AMENDMENTS TO TITLE 15 OF THE PENNSYLVANIA CONSOLIDATED STATUTES WITH COMMITTEE COMMENTS

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

To Accompany Senate Bill 304 (The GAA Amendments Act of 2013)

Adopted at a meeting of the Committee on January 18-20, 2013

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PENNSYLVANIA BAR ASSOCIATION
SECTION ON BUSINESS LAW
TITLE 15 / BUSINESS ASSOCIATIONS COMMITTEE

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Introduction

For a number of years the Title 15 / Business Associations Committee (the “Committee”) of the Section on Business Law of the Pennsylvania Bar Association has been engaged in a project looking to enactment of a complete Title 15 of the Pennsylvania Consolidated Statutes dealing with corporations, partnerships, and unincorporated associations. As part of that project, the Committee has prepared legislation, known as the GAA Amendments Act of 2013 (the “2013 G4A”), which completes the revision of the Nonprofit Corporation Law begun in 1988 (the “NPCL”), enacts the Uniform Unincorporated Nonprofit Association Act, and makes other related and miscellaneous changes to Title 15.

This document sets forth the text of each section of Title 15 that the Committee is proposing be amended by the 2013 G4A, with the exception of most of the provisions of the NPCL that are to be amended. The Committee has not previously prepared comments on the NPCL since many sections of the NPCL parallel the corresponding provisions of the Business Corporation Law. This document includes comments for the first time, however, on a limited number of sections of the NPCL where the Committee concluded there were unique provisions of the NPCL that it would be useful to explain.

Amendments to Title 15 are shown in this document by underlining text to be added and [bracketing text to be deleted].

This document does not identify the changes that have been made in the text of the Committee Comments. Instead, the Committee Comments in this document supersede the prior Committee Comments. For each section of Title 15 for which an amendment has been proposed, the Committee has taken the opportunity to review that section’s attendant Committee Comment generally and to revise it as appropriate. The Committee believes that the full updated Committee Comment should satisfy the test of 1 Pa.C.S. § 1939 because the changes in the Committee Comment that do not have a corresponding change in the statutory text are based on the assumption that the General Assembly should be deemed to have concluded that an amendment of the statutory text is unnecessary if the interpretation in the Committee Comment is correct.
§ 102. Definitions.

Subject to additional or inconsistent definitions contained in subsequent provisions of this title that are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Act or “action.” Includes failure to act.

“Association.” A corporation, a partnership, a limited liability company, a business trust or two or more persons associated in a common enterprise or undertaking. The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans' court division in general).

“Banking institution.” [A banking institution as defined in section 1103 (relating to definitions).] An institution as defined in section 102(r) of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.


“Business trust.” A trust subject to Chapter 95 (relating to business trusts).

“Cooperative corporation.” A corporation that is subject to Subpart D of Part II (relating to cooperative corporations).

“Corporation for profit.” A corporation incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise, to its shareholders or members.
“Corporation not-for-profit.” A corporation not incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise.

“Court.” Subject to any inconsistent general rule prescribed by the Supreme Court of Pennsylvania:

(1) the court of common pleas of the judicial district embracing the county where the registered office of the corporation or other association is or is to be located; or

(2) where an association results from a merger, consolidation, division or other transaction without establishing a registered office in this Commonwealth or withdraws as a foreign corporation or association, the court of common pleas in which venue would have been laid immediately prior to the transaction or withdrawal.

“Credit union.” A credit union as defined in 17 Pa.C.S. § 102 (relating to application of title).

“Department.” The Department of State of the Commonwealth.

“Domestic banking institution.” A domestic association which is an institution as defined in section 102(r) of the act of November 30, 1965 (P.L. 847, No. 356), known as the Banking Code of 1965.

“Domestic corporation.” A corporation for profit or not-for-profit incorporated under the laws of this Commonwealth.

“Domestic corporation for profit.” A corporation for profit incorporated under the laws of this Commonwealth.

“Domestic corporation not-for-profit.” A corporation not-for-profit incorporated under the laws of this Commonwealth.

“Domestic insurance corporation.” An insurance corporation as defined in section 3102 (relating to definitions).

“Domestic savings association.” A domestic corporation for profit which is an association as defined in section 102(3) of the act of December 14, 1967 (P.L. 746, No. 345), known as the Savings Association Code of 1967.

“ELECTING partnership.” An electing partnership as defined in section 8701(c) (relating to scope and definition).
“Execute.” When used with respect to authenticating or adopting a filing, document or other record, means “sign.”

“Foreign corporation for profit.” A corporation for profit incorporated under any laws other than those of this Commonwealth.

“Foreign corporation not-for-profit.” A corporation not-for-profit incorporated under any laws other than those of this Commonwealth.

“Insurance corporation.” An insurance corporation as defined in section 3102 (relating to definitions).


“Licensed person.” A natural person who is duly licensed or admitted to practice his profession by a court, department, board, commission or other agency of the Commonwealth or another jurisdiction to render a professional service that is or will be rendered by the association of which he is, or intends to become, a shareholder, partner, owner, director, officer, manager, member, employee or agent.

“Limited liability company.” A domestic or foreign limited liability company as defined in section 8903 (relating to definitions and index of definitions).

“Obligation.” Includes a note or other form of indebtedness, whether secured or unsecured.

“Officially publish.” Publish in two newspapers of general circulation in the English language in the county in which the registered office of the association is located or, in the case of a proposed association, will be located, one of which must be the legal newspaper, if any, designated by the rules of court for the publication of legal notices. If there is only one newspaper of general circulation in the county, advertisement in that newspaper is sufficient. If no other frequency is specified, the notice must be published one time. See section 109(a)(2) (relating to name of commercial registered office provider in lieu of registered address).

“Profession.” Includes the performance of any type of personal service to the public that requires as a condition precedent to the performance of the service the obtaining of a license or admission to practice or other legal authorization from the Supreme Court of Pennsylvania or a licensing board or commission under the Bureau of Professional and Occupational Affairs in the Department of State. Except as otherwise expressly provided by law, this definition shall be applicable to this title only and shall not affect the interpretation of any other statute or any local zoning ordinance or other official document heretofore or hereafter enacted or promulgated.
“Professional services.” Any type of services that may be rendered by a member of a profession within the purview of his profession.

“Record form.” Inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

“Representative.” [A representative as defined in section 1103 (relating to definitions).] When used with respect to an association, joint venture, trust or other enterprise, a person occupying the position or discharging the functions of a director, officer, partner, manager, trustee, fiduciary, employee or agent, regardless of the name or title by which the person may be designated. The term does not imply that a director, as such, is an agent of a corporation.

“Savings association.” [A savings association as defined in section 1103.] An association as defined in section 102(3) of the act of December 14, 1967 (P.L. 746, No. 345), known as the Savings Association Code of 1967.

“Sign.” With present intent to authenticate or adopt information in record form:

(1) to sign manually or adopt a tangible symbol; or

(2) to attach to, or logically associate with, information in record form, an electronic sound, symbol or process.

“Verified.” Includes an unsworn document containing a statement by the signatory that is made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Amended Committee Comment (2013):

The definitions in this section apply to all of Title 15. As the introductory paragraph to this section states, it is necessary to consider the context in which a defined term is used in Title 15.

“Association.” This is the generic term that encompasses all of the various types of organizations subject to Title 15. It also includes organizations whose internal affairs are largely governed by statutes outside of Title 15, such as banks (see the Banking Code of 1965, 7 P.S. § 101, et seq.), savings associations (see the Savings Association Code of 1967, 7 P.S. § 6020-1, et seq.), and credit unions (see Title 17).

The last sentence of the definition of “association,” which was added by the GAA Amendments Act of 1990, makes clear that trusts subject to the jurisdiction of the orphans' court are not subject to the provisions of Title 15, and thus, for example, are not authorized to merge with a corporation, limited partnership or limited liability company under 15 Pa.C.S. §§ 1921(c),
8545(c) or 8956(c), respectively. A related provision is found in 20 Pa.C.S. § 711(3), as amended by the General Association Act of 1988, which excludes business trusts from the jurisdiction of the orphans' court.

The definition of “association” in this section was made generally applicable to all of Pennsylvania's statutory law by an amendment to the general definitional section of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1991, which was made by the Limited Liability Company Act, act of December 7, 1994 (P.L. 703, No. 106). However, because the prior definition excluded from the concept of an association “a partnership or limited partnership,” the prior definition was continued with respect to statutes finally enacted before the date of enactment of the Limited Liability Company Act in order to avoid an unintended change in the law. For example, section 1633 of the Pennsylvania Election Code, 25 P.S. § 3253, prohibits generally political contributions by corporations or unincorporated associations; but since the prior definition of “association” in 1 Pa.C.S. § 1991 excluded partnerships, contributions from partnership funds were not prohibited. By continuing the prior definition of “association” in effect with respect to preexisting statutes, no change in the law was made; and, in the example given, political contributions from partnership funds continue to be permissible.

“Business trust.” Pennsylvania business trusts are included within the scope of Title 15 by Chapter 95, but 15 Pa.C.S. § 9501(c) provides that a Pennsylvania business trust will not be viewed as organized or incorporated by or under any statutory laws of this Commonwealth so as to subject it to any tax imposed on associations so organized or incorporated. The purpose of 15 Pa.C.S. § 9501(c) was to preserve the tax-exempt status of business trusts at the time that provision was first enacted in 1988. However, 15 Pa.C.S. § 9501(c) was subsequently repealed by Section 42(c) of Act 1994-48 to the extent that 15 Pa.C.S. § 9501(c) would affect any tax imposed under Articles III, IV and VI of the Tax Reform Code of 1971 for any taxable year beginning on or after January 1, 1995.

“Court.” This definition provides a rule on venue in actions under Title 15, but the rule is subject to any applicable rule of court. A merely permissive rule of court will not control over the rule in this definition.

“Licensed person.” This definition was added by the Limited Liability Company Act which patterned it after the definition of the same term formerly found in 15 Pa.C.S. § 2902. In general, a person who is licensed to practice a profession in a jurisdiction other than Pennsylvania is permitted to own an equity interest in a Pennsylvania professional practice. See, e.g., the use of the term “licensed person” in 15 Pa.C.S. §§ 2923, 8105 and 9506(f). Being such an equity owner, however, does not exempt the person from the requirement of being licensed in Pennsylvania if he or she practices in Pennsylvania.

“Obligation.” This definition is an example of the breadth involved in the use of the term “includes” in Title 15 definitions. In addition to a secured or unsecured note or other form of indebtedness, the term also includes, for example, a secured or unsecured undertaking,
guarantee, lease obligation, or duty to pay or perform.

“Officially publish.” To qualify as a newspaper for publishing corporate and other association notices, general circulation in a county is sufficient, whether or not the place of publication is in the county.

“Profession.” This definition was added by the GAA Amendments Act of 2001 which patterned it generally after the definition of the same term formerly found in 15 Pa.C.S. § 2902. Instead of defining professions with reference to the need to obtain authorization from the Supreme Court of Pennsylvania or the Department of State as this definition does, professions were described in the source provision as:

“. . . all personal services that prior to the enactment of the act of July 9, 1970 (P.L. 461, No. 160), known as the Professional Corporation Law, could not lawfully be rendered by means of a corporation. By way of example, and without limiting the generality of the foregoing, the term includes for the purposes of [Chapter 29] personal services rendered as an architect, chiropractor, dentist, funeral director, osteopath, podiatrist, physician, professional engineer, veterinarian, certified public accountant or surgeon and, except as otherwise prescribed by general rules, an attorney at law.”

The Committee decided that the quoted language was too indefinite and that the new definition would provide greater certainty.

“Record form.” This definition was patterned after the definition of “record” in the Electronic Transactions Act, 73 P.S. § 2260.103. It was added by the GAA Amendments Act of 2013 to provide a way of referring generally to records of an association and other documents that includes both paper documents and also documents that are created or maintained in electronic form. In addition to paper documents, which are included in the reference to “inscribed on a tangible medium,” any other form of record or document is acceptable so long as it is in a form that permits its retrieval in a tangible and reasonably legible form. One important effect of the use of the term is to validate records and documents that are kept in a form other than on paper. Although a number of sections of Title 15 refer expressly to “written” documents or “written” provisions of agreements or other documents, 15 Pa.C.S. § 107(b) provides that those references will be satisfied by a document or provision in record form.

Title 15 does not include a separate definition of what constitutes a “record.” It is intended that the concept of a “record” will be applied expansively. 15 Pa.C.S. § 107(a) makes clear that “shareholder or membership records, books of account and minute books” are part of an association’s records. The term “record” also includes, without limitation, contracts, leases, proxies and certifications.

“Sign.” This definition was added by the GAA Amendments Act of 2013 and is the
standard definition developed by the National Conference of Commissioners on Uniform State Laws for this concept. The definition is also intended to apply to other forms of the verb, such as “signed,” and noun forms, such as “signature.”

Title 15 has historically used the term “execute” to refer to the authentication of documents being filed with the Department of State. As opportunities arise, the Committee intends to propose substituting “sign” for “execute.” In the meantime, this section defines “execute” to be synonymous with “sign.”

§ 107. Form of records.

[Any records] (a) General rule.— Information maintained by a corporation or other association in the regular course of its business, including shareholder or membership records, books of account and minute books, may be kept [on, or be in the form of, punch cards, magnetic storage media, photographs, microphotographs or any other information storage device if the records so kept can be converted into reasonably legible written form within a reasonable time] in record form. [Any corporation or other association shall so convert any records so kept upon the request of any person entitled to inspect the records. Where records are kept in this manner a reasonably legible written form produced from the information storage device that accurately portrays the record shall be admissible in evidence, and shall be accepted for all other purposes, to the same extent as an original written record of the same information would have been accepted.]

(b) Meaning of “written.”— References in this title to a document in writing or to a written provision of an agreement or other document shall be deemed to include and be satisfied by a document or provision of an agreement or document in record form.

Amended Committee Comment (2013):

When this section was originally enacted in 1972 as former 15 Pa.C.S. § 111, it referred to records kept “in the form of punch cards, magnetic storage media, photographs, microphotographs or [on] any other information storage device if the records so kept can be converted into reasonably legible written form within a reasonable time.” The requirement that records be convertible into reasonably legible written form has been supplied by the definition of “record form” in 15 Pa.C.S. § 102. The listing of punch cards, magnetic storage media, etc. was intended to validate the use of information storage technologies that were considered the state of the art at the time. It is no longer necessary to refer to specific technologies in this section because the definition of “record form” will include any technology that meets the requirement of being retrievable in perceivable form.

Subsection (b) is a transitional provision that makes the definition of “record form” generally applicable to all of Title 15. It is intended that as individual sections are amended with
regard to other issues use of the terms “written” or “writing” will be changed to “record form.”

Compare 42 Pa.C.S. § 6109, which is limited to pictorial reproductions which show any marginalia.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”
“record form”

§ 111. Relation of title to Electronic Signatures in Global and National Commerce Act.

(a) General rule.—Except as set forth in subsection (b), this title modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001, et seq.).

(b) Exception.—This title does not do any of the following:

(1) Modify, limit or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001(c)).

(2) Authorize electronic delivery of a notice described in section 103(b) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7003(b)).

Committee Comment (2013):

This section is the standard language developed by the National Conference of Commissioners on Uniform State Laws to validate statutory provisions on the use of electronic technology. It is required by 15 U.S.C. § 7002(a)(2)(B) which permits state laws enacted after June 30, 2000 to supersede the provisions of the Federal E-SIGN Act but only if the state law makes specific reference to the Federal E-SIGN Act.

Subchapter B
Functions and Powers of Department of State

§ 131. Application of subchapter.

As used in this subchapter, the term “this title” includes Titles 17 (relating to credit unions) and 54 (relating to names) and any other provision of law that;
(1) makes reference to the powers and procedures of this subchapter; or

(2) to the extent not inconsistent with this subchapter:

   (i) requires a filing in the bureau; and
   
   (ii) does not specify some or all of the necessary procedures for the filing

   provided in this subchapter.

Committee Comment (2013):

The GAA Amendments Act of 2013 added paragraph (2) to make clear that the filing and
other administrative provisions in Chapter 1 apply generally to the operation of the bureau,
including in the performance of its duties under statutes that do not refer to the procedures in
Chapter 1. That paragraph also means that a statement of correction under 15 Pa.C.S. § 138 may
be filed to correct filings made under those other statutes. Of course, the provisions of Chapter 1
are default rules only and will be superseded by any specific procedural provisions in other
statutes.

The term “bureau” used in this section is defined in 15 Pa.C.S. § 102.

§ 133. Powers of Department of State.

(a) General rule.—The [Department of State shall have] department has the power and
authority reasonably necessary to enable it to administer this subchapter efficiently and to
perform the functions specified in section 132 (relating to functions of Department of State), in
13 Pa.C.S. (relating to commercial code) and in 17 Pa.C.S. (relating to credit unions). The
following shall not be agency regulations for the purposes of section 612 of the act of April 9,
1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, the act of October 15,
1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act, the act of June 25, 1982
(P.L. 633, No. 181), known as the Regulatory Review Act, or any similar provision of law, but
shall be subject to the opportunity of public comment requirement under section 201 of the act of
July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law:

   (1) Sample filing forms promulgated by the department [under subsection (d)].

   (2) Instructions accompanying sample filing forms and other explanatory material
published in the Pennsylvania Code that is intended to substantially track applicable
statutory provisions relating to the particular filing or to any of the functions of the
department covered by this subsection, if a regulation of the department expressly states
that [such] those instructions or explanatory materials shall not have the force of law.
(3) Regulations, which the department is hereby authorized to promulgate, that:

(i) Authorize payment of fees and other remittances through or by a credit or debit card issuer or other financial intermediary.

(ii) Authorize contracts with credit or debit card issuers and other financial intermediaries relating to the collection, transmission and payment of fees and other remittances.

[(iii) Adjust the level of fees and other remittances as otherwise fixed by law so as to facilitate their transmission through or by a credit card issuer or other financial intermediary pursuant to such regulations without net cost to the department.]

(iv) Adjust, not more than once per year, the fees set forth in section 153(a) (relating to fee schedule) and 13 Pa.C.S. § 9525 (relating to fees) for filings transmitted to the department electronically.

(v) Relate to the format or means of delivering documents to the department for filing.

(b) Language and content of documents.—Except to the extent required in order to determine whether a document complies with section 135 (relating to requirements to be met by filed documents), the department shall not examine articles and other documents authorized or required to be filed in the department under this title to determine whether the language or content thereof conforms to the provisions of this title.

(c) Meaning of term “conform to law”.—A document delivered to the department for the purpose of filing in the department shall be deemed to be in accordance with law and to conform to law, as those terms are used in statutes relating to the powers and duties of the department, if the document conforms to section 135.

(d) [Physical characteristics and copies of documents.—All articles and other documents authorized or required to be filed in the department under this title shall be in such format as to size, shape and other physical characteristics as shall be prescribed by regulations promulgated by the department. The regulations may require the submission of not to exceed three conformed copies of any document in addition to the original and any copies thereof otherwise required by law. All formats promulgated by the department for use under this title shall include a statement of the number of copies required to be filed and shall be published in the Pennsylvania Code.]

(e) Engrossed certificate.—Whenever the department has taken any action under this
title, the Secretary of the Commonwealth shall, upon request and payment of the fee or
additional fee therefor fixed by regulation of the department, issue to any person entitled thereto
an engrossed certificate evidencing the action, executed by the Secretary of the Commonwealth
under the seal of the Commonwealth.

**Amended Committee Comment (2013):**

It is the intention of subsection (a)(1) that the department will continue its practice of
promulgating sample filing forms in 19 Pa. Code. There is no requirement, however, that filings
be prepared on the sample forms promulgated by the department. *Cf.* 15 Pa.C.S. § 134(a)(4).
Because the use of forms promulgated by the department is not mandated under Title 15,
subsection (a) provides that the sample forms do not have to go through the full rulemaking
process.

Prior to its repeal by the GAA Amendments Act of 2013, subsection (a)(3)(iii) authorized
the department to increase its filing fees as necessary so that fees paid by credit card or through a
financial intermediary would result in the same net revenue to the department as fees paid
directly to the department. The intent was to allow the department to recoup any fees or
discounts imposed by the credit card issuer or other financial intermediary. At the time
subsection (a)(3)(iii) was enacted, it was thought that the ability to make such an adjustment
would encourage the department to allow such means of payment. As a matter of policy, the
department is now committed to accepting payments by credit card without an additional fee,
and the repeal of subsection (a)(3)(iii) reflects that policy.

The term "department" used in this section is defined in 15 Pa.C.S. § 102.

The term "this title" used in this section is defined in 15 Pa.C.S. § 131 to include Titles 17
and 54.

§ 134. Docketing statement.

(a) General rule. – The [Department of State] department may, but shall not be required
to, prescribe by regulation one or more official docketing statement forms designed to elicit from
a person effecting a filing under this title information that the department has found to be
necessary or desirable in connection with the processing of a filing. A form of docketing
statement prescribed under this subsection:

(1) Shall be published in the Pennsylvania Code.

(2) Shall not be integrated into a single document covering the requirements of the
filing and its related docketing statement.
(3) May be required by the department in connection with a filing only if notice of the requirement appears on the official format for the filing prescribed by the department.

(4) Shall not be required to be submitted on department-furnished forms.

(5) Shall not constitute a document filed in, with or by the department for the purposes of this title or any other provision of law except 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) Transmission to Department of Revenue. – The department shall note on the docketing statement the fact and date of the filing to which the docketing statement relates and shall transmit a copy of the docketing statement or the information contained therein to the Department of Revenue. If a docketing statement is not required for a particular filing, the Department of State may transmit a copy of the filing or the information contained therein to the Department of Revenue at no cost to the person effecting the filing.

(c) Transmission to other agencies. – If the docketing statement delivered to the Department of State sets forth any kind of business in which a corporation, partnership or other association may not engage without the approval of or a license from any department, board or commission of the Commonwealth, the Department of State shall, upon processing the filing, promptly transmit a copy of the docketing statement or the information contained therein to each such department, board or commission.

Amended Committee Comment (2013):

Subsection (a)(2) is intended to mandate two separate pieces of paper in situations where a docketing statement is required: (i) the docketing statement and (ii) the underlying filing, e.g., articles of incorporation, amendment, merger, etc. A docketing statement does not become a part of the “articles” under 15 Pa.C.S. §§ 1103 and 5103, the “certificate of limited partnership” under 15 Pa.C.S. § 8503 or the “certificate of organization” under 15 Pa.C.S. § 8903 because (i) it is not a document filed under Subpart IIB or IIC, Chapter 85 or Chapter 89, respectively, and (ii) it is not listed with documents filed under 15 Pa.C.S. §§ 108 and 138 in the definitions of “articles,” “certificate of limited partnership” and “certificate of organization.”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”
“department”

The term “this title” used in this section is defined in 15 Pa.C.S. § 131 to include Titles 17 (relating to credit unions) and 54 (relating to names).
§ 135. Requirements to be met by filed documents.

(a) General rule.—A document shall be accepted for filing by the [Department of State] department if it satisfies the following requirements:

(1) The document purports on its face to relate to matters authorized or required to be filed under this title or contains a caption indicating that relationship and, if no applicable statement has been prescribed under section 134 (relating to docketing statement), contains sufficient information to permit the department to prepare a docket record entry:

   (i) Identifying the name of the association or other person to which the document relates.

   (ii) Identifying the association or associations, if any, the existence of which is to be created, extended, limited or terminated by reason of the filing and the duration of existence of any such association.

   (iii) Specifying the date upon which the creation or termination of existence, if any, of the association or associations effected by the filing will take effect.

(2) The document complies with any regulations promulgated by the department [pursuant to section 133(d) (relating to physical characteristics and copies of documents)] and is accompanied by any applicable statement prescribed under section 134.

(3) In the case of a document that creates a new association or effects or reflects a change in name:

   (i) the document is accompanied by evidence that the proposed name has been reserved by or on behalf of the applicant; or

   (ii) the proposed name is available for use under the applicable standard established by this title and any other applicable provision of law.

(4) In the case of any other document that sets forth a name or mark, the proposed name or mark is available for use under the applicable standard established by law.

(5) All fees, taxes and certificates or statements relating thereto required by section 139 (relating to tax clearance of certain fundamental transactions) or otherwise have been tendered therewith.
(6) All certificates and other instruments required by statute evidencing the consent or approval of any department, board, commission or other agency of this Commonwealth as a prerequisite to the filing of the document in the Department of State have been incorporated into, attached to or otherwise tendered with the document.

(7) It is in record form and executed. The department shall not examine a document to determine whether the document has been [executed] signed by an authorized person or by sufficient authorized persons or otherwise is duly [executed]. A document shall be deemed executed if it contains a facsimile signature, so long as the operative portions of the document meet any applicable requirements prescribed under section 133(d) (relating to physical characteristics and copies of documents) signed.

(b) Attorney-in-fact.—Any person, other than an incorporator or officer of a corporation, as such, may sign a document by an attorney-in-fact or fiduciary. It shall not be necessary to present to or file in the department the original or a copy of any document evidencing the authority of an attorney-in-fact or fiduciary.

(c) Addresses.—

(1) Whenever any provision of this title requires that any person set forth an address in any document, such provision shall be construed to require the submission of an actual street address or rural route box number, and the department shall refuse to receive or file any document that sets forth only a post office box address.

(2) Whenever any provision of this title requires the statement of a registered office address in any document filed in the department, such provision shall be construed to require the statement also of the county in which the registered office address is located.

(d) [Method of filing.—The department may prescribe by regulation procedures for filing documents by electronic mail, facsimile transmission, telex or other similar means of communication.] (Reserved).

(e) Distinguishable names.—A name shall not be considered distinguishable upon the records of the department from another name for purposes of this title and 54 Pa.C.S. (relating to names) solely because the names differ from each other in any or all of the following respects:

(1) Use of punctuation marks.

(2) Use of a definite or indefinite article.

(3) Use of any of the following terms to designate the status of an association: corporation, company, incorporated, limited, association, fund, syndicate, limited
partnership, limited liability company, trust or business trust. This paragraph includes abbreviations, in any language, of the terms listed in this paragraph.

**Amended Committee Comment (2013):**

Because of the regulatory role that was once implicit in the functions of the department under the corporation laws, the personnel of the department acting under that authority exercised a sometimes heavy-handed prerogative to reject or reword corporate documents. The statutory revisions of the 1960’s were intended to eliminate this responsibility and consequently to introduce a desirable degree of predictability in the corporate filing process. Thus by Opinion of December 14, 1967 (see 40 Pa.B.A.Q. 298-99 (1969)) the Attorney General ruled:

1. The Act of January 18, 1966, P.L. 1305 (Act No. 591), amending the Act of May 5, 1933, P.L. 364, removed certain review powers of the Department with respect to documents filed with it. It limited the reasons for which the Bureau may reject articles of incorporation and other documents presented to it for filing under the BCL to the following items:
   a. improper execution, i.e., the omission of the required signature or signatures and, if required, the proper corporate seal;
   b. the required fees and taxes or certificates relating thereto have not been tendered;
   c. the proposed corporate name is not proper or available;
   d. the absence or failure to complete a required document; or
   e. absence of relation to matters authorized or required to be filed.

   For example, the proposed formation of corporations which are required to be made under other specific statutes.

***

2. The Bureau should not review the substantive provisions of articles of merger, consolidation or dissolution, and other documents specifying the relative rights and preferences of shareholders, including their rights to dividends, or suggest changes in the language used in documents filed with it.

3. In all cases of doubt, the Department should resolve that doubt in favor of the prompt filing of the questioned document subject to later correction, if necessary. Due to the change in the law, there is no longer any implication from the acceptance of a filing that the Department has ruled that the documents conform to law except in the limited instances noted above. In the usual case, the filing of a questionable document will not adversely affect any public rights, and, if unlawful, cannot permanently affect any private rights in view of the remedies currently available to private parties.

This section continues and reinforces the concept that the department is a filing office and not a reviewer of the contents of filed documents except in the limited case of examining the availability of names and marks against possible prior appropriation.
The rule in subsection (b) is limited to the context of this section and only relates to signing documents filed in the department. Whether other documents may be signed by an attorney-in-fact or fiduciary will be determined by other law.

Subsection (c)(1) applies to all addresses required to be set forth in filings in the department, and not just to the address of the registered office of a domestic or qualified foreign association. See, e.g., 15 Pa.C.S. §§ 1926(1)(ii) and 1954(1)(ii).

The department has adopted regulations pursuant to subsection (d) which provide that the department will accept filings by fax without additional charge, but that there will be an additional charge if the department is asked to respond by fax to a filing. See 19 Pa. Code §§ 3.26 and 13.3(d).

Prior to the amendment of this section in 2000, the general test under Title 15 for name availability was that the Department of State would not accept a filing creating or registering an association if the name of the association was “the same as or confusingly similar to” a name already on file. The new requirement that a name be distinguishable upon the records of the department from other names is patterned after the test for name availability that is used under the Delaware General Corporation Law. See, e.g., 8 Del. Code § 102(a)(1)(ii). The purpose of the new test is to reduce the circumstances in which an existing name will conflict with a new name and, thus, to make more names available.

Subsection (e) sets forth certain rules for determining whether a name is distinguishable from another name. Under subsection (e)(1), the names “The Party! Store, Inc.” and “The Party Store, Inc.” will not be distinguishable. Under subsection (e)(2), the names “The Party Store, Inc.” and “Party Store, Inc.” will not be distinguishable. Under subsection (e)(3), the names “The Party Store, Inc.” and “The Party Store Co.” will not be distinguishable; however, the names “The Company Party Store, Inc.” and “The Party Store, Inc.” will be distinguishable because “Company” in the first name is not being used to designate the status of the association as a corporation.

The new test that a name must simply be distinguishable upon the records of the department is intended to abrogate the former regulation of the department at 19 Pa. Code § 17.3(c)(1)(iv) that a geographic designator is not sufficient to make a name not confusingly similar to another name. It is intended that the names “The Party Store, Inc.” and “The Party Store of Pittsburgh, Inc.” will be considered distinguishable and may be used by different associations.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”
“department”
The term “this title” used in this section is defined in 15 Pa.C.S. § 131 to include Titles 17 (relating to credit unions) and 54 (relating to names).

§ 136. Processing of documents by Department of State.

(a) Filing of documents.—If a document conforms to section 135 (relating to requirements to be met by filed documents) the Department of State shall forthwith file the document, certify that the document has been filed by endorsing upon the document the fact and date of filing, make and retain a copy thereof and return the document or a copy thereof so endorsed to or upon the order of the person who delivered the document to the department.

(b) [Immediate certified] Duplicate copy.—

(1) If a duplicate copy, which may be either a signed or conformed copy, of any articles or other document authorized or required by this title to be filed in the department is delivered to the department with the original signed document, the department shall compare the duplicate copy with the original signed document and, if it finds that they are identical, shall certify the duplicate copy by making upon it the same endorsement that is required to appear upon the original, together with a further endorsement that the duplicate copy is a true copy of the original signed document, stamp the duplicate copy with the date received by the department and return the duplicate copy to the person who delivered it to the department.

