

Cataloging of Issues - Enforceability and Unincorporated Associations

Dear Legal Sub-team,

Below please find a list of responses and memo references for the issues for which cataloging was requested on the CCWG call yesterday.

- Both designators and members need to be legal persons in order to have enforceable rights. This is discussed in the Executive Summary to our Memorandum of April 23 ([Link](#)) and the governance charts attached to that Memorandum.
- The ability to approve, block, or force reconsideration of a strategic plan and budget is viable as an enforceable right in the member model, but is not viable in the designator model. The other four primary community powers (director removal, board recall, and amendment of bylaws and articles or fundamental bylaws and articles) are viable in either model, but legal persons are required for enforceability in either model. This, too, is discussed in the Executive Summary to our Memorandum of April 23 ([Link](#)) and the governance charts attached to that Memorandum.
- Forming an unincorporated association requires very little formality and the governance and composition of an unincorporated association are very flexible. Members of an unincorporated association benefit from limited liability under California law, and the unincorporated associations could be structured without any tangible or liquid assets, making them an unattractive target for litigation. Formation of unincorporated associations would not subject existing SOs or ACs to greater liability than they currently have. These issues are discussed at length in our Memorandum of May 3 ([Link](#)).
- The IRP is an effective alternative to litigation, and there is a great deal of flexibility in establishing an IRP process, including making it binding in most cases. Nevertheless, in order for the IRP to be effective, its decisions must ultimately be able to be enforced by a court in the event one of the parties does not accept the outcome. The realistic threat of enforcement is critical as an incentive to parties to adhere to the process and accept the outcome without resort to a court. In order for an IRP decision to be enforced in court, the person seeking to enforce the decision needs to be a legal person. These points are discussed in our IRP Memo attached as Annex A to our Memorandum of April 20 ([Link](#)).

Best regards,

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