AMENDMENTS TO THE PENNSYLVANIA CONSOLIDATED STATUTES WITH COMMITTEE COMMENTS

AMENDING PART I OF TITLE 15

BY ADOPTING

NEW SUBCHAPTER 2A OF TITLE 15 RELATING TO NAMES OF ASSOCIATIONS

MODEL ENTITY TRANSACTIONS ACT

AS NEW CHAPTER 3 OF TITLE 15

NEW CHAPTER 4 OF TITLE 15 RELATING TO REGISTRATION OF FOREIGN ASSOCIATIONS

AND MAKING CONFORMING AND RELATED AMENDMENTS AND REPEALS TO TITLES 15 AND 54

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

To Accompany the Association Transactions Act
House Bill 2234 (P.N. 3746)

June 17, 2014

Adoption of the statutory changes proposed in this document has been approved in concept by the Pennsylvania Bar Association, but the specific statutory language and Committee Comments have not been passed upon by the Pennsylvania Bar Association or its Section on Business Law.
PENNSYLVANIA BAR ASSOCIATION
SECTION ON BUSINESS LAW
TITLE 15 / BUSINESS ASSOCIATIONS COMMITTEE

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Introductory Note

The Title 15 / Business Associations Committee is proposing legislation to amend Title 15 that will:

(i) Add a set of provisions on names as new 15 Pa.C.S. Subch. 2A that will apply to (A) all domestic entities formed under Title 15 by a filing with the Department of State, (B) domestic general partnerships registering as limited liability partnerships, and (C) all foreign associations registering to do business in Pennsylvania under Title 15.

(ii) Enact the Model Entity Transactions Act as new 15 Pa.C.S. Ch. 3.

(iii) Add a set of provisions as new 15 Pa.C.S. Ch. 4 that will apply to all foreign associations registering to do business in Pennsylvania under Title 15.

(iv) Make conforming and related amendments and repeals to various provisions of Titles 15 and 54.

This document sets forth the text of new Chapters 2A, 3, and 4 that the Committee is proposing, along with conforming amendments to other provisions of the Pennsylvania Consolidated Statutes. Amendments to the Pennsylvania Consolidated Statutes are shown in this document by underlining text to be added and [bracketing text to be deleted]. Changes to the Committee Comments to existing provisions of Title 15 have not been marked.
§ 102. Definitions.

(a) Defined terms. – 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 for profit or not-for-profit, a partnership, a limited liability company, a business or statutory trust, an entity or two or more persons associated in a common enterprise or undertaking. The term does not include:

(1) 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);

(2) an association or relationship that:

(i) is not a person that has:

(A) a legal existence separate from any interest holder of the person;

or

(B) the power to acquire an interest in real property in its own name;

and

(ii) is not a partnership under the rules stated in section 8312 (relating to rules for determining the existence of a partnership) or a similar provision of the law of another jurisdiction;
(3) a decedent’s estate; or

(4) a government or a governmental subdivision, agency or instrumentality.

"Banking institution." 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 corporation.” A domestic or foreign business corporation as defined in section 1103 (relating to definitions), whether or not it is a cooperative corporation.

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

“Cooperative corporation.” A domestic corporation that is subject to Subpart D of Part II (relating to cooperative corporations), or a foreign corporation that is subject to a similar law of a foreign jurisdiction.

“Corporation for profit.” A domestic or foreign corporation incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise, to its shareholders or members, whether or not it is a cooperative corporation.

“Corporation not-for-profit.” A domestic or foreign corporation not incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise, whether or not it is a cooperative corporation.

"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.

“Dissenters rights.” The rights and remedies provided by Subchapter D of Chapter 15 (relating to dissenters rights).
“Distributional interest.” The right under the organic law of an entity that is not a
corporation for profit or not-for-profit, or under the organic rules of such an entity, to receive
distributions from the entity.

“Domestic association.” An association, the internal affairs or which are governed by
the law of this 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

“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 entity.” An entity, the internal affairs of which are governed by the law of
this Commonwealth.

“Domestic filing association.” A domestic association, the formation of which requires
the filing of a public organic record. The term does not include a general partnership that is
also:

1. a limited liability partnership; or
2. an electing partnership.

“Domestic filing entity.” A domestic entity, the formation of which requires the filing
of a public organic record. The term does not include a general partnership that is also:

1. a limited liability partnership; or
2. an electing partnership.

"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 former 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).

“ELECTRONIC.” Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

“ENTITY.” A domestic or foreign:

(1) business corporation;
(2) nonprofit corporation;
(3) general partnership;
(4) limited partnership;
(5) limited liability company;
(6) unincorporated nonprofit association;
(7) professional association; or
(8) business trust, common law business trust or statutory trust.

"EXECUTE." When used with respect to authenticating or adopting a filing, document or other record, means "sign."

"FILING ASSOCIATION.” A domestic or foreign association, the formation of which requires the filing of a public organic record. The term does not include a general partnership that is also:

(1) a limited liability partnership; or
(2) an electing partnership.

"FILING ENTITY.” A domestic or foreign entity, the formation of which requires the filing of a public organic record. The term does not include a general partnership that is also:

(1) a limited liability partnership; or
(2) an electing partnership.

"FOREIGN ASSOCIATION.” An association that is not a domestic association.

"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 entity.” An entity that is not a domestic entity.

“Foreign filing association.” A foreign association, the formation of which requires the filing of a public organic record.

“Fraternal benefit society.” A fraternal benefit society as defined in section 2403 of the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921.

“General partnership.” A domestic or foreign partnership as defined in section 8311 (relating to partnership defined), whether or not it is a limited liability partnership or electing partnership.

“Governance interest.” A right of a person under the organic law or organic rules of an association that is not a corporation for profit or not-for-profit, other than as a governor, agent, assignee or proxy, to:

1. receive or demand access to information concerning, or the books and records of, the association;
2. vote for the election of the governors of the association; or
3. receive notice of or vote on an issue involving the internal affairs of the association.

“Governor.” A person by or under whose authority the powers of an association are exercised and under whose direction the activities and affairs of the association are managed pursuant to the organic law and organic rules of the association. The term includes:

1. A director of a corporation for profit or a shareholder of a statutory close corporation that is deemed to be a director under section 2332(a) (relating to management by shareholders).
2. A director or member of an other body of a corporation not-for-profit.
3. A partner of a general partnership.
4. A general partner of a limited partnership.
5. A general partner of an electing partnership.
6. A manager of a manager-managed limited liability company or a member that has the right to participate materially in the management of a member-managed company.
limited liability company.

(7) A manager of an unincorporated nonprofit association.

(8) A member of the board of governors of a professional association.

(9) A trustee of a business trust, common law business trust or statutory trust.

“Health maintenance organization.” An entity that is subject to the act of December 29, 1972 (P.L. 1701, No. 364), known as the Health Maintenance Organization Act.

Hospital plan corporation.” A hospital plan corporation as defined in 40 Pa.C.S. § 6101 (relating to definitions).

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

“Interest.” A share in a corporation for profit, a membership or share in a corporation not-for-profit, a governance interest or a distributional interest. The term includes the following:

(1) A governance interest or transferable interest in a general partnership.

(2) A governance interest or transferable interest in a limited partnership.

(3) A governance interest or transferable interest in a limited liability company.

(4) A membership in an unincorporated nonprofit association.

(5) An ownership interest in a professional association.

(6) A beneficial interest in a business trust, common-law business trust or statutory trust.

“Interest holder.” A direct or record holder of an interest. The term includes the following:

(1) A shareholder of a corporation for profit.

(2) A member or shareholder of a corporation not-for-profit.

(3) A partner or transferee in a general partnership.

(4) A general or limited partner or transferee in a limited partnership.

(5) A member or transferee in a limited liability company.
(6) A member of an unincorporated nonprofit association.

(7) An associate in a professional association.

(8) A beneficiary or beneficial owner of record of a business trust, common-law business trust or statutory trust.


"Jurisdiction." When used to refer to a political entity, the United States, a state, a foreign country or a political subdivision of a foreign country.

"Jurisdiction of formation." The jurisdiction whose law includes the organic law of an association.

"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).

"Limited liability limited partnership." A domestic or foreign limited partnership for which there is in effect:

(1) a statement of registration under Chapter 82 (relating to registered limited liability partnerships);

(2) a provision of its certificate of limited partnership electing to be subject to Chapter 82; or

(3) a similar filing or provision under the organic law of a foreign partnership.

"Limited liability partnership." A domestic or foreign general partnership for which there is in effect:

(1) a statement of registration under Chapter 82 (relating to registered limited liability partnerships); or

(2) a similar filing under the organic law of a foreign general partnership.
“Limited partnership.” A domestic or foreign limited partnership as defined in section 3188503 (relating to definitions and index of definitions), whether or not it is a limited liability limited partnership or electing partnership.

“Nonfiling association.” An association that is not a filing association.

“Nonprofit corporation.” A domestic or foreign nonprofit corporation as defined in section 5103 (relating to definitions), whether or not it is a cooperative corporation.

“Nonregistered foreign association.” A foreign association that is not registered to do business in this Commonwealth pursuant to a filing with the department.

“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).

“Organic law.” The law of the jurisdiction of formation of an association governing its internal affairs.


“Principal office.” The principal executive office of an association, whether or not the office is located in this Commonwealth.

“Private organic rules.” The rules that govern the internal affairs of an association, are binding on all its interest holders and are not part of its public organic record, if any. The term includes the following:

1. The bylaws of a corporation for profit.
2. The bylaws of a corporation not-for-profit.
3. The partnership agreement of a general partnership.
4. The partnership agreement of a limited partnership.
5. The operating agreement of a limited liability company.
(6) The governing principles of an unincorporated nonprofit association.

(7) The bylaws of a professional association.

(8) The bylaws or similar rules, by whatever name they may be referred to, of a business trust, common-law business trust or statutory trust.

"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 association.” An association as defined in section 9302 (relating to application of chapter).

“Professional health service corporation.” A professional health service corporation as defined in 40 Pa.C.S. § 6302 (relating to definitions).

"Professional services." Any type of services that may be rendered by a member of a profession within the purview of his profession.

“Property.” All property, whether real, personal or mixed, or tangible or intangible, or any right or interest therein, including rights under contracts and other binding agreements.

“Public organic record.” The document the public filing of which by the department or a similar agency in another jurisdiction is required to form an association. The term includes any amendment or restatement of the document and includes the following:

(1) The articles of incorporation of a corporation for profit.

(2) The articles of incorporation of a corporation not-for-profit.

(3) The certificate of limited partnership of a limited partnership.

(4) The certificate of organization of a limited liability company.

(5) The articles of association of a professional association.

(6) The declaration of trust or other instrument of a business trust or statutory trust which has been filed by the department or a similar agency in another jurisdiction.

“Receipt.” Actual coming into possession.
“Receive.” To actually come into possession.

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

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

"Registered foreign association." A foreign association that is registered to do business in this Commonwealth pursuant to a filing in the department.

"Representative." 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." An association as defined in section 102(3) of the former 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.

“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.

“Type.” When used with respect to an association, a generic form:
(1) recognized at common law; or

(2) organized under an organic law, whether or not some associations organized
under that organic law are subject to provisions of that law which create different
categories of the form of association.

“Unincorporated nonprofit association.” A nonprofit association as defined in section
9112 (relating to definitions).

"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).

(b) Application of definitions. – The words and phrases defined in subsection (a) shall
have the same meanings when used in Title 54 (relating to names) except to the extent those
meanings are inconsistent with the provisions of that title.

Amended Committee Comment (2014):

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 includes the following types of organizations formed
under Pennsylvania law whose internal affairs are largely governed by statutes outside of Title
15 because those organization are subject to this chapter and, in some instances portions of
Chapters 2, 3, and 4:

- banks (see the Banking Code of 1965, 7 P.S. § 101, et seq.);
- credit unions (see Title 17); and
- fraternal benefit societies (see 40 P.S. § 991.2401, et seq.).

Subparagraph (2)(i) was added by the GAA Amendments Act of 1990 and makes clear
that trusts subject to the jurisdiction of the orphans' court are not subject to the provisions of
Title 15. Thus, such trusts are not authorized to be a party to a transaction under Chapter 3.
A related provision is found in 20 Pa.C.S. § 711(3), as amended by the General Association
Act of 1988, which excludes from the definition of an inter vivos trust subject to the
jurisdiction of the orphans' court “a business trust, including a trust subject to 15 Pa.C.S. Ch.
95 (relating to business trusts); and … similar trusts or fiduciary relationships.” The Uniform
Business Organizations Code (2011) § 1-102(10)(B)(ii) excludes from the definition of an
entity “a trust with a predominately donative purpose or a charitable trust.” Those types of
trusts are included within the types of trusts excluded from the definition of “association,” but
the definition also excludes other types of trusts that are within the jurisdiction of the
Orphan’s Court. Paragraphs (2) through (4) were added in 2014 by the Association
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 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, although section 1633 was subsequently amended to prohibit contributions from partnership funds made from funds of a partner that is a corporation.

“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.

“Electronic.” This definition is patterned after the definition of the same term in Uniform Electronic Transactions Act § 2(5). While not all of the technologies listed are technically “electronic” in nature (e.g., optical fiber technology), the term was chosen in the Uniform Electronic Transactions Act as the most descriptive term available to describe current technologies. The term should be construed broadly to include developing technologies arguably within any aspect of the definition. But the use of electronic technology will not always be in “record form” as defined in this section. An unrecorded telephone conversation between two people will involve electronic technology, but will not be in “record form” because the conversation will not later be “retrievable” as required by the definition of “record form.” A message on voicemail, however, will be in record form if the voicemail message is retrievable and capable of reproduction in perceivable form.
“Entity.” The term is limited to those forms of associations whose organic laws appear in Title 15. Thus, “entity” has a narrower scope than “association” as defined in this section. It is important to observe the distinction between the terms “association” and “entity” because they affect the scope of Chapters 2, 3, and 4. The provisions of Chapters 5 and following apply only to domestic entities, but Chapters 2, 3, and 4 apply more broadly to foreign associations and in some instances to domestic entities.

The Model Entity Transactions Act (2007) (Last Amended 2013) includes in its definition of “entity” a broad catch-all provision that the term:

(A) includes:

* * *

(x) any other person that has:

(I) a legal existence separate from any interest holder of that person; or

(II) the power to acquire an interest in real property in its own name; and

(B) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose or a charitable trust;

(iii) an association or relationship that is not listed in paragraph (A) and is not a partnership under the rules stated in [Section 202(c) of the Uniform Partnership Act (1997) (Last Amended 2011)] [Section 7 of the Uniform Partnership Act (1914)] or a similar provision of the law of any other jurisdiction;

(iv) a decedent’s estate; or

(v) a government or a governmental subdivision, agency, or instrumentality.

Consistent with the limited scope of the term “entity” in Title 15, that clarification of the scope of the category of “entities” has been omitted from the definition of “entity” in this section. But a similar provision has been included in the definition of “association.”

Inter vivos and testamentary trusts are excluded from the definition of “association” in this section and are not included in the definition of “entity.” Those types of trusts are thus not able to engage in transactions under Chapter 3. Trusts that carry on a business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust, Delaware statutory trust organized under 12 Del. Code Ch. 38, or other common law or statutory business trusts are “entities” and eligible to be parties to transactions under Chapter 3.

