a legal entity distinct from its members and administrators.

(b) A decentralized unincorporated nonprofit association has perpetual duration unless its governing principles otherwise specify.

(c) A decentralized unincorporated nonprofit association may engage in profit-making activities, but any profits must be used in furtherance of, or set aside for, the association's common nonprofit purpose.

Comment: Section 5

Subsection (a) – The separate legal status of a DUNA is a fundamental concept to the principles that allow a DUNA to hold and dispose of property in its own name and to sue and be sued in its own name, which insulates the assets of the members from claims against the DUNA. This reversal of the traditional common law is consistent with wide expansions of state statues that have evolved to treat partnerships and other unincorporated entities under an aggregate theory.

Subsection (b) – This section provides for perpetual existence of a DUNA and is an integral component to its separate entity status. Under the traditional common law aggregate theory, an unincorporated entity's existence would end with any change in membership and if the unincorporated entity continued in operation, it was deemed to be a new unincorporated entity. Providing perpetual existence allows for clearer ownership rights in a DUNA's property interests than simply attributing individual interests to its members.

The members can agree to a limited term and a DUNA can, of course, terminate by being dissolved and winding up. *See* Sections 27 and 28.

Subsection (c) – A DUNA may carry on a business for profit in which it may lawfully engage and apply any profit that results from the business activity, consistent with its primary nonprofit purpose or purposes. However, the members must be joined together for a common purpose without the expectation of profit and comply with any conditions on what constitutes a nonprofit organization under the existing laws of the enacting state. The nonprofit purpose requirements do not mandate a charitable purpose and contain the implicit understanding that the purpose is not a criminal activity and is otherwise lawful. Each enacting state needs to determine whether these limitations need to be set forth explicitly in this [act].

The fact that some or all of the members receive a direct or indirect benefit from a DUNA will not disqualify an organization from being a DUNA under this [act], so long as the benefit is in furtherance of the UNA's nonprofit purpose. The distribution of any profits to the members for the members' own use, e.g., a dividend distribution to members, would disqualify the organization from being a DUNA, as the distribution would not have been made in furtherance of the DUNA's nonprofit purposes. *See* Sections 2(2), and 6.

A DUNA engaging in activities that are intended to produce a profit may generate taxable income or prevent the organization from attaining tax-exempt status, but these are separate issues and should not affect the organizational status of a DUNA or the rights and liabilities of its members.

Section 6: Distributions prohibited; compensation and other permitted payments.

(a) Except as otherwise provided in subsection (b), a decentralized unincorporated nonprofit association may not pay dividends or distribute any part of its income or profits to its members or administrators.

(b) A decentralized unincorporated nonprofit association may:

(1) pay reasonable compensation or reimburse reasonable expenses to its members, administrators, and persons outside the organization for services rendered, including with respect to the administration and operation of the decentralized unincorporated nonprofit association (which may include, without limitation, the provision of collateral for the self-insurance of the decentralized unincorporated nonprofit association, voting and participation);

(2) confer benefits on its members or administrators in conformity with its common nonprofit purpose or purposes;

(3) repurchase membership interests to the extent authorized by its governing principles; and

(4) make distributions of property to members upon winding up and termination to the extent permitted by Section 28.

Comment: Section 6

A distribution by a DUNA to members in violation of this section would disqualify it from continuing to be a nonprofit association. *See* Sections 2(2) and 5(c).

The permitted distributions authorized by subsection (c) expound on those contained in Sections 640 and 641 of the Proposed Model Nonprofit Corporation Act-Fourth Edition (2019).

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

Section 7: Ownership and transfer of property.

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

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

Comment: Section 7

Subsection (a) – This section is based on Section 3-102(8), Uniform Common Interest Ownership Act (2021). It reverses the common law rule. Inasmuch as a DUNA is a type of unincorporated association, it was not a legal entity at common law and could not acquire, hold, or convey real or personal property. Harold J. Ford, Unincorporated Non-Profit Associations, 1-45 (Oxford Univ. Press (1959); 15 A.L.R. 2d 1451 (1951); Warburton, The Holding of Property by Unincorporated Associations, Conveyancer 318 (September-October 1985).

This deviation from the strict common law rule is consistent with the modifications existing in most jurisdictions by courts and statues that have established a myriad of special circumstances and situations where unincorporated associations have been allowed to acquire, hold, encumber or transfer an estate or interest in real or personal property.

Subsection (b) – This section is a necessary corollary of subsection (a) and thus, its inclusion is redundant. However, several states currently have statues which expressly provide that an unincorporated nonprofit association may be a legatee, devisee, or beneficiary. See, for example, Md. Estates & Trusts Code Ann. Section § 4-301 (2022). Therefore, it is desirable to continue this as an express rule. Section 7(b) applies to both trusts and contracts. Not all existing state statues apply expressly to both.

Section 8: Statement of authority as to real property.

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

(b) An interest in real property held in the name of a decentralized unincorporated nonprofit association may be transferred by a person authorized to do so in a statement of authority [filed] [recorded] by the association in the office in the [county] in which a transfer of the property would be [filed] [recorded].

(c) A statement of authority must state:

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

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

(3) that the association is a decentralized unincorporated nonprofit association; and

(4) the action, procedure or vote of the decentralized unincorporated nonprofit association which authorizes the person to transfer the real property of the decentralized unincorporated nonprofit association and which authorizes the person to execute the statement of authority.

(d) A statement of authority must be executed in the same manner as [a deed] [an affidavit] by a person who is not the person authorized to transfer the estate or interest.

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

(f) A record amending, revoking, or canceling a statement of authority or stating that the statement is unauthorized for [filing] [recording] an original statement.