(2) [If the duplicate copy is delivered by hand to the office of the department at the seat of government at least four hours before the close of business on any day not a holiday and relates to a matter other than a label or other mark requiring examination under Title 54 (relating to names) or the reservation or registration of a name under this title and, in the case of a document that creates a new association, effects or reflects a change in name or qualifies a foreign association to do business in this Commonwealth, if the duplicate copy is accompanied by evidence that the proposed name has been reserved or registered by or on behalf of the applicant, the department before the close of business on that day shall either:

(i) Certify the duplicate copy as required by this subsection and make such certified copy available at the office of the department to or upon the order of the person who delivered it to the department.

(ii) Make available at the office of the department to or upon the order of the person who delivered it to the department a brief statement in writing of the
reasons of the department for refusing to certify such duplicate copy.

See section 153(a)(10) (relating to certification fees).] (Reserved).

(3) In lieu of comparing date-stamping the duplicate copy with the original signed document as provided in paragraphs (1) and (2) paragraph (1), the department may make a copy of the original signed document at the cost of the person who delivered it to the department.

(c) Effective date.—Except as otherwise provided in this title, a document shall become effective upon the filing thereof in the department.

(d) Copies.—The department may make a copy, on microfilm or otherwise, of any document filed in, with or by it pursuant to this title, or any statute hereby supplied or repealed, and thereafter destroy the document or return it to or upon the order of the person who delivered the document to the department.

Amended Committee Comment (2013):

Prior to its repeal by the GAA Amendments Act of 2013, former subsection (b)(2) provided for expedited processing of filings upon request and payment of an additional fee. Expedited processing of filings is now available under 15 Pa.C.S. § 153(a)(16).

It is the intention of subsection (c) that a document will become effective on the date and at the time of its filing in the department. The reference to other provisions of this title is intended to include provisions permitting a delayed effective date to be included in a document.

The term “department” used in this section is defined in 15 Pa.C.S. § 102.

The term “this title” used in this section is defined in 15 Pa.C.S. § 131 to include Titles 17 and 54.

Subchapter C
Corporation Bureau and UCC Fees

§ 152. Definitions.

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

“Ancillary transaction.” Includes:
(1) preclearance of document; 

(2) amendment of articles, charter, certificate or other organic document, restatement of articles, charter, certificate or other organic document, change in registered or principal office, change in share structure; 

(3) dissolution, cancellation or termination, reorganization, of an association; 

(4) withdrawal by foreign association; 

(5) withdrawal by a partner; 

(6) any similar transaction, transaction similar to any item listed in paragraphs (1) through (5); or 

(7) the deposit in the Department of State delivery to the department for filing in, by or with the Department of State department or the Secretary of the Commonwealth of any articles, statements, proceedings, agreements or any like similar papers affecting associations under the statutes of this Commonwealth, for which a specific fee is not set forth in section 153 (relating to fee schedule) or other applicable statute.

“Bureau.” The Corporation Bureau of the Department of State or any successor agency within the department.

[There is no Committee Comment to 15 Pa.C.S. § 152.]

§ 153. Fee schedule.

(a) General rule. – The nonrefundable fees of the bureau, including fees for the public acts and transactions of the Secretary of the Commonwealth administered through the bureau, shall be as follows:

(1) Domestic corporations:

   (i) Articles of incorporation, letters patent or similar instruments incorporating a corporation or association..............................................$125

   (ii) Articles or agreement or similar instrument of merger, consolidation or division.................................................................70
(iii) Additional fee for each association which is a party to a
merger or consolidation ................................................................. 40

(iv) Additional fee for each new association resulting from a
division ........................................................................................ 125

(v) Articles of conversion or a similar instrument....................... 70

(vi) Each ancillary transaction ...................................................... 70

(2) Foreign corporations:

(i) Certificates of authority or similar qualifications to do
business .......................................................................................... 250

(ii) Amended certificate of authority or similar change in
qualification to do business ............................................................ 250

(iii) Domestication .......................................................................... 125

(iv) Statement of merger or consolidation or similar instrument
reporting occurrence of merger or consolidation not effected by a
filing in the department .................................................................... 70

(v) Additional fee for each qualified foreign corporation which
is named in a statement of merger or consolidation or similar
instrument ...................................................................................... 40

(vi) Each ancillary transaction ...................................................... 70

(3) Partnerships and limited liability companies:

(i) Certificate of limited partnership or certificate of
organization of a limited liability company or similar instrument
forming a limited partnership or organizing a limited liability company .... 125

(ii) Certificate of merger, consolidation or division ....................... 70

(iii) Additional fee for each association which is a party to a
merger or consolidation ................................................................. 40

(iv) Additional fee for each new association resulting from a
division .......................................................................................... 125
(v) Application for registration of foreign limited partnership  
or limited liability company............................................................250

(vi) Certificate of amendment of registration of foreign limited  
partnership or limited liability company.............................................250

(vii) Statement of registration of registered limited liability  
partnership or statement of election as an electing partnership.............125

(viii) Domestication of foreign limited liability company.................125

(ix) Each ancillary transaction...........................................................70

(4) Unincorporated nonprofit associations:

(i) Statement appointing an agent to receive service of process ..........70

(ii) Resignation of appointed agent ...................................................40

(iii) Amendment or cancellation of statement appointing an agent .......70

(5) Business trusts:

(i) Deed of trust or other initial instrument for a business trust ..........125

(ii) Each ancillary transaction...........................................................70

(6) Fictitious names:

(i) Registration.................................................................................70

(ii) Each ancillary transaction...........................................................70

(7) Service of process:

(i) Each defendant named or served..................................................70

(ii) (Reserved)

(8) Trademarks, emblems, union labels, description of bottles and  
similar matters:
(i) Trademark registration.................................................................50
(ii) Each ancillary trademark transaction.............................................50
(iii) Any other registration under this paragraph...............................70
(iv) Any other ancillary transaction under this paragraph....................70

(9) Uniform Commercial Code: As provided in 13 Pa.C.S. § 9525
(relating to fees).

(10) Copy fees, including copies furnished under the Uniform
Commercial Code:

(i) Each page of photocopy furnished..............................................3
(ii) (Reserved)

(11) Certification fees:

(i) For certifying copies of any document or paper on file, the
fee specified in paragraph (10), if the department furnished the copy,
plus ..........................................................40

(ii) (Reserved)

(iii) For issuing any other certificate of the Secretary of the
Commonwealth or the department (other than an engrossed certificate).......40

(12) Report of record search other than a search under paragraph (9):

(i) For preparing and providing a report of a record search, the
fee specified in paragraph (10), if any, plus ..................................................15

(ii) (Reserved)

(13) Reservation and registration of names:

(i) Reservation of association name..............................................70
(ii) Registration of foreign or other corporation name .........................70

(14) Change of registered office or address:

- 22 -
(i) Each statement of change of registered office by agent .........................5

(ii) Each statement or certificate of change of registered office .................5

(iii) Each statement of change of address ..................................................5

(15) Contingent domestication:

(i) Statement of contingent domestication ..............................................125

(ii) Each year, or portion of a year, during which a contingent
domestication or temporary domiciliary status is in effect .........................1,500

(16) Expedited service:

(i) For the processing of any filing under this title or
13 Pa.C.S. (relating to commercial code) which is received by the
bureau before 4 p.m. and is requested to be completed within one hour,
an additional fee of ..........................................................1,000

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

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

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

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

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

Amended Committee Comment (2013):

Subsection (a) describes the fees payable to the Department of State under this section as “nonrefundable” to make clear that if the department rejects a document delivered to it for filing the department will not return the fee paid. In effect, the fees payable to the department under this section are “processing” fees rather than “filing” fees because they are required in connection with the processing of a document without regard to whether the document is filed. The addition of the term “nonrefundable” by the GAA Amendments Act of 2013 is not intended to abrogate the bureau’s regulation at 19 Pa.Code § 11.12(d), which permits a limited time for resubmission of rejected documents without the payment of an additional filing fee in order to retain as the filing date the day the document was originally delivered to the department.

The fees specified in subsection (a)(16) for expedited processing of a filing are in addition to the basic fee prescribed in this section for the type of filing involved. Every time a filing is submitted with a request that it receive expedited processing, the appropriate fee under subsection (a)(16) will be payable as an extra charge for the expedited handling, even if a document is resubmitted within the time period permitted under 19 Pa.Code § 11.12(d). Thus, for example, if articles of incorporation are submitted under the three-hour expedited procedure, the initial filing fee will be $425. If the articles are rejected for filing and not timely resubmitted, the Department of State will keep the full $425. If the articles are timely resubmitted under the bureau’s regulation at 19 Pa. Code § 11.12(d) and again under the three-hour expedited procedure, they must be accompanied by payment of a $300 fee for the expedited processing but not the basic filing fee of $125.

The effectiveness of subsection (a)(16) was delayed by Sections 55 and 58(2) of the GAA Amendments Act of 2013 until the publication of a notice in the Pennsylvania Bulletin by the Department of State that it is ready to provide the expedited services.

The following terms used in this section are defined in 15 Pa.C.S. § 152:

“ancillary transaction”
“bureau”

§ 155. Disposition of funds.

(a) [Establishment of restricted account. – ] Corporation Bureau Restricted Account. – The Corporation Bureau Restricted Account, established under section 814 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, is continued. This account shall receive 30% of the amount received by the department under this subchapter
except for the fees collected under 13 Pa.C.S. § 9525(a)(1)(ii) (relating to fees). This account
shall receive 5% of the amount received by the department under 13 Pa.C.S. § 9525(a)(1)(ii).
The balance of the amount received by the department under this subchapter shall be deposited
in the General Fund. Money in the account shall be used solely for the operation of the bureau
and for its modernization as may be required for improved operations of the bureau unless a
surplus arises after two consecutive years, at which time the Secretary of the Commonwealth
shall transfer any amount in excess of the bureau’s budget into the General Fund.

(b) Expenditures. – The [Department of State] department shall submit a budget for the
operation or modernization of the [Corporation Bureau] bureau to the Governor for approval.
Such funds as are approved by the Governor are hereby appropriated from the Corporation
Bureau Restricted Account to the [Department of State] department for the operation of the
bureau.

(c) Advisory committee. – The Secretary of the Commonwealth shall appoint a
Corporation Bureau Advisory Committee. The committee shall be composed of persons
knowledgeable in matters covered by this title and related provisions of law and who have been
recommended for appointment to the committee by the organized bar or other organized users of
the facilities and services of the bureau. Members shall serve without compensation other than
reimbursement for reasonable and necessary expenses in accordance with Commonwealth policy
or regulations, shall serve for terms fixed by the secretary and may be reappointed. The
Chairman of the committee shall be elected by the committee. The committee shall make
recommendations to the Governor with respect to each budget submitted under subsection (b)
and may consult with the department in the administration of this title and related provisions of
law. The committee, in consultation with the bureau and the department, shall submit, by June 1
of each odd-numbered year, a report to the General Assembly describing its activities under this
title and any recommended changes to this title.

[There is no Committee Comment to 15 Pa.C.S. § 155.]

§ 156. References.

In statutes, regulations and orders, a reference to the Corporation Bureau shall be deemed a
reference to the Bureau of Corporations and Charitable Organizations.

[There is no Committee Comment to 15 Pa.C.S. § 155.]

Part II
Corporations
§ 1103. Definitions.

(a) General definitions. — Subject to additional definitions contained in subsequent provisions of this subpart that are applicable to specific provisions of this subpart, the following words and phrases when used in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

[“Act” or “action.” Includes failure to act.]

“Amendment.” An amendment of the articles.

“Articles.” The original articles of incorporation, all amendments thereof and any other articles, statements or certificates permitted or required to be filed in the Department of State by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction) or this subpart and including what have heretofore been designated by law as certificates of incorporation or charters. If an amendment of the articles or articles of merger or division made in the manner permitted by this subpart restates articles in their entirety or if there are articles of consolidation, conversion or domestication, thenceforth the “articles” shall not include any prior documents and any certificate issued by the department with respect thereto shall so state.

“Authorized shares.” The shares of all classes that the corporation is authorized to issue.

[“Banking institution” or “domestic banking institution.” A domestic corporation for profit that is an institution as defined in the act of November 30, 1965 (P.L. 847, No. 356), known as the Banking Code of 1965.]

“Board of directors” or “board.” The persons selected under section 1725 (relating to selection of directors) irrespective of the name by which the group is designated in the articles. See section 1731(c) (relating to status of committee action).

“Business corporation” or “domestic business corporation.” A domestic corporation for profit that is not excluded from the scope of this subpart by section 1102 (relating to application of subpart).

“Business development credit corporation.” A domestic corporation for profit that is a
corporation as defined in the act of December 1, 1959 (P.L. 1647, No. 606), known as the
Business Development Credit Corporation Law.

“Bylaws.” See section 1504(c) (relating to bylaw provisions in articles).

“Closely held corporation.” A business corporation that:

1. has not more than 30 shareholders; or
2. is a statutory close corporation.

Shares that are held jointly or in common or in trust by two or more persons, as fiduciaries or
otherwise, or that are held by spouses shall be deemed to be held by one shareholder for the
purposes of this definition.

[“Corporation for profit.” A corporation incorporated for a purpose or purposes
involving pecuniary profit, incidental or otherwise, to its shareholders or members.

“Corporation not-for-profit.” A corporation not incorporated for a purpose or
purposes involving pecuniary profit, incidental or otherwise.

“Court.” Subject to any inconsistent general rule prescribed by the Supreme Court
of Pennsylvania:

1. the court of common pleas of the judicial district embracing the county
where the registered office of the corporation is or is to be located; or
2. where a corporation results from a merger, consolidation, division or other
transaction without establishing a registered office in this Commonwealth or
withdraws as a foreign corporation, the court of common pleas in which venue would
have been laid immediately prior to the transaction or withdrawal.

“Credit union.” A credit union as defined in 17 Pa.C.S. § 102 (relating to application
of title).

“Department.” The Department of State of the Commonwealth.]

“Directors.” The term, when used in relation to any power or duty requiring collective
action, shall be construed to mean “board of directors.”

“Dissenters rights.” The rights and remedies provided by Subchapter D of Chapter 15
(relating to dissenters rights).
“Dissolve” or “dissolution.” The termination of corporate existence effected by:

1. filing of articles of dissolution in the department under this subpart by the corporation or by the office of the clerk of the court of common pleas;
2. expiration of the term of existence of a corporation by reason of any limitation contained in its articles;
3. forfeiture by proclamation of the Governor under section 1704 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, or otherwise;
4. filing of a certified copy of a decree of dissolution in the department under the act of April 9, 1856 (P.L. 293, No. 308), entitled “Supplement to the acts relating to incorporations by the Courts of Common Pleas,” or otherwise; or
5. judgment of ouster, upon proceedings in quo warranto, under former provisions of law.

“Distribution.” A direct or indirect transfer of money or other property (except its own shares or options, rights or warrants to acquire its own shares) or incurrence of indebtedness by a corporation to or for the benefit of any or all of its shareholders in respect of any of its shares whether by dividend or by purchase, redemption or other acquisition of its shares or otherwise. Neither the making of, nor payment or performance upon, a guaranty or similar arrangement by a corporation for the benefit of any or all of its shareholders nor a direct or indirect transfer or allocation of assets or liabilities effected under Chapter 19 (relating to fundamental changes) with the approval of the shareholders shall constitute a distribution for the purposes of this subpart.

[“Domestic corporation for profit.” A corporation for profit incorporated under the laws of this Commonwealth.

“Domestic corporation not-for-profit.” A corporation not-for-profit incorporated under the laws of this Commonwealth.]

“Employee.” Includes officers but not directors, as such. See section 1730 (relating to compensation of directors) as to acceptance by a director of duties that make him also an employee.

“Entitled to vote.” Those persons entitled to vote on the matter under either the bylaws of the corporation or any applicable controlling provision of law. The term includes those persons entitled at the time to vote on the matter under a plan or the terms of a fundamental transaction where dissenters rights are not available under section 1571(b)(2)(ii) (relating to exceptions).

“Fair value.” In the case of shares, fair value as determined under the standards and procedures provided by Subchapter D of Chapter 15 (relating to dissenters rights).

“Foreign business corporation.” A foreign corporation for profit subject to Chapter 41 (relating to foreign business corporations), whether or not required to qualify thereunder.

[“Foreign corporation for profit.” A corporation for profit incorporated under any laws other than those of this Commonwealth.

“Foreign corporation not-for-profit.” A corporation not-for-profit incorporated under any laws other than those of this Commonwealth.]

“Foreign domiciliary corporation.” A foreign business corporation defined in section 4102 (relating to foreign domiciliary corporations).

“Foreign insurance corporation.” A corporation for profit incorporated under any laws other than those of this Commonwealth that is qualified to do business in this Commonwealth under the act of May 17, 1921 (P.L. 789, No. 285), known as The Insurance Department Act of 1921.

“Full age.” Of the age of 18 years or older.

“Incorporator.” A signer of the original articles of incorporation.

[“Insurance corporation” or “domestic insurance corporation.” An insurance corporation as defined in section 3102 (relating to definitions).


“Issue.” Includes sale or other disposition of a security previously issued by the corporation and thereafter acquired by it.

“Management corporation.” A business corporation that has elected to become subject to Chapter 27 (relating to management corporations) and whose status as a management corporation has not been terminated as provided in Chapter 27.
“Mutual insurance company.” A mutual insurance company as defined in section 3102 (relating to definitions).

“Nonprofit corporation.” A domestic corporation not-for-profit defined in section 5103 (relating to definitions).

“Nonqualified foreign business corporation.” A foreign business corporation that is not a qualified foreign business corporation as defined in this section.

“Nonregistered corporation.” A corporation that is not a registered corporation.

“Nonstock corporation.” A business corporation that has elected to become subject to Chapter 21 (relating to nonstock corporations) and whose status as a nonstock corporation has not been terminated as provided in Chapter 21.

[“Obligation.” Includes a note or other form of indebtedness, whether secured or unsecured.]

“Officer.” If a corporation is in the hands of a custodian, receiver, trustee or like official, the term includes that official or any person appointed by that official to act as an officer for any purpose under this subpart.

[“Officially publish.” Publish in two newspapers of general circulation in the English language in the county in which the registered office of the corporation is located, or in the case of a proposed corporation is to be located, one of which shall be the legal newspaper, if any, designated by the rules of court for the publication of legal notices or, if there is no legal newspaper, in two newspapers of general circulation in the county. When there is but one newspaper of general circulation in any county, advertisement in that newspaper shall be sufficient. Where no other frequency is specified, the notice shall be published one time in the appropriate newspaper or newspapers. See section 109(a)(2) (relating to name of commercial registered office provider in lieu of registered address).]

“Plan.” A plan of reclassification, merger, consolidation, exchange, asset transfer, division or conversion.

“Preference.” A right in one class or series of shares that is senior to any right in a junior class or series of shares:

1. as to the right to payment of dividends;
2. as to the right to distribution of assets upon redemption of shares or upon the voluntary or involuntary liquidation of the corporation; or
as to both dividends and assets.

“Professional corporation.” A business corporation that is subject to Chapter 29 (relating to professional corporations) and whose status as a professional corporation has not been terminated as provided in Chapter 29.

“Public utility corporation.” Any domestic or foreign corporation for profit that:

1. is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States; or
2. was subject to such regulation on December 31, 1980, or would have been so subject if it had been then existing.

“Qualified foreign business corporation.” A foreign business corporation that is:

1. authorized under Chapter 41 (relating to foreign business corporations) to do business in this Commonwealth; or
2. a foreign insurance corporation.

“Reclassification.” A change in the number, voting rights, designations, preferences, limitations, special rights or par value of shares, or a conversion or exchange of one class or series of shares into or for another class or series of shares, other securities or obligations of the same corporation, or the cancellation of shares. The term does not include a stock dividend or split effected by distribution of its own previously authorized shares pro rata to the holders of shares of the same or any other class or series pursuant to action solely of the board of directors.

“Registered corporation.” A corporation defined in section 2502 (relating to registered corporation status).

“Registered office.” That office maintained by a corporation in this Commonwealth as required by section 1507 (relating to registered office). See section 109 (relating to name of commercial registered office provider in lieu of registered address).

“Relax.” When used with respect to a provision of the articles or bylaws, means to provide lesser rights for an affected representative or shareholder.

“Representative.” When used with respect to an association, joint venture, trust or other enterprise, means a person occupying the position or discharging the functions of a director, officer, employee or agent thereof, regardless of the name or title by which the person may be designated. The term does not imply that a director, as such, is an agent of a corporation.
“Savings association” or “domestic savings association.” A domestic corporation for profit that is an association as defined in the act of December 14, 1967 (P.L. 746, No. 345), known as the Savings Association Code of 1967.]


“Share certificate.” A written instrument signed on behalf of the corporation evidencing the fact that the person therein named is the record owner of the shares therein described.

“Shareholder.” A record holder or record owner of shares of a corporation, including a subscriber to shares. The term, when used in relation to the taking of corporate action, includes the proxy of a shareholder. If and to the extent the articles confer rights of shareholders upon holders of obligations of the corporation or governmental or other entities pursuant to any provision of this subpart or other provision of law, the term shall be construed to include those holders and governmental or other entities.

“Shares.” The units into which the rights of the shareholders to participate in the control of a corporation, in its profits or in the distribution of its assets are divided.

“Special treatment.” A provision of an amendment or plan permitted by section 1906 (relating to special treatment of holders of shares of same class or series).

“Statutory close corporation.” A business corporation that has elected to become subject to Chapter 23 (relating to statutory close corporations) and whose status as a statutory close corporation has not been terminated as provided in Chapter 23.

“Subscriber.” One who subscribes for or otherwise takes shares by agreement from the issuing corporation, whether before or after incorporation.

“Subscription.” The promise to pay a consideration or the agreement fixing the amount of the consideration paid or to be paid for shares by a subscriber.

“Unless otherwise provided” or “except as otherwise provided.” When used to introduce or modify a rule, implies that the alternative provisions contemplated may either relax or restrict the stated rule.

“Unless otherwise restricted” or “except as otherwise restricted.” When used to introduce or modify a rule, implies that the alternative provisions contemplated may further restrict, but may not relax, the stated rule.

“Voting” or “casting a vote.” Includes the giving of [written] consent in lieu of voting. The term does not include either recording the fact of abstention or failing to vote for a candidate or
for approval or disapproval of a matter, whether or not the person entitled to vote characterizes the conduct as voting or casting a vote.

(b) Index of other definitions.—The following is a nonexclusive list of words and phrases which when used in this subpart shall have the meanings given to them in section 102 (relating to definitions):

“Act” or “action.”
“Banking institution” or “domestic banking institution.”
“Corporation for profit.”
“Corporation not-for-profit.”
“Court.”
“Credit union.”
“Department.”
“Domestic corporation for profit.”
“Domestic corporation not-for-profit.”
“Execute.”
“Foreign corporation for profit.”
“Foreign corporation not-for-profit.”
“Insurance corporation” or “domestic insurance corporation.”
“Internal Revenue Code of 1986.”
“Obligation.”
“Officially publish.”
“Record form.”
“Representative.”
“Savings association” or “domestic savings association.”
“Sign.”

Amended Committee Comment (2013):

As the introductory paragraph to this section states, it is necessary to consider the context in which a defined term is used in the 1988 BCL. Subsection (b) was added by the GAA Amendments Act of 2013 which also transferred the listed definitions to 15 Pa.C.S. § 102 so that they would be more generally applicable.

“Articles.” Because the docketing statement required by 15 Pa.C.S. § 134 is not listed in this definition along with documents filed under 15 Pa.C.S. §§ 108 and 138, the docketing statement does not become part of the articles. The “articles” include any filing with respect to a corporation authorized by any provision of “this subpart” (i.e., the 1988 BCL) and thus the “articles” include, for example, a statement of change of registered office under 15 Pa.C.S. § 1507. A statement with respect to continuation of procedure filed under Section 107(c) of the General Association Act of 1988 (15 P.S. § 20107(c)) is also a part of the “articles” as defined in this section.
“Board of directors.” Under 15 Pa.C.S. § 1731(c), references in the 1988 BCL to the board of directors include committees of the board. Subject to the provisions of 15 Pa.C.S. § 1731(a) restricting the powers and authority of committees of the board, any action that may be taken by the full board may be taken by a duly authorized committee, subject to compliance by the committee with any procedure applicable to action by the full board.

“Closely held corporation.” The reference in this definition to shares “held jointly” is intended to include ownership as either joint tenants with right of survivorship or tenants by the entireties. See the Committee Comment to the definition of “statutory close corporation,” below.

“Dissolve.” The public policy underlying this definition is that the status of a corporation as validly existing may always be determined from the public record. Until the public record indicates that its corporate existence has been terminated (either by a provision in its articles limiting its period of existence or the filing of another document), a corporation is conclusively presumed to be validly existing.

Although this definition provides that the existence of a corporation terminates upon the occurrence of any of the listed events, the existence of a corporation continues in a limited sense beyond that point for purposes of the enforcement of certain rights and claims under 15 Pa.C.S. § 1979. Because of the need to provide for the enforcement of rights and claims after dissolution, the statutory paradigm for unincorporated associations is to view the existence of the association as never formally terminating even though its activities have ceased, and thus the statutes governing those associations do not provide expressly for a final filing that terminates the existence of the association.

“Distribution.” The term is intended to include all transfers by a corporation of money, indebtedness of the corporation or other property to a shareholder in respect of any shares of the corporation, except for those actions expressly excluded by this definition.

When used as a noun, the term is defined in this section in a restrictive sense for purposes of limitations on distributions. See, e.g., 15 Pa.C.S. § 1551. When used as a verb, however, the term is intended to be used in its broadest sense and includes a transaction involving the shares of the corporation. See, e.g., the usage in the definition of “reclassification” in this section. See generally the Committee Comment to 15 Pa.C.S. § 1551. See 15 Pa.C.S. § 7112 which exempts patronage rebates and similar payments by a cooperative corporation from treatment as a distribution.

The last sentence of this definition makes clear that an upstream guarantee will not be deemed a “distribution” for purposes of the 1988 BCL and, thus, among other things, will not be subject to the tests in 15 Pa.C.S. § 1551. This definition, however, is not intended to affect the status or treatment of upstream guaranties under laws other than the 1988 BCL, such as fraudulent transfer statutes.
The last sentence also makes clear that a transfer of property or other action taken in connection with a fundamental change effected under 15 Pa.C.S. Ch. 19 with the approval of the shareholders will not be deemed a “distribution.” As in the case of an upstream guarantee, this definition will not affect the application of laws other than the 1988 BCL to transactions effected under Chapter 19. The GAA Amendments Act of 2013 added the phrase “or allocation of assets or liabilities” in recognition of the fact that some actions taken under Chapter 19 that affect the ownership of assets or responsibility for liabilities of a corporation do not involve a transfer of those assets or liabilities. See 15 Pa.C.S. § 1957 and the related Committee Comment.

“Entitled to vote.” It is not intended that this term implicate procedural, as opposed to substantive, requirements. For example, a shareholder would ordinarily be “entitled to vote” at a meeting of shareholders even if not present in person or by proxy.


“Foreign registered corporation.” There is no such defined term. The term “registered corporation” is defined in 15 Pa.C.S. § 2502 to be a subclass of the term domestic business corporation, and it was thought that to introduce the term “foreign registered corporation” would lead to the misapprehension that provisions applicable to “registered corporations” are applicable to “foreign registered corporations.” Instead the phrase “corporation described in section 4102(b)(1)” is used in the 1988 BCL to describe a foreign corporation that, if a domestic business corporation, would be a registered corporation.

“Officer.” If a corporation is in the hands of a custodian, receiver, etc., that official or any person appointed by the official constitutes an “officer” of the corporation.

“Public utility corporation.” The provision of paragraph (2) is intended to accommodate existing and potential deregulation. For example, if the Federal Communications Commission deregulates interexchange service, facilities for such service would still be entitled to the benefits of 15 Pa.C.S. § 1511.

“Qualified shareholder.” This term was defined in Section 107(f) of the General Association Act of 1988 (15 P.S. § 20107(f)) for purposes of that section, and has been omitted from this section in view of its transitional nature.

“Reclassification.” This definition was intended as a codification of existing law at the time of its enactment in 1988.

“Registered office.” Under 15 Pa.C.S. § 135(c)(1), only an actual street address or rural route box number, and not a post office box number, is acceptable as a registered office address. Whenever a registered office is required to be stated in a filing, 15 Pa.C.S. § 135(c)(2) also
requires the filing to state the county in which the registered office is located.

“Shareholder.” In contrast to the prior law, the term as used in the 1988 BCL includes a subscriber to shares. Under 15 Pa.C.S. § 1524(d), a subscriber automatically has all the voting and other rights of the shares for which he or she subscribes unless a subscription agreement defers such rights to a later date, for instance, until the shares are issued and paid for. The status of “shareholder” is generally limited to record owners, but see the definition of “shareholder” in 15 Pa.C.S. § 1572. See 15 Pa.C.S. § 1763(c) for a procedure under which beneficial owners may be treated as record owners.


“Statutory close corporation.” In order to reduce the confusion between closely held corporations and corporations that formally elect “close corporation” status under the corporation law, the term “statutory close corporation” has been introduced to identify the latter class of corporations. All statutory close corporations are “closely held corporations” within the meaning of the latter term, regardless of their number of shareholders, but not all “closely held corporations” are statutory close corporations.

“Voting” or “casting a vote.” Normally in the 1988 BCL, only those persons who indicate an affirmative or negative decision on a matter are treated as voting, so that abstention or a mere absence or failure to vote is not equivalent to a negative decision. This concept is intended to be generally applicable, including cases where the terms “voting” or “casting a vote” do not specifically appear.

§1104. Other general provisions.

The following provisions of this title are applicable to corporations subject to this subpart:

Section 101 (relating to short title and application of title).
Section 102 (relating to definitions).
Section 103 (relating to subordination of title to regulatory laws).
Section 104 (relating to equitable remedies).
Section 105 (relating to fees).
Section 106 (relating to effect of filing papers required to be filed).
Section 107 (relating to form of records).
Section 108 (relating to change in location or status of registered office provided by agent).
Section 109 (relating to name of commercial registered office provider in lieu of registered address).
Section 110 (relating to supplementary general principles of law applicable).
Section 132 (relating to functions of Department of State).
Section 133 (relating to powers of Department of State).
Section 134 (relating to docketing statement).
Section 135 (relating to requirements to be met by filed documents).
Section 136 (relating to processing of documents by Department of State).
Section 137 (relating to court to pass upon rejection of documents by Department of State).
Section 138 (relating to statement of correction).
Section 139 (relating to tax clearance of certain fundamental transactions).
Section 140 (relating to custody and management of orphan corporate and business records).
Section 152 (relating to definitions).
Section 153 (relating to fee schedule).
Section 154 (relating to enforcement and collection).
Section 155 (relating to disposition of funds).
Section 162 (relating to contingent domestication of certain foreign associations).
Section 501 (relating to reserved power of General Assembly).
Section 503 (relating to actions to revoke corporate franchises).
Section 504 (relating to validation of certain defective corporations).
Section 505 (relating to validation of certain defective corporate acts).
Section 506 (relating to scope and duration of certain franchises).
Section 507 (relating to validation of certain share authorizations).

Chapter 13
Incorporation

Subchapter A
Incorporation Generally

§ 1306. Articles of incorporation.