Limited liability partnerships and limited liability limited partnerships are “entities” because they are general partnerships and limited partnerships, respectively, that have made the additional required election claiming LLP or LLLP status. A limited liability partnership is not, therefore, a separate type of entity from the underlying general or limited partnership that has elected limited liability partnership status. Thus, for example, the election of a
general partnership to become a limited liability partnership is not a conversion subject to Pa.C.S. Subch. 3E. Similarly, electing partnerships are also “entities” because they are also general or limited partnerships, and the election of electing partnership status is not a conversion.

“Filing entity.” Whether an entity is a filing entity is determined by reference to whether its legal existence requires the filing of a document with the Department of State or a similar office in another jurisdiction. While the definition refers to the “formation” of an entity, it is intended to encompass corporations which are “incorporated” and limited liability companies which are “organized.”

The term does not include a limited liability partnership because an election filed by a general partnership claiming that status is not required to form the entity. A limited liability partnership, on the other hand, is a filing entity because the formation of the underlying limited partnership requires the filing of a certificate of limited partnership.

“Foreign entity.” The term “foreign entity” includes any non-domestic entity of any type. Where a foreign entity is a filing entity, the internal affairs of the entity will be governed by the laws of the jurisdiction of filing. The jurisdiction whose laws will govern the internal affairs of a nonfiling foreign entity will be determined by other factors. It is a factual question whether a general partnership whose internal affairs are governed by the Uniform Partnership Act (1914) (“UPA”) is a domestic or foreign partnership. A UPA partnership will likely be deemed to be a domestic entity where the greatest nexus of contacts are found. The domestic or foreign characterization of a partnership under the Uniform Partnership Act (1997) (Last Amended 2013) (“RUPA”) that has not registered as a limited liability partnership will be governed by RUPA § 106(a) (“the law of the jurisdiction in which a partnership has its chief executive office”).

“Governance interest.” A governance interest is typically only part of the interest that a person will hold in an unincorporated association and is usually coupled with a transferable interest (or economic rights). However, memberships in some unincorporated nonprofit associations consist solely of governance interests and in others may not include either governance interests or distributional interests. In some unincorporated business associations, there is a more limited right to transfer governance interests than there is to transfer distributional interests. An interest holder in such an unincorporated business association who transfers only a distributional interest and retains the governance interest will also retain the status of an interest holder.

Governors of an association have the kinds of rights listed in the definition of “governance interest” by reason of their position with the association. For a governor to have a “governance interest” requires that the governor also have those rights for a reason other than the governor’s status as such. A manager who is not a member in a limited liability company, for example, will not have a governance interest, but a manager who is a member will have a governance interest arising from the ownership of a membership interest.
“Governor.” This term has been chosen to provide a way of referring to a person who has the authority under an association’s organic law to make management decisions regarding the association that is different from any of the existing terms used in connection with particular types of associations. Depending on the type of association or its organic rules, the governors of an association may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. A person having only the power to bind the association pursuant to the instruction of the governors is not a governor. Under the organic rules, particularly those of unincorporated associations, most or all of the management decisions may be reserved to the members or partners.

Cooperative corporations are treated as either corporations for profit or corporations not-for-profit. See 15 Pa.C.S. § 7102. Thus paragraphs (1) and (2) of the definition of “governor” include directors of cooperative corporations.

“Interest.” In the usual case, the interest held by an interest holder in an unincorporated entity will include both a governance interest and a distributional interest (or economic rights). Members in unincorporated nonprofit associations generally do not have any transferable interest because they do not receive distributions, but they nonetheless may hold a governance interest in which case they would have the status of interest holders.

“Interest holder.” This chapter does not refer to “equity” interests or “equity” owners or holders because the term “equity” could be confusing in the case of a nonprofit entity whose members do not have an interest in the assets or results of operations of the entity but only have a right to vote on its internal affairs.

“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.

“Private organic rules.” The term private “organic rules” is intended to include all governing rules of an association that are binding on all of the holders of an interest in the association, whether or not those rules are in record form, except for the provisions of the
association’s public organic document, if any. Thus the term includes oral partnership agreements and oral operating agreements among LLC members. Because the term includes all of the governing rules that are binding on the interest holders, it includes any amendment or restatement of those rules.

“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.

“Property.” The term “property” is intended to have as broad a meaning as possible. The last clause of the definition confirms that it includes, among other things, contract rights and choses in action.

“Public organic record.” A “public organic record” is a document the filing of which as a public record is required to form, organize, incorporate, or otherwise create an association. The term does not include a statement of registration as a limited liability partnership filed under 15 Pa.C.S. § 8201 because that statement does not create a new association. Similarly, the term does not include a statement of authority filed under Subchapter 91B by an unincorporated nonprofit association or a statement appointing an agent filed under that subchapter.

“Receipt.” This definition was added in 2014 by the Association Transactions Act which patterned it after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-102(40). See 15 Pa.C.S. § 112 with respect to what actual receipt means in the case of an electronic transmission. See 15 Pa.C.S. § 113 with respect to what constitutes delivery of a notice or other communication.

“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.”

“Type.” The term “type” is used to distinguish different legal forms of associations. It is sometimes difficult to decide whether one is dealing with a different form of association or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of association from a general partnership, while a limited liability partnership is not a different type of association from a general partnership nor is a limited liability limited partnership a different type of association from a limited partnership. Similarly, nonstock corporations, statutory close corporations, registered corporations, management corporations, professional corporations, and insurance corporations are all forms of business corporations and are not a separate “type” of association from a business corporation.

“Unincorporated nonprofit association.” The definition of this term in 15 Pa.C.S. § 9112 includes both domestic and foreign unincorporated nonprofit associations.

§ 109. Name of commercial registered office provider in lieu of registered address.

(a) General rule. – Where any provision of this title authorizes or requires the inclusion of a registered office address in any document filed in the Department of State, the person filing the document may substitute in lieu thereof the term "c/o" followed by:

(1) The name of an association or a division thereof that has filed in the
department, and not withdrawn, a statement of address of commercial registered office.

(2) The name of any county of this Commonwealth and a statement that the registered office of the association represented shall be deemed for venue and official publication purposes to be located in the county so named. For venue and official publication purposes, the county so named shall control over the address contained in the currently applicable statement filed under subsection (b).

(b) Statement of address of commercial registered office. – A domestic [business corporation] or [qualified] registered foreign [business corporation, partnership or other] association engaged in the business of maintaining registered offices in this Commonwealth for corporations or other associations may file in the department a statement of address of commercial registered office executed by the representing association or a division thereof and setting forth:

(1) The name of the representing association.

(2) The form of organization of the representing association.

(3) A statement that it is in the business of maintaining registered offices in this Commonwealth for corporations or other associations.

(4) The address, including street and number, if any, of a place of business of the representing association in this Commonwealth to which communications and other matters directed to each person represented by it may be delivered.

(c) Change or withdrawal. – A representing association that has effected a filing in the department under subsection (b) may:

(1) Amend the filing by filing in the department a superseding statement of address of commercial registered office.

(2) Withdraw its filing under subsection (b) and cease to provide registered office service by filing in the department a statement of termination of commercial registered office setting forth:

(i) The name of the representing association.

(ii) A statement that it has ceased to be in the business of maintaining registered offices in this Commonwealth for corporations and other associations.

(d) Action by and notice to association. – It is not necessary for an association represented to take any action in connection with a change or withdrawal effected under subsection (c), but a representing association that has effected a filing under subsection (c) (other than to reflect a change in the information required by subsection (b)(2)) shall promptly file a statement of change of registered office by agent under section 108 (relating to change in location or status of registered office provided by agent) with respect to each association represented.
Amended Committee Comment (2014):

This section gives a corporation or other association the option of listing the name (but not the address) of a corporation service company, followed by the name of a county (for venue and official publication purposes), in lieu of the usual registered office address. Persons desiring to learn the actual address of the corporation service company (and hence the registered office address of the represented corporation or other association) will be able to do so by reference to a register in the Department of State, but presumably will seldom have occasion to do so since, under the Judicial Code and Pa.R.C.P. Nos. 423 and 424, process is now mailed to or served at any actual business office of a corporation or other association.

15 Pa.C.S. § 135(c)(1) requires that any address set forth in a filed document be an actual street address or rural route box number.

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

“association”
“department”
“registered foreign association”

§ 112. Receipt of electronic communications.

(a) Requirements.—Unless otherwise provided in the organic rules of an entity or otherwise agreed between the sender and the recipient, an electronic communication is received when it:

(1) enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) is in a form capable of being processed by that system.

(b) Awareness not required.—An electronic communication is received under subsection (a) even if no individual is aware of its receipt.

(c) Presumption.—Receipt of an electronic acknowledgement from an information processing system described in subsection (a) establishes that a communication was received but, by itself, does not establish that the content sent corresponds to the content received.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and was patterned after Uniform Electronic Transactions Act § 15(b), (e), and (f). The section makes clear that
receipt of an electronic communication is not dependent on a person having notice that the
communication is in the person’s system. Receipt occurs when the communication reaches
the designated system whether or not the recipient ever retrieves the communication. The
paper analog is the recipient who never reads a mail notice. Subsection (c) provides legal
certainty regarding the effect of an electronic acknowledgement. It only addresses the fact of
receipt, not the quality of the content, nor whether the electronic communication was read or
“opened.” This section applies not only to email and similar messages, but also to other
electronic communications such as those resulting in voice mail messages.

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

“electronic”
“entity”
“organic rules”
“receipt”

§ 113. Delivery of document.

(a) Permissible means. – Permissible means of delivery of a document in record form
include:

(1) personal delivery;

(2) mail;

(3) conventional commercial practice; and

(4) electronic transmission.

(b) Delivery to department. – Delivery to the department of a document in record form
is effective only on receipt by the department.

(c) Delivery by department. – Except as provided by law other than this title, the
department may deliver a document in record form to a person by delivering it:

(1) in person to the person that submitted it for filing;

(2) to the address of the person’s registered office;

(3) to the principal office address of the person; or

(4) to another address the person provides to the department for delivery.

Committee Comment (2014):
Subsections (a) and (b) are patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-104. Subsection (c) is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-212.

Delivery to the department is effective only on actual receipt. The effectiveness of records delivered other than to the department will be controlled by provisions in other chapters of this title, if any, and may vary depending on the type of entity to which the records relate and manner in which the records are delivered.

If a person provides an email address to the department or delivers by email a document to the department for filing, the department will use that email address to deliver confirmation of the filing to the person.

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

- “department”
- “electronic”
- “principal office”
- “receipt”
- “record form”

Subchapter B
Functions and Powers of Department of State

§ 133. Powers of Department of State.

(a) General rule. – The 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.

(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 those instructions or explanatory materials shall not have the force of law.
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) (Deleted by 2013, July 9, P.L. 476, No. 67, § 5.)

(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.

(vi) Specify the symbols or characters which:

(A) do not make a name distinguishable on the records of the department; or

(B) may be used in the name of an entity.

(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) (Reserved).

(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 (2014):
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.

Subsection (a)(3)(vi) was added in 2014 by the Association Transactions Act. It permits the department to adopt regulations specifying what symbols or characters (i) will not make a name distinguishable, and (ii) which symbols or characters may be used in a name. The department may permit the use of a symbol or character in a name even though the symbol or character will not make the name distinguishable from other names. See 15 Pa.C.S. § 135(e)(1).


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.

§ 135. Requirements to be met by filed documents.

(a) General rule. – A document shall be accepted for filing by the 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 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 signed by an authorized person or by sufficient authorized persons or otherwise is duly 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) (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 and of symbols or characters specified by regulation of the department under section 133(a)(3)(vi) (relating to powers of department of state).

(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 (2014):

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.

* * *

(4) 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.

(5) 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.

Regulations adopted by the department under subsection (e)(1) do not have to go through the full rule-making process. See 15 Pa.C.S. § 133(a)(3)(vi).

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

“association”
“department”
“executed”
“record form”

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) 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 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) (Reserved).
(3) In lieu of date stamping the duplicate copy of the original signed document as provided in 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 and time. – Except as otherwise provided in this title and subject to sections 138 (relating to statement of correction) and 141 (relating to abandonment of filing before effectiveness), a document [shall become] filed by the department under a provision of this title is effective [upon the filing thereof in the department.]:

(1) on the date and at the time of its delivery to the department;

(2) on the date of delivery and at the time specified in the document as its effective time, if the time specified is later than the time under paragraph (1); or

(3) at a specified delayed effective date and:

(i) at a specified time; or

(ii) if no time is specified, at 12:01 a.m. on the date specified.

(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.

(e) Redaction of information. – If law other than this title prohibits the disclosure by the department of information contained in a document in record form delivered to the department for filing, the department shall accept the document if it otherwise complies with this title but may redact the information.

Amended Committee Comment (2014):

The system in this section of delivering duplicate copies of papers to the department, with one copy immediately stamped and returned, has been applicable since 1973 to filings under the Nonprofit Corporation Law. It was extended to the rest of Title 15 in 1988. The prior practice under which the department routinely issued certificates of incorporation, merger, consolidation, amendment, etc. was eliminated in 1988.

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

Subsection (c) was amended in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-203. Prior to the 2014 amendment, subsection (c) provided that documents were effective upon filing unless a specific document was authorized to include a delayed effective date or time by
another provision of Title 15. A provision authorizing a delayed effective date or time for a specific document is no longer necessary, and any document delivered to the department for filing may contain a delayed effective date or time. Provisions stating that a document may include a delayed effective date or time nonetheless have been retained in a number of sections of Title 15 as a reminder that a delayed effective date or time is permitted, but the absence of such a provision with respect to a specific document no longer means that the document may not include a delayed effective date or time.

Subsection (e) was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-201(b).

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113(b) and (c).

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

“department”
“record form”

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

§ 138. Statement of correction.

(a) Filing of statement. – Whenever any document authorized or required to be delivered to the department for filing by any provision of this title has been so filed and is an inaccurate record of the corporate or other action therein referred to or was defectively or erroneously executed, the document may be corrected by delivering to the department for filing a statement of correction of the document.

The statement of correction, except as provided in subsection (c), shall be executed signed by the association or other person that effected delivered the inaccurate, defective or erroneous document for filing and shall set forth:

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

(2) The statute by or under which the corporation was incorporated association was formed, or the preceding filing was made, in the case of a filing that does not constitute a part of the articles of incorporation of a corporation public organic record of an association.

(3) The inaccuracy or defect to be corrected.

(4) The portion of the document requiring correction in corrected form or, if the
document was erroneously executed, a statement that the original document shall be
deemed reexecuted or stricken from the records of the department, as the case may be.

(b) Effect of filing. –

(1) The corrected document shall be effective:

(i) Upon filing in the department, as to those persons who are substantially
and adversely affected by the correction.

(ii) As of the date the original document was effective, as to all other
persons.

(2) A filing under this section shall not have the effect of causing [original
articles of incorporation of a corporation or a similar type of document creating
any other form of association] the original public organic record of an association to
be stricken from the records of the department but the [articles or other document]
public organic record may be corrected under this section.