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

(h) If the record title to real property is in the name of a decentralized unincorporated nonprofit association and the statement of authority is [filed] [recorded] in the office of the [county] in which a transfer of real property would be [filed] [recorded], the authority of the person named in a statement of authority in subsection (c)(4) is conclusive in favor of a person who gives value without notice that the person lacks authority.

Comment: Section 8

This section is based on Uniform Partnership Act (1997) (Last Amended 2013) § 303 consistent with the Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011).

A statement of authority need not be filed to conclude an acquisition of or to hold real property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate or interest in real property. For this, it should, but need not, be filed. However, the filing provides important documentation. As a general rule a statement of authority will only be filed at the time of a conveyance of an interest in real estate as a means of establishing in the title records who has authority to execute a deed or other instrument conveying an interest in real estate.

Inasmuch as the statement relates to the authority of a person to act for the nonprofit association in transferring real property, subsection (b) requires that the statement be filed or recorded in the office where a transfer of the real property would be filed or recorded. This is usually the county in which the real estate is situated. This is where a title search concerning the real estate would be conducted. Uniform Partnership Act (1997) (Last Amended 2013) § 303 also provides for central filing, such as with the Secretary of State, but its statement of partnership authority concerns authority of partners generally, not just with respect to real estate.

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

Subsection (c)(2) – Requiring a fixed address may present problems to decentralized or ad-hoc organizations, as any number of reasons exist for why these types of organizations would not have one as the entirety of their operations may exist on the internet. However, in order to file taxes or attain bank accounts, they are likely to have a mailing address of some kind, e.g., virtual office services or the mailing address of a member or administrator.

Subsection (c)(3) – Requiring the inclusion of the precise character of the organization informs those relying on the statement. Knowing that the organization is a DUNA may cause the person dealing the organization to act differently.

Subsection (c)(4) – Permitting the statement to identify as the person who can act for the nonprofit association within a particular organizational role relieves the association from the need to make additional filings on each change of authorized person.

Under local title standards and practices, the transferee and filing or recording office are likely to require a certificate of incumbency if the statement designates the holder of a particular organizational role.

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

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

Subsection (h) – The purpose of this section is to protect good faith purchasers for value without notice who rely on the statement, including those who may acquire a security interest in the real property. If the required signatures on the statement, deed, or both are forgeries, the effect of them is not governed by Section 7(h). Instead, Section 3(a) applies and would invoke other state law.

Section 9: Liability.

(a) A debt, obligation, or other liability of a decentralized unincorporated nonprofit association is solely the debt, obligation, or other liability of the association. A member or administrator is not personally liable, directly or indirectly, by way of contribution or otherwise for a debt, obligation, or other liability of the association solely by reason of being or acting as a member or administrator. This subsection applies regardless of the dissolution of the association.

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

(c) The failure of a decentralized unincorporated nonprofit association to observe formalities relating to the exercise of its powers or administration of its activities and affairs is not a ground for imposing liability on a member or administrator of the association for a debt, obligation, or other liability of the association.

Comment: Section 9

The effect of Section 9 is to provide members and administrators of a DUNA with the same protection against vicarious liability for the debts and obligations of the DUNA and tort liability imposed on the DUNA as the members and managers of a nonprofit corporation would have under the enacting state's laws. These principles, taken together, constitute what is known as the limited liability doctrine under which a member or administrator is personally liable for his or her own tortious conduct under all circumstances and is personally liable for contract liabilities on behalf of a DUNA if the member or administrator guarantees or otherwise assumes personal liability for the contract or fails to disclose that he or she is acting as the agent for a DUNA. A member or administrator is not otherwise personally liable for the tort or contract liabilities imposed upon the DUNA. A creditor with a judgment against the DUNA must seek to satisfy the judgment out of the DUNA's assets but cannot levy execution against the assets of a member or administrator.

The one exception is the alter ego doctrine (also known as the veil piercing doctrine), which has been applied to unincorporated entities with liability protection. If the alter ego doctrine is found to be applicable, the separate entity status of a DUNA would be disregarded, and the assets of the DUNA and its members and administrators would be aggregated and subject to a DUNA creditor's claims in the same manner that

a judgment creditor of a general partnership collects a judgment against the assets of a general partner in a partnership.

"Solely" as used in Section 9 is intended to make clear that a member or administrator is not vicariously liable for the liabilities of the DUNA or the liabilities of another member or administrator merely because of that person's status as a member or administrator. A member or administrator may, however, have personal liability as a result of their own individual actions. A member or administrator will be personally liable, for example, for tortious acts or for breach of a contract binding on the DUNA which the member or administrator is a party to or has guaranteed. This personal liability is imposed by other law and not because of a person's status as a member or administrator. *See* subsection (b) and Section 3(a).

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

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

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

The liability of administrators and the ability of the governing principles of a DUNA to limit or eliminate this liability as far as monetary damages are concerned is a separate subject which is discussed in Section 24.

Section 10: Assertion and defense of claims.

(a) A decentralized unincorporated nonprofit association, in its name, may institute, defend, intervene or participate in a judicial, administrative or other governmental proceeding or in an arbitration, mediation or any other form of alternative dispute resolution.

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

Comment: Section 10

Subsection (a) – Under traditional common law doctrine, unincorporated associations were considered to be an aggregate of members and therefore could not sue or be sued in its own name. Only the members could sue or be sued and some state court cases held that all of the members had to be named plaintiffs in a suit brought on behalf of the unincorporated nonprofit association and that all the members had to be named and served with the summons and complaint in a suit against an unincorporated nonprofit association. Most states have enacted statues granting unincorporated nonprofit associations entity status for the purpose of suits by and against the unincorporated nonprofit association. Section 10 follows the modern rule and is consistent with the concept built into this [act] that unincorporated nonprofit associations, including decentralized unincorporated nonprofit associations, are separate entities for many more purposes than existed under traditional common law principles.