(a) General rule.—Articles of incorporation shall be signed by each of the incorporators and shall set forth in the English language:

   (1) The name of the corporation, unless the name is in a foreign language in which case it shall be set forth in Roman letters or characters or Arabic or Roman numerals.

   (2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its initial registered office in this Commonwealth.
(3) A statement that the corporation is incorporated under the provisions of the Business Corporation Law of 1988.

(4) A statement that the corporation is to be organized upon a nonstock basis, or if it is to be organized on a stock share basis:

   (i) The aggregate number of shares that the corporation shall have authority to issue. It shall not be necessary to set forth in the articles the designations of the classes of shares of the corporation, or the maximum number of shares of each class that may be issued.

   (ii) A statement of the voting rights, designations, preferences, limitations and special rights in respect of the shares of any class or any series of any class, to the extent that they have been determined.

   (iii) A statement of any authority vested in the board of directors to divide the authorized and unissued shares into classes or series, or both, and to determine for any such class or series its voting rights, designations, preferences, limitations and special rights.

(5) The name and address, including street and number, of each of the incorporators.

(6) The term for which the corporation is to exist, if not perpetual.

(7) If the articles are to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(8) Any other provisions that the incorporators may choose to insert if:

   (i) any provision of this subpart authorizes or requires provisions pertaining to the subject matter thereof to be set forth in the article or bylaws of a business corporation or in an agreement or other instrument; or

   (ii) the provisions, whether or not specifically authorized by this subpart, relate to the purpose or purposes of the corporation, the management of its business or affairs or the rights, powers or duties of its securityholders, directors or officers.

(b) Other provisions authorized.—A provision of the original articles or a provision of the articles approved by the shareholders, in either case adopted under subsection (a)(8)(ii), may relax or be inconsistent with and supersede any provision of Chapter 13 (relating to incorporation), 15 (relating to corporate powers, duties and safeguards), 17 (relating to officers,
directors and shareholders) or 19 (relating to fundamental changes) concerning the subjects specified in subsection (a)(8)(ii), except where a provision of those chapters expressly provides that the articles shall not relax or be inconsistent with any provision on a specified subject. Notwithstanding the foregoing, the articles may provide greater rights for shareholders than are authorized by any provisions of those chapters that otherwise provides that the articles shall not relax or be inconsistent with any provision on a specified subject.

(c) Par value.—The articles may, but need not, set forth a par value for any authorized shares or class or series of shares.

(d) Written consent to naming directors.—The naming of directors in articles of incorporation shall constitute an affirmation that the directors have consented in writing to serve as such.

(e) Reference to external facts.—Except for the provisions required by subsection (a)(1), (2), (3), (4)(i), (5) and (7), any provision of the articles of incorporation may be made dependent upon facts ascertainable outside of the articles if the manner in which the facts will operate upon the provision is set forth in the articles. The facts may include actions or events within the control of or determinations made by the corporation or a representative of the corporation.

Amended Committee Comment (2013):

New corporations are deemed to have all-purpose charters unless otherwise restricted by the terms of the articles. See 15 Pa.C.S. § 1301. Section 204A(3) of the prior law expressly authorized the articles to contain a purpose clause consisting of or including a statement that “the corporation shall have unlimited power to engage in and to do any lawful business for which corporations may be incorporated” under the 1933 BCL. It is intended that such a statement may be included in the articles of a 1988 BCL corporation under subsection (a)(8)(ii).

The only required reference to stock in original articles of incorporation is the maximum number of shares authorized to be issued (without designation or division between common stock, serial preferred stock, etc., and without statement as to par or no par status). All other terms may be added by statements filed pursuant to action by the board of directors if the board is authorized by the articles to fix those terms. It is intended that the articles may contain a statement to the effect that:

The board of directors shall have the full authority permitted by law to divide the authorized and unissued shares into classes or series, or both, and to determine for any such class or series its designation and the number of shares of the class or series and the voting rights, preferences, limitations and special rights, if any, of the shares of the class or series.

The duration of a corporation is perpetual in the absence of a provision in the articles setting forth a limited term, and the board of directors is authorized to amend the articles without
shareholder action to provide for perpetual existence. See 15 Pa.C.S. § 1914(c)(2).

The provision of the prior law permitting a future effective date to be included in a filed plan of merger is extended to articles of incorporation.

The elimination of any required statement as to par value or stated capital is not intended to make those concepts illegal. Corporations may continue to use those concepts, and the provisions of the 1988 BCL will not affect the presentation of such concepts in a corporation’s financial statements for purposes of financial reporting. The last sentence of 15 Pa.C.S. § 1551(a) makes clear that the test of the legality of distributions in 15 Pa.C.S. § 1551 applies without reference to what the articles of a corporation provide as to par value and stated capital.

See 15 Pa.C.S. § 1906 and the Committee Comment thereto regarding the implementation of “black hat-white hat” provisions in an amendment of the articles or a plan. Although they would not constitute “special treatment” as defined in 15 Pa.C.S. § 1103, it is intended that similar provisions may be included in articles of incorporation under subsection (a)(8)(i). Such a provision, for example, might provide for disparate rights of redemption based upon the identities or permissible specified characteristics of the shareholders.

Subsection (a)(8)(ii) is intended to be applied broadly and to provide the shareholders with the greatest possible latitude in regulating the internal affairs of their corporation. It is specifically intended that subsection (a)(8)(ii) will be more flexible than the analogous provision of Delaware law which limits the inclusion of provisions in a Delaware certificate of incorporation to those that “are not contrary to the laws of this State.” Delaware GCL § 102(b)(1).

Subsection (b) is intended as a “safe harbor” provision to make clear that the articles of a Pennsylvania corporation may include provisions that vary or are inconsistent with the otherwise applicable rule under Chapters 13 through 19 since such provisions are included in the description of provisions “not specifically authorized by this subpart.” The effect is the same as if each provision of those chapters were introduced by the phrase: “Unless otherwise provided in the articles,…” As an historical matter, and for purposes of continuity of language and usage, the Committee chose to continue or insert in a limited number of sections an express reference to an alternative provision in the articles. However, that usage is not intended to undermine the general principle of subsection (a)(8)(ii) described above.

In the following instances, however, the articles are prohibited from superseding a provision of Chapters 13 through 19:

§ 1508
§ 1527(c)
§ 1528(g)
§ 1553
The effect of limiting the rule of subsection (b) to Chapters 13 through 19 is to exclude article provisions varying the rules of Chapters 21 through 31 from the safe harbor. The Committee concluded that it would not be appropriate to authorize the articles to vary the provisions of Chapters 21 through 31 generally because those chapters are more regulatory in nature than Chapters 13 through 19. It is not intended, however, that the Delaware rule on the contents of the articles will apply to all the provisions of Chapter 21 through 31, and subsection (a)(8)(ii) refers specifically to “this subpart” (which encompasses Chapters 21 through 31). For example, there should be nothing objectionable about an articles provision that waives the application of 15 Pa.C.S. § 2324 to a statutory close corporation. See also 15 Pa.C.S. §§ 2501(c) and 2701(c).

Subsection (e) was added by the GAA Amendments Act of 2013. It permits the articles of incorporation to be made dependent on extrinsic facts in the same way as plans adopted under Chapter 19. See 15 Pa.C.S. §§ 1922(e) (plan of merger), 1931(i) (plan of exchange), 1952(i) (plan of division), and 1962(d) (plan of conversion). Section 102(d) of the Delaware General Corporation Law similarly permits the certificate of incorporation of a Delaware corporation to be made dependent on extrinsic facts.

Under 15 Pa.C.S. § 1504(c), where any provision of the 1988 BCL permits a rule to be set forth in the bylaws, including a bylaw adopted by the shareholders, a rule on the same subject may be set forth in the articles.

Under 15 Pa.C.S. § 135(c)(1), only an actual street address or rural route box number, and not a post office box number, is acceptable as a registered office address. Articles filed after the effective date of 15 Pa.C.S. § 135(c)(2) must also state the county in which the registered office is located.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“authorized shares”
“board of directors”
“business corporation”
“bylaws”
Chapter 15
Corporate Powers, Duties and Safeguards

Subchapter A
General Provisions

§ 1504. Adoption, amendment and contents of bylaws.

(a) General rule.—Except as otherwise provided in this subpart, the shareholders entitled to vote shall have the power to adopt, amend and repeal the bylaws of a business corporation. Except as provided in subsection (b), the authority to adopt, amend and repeal bylaws may be expressly vested by the bylaws in the board of directors, subject to the power of the shareholders to change such action. The bylaws may contain any provisions for managing the business and regulating the affairs of the corporation not inconsistent with law or the articles. In the case of a meeting of shareholders, written notice shall be given to each shareholder that the purpose, or one of the purposes, of a meeting is to consider the adoption, amendment or repeal of the bylaws. There shall be included in, or enclosed with, the notice a copy of the proposed amendment or a summary of the changes to be effected thereby. Any change in the bylaws shall take effect when adopted unless otherwise provided in the resolution effecting the change.

(b) Exception.—Except as otherwise provided in section 1310(a) (relating to organization meeting), or in the articles to the extent authorized by section 1306(b) (relating to other provisions authorized), the board of directors shall not have the authority to adopt or change a bylaw on any subject that is committed expressly to the shareholders by any of the provisions of this subpart. See:

Subsection (d) (relating to amendment of voting provisions).
Section 1521 (relating to authorized shares).
Section 1713 (relating to personal liability of directors).
Section 1721 (relating to board of directors).
Section 1725 (relating to selection of directors).
Section 1726 (relating to removal of directors).
Section 1729 (relating to voting rights of directors).
Section 1756 (relating to quorum).
Section 1757 (relating to action by shareholders).
Section 1765 (relating to judges of election).
Section 2105 (relating to termination of nonstock corporation status).
Section 2122 (relating to classes of membership).
Section 2124 (relating to voting rights of members).
Section 2302 (relating to definition of minimum vote).
Section 2321 (relating to shares).
Section 2322 (relating to share transfer restrictions).
Section 2325 (relating to sale option of estate of shareholder).
Section 2332 (relating to management by shareholders).
Section 2334 (relating to appointment of provisional director in certain cases).
Section 2337 (relating to option of shareholder to dissolve corporation).
Section 2923 (relating to issuance and retention of shares).

(c) Bylaw provisions in articles.—Where any provision of this subpart or any other
provision of law refers to a rule as set forth in the bylaws of a corporation or in a bylaw adopted
by the shareholders, the reference shall be construed to include and be satisfied by any rule on
the same subject as set forth in the articles of the corporation.

(d) Amendment of voting provisions.—

(1) Unless otherwise provided in a bylaw adopted by the shareholders, whenever
the bylaws require for the taking of any action by the shareholders or a class of
shareholders a specific number or percentage of votes, the provision of the bylaws setting
forth that requirement shall not be amended or repealed by any lesser number or percentage
of votes of the shareholders or of the class of shareholders.

(2) Paragraph (1) shall not apply to a bylaw setting forth the right of shareholders to
act by unanimous written consent as provided in section 1766(a) (relating to unanimous
consent).

Amended Committee Comment (2013):

Under 15 Pa.C.S. § 1310(a), bylaws adopted at the organization meeting, even though
adopted by a non-subscriber incorporator, or by the directors, are deemed bylaws adopted by the
shareholders for the purposes of the 1988 BCL.

In recognition of the trend to reduce the size and complexity of the filed articles, the 1988
BCL provides expressly that the bylaws rather than the articles may contain provisions on certain
voting rights of the corporation’s shares. See 15 Pa.C.S. §§ 1521(c) and 1766.
Written notice that a purpose of a meeting of directors is to amend the bylaws does not have to be given.

A majority of all votes cast on the adoption, amendment, or repeal of the bylaws satisfies the statutory requirements of the 1988 BCL, in lieu of the absolute majority required by the 1933 BCL.

The 1933 BCL required shareholder consent to the adoption of a bylaw establishing a fair and reasonable procedure for the nomination of directors. This requirement is not continued in 15 Pa.C.S. § 1758(e) and therefore that provision is not cited in the cross reference table in subsection (b). The requirement for action by shareholders in adopting bylaws under 15 Pa.C.S. §§ 1756 and 1757 is a continuation of the rule under the 1933 BCL. The remaining references in the table are new, but in most instances the requirement for shareholder approval makes no change in substance since under the 1933 BCL the matter could be resolved only by means of shareholder action amending the articles. See, e.g., 15 Pa.C.S. §§ 1721, 1726 and 1729. The provision of 15 Pa.C.S. 1756(a) limiting the authority to make certain amendments to the shareholders is not applicable to a registered corporation. See 15 Pa.C.S. § 2523.

The listing of a particular section in the table in subsection (b) is not intended to have independent substantive effect. The table has been included in that subsection for purposes of reference and merely collects all those sections that at the time the GAA Amendments Act of 2013 was enacted referred to a bylaw adopted by the shareholders. Whether the board of directors can adopt a bylaw on a particular subject is determined by the section of the 1988 BCL dealing with that subject.

The fact that the board of directors is authorized to amend the bylaws does not mean, of course, that once a provision authorized to be included in the bylaws has been entrenched in the articles pursuant to subsection (c) the board can alter it.

The converse of the rule stated in subsection (c) is not the case. A provision of the 1988 BCL that refers to a rule as set forth in the articles will not be satisfied by a provision in the bylaws. A provision in the bylaws on a subject reserved to the articles by the 1988 BCL will be inoperative.

The reference in subsection (c) to a bylaw adopted by the shareholders was added by the GAA Amendments Act of 2013 to avoid an unintended implication of an amendment in 2006 to 15 Pa.C.S. § 1726(a)(1) which was not prepared by the Committee. 15 Pa.C.S. § 1726(a)(1) provides that if the board of directors is classified into staggered terms by a bylaw adopted by the shareholders then the directors are removable only for cause. The act of February 10, 2006 (P.L. 21, No. 6) amended 15 Pa.C.S. § 1726(a)(1) to make clear that a provision of the articles classifying the board of directors into staggered terms has the same effect as a bylaw adopted by the shareholders. Prior to the 2006 amendment of 15 Pa.C.S. § 1726(a)(1), it was generally...
thought that the rule of subsection (c) applied to provisions of the 1988 BCL that referred to
either a bylaw generally or specifically to a bylaw adopted by the shareholders. To avoid an
argument that other provisions of the 1988 BCL that refer to a rule as set forth in a bylaw
adopted by the shareholders, but that do not contain the additional clarification regarding a
provision of the articles added to 15 Pa.C.S. § 1726(a)(1), may not be satisfied by a provision of
the articles, subsection (c) now makes clear that a provision of the articles satisfies a requirement
for a provision of either the bylaws generally or a bylaw adopted by the shareholders.

Paragraph (d)(2) was added by the GAA Amendments Act of 1992 and is intended to make
clear that, where a corporation has a bylaw that restates the rule of 15 Pa.C.S. § 1766(a) on
action by unanimous consent of the shareholders, the adoption of a bylaw authorizing action by
partial written consent does not require a unanimous vote of the shareholders. Paragraph (d)(2)
was made retroactive to October 1, 1989 (the general effective date of the 1988 BCL) by Section
7(b) of the GAA Amendments Act of 1992.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors
with respect to the bylaws must be taken by the full board, and not by a committee thereof.

Section 304(a)(2) of the General Association Act of 1988 provided that subsection (c) and
as much of the General Association Act of 1988 as may be necessary to make that provision
operative was effective retroactive to January 27, 1987, insofar as relates to the implementation
of former 42 Pa.C.S. Ch. 83F (relating to corporate directors’ liability).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“board of directors”
“business corporation”
“bylaws”
“entitled to vote”
“shareholders”
“unless otherwise provided”

The term “amendment” used in this section is not intended to refer to an “amendment” as
defined in 15 Pa.C.S. § 1103.

Subchapter B
Shares and Other Securities

§ 1523. Pricing and issuance of shares.

Except as otherwise restricted in the bylaws, shares of a business corporation may be
issued at a price determined by the board of directors[,]; or the board may [set a minimum price or establish a formula or method by which the price may be determined] authorize one or more directors or one or more officers, acting alone or with the participation of one or more directors, to determine, within limits, pursuant to a formula or method or subject to relevant criteria specifically prescribed by the board:

(1) the persons that shares will be issued to; and

(2) the number of shares, price or consideration and other terms on which shares will be issued.

Amended Committee Comment (2013):

This section and 15 Pa.C.S. § 1524 are intended to make clear that shares (including treasury shares) are issuable for the amount and form of consideration fixed by, or in the manner authorized by, the board of directors, including services already performed, future services or the note or obligation of a shareholder. It will therefore be permissible to issue par value stock for less than par. The concept of issuing calls on shares is abolished and all shares are deemed to be fully paid shares, without affecting the right of the corporation to enforce the personal obligation of the subscriber to pay the agreed consideration which is preserved by 15 Pa.C.S. § 1526. Shares are made assessable by 15 Pa.C.S. § 1524(c) only if and to the extent provided by a regulatory law (e.g., as permitted by voluntary action of the incorporators of a professional corporation under 15 Pa.C.S. § 2925).

This section does not apply to action under 15 Pa.C.S. § 1522(b) to set the terms of “blank check” shares. Once the terms of shares have been established, however, this section will apply to the sale of those shares.

Whenever the board authorizes officers to act under this section, the board must prescribe limits or relevant criteria to guide the officers in exercising that authority. Action by the board under this section, including the selection of the officers who are given the authority to act and the fixing of the limits or relevant criteria that will guide their actions, will be subject to the applicable standard of care of the directors.

15 Pa.C.S. § 1525(d) makes the provisions of this section applicable to the issuance of rights or options to acquire shares.

The GAA Amendments Act of 2013 substituted the last clause making clear that officers may be authorized to determine who the purchasers of shares will be and to set the number of shares, price, and other terms on which shares are issued for the prior provision which simply stated that the board could set a minimum price or establish a formula or method by which the price could be determined. In addition to confirming the existing practice of authorizing officers to set the price for shares, the new formulation confirms that the authority that may be delegated
by the board extends beyond just the price at which shares are issued and includes both the
identity of the purchaser of the shares and the other terms on which the shares are issued, such as
the timing and form of consideration. The issuance of shares in conformity with an approved
plan satisfies the requirements of this section.

Under 15 Pa.C.S. § 1504(c), the restrictions that this section authorizes to be set forth in the
bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731(c), any action that may be taken by the board of directors under
this section may be taken by a duly authorized committee thereof, subject to compliance by the
committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”
“business corporation”
“bylaws”
“except as otherwise restricted” (see “unless otherwise restricted”)
“director”
“issue”
“officer”
“shares”

§ 1527. Issuance of fractional shares or scrip.

(a) General rule.—A business corporation may but shall not be required to create and
issue fractions of a share, either represented by a certificate or uncertificated, which, unless
otherwise provided in the articles, shall represent proportional interests in all the voting rights,
preferences, limitations and special rights, if any, of full shares. If the corporation creates but
does not provide for the issuance of fractions of a share, it shall:

(1) arrange for the disposition of fractional interests by those entitled thereto;

(2) pay in money the fair value of fractions of a share determined at the time and in
the manner provided in the plan, amendment or resolution of the board providing for the
creation of the fractional interests; or

(3) issue scrip or other evidence of ownership, in registered form (either
represented by a certificate or uncertificated) or in bearer form (represented by a
certificate), entitling the holder to receive a full share upon the surrender of the scrip or
other evidence of ownership aggregating a full share, or the transfer of uncertificated scrip
aggregating a full share, but which shall not[, unless otherwise provided therein or with
respect thereto,] entitle the holder to exercise any voting right, to receive dividends or to participate in any of the assets of the corporation in the event of liquidation.

(b) Elimination of shares or scrip.—The scrip or other evidence of ownership may be issued subject to the condition that it shall become void if not exchanged for full shares before a specified date, or subject to the condition that the shares for which the scrip or evidence of ownership is exchangeable may be sold and the proceeds thereof distributed to the holders of the scrip or evidence of ownership, or subject to any other conditions that the corporation deems advisable.

(c) Limitation.—The articles may not provide that scrip or other evidence of ownership entitles the holder to exercise any voting right, to receive dividends or to participate in any of the assets of the corporation in the event of liquidation.

[No change to Committee Comment (1988).]

§ 1528. Shares represented by certificates and uncertificated shares.

(a) General rule.—The shares of a business corporation shall be represented by certificates or shall be uncertificated shares.

(b) Issue of certificates.—Every shareholder shall, except as otherwise provided in a provision of the articles adopted pursuant to subsection (f) or in the terms of a subscription that has not been fully performed by the subscriber, be entitled to a share certificate representing the shares owned by him.

(c) Form of certificate.—Share certificates shall state:

(1) That the corporation is incorporated under the laws of this Commonwealth.

(2) The name of the person to whom issued.

(3) The number and class of shares and the designation of the series, if any, that the certificate represents.

(d) Notice of variations in rights.—Every certificate representing shares issued by a business corporation that is authorized to issue shares of more than one class or series shall set forth upon the face or back of the certificate (or shall state on the face or back of the certificate that the corporation will furnish to any shareholder upon request and without charge) a full or summary statement of the designations, voting rights, preferences, limitations and special rights of the shares of each class or series authorized to be issued so far as they have been fixed and determined and the authority of the board of directors to fix and determine the designations,
voting rights, preferences, limitations and special rights of the classes and series of shares of the corporation. See also sections 1524(d) (relating to rights of subscribing shareholder), 1529(f) (relating to notice to transferee) and 2321(c) (relating to notice of statutory close corporation status).

(e) Execution.—Every share certificate shall be executed, by facsimile or otherwise, by or on behalf of the corporation issuing the shares in such manner as it may determine.

(f) Uncertificated shares.—The articles may provide that any or all classes and series of shares, or any part thereof, shall be uncertificated shares except that such a provision shall not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates by subsections (c) and (d). Except as otherwise expressly provided by law, the rights and obligations of the holders of shares represented by certificates and the rights and obligations of the holders of uncertificated shares of the same class and series shall be identical. See section 2321(a) (relating to uncertificated shares prohibited).

(g) Bearer shares prohibited.—A business corporation may not issue share certificates in bearer form. This subsection may not be varied by the articles.

Amended Committee Comment (2013):

This section permits any form of execution of a share certificate to be utilized by a corporation, and eliminates the requirements of the 1933 BCL of the corporate seal and at least one manual signature.

Because the 1988 BCL omits the statement in the 1933 BCL to the effect that the facsimile signature of a former officer continues to be good, the bylaws of a corporation that maintains a supply of presigned certificates or that uses a transfer agent should contain an equivalent provision, as well as a provision relating to the actual signature of a corporate officer and the actual or facsimile signature of a former transfer agent or registrar.

A share certificate is not required to state whether the shares represented by the certificate have a par value or are no-par.

The statement that the corporation upon request will furnish a summary statement of rights may appear on the front or back of the certificate.

If so agreed between the corporation and a subscriber, a certificate may be issued for shares for which the full agreed consideration has not been paid.

If the articles so provide, a business corporation is authorized to issue uncertificated shares,
but such an articles provision will not apply to a certificated share until the certificate is surrendered to the corporation. Thus, a corporation may not treat as uncertificated, and accordingly transferable on its books without due presentation of a certificate, any shares for which a certificate is outstanding. Uncertificated scrip is also recognized. The cross reference to 15 Pa.C.S. § 2321(a) in subsection (f) is a reminder, however, that a statutory close corporation is prohibited from issuing uncertificated shares.

Provision is made for the delivery of various notices to the holder of an uncertificated share so that holders of uncertificated shares will receive from the corporation the same information that the holders of certificates receive. There is no requirement that this information be delivered to purchasers of uncertificated shares before purchase.

It is intended that the board of directors will have the widest discretion when uncertificated shares are authorized, subject to express provisions in the articles, so that a particular class or series of shares may be entirely represented by certificates, entirely uncertificated, or represented partly by each.

See 13 Pa.C.S. §§ 8106, 9305, 9312, and 9314 regarding the perfection of a security interest in uncertificated shares.

Subsection (g) was added by the GAA Amendments Act of 2013 and was intended as a codification of existing law and practice. It was patterned in part after the last sentence of 6 Del. Code § 158, but instead of being phrased like the Delaware law in terms of a corporation not having the power to issue bearer shares, it was considered more appropriate to prohibit directly the issuance of bearer shares.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“board of directors”
“business corporation”
“except as otherwise provided” (see “unless otherwise provided”) “issue”
“preference”
“share certificate”
“shareholder”
“shares”
“subscriber”
“subscription”

§ 1529. Transfer of securities; restrictions.
(a) General rule.—The transfer of securities of a business corporation may be regulated by any provisions of the bylaws that are not inconsistent with 13 Pa.C.S. Div. 8 (relating to investment securities) and other provisions of law.

(b) Transfer restrictions generally.—A restriction on the transfer or registration of transfer of securities of a business corporation may be imposed by the bylaws or by an agreement among any number of securityholders or among them and the corporation. A restriction so imposed shall not be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to the agreement or voted in favor of the restriction. A restriction may be amended by the vote or consent, and otherwise in the manner, provided in the bylaws or agreement for amending the restriction or, in the absence of such a provision, as provided for amending the bylaws or agreement generally.

(c) Restrictions specifically authorized.—A restriction on the transfer of securities of a business corporation is permitted by this section if it:

1. obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities;

2. obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities that are the subject of an agreement respecting the purchase and sale of the restricted securities;

3. requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities; or

4. prohibits the transfer of the restricted securities to designated persons or classes of persons and the designation is not manifestly unreasonable.

(d) Subchapter S restrictions.—Any restriction on the transfer of the shares of a business corporation for the purpose of maintaining its status as an electing small business corporation under Subchapter S of the Internal Revenue Code of 1986 or a comparable provision under state law shall be conclusively presumed to be for a reasonable purpose.

(e) Other restrictions.—Any other lawful restriction on transfer or registration of transfer of securities is permitted by this section.

(f) Notice to transferee.—A written restriction on the transfer or registration of transfer of a share or other security of a business corporation, if permitted by this section and noted conspicuously on the face or back of the security or in the notice provided by section 1528(f)
(relating to uncertificated shares) or in an equivalent notice with respect to another uncertificated security, may be enforced against the holder of the restricted security or any successor or transferee of the holder, including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the security or in the notice provided by section 1528(f) or in an equivalent notice with respect to another uncertificated security, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

Amended Committee Comment (2013):

Under 15 Pa.C.S. § 1504(c), any transfer restriction that is authorized to be set forth in the bylaws may also be set forth in the articles.

The last sentence of subsection (b) was added by the GAA Amendments Act of 2013 and rejects the holding in *Bechtold v. Coleman Realty Co.*, 79 A.2d 661 (Pa. 1951). In that case the Pennsylvania Supreme Court did not permit the repeal of a transfer restriction found in a corporation’s bylaws even though the vote required to amend the bylaws generally was cast in favor of the repeal. The court held that transfer restrictions are “[p]rovisions in the nature of a contract which are evidently designed to vest property rights inter se among all stockholders. . . . [and] cannot be repealed or changed without the consent of the other parties whose rights are affected.” *Id.* at 663. In *Seven Springs Farm, Inc. v. Croker*, 801 A.2d 1212 (Pa. 2002), the Pennsylvania Supreme Court affirmed a decision by the Pennsylvania Superior Court, *Seven Springs Farm, Inc. v. Croker*, 748 A.2d 740 (Pa. Super 2000), which distinguished *Bechtold* and permitted the avoidance of a transfer restriction by structuring a transaction as a merger which was approved by a majority vote over the objection of the minority. Consistent with the endorsement of the doctrine of independent legal significance in 15 Pa.C.S. § 1904 and the holdings in *Seven Springs*, subsection (b) adopts the position that a shareholder who agrees to a transfer restriction either by approving its terms or acquiring shares already subject to the restriction should be bound by all of the provisions applicable to the restriction, including whether it may be amended or repealed by less than unanimous agreement.

The reference in subsection (c)(4) to a “manifestly unreasonable” classification is intended to prohibit references to race, color, etc. *See* 15 Pa.C.S. § 1906.

Subsection (d) includes restrictions relating to the status of a corporation as a “Pennsylvania S corporation” under section 307 of the Tax Reform Code of 1971, as added by the act of December 23, 1983 (P.L. 370, No. 90), § 4 (72 P.S. § 7307 et. seq.).

The scope of this section is broader than the equity securities referred to in 15 Pa.C.S. § 1528. Thus the reference in subsection (f) to “an equivalent notice with respect to another uncertificated security” includes, for instance, uncertificated debt securities.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors...
under this section with respect to the bylaws must be taken by the full board, and not by a
committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”
“bylaws”
“Internal Revenue Code of 1986”
“share”

Subchapter C
Corporate Finance

§ 1552. Power of corporation to acquire its own shares.

(a) General rule.—A business corporation shall have the power to acquire its own shares. If the articles provide that shares acquired by the corporation shall not be reissued, the authorized shares of the class shall be reduced by the number of shares acquired. In any other case the shares acquired shall be deemed to be issued but not outstanding, except that, unless otherwise provided in the bylaws, the board may, by resolution, restore any or all of the previously issued shares of the corporation owned by it to the status of authorized but unissued shares.

(b) Security for acquisition.—In connection with an acquisition by a corporation of its shares, the corporation may grant a security interest in the acquired shares to secure an obligation to pay for the acquisition. A share shall not be canceled on the books of the corporation until the obligation of the corporation secured by the share is fully paid or discharged.

(c) Application of distribution tests.—A corporation may acquire or agree to acquire its shares, even though the acquisition would violate section 1551 (relating to distributions to shareholders), if payment of all or part of the purchase price is deferred until the payment would not violate that section.

[(b)] (d) Cross reference.—See section 1914(c)(2) (relating to adoption by board of directors).

Amended Committee Comment (2013):

The 1933 BCL contained a troublesome provision requiring the filing of an annual statement reducing the authorized number of shares by the number of any converted or exchanged shares, regardless of any contrary provision in the articles, and dealing with the
mechanics of canceling treasury or authorized but unissued shares. The 1988 BCL eliminates
the concept of a required statement of reduction of authorized shares by providing in subsection
(a) that if the articles provide that acquired shares may not be reissued in any form (e.g., not even
as part of a new series), the authorized shares shall be reduced accordingly and permitting the
filing of articles of amendment by board action alone under 15 Pa.C.S. § 1914(c)(2) to evidence
the reduction. See 15 Pa.C.S. § 507.

Subsections (b) and (c) were added by the GAA Amendments Act of 2013 and were
patterned after N.J.S. § 14A: 7-16(8) and (9). They were intended as a codification of existing
law and practice. Subsection (b) authorizes a corporation to grant a security interest in
reacquired shares to secure the payment of the repurchase price. Subsection (c) authorizes share
repurchase agreements with payment conditioned upon the solvency of the corporation. It will
permit a buyout of a major shareholder at a price which would otherwise render the corporation
technically insolvent so long as each payment is deferred until such time as the corporation can
make a lawful distribution. See 15 Pa.C.S. § 1551(f).