(c) Filing pursuant to court order. – If the association or other person refuses to [file]
deliver to the department for filing an appropriate statement of correction under this section
within ten business days after any person adversely affected has made a [written] demand in
record form [therefor] for the correction, the affected person may apply to the court for an
order to compel the filing. If the court finds that a document on file in the department is
inaccurate [or], defective or erroneous, it may direct the association or other person who
effected the inaccurate, defective or erroneous filing to [file] deliver to the department for
filing an appropriate statement of correction [in the department], or it may order the clerk to
execute the statement under the seal of the court and cause the statement to be [filed in]
delivered to the department for filing. In the absence of fraud, an application may not be
made to a court under this subsection with respect to a document more than one year after the
date on which it was originally filed in the department.

(d) Cross reference. – See section 135 (relating to requirements to be met by filed
documents).

Amended Committee Comment (2001):

A statement with respect to continuation of procedure filed under Section 107(e) of the
General Association Act of 1988 (15 P.S. § 20107(e)) is subject to correction under this
section.

The purpose of subsection (b)(2) is to keep the procedure of this section from being used
as an alternative to the dissolution process.

The cross reference to 15 Pa.C.S. § 135 in subsection (d) 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.

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

“association”
“court”
“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).

§ 139. Tax clearance of certain fundamental transactions.

(a) [General rule. – Except as provided in subsection (c), a domestic association
shall not file articles or a certificate of merger or consolidation effecting a merger or
consolidation into a nonqualified foreign association or articles or a certificate of
dissolution or a statement of revival, a qualified foreign association shall not file an
application for termination of authority or similar document in the Department of State
and a domestic association shall not file articles or a certificate of division dividing solely
into nonqualified foreign associations unless the articles, certificate, application or other
document are accompanied by clearance certificates from the Department of Revenue
and the Office of Employment Security of the Department of Labor and Industry,
evidencing the payment by the association of all taxes and charges due the
Commonwealth required by law.] Requirement. – Except as provided in subsection (c) or
(d), clearance certificates from the Department of Revenue and the Department of Labor and
Industry, evidencing the payment by the association of all taxes and charges due the
Commonwealth required by law must be delivered to the department for filing when any of
the following is delivered to the department for filing:

(1) Articles or a statement or certificate of merger merging a domestic
association into a nonregistered foreign association.

(2) Articles or a statement or certificate of conversion or domestication effecting
a conversion or domestication of a domestic association into a nonregistered foreign
association.

(3) Articles or a certificate of dissolution or a statement of revival of a domestic
association.

(4) An application for termination of registration, statement of withdrawal or
similar document by a registered foreign association.
(5) Articles or a statement or certificate of division dividing a domestic association solely into foreign associations.

(b) Tax clearance in judicial proceedings. – Until the clearance certificates described in subsection (a) have been filed with the court:

(1) The court shall not order the dissolution of a domestic business corporation, nonprofit corporation or business trust.

(2) The court shall not approve a final distribution of the assets of a domestic general partnership, limited partnership, electing partnership or limited liability company if the court is supervising the winding up of the association.

(c) Alternative provisions. – If clearance certificates are filed with the court as required under subsection (b), it shall not be necessary to file the clearance certificates with the Department of State.

(d) Registration of foreign associations. – It shall not be necessary to deliver clearance certificates under subsection (a) if, simultaneously with the delivery of the articles, statement or certificate of merger, conversion, division or domestication:

(1) the foreign association that is the surviving, converted or domesticated association registers to do business in this Commonwealth; or

(2) at least one of the new foreign associations resulting from the division registers to do business in this Commonwealth.

Amended Committee Comment (2014):

Subsections (b) and (c) were added by the GAA Amendments Act of 2001 for the purpose of calling attention to the tax clearance procedure in judicial dissolution proceedings that was already the law. Subsection (b) is patterned after section 32 of the act of June 1, 1889 (P.L. 420, No. 332) (72 P.S. § 3323), which provides that:

No corporation, company, joint-stock association, association or limited partnership made taxable by this act, shall hereafter be dissolved by the decree of any court of common pleas, nor shall any judicial sale be valid or a distribution of the proceeds thereof be made, until all taxes due the commonwealth have been fully paid into the state treasury, and the certificate of the auditor general, state treasurer and attorney general to this effect filed in the proper court, with the proceedings for dissolution or sale.

Prior to the enactment of subsections (b) and (c), there was confusion about the requirements for tax clearance certificates in connection with judicial dissolutions because of the express statements in 15 Pa.C.S. §§ 1989(b) and 5989(b) that tax clearance certificates were not required when articles of dissolution were filed by the clerk of a court of common
pleas after an order was entered dissolving a business corporation or a nonprofit corporation. Because the requirement of section 32 of the 1889 Act that tax clearance certificates were to be filed with the court was not widely known, many people assumed that tax clearance certificates were not required at all in connection with judicial dissolutions. To call attention to the need to file tax clearance certificates with the court in connection with a judicial dissolution, the GAA Amendments Act of 2001 enacted subsections (b) and (c), repealed the statements in 15 Pa.C.S. §§ 1989(b) and 5989(b) that tax clearance certificates were not required to be filed in the Department of State, and added cross references to subsection (b) in 15 Pa.C.S. §§ 1989 and 5989.

In the case of general partnerships, limited partnerships and limited liability companies, 15 Pa.C.S. §§ 8354, 8572 and 8972, respectively, provide that a court may order dissolution of the association on application of a partner or a member under certain circumstances. However, unlike a judicial dissolution of a corporation or business trust, where the order dissolving the association comes at the end of the dissolution and winding up process, a judicial decree dissolving a limited partnership or limited liability company only commences the winding up process. Following an order dissolving a general partnership, limited partnership or limited liability company, the winding up process may or may not be conducted under judicial supervision pursuant to 15 Pa.C.S. §§ 8359, 8573 and 8973. Subsection (b)(2) provides that if a court supervises the winding up proceedings, the required tax clearance certificates are to be filed with the court. By implication, if the winding up is not supervised by the court, the general rule in subsection (a) will continue to apply to the dissolution of a limited partnership or a limited liability company and tax clearance certificates must be filed with the Department of State along with the filing formally terminating the existence of the association.

Subsection (b)(2) expands on the rule in section 32 of the 1889 Act to the extent that subsection (b)(2) requires the submission of tax clearance certificates in connection with the judicial supervision of the distribution of the assets of a general partnership. Tax clearance certificates are not required, however, where the partners of a general partnership wind up its affairs without judicial supervision.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

“association”
“court”
“nonregistered foreign association”
“registered foreign association”

§ 141. Abandonment of filing before effectiveness.

(a) General rule. – A document in record form delivered to the department for filing
may be abandoned before it takes effect by delivering to the department for filing a statement of abandonment.

(b) Requirements for statement of abandonment. – A statement of abandonment must:

(1) be signed by a person with the authority to sign the statement;
(2) identify the document to be abandoned; and
(3) state that abandonment of the document has been validly approved.

(c) Effect of statement of abandonment. – Upon filing by the department of a statement of abandonment, the action or transaction evidenced by the original document shall not take effect.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-204.

Only documents that have not yet taken effect may be withdrawn under this section. If a document has taken effect, it may be corrected under 15 Pa.C.S. § 138 if the requirements of that section are satisfied. Otherwise, the document must be amended in accordance with the applicable provisions of this title or, if the document relates to the formation of an entity, the existence of the entity may be terminated in accordance with the applicable provisions of this title.

Where a document being withdrawn has been signed by an entity, an individual who is different from the individual who signed the original document on behalf of the entity may sign the statement of withdrawal on behalf of the entity.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

“department”
“record form”

§ 142. Effect of signing filings.

(a) Affirmation of truth. – Signing a document delivered to the department for filing is an affirmation under the penalties provided in 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the facts stated in the document are true in all material respects.
(b) Signature by agent or legal representative. – A document filed under this title may be signed by an agent. If this title requires a particular individual to sign a document and the individual is deceased or incompetent, the document may be signed by a legal representative of the individual on behalf of the individual.

(c) Affirmation of authority. – A person that signs a document delivered to the department for filing affirms as a fact that the person is authorized to sign the document.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-209(a) and (c).

Subsection (a) makes it a criminal offense for any person to sign a document delivered to the department for filing that the person knows is false in any material respect. Under subsection (c), one of the facts to which the person signing the document is attesting is the authority of the person to sign the document. The organic law of an association often includes a provision on who has, or may be given, authority to sign a document on behalf of the association.

The term “this title” used in this section is defined in 15 Pa.C.S. § 131.

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

“department”
“sign”

§ 143. Liability for inaccurate information in filing.

If a document that is delivered to the department for filing under this title and filed by the department contains inaccurate information at the time of delivery to the department, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the document or caused another to sign it on behalf of the person and knew at the time the document was delivered that the information was inaccurate.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-211.

This section relates to liability to third parties for inaccurate information in a filed record. 15 Pa.C.S. § 142 provides for criminal liability where the facts in a filed record are not true in all material respects.
Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The term “this title” used in this section is defined in 15 Pa.C.S. § 131.

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

“department”

“sign”

§ 144. Signing and filing pursuant to judicial order.

(a) Petition. — If a person required by this title to sign a document or deliver a document to the department for filing under this title does not do so, any other person that is aggrieved may petition the court to order:

(1) the person to sign the document;

(2) the person to deliver the document to the department for filing; or

(3) the department to file the document unsigned.

(b) Association. — If a petitioner under subsection (a) is not the association to which the document pertains, the petitioner shall make the association a party to the action.

(c) Effect. — A record filed under subsection (a)(3) is effective without being signed.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Uniform Limited Liability Company Act (2006) (Last Amended 2013) § 204.

This section gives the court the flexibility to order either that a document be signed or that the document be filed by the department unsigned. The later circumstance may arise, for example, in a situation where the person who should sign the document is not subject to the jurisdiction of the court. This section also makes clear that the court may order a person with control over a document that has been signed to deliver the document to the department for filing.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The term “this title” used in this section is defined in 15 Pa.C.S. § 131.

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

(a) General rule. – On request of a person, the department shall issue:

(1) a subsistence certificate for a domestic filing entity or domestic limited
liability partnership; or

(2) a certificate of registration for a registered foreign association.

(b) Contents of certificate. – A certificate under subsection (a) must state:

(1) the name of the domestic filing entity or domestic limited liability
partnership or the name under which the registered foreign association is registered in
this Commonwealth;

(2) in the case of a domestic filing entity or domestic limited liability
partnership, that the entity is currently subsisting on the records of the department; and

(3) in the case of a registered foreign association, that it is registered to do
business in this Commonwealth.

(c) Effect of certificate. – Subject to any qualification stated in the certificate, a
certificate issued by the department under subsection (a) may be relied on as conclusive
evidence of the facts stated in the certificate.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned in

A certificate issued under this section only relates to matters that can be determined
from the records on file with the department and does not constitute a certificate of good
standing as that term is used under the law of other states.

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

“department”
“domestic filing entity”
“limited liability partnership”
“registered foreign association”

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;
(3) dissolution, cancellation or termination of an association;
(4) withdrawal by foreign association;
(5) withdrawal by a partner;
(6) any transaction similar to any item listed in paragraphs (1) through (5); [or]
(6.1) withdrawal, abandonment or termination of a document which has been delivered to the department for filing but has not yet become effective; or
(7) delivery to the department for filing in, by or with the department or the Secretary of the Commonwealth of any articles, statements, proceedings, agreements or any 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.

[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* associations:

(i) *Certificates of authority* Registration statement or similar qualifications to do business 250

(ii) *Amended certificate of authority* Amendment of registration statement or similar change in qualification to do business 250

(iii) Domestication of alien association under section 161 (relating to domestication of certain alien associations) [125] 250

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

(v) Additional fee for each qualified foreign *corporation* association 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 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) (ii) 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) (iii) 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] Declaration 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

(ii) (Reserved).

(8) Trademarks, emblems, union labels, description of bottles and similar matters:

(i) Trademark registration

(ii) Each ancillary trademark transaction

(iii) Any other registration under this paragraph

(iv) [Any other] Another ancillary transaction under this paragraph

(9) Uniform Commercial Code:

(i) As provided in 13 Pa.C.S. § 9525 (relating to fees).

(ii) (Reserved).

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

(i) Each page [of photocopy] furnished

(ii) (Reserved).

(11) Certification fees:

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

(ii) (Reserved).

(iii) For issuing any other certificate of the Secretary of the Commonwealth or the department [(if, other than an engrossed certificate)]

(iv) For preparing and issuing an engrossed certificate

(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] association name 70

(14) Change of registered office or address:

(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)] (15) Expedited service:

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

(16) Entity transactions:

(i) Statement of merger, interest exchange, conversion, division or domestication 70

(ii) Additional fee for each association that is a party to a merger 40

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

(iv) Each ancillary transaction 70

(17) Special processing fees:

(i) Request that multiple documents delivered to the department on the same day be filed in a certain order 70

(ii) (Reserved).

(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 subsection (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 (2014):

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 was
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 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)(15) 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)(15) 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 term “ancillary transaction” used in this section is defined in 15 Pa.C.S. § 152.

Subchapter D

[Definitive and Contingent] Domestication of Certain Alien Associations

§ 161. Domestication of certain alien associations.

(a) General rule. – Except as restricted by subsection (e), any association as defined in
subsection (f) may become a domestic association by filing in the Department of State a
statement of domestication.

(b) Statement of domestication.—The statement of domestication shall be [executed]
signed by the association and shall set forth in the English language:

(1) The name of the association. If the name is in a foreign language, it shall be
set forth in Roman letters or characters or Arabic or Roman numerals. If the name is
one that is rendered unavailable for use by a [corporation by any provision of section
1303(b) or (c) (relating to corporate name)] domestic entity by section 202(b) or (c)
(relating to requirements for names generally), the association shall adopt a new name,
in accordance with any procedures for changing the name of the association that are
applicable prior to the domestication of the association, and shall set forth the new name
in the statement.

(2) The name of the jurisdiction under the laws of which and the date on which it
was first formed, incorporated or otherwise came into being.
(3) The name of the jurisdiction that constituted the seat, siege social or principal place of business or control administration of the association, or any equivalent under applicable law, immediately prior to the filing of the statement.

(4) A statement of the type of domestic association that the association will be upon domestication.

(5) A statement that the filing of the statement of domestication and, if desired, the renunciation of the prior domicile has been authorized (unless its [charter or other organic documents] organic rules require a greater vote) by a majority in interest of the [shareholders, members or other proprietors] interest holders of the association.

(6) If the association will be a type of domestic association that is created by a filing in the department, such other provisions as are required to be included in an initial filing to create that type of domestic association, except that it shall not be necessary to set forth the name of the person organizing the association.

(7) Any other provision that the association may choose to insert unless this title prohibits the inclusion of such a provision in a filing that creates the type of domestic association that the association will be upon domestication.

(c) Execution. – The statement shall be signed on behalf of the association by any authorized person.

(d) Effect of domestication. – Upon the filing of the statement of domestication, the association shall be domesticated in this Commonwealth and the association shall thereafter be subject to any applicable provisions of this title and any other provisions of law applicable to associations existing under the laws of this Commonwealth. If the association will be a type of domestic association that is created by a filing in the department, the statement of domestication shall constitute that filing. The domestication of any association in this Commonwealth pursuant to this section shall not be deemed to affect any obligations or liabilities of the association incurred prior to its domestication.