This section applies to all types of judicial, administrative, and governmental proceedings and all types of alternative dispute resolution proceedings, such as arbitration and mediation.

The enacting state's general civil procedure law will be applicable to DUNAs. *See* Section 3(a). These statues and court rules will deal with issues such as standing of a DUNA to sue on behalf of its members, joinder, counterclaims, and the like. Many will also cover issues such as pleadings, service of pleadings, and venue. That is why Sections 12 and 13 are bracketed and should not be enacted in a state if the existing statues and court rules are sufficient. Sections 10, 11, 14, and 15 should be enacted as part of this [act] because there is a body of inconsistent case law or gaps in the existing statues or rules addressed within these sections.

Subsection (b) – Under the common law aggregate theory, since an unincorporated nonprofit association was not an entity separate from its members, a member could not assert a claim against the unincorporated nonprofit association since there is technically no legal entity, and the member would be both a claimant and the defendant and personally liable for any judgment obtained in the action. For the same reason, an unincorporated nonprofit association could not assert a claim against a member (e.g., for unpaid dues) because the unincorporated nonprofit association technically does not exist. Subsection (b) only allows a member to assert that member's claim against a DUNA. It does not authorize a member to file a derivative action. However, the enacting state's civil procedure law may authorize derivative actions.

Section 11: Effect of judgment or order.

A judgment or order against a decentralized unincorporated nonprofit association is not by itself a judgment or order against a member or administrator.

Comment: Section 11

Section 11 is consistent with Restatement (Second) of Judgments, § 61(2), which provides: "If under applicable law an unincorporated association is treated as a jural entity distinct from its members, a judgment for or against the association has the same effects with respect to the association and its members as a judgment for or against a corporation…."

Section 11 applies not only to judgments but also to orders, such as an award rendered in arbitration or an injunction.

This section reverses the common law rule consistent with many states' wide expansion of the legal entity status afforded unincorporated nonprofit associations. Under the common law's aggregate view of an unincorporated association, members, as co-principals, were individually liable for obligations of the association.

That a judgment against a DUNA is not also a judgment against one authorized to administer the affairs of the DUNA recognizes fully the entity status of a DUNA. An obvious corollary of this section is that a judgment against a DUNA may not be satisfied against a member unless there is also a judgment against the member. The one exception to this rule would be an injunction issued against a DUNA. Federal Rule of Civil Procedure 65(d) provides that every injunction and restraining order is binding not only on the named parties but also on the "parties' officers, agents, servants, employees, and attorneys … who receive actual notice of it by personal notice or otherwise."

[Section 12: Appointment of agent to receive service of process.

(a) A decentralized unincorporated nonprofit association [may] file in the office of the [Secretary of State] a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) the name of the decentralized unincorporated nonprofit association; and

(2) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed and [acknowledged] [sworn to] by a person authorized by the decentralized unincorporated nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the [Secretary of State] and giving notice to the decentralized unincorporated nonprofit association.

(d) The [Secretary of State] may collect a fee for filing a statement appointing an agent to receive service of process, an amendment or a resignation in the amount charged for filing similar documents.

(e) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(f) An amendment must be filed to update the office of the [Secretary of State] as to any change regarding an agent authorized to receive service of process within 30 days of a change being made.]

Comment: Section 12

This section authorizes, but does not require, a DUNA to file a statement authorizing an agent to receive service of process. It is, of course, not the equivalent of filing articles of incorporation or registering with the office of the Secretary of State. However, depending upon the state's other laws, filing gives some public notice of the DUNA's existence which would assure the DUNA receives prompt notice in the event a lawsuit were filed against it. Additionally, as discussed in more detail in Section 15, public notice of the location of the registered agent would resolve the possibility of issues in easily establishing venue of a DUNA.

Some states have expressly addressed the appointment of agents to receive service of process on an unincorporated nonprofit association in court rules or by state. Those states may wish to continue their rules and so not adopt this section. For this reason, this Section 12 and 13 are bracketed.

The format of this section is similar to Section 8, which concerns a statement of authority with respect to real property. Because one requires local and the other central filing, they are not combined.

[Section 13: Service of process. In an action or proceeding against a decentralized unincorporated nonprofit association, a summons and complaint or other process shall be served on an agent authorized by

appointment to receive service of process, any appointed administrator of the association, or in any other manner authorized by the law of this state.]

Comment: Section 13

Some states have expressly addressed the appointment of agents to receive service of process on an unincorporated nonprofit association in court rules or by state. Those states may wish to continue their rules and accordingly, not adopt this section. For this reason, Section 12 and 13 are bracketed.

By rule or statue, all jurisdictions have extensive existing law on service of process. The real question pertaining to DUNAs is which set of these rules should apply. This [act] treats a DUNA as a legal entity. Thus, the rules applicable to another entity, a corporation, seem most appropriate.

"Administrator" is a defined term. *See* Section 2(1). Service on a member of a DUNA would not be effective under this section unless the member was an administrator appointed by the association for the purposes of accepting service.

Section 14: Claim not abated by change of members or other persons. A claim for relief against a decentralized unincorporated nonprofit association does not abate merely because of a change in its members or persons authorized to administer the affairs of the association.

Comment: Section 14

Section 14 reverses the common law rule of partnerships, which courts often extended to unincorporated nonprofit associations consistent with many states' wide expansion of the legal entity status afforded unincorporated nonprofit associations. Uniform Partnership Act (1914) §§ 29 and 31(4). This [act]'s entity approach requires this change to the old common law rule. Uniform Partnership Act (1997) (Last Amended 2013) §§ 603(a), 701, and 801.