Under 15 Pa.C.S. § 1504(c), the restrictions that subsection (a) authorizes to be set forth in
the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731(c), any action that may be taken by the board of directors under
this section may be taken by a duly authorized committee thereof, subject to compliance by the
committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“board” (see “board of directors”)
“business corporation”
“bylaws”
“obligation”
“shares”
“unless otherwise provided”

The reference in the second sentence of subsection (a) to “authorized shares” is to the
shares of a particular class rather than the “authorized shares” as defined in 15 Pa.C.S. § 1103.
However, shares restored under the third sentence are restored to the “authorized shares” as
defined in 15 Pa.C.S. § 1103 without regard to any class designation unless otherwise restricted
in the bylaws. A typical example of a restrictive provision of the type contemplated by the third
sentence is a statement in the articles that the corporation shall have the authority to issue a
specified number of shares of a preferred or special class. In such a case, the board cannot
increase the total number of authorized shares of the preferred or special class merely by
acquiring common or other junior shares.
Subchapter D
Dissenters Rights

§ 1575. Notice to demand payment.

(a) General rule.—If the proposed corporate action is approved by the required vote at a meeting of shareholders of a business corporation, the corporation shall mail a further notice to all dissenters who gave due notice of intention to demand payment of the fair value of their shares and who refrained from voting in favor of the proposed action. If the proposed corporate action is [to be] approved by the shareholders by less than unanimous consent without a meeting or is taken without [a vote of] the need for approval by the shareholders, the corporation shall send to all shareholders who are entitled to dissent and demand payment of the fair value of their shares a notice of the adoption of the plan or other corporate action. In either case, the notice shall:

(1) State where and when a demand for payment must be sent and certificates for certificated shares must be deposited in order to obtain payment.

(2) Inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received.

(3) Supply a form for demanding payment that includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares.

(4) Be accompanied by a copy of this subchapter.

(b) Time for receipt of demand for payment.—The time set for receipt of the demand and deposit of certificated shares shall be not less than 30 days from the mailing of the notice.

Amended Committee Comment (2013):

The basic purpose of this section is to require the corporation to tell all actual or potential dissenters what they must do in order to take advantage of their right to dissent. The requirements of what the notice must contain are spelled out in detail to ensure that the notice serves this basic purpose.

In the case of an action that is submitted to a vote of shareholders, the notice must be sent only to those persons who gave notice of their intention to dissent and who refrained from voting in favor of the proposed actions. In the case of a transaction not involving a vote by shareholders, the notice must be sent to all persons who are eligible to dissent and demand payment.
The notice must contain or be accompanied by a form which a person asserting dissenters rights may use to complete the demand for payment. The form must specify the date by which it must be received by the corporation, which date must be at least 30 days after the date of mailing of the notice of how to demand payment.

The notice must also specify where and when share certificates must be deposited, or, in the case of uncertificated shares, when restrictions on transfer will become effective. The date for deposit of share certificates may not be set at a date earlier than the date for receiving the demand for payment.

This section contemplates the retention by the corporation of the share certificates (or prohibition of transfer in the case of uncertificated securities) rather than the notation of the claim of dissenters rights provided for in Section 515I of the 1933 BCL.

There is no requirement that the procedures mandated by this section be completed before the proposed corporate action can be consummated. It is intended rather that the proposed corporate action can be consummated as soon as it has been approved without the necessity of waiting until the dissenters rights procedures have been completed.

Prior to the 1988 BCL, dissenters rights were not available in a context where a meeting of shareholders was not to be held. The provision of subsection (a) relating to dissenters rights in the case of corporate action taken without a vote of shareholders opened the way for the introduction into Pennsylvania law of the short form merger (equivalent to the Delaware certificate of ownership and merger) procedure of 15 Pa.C.S. §§ 1924(b)(3) and 1926, and similar changes.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”
“plan”
“share certificate”
“shareholder”
“shares”
“voting”

The following terms used in this section are defined in 15 Pa.C.S. § 1572:

“corporation”
“dissenter”
“fair value”
Chapter 17
Officers, Directors and Shareholders

Subchapter A
Notice and Meetings Generally

§ 1704. Place and notice of meetings of shareholders.

(a) Place.—Meetings of shareholders may be held at such geographic location within or without this Commonwealth as may be provided in or fixed pursuant to the bylaws. Unless otherwise provided in or pursuant to the bylaws, all meetings of the shareholders shall be held at the executive office of the corporation wherever situated. If a meeting of the shareholders is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the shareholders have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the shareholders [and], pose questions to the directors, make appropriate motions and comment on the business of the meeting, the meeting need not be held at a particular geographic location.

(b) Notice.—[Written notice] Notice in record form of every meeting of the shareholders shall be given by, or at the direction of, the secretary or other authorized person to each shareholder of record entitled to vote at the meeting at least:

(1) ten days prior to the day named for a meeting that will consider a fundamental change under Chapter 19 (relating to fundamental changes); or

(2) five days prior to the day named for the meeting in any other case.

[If the secretary or other authorized person neglects or refuses to give notice of a meeting, the person or persons calling the meeting may do so.]

(c) Contents.—In the case of a special meeting of shareholders, the notice shall specify the general nature of the business to be transacted, and in all cases the notice shall comply with the express requirements of this subpart. The corporation shall not have a duty to augment the notice.

(d) Alternative authority.—If the secretary or other authorized person neglects or refuses to give notice of a meeting, a person calling the meeting may do so.

(e) Cross reference.—See section 2528 (relating to notice of shareholder meetings).

Amended Committee Comment (2013):
The provisions of this section generally may be restricted in the bylaws. But note the use of the term “otherwise provided” in the second sentence of subsection (a). See the Committee Comment to 15 Pa.C.S. § 1701.

It is intended that the references to electronic communications technology in subsection (a) will be interpreted in a manner consistent with the definition of the term “electronic” in the act of December 16, 1999 (P.L. 971, No. 69), known as the Electronic Transactions Act, 73 P.S. § 2260.101, et seq. Section 103 of that act defines “electronic” as “[r]elating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.” 73 P.S. § 2260.103.

The requirement in subsection (b) that notice be “in record form” (which is defined in 15 Pa.C.S. § 102) means that notice may be given by email, fax, and other forms of electronic communication, as well as in tangible written form.

If participation in a meeting by means of the Internet or other electronic communications technology is made available to the shareholders but the meeting is also held at a geographic location at which shareholders have the right to attend in person, the requirements in the last sentence of subsection (a) for electronic meetings will not apply.

Under 15 Pa.C.S. § 1709, rules for the conduct of an electronic meeting may be established as provided in the bylaws or by the presiding officer of the meeting. Any such rules should be appropriate for an electronic meeting and need not be the same as rules for a meeting held in person.

Under 15 Pa.C.S. § 1504(c), the provisions that subsection (a) authorizes to be set forth in the bylaws may also be set forth in the articles.

As originally enacted in 1988, subsection (b)(1) applied to a meeting “called to consider” a fundamental change. The GAA Amendments Act of 1992 amended that provision to make clear that ten days notice is required for any meeting that will consider a fundamental change, including a regularly scheduled meeting.

The Official Source Note for the amendments to this section made by the GAA Amendments Act of 1990 states that:

“The second sentence of subsection (c) is new and is intended to make clear that State law does not duplicate the disclosure requirements of 18 [sic] CFR § 240.10b-5. Compare Stroud v. Milliken Enterprises, Inc., 552 A.2d 476 (Del. 1989).”

1990 Laws of Pennsylvania at 1065. The Committee believes that the reference to Rule 10b-5 in that Official Source Note was intended to be a generalized reference to the disclosure...
requirements of the Federal and state securities laws. There is nothing in the second sentence of
subsection (c) that would limit it just to contexts in which Rule 10b-5 is applicable and such a
limitation should not be implied from the Official Source Note. The proper interpretation of
subsection (c) is that Title 15 does not duplicate any of the disclosure requirements of the
Federal and state securities laws, including without limitation 17 CFR § 240.14a-9 and 70 P.S.
§ 1-401.

The cross reference in subsection (e) is a reminder that the “householding” rules of the
Securities and Exchange Commission apply to notices of shareholder meetings of registered
corporations.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“bylaws”
“entitled to vote”
“shareholders”
“unless otherwise provided”

The term “record form” used in subsection (b) is defined in 15 Pa.C.S. § 102.

§ 1705. Waiver of notice.

(a) **[Written waiver]** General rule.—Whenever any **[written]** notice is required to be
given under the provisions of this subpart or the articles or bylaws of any business corporation, a
waiver thereof **[in writing, signed]** which is filed with the secretary of the corporation in record
form signed by the person or persons entitled to the notice, whether before or after the time
stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be
transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the
meeting.

(b) **Waiver by attendance.**—Attendance of a person at any meeting shall constitute a
waiver of notice of the meeting except where a person attends a meeting for the express purpose
of objecting, at the beginning of the meeting, to the transaction of any business because the
meeting was not lawfully called or convened.

**Amended Committee Comment (2013):**

The corporation must keep a record of all waivers under subsection (a), regardless of their
form, because they are required to be “filed” with the secretary of the corporation.

The provisions of this section may be restricted in the bylaws. See 15 Pa.C.S. § 1701(a)(2).
The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“business corporation”
“bylaws”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“record form”
“sign”

Subchapter C
Directors and Officers

§ 1727. Quorum of and action by directors.

(a) General rule.--Unless otherwise provided in the bylaws, a majority of the directors in office of a business corporation shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the directors present and voting at a meeting at which a quorum is present shall be the acts of the board of directors.

(b) Action by consent.--Unless otherwise restricted in the bylaws, any action required or permitted to be approved at a meeting of the directors may be approved without a meeting if, prior or subsequent to the action, a consent or consents to the action in record form are signed, before, on or after the effective date of the action, by all of the directors in office on the date the last consent is signed. The consent or consents must be filed with the minutes of the proceedings of the board of directors.

Amended Committee Comment (2013):

Unlike the case of a shareholders meeting where, under 15 Pa.C.S. §1756(a)(2), the shareholders can continue to do business notwithstanding the withdrawal of enough shareholders to leave less than a quorum, subsection (a) requires that a quorum be present whenever action is taken by the board of directors. If, for example, four matters are to be considered at a meeting of the board at which a quorum is present at the start of the meeting, but enough directors to destroy the existence of a quorum leave the meeting after two of the matters have been considered, actions properly taken on the first two matters will be valid but the meeting will not be able to act on the last two matters.

A corporation that implements a decision approved by less than all of the directors on the expectation that one or more directors will sign the requisite consents after the decision has been
implemented, assumes the risk that unanimous consent cannot be obtained, with the result that ratification at a meeting will be necessary, or failing ratification, that the corporation will have acted without authority. The reference to consent given after the action has been taken is intended to make clear that a consent may be effective coincident with the effective date of the action.

The corporation must keep a record of all consents under subsection (b), regardless of their form, because they are required to be “filed” with the secretary of the corporation.

The provisions of this section also apply to meetings of a committee of the board of directors under 15 Pa.C.S. § 1731(c).

Prior to its amendment by the GAA Amendments Act of 2013, subsection (b) read:

Unless otherwise restricted in the bylaws, any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if, prior or subsequent to the action, a consent or consents thereto by all of the directors in office is filed with the secretary of the corporation.

The 2013 amendments were intended as a clarification of the wording of the section and a confirmation of existing law and practice.

Under 15 Pa.C.S. § 1504(c), the provisions and restrictions that this section authorizes to be set forth in the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors under this section with respect to the bylaws must be taken by the full board, and not by a committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”
“business corporation”
“bylaws”
“directors”
“unless otherwise provided”
“unless otherwise restricted”
“voting”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”
“record form”

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§ 1756. Quorum.

(a) General rule.--A meeting of shareholders of a business corporation duly called shall not be organized for the transaction of business unless a quorum is present. Unless otherwise provided in a bylaw adopted by the shareholders:

(1) The presence of shareholders entitled to cast at least a majority of the votes that all shareholders are entitled to cast on a particular matter to be acted upon at the meeting shall constitute a quorum for the purposes of consideration and action on the matter.

(2) The shareholders present at a duly organized meeting can continue to do business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(3) If a meeting cannot be organized because a quorum has not attended, those present may, except as otherwise provided in this subpart, adjourn the meeting to such time and place as they may determine.

(4) If a proxy casts a vote or takes other action on behalf of a shareholder on any issue other than a procedural motion considered at a meeting of shareholders, the shareholder shall be deemed to be present during the entire meeting for purposes of determining whether a quorum is present for consideration of any other issue.

(b) Exceptions.--Unless otherwise provided in a bylaw adopted by the shareholders, those shareholders entitled to vote who attend a meeting of shareholders:

(1) At which directors are to be elected that has been previously adjourned for lack of a quorum, although less than a quorum as fixed in this section or in the bylaws, shall nevertheless constitute a quorum for the purpose of electing directors.

(2) That has been previously adjourned for one or more periods aggregating at least 15 days because of an absence of a quorum, although less than a quorum as fixed in this section or in the bylaws, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the notice of the meeting if the notice states that those shareholders who attend the adjourned meeting shall nevertheless constitute a quorum for the purpose of acting upon the matter.

(c) Cross references.--See sections 2523 (relating to quorum at shareholder meetings) and 3134 (relating to quorum at shareholder or member meetings).
Amended Committee Comment (2013):

Unless the articles or a bylaw adopted by the shareholders provides otherwise, if due notice of intention to exercise the provisions of subsection (b)(2) is given, those shareholders who attend a meeting of shareholders that has been adjourned for one or more periods aggregating at least 15 days constitute a quorum to act on the matters included in the notice. It is intended that the notice of the original meeting may contain the notice required by subsection (b)(2), since under 15 Pa.C.S. § 1702(b) notice of the adjourned meeting may generally be solely by announcement at the meeting at which the adjournment is taken. Therefore the original notice should ordinarily carry the requisite notice concerning the possibility of an adjourned meeting and of action at the meeting by less than a quorum. Under subsection (b)(1), if such a statement is not included in a notice of meeting at which directors are to be elected, the first adjourned meeting, regardless of the length of the adjournment, will nevertheless be competent to elect directors in the absence of the usual quorum, unless a bylaw adopted by the shareholders provides otherwise.

Subsection (a)(4) was added by the GAA Amendments Act of 2001 and is intended to resolve the uncertainty created by so-called “broker non-votes.” Where a nominee holds shares in “street name” and votes the shares on certain issues, but does not vote them on other issues because it has not received instructions from the beneficial owner, the shares will be considered present at the meeting for all purposes.

Subsection (a)(4) assumes that in virtually every instance written proxies will have been submitted before the start of a meeting, and the person authorized to act as proxy will be present for the entire meeting. In the rare instance that the existence of a proxy becomes known during the course of a meeting, it is intended that the rule of subsection (a)(4) will apply beginning at the point in the meeting at which the secretary or judges of election learn of the proxy. If there are three items on the agenda of a meeting, for example, and a proxy voting on just the second item is mailed to the secretary before the start of the meeting, the shares covered by the proxy will be deemed to be present for the consideration of all three agenda items. If, on the other hand, a person holding that same proxy arrives at the meeting after the consideration of the first agenda item, the shares will be deemed to be present only for the consideration of the second and third agenda items.

The GAA Amendments Act of 2013 added the reference to “takes other action” in the first clause of subsection (a)(4) to make clear that if a proxy abstains at the direction of a shareholder the shares that are abstaining from voting are considered present for purposes of a quorum. The definition of “voting” in 15 Pa.C.S. § 1103 does not include abstaining from voting and thus prior to the 2013 amendment there was some question as to whether shares present by proxy that abstained from voting were present for purposes of a quorum. Subsection (a)(4) requires that the voting or other action be taken “on behalf of a shareholder.” A situation where a broker does not vote shares held in street name because the broker has not received instructions from the beneficial owner, a so called “broker non-vote,” is different from the situation where a broker is
instructed to abstain. In the case of a broker non-vote, the broker is not acting on behalf of the shareholder and thus the shares that are not voted will not count toward a quorum; but where the broker is instructed to abstain, the broker is acting on behalf of the shareholder and the shares will be considered present for quorum purposes.

The GAA Amendments Act of 1992 made stylistic changes in subsection (b), but no substantive change was intended.

Under 15 Pa.C.S. § 1504(c), the provisions that this section authorizes to be set forth in the bylaws may also be set forth in the articles.

The board of directors of a registered corporation is authorized to adopt the bylaws referred to in subsection (a). See 15 Pa.C.S. § 2523.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”
“bylaws”
“casts a vote” (see “voting”)
“entitled to vote”
“shareholders”
“unless otherwise provided”

Subchapter E
Shareholders

§ 1759. Voting and other action by proxy.

(a) General rule.—

(1) Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action [in writing] without a meeting may authorize another person to act for him by proxy.

(2) The [presence of, or] vote or other action on behalf of a shareholder at a meeting of shareholders, or the expression of consent or dissent to corporate action [in writing], by a proxy of a shareholder shall constitute the presence of, or vote or action by, or [written] consent or dissent of the shareholder for the purposes of this subpart.

(3) Where two or more proxies of a shareholder are present, the corporation shall, unless otherwise expressly provided in the proxy, accept as the vote or other action of all shares represented thereby the vote cast or other action taken by a majority of them and, if
a majority of the proxies cannot agree whether the shares represented shall be voted or upon the manner of voting the shares or taking the other action, the voting of the shares or right to take other action shall be divided equally among those persons.

(b) Execution and filing.—Every proxy shall be executed or authenticated by the shareholder or by his duly authorized attorney-in-fact and filed with or transmitted to the secretary of the corporation or its designated agent. A shareholder or his duly authorized attorney-in-fact may execute or authenticate a writing or transmit an electronic message authorizing another person to act for him by proxy. A telegram, telex, cablegram, datagram, e-mail, Internet communication or other means of electronic transmission from a shareholder or attorney-in-fact, or a photographic, facsimile or similar reproduction of a writing executed by a shareholder or attorney-in-fact:

(1) may be treated as properly executed or authenticated for purposes of this subsection; and

(2) shall be so treated if it sets forth or utilizes a confidential and unique identification number or other mark furnished by the corporation to the shareholder for the purposes of a particular meeting or transaction.

(c) Revocation.—A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the corporation or its designated agent in writing or by electronic transmission. An unrevoked proxy shall not be valid after three years from the date of its signature, authentication or transmission unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice in record form of the death or incapacity is given to the secretary of the corporation or its designated agent.

(d) Proxy coupled with an interest.—As used in this section, the term “proxy coupled with an interest” includes:

(1) a vote pooling or similar arrangement among shareholders;

(2) an agreement permitted by section 1768(b) (relating to other agreements); and

(3) an unrevoked proxy in favor of an existing or potential creditor of a shareholder.

A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the share itself or an interest in the corporation generally.
(e) Cross [reference] references.—See [section] sections 1702 (relating to manner of
giving notice) and 3135 (relating to proxies of members of mutual insurance companies).

Amended Committee Comment (2013):

Subsection (a)(2) and (3) were intended as a codification of existing law and practice at the
time those provisions were originally enacted in 1988.

Subsection (b) is intended to overrule the contrary dictum in Carey v. Pennsylvania
Enterprises, Inc., 876 F.2d 333 (3d Cir. 1989), and to satisfy the concerns about datagram
proxies articulated in Parshalle v. Roy, 567 A.2d 19 (Del. 1989). A datagram proxy was defined
in Parshalle v. Roy as “a procedure in which a record shareholder, by using a toll-free telephone
number, is able to communicate his vote in telegraphic or 'datagram' form.” In addition to
validating that type of telephone voting, subsection (b) is intended in general to provide broad
enabling legislation that will accommodate changes in technology and practice such as, for
example, use of the Internet. Subsection (b) also makes clear that the use of electronic
communications technology is permissible both when a shareholder of record is voting and also
when a beneficial owner is communicating its vote to a shareholder of record such as a securities
depository or brokerage firm. Compare 15 Pa.C.S. § 1702(a) which permits a more limited use
of electronic technology for purposes of giving notice.

The requirement that a proxy be “transmitted” to the corporation implies that the
corporation is able to receive the transmission. So long as that is the case, a shareholder may use
any method of transmission that the shareholder desires. This result is different than the rule
under 15 Pa.C.S. § 1702(a) which gives to the corporation the choice of how to send notice of a
meeting.

It is intended that the references in this section to electronic transmissions will be
interpreted in a manner consistent with the definition of the term “electronic” in the act of
December 16, 1999 (P.L. 971, No. 69), known as the Electronic Transactions Act, 73 P.S. §
2260.101, et seq. Section 103 of that act defines “electronic” as “[r]elating to technology having
electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.” 73 P.S.
§ 2260.103.

Subsection (d)(1) and (2) were intended as a codification of existing law and practice at the
time those provisions were originally enacted in 1988.

Subsection (d)(3) treats a potential creditor the same as an existing creditor for purposes of
whether a proxy given to the potential creditor is coupled with an interest and accordingly
irrevocable. This provision will permit, for example, the establishment of a line of credit secured
in part by an irrevocable proxy to vote shares upon default without the necessity for the creditor
to require a draw against the line when it is established or the maintenance of an outstanding
balance throughout its life in order to preserve the irrevocability of the proxy.
The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“entitled to vote”
“shareholder”
“shares”
“unless otherwise provided”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“action”
“execute”
“record form”
“sign”

§ 1764. Voting lists.

(a) General rule.—The officer or agent having charge of the transfer books for shares of a business corporation shall make a complete list of the shareholders entitled to vote at any meeting of shareholders, arranged in alphabetical order, with the address of and the number of shares held by each. This section does not require the corporation to include electronic mail addresses or other electronic contact information on the list. The list shall be produced and kept open at the time and place of the meeting of shareholders of a nonregistered corporation held at a geographic location and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof except that, if a business corporation has 5,000 or more shareholders, in lieu of the making of the list the corporation may make the information therein available at the meeting by any other means. See section 2529 (relating to voting lists).

(b) Effect of list.—Failure to comply with the requirements of this section shall not affect the validity of any action taken at a meeting prior to a demand at the meeting by any shareholder entitled to vote thereat to examine the list. The original share register or transfer book, or a duplicate thereof kept in this Commonwealth, shall be prima facie evidence as to who are the shareholders entitled to examine the list or share register or transfer book or to vote at any meeting of shareholders.

(c) Electronic meetings.—If a meeting of shareholders of a nonregistered corporation is not held at a geographic location, the corporation shall make the list of shareholders required by subsection (a) available in a reasonably accessible manner.

Amended Committee Comment (2013):
The 1933 BCL required that a voting list be available at the principal place of business of the corporation five days in advance of a meeting. Production of the voting list just at the meeting is now sufficient. Only an unsatisfied demand for the production of the list at a meeting may be advanced to impeach the regularity of the meeting, and then only with respect to unfinished business at the time of the demand.

The GAA Amendments Act of 2013 limited the requirement to produce a voting list for inspection by the shareholders just to nonregistered corporations. The purpose of producing a voting list at a meeting is to resolve disputes about the identity and right to vote of shareholders. In the case of a registered corporation, 15 Pa.C.S. § 2529 requires that the voting list be available to the judges of election for that purpose. It was considered impractical and unnecessary to require that all shareholders of a registered corporation be given the right to inspect the list.

Shareholders of both registered corporations and nonregistered corporations have the right to seek to inspect the share register under 15 Pa.C.S. § 1508.

The second sentence of subsection (a) and all of subsection (c) are patterned in part after 8 Del. Code § 219(a). The Delaware statute provides that the list of shareholders may be made available “on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting.” Subsection (c) is intended to be more flexible than the Delaware statute because subsection (c) is not limited to an accessible electronic network. Subsection (c) also does not require that the notice of the meeting include information required to gain access to the list. If any information needed to access the list is not available to a shareholder, the list will not be available in a “reasonably accessible manner.” But the information may be provided in a manner other than inclusion in the notice of the meeting.

The Delaware statute that was the model for subsection (c) also provides that “In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation.” It was not considered necessary to add that statement to subsection (c) because a corporation has the inherent power and authority to protect its proprietary information.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”
“entitled to vote”
“nonregistered corporation”
“officer”
“shareholders”
“shares”
§ 1766. Consent of shareholders in lieu of meeting.

(a) Unanimous consent.--Unless otherwise restricted in the bylaws, any action required or permitted to be taken at a meeting of the shareholders or of a class of shareholders of a business corporation may be taken without a meeting if, prior or subsequent to the action, a consent or consents [thereto] to the action in record form are signed, before, on or after the effective date of the action, by all of the shareholders who would be entitled to vote at a meeting for such purpose [shall be filed]. The consent or consents must be filed with the [secretary of the corporation] minutes of the proceedings of the shareholders.

(b) Partial consent.--If the bylaws so provide, any action required or permitted to be taken at a meeting of the shareholders or of a class of shareholders may be taken without a meeting upon the signed consent of shareholders who would have been entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. The consents shall be filed in record form with the [secretary of the corporation] minutes of the proceedings of the shareholders.

(c) Effectiveness of action by partial consent.--An action taken pursuant to subsection (b) shall not become effective until after at least ten days' notice of the action has been given to each shareholder entitled to vote thereon who has not consented thereto. This subsection may not be relaxed by any provision of the articles.

(d) Cross [reference] references.--See [section] sections 1702 (relating to manner of giving notice) and 2524 (relating to consent of shareholders in lieu of meeting).

Amended Committee Comment (2013):

The “act” or “action” referred to in this section is the decision made by the shareholders, for example, to approve a merger. Thus, the notice that is required under subsection (c) is notice that the action has been taken (i.e., the corporate decision has been made), thereby laying the foundation for an action in equity by a nonconsenting shareholder to enjoin consummation of the corporate decision. Notice that an action will be taken at a future date will not trigger the running of the ten-day period, because such an intention may be too speculative to support equitable review of the action.

The consent required by this section may be given by proxy under 15 Pa.C.S. § 1759.

Under 15 Pa.C.S. § 1504(c), the restrictions and provisions that this section authorizes to be set forth in the bylaws may also be set forth in the articles.

In the case of a registered corporation, action by partial consent must be authorized in the
articles, rather than the bylaws, and the ten-day mandatory delay period of subsection (c) is not
applicable. See 15 Pa.C.S. § 2524(b). The mandatory delay does not apply to registered
corporations because the shareholders of a registered corporation are likely to have at least
informal notice of the solicitation of consents or the possibility that action may be taken by
consent.

The corporation must keep a record of all consents under this section, regardless of their
form, because they are required to be “filed” with the secretary of the corporation.

Subsection (a) was amended by the GAA Amendments Act of 2013 to clarify its wording.
The changes were patterned after similar changes made to 15 Pa.C.S. § 1727(b) and were
intended as a codification of existing law and practice.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors
under this section with respect to the bylaws must be taken by the full board, and not by a
committee thereof.

Section 304(a)(2) of the General Association Act of 1988 provides that this section and as
much of the GAA as may be necessary to make this section operative shall be effective
retroactive to January 27, 1987, insofar as relates to the implementation of former 42 Pa.C.S. Ch.
83F (relating to corporate directors' liability). See 15 P.S. § 20304(a)(2).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“business corporation”
“bylaws”
“entitled to vote”
“relax”
“shareholders”
“unless otherwise restricted”
“voting”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“action”
“record form”
“signed”

Chapter 19
Fundamental Changes
Subchapter A
Preliminary Provisions

§ 1906. Special treatment of holders of shares of same class or series.

(a) General rule. – Except as otherwise restricted in the articles, a plan may contain a
provision classifying the holders of shares of a class or series into one or more separate groups
by reference to any facts or circumstances that are not manifestly unreasonable and providing
mandatory treatment for shares of the class or series held by particular shareholders or groups of
shareholders that differs materially from the treatment accorded other shareholders or groups of
shareholders holding shares of the same class or series (including a provision modifying or
rescinding rights previously created under this section) if:

(1) (i) such provision is specifically authorized by a majority of the votes cast by
all shareholders entitled to vote on the plan, as well as by a majority of the votes cast
by any class or series of shares any of the shares of which are so classified into
groups, whether or not such class or series would otherwise be entitled to vote on the
plan; and

(ii) the provision voted on specifically enumerates the type and extent of the
special treatment authorized; or

(2) under all the facts and circumstances, a court of competent jurisdiction finds
such special treatment is undertaken in good faith, after reasonable deliberation and is in
the best interest of the corporation.

(b) Statutory voting rights upon special treatment. – Except as provided in subsection (c),
if a plan contains a provision for special treatment, each group of holders of any outstanding
shares of a class or series who are to receive the same special treatment under the plan shall be
entitled to vote as a special class in respect to the plan regardless of any limitations stated in the
articles or bylaws on the voting rights of any class or series.

(c) Dissenters rights upon special treatment. – If any plan contains a provision for special
treatment without requiring for the adoption of the plan the statutory class vote required by
subsection (b), the holder of any outstanding shares the statutory class voting rights of which are
so denied, who objects to the plan and complies with Subchapter D of Chapter 15 (relating to
dissenters rights), shall be entitled to the rights and remedies of dissenting shareholders provided
in that subchapter.

(c.1) Determination of groups.—For purposes of applying subsections (a)(1) and (b), the
determination of which shareholders are part of each group receiving special treatment shall be
made as of the record date for shareholder action on the plan.
(d) Exceptions. – This section shall not apply to:

(1) The creation or issuance of securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights or obligations authorized by section 2513 (relating to desperate treatment of certain persons).

(2) A provision of a plan that offers to all holders of shares of a class or series the same option to elect certain treatment.

(3) A plan that contains an express provision that this section shall not apply or that fails to contain an express provision that this section shall apply. [The shareholders of a corporation that proposes a plan to which this section is not applicable by reason of this paragraph shall have the remedies contemplated by section 1105 (relating to restriction on equitable relief).]

(4) A provision of a plan that treats all of the holders of a particular class or series of shares differently from the holders of another class or series. A provision of a plan that treats the holders of a class or series of shares differently from the holders of another class or series of shares shall not constitute a violation of section 1521(d) (relating to authorized shares).

(e) Definition – As used in this section, the term “plan” includes:

(1) an amendment of the articles that effects a reclassification of shares, whether or not the amendment is accompanied by a separate plan of reclassification; and

(2) a resolution recommending that the corporation dissolve voluntarily adopted under section 1972(a) (relating to proposal of voluntary dissolution).

Amended Committee Comment (2013):

This section authorizes “black hat – white hat” treatment of shareholders, and the facts or circumstances forming the basis for special treatment of shareholders are specifically intended to include the identity of the individual shareholders. Commonplace examples are provisions providing marketable securities to non-management holders and earn-out securities to continuing management in connection with the acquisition of a corporation. Any classification of shareholders, however, is subject to the requirement that it not be “manifestly unreasonable,” which is intended to import the standard of 15 Pa.C.S. § 1529(c)(4) and to prohibit special treatment on the basis of race, sex, religion, etc.

No reference to this section or to the concept of special treatment has been included in 15 Pa.C.S. § 1521 since the concept is intended by definition to be exogenous to the shares. A provision in the articles that distinguishes among the holders of a class or series of shares creates
a de facto subclass or subseries which is analytically different from the concept of special
treatment. The adoption of such a provision by amendment will involve special treatment if the
persons for whom different treatment is prescribed are already shareholders, but after the
differing treatment has been included in the articles it no longer constitutes special treatment.