(e) Exclusion.—An association that can be domesticated under [any of the following sections] Subchapter G of Chapter 3 (relating to domestication) shall not be domesticated under this section[:]

[Section 4161 (relating to domestication).
Section 6161 (relating to domestication).
Section 8590 (relating to domestication).
Section 8982 (relating to domestication).
Section 9501(a)(1)(ii) (relating to application and effect of chapter).]

(f) Definition. – As used in this section, the term “association,” except as restricted by subsection (e), includes any [alien] incorporated organization, private law corporation
(whether or not organized for business purposes), public law corporation, partnership, proprietorship, joint venture, foundation, trust, association or similar organization or entity existing under the laws of any jurisdiction other than this Commonwealth.

(g) Cross references. – See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Amended Committee Comment (2014):

This section sets forth a procedure by which an association that is organized under the laws of a jurisdiction other than Pennsylvania and that is not an “entity” (and thus is not eligible to domesticate in Pennsylvania under Subchapter G or Chapter 3) may become a domestic Pennsylvania association.

Since this section is addressed particularly to associations that do not correspond directly to a recognized type of Pennsylvania association, subsection (b)(4) leaves to the domesticating association the choice of the type of association it will be under Pennsylvania law.

If the name of a domesticating association is one that cannot be used under 15 Pa.C.S. § 202(b) or (c), subsection (b)(1) requires the association to “adopt” a new name, which is intended to parallel the usage of that term in 15 Pa.C.S. § 206(b). It is not intended that the association must formally change its name prior to domesticating since there would be no reason for Pennsylvania to require a filing in the jurisdiction that the association is leaving. Rather, it will be sufficient for the association to obtain whatever approvals by the interest holders of the association and those persons managing its affairs would be necessary to change its name.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The cross reference to 15 Pa.C.S. § 135 in subsection (g) 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.

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

“association”
“department”
“domestic association”
“domestic entity”
“interest holder”
“organic rules”
“sign”
§ 162. Contingent domestication of certain alien associations. (Repealed.)

Chapter 2
Entities Generally

Subchapter
A. Names
B. (Reserved)

Subchapter A
Names

Section
201. Definitions.
202. Requirements for names generally.
203. Corporation names.
204. Partnership and limited liability company names.
205. Business trust names.
206. Requirements for foreign association names.
207. Required name changes by senior associations.
208. Reservation of name.
209. Registration of name of nonregistered foreign association.

§ 201. 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:

“Covered association.” Any of the following:

(1) a domestic filing entity;
(2) a domestic limited liability partnership;
(3) an electing partnership; or
(4) a registered foreign association.

“Proper name.” The name set forth in:

(1) the public organic record of a domestic filing association;
(2) the statement of registration of a limited liability partnership;

(3) the statement of election of an electing partnership; or

(4) the statement of registration of a registered foreign association under section 412(a)(1)(i) (relating to foreign registration statement) or, if that name does not comply with this section, the name set forth in the statement under section 412(a)(1)(ii).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. The same definition of “proper name” appears in 54 Pa.C.S. § 302 for purposes of Title 54.

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

“domestic filing association”
“domestic filing entity”
“electing partnership”
“limited liability partnership”
“public organic record”
“registered foreign association”

§ 202. Requirements for names generally.

(a) General rule.—The proper name of a covered association may be in any language, but must be expressed in Roman letters or characters, Arabic or Roman numerals or symbols or characters specified by regulation of the department under section 133(a)(3)(vi) (relating to powers of department of state).

(b) Duplicate use of names.—Except as provided in subsection (f), the proper name of a covered association must be distinguishable on the records of the department from the following:

(1) The proper name of another covered association or the name of an association registered at any time under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names), unless the covered association or other association has:

(i) stated that it is about to change its name, is about to cease to do business, is being wound up or is a foreign association about to withdraw from doing business in this Commonwealth, and the statement and a consent to the adoption of the name are delivered to the department for filing;

(ii) filed a tax return or certificate with the Department of Revenue indicating that the covered association or other association is out of existence or
has failed for a period of three successive years to file with the Department of
Revenue a report or return required by law and the fact of the failure has been
certified by the Department of Revenue to the Department of State;

(iii) abandoned its name under the laws of its jurisdiction of formation, by
amendment, merger, consolidation, division, expiration, dissolution or otherwise,
without its name being adopted by a successor, and an official record of that fact,
certified as provided under 42 Pa.C.S. § 5328 (relating to proof of official records),
is presented by a person to the department; or

(iv) had the registration of its name under 54 Pa.C.S. Ch. 5 terminated.

(2) A name that has been reserved or registered pursuant to section 208 (relating
to reservation of name) or 209 (relating to registration of name of nonregistered foreign
association). A name shall be rendered unavailable for use under this subchapter by
reason of the filing by the department of an assumed or fictitious name registration
under 54 Pa.C.S. Ch. 3 (relating to fictitious names) only to the extent expressly
provided in 54 Pa.C.S. Ch.3.

(c) Required approvals or conditions.—

(1) The proper name of a covered association shall not imply that the association
is:

(i) A governmental agency of the Commonwealth or of the United States.

(ii) A bank, bank and trust company, savings bank, private bank or trust
company, as defined in the act of November 30, 1965 (P.L. 847, No. 356), known
as the Banking Code of 1965, unless:

(A) The association is a Pennsylvania bank holding company or is
otherwise authorized by statute to use its name.

(B) The association is a nonprofit corporation holding property in
trust under section 5547 (relating to authority to take and hold trust property)
and has been converted from a trust company under Subchapter E of Chapter
3 (relating to conversion). The preceding sentence controls over section
805(b) of the Banking Code of 1965.

(iii) An insurance company, nor contain any of the words "annuity,"
"surety" or "title" when used in a manner as to imply that the association is
engaged in the business of writing insurance or reinsurance as principal or any
other words of like purport unless it is duly licensed as an insurance company by
its jurisdiction of formation or the Insurance Department certifies that it has no
objection to the use by the association or proposed association of the designation.
The proper name of a domestic insurance company shall:

(A) contain the word "mutual" only if it is a mutual insurance company; and

(B) clearly designate the object and purpose of the association.

(iv) A public utility furnishing electric or gas service to the public, unless the association or proposed association has as an express purpose the furnishing of service subject to the jurisdiction of the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission.

(v) A credit union. See 17 Pa.C.S. § 104 (relating to prohibition on use of words "credit union").

(2) The proper name of a covered association shall not contain:

(i) The word "college," "university" or "seminary" when used in a manner as to imply that it is an educational institution conforming to the standards and qualifications prescribed by the State Board of Education, unless there is submitted a certificate from the Department of Education certifying that the association or proposed association is entitled to use that designation.

(ii) Words that constitute blasphemy, profane cursing or swearing or that profane the Lord’s name.

(iii) The words "engineer" or "engineering," or "surveyor" or "surveying" or any other word implying that any form of the practice of engineering or surveying as defined in the act of May 23, 1945 (P.L. 913, No. 367), known as the Engineer, Land Surveyor and Geologist Registration Law, is provided unless at least one of the individuals signing the initial public organic record of the association or one of the governors of the existing association has been properly registered with the State Registration Board for Professional Engineers in the practice of engineering or surveying and there is submitted to the department a certificate from the board to that effect.

(iv) The words "architect" or "architecture" or any other word implying that any form of the practice of architecture as defined in the act of December 14, 1982 (P.L. 1227, No. 281), known as the Architects Licensure Law, is provided unless at least one of the individuals signing the initial public organic record of the association or one of the governors of the existing association has been properly registered with the Architects Licensure Board in the practice of architecture and there is submitted to the department a certificate from the board to that effect.

(v) The word "cooperative" or an abbreviation thereof unless the
corporation is a cooperative corporation.

(vi) Any other words prohibited by law. See section 103 (relating to subordination of title to regulatory laws).

(d) Other rights unaffected.—This section shall not abrogate or limit the law as to unfair competition or unfair practices nor derogate from the common law, the principles of equity or the provisions of 54 Pa.C.S. (relating to names) with respect to the right to acquire and protect trade names.

(e) Remedies for violation of section.—The use of a name in violation of this section shall not vitiate or otherwise affect the existence or any acts of an association, but a court having jurisdiction may enjoin the association from using or continuing to use a name in violation of this section on the application of:

(1) the Attorney General, acting on his or her own motion or at the instance of an administrative department, board or commission of this Commonwealth; or

(2) a person adversely affected.

(f) Court-ordered use of name. – Subsection (b) shall not apply if an association delivers to the department for filing a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the association to use a name in this Commonwealth.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) through (e) are a generalization of former 15 Pa.C.S. § 1303. Subsection (f) is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-301(f).

The requirement in subsection (b) that a name be distinguishable on the records of the department is discussed in the Committee Comment to 15 Pa.C.S. § 135.

Chapter 3 of Title 54, which is referred to in subsection (b)(2), does not provide that the registration of a fictitious name blocks the appropriation of that name. See 54 Pa.C.S. §§ 311(a)(6) and 332.

Except as expressly provided in subsection (c)(1)(ii), use of the word “trust” in the name of an association is prohibited when it implies that an association is a trust company or bank and trust company. In general, use of “trust” other than in the phrase “trust company” will be permissible.

Subsection (c)(2)(ii) was found to be unconstitutional in Kalman v. Cortes, 723 F. Supp.2d 766 (E.D. Pa. 2010).
Subsection (f) permits a court to approve the use of a name even though it is not distinguishable from another name that already appears on the records of the department. The order of the court establishing the right of the association to use the name is to be delivered to the department “for filing” so that the publicly available records in the department will show the reason the association was allowed to use the name.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 201:

“covered association”
“proper name”

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

“association”
“cooperative corporation”
“credit union”
“department”
“domestic corporation for profit”
“domestic corporation not-for-profit”
“domestic insurance corporation”
“foreign corporation for profit”
“foreign corporation not-for-profit”
“jurisdiction of formation”

The term “court of competent jurisdiction” used in subsection (d) and the term “court having jurisdiction” used in subsection (e) are not intended to refer exclusively to the “court” as defined in 15 Pa.C.S. § 102.

The term “administrative department” used in subsection (e)(1) is not intended to refer exclusively to the “department” as defined in 15 Pa.C.S. § 102.

§ 203. Corporation names.

(a) Business corporations.—The proper name of a domestic or registered foreign business corporation must contain:

(1) the word "corporation," "company," "incorporated" or "limited" or an abbreviation of any of the terms;

(2) the word "association," "fund" or "syndicate"; or

(3) words or abbreviations of like import used in a jurisdiction other than this
Commonwealth.

(b) Nonprofit corporations.—The proper name of a domestic nonprofit corporation or registered foreign corporation not-for-profit shall not be required to contain one of the words or abbreviations described under subsection (a).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is derived from former 15 Pa.C.S. § 1303(a). Subsection (b) is derived from former 15 Pa.C.S. § 5303(a).

Under subsection (a)(1) a name in the form of “Jones & Co.” is acceptable as the proper name of a business corporation. Under subsection (a)(3) a business corporation may use a term such as “S.A.” or “P.L.C.” in lieu of “Inc.”

The term “proper name” used in this section is defined in 15 Pa.C.S. § 201.

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

“business corporation”
“nonprofit corporation”

§ 204. Partnership and limited liability company names.

(a) Limited liability partnerships.—The proper name of a domestic limited liability partnership or registered foreign limited liability partnership must contain the term "company," "limited" or "limited liability partnership," or an abbreviation of one of those terms, or words or abbreviations of like import used in a jurisdiction other than this Commonwealth.

(b) Limited partnerships.—The proper name of a domestic or registered foreign limited partnership:

(1) shall not be required to contain a word or abbreviation indicating that it is a limited partnership;

(2) if it is a limited liability limited partnership, must contain:

(i) the term "company," "limited" or "limited liability limited partnership" or a term of like import; or

(ii) an abbreviation of a term under subparagraph (i); and

(3) may contain the name of a partner.
(c) Limited liability companies.—The proper name of a domestic limited liabilityiance company or registered foreign limited liability company must contain the term “company,” “limited” or “limited liability company,” or an abbreviation of one of those terms, or words or abbreviations of like import used in a jurisdiction other than this Commonwealth.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is derived from former 15 Pa.C.S. § 8203(a)(2). Subsection (b) is derived from former 15 Pa.C.S. § 8505(a)(3). Subsection (c) is derived from former 15 Pa.C.S. § 8905(a)(3).

Pennsylvania law has never required the inclusion in the name of a limited liability partnership of an indication that it is a limited liability partnership. Subsection (a) continues to follow that practice.

Pennsylvania law has never required the inclusion in the name of a limited partnership of an indication that it is a limited partnership. Pennsylvania law has also never restricted the name of a limited partnership from including a corporate designator. The permission for the name of a limited partnership to contain the name of any partner without restriction also is a continuation of established Pennsylvania practice.

Under the rules of subsection (b), a permissible name for a limited partnership could be, for example, “[name of a limited partner], Ltd.”

It is intended that any of the standard designations of corporate status will be a word or abbreviation “of like import” and thus acceptable under subsections (a), (b)(2)(i), and (c). A name with a corporate designator should put persons dealing with a limited liability partnership, limited liability limited partnership, or limited liability company on notice that they should inquire as to the credit standing behind the entity because there would appear to be no one with personal liability for its debts.

The term “proper name” used in this section is defined in 15 Pa.C.S. § 201.

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

“limited liability company”
“limited liability limited partnership”
“limited liability partnership”
“limited partnership”


The proper name of a domestic business trust or registered foreign business trust shall not be required to contain a word or abbreviation indicating that it is a business trust.
Pennsylvania law has never required the inclusion in the name of a business trust of an indication that it is a business trust.

The name of a business trust may include the term “trust” so long as the name does not imply that it is a trust company. See 15 Pa.C.S. § 202(c)(1)(ii).

The term “proper name” used in this section is defined in 15 Pa.C.S. § 201.

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

§ 206. Requirements for foreign association names.

(a) General rule.—The department shall not file a registration statement pursuant to section 412 (relating to foreign registration statement) for a foreign association that, except as provided under subsection (b), has a name that is rendered unavailable for use by a covered association under section 202(a), (b) or (c)(1)(i), (iii), (iv) or (v) or (2) (relating to requirements for names generally).

(b) Exception.—The provisions of section 202(b) and (c) shall not prevent the filing of a registration statement of a foreign association setting forth a name that is prohibited by section 202(b) and (c) if the foreign association delivers to the department for filing a resolution of its governors adopting a name for use in registering to do business in this Commonwealth that is available for use by a covered association.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 4123.

If a foreign association cannot register to do business under its own name by reason of the prior and valid appropriation of that name in Pennsylvania, this section permits the association to adopt for use in Pennsylvania and register under some other available name.

For purposes of Title 15, it is sufficient if the adoption of an alternate name is approved just by action of the governors of the association and not by its interest holders. If the organic rules of the association or the law of its jurisdiction of formation require other approvals, the association may nonetheless use the alternate name without obtaining those approvals, but it will be in breach or default under those other requirements.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.
The term “covered association” used in this section is defined in 15 Pa.C.S. § 201.

“covered association”
“proper name”

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

“department”
“foreign association”
“governors”

§ 207. Required name changes by senior associations.