Section 15: Venue. In addition to any other applicable state laws providing venue, venue of an action against a decentralized unincorporated nonprofit association may be brought in this state in the county in which the nonprofit association has appointed an agent for services in accordance with Section 12.

Comment: Section 15

Many states have established thorough grounds for establishing venue, including the county in which the real estate that is the subject of the suit is situated and the county in which the act causing, in whole or in part, the personal injury or other tort occurred. However, DUNAs present a potential complexity in establishing venue as most states' criteria are dependent on physical presence tests that may not be easily applied to a decentralized entity. Accordingly, Section 15 establishes an additional test that would clarify venue for a DUNA.

Some consideration by the enacting [state] would need to be undertaken to determine if this [act] is the appropriate means for expanding its venue criteria or if amendments to existing statutes on venue needed to be enacted in conjunction with this [act].

Section 15 is a deviation of the common law aggregate principle for fixing venue, in which the association is resident in any county in which a member resides. *See* Wright, Miller, & Cooper, 15 FEDERAL PROCEDURE & PRACTICE 3812 (1986). Consistent with many states' statutory modification of the common law rule, Section 15 rejects the common law view and conforms to the entity view of an association. For example, Illinois provides that "a voluntary unincorporated association sued in its own name is a resident

of any county in which it has an office or if on due inquiry no office can be found, in which any officer resides." Although this application clearly demonstrates a state taking the entity view of an association, DUNAs may not have an office or an authorized administrator within any state.

Section 16: Member has no agency power. A member of a decentralized unincorporated nonprofit association is not an agent of the association solely by reason of being a member.

Comment: Section 16

A person's status as a member does not by itself make that person an agent of the DUNA. 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 DUNA are determined under the enacting state's agency law. *See* Section 3(a).

Under agency law, the administrators of a nonprofit association could possibly be considered as having apparent authority to bind the nonprofit association for acts in the ordinary course of the DUNA's business depending on circumstance. *See* Section 24. Accordingly, a member who is also an administrator could be an agent of the DUNA but this is because of that person's role as an administrator and not a result of being a member of the DUNA, and therefore the agency authority is not "solely by reason of being a member."

Under agency law, a member might have actual authority or apparent authority to bind the DUNA because of the member's established course of dealing with third parties or under an estoppel theory. Again, the member's agency authority to bind is not solely because of the member's status as a member. A DUNA might be directly or vicariously liable for actions of a member under general law other than agency law. For example, under the doctrine of *respondeat superior*, a DUNA might be liable for the tortious conduct of a member who is found to be acting as a servant of the nonprofit association at the time of the tortious conduct or for negligently supervising a member who is acting on behalf of the DUNA. *See* Section 9.

Section 17: Member approval.

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

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

(2) select or dismiss an administrator;

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

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

(5) dissolve under Section 27, merge under Section 29, or convert under Section 30;

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

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

(b) A decentralized unincorporated nonprofit association must have the approval of the members in accordance with its governing principles to do any other acts or exercise a right that the governing principles require to be approved by members.

(c) Unless otherwise provided for in the governing principles, membership interest in a decentralized unincorporated nonprofit association shall be calculated in proportion to their voting rights within the association.

Comment: Section 17

Sections 17 through 26 deal with governance issues and are often referred to as internal affairs rules. They establish the rules governing relation of the members and administrators to each other and to the decentralized unincorporated nonprofit association. Many but not all of these provisions are default rules that can be varied by the DUNA's governing principles. The internal affairs rules in Section 17 through 26 apply to DUNAs formed in the enacting state.

Subsection (c) establishes voting on a per capita basis as a default in the highly unlikely situation where the governing principles do not establish the voting procedures for a DUNA. As established in Section 21, membership in a DUNA results from having the right to participate in the association's decision-making and an affirmation to abide by the governing principles of the association. As the terms of this membership interest will almost certainly establish the association's voting procedures, this default rule only included for completeness in the event a situation ever arises where a default rule is needed.

Section 18: Utilization of distributed ledger technology.

(a) A decentralized unincorporated nonprofit association may provide for its governance, in whole or in part, through distributed ledger technology, including smart contracts.

(b) The governing principles for a decentralized unincorporated nonprofit association may:

(1) specify whether any distributed ledger technology utilized or enabled by the association will be fully immutable or subject to change and whether any such ledger will be fully or partially public or private, including the extent of members' access to information.

(2) adopt voting procedures, which may include smart contracts deployed to distributed ledger technology that provide for the following:

(A) proposals from administrators or members in the association for upgrades, modifications or additions to software systems and/or protocols;

(B) other proposed changes to the association's governing principles; and

(C) any other matters of governance or activities within the purpose of the association.

Comment: Section 18

Section 18 provides clarification in how a DUNA can utilize distributed ledger technology, including smart contracts, wholly or in part to establish its governance principles. As such, a DUNA's distributed ledger technology, including smart contracts, that establish member participation in voting, voting procedures, the mechanism for bringing proposals, selection process for administrators, or any other matter of governance for the DUNA – would be sufficient for establishing governing principles of the DUNA.

Most commonly this will be enacted through smart contracts whose code is stored on the distributed ledger technology and will execute a transaction automatically when certain conditions are met.

Section 19: Consensus formation algorithms and governance process.

In accordance with its governing principles, a decentralized unincorporated nonprofit association may:

(a) adopt any reasonable algorithmic means for establishing consensus for the validation of records, as well as for establishing requirements, processes, and procedures for conducting operations, or making organizational decisions with respect to the distributed ledger technology used by the association; and

(b) in accordance with any procedure specified pursuant to Section 18 of this [act], modify the consensus mechanism as well as the requirements, processes, and procedures, or substitute a new consensus mechanism, requirement, processes, or procedures that comply with the requirements of law and the governing principles of the association.

