

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS65453-LTfz-139* (5/3)

Short Title: Uniform Unincorporated Nonprofit Assoc. Act. (Public)

Sponsors: Senators Hagan, and Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

Chapter 59B.

"Uniform Unincorporated Nonprofit Association Act.

"§ 59B-1. Short title.

This Chapter may be cited as the Uniform Unincorporated Nonprofit Association Act.

"§ 59B-2. Definitions.

In this Chapter:

- (1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.
- (2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.
- (3) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture,

1 government, governmental subdivision, agency, or instrumentality, or
2 any other legal or commercial entity.

3 (4) "State" means a state of the United States, the District of Columbia,
4 the Commonwealth of Puerto Rico, or any territory or insular
5 possession subject to the jurisdiction of the United States.

6 **"§ 59B-3. Supplementary general principles of law and equity.**

7 Principles of law and equity supplement this Chapter unless displaced by a particular
8 provision of it.

9 **"§ 59B-4. Title to property; choice of law.**

10 Real and personal property in this State may be acquired, held, encumbered, and
11 transferred by a nonprofit association, whether or not the nonprofit association or a
12 member has any other relationship to this State.

13 **"§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or**
14 **beneficiary.**

15 (a) A nonprofit association is a legal entity separate from its members for the
16 purposes of acquiring, holding, encumbering, and transferring real and personal
17 property.

18 (b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer
19 an estate or interest in real or personal property.

20 (c) A nonprofit association may be a beneficiary of a trust or contract, a legatee,
21 or a devisee.

22 (d) Any judgments and executions against a nonprofit association bind its real
23 and personal property in like manner as if it were incorporated.

24 **"§ 59B-6. Statement of authority as to real property.**

25 (a) A nonprofit association may execute and record a statement of authority to
26 transfer an estate or interest in real property in the name of the nonprofit association.

27 (b) An estate or interest in real property in the name of a nonprofit association
28 may be transferred by a person so authorized in a statement of authority recorded in the
29 office of the register of deeds in the county in which a transfer of the property would be
30 recorded.

31 (c) A statement of authority must be set forth in a document styled "affidavit"
32 that contains all of the following:

33 (1) The name of the nonprofit association.

34 (2) Reserved for future codification purposes.

35 (3) The street address, and the mailing address if different from the street
36 address, of the nonprofit association, and the county in which it is
37 located, or, if the nonprofit association does not have an address in this
38 State, its address out-of-state.

39 (4) That the association is an unincorporated nonprofit association.

40 (5) The name or office of a person authorized to transfer an estate or
41 interest in real property held in the name of the nonprofit association.

42 (6) That the association has duly authorized the member or agent
43 executing the statement to do so.

1 (d) A statement of authority must be sworn to and subscribed in the same manner
2 as an affidavit by a member or agent who is not the person authorized to transfer the
3 estate or interest.

4 (e) The register of deeds shall collect a fee for recording a statement of authority
5 in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the
6 name of the nonprofit association and the member or agent signing the statement of
7 authority or any subsequent document relating thereto as Grantor and the name of the
8 appointee as Grantee.

9 (f) An amendment, including a termination, of a statement of authority must
10 meet the requirements for execution and recording of an original statement. Unless
11 terminated earlier, a recorded statement of authority or its most recent amendment
12 expires by operation of law five years after the date of the most recent recording.

13 (g) If the record title to real property is in the name of a nonprofit association and
14 the statement of authority is recorded in the office of the register of deeds in the county
15 in which a transfer of real property would be recorded, the authority of the person or
16 officer named in a statement of authority is conclusive in favor of a person who gives
17 value without notice that the person or officer lacks authority.

18 **"§ 59B-7. Liability of members or other persons.**

19 (a) A nonprofit association is a legal entity separate from its members for the
20 purposes of determining and enforcing rights, duties, and liabilities.