If there is any group of holders of a class or series under subsection (b), then the entire
class or series has a statutory class vote under subsection (a)(1)(i) (unless subsection (a)(2) is
satisfied), in addition to the group votes under subsection (b) (unless one of the exemptions in
subsections (c) and (d) is applicable). Where, for example, an amendment of the articles is
proposed to reclassify the shares of a class or series so that the holders of shares of the class or
series are allotted a new fixed rate preferred stock unless they are employees, in which case they
may elect to receive instead an earn-out (variable face amount) security, there will be two groups
within the meaning of subsection (b): (1) the employee holders and (2) all other holders of the
class or series. Subsection (b) will be applicable separately to each group, and the board of
directors could, for example, provide for a separate vote by group (1) (thus depriving them of
dissenters rights) and no separate vote for group (2) (thus according them dissenters rights).
Both group (1) and group (2) would, however, vote together as a single class under subsection
(a)(1), unless the board of directors were willing to gamble that a court would agree that the
standards of paragraph (a)(2) are satisfied.

In the case of a merger or other transaction in which dissenters rights will be available even
if the plan does not provide for special treatment, the decision to use that form of transaction is
effectively a choice to provide dissenters rights under subsection (c). If a class vote is provided
under subsection (b) in such a situation, that class vote will not deprive the shareholders of the
dissenters rights granted independently by another provision of the 1988 BCL.

The use of the term “court of competent jurisdiction” rather than “court” in paragraph
(a)(2) implies that the requirement of paragraph (a)(2) is not a condition precedent, but may be
satisfied, e.g., by a finding of a court which has been asked to enjoin the transaction as
unauthorized under subsection (a). Paragraph (a)(2), of course, is applicable only if paragraph
(a)(1) is not satisfied. If the procedures in paragraph (a)(1) are followed, the transaction will be
subject to challenge only under 15 Pa.C.S. § 1105.

The procedures of this section will apply only if an amendment or plan expressly provides
that this section is to apply. If this section does not apply, the statutory requirements relating to
fraud or fundamental unfairness (as modified by 15 Pa.C.S. § 1521(b)(1)(i)) will be exclusively
applicable. See 15 Pa.C.S. §§ 1105 and 1521(d).

Subsection (c.1) was added by the GAA Amendments Act of 2013 to confirm that the
record date provisions in 15 Pa.C.S. § 1763 will apply under this section in the usual way. The
fact that the identity of the shareholders receiving a certain form of special treatment changes
between the record date and the effective date of a plan will not invalidate an otherwise valid
approval of the plan.
The GAA Amendments Act of 2013 deleted the former last sentence of paragraph (d)(3) which provided that “The shareholders of a corporation that proposes a plan to which this section is not applicable by reason of this paragraph shall have the remedies contemplated by section 1105 (relating to restriction on equitable relief).” The Committee was concerned that the quoted sentence could be read to provide that remedies might be available under 15 Pa.C.S. § 1105 without regard to whether the tests in section 1105 would otherwise justify the grant of a remedy. Deletion of the quoted sentence will have no substantive effect because 15 Pa.C.S. § 1105 applies in any event to all plans.

If this section is applicable to a plan, it is within the discretion of the board of directors to choose whether statutory class voting rights under subsection (b) or dissenters rights under subsection (c) will be available. The dissenters rights granted by subsection (c) are not subject to the “statutory market” exceptions of 15 Pa.C.S. § 1571(b)(1).

A group may be created that consists of only a single shareholder, since under 1 Pa.C.S. § 1902 (relating to number; gender; tense) words in the singular include the plural and vice versa.

The GAA Amendments Act of 1990 added both the reference in subsection (a) to a provision of the articles restricting the use of special treatment and also subsection (d)(2) and (3). The GAA Amendments Act of 1990 also clarified the references to groups in subsection (a)(1)(i) and (b). Those amendments were effective retroactive to October 1, 1989 which was the general effective date of the 1988 BCL and thus also the date that special treatment was first authorized under Pennsylvania law. See 15 P.S. § 21404(a)(2).

Subsection (d)(4) was added by the GAA Amendments Act of 2001 and was intended as a codification of existing law and practice.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”
“articles”
“bylaws”
“entitled to vote”
“except as otherwise restricted” (see “unless otherwise restricted”)
“issue”
“plan”
“reclassification”
“shareholders”
“shares”
“special treatment”

See also the definition of “voting” in 15 Pa.C.S. § 1103.
Subsection (e) supplements the definition of “plan” in 15 Pa.C.S. § 1103 just for purposes of this section.

The term “obligation” used in this section is defined in 15 Pa.C.S. § 102.

§ 1907. Purpose of fundamental transactions.

A transaction under this chapter does not require an independent business purpose in order for the transaction to be lawful.

Committee Comment (2013):

This section rejects, with respect to all fundamental transactions, the dictum in Barter v. Diodoardo, 771 A.2d 835, 840 (Pa. Super. 2001), that there must be a business purpose for a merger in order to sustain its legality under Pennsylvania law. It is intended that the rule on this subject established in Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983), will be applicable instead.

In Weinberger, the Supreme Court of Delaware rejected the requirement of an independent business purpose for a merger as that requirement had developed in its previous decisions in Singer v. Magnavox Co., 380 A. 969 (Del. 1977), Tanzer v. International General Industries, Inc., 379 A.2d 1121 (Del. 1977), and Roland International Corp. v. Najjar, 407 A.2d 1032 (Del. 1979). The valuation standard articulated in Weinberger was previously incorporated into the definition of “fair value” in 15 Pa.C.S. § 1572. This section confirms that the independent business purpose test rejected by Weinberger is also inapplicable in Pennsylvania.

To the extent that the decisions in In re Jones & Laughlin Steel Corp., 412 A.2d 1099 (Pa. 1980), and Dower v. Mosser Industries, Inc., 648 F.2d 183 (3d Cir. 1981), both of which were decided before Weinberger, are inconsistent with this section, they are abrogated.

§ 1908. Submission of matters to shareholders.

A business corporation may agree, in record form, to submit an amendment or plan to its shareholders whether or not the board of directors determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the shareholders reject or vote against it, regardless of whether the board of directors changes its recommendation. If a corporation so agrees to submit a matter to its shareholders, the matter is deemed to have been validly adopted by the corporation when it has been approved by the shareholders.

Committee Comment (2013):
This section adopts the Delaware approach of permitting a corporation to agree to a “force
the vote” provision. Under this section directors can agree to submit a fundamental transaction
or other matter to the shareholders for approval even if they later determine that they no longer
recommend it.

In *Smith v. Van Gorkom*, 488 A.2d 858, the Delaware Supreme Court interpreted 6 Del.
Code § 251(b) to mean that a board considering a merger agreement “had but two options: (1) to
proceed with the merger and the stockholder meeting, with the Board’s approval; or (2) to
rescind its agreement …, withdraw its approval of the merger, and notify its stockholders.” *Id.* at
888. The court also stated that “in the merger context, a director may not … leav[e] to the
shareholders alone the decision to approve or disapprove the [merger] agreement.” *Id.* at 873
(citing Beard v. Elster, 160 A.2d 731, 737 (1960)).

In response to the quoted language from *Smith v. Van Gorkom*, Delaware amended 6 Del.
Code § 251(c) in 1998 to allow a merger agreement to be submitted to the stockholders without a
recommendation of the board. Delaware subsequently deleted that language from § 251(c) in
2003 and adopted a new section 146 which is not specific to mergers and permits any matter to
be submitted to the stockholders without a recommendation of the board.

The first sentence is patterned after 6 Del. Code § 146. The second sentence has been
added to the Delaware provision to make clear how this section relates to the “two house”
requirement of 15 Pa.C.S. § 1924(a) and similar sections.

This section is not intended to relieve the board of directors of its duty to consider carefully
a proposed transaction and the interests of the shareholders.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”
“board of directors”
“business corporation”
“plan”
“shareholders”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

Subchapter B
Amendment of Articles

§ 1911. Amendment of articles authorized.
(a) General rule – A business corporation, in the manner provided in this subchapter, may from time to time amend its articles for one or more of the following purposes:

(1) To adopt a new name, subject to the restrictions provided in this subpart.

(2) To modify any provision of the articles relating to its term of existence.

(3) To change, add to or diminish its purposes or to set forth different or additional purposes.

(4) To cancel or otherwise affect the right of holders of the shares of any class or series to receive dividends that have accrued but have not been declared or to otherwise effect a reclassification of or otherwise affect the substantial rights of the holders of any shares, including, without limitation, by providing special treatment of shares held by any shareholder or group of shareholders [as authorized by, and subject to the provisions of,] consistent with section 1906 (relating to special treatment of holders of shares of same class or series).

(5) To restate the articles in their entirety.

(6) In any and as many other respects as desired.

(b) Exceptions. – An amendment adopted under this section shall not amend articles in such a way that as so amended they would not be authorized by this subpart as original articles of incorporation except that:

(1) Restated articles shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), state the address of the current instead of the initial registered office of the corporation in this Commonwealth and need not state the names and addresses of the incorporators.

(2) The corporation shall not be required to revise any other provision of its articles if the provision is valid and operative immediately prior to the filing of the amendment in the Department of State.

(c) Cross reference. – See section 1521(b)(1)(i) (relating to provisions specifically authorized).

Amended Committee Comment (2013):

The “restrictions provided in this subpart” referred to in paragraph (a)(1) appear in 15 Pa.C.S. § 1303 et seq.
Prior to its amendment by the GAA Amendments Act of 2013, subsection (a)(4) stated that an amendment could provide for special treatment “as authorized by, and subject to the provisions of, section 1906.” While 15 Pa.C.S. § 1906(a)-(c) provides a procedure under which special treatment may be effected, 15 Pa.C.S. § 1906(d)(3) makes clear that the procedures in 15 Pa.C.S. § 1906(a)-(c) are optional and that a corporation may choose not to use those procedures. The 2013 amendment to subsection (a)(4) was intended to avoid any implication that special treatment may be included in an amendment only if authorized under the procedures in 15 Pa.C.S. § 1906(a)-(c) and to confirm that the provisions of 15 Pa.C.S. § 1906(d) apply to amendments.

Subsection (b)(2) was intended at the time of its adoption in 1988 as a codification of existing law.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”
“articles”
“business corporation”
“incorporators”
“reclassification”
“registered office”
“shareholder”
“shares”
“special treatment”

§ 1913. Notice of meeting of shareholders.

(a) General rule.—[Written notice] Notice in record form of the meeting of shareholders of a business corporation that will act on the proposed amendment [shall] must be given to each shareholder entitled to vote thereon. [There shall be included in, or enclosed with, the notice a copy of] The notice must include the proposed amendment or a summary of the changes to be effected thereby and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable, [a copy] the text, of that subchapter.

(b) Cross [reference] references.—See Subchapter A of Chapter 17 (relating to notice and meetings generally) and section 2528 (relating to notice of shareholder meetings).

Amended Committee Comment (2013):

As originally enacted in 1988, this section applied to a shareholders meeting “called for the purpose of considering” a proposed amendment. The GAA Amendments Act of 1992 amended this section to apply to any meeting “that will act on” an amendment to make clear that this
section applies not just to special meetings called for the express purpose of considering an amendment, but also to a regularly scheduled annual meeting at which an amendment is to be considered. A similar change was made by the GAA Amendments Act of 1992 in 15 Pa.C.S. § 1704(b).

The requirement that a copy of 15 Pa.C.S. Subch. 15D be supplied with the notice does not apply to certain registered corporations. See 15 Pa.C.S. § 2512.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”
“business corporation”
“entitled to vote”
“shareholders”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

Subchapter C
Merger, Consolidation, Share Exchange and Sale of Assets

§ 1922. Plan of merger or consolidation.

(a) Preparation of plan – A plan of merger or consolidation, as the case may be, shall be prepared, setting forth:

(1) The terms and conditions of the merger or consolidation.

(2) If the surviving or new corporation is or is to be a domestic business corporation:

(i) any changes desired to be made in the articles, which may include a restatement of the articles in the case of a merger; or

(ii) in the case of a consolidation, all of the statements required by this subpart to be set forth in restated articles.

(3) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving or new corporation, or of canceling some or all of the shares of a corporation, as the case may be, and, if any of the shares of any of the corporations that are parties to the merger or consolidation are not to be canceled or converted solely into shares or other securities or obligations of the surviving or new
corporation, the shares or other securities or obligations of any other person or cash, property or rights that the holders of such shares are to receive in exchange for, or upon conversion of, such shares, and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property or rights may be in addition to or in lieu of the shares or other securities or obligations of the surviving or new corporation.

(4) Any provisions desired providing special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series).

(5) Such other provisions as are deemed desirable.

(b) Post-adoption amendment.—A plan of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the plan at any time prior to its effective date, except that an amendment made subsequent to the adoption of the plan by the shareholders of any constituent domestic business corporation shall not change:

(1) The amount or kind of shares, obligations, cash, property or rights to be received in exchange for or on conversion of all or any of the shares of the constituent domestic business corporation adversely to the holders of those shares.

(2) Any provision of the articles of the surviving or new corporation as it is to be in effect immediately following consummation of the merger or consolidation except provisions that may be amended without the approval of the shareholders under section 1914(c)(2) (relating to adoption of amendments).

(3) Any of the other terms and conditions of the plan if the change would adversely affect the holders of any shares of the constituent domestic business corporation.

(c) Proposal.—Except where the approval of the board of directors is unnecessary under this subchapter, every merger or consolidation shall be proposed in the case of each domestic business corporation by the adoption by the board of directors of a resolution approving the plan of merger or consolidation. Except where the approval of the shareholders is unnecessary under this subchapter, the board of directors shall direct that the plan be submitted to a vote of the shareholders entitled to vote thereon at a regular or special meeting of the shareholders.

(d) Party to plan or transaction.—A corporation, partnership, business trust or other association that approves a plan in its capacity as a shareholder or creditor of a merging or consolidating corporation, or that furnishes all or part of the consideration contemplated by a plan, does not thereby become a party to the plan or the merger or consolidation for the purposes of this subchapter.
(e) Reference to outside facts.—Any of the terms of a plan of merger or consolidation may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by a party to the plan or a representative of a party to the plan.

Amended Committee Comment (2013):

A plan of merger or consolidation does not afford a corporation an opportunity to effect a unilateral change in the rights of parties who are not shareholders within the meaning of 15 Pa.C.S. § 1103, e.g., option and debt-to-equity conversion right holders. The way those types of parties will be affected by a corporate fundamental change is dependent upon the particular language of the contract documents embodying the option, etc. See, e.g., Broad v. Rockwell International Corp., 642 F.2d 929 (5th Cir. 1981) (en banc), cert. denied, 454 U.S. 965 (1981). See also, e.g., Bratton, The Economics and Jurisprudence of Convertible Bonds, 1984 Wisc. L. Rev. 667.

The addition by the GAA Amendments Act of 2013 of the express references in subsection (a) to canceling shares in a merger was intended as a codification of existing law and practice.

The restriction in subsection (b)(1) is not intended to prohibit the use of consideration authorized by subsection (e), e.g., an exchange ratio dependent upon future market prices, appraisal of assets, tax audit, etc., or other contingent event, including an event whose contingency is under the control of the board of directors. The restriction is intended only to prohibit a change in the language of the applicable formula or delegation. Since subsection (b)(1) is limited to adverse changes, it does not apply to a simple increase in the amount or value of the consideration to be received by shareholders.

The manner in which subsection (b)(3) will apply will depend on the terms of the plan. For example, an amendment that deletes a condition to closing a transaction may adversely affect the shareholders and thus be prohibited under subsection (b)(3). However, if the plan itself provides for the possibility of a waiver of the same condition, such a waiver would not require an “amendment” of the plan and should not be held to implicate subsection (b)(3) both for that reason and also because the possibility of the waiver should be deemed to have been approved by the shareholders as part of their approval of the plan.

As originally enacted in 1988, subsection (b) could have been read to apply not only to any domestic business corporation that was a party to a plan of merger or consolidation, but also to any foreign corporation that was a party to that plan, for example, by prohibiting an amendment that would benefit the shareholders of a constituent domestic corporation but that would adversely affect shareholders of a foreign constituent corporation. That result was not intended, and was contrary to the general approach of Subchapter 19C which presumes that the substantive rights of shareholders of a foreign corporation that is a party to a merger or consolidation with a
domestic corporation will be governed by law of the state in which the foreign corporation is incorporated. See 15 Pa.C.S. § 1925. The reason for looking only to the laws of the state in which a constituent corporation is incorporated is to avoid possible conflicts between the requirements of Pennsylvania law and the law of the other state. In a merger just between two corporations incorporated in another state, the shareholders of the foreign corporations involved would have whatever rights, more or less, that the law of the other state provided, and there is no reason why having a Pennsylvania corporation be a party to the merger or consolidation should increase or diminish their rights. The GAA Amendments Act of 2001 accordingly added the express references to domestic business corporations to make clear that subsection (b) is concerned only with the rights of the shareholders of Pennsylvania corporations.


See the first paragraph of the Amended Committee Comment to 15 Pa.C.S. § 1929 with respect to the treatment of triangular mergers generally under Subchapter 19C.

Under 15 Pa.C.S. § 1731(a)(2)(i), any action that may be taken by the board of directors under this section that does not involve the submission of a plan to the shareholders may be taken by a duly authorized committee of the board, subject to compliance by the committee with any procedure applicable to action by the full board.

Since the term “action” is defined in 15 Pa.C.S. § 102 to include failure to act, the outside facts that subsection (e) provides may be referred to in a plan will include the fact of a failure to act. For example, a provision in a plan might require that a regulatory agency fail to object before the plan becomes operative.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“board of directors”
“domestic business corporation” (see “business corporation”)
“entitled to vote”
“obligations”
“plan”
“shareholders”
“shares”
“special treatment”

The term “association” used in this section is defined in 15 Pa.C.S. § 102.

§ 1923. Notice of meeting of shareholders.
(a) General rule.—[Written notice] Notice in record form of the meeting of shareholders
that will act on the proposed plan [shall] must be given to each shareholder of record, whether or
not entitled to vote thereon, of each domestic business corporation that is a party to the merger or
consolidation. [There shall be included in, or enclosed with, the notice a copy of] The notice
must include or be accompanied by the proposed plan or a summary thereof [and, if]. If
Subchapter D of Chapter 15 (relating to dissenters rights) is applicable to the holders of shares of
any class or series, [a copy] the text of that subchapter and of section 1930 (relating to dissenters
rights) [shall] must be furnished to the holders of shares of that class or series. If the surviving
or new corporation will be a nonregistered corporation, the notice [shall] must state that a copy
of its bylaws as they will be in effect immediately following the merger or consolidation will be
furnished to any shareholder on request and without cost.

(b) Cross references.—See Subchapter A of Chapter 17 (relating to notice and meetings
generally) and [section] sections 2512 (relating to dissenters rights procedure) and 2528 (relating
to notice of shareholder meetings).

Amended Committee Comment (2013):

As originally enacted in 1988, this section applied to a shareholders meeting “called for the
purpose of considering” a merger or consolidation. The GAA Amendments Act of 1992
amended this section to apply to any meeting “that will act on” an amendment to make clear that
this section applies not just to special meetings called for the express purpose of considering a
merger or consolidation, but also to a regularly scheduled annual meeting at which a merger or
consolidation is to be considered. A similar change was made by the GAA Amendments Act of

Prior to the amendment of this section by the GAA Amendments Act of 1992, notice was
required to be given to the shareholders of each domestic business corporation that was a party to
the plan of merger. The reason for the change to the current language is described in the first
paragraph of the Amended Committee Comment to 15 Pa.C.S. § 1929.

The requirement that a copy of 15 Pa.C.S. Subch. 15D be supplied with the notice does not
apply to certain registered corporations. See 15 Pa.C.S. § 2512.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“bylaws”
“domestic business corporation” (see “business corporation”)
“entitled to vote”
“nonregistered corporation”
“plan”
“shareholder”
The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

§ 1931. Share exchanges.

(a) General rule.—All the outstanding shares of one or more classes or series of a domestic business corporation, designated in this section as the exchanging corporation, may, in the manner provided in this section, be acquired by any person, designated in this section as the acquiring person, through an exchange of all the shares pursuant to a plan of exchange. The plan of exchange may also provide for the conversion of any other shares of any other class or series of the exchanging corporation to be canceled or converted into shares, other securities or obligations of any person or cash, property or rights. The procedure authorized by this section shall not be deemed to limit the power of any person to acquire all or part of the shares or other securities of any class or series of a corporation through a voluntary exchange or otherwise by agreement with the holders of the shares or other securities.

(b) Plan of exchange.—A plan of exchange shall be prepared, setting forth:

(1) The terms and conditions of the exchange.

(2) The manner and basis of canceling the shares of the exchanging corporation or exchanging or converting the shares of the exchanging corporation into shares or other securities or obligations of the acquiring person, and, if any of the shares of the exchanging corporation are not to be exchanged or converted solely into shares or other securities or obligations of the acquiring person, the shares or other securities or obligations of any other person or cash, property or rights that the holders of the shares of the exchanging corporation are to receive in exchange for, or upon conversion of, the shares and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property and rights may be in addition to or in lieu of the shares or other securities or obligations of the acquiring person.

(3) Any changes desired to be made in the articles of the exchanging corporation, which may include a restatement of the articles.

(4) Any provisions desired providing special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series). Notwithstanding subsection (a), a plan that provides special treatment may affect less than all of the outstanding shares of a class or series.

(5) Such other provisions as are deemed desirable.
(c) Proposal and adoption.—The plan of exchange shall be proposed and adopted and may be amended after its adoption and terminated by the exchanging corporation in the manner provided by this subchapter for the proposal, adoption, amendment and termination of a plan of merger except section 1924(b) (relating to adoption by board of directors). There shall be included in, or enclosed with, the notice of the meeting of shareholders to act on the plan a copy or a summary of the plan and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable, a copy of the subchapter and of subsection (d). The holders of any class of shares to be exchanged or converted pursuant to the plan of exchange shall be entitled to vote as a class on the plan if they would have been entitled to vote on a plan of merger that affects the class in substantially the same manner as the plan of exchange.

(d) Dissenters rights in share exchanges.—Any holder of shares that are to be canceled, exchanged or converted pursuant to a plan of exchange who objects to the plan and complies with the provisions of Subchapter D of Chapter 15 shall be entitled to the rights and remedies of dissenting shareholders therein provided, if any. See section 1906(c) (relating to dissenters rights upon special treatment).

(e) Articles of exchange.—Upon adoption of a plan of exchange, as provided in this section, articles of exchange shall be executed by the exchanging corporation and shall set forth:

1. The name and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the location of the registered office, including street and number, if any, of the exchanging corporation.

2. If the plan is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

3. The manner in which the plan was adopted by the exchanging corporation.

4. Except as provided in section 1901 (relating to omission of certain provisions from filed plans), the plan of exchange.

The articles of exchange shall be filed in the Department of State. See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(f) Effective date.—Upon the filing of articles of exchange in the department or upon the effective date specified in the plan of exchange, whichever is later, the plan shall become effective.

(g) Effect of plan.—Upon the plan of exchange becoming effective, the shares of the exchanging corporation that are, under the terms of the plan, to be canceled, converted or exchanged shall cease to exist or shall be converted or exchanged. The former holders of the
shares shall thereafter be entitled only to the shares, other securities or obligations or cash, property or rights into which they have been converted or for which they have been exchanged in accordance with the plan, and the acquiring person shall be the holder of the shares of the exchanging corporation stated in the plan to be acquired by such person. The articles of incorporation of the exchanging corporation shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the plan of exchange.

(h) Special requirements.—If any provision of the articles or bylaws of an exchanging domestic business corporation adopted before October 1, 1989, requires for the proposal or adoption of a plan of merger, consolidation or asset transfer a specific number or percentage of votes of directors or shareholders or other special procedures, the plan of exchange shall not be proposed by the directors or adopted by the shareholders without that number or percentage of votes or compliance with the other special procedures.

(i) Reference to outside facts.—Any of the terms of a plan of exchange may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control or determinations made by a party to the plan or a representative of a party to the plan.

Amended Committee Comment (2013):

This section permits triangular merger transactions to be effected without the need to utilize a third corporation.

The second sentence of subsection (a) was added by the GAA Amendments Act of 2001 to make clear what had been implicit in subsection (b)(2) since this section was first enacted in 1988.

See the first paragraph of the Committee Comment to 15 Pa.C.S. § 1922.

Prior to the enactment of the GAA Amendments Act of 2001, subsection (b)(2) required that a plan of exchange set forth the “manner and basis of converting the shares of the exchanging corporation.” The Committee concluded that referring only to “converting” the shares of the exchanging corporation might create the incorrect impression that those shares would always cease to exist as a result of being converted in the share exchange. That result, of course, would defeat the purpose of a share exchange, which is for the acquiring corporation to end up owning the shares of the exchanging corporation. The GAA Amendments Act of 2001 accordingly added the reference to the manner and basis of “exchanging” the shares of the exchanging corporation. The purpose of that amendment was simply to confirm the existing practice and understanding as to the effect of a share exchange, and no adverse inference should be drawn with regard to share exchanges consummated prior to the effectiveness of that amendment.
The reference in subsection (c) to the merger procedures of this subchapter is intended to incorporate also other procedural provisions of the 1988 BCL applicable to a transaction governed by the merger provisions of this subchapter, e.g., 15 Pa.C.S. § 1922(d).

The requirement in subsection (c) that a copy of 15 Pa.C.S. Subch. 15D be supplied with the notice of the meeting of shareholders does not apply to certain registered corporations. See 15 Pa.C.S. § 2512.

Dissenters rights conferred by the first sentence of subsection (d) are subject to the “market out” exception of 15 Pa.C.S. § 1571(b)(1).

As to subsection (h), see 15 Pa.C.S. § 1106(b)(3).

Under 15 Pa.C.S. § 1731(a)(2)(i), any action that may be taken by the board of directors under this section that does not involve the submission of a plan to the shareholders may be taken by a duly authorized committee of the board, subject to compliance by the committee with any procedure applicable to action by the full board.

Under 15 Pa.C.S. § 135(c)(1), only an actual street address or rural route box number, and not a post office box number, is acceptable as a registered office address. The articles of exchange are also required by 15 Pa.C.S. § 135(c)(2) to state the county in which the registered office is located.

The cross reference to 15 Pa.C.S. § 135 in subsection (e) reflects a change in style by the Committee. Similar cross references will be added throughout Title 15 as the opportunity arises. In the meantime, no contrary implication is intended with respect to sections lacking that cross reference and 15 Pa.C.S. § 135 will continue to be applicable to all filings under Title 15.

Since the term “action” is defined in 15 Pa.C.S. § 102 to include failure to act, the outside facts that subsection (i) provides may be referred to in a plan will include the fact of a failure to act. For example, a provision in a plan might require that a regulatory agency fail to object before the plan becomes operative.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“department”
“domestic business corporation” (see “business corporation”)
“entitled to vote”
“obligations”
“plan”
“registered office”
§ 1957. Effect of division.

(a) Multiple resulting corporations.—Upon the division becoming effective, the dividing corporation shall be subdivided into the distinct and independent resulting corporations named in the plan of division and, if the dividing corporation is not to survive the division, the existence of the dividing corporation shall cease. The resulting corporations, if they are domestic business corporations, shall not thereby acquire authority to engage in any business or exercise any right that a corporation may not be incorporated under this subpart to engage in or exercise. Any resulting foreign business corporation that is stated in the articles of division to be a qualified foreign business corporation shall be a qualified foreign business corporation under Article D (relating to foreign business corporations), and the articles of division shall be deemed to be the application for a certificate of authority and the certificate of authority issued thereon of the corporation.

(b) Property rights; allocations of assets and liabilities.—

(1) (i) All the property, real, personal and mixed, and franchises of the dividing corporation, and all debts due on whatever account to it, including subscriptions for shares and other choses in action belonging to it, shall (except as otherwise provided in paragraph (2)), to the extent allocations of assets are contemplated by the plan of division, be deemed without further action to be allocated to and vested in the resulting corporations on such a manner and basis and with such effect as is specified in the plan, or per capita among the resulting corporations, as tenants in common, if no specification is made in the plan, and the title to any real estate, or interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the division.

(ii) Upon the division becoming effective, the resulting corporations shall each thenceforth be responsible as separate and distinct corporations only for such liabilities as each corporation may undertake or incur in its own name but shall be liable for the liabilities of the dividing corporation in the manner and on the basis provided in subparagraphs (iv) and (v).

(iii) Liens upon the property of the dividing corporation shall not be impaired by the division.
(iv) \[To\] Except as provided in section 1952(g) (relating to proposal and
adoption of plan of division), to the extent allocations of liabilities are contemplated
by the plan of division, the liabilities of the dividing corporation shall be deemed
without further action to be allocated to and become the liabilities of the resulting
corporations on such a manner and basis and with such effect as is specified in the
plan; and one or more, but less than all, of the resulting corporations shall be free of
the liabilities of the dividing corporation to the extent, if any, specified in the plan, if
in either case:

(A) no fraud on minority shareholders or shareholders without voting
rights or violation of law shall be effected thereby; and

(B) the plan does not constitute a fraudulent transfer under 12 Pa.C.S.
Ch. 51 (relating to fraudulent transfers).

(v) If the conditions in subparagraph (iv) for freeing one or more of the
resulting corporations from the liabilities of the dividing corporation or for allocating
some or all of the liabilities of the dividing corporation are not satisfied, the liabilities
of the dividing corporation as to which those conditions are not satisfied shall not be
affected by the division nor shall the rights of creditors thereunder be impaired by the
division and any claim existing or action or proceeding pending by or against the
corporation with respect to those liabilities may be prosecuted to judgment as if the
division had not taken place, or the resulting corporations may be proceeded against
or substituted in place of the dividing corporation as joint and several obligors on
those liabilities, regardless of any provision of the plan of division apportioning the
liabilities of the dividing corporation.

(vi) The conditions in subparagraph (iv) for freeing one or more of the
resulting corporations from the liabilities of the dividing corporation and for
allocating some or all of the liabilities of the dividing corporation shall be
conclusively deemed to have been satisfied if the plan of division has been approved
by the Department of Banking, the Insurance Department or the Pennsylvania Public
Utility Commission in a final order issued after August 21, 2001, that has become not
subject to further appeal.

(2) (i) The allocation of any fee or freehold interest or leasehold having a
remaining term of 30 years or more in any tract or parcel of real property situate in
this Commonwealth owned by a dividing corporation (including property owned by a
foreign business corporation dividing solely under the law of another jurisdiction) to
a new corporation resulting from the division shall not be effective until one of the
following documents is filed in the office for the recording of deeds of the county, or
each of them, in which the tract or parcel is situated:
(A) A deed, lease or other instrument of confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the articles of division.

(C) A copy of the articles of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in such county of the corporation as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to an allocation of ownership of any motor vehicle, trailer or semitrailer to a new corporation under this section or under a similar law of any other jurisdiction but any such allocation shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

(3) It shall not be necessary for a plan of division to list each individual asset or liability of the dividing corporation to be allocated to a new corporation so long as those assets and liabilities are described in a reasonable manner.

(4) Each new corporation shall hold any assets and liabilities allocated to it as the successor to the dividing corporation, and those assets and liabilities shall not be deemed to have been assigned to the new corporation in any manner, whether directly or indirectly or by operation of law.