Comment: Section 19

Section 19 provides that reasonable algorithmic means is an acceptable method for establishing consensus for the validation of records, as well as for establishing requirements, processes, and procedures for conducting its operations. Although reasonableness is an amorphous concept, its utilization here establishes that the inclusion of consensus algorithms within the operations of a DUNA is acceptable if they were considered sufficient by the membership for the purposes in which they are deployed when introduced as governing principles.

Section 20: Duties of members.

(a) A member does not have any fiduciary duty to a decentralized unincorporated nonprofit association or to any other member of the association solely by being a member.

(b) A member shall discharge the duties and obligations under this [act] or under the governing principles and exercise any rights consistently the contractual obligation of good faith and fair dealing.

Comment: Section 20

Subsection (a) – Members of a DUNA do not have fiduciary duties (generally defined as a duty of loyalty and good faith) to the association or the other members by virtue of their status as members. A member who undertakes duties as an administrator may have duties as an agent depending on facts and circumstances. *See* Section 24.

Subsection (b) – While they have no fiduciary duties, members do have the obligation stated in subsection (b) to discharge any duties and any rights they exercise pursuant to this act or the DUNA's governing principles consistent with the obligation of good faith and fair dealing.

The obligation of good faith and fair dealing is a duty that is derived from the consensual and contractual nature of a DUNA. Subsection (b) refers to the "*contractual* obligation of good faith and fair dealing" (emphasis added) and thereby invokes the implied obligation that exists in every contract. *See* Restatement (Second) of Contracts § 205 (1981). ("Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."). The adjective ("contractual") should help avoid decision like *Phelps v. Frampton,* 2007 MT 263, 339 Mont. 330, 342043, 170 P.3d 474, 483 (2007) (holding that Montana's version of UPA (1997) creates a statutory obligation of good faith and fair dealing separate from the implied contractual covenant).

For the most part, the duties and rights "under this [act]" apply to relationship *inter se* the members and the DUNA and function only to the extent not displaced by the governing principles. Those statutory default rules are thus intended to function like a contract; applying the contractual notion of good faith and fair dealing therefore makes sense.

The contractual obligation of "good faith" has no relation to the corporate concept of good faith. *See* (i) Delaware's corporate law exoneration provision; and (ii) that provision's exception "for acts or

omissions not in good faith." DEL. CODE ANN. Tit. 8, § 102(b)(7) (2012). In that context, good faith is an aspect of the duty of loyalty. *See Stone ex rel. AmSouth Bancorporation v. Ritter,* 911 A.2d 362, 369-70 (Del. 2006). Likewise, the contractual obligation of good faith and fair dealing has no relation to the "utmost good faith" sometimes used to describe the fiduciary duties that owners of closely held businesses owe each other.

The purpose of the contractual obligation of good faith and fair dealing is to protect the arrangement the members have chosen for themselves, not to restructure that arrangement under the guise of safeguarding it.

This [act] is not an expansion of an enacting state's existing law on the contractual obligation of good faith and fair dealing. Accordingly, in states with existing law or case history placing significant restrictions on the application of the contractual obligation of good faith and fair dealing, subsection (b) would be interpreted narrowly.

Section 21: Admission, suspension, dismissal, or expulsion of members.

(a) A person becomes a member in accordance with the governing principles of the decentralized unincorporated nonprofit association. If there are no applicable governing principles, a person shall:

(1) be considered a member upon such person's purchase or assumption of a right of ownership of a membership interest or other property or instruments that confers upon a person a voting right within the association; and

(2) continue as a member until the earlier of such person's resignation pursuant to Section 22 or expulsion pursuant to subsection (b).

(b) A member may be suspended or expelled in accordance with the governing principles of the decentralized unincorporated nonprofit association. If there are no applicable governing principles, a person may be suspended or expelled from an association only by a vote of its members.

(c) Unless the governing principles provide otherwise, the suspension or expulsion of a member does not relieve the member from any obligation incurred or commitment made by the member before suspension or expulsion.

Comment: Section 21

Subsection (a) – This subsection sets forth the default rules for admission as purchasing, or otherwise assuming a right of ownership of, a membership interest. Although a person may not be admitted as a member without the person's consent, assumption of the membership interest is sufficient to clearly demonstrate via conduct (i.e., the purchasing of a membership interest, solicitation of membership interest received, acceptance of a delivered membership interest, etc.) that a person intends to be a member of a DUNA and abide by its governing principles. As such, it is not a requirement that a person participate in voting or the administrating of the affairs of the association to be a member.

Subsection (b) – This subsection sets forth the default rules for suspension or expulsion of members as a majority vote of members. If the DUNA's governing principles provide otherwise, the governing principles would be applicable.

As this [act] is intended for the utilization of distributed ledger technology and consensus formation algorithms, it is possible that the technical function comprising the governing principles does not allow for the suspension or expulsion of members even through majority vote.

Subsection (c) – This subsection makes clear that suspension or expulsion does not relieve a member of any obligation it owes the DUNA.

Section 22: Member's resignation.

(a) A member may resign as a member of a decentralized unincorporated nonprofit association in accordance with the governing principles. In the absence of applicable governing principles, a member shall be deemed to have resigned as a member upon the disposal (voluntary or involuntary) of all membership interest or other property or instruments that confers upon the person a voting right within the association.

(b) Unless a decentralized unincorporated nonprofit association's governing principles otherwise provide, resignation of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before resignation.