21 (b) A person is not liable for the contract, tort, or other obligations of a nonprofit
22 association merely because the person is a member, is authorized to participate in the
23 management of the affairs of the nonprofit association, or is referred to as a "member"
24 by the nonprofit association.

25 (c) Reserved for future codification purposes.

26 (d) A tortious act or omission of a member or other person for which a nonprofit
27 association is liable is not imputed to a person merely because the person is a member
28 of the nonprofit association, is authorized to participate in the management of the affairs
29 of the nonprofit association, or is referred to as a "member" by the nonprofit association.

30 (e) A member of, or a person referred to as a "member" by, a nonprofit
31 association may assert a claim against or on behalf of the nonprofit association. A
32 nonprofit association may assert a claim against a member or a person referred to as a
33 "member" by the nonprofit association.

34 **"§ 59B-8. Capacity to assert and defend; standing.**

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

38 (b) A nonprofit association may assert a claim in its name on behalf of its
39 members or persons referred to as "members" by the nonprofit association if one or
40 more of them have standing to assert a claim in their own right, the interests the
41 nonprofit association seeks to protect are germane to its purposes, and neither the claim
42 asserted nor the relief requested requires the participation of a member or a person
43 referred to as a "member" by the nonprofit association.

44 **"§ 59B-9. Effect of judgment or order.**

1 A judgment or order against a nonprofit association is not by itself a judgment or
 2 order against a member, a person referred to as a "member" by the nonprofit
 3 association, or a person authorized to participate in the management of the affairs of the
 4 nonprofit association.

5 **"§ 59B-10. Disposition of personal property of inactive nonprofit association.**

6 If a nonprofit association has been inactive for three years or longer, or a different
 7 period specified in a document of the nonprofit association, a person in possession or
 8 control of personal property of the nonprofit association may transfer custody of the
 9 property:

- 10 (1) If a document of the nonprofit association or document of gift specifies
 11 a person to whom transfer is to be made under these circumstances, to
 12 that person; or
 13 (2) If no person is so specified, to a nonprofit association, nonprofit
 14 corporation, or other nonprofit entity pursuing broadly similar
 15 purposes, or to a government or governmental subdivision, agency, or
 16 instrumentality.

17 **"§ 59B-11. Appointment of agent to receive service of process.**

18 (a) A nonprofit association may file in the office of the Secretary of State a
 19 statement appointing an agent authorized to receive service of process, notice, or
 20 demand required or permitted by law to be served on a nonprofit association.

21 (b) A statement appointing an agent must set forth all of the following:

- 22 (1) The name of the nonprofit association.
 23 (2) Reserved for future codification purposes.
 24 (3) The street address, and the mailing address if different from the street
 25 address, of the nonprofit association, and the county in which it is
 26 located, or, if the nonprofit association does not have an address in this
 27 State, its address out-of-state.
 28 (4) The name of the person in this State authorized to receive service of
 29 process and the person's address, including the street address, in this
 30 State.

31 (c) A statement appointing an agent must be signed and acknowledged by a
 32 person authorized to manage the affairs of a nonprofit association. The statement must
 33 also be signed and acknowledged by the person appointed agent, who thereby accepts
 34 the appointment. The appointed agent may resign by filing a resignation in the office of
 35 the Secretary of State and giving written notice to the nonprofit association at its last
 36 known address.

37 (d) The sole duty of the appointed agent to the nonprofit association is to forward
 38 to the nonprofit association at its last known address any notice, process, or demand that
 39 is served on the appointed agent.

40 (e) The Secretary of State is not an agent for service of any process, notice, or
 41 demand on any nonprofit association.