(c) Taxes.—Any taxes, interest, penalties and public accounts of the Commonwealth claimed against the dividing corporation that are settled, assessed or determined prior to or after the division shall be the liability of any of the resulting corporations and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of all the corporations. Upon the application of the dividing corporation, the Department of Revenue, with the concurrence of the Office of Employment Security of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting corporations from liability and liens for all taxes, interest, penalties and public accounts of the dividing corporation due the Commonwealth for periods prior to the effective date of the division if those departments are satisfied that the public revenues will be adequately secured.

(d) Articles of surviving corporation.—The articles of incorporation of the surviving corporation, if there be one, shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the plan of division.
(e) Articles of new corporations.—The statements that are set forth in the plan of
division with respect to each new domestic business corporation and that are required or
permitted to be set forth in restated articles of incorporation of corporations incorporated under
this subpart, or the articles of incorporation of each new corporation set forth therein, shall be
deemed to be the articles of incorporation of each new corporation.

(f) Directors and officers.—Unless otherwise provided in the plan, the directors and
officers of the dividing corporation shall be the initial directors and officers of each of the
resulting corporations.

(g) Disposition of shares.—Unless otherwise provided in the plan, the shares and other
securities or obligations, if any, of each new corporation resulting from the division shall be
distributable to:

1. the surviving corporation, if the dividing corporation survives the division; or
2. the holders of the common or other residuary shares of the dividing corporation
   pro rata, in any other case.

(h) Conflict of laws.—It is the intent of the General Assembly that:

1. The effect of a division of a domestic business corporation shall be governed
   solely by the laws of this Commonwealth and any other jurisdiction under the laws of
   which any of the resulting corporations is incorporated.
2. The effect of a division on the assets and liabilities of the dividing corporation
   shall be governed solely by the laws of this Commonwealth and any other jurisdiction
   under the laws of which any of the resulting corporations is incorporated.
3. The validity of any allocations of assets or liabilities by a plan of division of a
domestic business corporation, regardless of whether or not any of the new corporations is
a foreign business corporation, shall be governed solely by the laws of this
Commonwealth.
4. In addition to the express provisions of this subsection, this subchapter shall
otherwise generally be granted the protection of full faith and credit under the Constitution
of the United States.

Amended Committee Comment (2013):

It is intended that this section will be applied in a manner that is consistent with the
analogous rule on the effects of a merger in 15 Pa.C.S. § 1929. In particular, it is intended that
the holding in *Sante Fe Energy Resources, Inc. v. Manners*, 635 A.2d 648 (Pa. Super. 1993), that
the new or surviving corporation in a merger or consolidation simply succeeds to the assets of each constituent corporation and those assets are neither assigned nor transferred to the successor corporation, will apply by analogy to a division. This means, for example, that if a dividing corporation is a party to a contract that requires prior consent to its assignment or transfer, a new corporation to which the contract is allocated will be bound by the contract and will be entitled to its benefits without the need to seek consent from the other party to the contract. If such a contract were also specifically to provide that consent is required before the contract will be binding upon a successor to a party to the contract, it is intended that the new corporation will nonetheless be a party to the contract; however in that situation the division will constitute a breach of the contract for which the dividing corporation may be liable. The liability for such a breach will be subject to allocation in the division just as any other liability of the dividing corporation.

This section differs from the analogous provision applicable to nonprofit corporations in order to insure that the procedure of division cannot be used as a technique to avoid real estate transfer taxes and sales taxes on motor vehicle transfers.

Section 302(a) of the General Association Act of 1988 (15 P.S. § 20302(a)) repealed “…the penultimate sentence of section 1401, insofar as relates to the release of lien as provided by 15 Pa.C.S. §§ 1957(c) (relating to taxes) and 5957(c) (relating to taxes), of the act of April 9, 1929 (P.L. 364, No. 176), known as The Fiscal Code.” The quoted provision also repealed Section 730 of The Fiscal Code (72 P.S. § 730) except as to banking institutions, credit unions, insurance corporations and savings associations. Section 401(a) of the GAA Amendments Act of 1990 repealed Section 730 of The Fiscal Code with respect to insurance corporations.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“domestic business corporation” (see “business corporation”)
“foreign business corporation”
“officers”
“plan”
“qualified foreign business corporation”
“shareholders”
“shares”
“subscriptions”
“unless otherwise provided”

The term “obligations” used in this section is defined in 15 Pa.C.S. § 102.

Subchapter F
Voluntary Dissolution and Winding Up

(a) General rule.—[Written notice] Notice in record form of the meeting of shareholders that will consider the resolution recommending dissolution of the business corporation [shall] must be given to each shareholder of record entitled to vote thereon [and the purpose shall be included]. The purpose of the meeting must be stated in the notice [of the meeting].

(b) Cross reference references.—See Subchapter A of Chapter 17 (relating to notice and meetings generally) and section 2528 (relating to notice of shareholder meetings).

Amended Committee Comment (2013):

As originally enacted in 1988, this section applied to a shareholders meeting “called for the purpose of considering” the voluntary dissolution of the corporation. The GAA Amendments Act of 1992 amended this section to apply to any meeting “that will consider” voluntary dissolution to make clear that this section applies not just to special meetings called for the express purpose of considering voluntary dissolution, but also to a regularly scheduled annual meeting at which voluntary dissolution is to be considered. A similar change was made by the GAA Amendments Act of 1992 in 15 Pa.C.S. § 1704(b).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”
“entitled to vote”
“shareholders”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

§ 1978. Winding up of corporation after dissolution.

(a) Winding up and distribution.—Every business corporation that is dissolved by expiration of its period of duration or otherwise shall, nevertheless, continue to exist for the purpose of winding up its affairs, prosecuting and defending actions or proceedings by or against it, collecting and discharging obligations, disposing of and conveying its property and collecting and dividing its assets, but not for the purpose of continuing business except insofar as necessary for the winding up of the corporation. The board of directors of the corporation may continue as such and shall have full power to wind up the affairs of the corporation.

(b) Standard of care of directors and officers.—The dissolution of the corporation shall not subject its directors or officers to standards of conduct different from those prescribed by or pursuant to Chapter 17 (relating to officers, directors and shareholders). Directors of a dissolved
corporation who have complied with section 1975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities) and governing persons of a successor entity who have complied with Subchapter H shall not be personally liable to the creditors or claimants of the dissolved corporation.

**Amended Committee Comment (2013):**

Consistent with 15 Pa.C.S. § 1979(b), which provides that dissolution does not affect the limited liability of shareholders, subsection (b) provides that dissolution also does not affect the standard of conduct of directors and officers. The GAA Amendments Act of 2001 added the last sentence of subsection (b) which was intended as a codification of existing law. That sentence was subsequently revised by the GAA Amendments Act of 2013 to add the references to governing persons of a successor entity and claimants so that subsection (b) is consistent with the scope and terminology of subchapter 19H.

Under 15 Pa.C.S. § 1731(a)(2), the powers of the board of directors to wind up the affairs of the corporation may be exercised by a duly authorized committee of the board, subject to compliance by the committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”
“business corporation”
“dissolution”
“officers”

The term “obligations” used in this section is defined in 15 Pa.C.S. § 102.

**Chapter 25**
**Registered Corporations**

**Subchapter C**
**Directors and Shareholders**

§ 2522. Adjournment of meetings of shareholders.

[Any] Except as otherwise provided in the bylaws, any regular or special meeting of the shareholders of a registered corporation, including one at which directors are to be elected, may be adjourned for such period as the shareholders present and entitled to vote shall direct.

**Amended Committee Comment (2013):**
No provision of the Delaware General Corporation Law is comparable to 15 Pa.C.S. § 1755(c), the provision rendered inoperative by this section.

Under 15 Pa.C.S. § 2501(c) a registered corporation may render this section inapplicable to the corporation by a contrary provision of its articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“bylaws”
“entitled to vote”
“except as otherwise provided”
“shareholders”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

§ 2528. Notice of shareholder meetings.

If a registered corporation solicits proxies generally with respect to a meeting of its shareholders, the corporation is not required to give notice of the meeting to any shareholder to whom the corporation is not required to send a proxy statement pursuant to the rules of the Securities and Exchange Commission.

Committee Comment (2013):

The “householding” rules of the Securities and Exchange Commission provide that a registered corporation is not required to send more than one copy of its annual report or proxy statement to shareholders who share an address and consent to receiving only one copy of those documents. 17 CFR § 240.14a-3(e)(1). This section permits a registered corporation to also treat notices of shareholder meetings in the same fashion.

The term “shareholders” used in this section is defined in 15 Pa.C.S. § 1103.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

§ 2529. Voting lists.

A registered corporation is not required to produce or make available to its shareholders a list of shareholders in connection with any meeting of its shareholders for which a judge or judges of election are appointed, but such a list must be furnished to the judge or judges of election.
Committee Comment (2013):

This section was enacted by the GAA Amendments Act of 2013 in connection with the amendment of 15 Pa.C.S. § 1764 by that act. This section makes inapplicable to registered corporations the requirements in 15 Pa.C.S. § 1764(a) and (c) to produce at each shareholder meeting or make available in connection with an electronic meeting a list of shareholders entitled to vote at the meeting. In the case of a nonregistered corporation, having access to such a list serves the important purpose of resolving disputes about the identity and right to vote of shareholders. In a registered corporation, however, the shareholders seldom, if ever, consult the voting list at a meeting for those or any other purposes. Instead, shareholders in a registered corporation who are interested in the contents of the voting list usually wish to have access to the list in advance of the meeting for the purpose of soliciting proxies. In that regard, shareholders in all domestic business corporations continue to have the right to seek inspection of the share register under 15 Pa.C.S. § 1508.

In the unlikely event that there is no judge of elections at a meeting of the shareholders of a registered corporation, this section will not apply and the corporation will be subject to the requirements of 15 Pa.C.S. § 1764.

The term “shareholders” used in this section is defined in 15 Pa.C.S. § 1103.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

Subchapter E
Control Transactions

§ 2545. Notice to shareholders.

(a) General rule.—Prompt notice that a control transaction has occurred shall be given by the controlling person or group to:

(1) Each shareholder of record of the registered corporation holding voting shares.

(2) The court, accompanied by a petition to the court praying that the fair value of the voting shares of the corporation be determined pursuant to section 2547 (relating to valuation procedures) if the court should receive, pursuant to section 2547, certificates from shareholders of the corporation or an equivalent request for transfer of uncertificated securities.

(b) Obligations of the corporation.—If the controlling person or group so requests, the corporation shall, at the option of the corporation and at the expense of the person or group,
either furnish a list of all such shareholders and their postal addresses to the person or group or [mail] provide the notice to all such shareholders.

(c) Contents of notice.—The notice shall state that:

(1) All shareholders are entitled to demand that they be paid the fair value of their shares.

(2) The minimum value the shareholder can receive under this subchapter is the highest price paid per share by the controlling person or group within the 90-day period ending on and including the date of the control transaction, and stating that value.

(3) If the shareholder believes the fair value of his shares is higher, this subchapter provides an appraisal procedure for determining the fair value of such shares, specifying the name of the court and its address and the caption of the petition referenced in subsection (a)(2), and stating that the information is provided for the possible use by the shareholder in electing to proceed with a court-appointed appraiser under section 2547.

There shall be included in, or enclosed with, the notice a copy of this subchapter.

(d) Optional procedure.—The controlling person or group may, at its option, supply with the notice referenced in subsection (c) a form for the shareholder to demand payment of the partial payment amount directly from the controlling person or group without utilizing the court-appointed appraiser procedure of section 2547, requiring the shareholder to state the number and class or series, if any, of the shares owned by him, and stating where the payment demand must be sent and the procedures to be followed.

(e) Cross reference.—See section 1702 (relating to manner of giving notice).

Amended Committee Comment (2013):

The corporation has the option of providing the notice under this section electronically. However, the corporation is not required to supply the controlling person or group with electronic addresses for the shareholders, but only their postal addresses.

The term “court” used in this section is defined in 15 Pa.C.S. § 102.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“shareholder”

“shares”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.
The following terms used in this section are defined in 15 Pa.C.S. § 2542:

“control transaction”
“fair value”
“partial payment amount”
“voting shares”

The term “controlling person or group” used in this section is defined in 15 Pa.C.S. § 2543.

Chapter 31
Insurance Corporations

Subchapter C
Officers, Directors and Shareholders

§ 3133. Notice of meetings of members of mutual insurance companies.

(a) General rule.—Unless otherwise restricted in the bylaws, persons authorized or required to give notice of an annual meeting of members of a mutual insurance company for the election of directors or of a meeting of members of a mutual insurance company called for the purpose of considering amendment of the articles or bylaws, or both, of the corporation may, in lieu of any [written] notice of meeting of members required to be given by this subpart, give notice of such meeting by causing notice of such meeting to be officially published. Such notice shall be published each week for at least:

(1) Three successive weeks, in the case of an annual meeting.

(2) Four successive weeks, in the case of a meeting to consider amendment of the articles or bylaws, or both.

(b) Cross reference.—See 1 Pa.C.S. § 1909 (relating to time; publication for successive weeks).

Amended Committee Comment (2013):

Under the definition of “unless otherwise restricted,” the bylaws may prohibit the giving of notice by publication, which would have the effect of giving the members greater rights to notice under 15 Pa.C.S. Subch. 17A; but the bylaws could not, for example, require publication of the notice only one time because that would give the members less rights to notice and thus impermissibly “relax” this section. If notice is given by publication as authorized by this
section, the requirements of 15 Pa.C.S. § 1702 will not be applicable.

Although notice by publication is permissible under this section with respect to an amendment of the articles, notice by publication is not available with respect to other fundamental transactions such as a merger, division, or dissolution.

As to the use of the term “member” in this section, see 15 Pa.C.S. § 2101(c).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“bylaws”
“directors”
“mutual insurance company”
“unless otherwise restricted”

The term “officially publish” used in this section is defined in 15 Pa.C.S. § 102.

§ 3135. Proxies of members of mutual insurance companies.

In no event shall a proxy given by a member of a mutual insurance company, unless coupled with an interest, be voted on or utilized to express consent or dissent to corporate action [in writing] after 11 months from the date of execution of the proxy.

Committee Comment (2013):

Absent this section, a proxy of a member of a mutual insurance company not coupled with an interest could have a duration of up to three years under 15 Pa.C.S. § 1759(c).

As to the use of the term “member” in this section, see 15 Pa.C.S. § 2101(c).

The term “mutual insurance company” used in this section is defined in 15 Pa.C.S. § 3102.

Chapter 33
Benefit Corporations

Subchapter C
Accountability

§ 3322. Benefit director.
(a) General rule. –

(1) The board of directors of a benefit corporation which is a registered corporation shall include a director who:

(i) shall be designated as the benefit director; and

(ii) shall have, in addition to all of the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this subchapter.

(2) The board of directors of a benefit corporation which is not a registered corporation may include a director who:

(i) shall be designated as the benefit director; and

(ii) shall have, in addition to all of the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this subchapter.

(b) Election, removal and qualifications. – The benefit director shall be elected and may be removed in the manner provided under Subchapter C of Chapter 17 (relating to directors and officers)

[and]. Except as provided in subsection (e)(2)(i) or (g), the benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(c) Annual compliance statement. – The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required under section 3331 (relating to annual benefit report), a statement whether, in the opinion of the benefit director, the benefit corporation acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report and whether the directors and officers complied with sections 3321(a) (relating to standard of conduct for directors) and 3323(a) (relating to standard of conduct for officers), respectively. If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed so to act, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to comply.

(d) Status of actions. – The acts of an individual in the capacity of a benefit director shall constitute for all purposes acts of that individual in the capacity of a director of the benefit corporation.
(e) Alternative governance arrangements. –

(1) The bylaws of a benefit corporation must provide that the persons or shareholders who perform the duties of the board of directors include a person with the powers, duties, rights and immunities of a benefit director if any of the following apply:

(i) The bylaws of a benefit corporation provide that the powers and duties conferred or imposed upon the board of directors shall be exercised or performed by a person other than the directors under section 1721(a) (relating to board of directors).

(ii) The bylaws of a statutory close corporation that is a benefit corporation provide that the business and affairs of the corporation shall be managed by or under the direction of the shareholders,

(2) A person that exercises one or more of the powers, duties or rights of a benefit director under this subsection:

(i) does not need to be independent of the benefit corporation;

(ii) shall have the immunities of a benefit director;

(iii) may share the powers, duties and rights of a benefit director with one or more other persons; and

(iv) shall not be subject to the procedures for election or removal of directors in Chapter 17 Subchapter C (relating to directors and officers) unless:

(A) the person is also a director of the benefit corporation; or

(B) the bylaws make those procedures applicable.

(f) Exoneration from personal liability. – Regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized under section 1713 (relating to personal liability of directors), a benefit director shall not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct or a knowing violation of law.

(g) Professional corporations. – The benefit director of a professional corporation does not need to be independent.

Amended Committee Comment (2013):

The statement of the benefit director required by subsection (c) is an important part of the
transparency required under this chapter. The perspective of the benefit director on whether the
corporation has been successful in creating general or specific public benefit will be an important
source of information for the shareholders as to whether the directors have adequately
discharged their stewardship of the benefit corporation and its resources.

Subsection (d) makes clear that the actions of a benefit director are actions of a director of
the benefit corporation and are subject to the same standards as actions of directors generally.

Subsection (e) recognizes that the 1988 BCL authorizes a business corporation to vary the
usual functions of the board of directors. See 15 Pa.C.S. §§ 1721, 2331, and 2332. If a benefit
corporation chooses to vary the usual governance paradigm under one of those sections,
subsection (e) explains how this section will apply to the corporation. See 15 Pa.C.S. §
3331(a)(8) which requires a benefit corporation that has so varied its governance to describe the
alternative arrangements in its annual benefit report.

Subsection (f) is patterned after 15 Pa.C.S. § 1713, but unlike that section it does not
require the benefit corporation to adopt an implementing bylaw. Instead the liability shield
provided by subsection (f) automatically applies to all benefit directors.

The GAA Amendments Act of 2013 made the requirement of a benefit director optional for
all corporations except registered corporations because of a concern that in smaller, privately-
owned businesses finding a person to serve as the benefit director could be disruptive to the
governance of the corporation and potentially burdensome. The GAA Amendments Act of 2013
also added subsection (g) to remove an impediment to professional corporations becoming
benefit corporations since all of the directors of professional corporations practicing certain
professions are required to be licensed individuals and finding an independent director in such a
situation is effectively impossible. See, e.g., PA Rule of Professional Conduct 5.4(d)(2).

The term “act” used in this section is defined in 15 Pa.C.S. § 102 to include failure to act.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles
“board of directors”
“bylaws”
“director”
“officers”
“professional corporation”
“registered corporation”
“shareholders”
“statutory close corporation”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:
§ 3325. Right of action.

(a) Limitations. –

(1) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(i) failure to pursue or create general public benefit or a specific public benefit set forth in its articles; or

(ii) violation of a duty or standard of conduct under this chapter.

(2) A benefit corporation shall not be liable for monetary damages under this chapter for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(b) Parties with standing. – A benefit enforcement proceeding may be commenced or maintained only:

(1) directly by the benefit corporation; or

(2) derivatively by:

(i) a shareholder that owned at least 2% of the total number of shares of a class or series outstanding at the time of the act complained of;

(ii) a director;

(iii) a person or group of persons that owns beneficially or of record 5% or more of the equity interests in an association of which the benefit corporation is a subsidiary at the time of the act complained of; or

(iv) such other persons as may be specified in the articles or bylaws of the
benefit corporation.

(c) Cross reference. – The provisions of Subchapter F of Chapter 17 (relating to derivative actions) shall apply to derivative actions under this section.

**Amended Committee Comment (2013):**

Standing in actions against directors and officers of a business corporation that is not a benefit corporation for breach of duty is limited by 15 Pa.C.S. § 1717 just to the corporation or shareholders bringing a derivative suit. This section provides a similar limitation on standing in actions to enforce this chapter, except that the requirement that a shareholder own at least 2% of a class or series and the grants of standing to a director or 5% shareholder of a parent association are new. The limitation on standing in 15 Pa.C.S. § 1717 will continue to apply to actions against the directors and officers of a benefit corporation to the extent the action is not seeking to enforce this chapter.

This section only applies to actions or claims relating to the duties of directors and officers under this chapter, and the general and specific public benefit purposes of a benefit corporation. Lawsuits for breach of contract by directors, officers, or the benefit corporation, as well as lawsuits for breach of duties not arising under this chapter, are not subject to this section.

The GAA Amendments Act of 2013 added the contemporaneous ownership requirement in subsection (b)(2)(i) and (iii).

The cross reference in subsection (c) is a reminder that the provisions on derivative actions in 15 Pa.C.S. Subch. 17F will apply to a derivative action under this section. See 15 Pa.C.S. § 3301(c).

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”
“association”

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“bylaws”
“directors”
“officers”
“shareholder”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:
Subchapter D
Transparency

§ 3331. Annual benefit report.

(a) Contents. – A benefit corporation must deliver to each shareholder an annual benefit report including:

(1) A narrative description of:

   (i) the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

   (ii) the ways in which the benefit corporation pursued any specific public benefit that the articles state is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created;

   (iii) any circumstances that have hindered the creation by the benefit corporation of general or specific public benefit; and

   (iv) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

(2) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment does not need to be audited or certified by a third-party standards provider.

(3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in that capacity.

(5) The name of each person that owns 5% or more of the outstanding shares
of the benefit corporation either beneficially, to the extent known to the benefit
corporation without independent investigation, or of record.]

(6) The statement of the benefit director described in section 3322(c) (relating to
benefit director).

(7) A statement of any connection between the organization that established the
third-party standard, or its directors, officers or any holder of 5% or more of the
governance interests in the organization, and the benefit corporation or its directors,
officers or any holder of 5% or more of the outstanding shares of the benefit corporation,
including any financial or governance relationship which might materially affect the
credibility of the use of the third-party standard.

(8) If the benefit corporation has dispensed with, or restricted the discretion or
powers of, the board of directors, a description of:

(i) the persons that exercise the powers, duties and rights and who have the
   immunities of the board of directors; and

(ii) the benefit director, as required by section 3322(e).

(b) Timing of report. – A benefit corporation shall annually send a benefit report to each
shareholder either:

(1) within 120 days following the end of the fiscal year of the benefit corporation;
or

(2) at the same time that the benefit corporation delivers any other annual report to
its shareholders.

(c) Internet website posting. – A benefit corporation must post all of its benefit reports on
the public portion of its Internet website, if any; except that the compensation paid to directors
and any financial or proprietary information included in the benefit reports may be omitted from
the benefit report as posted.

(d) Availability of copies. – If a benefit corporation does not have an Internet website,
the benefit corporation shall provide a copy of its most recent benefit report, without charge, to
any person that requests a copy, but the compensation paid to directors and financial or
proprietary information included in the benefit report may be omitted from the copy of the
benefit report provided.

(e) Filing of report. – Concurrently with the delivery of the benefit report to shareholders
pursuant to subsection (b), the benefit corporation must deliver a copy of the benefit report to the
department for filing, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as filed under this section. The department shall charge a fee of $70 for filing a benefit report.

Amended Committee Comment (2013):

A benefit corporation may change from year to year the standard it uses under subsection (a)(2) for assessing its performance. But if a benefit corporation uses the same standard for assessing its performance in more than one year, the standard must either be applied consistently or the benefit corporation must provide an explanation of the reasons for any inconsistent use of the standard.

The GAA Amendments Act of 2013 deleted the requirement in former subsection (a)(5) that the annual benefit report disclose record shareholders that own 5% or more of the benefit corporation and any beneficial owners of 5% or more that are known to the benefit corporation. That disclosure requirement was considered unnecessary, and unduly intrusive in the case of privately owned corporations.

The term “department” used in this section is defined in 15 Pa.C.S. § 102.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“director”
“shareholder”
“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“benefit director”
“general public benefit”
“specific public benefit”
“third-party standard”

Chapter 41
Foreign Business Corporations

Subchapter B
Qualification
§ 4127. Merger, consolidation or division of qualified foreign corporations.

(a) General rule.—Whenever a qualified foreign business corporation is a nonsurviving party to a statutory merger, consolidation or division permitted by the laws of the jurisdiction under which it is incorporated, the corporation or other association surviving the merger, or the new corporation or other association resulting from the consolidation or division, as the case may be, shall file in the [Department of State] department a statement of merger, consolidation or division, which shall be executed by the surviving or new corporation or other association and shall set forth:

1. The name of each nonsurviving qualified foreign business corporation.

2. The name of the jurisdictions under the laws of which each nonsurviving qualified foreign business corporation was incorporated.

3. The date on which each nonsurviving qualified foreign business corporation received a certificate of authority to do business in this Commonwealth.

4. A statement that the corporate existence of each nonsurviving qualified foreign business corporation has been terminated by merger, consolidation or division, as the case may be.

5. In the case of a merger, consolidation or division in which any of the new or resulting associations is a corporation, or if the surviving corporation in a merger was a nonqualified foreign business corporation prior to the merger, the statements on the part of the surviving or each new or resulting corporation required by section 4124(a) (relating to application for a certificate of authority).

(b) Effect of filing.—The filing of the statement shall operate, as of the effective date of the merger, consolidation or division, to cancel the certificate of authority of each nonsurviving constituent corporation that was a qualified foreign business corporation and to qualify the surviving [or new corporation], new or resulting corporations, under this subchapter. If the surviving [or new corporation does], new or resulting corporations do not desire to continue as [a] qualified foreign business [corporation, it] corporations, they may thereafter withdraw in the manner provided by section 4129 (relating to application for termination of authority).

(c) Surviving qualified foreign corporations.—It shall not be necessary for a surviving corporation that was a qualified foreign business corporation to effect any filing under this subchapter with respect to a merger or division or to procure an amended certificate of authority to do business in this Commonwealth unless the name of the corporation is changed by the merger or division.

(d) Cross [reference] references.—See [section] sections 134 (relating to docketing
statement) and 135 (relating to requirements to be met by filed documents).

Amended Committee Comment (2013):

The filing requirements by qualified foreign business corporations in the case of a merger, consolidation, or division are rationalized by this section so as to apply only when a filing in this Commonwealth is necessary to maintain the accuracy of the Pennsylvania records on the corporate status of the foreign business corporation or the resulting association.

It is not necessary to file tax clearance certificates with the statement required by this section if the surviving, new, or resulting associations are corporations, because any resulting foreign corporation automatically has the status of a qualified foreign corporation under subsection (b). If there is no surviving, new, or resulting corporation, a tax clearance certificate will be required under 15 Pa.C.S. § 139 because the statement will have the effect of an application for termination of authority.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“nonqualified foreign business corporation”
“qualified foreign business corporation”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”
“execute”

Subpart C
Nonprofit Corporations

Chapter 51
General Provisions

§ 5103. Definitions.

(a) General definitions.—Subject to additional definitions contained in subsequent provisions of this subpart that are applicable to specific provisions of this subpart, the following words and phrases when used in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

[“Act” or “action.” Includes failure to act.]
“Amendment.” An amendment of the articles.

“Articles.” The original articles of incorporation, all amendments thereof, and any other articles, statements or certificates permitted or required to be filed in the Department of State by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction) or this subpart and including what have heretofore been designated by law as certificates of incorporation or charters. If an amendment of the articles or articles of merger or division made in the manner permitted by this subpart restates articles in their entirety or if there are articles of consolidation, conversion or domestication, thenceforth the “articles” shall not include any prior documents and any certificate issued by the department with respect thereto shall so state.

“Board of directors” or “board.” The group of persons [vested with the management of] under the direction of whom the business and affairs of the corporation are managed irrespective of the name by which [such] the group is designated. The term does not include an other body. [The term, when used in any provision of this subpart relating to the organization or procedures of or the manner of taking action by the board of directors, shall be construed to include and refer to any executive or other committee of the board. Any provision of this subpart relating or referring to action to be taken by the board of directors or the procedure required therefor shall be satisfied by the taking of corresponding action by a committee of the board of directors to the extent authority to take such action has been delegated to such committee pursuant to section 5731 (relating to executive and other committees of the board).] See section 5731(c) (relating to status of committee action).

“Business.” Any or all of the activities for which a corporation has been incorporated.

“Business corporation.” A domestic corporation for profit defined in section 1103 (relating to definitions).

“Bylaws.” The code or codes of rules adopted for the regulation or management of the business and affairs of the corporation irrespective of the name or names by which [such] the rules are designated. The term includes provisions of the articles as provided by section 5504(c) (relating to adoption, amendment and contents of bylaws).

“Charitable purposes.” The relief of poverty, the advancement and provision of education, including postsecondary education, the advancement of religion, [the promotion of health,] the prevention and treatment of disease or injury, including mental retardation and mental disorders, governmental or municipal purposes, and any other [purposes] purpose the accomplishment of which is recognized as important and beneficial to the [community] public.

“Common trust fund.” A fund maintained by the corporation for the collective investment and reinvestment of trust assets, and any other funds contributed thereto by such corporation, as fiduciary or otherwise.
“Corporation for profit.” A corporation incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise, to its shareholders or members.

“Corporation not-for-profit.” A corporation not incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise.

“Court.” Subject to any inconsistent general rule prescribed by the Supreme Court of Pennsylvania:

1. The court of common pleas of the judicial district embracing the county where the registered office of the corporation is or is to be located; or
2. Where a corporation results from a merger, consolidation, division or other transaction without establishing a registered office in this Commonwealth or withdraws as a foreign corporation, the court of common pleas in which venue would have been laid immediately prior to the transaction or withdrawal.

“Department.” The Department of State of the Commonwealth.

“Directors.” [Persons] Individuals designated, elected or appointed, by that or any other name or title, to act as members of the board of directors, and their successors. The term does not include a member of another body, [as such] unless the person is also a director. The term, when used in relation to any power or duty requiring collective action, shall be construed to mean “board of directors.”

“Dissolve” or “dissolution.” The termination of corporate existence effected by:

1. Filing of articles of dissolution in the department under this subpart by the corporation or by the office of the clerk of the court of common pleas;
2. Expiration of the term of existence of a corporation by reason of any limitation contained in its articles;
3. Forfeiture by proclamation of the Governor under section 1704 of the act of April 9, 1929 (P.L.342, No. 176), known as The Fiscal Code, or otherwise;
4. Filing of a certified copy of a decree of dissolution in the department under the act of April 9, 1856 (P.L.293, No. 308), entitled “Supplement to the acts relating to incorporations by the Courts of Common Pleas,” or otherwise; or
5. Judgment of ouster, upon proceedings in quo warranto, under former provisions of law.
[“Domestic corporation for profit.”] A corporation for profit incorporated under the laws of this Commonwealth.

“Domestic corporation not-for-profit.” A corporation not-for-profit incorporated under the laws of this Commonwealth.

“Employee.” The term does not include a member, director or member of an other body, unless the person is also an employee. See section 5730 (relating to compensation of directors) as to acceptance by a director of duties that make the director also an employee.

“Entitled to vote.” Those persons entitled to vote on the matter under either the bylaws of the corporation or any applicable controlling provision of law.

[“Foreign corporation for profit.” A corporation for profit incorporated under any laws other than those of this Commonwealth.

“Foreign corporation not-for-profit.” A corporation not-for-profit incorporated under any laws other than those of this Commonwealth.

“Foreign domiciliary corporation.” A foreign nonprofit corporation described in section 6102 (relating to foreign domiciliary corporations).