Comment: Section 22

Preventing a member from voluntarily withdrawing from a DUNA would be unconstitutional and void on public policy grounds. However, the governing principles of a DUNA can impose reasonable restrictions on withdrawal.

Subsection (b) states that a member who resigns remains liable for obligations and commitments made before resignation.

Section 23: Membership interest transferable. Except as otherwise provided in the decentralized unincorporated nonprofit association's governing principles, a member's interest or any right thereunder is freely transferable to another person through conveyance of membership interest4.

Comment: Section 23

Although there may be situations where a DUNA might wish to limit transferability of membership, the vast majority of associations will freely authorize automatic transfer of membership upon conveyance of a membership interest. In those situations, the limitations on transferability could be made in accordance with a DUNA's governing principles.

Section 24: Selection of administrators; rights and duties of administrators.

(a) Except as otherwise provided in this [act] or a decentralized unincorporated nonprofit association's governing principles, the members may select the association's administrators in accordance with Section 17.

(b) If no administrators are selected, no member of the association is an administrator.

(c) As there is no requirement a decentralized unincorporated nonprofit association has administrators, there are no default obligations, and the rights and duties of an administrator or administrators are a result of the specific authority authorized by the nonprofit association through approval of its members in accordance with Section 17 and contractual agreement with its administrator or administrators.

(d) An administrator has no authority to act on behalf of the decentralized unincorporated nonprofit association beyond the specific authorization granted in the selection process.

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

(1) the amount of financial benefit improperly received by an administrator;

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

(3) an intentional violation of criminal law;

(4) breach of the duty of loyalty should one exist, unless a full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty by an agent be authorized or ratified by approval of the disinterested members under Section 17 of this [act]; or

(5) improper distributions.

Comment: Section 24

The actual authority of a DUNA's administrator or administrators is a question of agency law and depends fundamentally on the governing principles and any separate contract between the DUNA and its administrator or administrators. These agreements are the primary source of the manifestations of the DUNA (as principal) from which an administrator (as agent) will form the reasonable beliefs that delimit the scope of the administrator's actual authority. RESTATEMENT (THIRD) OF AGENCY § 3.01 (2006). *See also* RESTATEMENT (SECOND) OF AGENCY §§ 15, 26 (1958).

The utilization of administrator is an intentional distinction from the position of manager in an UNA or LLC where, as a general matter and absent countervailing facts, courts may see the position of manager as clothing its occupants with the apparent authority to take actions that reasonably appear within the ordinary course of operations. By requiring DUNA's to specifically authorize the scope of authority, rights, and duties for each administrator, much of the confusion regarding management authority that exists across entity forms will be remedied.

Additionally, this limited authorization of authority for specific purposes fulfills the intent of this [act] to provide an entity form for decentralized organizations that exists without the need for the contractual limitations surrounding fiduciary duties common to entity structures that default to managerial authority and the accompanying fiduciary duties.

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

Subsection (e)(4) a potential breach of loyalty claim (e.g., conflict of interest or engaging in competing activities) can be avoided by advance approval or ratification after full disclosure of the facts.

Section 24 only deals with the liability of a DUNA administrator to the DUNA and its members. Liability of an administrator to third parties is dealt with in other sections of this [act]. *See* Section 9.

Section 25: Rights of members and administrators to information.

(a) On reasonable notice, a member or administrator of a decentralized unincorporated nonprofit association is entitled to an electronic record of any record maintained by the association regarding its activities, financial condition, and other circumstances, to the extent the information exists and is material to the member's or administrator's rights and duties under the association's governing principles of this [act], subject to subsection (b).

(b) A decentralized unincorporated nonprofit association has no obligation to furnish any record maintained by the association for record requests which the member or administrator has access, including through records made available on distributed ledger technology.

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

(d) A former member or administrator may have access to information to which the member or administrator was entitled while a member or administrator if the information pertains to the period during which the person was a member or administrator, the former member or administrator seeks the information in good faith, and the former member or administrator satisfies the requirements of subsection (a)-(c).

(e) A decentralized unincorporated nonprofit association has no obligation to collect and maintain member listings.

Comment: Section 25

The [act] does not require a DUNA to keep any books and records, but if it does have them, they must be made available to the member and administrators pursuant to Section 25. The term "books and records" is intended to cover all types and forms of data, including electronic data. An enacting state may want to include a definition of books and records in the act if there is any uncertainty about what is included in this term in the state's existing laws.

Subsection (e) states that a DUNA has no obligation to collect and maintain member lists, including the names and addresses of its members. However, if the DUNA utilizes distributed ledger technology, the mechanism through which the members interact with the DAO will be available through the ledger.

Although taxation reporting obligations and Federal beneficial ownership laws may ultimately require DUNAs to attain specific member information, those obligations occur independent of this [act].

Section 26: Reimbursement; indemnification; advancement of expenses; insurance.

(a) Except as otherwise provided in a decentralized unincorporated nonprofit association's governing principles, members or administrators may be reimbursed for authorized expenses reasonably incurred on behalf of the association.

(b) A decentralized unincorporated nonprofit association may indemnify a member or manager for any debt, obligation, or other liability incurred during the member or administrator's activities on behalf of the association. To be eligible for indemnification, an administrator must have complied with the duties stated in Section 24. If in a record, an association's governing principles may broaden or limit this right of indemnification.

(c) If a person is made or threatened to be made a party in a proceeding based on that person's conduct of the affairs of a decentralized unincorporated nonprofit association, that person is entitled, upon written request to the association, and approval, in a record, of the disinterested members under Section 17 of this [act], may receive payment of or reimbursement by the association, of reasonable expenses, including attorney's fees and disbursements, incurred by that person in advance of the final disposition of the proceeding. To be entitled to these payments or advances, the person making the request must make a written affirmation that the person has a good faith belief that the criteria for indemnification in subsection (a) have been satisfied and that the person will repay the amounts paid or reimbursed if it is determined that the criteria for reimbursement have not been satisfied.