(a) Loss of rights to name. – A covered association shall cease to have the exclusive right to its proper name if the association:

(1) has failed to file in the Department of Revenue a report or a return required by law;

(2) has filed in the Department of Revenue a tax return or certificate indicating that it is out of existence; or

(3) has failed to file the most recent required decennial filing under 54 Pa.C.S. § 503 (relating to decennial filing required).

(b) Adoption of new name on reactivation.—Upon the removal of the reason why a covered association has lost the exclusive right to its proper name under subsection (a), the association shall make inquiry with the Department of State with regard to the availability of its name and, if the name has been appropriated by another person, the covered association shall adopt a new name in accordance with law before resuming its activities.

(c) Enforcement of undertaking to release name.—If a covered association has used a name that is not distinguishable on the records of the Department of State from the name of another association as permitted by section 202(b)(1) (relating to requirements for names generally) and the other association continues to use its name in this Commonwealth and does not change its name, cease to do business, be wound up or withdraw as it proposed to do in its consent or change its name as required by subsection (a), any court having jurisdiction may enjoin the other association from continuing to use its name or a name that is not distinguishable therefrom on the application of:

(1) the Attorney General, acting on his or her own motion or at the instance of an administrative department, board or commission of this Commonwealth; or

(2) any person adversely affected.
Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1304.

The requirement in subsection (b) that a name be distinguishable upon the records of the Department of State is discussed in the Committee Comment to 15 Pa.C.S. § 135.

The following terms used in this section are defined in 15 Pa.C.S. § 201:

“covered association”
“proper name”

The term “court having jurisdiction” used in subsection (b) is not intended to refer exclusively to the “court” as defined in 15 Pa.C.S. § 102.

The term “administrative department” used in subsection (b)(1) is not intended to refer exclusively to the “department” as defined in 15 Pa.C.S. § 102.

§ 208. Reservation of name.

(a) General rule.—The exclusive right to the use of a name may be reserved by any person. The reservation shall be made by delivering to the department an application to reserve a specified name, signed by the applicant. If the department finds that the name is available for use, it shall reserve the name for the exclusive use of the applicant for a period of 120 days.

(b) Transfer of reservation.—The right to exclusive use of a name reserved pursuant to subsection (a) may be transferred to any other person by delivering to the department a notice in record form of the transfer, signed by the person who reserved the name, and specifying the name and address of the other person.

(c) Cross references.—See:

Section 134 (relating to docketing statement).
Section 135 (relating to requirements to be met by filed documents).
Section 209 (relating to registration of name of nonregistered foreign association).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1305.

Under the definition of “person” in 1 Pa.C.S. § 1991, a corporation, partnership, or other association, as well as a natural person, may reserve a corporate name.
This section only provides for a single, one-time reservation of a name. After the 120-day reservation period expires, the name becomes available again and anyone, including the original reserver, may reserve the name. Nothing prevents the formation of an association for the purpose of holding a name if a longer period of reservation is desired than the 120-day period specified by subsection (a).

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

“department”
“record form”
“sign”

§ 209. Registration of name of nonregistered foreign association.

(a) General rule.—A nonregistered foreign association may register its name under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names) if the name is available for use by a registered foreign association pursuant to section 206 (relating to requirements for foreign association names) by delivering to the department for filing an application for registration of name, signed by the association, setting forth:

(1) The name of the association.

(2) The address, including street and number, if any, of the principal office of the association.

(b) Annual renewal.—An association that has in effect a registration of its name may renew the registration from year to year by annually delivering to the department for filing an application for renewal setting forth the facts required to be set forth in an original application for registration. A renewal application may be filed between October 1 and December 31 in each year and shall extend the registration for the following calendar year.

(c) Use of registered name. – A foreign association whose name registration is effective may register as a foreign association under the registered name or consent in record form to the use of that name by another association.

(d) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):
This section was added in 2014 by the Association Transactions Act and is a
generalization of former 15 Pa.C.S. § 4131.
Rules on what constitutes delivery of documents to and by the department are set forth
The following terms used in this section are defined in 15 Pa.C.S. § 102:
“association”
“department”
“foreign association”
“nonregistered foreign association”
“principal office”
“record form”
“registered foreign association”
“sign”

Chapter 3
Entity Transactions

Subchapter A
Preliminary Provisions

§ 311. Short title of chapter.
This chapter may be cited as the Entity Transactions Law.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act.

The Committee Comments to Chapter 3 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 Model Entity Transactions Act (2007) (Last Amended 2013) and are intended to supersede that commentary.

§ 312. Definitions.

(a) Definitions.—The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Acquired association.” The domestic entity or foreign association, all of one or more classes or series of interests in which are acquired in an interest exchange.

“Acquiring association.” The domestic entity or foreign association that acquires all of one or more classes or series of interests of the acquired association in an interest exchange.

“Conversion.” A transaction authorized by Subchapter E (relating to conversion).

“Converted association.” The converting association as it continues in existence after a conversion.

“Converting association.” The domestic entity or domestic banking institution that approves a plan of conversion pursuant to section 353 (relating to approval of conversion) or the foreign association that approves a conversion pursuant to the law of its jurisdiction of formation.

“Dividing association.” The domestic entity that approves a plan of division pursuant to section 363 (relating to approval of division) or 364 (relating to division without interest holder approval) or the foreign association that approves a division pursuant to the law of its jurisdiction of formation.

“Division.” A transaction authorized by Subchapter F (relating to division).

“Domesticated entity.” The domesticating entity as it continues in existence after a domestication.
“Domesticating entity.” The domestic entity that approves a plan of domestication pursuant to section 373(a) (relating to approval of domestication) or the foreign entity that approves a domestication pursuant to section 373(b).

“Domestication.” A transaction authorized by Subchapter G (relating to domestication).

“Interest exchange.” A transaction authorized by Subchapter D (relating to interest exchange).

“Interest holder liability.” Either of the following:

   (1) Personal liability for a liability of an association that is imposed on a person either:

      (i) Solely by reason of the status of the person as an interest holder.

      (ii) By the organic rules of the association that make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity.

   (2) An obligation of an interest holder under the organic rules of an association to contribute to the association.

“Merger.” A transaction in which two or more merging associations are combined into a surviving association pursuant to a document filed by the department or similar office in another jurisdiction.

“Merging association.” A domestic entity, domestic banking institution or foreign association that is a party to a merger under Subchapter C (relating to merger) and exists immediately before the merger becomes effective.

“New association.” An association that is created by a division.

“Plan.” A plan of merger, plan of interest exchange, plan of conversion, plan of division or plan of domestication, as applicable.

“Protected agreement.” Either of the following:

   (1) A record evidencing indebtedness and any related agreement in effect on July 1, 2015.

   (2) A protected governance agreement.

“Protected governance agreement.” Either of the following:
(1) The organic rules of a domestic entity or foreign association in effect on {the
Legislative Reference Bureau shall insert here on the effective date of this chapter}.  

(2) An agreement that is binding on any of the governors or interest holders of a
domestic entity or foreign association on July 1, 2015.

“Registered office.” In the case of a domestic banking institution that is a corporation,
the principal place of business of the corporation set forth in its articles of incorporation as
required by section 1004 of the act of November 30, 1965 (P.L. 847, No. 356), known as the

“Resulting association.” A dividing association, if it survives the division, or a new
association.

“Special treatment.” A provision of a plan permitted by section 329 (relating to special
treatment of interest holders).

“Surviving association.” The domestic entity, domestic banking institution or foreign
association that continues in existence after or is created by a merger under Subchapter C.

(b) Index of definitions.—Following is a none xclusive list of definitions in section
102 (relating to definitions) that apply to this chapter:

“Act” or “action.”
“Banking institution.”
“Department.”
“Dissenters rights.”
“Domestic entity.”
“Entity.”
“Filing entity.”
“Foreign entity.”
“Governor.”
“Interest.”
“Interest holder.”
“Obligation.”
“Organic law.”
“Organic rules.”
“Private organic rules.”
“Property.”
“Public organic record.”
“Record form.”
“Registered foreign association.”
“Representative.”
“Sign.”
“Transfer”
“Type.”
Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 102.

This section defines the terms that are used in other parts of the chapter. Because the laws of some states use different terms to describe the transactions authorized by this chapter, the definitions are intended to be broad enough to encompass those similar transactions, regardless of how described.

“Acquired association.” This definition recognizes that an interest exchange may involve only the acquisition of a particular “class” or “series” of interests in a domestic entity or foreign association. Because the interests of members in an unincorporated business organization often tend to be distinctive, it may be that each member’s interest will comprise a separate class or series.

“Conversion.” As used in this chapter, the term “conversion” does not include a transaction in which an association changes the jurisdiction in which it is organized but does not change to a different type of entity; that type of transaction is referred to in Title 15 as a “domestication.” A “conversion” also does not include a transaction in which an entity changes from one form of an entity to another form of the same entity, such as an election to be a statutory close corporation under 15 Pa.C.S. § 2305.

“Interest exchange.” The consideration that may be provided to the interest holders whose interests are being acquired in an exchange may consist in whole or part of interests in a third party that is not one of the two parties to the exchange itself.

“Interest holder liability.” This term is used to describe the liability of an interest holder, by virtue of being an interest holder, for liabilities of the association. The term includes only personal liability of an interest holder for a liability of the association imposed on the interest holder either by statute or by the organic rules to the extent authorized pursuant to the organic law. Liabilities that an interest holder incurs in any other fashion are not interest holder liabilities for purposes of this chapter. Thus, for example, if a state’s business corporation law makes shareholders personally liable for unpaid wages because of their status as shareholders, that liability would be an “interest holder liability.” If, on the other hand, a shareholder were to guarantee payment of an obligation of a corporation, that liability would not be an “interest holder liability” because it is a direct liability and not based on the status of being a shareholder. Similarly, the liability to return an improper distribution is not an interest holder liability because it is a direct liability of the interest holder.

“Merger.” The term means a transaction in which two or more domestic entities or foreign associations are combined into a single entity pursuant to a filing with the Department of State. The term “merger” in this chapter includes the transaction formerly known under Pennsylvania law as a consolidation in which a new entity results from the combination of two or more pre-existing entities.
“Merging association.” The term “merging association” refers to each domestic entity, domestic banking institution, and foreign association that is in existence immediately before a merger and is a party to the merger. It will include the surviving association if the surviving association exists before the merger becomes effective. It does not include an association that provides consideration to be received by interest holders if that association is not a party to the merger.

“Protected agreement.” The term “protected agreement” refers to protected governance agreements or evidences of indebtedness and related agreements binding on a domestic entity or foreign association immediately before the effectiveness of a plan that are unpaid or executory in whole or in part on the effective date of this chapter. Thus a revolving line of credit from a bank to a domestic entity or foreign association would constitute a protected agreement even if advances were not made until after the effective date of this chapter.

“Protected governance agreement.” The term “protected governance agreement” refers to the organic rules of a domestic entity or foreign association or agreements binding on those persons that are in effect on the effective date of this chapter.

“Registered office.” A domestic banking corporation is not required to maintain a registered office address in Pennsylvania, instead its articles of incorporation are required to state the location and post office address of its principal place of business. See 7 P.S. § 1004(b)(ii). The effect of the definition of “registered office” is that when this chapter requires a statement of merger or statement of conversion to state the registered office of a domestic banking corporation, the address that should be used is that of its principal place of business.

§ 313. Relationship of chapter to other provisions of law.

(a) Antitakeover provisions. – A transaction under this chapter to which a registered corporation is a party may not impair any right or obligation that a person has under, and may not make applicable to the corporation, any provision of section 2538 (relating to approval of transactions with interested shareholders) or Subchapters E (relating to control transactions), F (relating to business combinations), G (relating to control-share acquisitions), H (relating to disgorgement by certain controlling shareholders following attempts to acquire control), I (relating to severance compensation for employees terminated following certain control-share acquisitions) and J (relating to business combination transactions - labor contracts) of Chapter 25, nor shall it change the standard of care applicable to the directors under Subchapter B of Chapter 17 (relating to fiduciary duty) unless:

(1) If the corporation does not survive the transaction, the transaction satisfies any requirements of the provision.
(2) If the corporation survives the transaction, the approval of the transaction is
by a vote of the shareholders or directors which would be sufficient to impair the right
or obligation under, or make the corporation subject to, the provision.

(b) Transitional provision. –

(1) This subsection applies to a transaction of a type authorized by this chapter
if:

(i) prior to July 1, 2015, a step has been taken to effectuate the transaction;

but

(ii) the transaction does not take effect by July 1, 2015.

(2) Except as set forth in paragraph (3), the transaction shall remain subject to
the former provisions of law supplied by this chapter under the transaction:

(i) is abandoned; or

(ii) takes effect.

(3) Notwithstanding paragraph (2), if the plan provides that this chapter applies
to the transaction, this chapter shall apply to the transaction after June 30, 2015.

Committee Comment (2014):
This section was added in 2014 by the Association Transactions Act. Subsection (a)
was derived from former 15 Pa.C.S. § 1924(b)(5) and is patterned after Model Entity
Transactions Act (2007) (Last Amended 2013) § 103(c).

Subsection (a) protects the application of the antitakeover statutes in Chapter 25 from
being affected by a transaction under this chapter by requiring that the transaction be
approved in a manner that would be sufficient to approve changing the application of the
antitakeover statute. If a transaction is approved in that manner, there is no policy reason to
prohibit the application of the antitakeover statute from being varied by a transaction under
this chapter. If the application of an antitakeover statute cannot be varied by action of a
corporation subject to it, then a transaction under this chapter will be permissible only if the
antitakeover provision continues to apply after the transaction or the transaction itself is
permissible under the antitakeover statute. Any limitations on the ability of a corporation to
opt out of an antitakeover provision are also intended to be preserved. For example, the 18
month delay on opting out of 15 Pa.C.S. Subch 25F imposed by 15 Pa.C.S. § 2551(b)(3) will
also apply in a transaction under this chapter.

Subsection (a) also reflects a policy decision that action solely by the board of directors
to effectuate a transaction as permitted by 15 Pa.C.S. § 321(d) should not affect the
application to the corporation of the antitakeover provisions of the 1988 BCL. The
Committee decided that rather than attempting to analyze and predict all of the ways that a
transaction under this chapter could affect the application of 15 Pa.C.S. § 2538 or Subchapters
17B and 25E-J, it would be preferable to adopt simply a general statement of policy on the
relationship between the antitakeover provisions and this chapter.

As one example, 15 Pa.C.S. § 2543(b)(2)(i) provides that a person will not be a
controlling person under Subchapter 25E (i.e., a person over the 20% threshold) if it is
necessary to take into account shares owned “continuously since January 1, 1983.” Because
the effect of a transaction under this chapter may be to convert the shares of the constituent
corporation into shares of a holding company (see 15 Pa.C.S. § 321(d)(4)), it could be argued
that after such a transaction ownership of shares of the holding company would no longer
satisfy the test of 15 Pa.C.S. § 2543(b)(2)(i). That is not intended and the effect of the
requirement that a transaction “not impair any right” of a person will be that the holding
period for the shares of the constituent corporation will tack to the holding period for the
shares of the holding company.

