

CLUB LEGAL STATUS

SUMMARY: We should be registered with the CA Secretary of State (a current registration) as an unincorporated association. Filing protects our name AND the liability of all members as set forth in CA Business Code Section 17912 Section 2 395.2 and 18260.

We could register as an unincorporated **non-profit** which costs just \$10 for 5 years as opposed to \$25. Non-profits include: "any lodge, order, beneficial association, fraternal or beneficial society, historical, military, or veterans organization, labor union, foundation, or federation, or any other society, organization, or association..."

We do not qualify for a 501(c)(3) entity as we do not have a public charity purpose.

"Unincorporated association" means an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not.

If the lawful purpose they've joined together to accomplish includes earning a profit, their association is automatically a **partnership** or joint venture for tax and most other legal purposes. For example, if two people get together and decide to operate a food truck, they've formed a partnership, even if they file no paperwork.

But, if the purpose for the association is to benefit the public some way, and does not include earning a profit, the association's members have formed an unincorporated non-profit association. People form nonprofit unincorporated associations all the time; often without being aware of it. For example, if you and several of your neighbors get together to help raise funds to keep your local library branch open, you've formed an unincorporated nonprofit association.

If an unincorporated association's purpose is charitable, educational, and/or scientific in nature, it can qualify as a Section 501(c)(3) organization (also called a public charity). Contributions to Section 501(c)(3)s are tax deductible. If an unincorporated charitable nonprofit has less than \$5,000 in annual revenues, it may function as a 501(c)(3) without applying for IRS recognition of its status. However, as a practical matter, it may be difficult to obtain contributions without an IRS determination letter officially recognizing the nonprofit as a Section 501(c)(3) organization.

An association with over \$5,000 in revenue must apply for recognition from the IRS by filing IRS Form 1023. It is not necessary for an unincorporated association to convert to a nonprofit corporation to obtain IRS recognition of its Section 510(c)(3) status. However, the association must adopt written bylaws or a constitution, and include it with its IRS application. It's probably easier to form a nonprofit corporation than to adopt such bylaws or constitution.

Some states, such as California, give some limited liability to nonprofit association members; but it's not as good as the protection obtainable from a nonprofit corporation.

CA18260. A money judgment against an unincorporated association, whether organized for profit or not, may be enforced only against the property of the association.

Unincorporated associations as well as nonprofit unincorporated associations are governed by Cal Corp. Code §§18000-24001.5. An unincorporated association may, in its name, acquire, hold, manage, encumber, or transfer an interest in real or personal property in California.

Filing with the California Secretary of State

An unincorporated association may file with the Secretary of State, For general unincorporated associations, the UA-100 form is suggested: <http://www.sos.ca.gov/business/other/forms/ua-100.pdf> or for a non profit <https://bpd.cdn.sos.ca.gov/other/forms/una-128.pdf>. The Statement by Unincorporated Association expires 5 years from December 31 following the date of filing with the Secretary of State, unless previously superseded by the filing of a new statement. The fee for filing the Statement by Unincorporated Association is \$25.00 or from \$10 for a non profit. For more information on unincorporated associations, go to: <http://www.sos.ca.gov/business/be/forms.htm>