(d) A decentralized unincorporated nonprofit association may purchase and maintain insurance on behalf of a member or administrator for liability asserted against or incurred by the member or administrator in that capacity, whether or not the association would have the power to indemnify or advance expenses to the member or administrator against the same liability under this [act].

(e) These rights of reimbursement, indemnification and advancement of expense apply to former members or administrators for activities undertaken on behalf of the decentralized unincorporated nonprofit association while they were members or administrators.

Comment: Section 26

The rights to reimbursement of expenses indemnification and advancement of litigation expenses and attorney's fees in business entity statues varies greatly across jurisdictions. The rights of reimbursement of expenses indemnification in subsection (a) and (b) are similar to those found in other business entity statues. *See* Uniform Liability Company Act (2006) § 408; Model Nonprofit Corporation Act-Third Edition (2008) §§ 8.50-8.58. Many existing state statutes only allow reimbursement of litigation expenses after the conclusion of litigation and a finding of nonliability. Given the fact that most members and potentially even administrators would not receive any compensation in relation to their membership, the advancement of litigation expenses on a discretionary basis authorized by subsection (c) seems appropriate.

Errors and omissions insurance is expensive but because of potential liability, administrators of a DUNA may require that it be maintained on their behalf to assume any role in which they may be considered an agent of the DUNA. Subsection (d) makes it clear that the purchase of such insurance is authorized.

Section 27: Dissolution; continuation of existence.

(a) A decentralized unincorporated nonprofit association may be dissolved by any of the following methods:

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

(2) if the governing principles of the association do not provide a method for dissolution, upon approval of the members in accordance with Section 17;

(3) if membership in the organization falls below 100 members; or

(4) by court order.

(b) After dissolution, a decentralized unincorporated nonprofit association continues in existence until its activities have been would up and it is terminated pursuant to Section 28.

Comment: Section 27

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

In the event, the enacting state has adopted the Uniform Unincorporated Nonprofit Association Act or other laws distinguishing UNAs from the historical treatment under the common law – the enacting state should consider whether falling below the 100-member requirement should result in a conversion to an UNA instead of dissolution. Otherwise, the enacting state should consider the addition of time periods

regarding the 100-member requirement, particularly in regard to providing adequate time for an initial DUNA to meet the 100-member requirement and prevent an inadvertent dissolution. *See* Section 2(2).

Section 28: Winding up and termination.

(a) A dissolved decentralized unincorporated nonprofit association shall wind up its business and the nonprofit association continues after dissolution only for the purpose of winding up.

(b) In winding up a decentralized unincorporated nonprofit association, the members:

(1) shall discharge the association's debts, obligation, and other liabilities, settle and close the association's business, and marshal and distribute any remaining property:

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

(B) in accordance with the association's governing principles; and in the absence of applicable governing principles, to the current members of the association in proportion to their membership interests; or

(C) if neither subsection (1)(A) or (B) applies, the law of unclaimed property in the enacting state.

(2) may:

(A) appoint an administrator or administrators authorized to wind up the association in accordance with Section 17;

(B) preserve the association operations and property as a going concern for a reasonable time;

(C) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(D) transfer the association's property;

(E) settle disputes by mediation or arbitration;

(F) receive reasonable compensation for services rendered in winding up the association; and

(G) perform other acts necessary or appropriate to the winding up.

(3) If the members of an association do not appoint an administrator or administrators to wind up the association, the members themselves would each owe the association a duty of care in the conduct or winding up of the association operations to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of the law.

Comment: Section 28

Although it is in the best interest of the DUNA for winding up to occur as quickly as possible, the time necessary to finish old business, collect and pay debts, and make final distributions depend on the circumstances of each nonprofit association.

Subsection (b)(2)(A) - A person appointed under this subsection will normally be an agent of the dissolved partnership, acting pursuant to a contract. Agency and contract law will determine the person's duties as, by its terms, Section 24 does not apply.

This act does not refer to the duty of care as a fiduciary duty, because: (i) the duty of care applies in many non-fiduciary situations; and (ii) breach of the duty of care is remediable in damages while breach of a fiduciary duty gives rise sole to equitable remedies, including disgorgement, constructive trusts, and

rescission. The change in label is consistent with the Restatement (Third) of Agency § 8.02 (2006), which eschews the agent's duty of "care, competence, and diligence." *Id.* § 8.08.

However, the duties incumbent on members responsible for winding up a DUNA does not extend a duty not to compete as the association has been dissolved prior to their assuming responsibility for winding up.

Section 29: Mergers.

(a) The following definitions govern the construction of this section:

(1) "Constituent organization" means an organization that is merged with one or more other organizations and includes the surviving organization.

(2) "Disappearing organization" means a constituent organization that is not the surviving organization.

(3) "Organization" means a decentralized unincorporated nonprofit association, unincorporated nonprofit association, a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business or statutory trust, corporation, or any other legal or commercial entity having a statute governing its formation and operation. The term includes a domestic or foreign organization regardless of whether organized for profit.

(4) "Surviving organization" means an organization into which one or more other organizations are merged.

(b) A decentralized unincorporated nonprofit association may merge with any organization that is authorized by law to effect a merger with a decentralized unincorporated nonprofit association.

(c) A merger involving a decentralized unincorporated nonprofit association is subject to the following requirements:

(1) Each of the constituent merging organizations complies with its governing law.