It was not considered necessary to refer to 15 Pa.C.S. § 2539 because that section itself
is intended simply to protect the applicability of Subchapter 25F. In the case of a registered
corporation that is not subject to Subchapter 25F, the only effect of 15 Pa.C.S. § 2539 is to
require board approval. Where Subchapter 25F is applicable to a registered corporation,
subsection (a) should protect the application of both Subchapter 25F and 15 Pa.C.S. § 2539.

While the principal focus of this section is on registered corporations, the prohibition
against changing the standard of care will apply to all domestic business corporations.

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

§ 314. Regulatory conditions and required notices and approvals.

(a) Regulatory approvals.—If law of this Commonwealth other than this chapter
requires notice to, or the approval of, a governmental agency or officer of this Commonwealth
in connection with the participation under an organic law that is not part of this title by a
domestic or foreign association in a transaction which is a form of transaction authorized by
this chapter, the notice must be given or the approval obtained by the association before it
may participate in any form of transaction under this chapter.

(b) Certain regulated businesses. – A domestic converted association, domestic
domesticated entity, domestic new association, domestic resulting association or domestic
surviving association may not acquire as a result of a transaction under this chapter the power
to engage in the business of banking, insurance or acting as a trust company unless an
association of that type is authorized to have and exercise that power under the law of this
Commonwealth.

(c) Charitable assets.—Property held for a charitable purpose under the law of this
Commonwealth by a domestic or foreign association immediately before a transaction under
this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised or otherwise transferred unless, to the extent required by or pursuant to the law of this Commonwealth concerning cy pres or other law dealing with nondiversion of charitable assets, the domestic or foreign association obtains an appropriate order of a court of competent jurisdiction specifying the disposition of the property.

(d) Preservation of transfers. – A bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to a merging association that is not the surviving association and that takes effect or remains payable after the merger inures to the surviving association. A trust obligation that would govern property if transferred to a merging association that is not the surviving association applies to property that is transferred to the surviving association.

(e) Cross reference. – See section 318 (relating to excluded entities and transactions).

Committee Comment (2014):

1. This section was added in 2014 by the Association Transactions Act. Subsections (a), (c), and (d) are patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 104. Subsection (c) is also patterned after 15 Pa.C.S. § 5547(b).

2. The purpose of subsection (a) is to ensure that transactions under this chapter will be subject to appropriate regulatory approval. If an association must obtain regulatory approval under Pennsylvania law to participate in a fundamental transaction pursuant to an organic law outside of Title 15, subsection (a) requires the same approval to be obtained if the association participates in any form of transaction under this chapter. The regulatory approvals that subsection (a) makes applicable are found outside of this title.

The consequence of violating subsection (a) should be the same as in the case of a transaction consummated without the required approval under the organic law outside of Title 15.

15 Pa.C.S. § 318(b) prohibits certain regulated nonprofit corporations from engaging in a transaction under this chapter that would change the corporation to a different type of entity.

The requirement to obtain tax clearance certificates is governed by section 139 (relating to tax clearance of certain fundamental transactions) and not by subsection (a).

3. This chapter permits certain associations organized under an organic law outside of Title 15 to participate in a transaction with an entity organized under an organic law found within Title 15. For example, a bank may acquire a computer consulting firm organized as a limited partnership for the purpose of bolstering the bank’s internal data processing capabilities by means of a merger of the limited partnership with the bank pursuant to this chapter but only if the bank is the surviving association. Subsection (b) provides that if the limited partnership were the surviving association in the merger it could not exercise the
banking powers of the merging bank because a limited partnership is prohibited by 15 Pa.C. § 8102 from engaging in the business of banking; thus effectively prohibiting the limited partnership from being the surviving association.

4. This chapter applies generally to nonprofit corporations and unincorporated nonprofit associations. To prevent the procedures in this chapter from being used to avoid restrictions on the use of property held by nonprofit associations, subsection (c) requires court approval if a transaction under this chapter would divert property held for charitable purposes from the objects for which it was transferred to the nonprofit association.

An approval or order obtained under subsection (c) may impose conditions or specify the disposition of property or liabilities in a manner different than would otherwise be the case. In such an instance, the approval or order will control over the provisions of this chapter specifying the effects of a transaction. See 15 Pa.C.S. §§ 336, 346, 356, 367, and 376.

5. Subsection (d) only applies to bequests, etc. that have been made to a merging association that does not survive a merger. It was not considered necessary to provide a rule for bequests, etc. that have been made to associations that are parties to transactions under this charter in other capacities because in those situations the association survives the transaction, albeit sometimes of a different type.

6. The following terms used in this section are defined in 15 Pa.C.S. § 312:

“converted association”
“domesticated entity”
“merger”
“merging association”
“new association”
“resulting association”
“surviving association”

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

“domestic association”
“foreign association”
“organic law”
“transfer”

§ 315. Nature of transactions.

The fact that a sale or conversion of the interests in or assets of an association or a transaction under a particular subchapter produces a result that could be accomplished in any other manner permitted by a different subchapter or other law shall not be a basis for recharacterizing the sale, conversion or transaction as a different form of sale, conversion or transaction under any other subchapter or other law.
Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned in part after Model Entity Transactions Act (2007) (Last Amended 2013) § 106.

This section protects a transaction that has the same end result as a second type of transaction, but is not accomplished under the provisions of Title 15 applicable to the second type of transaction, from being recharacterized as the second type of transaction. For example, a sale of assets and transfer of liabilities by two entities to a third entity followed by the liquidation of the two transferring entities does not need to be structured as a merger under Subchapter C and should not be recharacterized as a merger, even though the end result of the transaction is essentially the same as if the two entities had merged into the third entity.

In effect, this section confirms that Pennsylvania law includes what is known under Delaware law as the doctrine of independent legal significance. As stated by the Supreme Court of Delaware in *Orzeck v. Englehart*, 41 De. Ch. 361, 365-6, 195 A.2d 375 (Del. 1963):

… action taken in accordance with different sections of [the Delaware General Corporation Law] are acts of independent legal significance even though the end result may be the same under different sections. The mere fact that the result of actions taken under one section may be the same as the result of action taken under another section does not require that the legality of the result must be tested by the requirement of the second section.

See 15 Pa.C.S. § 1904 which provides a similar rule with respect to business corporations.

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

“association”
“business corporation”
“interests”

§ 316. Contents of plan.

(a) Omission of certain provisions.—A plan as delivered to the department for filing under any provision of this chapter in lieu of a statement of merger, statement of interest exchange, statement of conversion, statement of division or statement of domestication may omit all provisions of the plan except provisions, if any, that:

(1) are intended to amend or constitute the operative provisions of the public organic record of a domestic association as in effect subsequent to the effectiveness of the plan:
(2) are required by this chapter in the statement in lieu of which the plan is being delivered to the department for filing; or

(3) allocate or specify the respective property and liabilities of the resulting associations, in the case of a plan of division.

(b) Availability of full plan.—If any of the provisions of a plan are omitted from the plan as delivered to the department as permitted under subsection (a), the plan must state that the full text of the plan is on file at the principal office of the surviving, acquiring, converted, new or resulting association or domesticated entity and the address thereof. An association that takes advantage of this section shall furnish a copy of the full text of the plan, on request and without cost, to any interest holder of any domestic or foreign association that was a party to the plan.

(c) Reference to external facts.—A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate on the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) and (b) are a generalization of former 15 Pa.C.S. § 1901. Subsection (c) is a generalization of former 15 Pa.C.S. § 1922(e) and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 107.

Subsections (a) and (b) only apply to plans that are delivered to the Department of State in lieu of filing a statement of merger, etc. Subsection (c), on the other hand, applies to all plans, including those not filed in the department.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquiring association”
“converted association”
“domesticated entity”
“new association”
“plan”
“resulting association”
“surviving association”

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

“department”
§ 317. Contractual dissenters rights in entity transactions.

(a) General rule.—An interest holder of a domestic entity other than a nonprofit corporation or unincorporated nonprofit association shall be entitled to contractual dissenters rights in connection with a transaction under this chapter, even though the interest holder would not otherwise be entitled to dissenters rights under this title to the extent provided:

(1) in the entity’s organic rules; or

(2) in the plan.

(b) Procedures for contractual dissenters rights.—If an interest holder is entitled to contractual dissenters rights pursuant to subsection (a), Subchapter D of Chapter 15 (relating to dissenters rights) applies to the extent practicable except as otherwise provided in the organic rules of the domestic entity or the plan.

(c) Cross references.—See sections 329 (relating to special treatment of interest holders) and 1571(c) (relating to application and effect of subchapter).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) and (b) are patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 109(b) and (c).

This section permits a domestic entity other than a nonprofit corporation or unincorporated nonprofit association to grant optional dissenters rights as part of the terms of a transaction in circumstances where dissenters rights would not otherwise be available. Cf. 6 Del. Code §§ 15-120 (general partnerships), 17-212 (limited partnerships), and 18-210 (limited liability companies) which provide for “contractual appraisal rights.” Contractual appraisal rights may not be granted to interest holders in a nonprofit corporation or unincorporated nonprofit association because interest holders in those types of associations have never been entitled to dissenters rights under Pennsylvania law.

Legislative authorization of the grant of contractual dissenters rights removes any question as to whether a court would have jurisdiction to hear a case in which the parties were attempting to create jurisdiction in the court by private agreement. Subsection (b) makes the
dissenters rights procedures in 15 Pa.C.S. Subch. 15D applicable unless the entity’s organic
rules or the plan provide otherwise.

The term “plan” used in this section is defined in 15 Pa.C.S. § 312.

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

“dissenters rights”
“domestic entity”
“interest holder”
“nonprofit corporation”
“organic rules”
“unincorporated nonprofit association”

§ 318. Excluded entities and transactions.

(a) Excluded entities.—The following entities may not participate in a transaction under this chapter:

(1) A cooperative corporation subject to Chapter 73 (relating to electric cooperative corporations).

(2) A beneficial, benevolent, fraternal or fraternal benefit society:

(i) having a lodge system and a representative form of government; or

(ii) transacting any type of insurance.

(b) Excluded transactions involving certain nonprofit corporations.—The following apply to nonprofit corporations:

(1) Except as provided in paragraph (2), this chapter may not be used to accomplish a transaction that has the effect of converting a domestic nonprofit corporation that is subject to the supervision of the Department of Banking and Securities, the Insurance Department or the Pennsylvania Public Utility Commission to a different type of entity.

(2) Paragraph (1) does not apply to a transaction under this chapter in which a health maintenance organization is converted to a different type of entity if the transaction has received the prior approval of the Insurance Department.

(c) Cross references.—See sections 103 (relating to subordination of title to regulatory laws) and 314 (relating to required notice or approval).

Committee Comment (2014):
This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 110. Subsection (a)(1) is derived from 15 Pa.C.S. §§ 7302(b) and 7331. Subsections (a)(2) and (b) are derived from former 15 Pa.C.S. § 5961(b)(1)(iii).

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

“cooperative corporation”
“entity”
“fraternal benefit society”
“health maintenance organization”
“nonprofit corporation”
“type”

§ 319. Party to plan or transaction.

An association that approves a plan in its capacity as an interest holder or creditor of a domestic or foreign association that is a party to the transaction under the plan, or that furnishes all or a part of the consideration contemplated by a plan, does not thereby become a party to the plan or the transaction under the plan for purposes of this chapter.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. §§ 1922(d) and 5922(e). Former 15 Pa.C.S. § 1922(d) was based on Terry v. Penn Central Corp., 527 F.Supp. 118 (E.D. Pa. 1981), aff’d 668 F.2d 188 (3d Cir. 1981).

The term “plan” used in this section is defined in 15 Pa.C.S. § 312.

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

“association”
“domestic association”
“foreign association”
“interest holder”

§ 320. Submission of matters to interest holders.

(a) General rule.—A domestic association may agree, in record form, to submit a plan to its interest holders whether or not the governors determine, at any time after approving the plan, that the plan is no longer advisable and recommend that the interest holders reject or vote against it, regardless of whether the governors change their recommendation. If an
association so agrees to submit a plan to its interest holders, the plan is deemed to have been
validly adopted by the association when it has been approved by the interest holders.

(b) Cross references.—See sections 321(c) (relating to approval by business
corporations) and 325(c)(2) (relating to approval by limited liability companies).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is
patterned after 6 Del. Code § 146. A similar provision applicable to amendments of the
articles of incorporation and other matters involving a business corporation is found at 15
Pa.C.S. § 1908.

This section adopts the Delaware approach of permitting an association to agree to a
“force the vote” provision. Under this section governors can agree to submit a fundamental
transaction to the interest holders 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 of directors of a corporation 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 of a corporation 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 of a corporation without a
recommendation of the board.

The last sentence of subsection (a) has been added to the language taken from the
Delaware provision to clarify how this section relates to the “two house” requirement of 15
Pa.C.S. § 321(e) and similar sections. The initial approval of a plan by the governors is
considered sufficient to satisfy the required approval by the governors and that approval does
not have to be refreshed at the time of approval of the plan by the interest holders.

This section is not intended to relieve the governors of any applicable duty to consider
carefully a proposed transaction and the interests of the interest holders.

The term “plan” used in this section is defined in 15 Pa.C.S. § 312.

The following terms used in this section are defined in 15 Pa.C.S. § 102:
“domestic association”
“governors”
“interest holders”
“record form”

Subchapter B
Approval of Entity Transactions

Section
321. Approval by business corporation.
322. Approval by nonprofit corporation.
323. Approval by general partnership.
324. Approval by limited partnership.
325. Approval by limited liability company.
326. Approval by professional association.
327. Approval by business trust.
328. Approval by unincorporated nonprofit association.
329. Special treatment of interest holders.

§ 321. Approval by business corporation.

(a) Proposal of plan.—Except where the approval of the board of directors is unnecessary pursuant to section 330 (relating to alternative means of approval of transactions), a plan shall be proposed in the case of a domestic business corporation by the adoption by the board of directors of a resolution approving the plan. Except where the approval of the shareholders is unnecessary under this chapter, 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.

(b) Notice of meeting of shareholders.—Notice in record form of the meeting of shareholders that will act on the proposed plan 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 transaction under the plan. There shall be included in or enclosed with the notice a copy of the proposed plan or a summary thereof and any notice required by section 329 (relating to special treatment of interest holders). If the holders of shares of any class or series are entitled to assert dissenters rights, the notice must include or be accompanied by the text of the provision of this chapter granting dissenters rights and of Chapter 15 Subch. D (relating to dissenters rights). The notice must state that a copy of the organic rules of the surviving, acquired, converted, new or resulting association or domesticated entity as they will be in effect immediately following the transaction will be furnished to any shareholder of the corporation giving the notice on request and without cost.
(c) Shareholder vote required.—Except as provided in section 1757 (relating to action
by shareholders) or subsection (d), a plan shall be adopted by a domestic business corporation
that is a party to the transaction under the plan upon receiving the affirmative vote of a
majority of the votes cast by all shareholders entitled to vote on the plan and, if any class or
series of shares is entitled to vote thereon as a class, the affirmative vote of a majority of the
votes cast in each class vote. The holders of any class or series of shares of a domestic
business corporation that is a party to a transaction under a plan that would effect any change
in the articles of the corporation shall be entitled to vote as a class on the plan if they would
have been entitled to a class vote under the provisions of section 1914 (relating to adoption of
amendments) had the change been accomplished under Subchapter B of Chapter 19 (relating
to amendment of articles). Except as provided in section 330, a proposed plan shall not be
deemed to have been adopted by a domestic business corporation unless it has also been
approved by the board of directors, regardless of the fact that the board has directed or
suffered the submission of the plan to the shareholders for action.