“Foreign nonprofit corporation.” A foreign corporation not-for-profit or other entity subject to Chapter 61 (relating to foreign nonprofit corporations), whether or not required to qualify thereunder.

“Fraternal benefit society.” A domestic corporation not-for-profit that is a society as defined in [the act of July 29, 1977 (P.L. 105, No. 38), known as the Fraternal Benefit Society Code] section 2402 of the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921.

“Full age.” Of the age of 18 years or over.

“Incorporator.” A signer of the original articles of incorporation.

“Member.” [One having membership rights in a corporation in accordance with the provisions of its bylaws. The term, when used in relation to the taking of corporate action includes:

(1) the proxy of a member, if action by proxy is permitted under the bylaws of the corporation; and
(2) a delegate to any convention or assembly of delegates of members established pursuant to any provision of this subpart.

If and to the extent the bylaws confer rights of members upon holders of securities evidencing indebtedness or governmental or other entities pursuant to any provision of this subpart the term shall be construed to include such security holders and governmental or other entities. The term shall be construed to include “shareholder” if the corporation issues shares of stock. Any of the following:

(1) A person that has voting rights in a membership corporation.

(2) When used in relation to the taking of corporate action by a membership corporation, a delegate to a convention or assembly of delegates of members established pursuant to any provision of this subpart who has the right to vote at the convention or assembly in accordance with the rules of the convention or assembly.

(3) A person that has been given voting rights or other membership rights in a membership corporation by a bylaw adopted by the members pursuant to section 5770 (relating to voting powers and other rights of certain securityholders and other entities) or other provision of law, but only to the extent of those rights.

(4) A shareholder of a corporation, if the corporation issues shares of stock.

“Membership corporation.” A nonprofit corporation having articles of incorporation that do not provide that the corporation is to have no members.

“Nonprofit corporation” or “domestic nonprofit corporation.” A domestic corporation not-for-profit which is not excluded from the scope of this subpart by section 5102 (relating to application of subpart).

“Nonqualified foreign corporation” or “nonqualified foreign nonprofit corporation.” A foreign corporation not-for-profit which is not a qualified foreign corporation, as defined in this section.

“Officer.” If a corporation is in the hands of a custodian, receiver, trustee or like official, the term includes that official or any person appointed by that official to act as an officer for any purpose under this subpart.

“Other body.” A term employed in this subpart to denote a person or group, other than the board of directors or a committee thereof, who pursuant to authority expressly conferred by this subpart may be vested by the bylaws of the corporation with powers which, if not vested by the bylaws in such the person or group, would by this subpart be required to be exercised by [either]:
(1) the [membership of a corporation taken as a whole] members;

(2) a convention or assembly of delegates of members established pursuant to any provision of this subpart; or

(3) the board of directors.

Except as otherwise provided in this subpart, a corporation may establish distinct persons or groups to exercise different powers [which] this subpart authorizes a corporation to vest in an other body.

“Plan.” A plan of reclassification, merger, consolidation, asset transfer, division or conversion.

“Qualified foreign corporation” or “qualified foreign nonprofit corporation.” A foreign corporation not-for-profit authorized under Chapter 61 (relating to foreign nonprofit corporations) to do business in this Commonwealth.

“Registered office.” That office maintained by a corporation in this Commonwealth as required by section 5507 (relating to registered office). See section 109 (relating to name of commercial registered office provider in lieu of registered address).

“Relax.” When used with respect to a provision of the articles or bylaws, means to provide lesser rights for an affected representative or member.

[“Representative.” When used with respect to a corporation, partnership, joint venture, trust or other enterprise, means a director, officer, employee or agent thereof.]

“Trust instrument.” Any lawful deed of gift, grant, will or other document by which the donor, grantor or testator [shall give, grant or devise] gives, grants or devises any real or personal property or the income [therefrom] from any real or personal property in trust for any charitable purpose.

“Unless otherwise provided” or “except as otherwise provided.” When used to introduce or modify a rule, the term implies that the alternative provisions contemplated may either relax or restrict the stated rule.

“Unless otherwise restricted” or “except as otherwise restricted.” When used to introduce or modify a rule, the term implies that the alternative provisions contemplated may further restrict, but may not relax, the stated rule.

“Voting” or “casting a vote.” Includes the giving of consent in lieu of voting. Whether or
not the person entitled to vote characterizes the conduct as voting or casting a vote, the term does not include:

(1) recording the fact of abstention; or
(2) failing to vote for a candidate or for approval or disapproval of a matter.

“Voting rights.” The right of a person in a membership corporation, other than in the capacity of a director or member of an other body, to vote on the election or removal of directors or members of an other body or on approval of an amendment of the articles of incorporation, a plan or the dissolution of the corporation.

(b) Index of other definitions.—The following is a nonexclusive list of words and phrases which when used in this subpart shall have the meanings given to them in section 102 relating to definitions:

“Act” or “action.”
“Corporation for profit.”
“Corporation not-for-profit.”
“Court.”
“Department.”
“Domestic corporation for profit.”
“Domestic corporation not-for-profit.”
“Execute.”
“Foreign corporation for profit.”
“Foreign corporation not-for-profit.”
“Internal Revenue Code of 1986.”
“Obligation.”
“Officially publish.”
“Record form.”
“Representative.”
“Sign.”

Committee Comment (2013):

As the introductory paragraph to this section states, it is necessary to consider the context in which a defined term is used in the 1988 NPCL. For example, the numerous references in this section and elsewhere to a “member of an other body” are references to a person who holds a position on an other body and not to a “member” as defined in this section.

“Charitable purposes.” This definition parallels the specification of charitable purposes in Section 5 of the Institutions of Purely Public Charity Act, 10 P.S. § 375.
“Member,” “membership corporation,” and “voting rights.” The GAA Amendments Act of 2013 revised the definition of “member” and added the definitions of “membership corporation” and “voting rights” to bring greater clarity to the question of who is a member of a nonprofit corporation.

The most basic right that usually attaches to membership in a nonprofit corporation is the right to vote for election of directors. Members may also have the right to vote on amendments of the articles of incorporation or bylaws, or to approve other types of fundamental transactions, such as a merger, division, or dissolution of the corporation. Although not the usual case, a person who has the right to vote on approval of a fundamental transaction but does not have the right to vote for election of directors will nonetheless have “voting rights” as defined in this section.

In addition to voting rights, the rights of members include the right to inspect the records of the corporation under 15 Pa.C.S. § 5508 and to bring a derivative suit to enforce the duties of directors under 15 Pa.C.S. § 5717. The term “membership rights” is not defined in the 1988 NPCL, but includes both voting rights and the other rights conferred upon members by the 1988 NPCL and the articles or bylaws of a corporation. See the usage of the phrase “voting rights or other membership rights” in paragraph (3) and the similar usage in 15 Pa.C.S. § 5767.

“Members” are defined generally in paragraph (1) as those persons who have voting rights in the corporation. That is a change from the prior test for membership status which was enacted in the Nonprofit Corporation Law of 1972 and which defined a member as a person “having membership rights in a corporation in accordance with the provisions of its bylaws.” Prior to the adoption of that definition in 1972, the Nonprofit Corporation Law of 1933 defined a member as “each person signing the articles of incorporation, and each person admitted to membership in the corporation.”

A person who has the status of a member solely by reason of paragraph (2), which is limited to situations involving the taking of corporate action, will have the rights of a member only with respect to that corporate action, and not more broadly. The last clause of paragraph (2) limiting the scope of paragraph (2) to voting delegates was added by the GAA Amendments Act of 2013.

The membership status of a person who is a member solely by reason of paragraph (3) will be limited to those rights conferred on the person pursuant to 15 Pa.C.S. § 5767.

Paragraph (4) is substantially a reenactment of the second sentence of the definition of “member” in Section 2 of the Nonprofit Corporation Law of 1933. Only membership corporations may be organized with shareholders. See 15 Pa.C.S. § 5306(a)(6).

The 1972 NPCL also defined as a member “the proxy of a member, if action by proxy is permitted under the bylaws of the corporation.” That provision has been omitted as unnecessary.
because 15 Pa.C.S. § 5759(a) already makes clear that the presence of or vote or other action by a proxy constitutes the presence of or vote or other action by the member appointing the proxy.

15 Pa.C.S. § 5751(c) makes clear that merely because a nonprofit corporation refers to a person as a member does not make the person a member for purposes of the 1988 NPCL. The rule against a person becoming a member merely because of the informal usage of a corporation also applies, of course, to corporations that are not membership corporations.

The status of “member” is limited to membership corporations. For example, if a religious order is organized without members, but its articles of incorporation may be amended only with the approval of a superior religious organization, the superior organization will have the status of an other body rather than a member.

“Other body.” The concept of an other body gives a nonprofit corporation the ability to depart from the traditional corporate governance structure based on a board of directors and, in appropriate circumstances, members. An other body may be given authority that would otherwise be exercised by the board of directors, a committee of the board, or the members. An other body may also be given a role that represents a combination of functions, some of which would otherwise be exercised by the board of directors and others of which would be exercised by the members. There is no limitation on the number of other bodies that a nonprofit corporation may create.

When an other body is exercising a power that would otherwise be exercised by the board of directors, the members of the other body have the duties and liabilities of directors. See 15 Pa.C.S. § 5734. However, when an other body is exercising a power that would otherwise be exercised by the members or a convention or assembly of delegates of members, the members of the other body will be subject only to the duties and liabilities of members or delegates.

§ 5106. [Limited uniform] Uniform application of subpart

(a) General rule. – Except as provided in subsection (b), this subpart and its amendments are intended to provide uniform rules for the government governance and regulation of the affairs of nonprofit corporations and of their officers, directors and members and of members of other bodies, regardless of the date or manner of incorporation or qualification, or of the issuance of any evidences of membership in or shares thereof of a nonprofit corporation.

(b) Exceptions.--

(1) Unless expressly provided otherwise in any amendment to this subpart any such, the amendment shall take effect only prospectively.

(2) Any existing corporation lawfully using a name[,] or as a part of its name a
word[, which] that could not be used as or included in the name of a corporation

[hereafter] subsequently incorporated or qualified under this subpart[,] may continue to
use [such] the name[,] or word as part of its name[, provided] if the use or inclusion of
[such] the word or name was lawful when first adopted by the corporation in this
Commonwealth.

(3) [Nothing in subsection] Subsection (a) shall not adversely affect the rights
specifically provided for or saved [by the general terms of section 5105 (relating to
saving clause and restriction on equitable relief)] in this subpart, including, without
limiting the generality of the foregoing, the provisions of section 5952(d) (relating to
proposal and adoption of plan of division).

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

Committee Comment (2013):

Act 1977-38, which enacted the 1977 Fraternal Benefit Society Code, incorrectly provided
that it repealed the 1972 Nonprofit Corporation Law “absolutely.” When he signed Act 1977-38,
Governor Shapp took the extraordinary step of adding a statement above his signature explaining
that it was his intention in approving the legislation that the repealer applied to the NPCL only to
the extent that the NPCL was inconsistent with Act 1977-38. Section 56 of the GAA
Amendments Act of 2013 confirmed the intention of the General Assembly to remove any
question as to the full effectiveness of the NPCL. Section 56 of the GAA Amendments Act of
2013 provides that:

“Notwithstanding 1 Pa.C.S. § 1957, it is declared to be the intent of the former act of
December 21, 1988 (P.L.1444, No.177), known as the General Association Act of 1988,
the act of December 19, 1990 (P.L.834, No.198), known as the GAA Amendments Act of
1990, the act of December 18, 1992 (P.L.1333, No.169), known as the GAA Amendments
Act of 1992, the act of June 22, 2001 (P.L.418, No.34), known as the GAA Amendments
act of 2001, and this act cumulatively to restore all provisions of 15 Pa.C.S. added by the
act of November 15, 1972 (P.L. 1063, No.271), entitled “An act amending the act of
November 25, 1970 (No.230), entitled ‘An act codifying and compiling a part of the law of
the Commonwealth,’ adding provisions relating to burial grounds, corporations, including
 corporations not-for-profit, educational institutions, certain nonprofit insurers, service of
process on certain nonresident persons, names, prescribing penalties and making repeals,”
to their status prior to the partial repeal effected by Section 905 of the former act of July
29, 1977 (P.L.105, No.38), known as the Fraternal Benefit Society Code, except as
otherwise expressly provided by such provisions as reenacted and amended by the former
General Association Act of 1988, the GAA Amendments Act of 1990, the GAA
Amendments Act of 1992, the GAA Amendments Act of 2001, and this act.”
Section 57 of the GAA Amendments Act of 2013 provides that Section 56 applies retroactively to January 30, 1978, which was the effective date of the 1977 Fraternal Benefit Society Code.

The statute preserved by subsection (b)(4) provides that:

“Whenever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised, or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of any of these, the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated: And provided, All charters heretofore granted for any church, congregation, or religious society, without incorporating therein the requirement that the property, real and personal, of such corporation, shall be taken, held, and enure subject to the control and disposition as herein provided, but which are in other respects good and valid, and shall be in all respects as good and valid, for all purposes, as if the said requirement had been inserted therein when the said charters were originally granted; and the title to all property, real and personal, heretofore bequeathed, devised, or conveyed to such church, congregation, or religious society, or which may have heretofore been granted or conveyed by such corporation, shall be firm and stable forever, with like effect as though the said requirements had been contained in the charter of such corporation when the same was originally granted: Provided, That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding.”

Chapter 53
Incorporation

Subchapter A
Incorporation Generally
§ 5306. Articles of incorporation.

(a) General rule.—Articles of incorporation shall be signed by each of the incorporators and shall set forth in the English language:

(1) The name of the corporation, unless the name is in a foreign language in which case it shall be set forth in Roman letters or characters or Arabic or Roman numerals.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its initial registered office in this Commonwealth.

(3) A brief statement of the purpose or purposes for which the corporation is incorporated.

(4) A statement that the corporation is one which does not contemplate pecuniary gain or profit, incidental or otherwise.

(5) A statement that the corporation is incorporated under the provisions of the Nonprofit Corporation Law of 1988.

(6) [A] If the corporation is a membership corporation, a statement whether the corporation is to be organized upon a nonstock basis or a stock share basis, and, if it is to be organized on a stock share basis:

(i) The aggregate number of shares that the corporation shall have authority to issue. It shall not be necessary to set forth in the articles the designations of the classes of shares of the corporation or the maximum number of shares of each class that may be issued.

(ii) A statement of the voting rights, designations, preferences, limitations and special rights in respect of the shares of any class or any series of any class, to the extent that they have been determined.

(iii) A statement of any authority vested in the board of directors or other body to divide by provision in the bylaws the authorized and unissued shares into classes or series, or both, and to determine for any class or series its voting rights, designations, preferences, limitations and special rights.

(7) If the corporation is to have no members, a statement to that effect.

(8) The name and address, including street and number, if any, of each of the
incorporators.

(9) The term for which the corporation is to exist, if not perpetual.

(10) If the articles are to be effective on a specified date, the hour, if any, and the
month, day and year of the effective date.

(11) Any other provisions that the incorporators may choose to insert if:

(i) any provision of this subpart authorizes or requires provisions pertaining
to the subject matter thereof to be set forth in the articles or bylaws of a nonprofit
corporation or in an agreement or other instrument; or

(ii) such provisions are not inconsistent with this subpart and relate to the
purpose or purposes of the corporation, the management of its business or affairs or
the rights, powers or duties of its members, security holders, directors, members of an
other body or officers.

(b) Par value.—The articles may, but need not, set forth a par value for any authorized
shares or class or series of shares.

(c) Written consent to naming directors.—The naming of directors in articles of
incorporation shall constitute an affirmation that such directors have consented in writing to
serve as such.

Committee Comment (2013):

This section requires that the articles of incorporation of a nonprofit corporation include
much the same information as the articles of incorporation of a business corporation. Compare
15 Pa.C.S. § 1306. However, the ability to include in the articles of incorporation provisions that
vary the statutory default rules governing its internal affairs is more limited for nonprofit
corporations than it is for business corporations.

Paragraph (a)(11)(ii) of this section permits optional provisions to be included in the
articles of incorporation of a nonprofit corporation if they “are not inconsistent with [the
NPCL].” In contrast, 15 Pa.C.S. § 1306(a)(8)(ii) permits the articles of incorporation of a
business corporation to include optional provisions “whether or not specifically authorized by
[b the BCL].” 15 Pa.C.S. § 1306(b) explains that business corporations are intended to have the
ability to include in their articles of incorporation provisions that “may relax or be inconsistent
with and supersede” the provisions of the BCL except in those instances where a section of the
BCL provides expressly that it may not be varied by a provision of the articles. Thus, a
nonprofit corporation may include in its articles of incorporation optional provisions varying the
default rules of the NPCL, but those provisions are subject to the more restrictive test that they

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must be consistent with or authorized by the NPCL.

Because a nonprofit corporation is limited to including in its articles of incorporation provisions that are not inconsistent with the NPCL, the NPCL does not include the provisions found in the BCL that indicate which provisions of the BCL may not be varied by the articles. Compare, for example, 15 Pa.C.S. §§ 1508 and 5508. Similarly, it is not necessary for the NPCL to include a provision analogous to 15 Pa.C.S. § 1718, which provides that the articles of incorporation of a business corporation may not include a provision inconsistent with 15 Pa.C.S. Subch. 17B, because the articles of incorporation of a nonprofit corporation are subject generally to the restriction that they may not be inconsistent with the NPCL.

Chapter 57
Officers, Directors and Members

Subchapter E
Members

§ 5751. Classes and qualifications of membership.

(a) General rule.—Membership in a nonprofit corporation shall be of [such] the classes, and shall be governed by [such] the rules of admission, retention, suspension and expulsion, [as] prescribed in bylaws adopted by the members [shall prescribe], except that [all such] the rules shall be reasonable, germane to the purpose or purposes of the corporation[,] and equally enforced as to all members of the same class. Unless otherwise provided by a bylaw adopted by the members[, there]:

(1) There shall be one class of members whose voting and other rights and interests shall be equal.

(2) If there is only one class of members, the members shall have all the rights of members generally in a nonprofit corporation.

(b) Corporations without voting members.—Where the articles provide that the corporation shall have no members, as such, or where a nonprofit corporation has under its bylaws or in fact no members entitled to vote on a matter, any provision of this [article] subpart or any other provision of law requiring notice to, the presence of, or the vote, consent or other action by members of the corporation in connection with [such] the matter shall be satisfied by notice to, the presence of[,] or the vote, consent or other action by the board of directors or other body of the corporation.

(c) Membership status.—Regardless of whether a nonprofit corporation designates or
refers to a person as a member of the corporation, the person is not a member of the corporation for purposes of this subpart unless the person satisfies the definition of “member” in section 5103(a) (relating to definitions).

Committee Comment (2013):

Subsection (c) was added by the GAA Amendments Act of 2013 to make clear that merely because a nonprofit corporation refers to a person as a member does not make the person a member for purposes of the 1988 NPCL. The rule against a person becoming a member merely because of the informal usage of a corporation also applies, of course, to corporations that are not membership corporations.

§ [5763] 5766. Consent of members in lieu of meeting.

(a) Unanimous consent.—Unless otherwise restricted in the bylaws, any action [which may] required or permitted to be taken at a meeting of the members or of a class of members of a nonprofit corporation may be taken without a meeting[, if a consent or consents [in writing, setting forth the action so taken, shall be signed] to the action in record form are signed, before, on or after the effective date of the action, by all of the members who would be entitled to vote at a meeting for [such purpose and shall be filed] that purpose. The consent or consents must be filed with the [secretary of the corporation] minutes of the proceedings of the members.

(b) Partial consent.—If the bylaws so provide, any action required or permitted to be taken at a meeting of the members or of a class of members may be taken without a meeting upon the signed consent of members who would have been entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all members entitled to vote thereon were present and voting. The consents must be filed in record form with the minutes of the proceedings of the members.

(c) Effectiveness of action by partial consent.—An action taken pursuant to subsection (b) shall not become effective until after at least ten days’ notice of the action has been given to each member entitled to vote thereon who has not consented thereto.

Committee Comment (2013):

The analogous provision of the BCL, which is 15 Pa.C.S. § 1766, provides that subsection (c) may not be relaxed by the articles of incorporation. That restriction is needed in the BCL because otherwise the articles of incorporation of a business corporation could reduce or eliminate the required delay in the effectiveness of an action by partial consent under 15 Pa.C.S. § 1306(a)(8)(ii) and (b). The articles of incorporation of a nonprofit corporation, in contrast, are subject to the more restrictive test that they be “not inconsistent” with the NPCL. Thus,
subsection (c) is protected from variation by the more restricted scope of articles of incorporation of nonprofit corporations. See the Committee Comment to 15 Pa.C.S. § 5306.

Subsections (b) and (c) were added by the GAA Amendments Act of 2013 and were patterned after 15 Pa.C.S. § 1766(b) and (c). The GAA Amendments Act of 2013 also amended subsection (a) to clarify its wording. The changes to subsection (a) were patterned after 15 Pa.C.S. § 1766(a) and were intended as a codification of existing law and practice.

Part III
Partnerships and Limited Liability Companies

Chapter 89
Limited Liability Companies

Subchapter A
Organization

§ 8911. Purposes.

(a) General rule. – Limited liability companies may be organized under this chapter for any lawful purpose, except for the purpose of [banking or] insurance. Unless otherwise restricted in its certificate of organization, every limited liability company has as its purpose the engaging in all lawful business for which limited liability companies may be organized under this chapter. Nothing in this section shall prohibit the following:

(1) A banking institution organized under this chapter or a limited liability company organized by one or more [banks or a banking organization for the sole purposes of] banking institutions, savings associations or credit unions from engaging in the marketing and [selling] sale of title insurance.

(2) The organization of an insurance agency licensed in this Commonwealth as a limited liability company.

(b) Effect of limitation. – A limitation upon the business, purposes or powers of a limited liability company, expressed or implied in its certificate of organization or operating agreement or implied by law, shall not be asserted in order to defend any action at law or in equity between the company and a third person, or between a member and a third person, involving any contract to which the company is a party or any right of property or any alleged liability of whatever nature, but the limitation may be asserted:

(1) In an action by a member against the company to enjoin the doing of
unauthorized acts or the transaction or continuation of unauthorized business. If the unauthorized acts or business sought to be enjoined are being transacted pursuant to any contract to which the company is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the result to be equitable, set aside and enjoin the performance of the contract and in so doing shall allow to the company or to the other parties to the contract, as the case may be, such compensation as may be appropriate for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In any action by or in the right of the company to procure a judgment in its favor against an incumbent or former member or manager of the company for loss or damage due to his unauthorized acts.

(3) In a proceeding by the Commonwealth to enjoin the company from the doing of unauthorized or unlawful business.

(c) Conveyance of property by or to a company. – A conveyance or transfer by or to a limited liability company of property, real or personal, of any kind or description shall not be invalid or fail because in making the conveyance or transfer or in acquiring the property, real or personal, any representative of the company acting within the scope of the actual or apparent authority given to him by the company has exceeded any of the purposes or powers of the company.

(d) Cross references. – See sections 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization) and 8996(a) (relating to purposes of restricted professional companies).

Amended Committee Comment (2013):

The Banking Code of 1965 was amended in 2012 to permit a banking institution to be organized as a limited liability company. A conforming change was made to subsection (a) by the GAA Amendments Act of 2013 to delete a prohibition against a limited liability company being organized for the purpose of banking. 15 Pa.C.S. § 8102(b)(2) provides that a limited liability company may not be “a banking institution, credit union, insurance corporation or savings association, unless the laws relating thereto expressly contemplate the conduct of the regulated business in partnership or limited liability company form.” Thus, although the prohibition against a limited liability company being organized for the purpose of banking has been removed from subsection (a) and a limited liability company may now be a banking institution, it remains impermissible for a limited liability company to be a credit union, insurance corporation, or savings association.
Prior to its amendment by the GAA Amendments Act of 2013, subsection (a)(1) permitted a bank or banking organization to organize a limited liability company for the sole purpose of marketing and selling title insurance. The 2013 amendments to subsection (a)(1) make clear that (i) a banking institution organized as a limited liability company may itself market and sell title insurance; (ii) a banking institution, savings association, or credit union may organize a limited liability company to market and sell title insurance; and (iii) the limited liability company may have purposes other than the marketing and sale of title insurance.

A limited liability company may engage in any type of business or activity that a general or limited partnership may engage in. See 15 Pa.C.S. § 8921(b) and the Committee Comment to that section. In particular, it is intended that a limited liability company may be used to conduct a professional practice, such as accounting, law or medicine, if the ethics of the profession permit the use of a limited liability company. But see 15 Pa.C.S. § 8922(b) which preserves the professional liability of persons practicing in the form of a limited liability company.

Chapter 89 does not contain a “powers” provision analogous to 15 Pa.C.S. § 1502 which enumerates the corporate powers of business corporations. The corporate powers and ultra vires provisions of the 1988 Business Corporation Law reflect the evolution of the corporation law out of the old view that corporations were artificial legal entities created by state law with limited powers. That view no longer describes even corporations, and 15 Pa.C.S. §§ 1501, 1502, and 1503 are needed to reflect the modern view that corporations have the same powers and capacity to act as natural persons. Chapters 83 and 85 do not contain provisions on the powers of general or limited partnerships, and the Committee concluded that to add a powers provision to Chapter 89 would be a regressive step and undesirable.

The broad principle of this section is subject to 15 Pa.C.S. § 103(a) which provides that Chapter 89 does not give the individuals conducting a business in the form of a limited liability company any immunity from government regulation provided by or pursuant to a statute applicable to the business in which the company is engaged and which would be applicable to a sole proprietor. See 15 Pa.C.S. § 8921(a).

The second sentence of subsection (a) is intended to make clear that the members, as a matter of contract in the certificate of organization, may restrict the types of business in which a company may engage. Such a restriction, however, will be enforceable only by the members in an action against the company or by the company in an action against a former or incumbent member or manager of the company. In the case of a restricted professional company, the restriction in 15 Pa.C.S. § 8996(a), which limits the purposes of the company to rendering restricted professional services and certain other indicated activities, may also be enforced by the Commonwealth under subsection (b)(3).

As is the case under 15 Pa.C.S. § 1301 with respect to articles of incorporation, if the certificate of organization does not contain a statement of general purpose, a statement in the certificate of a particular type of business to be conducted by the company (without an express
restriction to that line of business) will nonetheless be sufficient to create a restriction on the purpose of the company.

The restriction that subsection (a) authorizes to be set forth in the certificate of organization will not binding if it is set forth only in the operating agreement instead. See 15 Pa.C.S. §§ 8903 ("operating agreement") and 8913(8) and the Committee comments thereto.

The following terms used in this section are defined in 15 Pa.C.S. § 8903:

“certificate of organization”
“court”
“limited liability company”
“operating agreement”
“manager”
“member”
“real property”
“unless otherwise restricted”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“banking institution”
“credit union”
“representative”
“savings association”

§ 8925. Taxation of limited liability companies.

(a) General rule. – For the purposes of the imposition by the Commonwealth of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation, a domestic or foreign limited liability company that is not a domestic or qualified foreign restricted professional company shall be deemed to be a corporation organized and existing under Part II (relating to corporations), and a member of such a company, as such, shall be deemed to be a shareholder of a corporation. Such a company may elect to be treated as a Pennsylvania S corporation, and its members shall be deemed shareholders of such a corporation, only if the company satisfies the conditions for electing that status. For purposes of the corporate net income tax and the capital stock and franchise tax, such a company shall be considered a “corporation” and an “entity” as defined in Articles IV and VI of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, and, if such a company is not required to file a Federal corporate income tax return, these taxes shall be computed as if such a Federal return had been filed. For purposes of the bank shares tax and the mutual thrift institutions tax, a bank, bank and trust company, trust company, savings bank, building and loan association, savings and loan association or savings institution that is a domestic or foreign
limited liability company shall be considered an “institution” as defined by Article VII or Article
XV of the Tax Reform Code of 1971. Nothing in this subsection shall impair or preempt the
ability of a political subdivision to levy, assess or collect any applicable taxes or license fees
authorized pursuant to the act of December 31, 1965 (P.L. 1257, No. 511), known as The Local
Tax Enabling Act, on any company which elects limited liability company status in accordance
with the provisions of this chapter.

(b) Reorganizations. – Every domestic or foreign limited liability company, regardless of
whether it is also a domestic or qualified foreign restricted professional company, shall be
deemed to be a corporation for purposes of applying the provisions of section 303(a) of the Tax
Reform Code of 1971, with respect to a “reorganization” as defined in that section.

(c) Cross reference. – See section 8997 (relating to taxation of restricted professional
companies).

Amended Committee Comment (2013):

Limited liability companies are treated generally by Chapter 89 as a form of
partnership. See 15 Pa.C.S. § 8904 which looks for the underlying law in cases not
provided for in Chapter 89 either to Chapters 83 (general partnerships) and 85 (limited
partnerships) together if a company is managed by managers, or to Chapter 83 alone if a
company is managed by the members. Notwithstanding that general approach, this section
provides as a general rule that a limited liability company will be taxed as a corporation for
purposes of Pennsylvania state and local taxes. A different rule applies under 15 Pa.C.S. §
8997 to the class of restricted professional companies, which are generally taxed as limited
partnerships for purposes of Pennsylvania state and local taxes.

Chapter 89 permits a company to be organized or operated in such a fashion that it
will be taxed as a corporation under the federal income tax laws. The second sentence of
subsection (a) makes clear that a company that is taxed as a corporation and that is eligible
to make an election to be treated as an S corporation for federal income tax purposes will
also be able to make a similar election for purposes of Pennsylvania taxation under the
same standards as are applicable to corporations in general.

The Banking Code of 1965 was amended in 2012 to permit an “institution” subject to
that act to be organized as a limited liability company. The fourth sentence of subsection
(a) was added by the GAA Amendments Act of 2013 to make clear that a domestic or
foreign limited liability company that is such an institution will be subject to the bank
shares tax or the mutual thrift institutions tax instead of the corporate net income tax.

Section 35.1(b) of Act 1997, May 7, P.L. 85, No. 7 (amending the Tax Reform Code
of 1971), repealed this section effective January 1, 1998, insofar as it is inconsistent with
that act.
The following terms used in this section are defined in 15 Pa.C.S. § 8903:

“domestic limited liability company”
“domestic restricted professional company”
“foreign limited liability company”
“member”
“qualified foreign restricted professional company”

Chapter 91
[Unincorporated Associations Generally]
Unincorporated Nonprofit Associations

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

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

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

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

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

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

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

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

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

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

(c) Savings provisions.—

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

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

(d) Cross reference.—See section 5331 (relating to incorporation of unincorporated associations).

Committee Comment (2013):

Subsection (a) is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) (“UUNAA”) § 1. Subsection (b) is patterned after UUNAA § 30. Subsection (c)(1) is patterned after UUNAA § 3(b). Subsection (c)(2) is patterned after 15 Pa.C.S. § 5106(b)(4).

1. A nonprofit association is a nonprofit organization that is not a charitable trust or a nonprofit corporation or any other type of association organized under statutory law that is authorized to engage in nonprofit activities. A nonprofit association is thus a default...
organization and, as such, it is the nonprofit equivalent of a general partnership, which is the
default form of for-profit organization.