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

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

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

(C) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

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

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

(3) The plan of merger must be approved by the members of each decentralized unincorporated nonprofit association that is a constituent organization in the merger. If a member of an association that is a party to a merger will have personal liability with respect to an obligation of a constituent or a surviving organization, the consent in a record of that member to the plan of merger must also be obtained.

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

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

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

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

(C) if the surviving organization is not a decentralized unincorporated nonprofit association, as provided by the statute governing the surviving organization.

(d) When a merger becomes effective:

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

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

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

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

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

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

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

(8) the merger does not affect the personal liability, if any, of a member, administrator, or manager of a constituent association for a debt, liability or obligation of the association incurred before the merger is effective; and

(9) a surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the [Secretary of State] as its agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection.

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

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

Comment: Section 29

Section 29 authorizes a DUNA to merge into another DUNA or into another organization, assuming the law governing the other organization authorizes a merger with a DUNA; and then sets forth the requirement for the merger; the plan of merger (subsection (c)(2)); approval of the merger (subsections (c)(3) and (4)); compliance with all applicable laws (subsections (c)(1) and (5)); and the legal effect of the merger (subsection (d)). The requirements in Section 29 are consistent with merger provisions of other business entity laws.

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

The Uniform Limited Liability Act (2006) Section 1001-09 was used as a guide with the following modifications: (1) per governing principles vs. unanimous vote for approval, and (2) no filing required if all the entities involved do not have filing requirements upon original formation.

[Section 30: Conversions.

(a) The following definitions govern the construction of this section:

(1) "Conversion" means a transaction authorized by Section 30 pursuant to which an entity of one type is converted into an entity of another type.

(2) "Converted entity" means the entity that results from a conversion.

(3) "Converting entity" means the entity that becomes the converted entity through a conversion.

(b) A decentralized unincorporated nonprofit association may convert to any entity form that is authorized by law to affect a conversion from a decentralized unincorporated nonprofit association.

(c) A conversion involving a decentralized unincorporated nonprofit association is subject to the following requirements:

(1) Each of the constituent converting organizations complies with its governing law.

(2) The decentralized unincorporated organization, as a converting entity, shall approve a plan of conversion in accordance with its governing principles. The plan, which must be in a record, must include the following provisions:

(A) the name of the converting decentralized unincorporated nonprofit association;

(B) the name, jurisdiction of formation, and type of entity of the converted entity;

(C) the manner of converting the interest in the converting decentralized unincorporated nonprofit association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(D) if the converted entity requires a record that is filed publicly to form, organize, incorporate, or otherwise create an entity, the converted entity's organizational documents that are proposed to be in a record;

(E) if the converted entity does not require a record that is filed publicly to form, organize, incorporate, or otherwise create an entity, a record of the converted entities governing principles to the extent they exist;

(F) the other terms and conditions of the conversion; and

(G) any other provision required by the law of this state or the governing principles of the converting decentralized unincorporated nonprofit association.

(3) The plan of conversion must be approved by the members of the converting decentralized unincorporated in accordance with its governing principles. If a member of an association that is a party to a conversion will have personal liability with respect to an obligation of a converted entity or converting entity, the consent in a record of that member to the plan of conversion must also be obtained.

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

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

(A) if a converted entity is required to give notice to or obtain the approval of a governmental agency or officer in order to form an entity, the notice has been given and the approval has been obtained; and

(B) if a converted entity is not required to give notice or obtain the approval of a governmental agency or officer in order to form an entity, as provided by the statute governing the converted entity.

(d) A conversion becomes effective when the converted entity comes into existence.

(e) When a conversion becomes effective:

(1) the converted entity is:

(A) organized under and subject to the laws of the converted entity; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(f) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.]

Comment: Section 30

Section 30 authorizes a DUNA to convert into another domestic entity, assuming the law governing the other organization authorizes a conversion; and then sets forth the requirement for the conversion; the plan of conversion (subsection (c)(2)); approval of the conversion (subsections (c)(3) and (4)); compliance with all applicable laws (subsections (c)(1) and (5)); and the legal effect of the conversion (subsections (d) and (e)). The requirements in Section 30 are consistent with conversion provisions of other business entity laws. The Uniform Limited Liability Act (2006) Section 1041-46 were used as a guide with the following

modifications: (1) per governing principles vs. unanimous vote for approval, and (2) no filing required if all the entities involved do not have filing requirements upon original formation.

A converted entity is the same entity as it was before the conversion; the entity just has a different legal form.

Some states have expressly addressed conversion and domestication of business entities in general statutes. Those states may wish to continue their rules and accordingly, not adopt this section. For this reason, Section 30 is bracketed.

Section 31: Uniformity of application and construction. In applying and construing this [act], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[Section 32: Severability clause. If any provision of this [act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or application of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Comment: Section 32

Enacting states should only include this section if the state lacks a general severability statute or decision by the highest court of the state stating a general rule of severability. For this reason, Section 32 is bracketed.

SECTION 33. EFFECTIVE DATE. This [act] takes effect . . .

Comment: Section 33

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

This act provides a DUNA and its members with a legal structure that conforms to the expectations of many of them, particularly as such organizations would already exist as UNAs or be newly formed under this [act]. Therefore, the need by nonprofit associations for additional time to revise procedures and forms to conform to a significant change in the law is not necessary.

However, in enacting states that have not already enacted significant changes to the common law treatment of unincorporated nonprofit associations, this act would materially change the common law rules regarding third parties, particularly creditors of DUNAs. Anecdotal evidence suggests that many creditors place little reliance on their rights against members in extending credit. If they have any reservations about the creditworthiness of a nonprofit association they obtain guarantees from creditworthy members or insist on cash. To the extent that this is true, no change in credit policies is needed and so no extra planning time is needed.