(d) Adoption of plan of merger without shareholder vote.—

(1) Unless otherwise required by the organic rules, a plan of merger shall not
require the approval of the shareholders of a domestic business corporation that is a
merging association if:

(i) whether or not the corporation is the surviving association:

(A) the surviving association is a domestic business corporation and
its articles are identical to the articles of the corporation for which
shareholder approval is not required, except for changes that could be made
without shareholder approval pursuant to section 1914(c);

(B) each share of the corporation outstanding immediately prior to the
effectiveness of the merger is to continue as or be converted into, except as
may be otherwise agreed by the holder thereof, an identical share of the
surviving association; and

(C) the plan provides that the shareholders of the corporation are to
hold in the aggregate shares of the surviving association to be outstanding
immediately after the effectiveness of the merger entitled to cast at least a
majority of the votes entitled to be cast generally for the election of directors;

(ii) immediately prior to the adoption of the plan and at all times thereafter
prior to the effectiveness of the merger, another association owns directly or
indirectly 80% or more of the outstanding shares of each class of the corporation;
or

(iii) no shares of the corporation have been issued prior to the adoption of
the plan by the board of directors pursuant to subsection (a).
(2) If a merger is effected pursuant to paragraph (1)(i) or (iii), the plan shall be deemed adopted by the corporation when it has been adopted by the board of directors pursuant to subsection (a).

(3) If a merger of a subsidiary corporation is effected pursuant to paragraph (1)(ii), the plan shall be deemed adopted by the subsidiary corporation when it has been adopted by the governors of the parent association and neither approval of the plan by the board of directors of the subsidiary corporation nor signing of the statement of merger by the subsidiary corporation shall be necessary.

(4) Unless otherwise required by the organic rules, a plan of merger providing for the merger of a domestic business corporation (referred to in this paragraph as a “constituent corporation”) with or into a single indirect wholly owned subsidiary (referred to in this paragraph as the "subsidiary corporation") of the constituent corporation shall not require the approval of the shareholders of either the constituent corporation or the subsidiary corporation if all of the following provisions are satisfied.

(i) A merger under this paragraph must satisfy the following conditions:

(A) The constituent corporation and the subsidiary corporation are the only parties to the merger, other than a surviving association that is a corporation created in the merger.

(B) Each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effectiveness of the merger is converted in the merger into a share or equal fraction of a share of capital stock of a holding company having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the share of capital stock of the constituent corporation being converted in the merger.

(C) The holding company and the surviving association are each domestic business corporations.

(D) Immediately following the effectiveness of the merger, the articles of incorporation and bylaws of the holding company are identical to the articles of incorporation and bylaws of the constituent corporation immediately before the effectiveness of the merger, except for changes that could be made without shareholder approval pursuant to section 1914(c).

(E) Immediately following the effectiveness of the merger, the surviving association is a direct or indirect wholly owned subsidiary of the holding company.

(F) The directors of the constituent corporation become or remain the directors of the holding company on the effectiveness of the merger.
(G) The board of directors of the constituent corporation has made a good faith determination that the shareholders of the constituent corporation will not recognize gain or loss for United States Federal income tax purposes.

(ii) If the holding company is a registered corporation, the shares of the holding company issued in connection with the merger shall be deemed to have been acquired at the time that the shares of the constituent corporation converted in the merger were acquired.

(iii) As used in this paragraph only, the term "holding company" means a corporation that, from its incorporation until consummation of the merger governed by this paragraph, was at all times a direct wholly owned subsidiary of the constituent corporation and whose capital stock is issued in the merger.

(e) Approval of division by preferred shares. – If a dividing association that is a business corporation has outstanding any shares of a preferred or special class or series of shares, regardless of a limitation stated in the articles or bylaws on the voting rights of the class or series of shares, the holders of outstanding shares of the class or series shall be entitled to vote as a class on a plan of division which:

(1) provides that the dividing association will not survive the division; or

(2) amends the articles of bylaws of the surviving corporation in a manner that would entitle the holders of the preferred or special shares to a class vote on the amendment under the articles, the bylaws or section 1914(b).

(f) Cross references.—See:

Subchapter A of Chapter 17 (relating to notice and meetings generally).
Section 2512 (relating to dissenters rights procedure).
Section 2539 (relating to adoption of plan of merger by board of directors).
Section 3304(b) (relating to election of benefit corporation status).
Section 3305(b) (relating to termination of benefit corporation status).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is substantially a reenactment of former 15 Pa.C.S. § 1922(c). Subsection (b) is substantially a reenactment of 15 Pa.C.S. § 1923(a). Subsections (c) and (d) are substantially a reenactment of former 15 Pa.C.S. § 1924 (a) and (b). Subsection (e) is substantially a reenactment of former 15 Pa.C.S. § 1952(f). Subsection (f) is derived from former 15 Pa.C.S. §§ 1923(b) and 1924(d).
Subsection (b) applies to any meeting “that will act on” a plan to make clear that this
section applies not just to special meetings called for the express purpose of considering a
transaction under Chapter 3, but also to a regularly scheduled annual meeting at which a
transaction is to be considered.

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.

A majority of all votes cast on the adoption of a plan satisfies the statutory vote
requirements of Chapter 3. In addition to the class vote requirements of 15 Pa.C.S. § 1914, a
form of statutory class or group voting may arise under 15 Pa.C.S. § 329. The vote
requirements of subsection (c) are modified for certain registered corporations. See 15
Pa.C.S. Subch. 25F.

The last sentence of subsection (c) is intended to make clear that the inclusion in
management proxy material of a shareholder proposal recommending approval of a plan
results only in an advisory vote unless or until the board has embraced the plan by approving
it.

Subparagraph (d)(1)(i) authorizes the board to effect a merger (including a merger
where it is a nonsurviving corporation) without shareholder approval if the charter of the
corporation and its previously outstanding shares are unaffected by the merger (except for
changes in the articles that the board could effect on its own initiative under 15 Pa.C.S. §
1914) and the shareholders before the merger will be in control of the surviving entity.

The Delaware certificate of ownership and merger procedure is adopted in substance by
subsection (b)(1)(ii) and (3) which eliminates the need for the adoption of a plan of merger, or
execution of articles of merger, by certain subsidiaries, except that the required level of
ownership by the parent in the subsidiary has been reduced from 90% to 80%.

Subsection (d)(4) authorizes the board of directors to effect a merger with a wholly-
owned indirect subsidiary which in effect converts the corporation into a subsidiary of a
holding company, and converts the shares owned by the shareholders into shares of the
holding company.

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 submission of a merger 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.

This section is not a comprehensive statement of the procedures that must be followed to
approve a plan. The provisions of the Business Corporation Law and the organic rules of the
business corporation will apply as appropriate with respect to issues not dealt with in this
section, such as how far in advance of a meeting notice must be given, quorum requirements for
meetings, action by consent without a meeting, etc.
The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
“converted association”
“domesticated entity”
“new association”
“plan”
“resulting association”
“surviving association”

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

“business corporation”
“dissenters rights”
“organic rules”
“record form”
“registered corporation”

§ 322. Approval by nonprofit corporation.

(a) Proposal of plan.—A plan shall be proposed in the case of a domestic nonprofit corporation as follows:

(1) by the adoption by the board of directors or other body of a resolution approving the plan;

(2) unless otherwise provided in the articles, by petition of members entitled to cast at least 10% of the votes that all members are entitled to cast thereon, setting forth the proposed plan, which petition shall be directed to the board of directors and filed with the secretary of the corporation; or

(3) by such other method as may be provided in the bylaws.

(b) Submission to members.—Except where the domestic nonprofit corporation has no members entitled to vote thereon, the board of directors or other body shall direct that the plan be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

(c) Notice of meeting of members.—Notice in record form of the meeting of members that will act on the proposed plan shall be given to each member of record, whether or not entitled to vote thereon, of each domestic nonprofit corporation that is a party to the transaction under the plan. A copy of the proposed plan or a summary thereof shall be included in or enclosed with the notice. The notice shall state that a copy of the organic rules of the surviving, acquired, converted, new or resulting association or domesticated entity as
they will be in effect immediately following the transaction will be furnished to any member
of the corporation giving the notice on request and without cost.

(d) Member vote required.—Except as provided in section 5757 (relating to action by
members), a plan shall be adopted upon receiving the affirmative vote of at least a majority of
the votes that all members present are entitled to cast thereon of each domestic nonprofit
corporation that is a party to the transaction under the plan. If any class of members is
entitled to vote on a plan as a class, the plan must be adopted by the affirmative vote of at
least a majority of the votes that all members present of such class are entitled to cast thereon.

(e) Adoption in absence of voting members.—If a domestic nonprofit corporation has
no members entitled to vote thereon, a plan shall be deemed adopted by the corporation when
it has been adopted by the board of directors or other body pursuant to subsection (a).

(f) Cross references.—See Subchapter A of Chapter 57 (relating to notice and
meetings generally) and section 3304(b) (relating to election of benefit corporation status).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a)
and (b) are a generalization of former 15 Pa.C.S. § 5922(c) and (d). Subsection (c) is a
generalization of former 15 Pa.C.S. § 5923(a). Subsections (d) and (e) are a generalization of
former 15 Pa.C.S. § 5924(a) and (b).

This section is not a comprehensive statement of the procedures that must be followed to
approve a plan. The provisions of the Nonprofit Corporation Law and the organic rules of the
nonprofit corporation will apply as appropriate with respect to issues not dealt with in this
section, such as how far in advance of a meeting notice must be given, quorum requirements for
meetings, action by consent without a meeting, etc.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
“converted association”
“domesticated entity”
“new association”
“plan”
“resulting association”
“surviving association”

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

“nonprofit corporation”
“organic rules”
“record form”
§ 323. Approval by general partnership.

(a) General rule. – A plan shall be approved in the case of a domestic general partnership as follows:

(1) in the manner provided in its organic rules for the type of plan involved;

(2) if its organic rules do not provide for approval of the type of plan involved, then in the manner provided in its organic rules for approval of a plan of merger; or

(3) if its organic rules do not provide for approval of the type of plan involved or a plan of merger, then the plan shall be approved by all of the partners.

(b) Cross reference. – See section 3304(b) (relating to election of benefit corporation status)

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of Uniform Partnership Act (1997) (Last Amended 2013) § 905(c)(1).

This section looks first to the organic rules of a general partnership to determine what vote of the partners is required to approve a transaction under this chapter. If the organic rules do not provide for the required vote, then unanimous approval is required.

This section is not a comprehensive statement of the procedures that must be followed to approve a plan. The provisions of Chapter 83 and the organic rules of the partnership will apply as appropriate with respect to issues not dealt with in this section, such as how far in advance of a meeting notice must given, quorum requirements for meetings, action by consent without a meeting, etc.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“merger”

“plan”

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

“domestic”

“general partnership”

“organic rules”

§ 324. Approval by limited partnership.
(a) Proposal of plan.—A plan shall be proposed in the case of a domestic limited partnership by the adoption by a unanimous vote of the general partners of a resolution approving the plan. Except where the approval of the limited partners is unnecessary under this chapter or the organic rules, the general partners shall submit the plan to a vote of the limited partners entitled to vote thereon at a regular or special meeting of the limited partners.

(b) Notice of meeting of limited partners.—Notwithstanding any other provision of the organic rules, notice in record form of the meeting of limited partners called for the purpose of considering the proposed plan shall be given to each limited partner, whether or not entitled to vote thereon, of each domestic limited partnership that is a party to the transaction under the plan. A copy of the proposed plan or a summary thereof shall be included in or enclosed with the notice. The notice must state that a copy of the organic rules of the surviving, acquired, converted, new or resulting association or domesticated entity as they will be in effect immediately following the transaction will be furnished to any limited partner of the limited partnership giving the notice on request and without cost.

(c) Required vote by limited partners.—The plan shall be adopted upon receiving a majority of the votes cast by all limited partners, if any, entitled to vote thereon of each domestic limited partnership that is a party to the proposed transaction under the plan and, if any class of limited partners is entitled to vote thereon as a class, a majority of the votes cast in each class vote. A proposed plan shall not be deemed to have been adopted by the limited partnership unless it has also been approved by the general partners, regardless of the fact that the general partners have directed or suffered the submission of the plan to the limited partners for action.

(d) Merger by action of general partners only. – Except as provided in the organic rules, a plan of merger shall not require the approval of the limited partners of a domestic limited partnership that is a merging association and shall be deemed adopted by the limited partnership when it has been adopted by the general partners pursuant to subsection (a) if:

(1) whether or not the limited partnership is the surviving association, the surviving association is a domestic limited partnership and its organic rules are identical to the organic rules of the merging limited partnership, except for changes that could be made without action by the limited partners; and

(2) each partnership interest outstanding immediately before the effectiveness of the merger is to continue as or to be converted into, except as may be otherwise agreed by the holder thereof, an identical partnership interest in the surviving limited partnership after the effectiveness of the merger.

(e) Cross reference.—See section 3304(b) (relating to election of benefit corporation status)

Committee Comment (2014):
This section was added in 2014 by the Association Transactions Act and was derived from former 15 Pa.C.S. 8546(c), (e), (f) and (g).

Unless the organic rules of a limited partnership provide otherwise, the general partners must approve a transaction under this chapter by unanimous vote. However, only a majority vote of the limited partners is required unless the organic rules provide otherwise.

This section is not a comprehensive statement of the procedures that must be followed to approve a plan. The provisions of Chapter 85 and the organic rules of the limited partnership will apply as appropriate with respect to issues not dealt with in this section, such as how far in advance of a meeting notice must given, quorum requirements for meetings, action by consent without a meeting, etc.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
“converted association”
“domesticated entity”
“new association”
“plan”
“resulting association”
“surviving association”

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

“limited partnership”
“organic rules”
“record form”

§ 325. Approval by limited liability company.

(a) Proposal of plan in manager-managed company.—Except as provided in the organic rules or where the approval of the managers is unnecessary under section 330 (relating to alternative means of approval of transactions), a plan shall be proposed, in the case of a manager-managed, domestic limited liability company, by the adoption by the managers of a resolution approving the plan. Except where the approval of the members of a manager-managed, domestic limited liability company is unnecessary under this chapter or the organic rules, the plan shall be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

(b) Notice of meeting of members.—Except as provided in the organic rules:

(1) Notice in record form of the meeting of members of a domestic limited liability company that will act on the proposed plan shall be given to each member of
(2) There shall be included in or enclosed with the notice a copy of the proposed plan or a summary thereof.

(3) The notice shall state that a copy of the organic rules of the surviving, acquired, converted, new or resulting association or domesticated entity as they will be in effect immediately following the transaction will be furnished to any member of the company giving the notice on request and without cost.

(c) Adoption of plan by members. – A plan:

(1) Except as provided in the organic rules, shall be adopted upon receiving a majority of the votes cast by all members, if any, entitled to vote thereon of each of the domestic limited liability companies that is a party to the transaction under the plan and, if any class of members is entitled to vote thereon as a class, a majority of the votes cast in each class vote.