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

2. A delayed effective date has not been provided for this chapter because the
Committee concluded that the chapter provides a nonprofit association and its members with a
legal structure that conforms to the expectations of many of them. Therefore, the need by a
nonprofit association for additional time to revise procedures and forms to conform to a
significant change in the law was not considered necessary. It is conceivable, however, that the
chapter could materially affect third parties, particularly creditors of nonprofit associations.
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.

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

Subsection (b)(1) is not a retroactive rule. It applies to the facts existing when this chapter
took effect. At that time, subsection (b)(1) applies to a purported transfer of property that under
prior law could not be given effect at the time it was made. Subsection (b)(1) belatedly makes it
effective when this subchapter took effect and not when made. The practical result of this
difference in when the purported transfer is effective is that the transfer is subject to interests in
the property that came into being in the interim. The interest of the nonprofit association is
subject, for example, to a tax or judgment lien that became effective in the interim. An
intervening transfer by the initial transferor may simply be evidence that the “parties had treated
the transfer as ineffective.” If so, subsection (b)(1) by its terms does not vest ownership in the
nonprofit association.

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

4. The statute preserved by subsection (c)(2) provides that:

“Whensoever any property, real or personal, has heretofore been or shall hereafter be
bequeathed, devised, or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or
other person, for the use of any church, congregation, or religious society, for or in trust for
religious worship or sepulture, or for use by said church, congregation, or religious society,
for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the
maintenance of any of these, the same shall be taken and held subject to the control and
disposition of such officers or authorities of such church, congregation, or religious society,
having a controlling power according to the rules, regulations, usages, or corporate
requirements of such church, congregation, or religious society, which control and
disposition shall be exercised in accordance with and subject to the rules and regulations,
usages, canons, discipline and requirements of the religious body, denomination or
organization to which such church, congregation, or religious society shall belong, but
nothing herein contained shall authorize the diversion of any property from the purposes,
uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may
hereafter, consistently herewith, be lawfully dedicated: And provided, All charters
heretofore granted for any church, congregation, or religious society, without incorporating
therein the requirement that the property, real and personal, of such corporation, shall be
taken, held, and enure subject to the control and disposition as herein provided, but which
are in other respects good and valid, and shall be in all respects as good and valid, for all
purposes, as if the said requirement had been inserted therein when the said charters were
originally granted; and the title to all property, real and personal, heretofore bequeathed,
devised, or conveyed to such church, congregation, or religious society, or which may have
heretofore been granted or conveyed by such corporation, shall be firm and stable forever,
with like effect as though the said requirements had been contained in the charter of such
corporation when the same was originally granted: Provided, That all property, real and
personal, held by such existing corporation, shall enure, and be taken and held, subject to
the control and disposition as herein provided, with like effect as though such provision
had been inserted in the charter of such corporation when originally granted, any other or
different provision therein notwithstanding.”
5. The Committee Comments to this chapter are intended to form part of the legislative
history of the chapter and to be citable as such under 1 Pa.C.S. § 1939. The Committee
Comments have been adapted from the commentary to the UUNAA and are intended to
supersede that commentary.

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

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

“member”
“nonprofit association”

§ 9112. Definitions.

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

“Established practices.” The practices used by a nonprofit association without material
change during:

(1) the most recent five years of its existence; or
(2) if it has existed for less than five years, its entire existence.

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

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

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

“Nonprofit association.” An unincorporated organization consisting of two or more members joined together under an agreement that is oral, in record form or implied from conduct for one or more common, nonprofit purposes. The term does not include:

1. a trust;
2. a marriage, domestic partnership, common law domestic relationship, civil union or other domestic living arrangement;
3. an organization formed under any other statute that governs the organization and operation of unincorporated associations;
4. a joint tenancy, tenancy in common or tenancy by the entirety, even if the co-owners share use of the property for a nonprofit purpose; or
5. a relationship under an agreement in record form that expressly provides that the relationship between the parties does not create a nonprofit association.

"Property." Includes:
1. real property;
2. personal property which is tangible or intangible;
3. mixed real and personal property; and
4. a right or interest in property.

"Transfer." Includes:
1. an assignment;
2. a conveyance;
3. a sale;
4. a lease;
5. an encumbrance, including a mortgage or security interest;
6. a gift; and
(7) a transfer by operation of law.

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 2.

“Established practices.” Established practices are essentially equivalent to the commercial law concepts of course of performance and course of dealing. See 13 Pa.C.S. § 1303. Many nonprofit associations operate on a very informal basis. Often there are no written procedures or bylaws, or what writings they have are very incomplete. Nevertheless, over time they develop and follow various practices. These practices, if followed consistently for at least five years (or during the entire existence of the nonprofit association if it has been in existence less than five years), become established practices and therefore can qualify as part of the nonprofit associations “governing principles.” An example would be an unincorporated church that has no written bylaws covering the issue of notice of meetings that for the past five years has printed notice of the annual meeting of its members in the church bulletin for the three weeks preceding the annual meeting. This established practice would be part of the church’s governing principles and if followed in the sixth and subsequent years would be determinative of whether reasonable notice of an annual meeting had been given.

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

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

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

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

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

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

“Nonprofit association.” An organization cannot be a nonprofit association if it is
organized as a corporation or is a for-profit unincorporated entity, e.g., a general partnership. On
the other hand, not every form of unincorporated nonprofit organization should automatically
become a nonprofit association and therefore be able to have limited liability and the other
benefits of this chapter. That is the reason for the language excluding trusts, domestic living
arrangements including marriages and domestic partnerships, and agreements merely to hold title
to property as co-owners. The laws governing the rights of creditors, trustees, and beneficiaries
of trusts are well developed and therefore the legal principles in this chapter are unnecessary.
Domestic relations law provides property rights for adults co-habiting together after a legal
marriage or in a long-term unmarried status such as what is frequently referred to as a “common law marriage” or the state of recently enacted domestic partnership and civil union statutes. Living together in any of these domestic living arrangements can probably qualify as an association having a nonprofit purpose, but for public policy reasons these arrangements should not be able to qualify as a nonprofit association and therefore avoid individual liability for taxes and other liabilities. For similar reasons, mere co-ownership of property, even if for nonprofit purposes, should not automatically result in the applicability of this chapter.

“Agreement” rather than “contract” is the appropriate term 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 nonprofit association can be in record form, or oral, or implied from conduct (e.g., course of performance or course of dealing). The agreement to form a nonprofit association becomes part of the overall “governing principles” of the nonprofit association.

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

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

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

The members must be joined together for a common purpose. Because of the informality of many ad hoc organizations, it was considered appropriate not to impose the requirement that the common purpose be “stated.” Very probably, it is the small, informal, ad hoc organizations and those third parties affected by them that most need this chapter.

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

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

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

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

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

§ 9113. Governing law.

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

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

**Committee Comment (2013):**

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

2. The default rule in this chapter for determining the jurisdiction whose laws govern the internal affairs of a nonprofit association is the jurisdiction in which the nonprofit association has its main place of activities. A nonprofit association can, however, designate the internal affairs jurisdiction in its governing principles, subject to applicable conflicts of laws substantial contact rules. See *Restatement (Second) of Conflict of Laws* §187(2) (1971).

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

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

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

   "governing principles"

   "nonprofit association"

**§ 9114. Entity status.**

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

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

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

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

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 5.

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

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

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

3. Many unincorporated nonprofit organizations engage in activities that are intended to produce a profit, e.g., a bingo parlor operated by a church where the profits are used to buy food for a homeless shelter. This type of profit-making endeavor should not disqualify the organization from being a nonprofit association if it otherwise qualifies. A for-profit activity might endanger the tax-exempt status of the organization or may generate taxable income, but these are separate issues and should not affect the organizational status of a nonprofit association or the rights and liabilities of its members and managers.

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

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

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

§ 9115. Ownership and transfer of property.

(a) General rule.—A nonprofit association may acquire, hold or transfer, in its name, an
interest in property.

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

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008)
(Last Amended 2011) § 6.

Subsection (a) is based on section 3-102(8) of the Uniform Common Interest Ownership
Act. It reverses the common law rule. Because a nonprofit association was not a legal entity at
common law, it could not acquire, hold, or convey real or personal property. Harold J. Ford,
UNINCORPORATED NON-PROFIT ASSOCIATIONS, 1-45 (Oxford Univ. Press (1959); Warburton,
The Holding of Property by Unincorporated Associations, CONVEYANCER 318 (September-
October 1985).

The strict common law rule has been modified in various ways in most jurisdictions by
courts and statutes. For example, courts have held that a gift by will or inter vivos transfer of
real property to a nonprofit association is not effective to vest title in the nonprofit association,
but is effective to vest title in the officers of the nonprofit association to hold as trustees for the
1977).
As is the case with many of the problems created by the view that a nonprofit association is not an entity, the statutory solutions are often partial – limited to special circumstances and associations. Subsection (a) solves this problem for all nonprofit associations, for all kinds of transactions, and for both real and personal property. Since Pennsylvania has not modified the common law rule as clearly as other states, subsection (a) is an important advance in Pennsylvania law. See 15 Pa.C.S. § 9111(b) with respect to attempted transfers of real and personal property to a nonprofit association that were made before the effective date of this subchapter.

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

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

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

§ 9116. Statement of authority as to real property.

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

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

(1) the name of the nonprofit association;

(2) the address in this Commonwealth, including the street and number, if any, of the nonprofit association or, if the nonprofit association does not have an address in this Commonwealth, its address outside of this Commonwealth;

(3) that the association is a nonprofit association; and
(4) the name, title or position of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

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

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

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

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

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

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 7.

A statement of authority need not be filed in order for a nonprofit association to conclude an acquisition of or to hold real property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate or interest in real property. For this, it should, but need not, be filed. The filing, however, provides important documentation. It is expected that a statement of authority will usually 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 (a) requires that the statement be recorded in the office of the recorder of deeds where a transfer of the real property would be recorded. This is where a title search concerning the real estate would be conducted.
Subsection (b)(2) may present a problem for some small, ad-hoc nonprofit associations. They may have no fixed office address. They may meet in the homes of their leaders. However, if they distribute literature or file petitions they are likely to have a mailing address of some kind, e.g., the mailing address of a member or manager.

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

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

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

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

The obvious purpose of subsection (g) is to protect good faith purchasers for value without notice who rely on the statement, including those who 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 subsection (g). Instead, 15 Pa.C.S. § 110 applies and would invoke other Pennsylvania law.

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

§ 9117. Liability.

(a) Scope. –

(1) A debt, obligation or other liability of a nonprofit association, whether arising in contract, tort or otherwise, is solely the debt, obligation or other liability of the nonprofit association.

(2) A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the nonprofit association solely by reason of being or acting as a member or manager.

(3) This subsection applies regardless of the dissolution of the nonprofit
(b) Liability for conduct.—A person’s status as a member or manager does not prevent or restrict law other than this chapter from imposing liability on the person or the nonprofit association because of the person’s conduct.

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

(d) Observation of formalities. – The failure of a nonprofit association to observe formalities relating to the exercise of its powers or the management of its activities and affairs is not a ground for imposing liability on a member or manager of the nonprofit association for a debt, obligation or other liability of the nonprofit association.

Committee Comment (2013):

Subsections (a) and (b) are patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 8.

1. The effect of this section is to provide members and managers of a nonprofit association with the same protection against vicarious liability for the debts and obligations of the nonprofit association and tort liability imposed on the nonprofit association as the members and managers of a nonprofit corporation would have under Pennsylvania law. These principles, taken together, constitute what is known as the limited liability doctrine under which a member or manager is personally liable for his or her own tortious conduct under all circumstances and is personally liable for contract liabilities incurred on behalf of the nonprofit association if the member or manager guarantees or otherwise assumes personal liability for the contract or, under concepts of agency law, the member or manager fails to disclose that he or she is acting as the agent for the nonprofit association and the third party did not know and should not have reasonably known such relationship. A member or manager is not otherwise personally liable for the tort or contract liabilities imposed upon the nonprofit association. A creditor with a judgment against the nonprofit association must seek to satisfy the judgment out of the assets of the nonprofit association but cannot levy execution against the assets of a member or manager.

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

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

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

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

5. “Solely” as used in this section is intended to make it clear that a member or manager is not vicariously liable for the liabilities of the nonprofit association or the liabilities of another member or manager merely because of that person’s status as a member or manager. A member or manager may, however, have personal liability as a result of his or her own actions. A member or manager will be personally liable, for example, for his or her own tortious acts, or for breach of a contract binding on the nonprofit association which the member or manager is a party to or has guaranteed. This personal liability is imposed by other law and not because of his or her status as a member or manager.

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

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

“manager”
“member”
“nonprofit association”

§ 9118. Assertion and defense of claims.

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

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

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

Committee Comment (2013):

Subsections (a) and (b) are patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) (“UUNAA”) § 9. Subsection (c) is patterned after Uniform Unincorporated Nonprofit Association Act (1996) § 7(b).

1. Under traditional common law doctrine, a nonprofit association was considered to be an aggregate of members and therefore it 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 nonprofit association, and that all the members had to be named and served with process in a suit against a nonprofit association. Many states have enacted statutes in recent years granting nonprofit associations the status of an entity for the purpose of suits by and against the nonprofit association. This section follows the modern rule
and is consistent with the concept built into this chapter that a nonprofit association is a separate
entity for many more purposes than existed under traditional common law principles.
Subsection (a) is consistent with existing Pa.R.Civ.P. 2153.

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

2. Subsection (b) is another aspect of a nonprofit association being a separate legal
entity under this chapter. Under the common law aggregate theory, since a nonprofit association
was not an entity separate from its members, a member could not assert a claim against the
nonprofit association since there was 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, a nonprofit association could not assert a claim against a member (e.g., for
unpaid dues) because the nonprofit association technically did not exist. Subsection (b) only
allows a member to assert that member’s claim against the nonprofit association. It does not
authorize a member to file a derivative action.

Subsection (b) is substantive in that it gives statutory sanction to the provisions of

3. Subsection (c) describes the standing of a nonprofit association to represent the
interests of its members in a proceeding. It is the federal standing rule. Hunt v. Washington
nonprofit association must meet the three requirements only if it seeks to represent the interests
of its members. If the suit concerns only the interests of the nonprofit association, subsection (c)
does not apply.

If participation of individual members is required, the nonprofit association does not have
standing. If the injury for which a claim is made or the remedy sought is different for different
members, their participation through testimony and presenting other evidence is required. The
typical case in which a nonprofit association has standing is where it seeks only a declaration, in-
junction or some form of prospective relief for injury to its members. Wadh v. Seldin, 422 U.S.
490, 515, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

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

4. Section 12 of the UUNAA, which deals with service of process on nonprofit associations, has been omitted from this chapter as unnecessary in light of Pa.R.Civ.P. 423. Section 14 of the UUNAA, which deals with venue in actions involving nonprofit associations, has been omitted from this chapter as unnecessary in light of Pa.R.Civ.P. 2156.

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

   “manager”
   “member”
   “nonprofit association”

§ 9119. Effect of judgment or order.

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

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 10.

This section 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 ....”

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

That a judgment against a nonprofit association is not also a judgment against one authorized to manage the affairs of the nonprofit association recognizes fully the entity status of a nonprofit association. An obvious corollary of this section is that a judgment against a nonprofit association 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 nonprofit association. 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.”

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

“manager”
“member”
“nonprofit association”

§ 9120. Appointment of agent to receive service of process.

(a) Statement.—A nonprofit association may deliver to the department for filing a statement appointing an agent to receive service of process.

(b) Contents.—A statement appointing an agent to receive service of process must state:

(1) the name of the nonprofit association;

(2) the address, if any, in this Commonwealth; and

(3) the name of the person in this Commonwealth authorized to receive service of process and the person’s address, including street and number, in this Commonwealth.

(c) Signature and effect.—

(1) A statement appointing an agent to receive service of process must be signed by:

(i) a person authorized to manage the affairs of the nonprofit association; and

(ii) the person appointed as the agent.

(2) The signing of the statement is an affirmation:

(i) by the person authorized to manage the affairs of the nonprofit association that the person has that authority; and

(ii) by the person appointed as agent that the person consents to act as agent.

(d) Amendment or cancellation.—An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for signature of an original statement. An agent may resign by delivering a resignation to the department for filing
and giving notice to the nonprofit association.

(e) Rejection of statement. – A statement appointing an agent to receive service of process may not be rejected for filing because the name of the nonprofit association signing the statement is not distinguishable on the records of the department from the name of another association appearing in those records. The filing of such a statement does not make the name of the nonprofit association signing the statement unavailable for use by another association.

(f) Effectiveness. – A statement appointing an agent to receive service of process:

(1) takes effect on filing by the department; and

(2) is effective for five years after the date of filing unless canceled or terminated earlier.

(g) Duty of agent. – The only duty under this chapter of an agent to receive service of process is to forward to the nonprofit association at the address most recently supplied to the agent by the nonprofit association any process, notice or demand pertaining to the nonprofit association which is served or received by the agent.

(h) Cross references. – See section 135 (relating to requirements to be met by filed documents).

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 31.

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

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

Central filing with the Department of State has been provided because that is where interested parties will seek information of this kind and where such appointments are commonly publicly filed.
Subsection (e) has two purposes: (1) it prohibits the department from refusing to file a registered agent statement by a nonprofit association on the grounds that the name of the association conflicts with the name of another entity that has filed formation documents with the department; and (2) the filing of the statement by the nonprofit association does not prohibit another association formed after the nonprofit association has filed from using the same name as the nonprofit association. Both derive from the non-mandatory nature of the appointment of a registered agent by a nonprofit association. The term “association” is used in the broad sense defined in 15 Pa.C.S. § 102.

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

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

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

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

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

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 12.

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

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

“manager”
“member”
“nonprofit association”

§ 9122. Member not agent.
A member is not an agent of the nonprofit association solely by reason of being a member.

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 14.

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

A nonprofit association 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 nonprofit association 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 nonprofit association. See 15 Pa.C.S. § 9117.

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

“member”

“nonprofit association”

§ 9123. Approval by members.

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

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

(2) select or dismiss a manager;
(3) adopt, amend or repeal the governing principles;

(4) transfer all, or substantially all, of the property of the nonprofit association, with or without its goodwill, outside the ordinary course of its activities;

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

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

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

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

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 15.

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

Subsection (a)(4) does not apply to a transfer by operation of law because this section is addressing voluntary actions taken by a nonprofit association.

Subsection (a)(7) includes changing the policies or purposes of a nonprofit association after they have been adopted.

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

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

§ 9124. Action by members.
(a) General rule.—Except as provided in the governing principles:

(1) approval of a matter by the members requires the affirmative vote of at least a majority of the votes cast at a meeting of members; and

(2) each member is entitled to one vote on each matter that is submitted for approval by the members.

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

(1) calling, location and timing of member meetings;

(2) notice and quorum requirements for member meetings;

(3) conduct of member meetings;

(4) taking of action by the members by consent without a meeting or by ballot;

(5) participation by members in a meeting of the members by telephone or other means of electronic communication; and

(6) taking of action by members by proxy.

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

Committee Comment (2013):

Subsections (a) and (b) are patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 16. Subsection (c) is derived from former 15 Pa.C.S. § 9101.

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

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

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

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

“governing principles”
“member”
“nonprofit association”

§ 9125. Duties of member.

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

(b) Discharge of duties and exercise of rights.—A member shall, consistent with the
governing principles and the contractual obligation of good faith and fair dealing:

(1) discharge duties under the governing principles to the nonprofit association and
the other members; and

(2) exercise any rights under the governing principles and this chapter.

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008)
(Last Amended 2011) § 17.

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

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

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

“governing principles”
“member”
“nonprofit association”

§ 9126. Membership.

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

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

(2) Except as provided in the governing principles, the suspension, dismissal or expulsion 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 the suspension, dismissal or expulsion.

(b) Resignation of member.—

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

(2) Except as provided in the governing principles, 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.

Committee Comment (2013):
Subsection (a) is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) ("UUNAA") § 18. Subsection (b) is patterned after UUNAA § 20.

The default rule for admission, suspension, dismissal, or expulsion of members is a majority vote of members, but if the governing principles provide otherwise, they will control. See 15 Pa.C.S. § 9124(a). Subsection (a)(2) makes clear that suspension, dismissal, or expulsion does not relieve a member of any obligations it owes the nonprofit association.

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

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

“governing principles”

“member”

§ 9127. Membership interest not transferable.

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

(b) Certain nonprofit associations formed prior to effective date.—

(1) This subsection applies to a nonprofit association:

(i) which was formed before {the Legislative Reference Bureau shall insert here the effective date of this section};

(ii) which was formed for the purpose of encouraging lawful associational activity among agricultural and industrial workers through the organization of a nonprofit association for mutual benefit insurance, saving or other lawful objects; and

(iii) in which the persons that organized the nonprofit association derive benefits from the preservation and continuance of the membership and interest among persons engaged in a common calling, labor or enterprise.

(2) For a nonprofit association under paragraph (1), the following apply:
Except as set forth in subparagraph (ii), a member’s interest or any right under the governing principles is transferable.

(ii) A member’s interest or any right under the governing principles is nontransferable if the governing principles so provide.

(c) Assignments and pledges.—No legal or equitable right or interest shall pass as a result of an attempted transfer in violation of:

(1) subsection (a); or

(2) a transfer restriction under subsection (b)(2)(ii).

(d) Knowledge of nontransferability.—Whenever the interest of a member in a nonprofit association is evidenced by a certificate, an endorsement on the certificate that the certificate is nontransferable shall be conclusive evidence that the person to whom any attempted transfer of the certificate is made has knowledge of the nontransferable character of the interest of the member.

Committee Comment (2013):

Subsection (a) is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 20. Subsections (b), (c), and (d) are derived from former 15 Pa.C.S. § 9103.

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

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

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

“governing principles”

“member”
“nonprofit association”

§ 9128. Selection and management rights of managers.

Except as provided in this chapter or the governing principles:

(1) if there is no manager selected and serving, all members are managers;

(2) only the members may select a manager;

(3) a manager may be a member or a nonmember;

(4) each manager has equal rights in the management and conduct of the activities of the nonprofit association;

(5) all matters relating to the activities of the nonprofit association are decided by its managers except for matters reserved for approval by the members in section 9123 relating to approval by members; and

(6) a difference among the managers is decided by a majority of the managers.

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 21.

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

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

The rules in this section are default rules that can be varied by the governing principles. The intent is to allow maximum flexibility. The governing principles can provide for any type of managerial structure the nonprofit association wants to have. Choices range from a traditional board of directors or board of trustees, to third parties who manage the nonprofit association under a contract. The managerial responsibilities can be split among the various managers (e.g., one manager in charge of finances, another in charge of programs). Members who are also managers will have a dual status and their duties and liabilities will be based on the capacity in which they are acting at the time an action (or omission) takes place.
The following terms used in this section are defined in 15 Pa.C.S. § 9112:

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

§ 9129. Duties of managers.

(a) Standard of care.—

(1) A manager shall manage the nonprofit association:

(i) in good faith;

(ii) in a manner the manager reasonably believes to be in the best interests of the nonprofit association; and

(iii) with such care, including reasonable inquiry, as a prudent person would reasonably exercise in a similar position and under similar circumstances.

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

(b) Conflicts of interest.—

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

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

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

(1) is not interested, directly or indirectly, in the subject of the judgment and is otherwise able to exercise independent judgment;
(2) is informed with respect to the subject of the judgment to the extent the manager reasonably believes to be appropriate under the circumstances; and

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

(d) Limitation of liability.—

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

(i) the manager has breached or failed to perform the manager’s duties under this chapter; and

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

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

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

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

Committee Comment (2013):

This section is patterned generally after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 22. Subsection (a) is patterned after 15 Pa.C.S. § 1712(a). Subsection (d) is patterned after 15 Pa.C.S. § 1713.

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

The two fundamental fiduciary duties are care and loyalty. Good faith is sometimes characterized as a fiduciary duty but with respect to unincorporated business entities is designated as a contract based obligation.
Under subsection (b) the duty of loyalty to a nonprofit association is limited to circumstances surrounding the responsibilities of a manager. A manager of a nonprofit does not owe a duty of loyalty in reference to situations that are commonly called the “business opportunity” doctrine or engaging in competing activities. A potential breach of the duty of loyalty can be avoided by advance approval or ratification after full disclosure of the facts. Under subsection (c)(1) having a conflict of interest precludes the application of the presumption in subsection (c).

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

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

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

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

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

§ 9130. Action by managers.

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

(1) approval of a matter by the managers requires the affirmative vote of at least a majority of the votes cast at a meeting of managers; and

(2) each manager is entitled to one vote on each matter that is submitted for approval by the managers.

(b) Procedural matters.—The governing principles may provide for the:
(1) delegation to a manager of authority to act without a meeting of the managers;
(2) creation and authority of committees of the managers;
(3) calling, location and timing of meetings of the managers or a committee of the managers;
(4) notice and quorum requirements for meetings of the managers or a committee of the managers;
(5) conduct of meetings of the managers or a committee of the managers;
(6) taking of action by the managers or a committee of the managers by consent without a meeting or by ballot;
(7) participation by managers in a meeting of the managers or a committee of the managers by telephone or other means of electronic communication; and
(8) taking of action by a manager by proxy.

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

Committee Comment (2013):

This section is patterned generally after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 23.

A nonprofit association will usually have some kind of notice and quorum requirements and meeting procedures in its governing principles. If a nonprofit association does not have any such requirements (e.g., it is newly formed and is holding its initial meeting), it can create them at that meeting and those requirements, even if oral or shown through the course of conduct over time, become part of the governing principles.

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

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

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

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

§ 9131. Right of member or manager to information.

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

(b) Restrictions.—A 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 on the recipient obligations of nondisclosure and safeguarding.

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

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

(1) the information pertains to the period during which the person was a member or manager;

(2) the former member or manager seeks the information in good faith; and

(3) the former member or manager satisfies subsections (a), (b) and (c).

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 24.
This subchapter does not require a nonprofit association to keep any books and records, but if it does have them, they must be made available to the members and managers pursuant to this section. The term books and records is intended to cover all types and forms of data, including electronic data.

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

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

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

§ 9132. Distributions prohibited; compensation and other permitted payments.

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

(b) Permitted payments.—A nonprofit association may:

(1) pay reasonable compensation or reimburse reasonable expenses to a member or manager for services rendered;

(2) confer benefits on or make contributions to a member or manager in conformity with its nonprofit purposes;

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

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

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

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 25.
A distribution by a nonprofit association to its members is inconsistent with the nonprofit nature of the organization. Thus this section prohibits distributions generally, subject to the exceptions in subsection (b), in a manner similar to the restrictions applicable to nonprofit corporations. See 15 Pa.C.S. § 5551.

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

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

§ 9133. Reimbursement, indemnification and advancement of expenses.

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

(b) Indemnification and advancement of expenses.—

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

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

Committee Comment (2013):

Subsection (a) is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 26(a).

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

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

“governing principles”
“manager”
§ 9134. Dissolution.

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

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

(2) if the governing principles do not provide a time or method for dissolution,
upon approval by the members;

(3) if no member can be located and the operations of the nonprofit association
have been discontinued for at least three years, by:

   (i) the managers; or
   
   (ii) if the nonprofit association has no current manager, its last manager;

(4) by court order; or

(5) under law other than this chapter.

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

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008)
(Last Amended 2011) § 27.

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

Subsection (a)(4) provides a means for the dissolution of a nonprofit association where it is
impossible or impracticable to continue the nonprofit association and subsections (a)(1) – (a)(3)
do not apply, for example because of a deadlock or in other circumstances where the doctrine of
cy pres is deemed to be applicable.
A nonprofit association that is totally inactive and has no assets or that has decreased its membership below the two member minimum requirement is *de facto* dissolved, even though it is not *de jure* dissolved. Formal dissolution (and winding up and termination under 15 Pa.C.S. § 9135) is only necessary if the nonprofit association has assets.

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

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

### § 9135. Winding up and termination.

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

1. All known debts and liabilities must be paid or adequately provided for.
2. Any property subject to a condition requiring return to the person designated by the donor shall be transferred to that person.
3. Any property subject to a trust shall be distributed in accordance with the trust agreement.
4. Any property committed to a charitable purpose shall be distributed in accordance with that purpose unless the nonprofit obtains a court order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.
5. Any remaining property shall be distributed as follows:
   - (i) Distribution shall be made:
     - (A) in accordance with the governing principles of the nonprofit association; or
     - (B) in the absence of applicable governing principles, to the members of the nonprofit association:
       - (I) per capita; or
       - (II) as the members direct.
(ii) If subparagraph (i) does not apply, distribution shall be made under Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Committee Comment (2013):

This section is patterned after Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) § 28. Subsection (a)(4) is patterned in part after 15 Pa.C.S. § 5547(b).

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

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

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

“governing principles”
“member”
“nonprofit association”

§ 9136. Subordination of chapter to canon law.

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

Committee Comment (2013):

This section extends to nonprofit associations a provision of the Nonprofit Corporation Law of 1988 that subordinates that statute to applicable canon law. See 15 Pa.C.S. § 5107. This section applies to all types of religious groups and not just to those with a formal system of canon law. Both sections are consistent with prevailing decisions of the U.S. Supreme Court that prohibit civil courts from making judgments regarding purely ecclesiastical matters. See, e.g., Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevich, et al., 426 U.S. 696 (1976); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1951);

**Part V**

**Business Trusts**

**Chapter 95**

**Business Trusts**

**§ 9503. Documentation of trust.**

(a) General rule.—A business trust shall not be valid unless created by deed of trust or other written instrument subscribed by one or more individuals, associations or other entities. The trustees of a business trust shall promptly cause the instrument or any amendment thereof, except an amendment solely effecting or reflecting the substitution of or other change in the trustees, to be filed in the Department of State.

(b) Definition of “instrument”.—The term “instrument,” as used in this chapter, shall mean the original deed of trust or other written instrument, all amendments thereof and any other statements or certificates permitted or required to be filed in the department by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction) or this chapter. If an amendment of the instrument or articles of merger made in the manner permitted by section 1921(c) (relating to business trusts and other associations) or a certificate of merger made in the manner permitted by section 8545(c) (relating to business trusts and other associations) restates an instrument in its entirety, henceforth the “instrument” shall not include any prior documents, and any certificate issued by the department with respect thereto shall so state.

(c) Amendment.—The instrument may be amended in the manner and to the extent provided therein or by the trustee or a majority of the trustees, if not otherwise provided therein. The amendment shall be evidenced by a written instrument subscribed by one or more authorized persons on behalf of the business trust. The instrument of amendment, if required by subsection (a), shall be filed in the department and:

(1) if the original deed of trust or other instrument was filed in the department under subsection (a), shall become effective upon filing or such later date and time, if any, as may be set forth in the instrument of amendment; or

(2) in any other case, shall become effective as set forth in the instrument of amendment.

(d) Duration.—The instrument creating a business trust shall specify the period of its
duration, which may be perpetual. The rule against perpetuities or analogous principles shall not be applicable to a business trust.

(d.1) Bearer certificates prohibited.—A business trust may not issue a certificate of beneficial interest in bearer form. This subsection may not be varied by the instrument or other documentation of the business trust.

(e) Cross [reference] references.—See [section] sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

[There is no Committee Comment to § 9503.]