42 (f) The Secretary of State shall collect the following fees when the documents
 43 described in this subsection are delivered to the Secretary of State for filing:

<u>Document</u>	<u>Fee</u>
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1	(1)	<u>Statement appointing an agent to receive service of process</u>	\$5.00
2	(2)	<u>Amendment of statement appointing an agent</u>	5.00
3	(3)	<u>Cancellation of statement appointing an agent</u>	5.00
4	(4)	<u>Agent's statement of resignation</u>	No fee

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

8 **"§ 59B-12. Claim not abated by change.**

9 A claim for relief against a nonprofit association does not abate merely because of a
10 change in its members or persons authorized to manage the affairs of the nonprofit
11 association.

12 **"§ 59B-13. Venue.**

13 For purposes of venue, a nonprofit association is a resident of a county in which it
14 has an office or maintains a place of operation or, if on due inquiry no office or place of
15 operation can be found, in which any officer resides.

16 **"§ 59B-14. Uniformity of application and construction.**

17 This Chapter shall be applied and construed to effectuate its general purpose to make
18 uniform the law with respect to the subject of this Chapter among states enacting it."

19 **SECTION 2.(a)** G.S. 39-24 and G.S. 39-25 are repealed.

20 **SECTION 2.(b)** G.S. 39-26 and G.S. 39-27 are recodified as G.S. 59B-15(a)
21 and (b), respectively. As recodified by this act, G.S. 59B-15 reads as rewritten:

22 **"§ 59B-15. Effect as to conveyances by ~~trustees.~~ trustees; prior deeds validated.**

23 (a) Nothing in this Article shall be deemed in any manner to change Chapter
24 changes the law with reference to the holding and conveyance of land by the trustees of
25 churches or other voluntary organizations under Chapter 61 of the General Statutes
26 where ~~such~~ the land is conveyed to and held by ~~such~~ the trustees.

27 (b) All deeds ~~heretofore~~ executed in conformity with this Article before the
28 effective date of this Chapter in conformity with former G.S. 39-24 and former
29 G.S. 39-25 are declared to be sufficient to pass title to real estate held by such
30 organizations. estate."

31 **SECTION 3.** G.S. 1-69.1 reads as rewritten:

32 **"§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

33 (a) Except as provided in subsection (b) of this section:

34 (1) All unincorporated associations, organizations or societies, or general
35 or limited partnerships, foreign or domestic, whether organized for
36 profit or not, may hereafter sue or be sued under the name by which
37 they are commonly known and called, or under which they are doing
38 business, to the same extent as any other legal entity established by
39 law and without naming any of the individual members composing it.

40 (2) Any judgments and executions against any such association,
41 organization or society shall bind its real and personal property in like
42 manner as if it were incorporated.

43 (3) Any unincorporated association, organization, society, or general
44 partnership bringing a suit in the name by which it is commonly

1 known and called must allege the specific location of the recordation
2 required by G.S. 66-68.

3 (b) Unincorporated nonprofit associations are subject to Chapter 59B of the
4 General Statutes and not this section."

5 **SECTION 4.** G.S. 47C-3-101 reads as rewritten:

6 "**§ 47C-3-101. Organization of unit owners' association.**

7 A unit owners' association shall be organized no later than the date the first unit in
8 the condominium is conveyed. The membership of the association at all times shall
9 consist exclusively of all the unit owners, or following termination of the condominium,
10 of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The
11 association shall be organized as a profit or nonprofit corporation or as an
12 unincorporated nonprofit association."

13 **SECTION 5.** If any provision of this act or its application to any person or
14 circumstance is held invalid, the invalidity does not affect any other provisions or
15 applications of this act which can be given effect without the invalid provision or
16 application, and to this end the provisions of this act are severable.

17 **SECTION 6.** This act does not affect an action or proceeding commenced or
18 right accrued before this act takes effect.

19 **SECTION 7.** The Revisor of Statutes shall cause to be printed along with
20 this act all relevant portions of the official comments to the Uniform Unincorporated
21 Nonprofit Association Act and all explanatory comments of the drafters of this act as
22 the Revisor deems appropriate.

23 **SECTION 8.** This act becomes effective January 1, 2007.