(2) Except as provided in the organic rules or section 330, shall not be deemed to have been adopted by a manager-managed company unless it has also been approved by the managers, regardless of the fact that the managers have directed or suffered the submission of the plan to the members for action.

(d) Merger by action of managers only. – Unless otherwise required by a provision of the organic rules in record form, a plan of merger shall not require the approval of the members of a manager-managed, domestic limited liability company and shall be deemed adopted by the company when a resolution approving the plan has been adopted by the managers pursuant to subsection (a), if:

(1) Whether the company is the surviving association:

   (i) the surviving association is a domestic limited liability company and its organic rules are identical to the organic rules of the limited liability company that is a party to the merger, except for changes that could be made without action by the members; and

   (ii) each membership interest outstanding immediately prior to the effectiveness of the merger is to continue as or to be converted into, except as may be otherwise agreed by the holder thereof, an identical membership interest in the surviving association after the effectiveness of the merger.

(2) The plan of merger provides for the merger of the company, referred to in this paragraph as the “constituent company,” with or into a single indirect wholly owned subsidiary, referred to in this paragraph as the "subsidiary company," of the constituent company if all of the following provisions are satisfied:
(i) The constituent company and the subsidiary company are the only parties to the merger, other than a surviving association that is created in the merger.

(ii) Each interest of the constituent company outstanding immediately prior to the effectiveness of the merger is converted in the merger into an interest of a holding company having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the interest of the constituent company being converted in the merger.

(iii) The holding company and the surviving association are each domestic limited liability companies.

(iv) Immediately following the effectiveness of the merger, the certificate of organization and operating agreement of the holding company are identical to the certificate of organization and operating agreement of the constituent company immediately before the effectiveness of the merger, except for changes that could be made without member approval pursuant to Chapter 89 (relating to limited liability companies).

(v) Immediately following the effectiveness of the merger, the surviving association is a direct or indirect wholly owned subsidiary of the holding company.

(vi) The managers of the constituent company become or remain the managers of the holding company on the effectiveness of the merger.

(vii) The managers of the constituent company have made a good faith determination that the members of the constituent company will not recognize gain or loss for United States Federal income tax purposes.

(viii) As used in this paragraph only, the term "holding company" means a limited liability company that, from its formation until consummation of the merger governed by this paragraph, was at all times a direct wholly owned subsidiary of the constituent company and interests in which are issued in the merger.

(e) Cross reference. – See section 3304(b) (relating to election of benefit corporation status).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and was derived from former 15 Pa.C.S. 8957(d), (f), (g) and (h).
This section applies to both manager-managed and member-managed limited liability companies, but in the case of a member-managed limited liability company only subsections (b) and (c)(1) will be relevant.

Subsection (b) requires that notice of a meeting of members that will act on a plan must be given to all of the members except as provided in the organic rules. Subsection (b) does not prescribe what the period for such notice must be, which will be determined by the organic rules of the domestic limited liability company.

This section is not a comprehensive statement of the procedures that must be followed to approve a plan. The provisions of Chapter 89 and the organic rules of the limited liability company will apply as appropriate with respect to issues not dealt with in this section, such as how far in advance of a meeting notice must be given, quorum requirements for meetings, action by consent without a meeting, etc.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
“converted association”
“domesticated entity”
“new association”
“plan”
“resulting association”
“surviving association”

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

“limited liability company”
“organic rules”
“record form”

§ 326. Approval by professional association.

(a) General rule. – A plan shall be approved in the case of a domestic professional association by vote of a majority, or such higher percentage as may be provided in the organic rules of the associates, voting according to their proportionate shares of ownership.

(b) Cross reference. – See section 3304(b) (relating to election of benefit corporation status)

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and was patterned in part after 15 Pa.C.S. § 9319(a)(2).
This section is not a comprehensive statement of the procedures that must be followed to approve a plan. The provisions of Chapter 93 and the organic rules of the professional association will apply as appropriate with respect to issues not dealt with in this section, such as how far in advance of a meeting notice must be given, quorum requirements for meetings, action by consent without a meeting, etc.

The term “plan” used in this section is defined in 15 Pa.C.S. § 312.

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

“organic rules”
“professional association”

§ 327. Approval by business trust.

(a) General rule. – Except as provided in subsection (b), a plan shall be approved in the case of a domestic business trust as follows:

(1) in the manner provided in its organic rules for the type of plan involved;

(2) if its organic rules do not provide for approval of the type of plan involved, in the manner provided in its organic rules for approval of a plan of merger; or

(3) if its organic rules do not provide for approval of the type of plan involved or a plan of merger, the plan shall be approved by all of the beneficial owners.

(b) Adoption of plan of merger without beneficiary vote. – Unless otherwise required by the organic rules, a plan of merger providing for the merger of a domestic business trust, referred to in this paragraph as the “constituent trust,” with or into a single indirect wholly owned subsidiary, referred to in this paragraph as the “subsidiary trust,” of the constituent trust shall not require the approval of the beneficiaries of the constituent trust if all of the following provisions are satisfied:

(1) The constituent trust and the subsidiary trust are the only parties to the merger, other than a surviving association created in the merger.

(2) Each interest in the constituent trust outstanding immediately prior to the effectiveness of the merger is converted in the merger into an interest in the holding trust having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the interests in the constituent trust being converted in the merger.

(3) The holding trust and the surviving association are each domestic business trusts.
(4) Immediately following the effectiveness of the merger, the instrument and
organic rules of the holding trust are identical to the instrument and organic rules of the
constituent trust immediately before the effectiveness of the merger, except for changes
that could be made without beneficiary approval under Chapter 95 (relating to business
trusts).

(5) Immediately following the effectiveness of the merger, the surviving
association is a direct or indirect wholly owned subsidiary of the holding trust.

(6) The trustees of the constituent trust become or remain the trustees of the
holding trust on the effectiveness of the merger.

(7) The trustees of the constituent trust have made a good faith determination
that the beneficiaries of the constituent trust will not recognize gain or loss for United
States Federal income tax purposes.

(8) As used in this subsection only, the term "holding trust" means a business
trust that, from its formation until consummation of the merger governed by this
subsection, was at all times a direct wholly owned subsidiary of the constituent trust and
the interests in which are issued in the merger.

(c) Cross reference. – See section 3304(b) (relating to election of benefit corporation
status)

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act.

This section looks first to the organic rules of a business trust to determine what vote of
the beneficial owners is required to approve a transaction under this chapter. If the organic
rules do not provide for the required vote, then unanimous approval is required.

This section is not a comprehensive statement of the procedures that must be followed to
approve a plan. The provisions of Chapter 95 and the organic rules of the business trust will
apply as appropriate with respect to issues not dealt with in this section, such as how far in
advance of a meeting notice must given, quorum requirements for meetings, action by consent
without a meeting, etc.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“merger”
“plan”
“surviving association”

The following terms used in this section are defined in 15 Pa.C.S. § 102:
§ 328. Approval by unincorporated nonprofit association.

(a) General rule. – Except as provided in the governing principles, a plan shall be approved in the case of a domestic unincorporated nonprofit association by the affirmative vote of at least a majority of the votes cast at a meeting of the members.

(b) Cross reference. – See section 3304(b) (relating to election of benefit corporation status)

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and was patterned in part after 15 Pa.C.S. § 9124(a)(1).

This section is not a comprehensive statement of the procedures that must be followed to approve a plan. The provisions of Chapter 91 and the organic rules of the nonprofit association will apply as appropriate with respect to issues not dealt with in this section, such as how far in advance of a meeting notice must given, quorum requirements for meetings, action by consent without a meeting, etc.

The term “plan” used in this section is defined in 15 Pa.C.S. § 312.

§ 329. Special treatment of interest holders.

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

(1) The plan:

(i) is approved by a majority of the votes cast by the holders of any class or series of interests any of the interests 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) specifically enumerates the type and extent of the special treatment authorized.

(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 association.

(b) Statutory voting rights on special treatment.—Except as provided in subsection (d), if a plan contains a provision for special treatment, each group of holders of any outstanding interests 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 organic rules on the voting rights of any class or series.

(c) Determination of groups.—For purposes of applying subsections (a)(1) and (b), the determination of which interest holders are part of each group receiving special treatment shall be made as of the record date for interest holder action on the plan.

(d) Dissenters rights on special treatment.— If a plan contains a provision for special treatment without requiring for the adoption of the plan the statutory class vote required under subsection (b), the holder of any outstanding interests the statutory class voting rights of which are so denied shall be entitled to assert dissenters rights with respect to those interests. A shareholder of a business corporation who wishes to assert dissenters rights shall comply with Subchapter D of Chapter 15 (relating to dissenters rights). An interest holder in any other type of domestic entity shall comply with Subchapter D of Chapter 15 to the extent practicable.

(e) Notice to interest holders.—Any notice to interest holders of a meeting called to act on a plan that provides for special treatment shall state that the plan provides for special treatment. The notice shall identify the interest holders receiving special treatment unless the notice is accompanied by either a summary of the plan that includes that information or the full text of the plan.

(f) Exceptions.—This section shall not apply to any of the following:

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

(2) A plan involving any type of domestic entity that contains an express provision that this section does not apply or that fails to contain an express provision that this section shall apply.

(3) A provision of a plan that treats all of the holders of a particular class or series of interests of any type of domestic entity 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 of a domestic business corporation differently from the holders of another class or series.
of shares shall not constitute a violation of section 1521(d) (relating to authorized
shares).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a

This section only applies to special treatment in connection with a transaction pursuant
to a “plan” as defined in 15 Pa.C.S. § 312, i.e., a plan of merger, plan of interest exchange,
plan of conversion, plan of division, or plan of domestication.

This section authorizes "black hat--white hat" treatment of interest holders. The facts or
circumstances forming the basis for special treatment of interest holders are specifically
intended to include the identity of the individual interest holders. 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 business. Any
classification of interest holders, however, is subject to the requirement that it not be
"manifestly unreasonable," which is intended to prohibit special treatment on the basis of
race, sex, religion, etc.

If there is any group of holders of a class or series of interests receiving special
treatment, then the entire class or series has a statutory class vote under subsection (a)(1)(i)
unless subsection (a)(2) is satisfied. The class vote under subsection (a)(1)(i) is in addition to
the class vote under subsection (b) unless the exemption in subsection (d) is applicable.
Where, for example, holders of shares of a class or series are allotted a new fixed rate
preferred interest 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 governors 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
governors 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
for the interest holders of a domestic entity 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 (d). If a class vote is provided under subsection (b) in such
situation, that class vote will not deprive the interest holders of the dissenters rights granted
independently by another provision of Title 15.

The requirement of paragraph (a)(2) is not a condition precedent to proposal of a
transaction involving special treatment, 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 in the case of a business corporation or 15 Pa.C.S. § 104 in the case of any other domestic entity.

Subsection (c) confirms that record date provisions will operate in the usual way and will fix the date for determining which interest holders are receiving special treatment.

The procedures of this section will apply only if a plan expressly provides that this section is to apply.

If this section is applicable to a plan, it is within the discretion of the governors to choose whether statutory class voting rights under subsection (b) or dissenters rights under subsection (d) will be available. The dissenters rights granted by subsection (d) are not subject to the "statutory market" exceptions of 15 Pa.C.S. § 1571(b)(1). See 15 Pa.C.S. § 1571(b)(2)(iii).

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

The term “plan” used in this section is defined in 15 Pa.C.S. § 312.

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

“association”
“business corporation”
“dissenters rights”
“domestic entity”
“interest”
“interest holder”
“organic rules”
“special treatment”

§ 330. Alternative means of approval of transactions.

(a) General rule.—Except as provided in subsection (b) or the organic rules of a domestic entity, approval of a transaction under this chapter by the unanimous vote or consent of its interest holders satisfies the requirements of this chapter for approval of the transaction.

(b) Exception.—Subsection (a) shall not apply to a nonprofit corporation.

Committee Comment (2014):
This section was added in 2014 by the Association Transactions Act. Subsection (a) is a generalization of 15 Pa.C.S. § 1905 and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 108.

This section makes it clear that a unanimous vote by the interest holders of an entity constitutes the only approval needed for a transaction under this chapter. If that vote is obtained, the separate approvals that would otherwise be required under 15 Pa.C.S. §§ 321(c) (directors of a business corporation) and 325 (managers of a manager-managed limited liability company) are not required. Approval by a limited partnership also requires a type of “two-house” requirement because the general partners are always required to approve a plan by 15 Pa.C.S. § 324, but in the case of a limited partnership that vote will be the same as the vote required by this section because general partners are interest holders.

A “two-house” requirement does not apply to nonprofit corporations under 15 Pa.C.S. § 322 and thus nonprofit corporations are excluded from this section. If the members of nonprofit corporation propose a plan under 15 Pa.C.S. § 322(a)(2), the plan will be validly adopted if it receives the vote required by 15 Pa.C.S. § 322(d) even if the board of the nonprofit corporation does not approve the plan.

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

“domestic entity”
“interest holders”
“nonprofit corporation”
“organic rules”

Subchapter C
Merger

§ 331. Merger authorized.

(a) General rule.—Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this chapter:

(1) One or more domestic entities may merge with one or more domestic entities or foreign associations into a surviving association.
(2) Two or more foreign associations may merge into a surviving association that is a domestic entity.

(3) A domestic banking institution may be a merging association or surviving association in a merger with one or more domestic or foreign associations if the surviving association or at least one of the merging associations is a domestic entity.

(b) Foreign law authorization required.— By complying with the applicable provisions of this subchapter, a foreign association may be a party to a merger under this subchapter or may be the surviving association in such a merger if the merger is authorized by the law of the jurisdiction of formation of the foreign association.

c) Banking institutions.— Subsection (a)(3) controls over any inconsistent provision of the organic law of a domestic banking institution that is a merging association.

d) Exception.— A health maintenance organization may be a merging association only if the surviving association is a health maintenance organization.

e) Cross reference.— See section 314 (relating to regulatory conditions and required notices and approvals).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) and (b) are patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 201.

The merger transaction authorized by this subchapter involves the combination of one or more domestic associations with or into one or more other domestic or foreign associations. It also contemplates the consolidation of two or more foreign associations into a single domestic entity created in the transaction. On the effective date of the merger, all the property and liabilities of the merging associations vest in the surviving association as a matter of law. Mergers require the existence of at least two separate associations before the transaction and only one surviving association may survive the merger. If independent existence of the merging associations is desired following the conclusion of the transaction, a restructuring transaction other than a merger must be used to accomplish the transfer of property and liabilities.

The Banking Code of 1965, 7 P.S. § 101, et seq., was amended in 2012 to allow a limited liability company to be a banking institution. Subsections (a)(3) and (c), along with 15 Pa.C.S. § 333(c), permit mergers involving such a limited liability company. For example, a limited liability company that is a banking institution may merge into a banking institution that is a corporation. Approval of the merger by the limited liability company will be governed by this chapter, while approval of the merger by the banking institution will be governed by The Banking Code of 1965. In anticipation that other types of entities in addition to limited liability companies may be permitted to be banking institutions, subsection
(a)(3) relating to mergers involving domestic banking institutions has not been restricted to limited liability companies.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“merger”
“merging association”
“surviving association”

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

“association”
“domestic association”
“domestic banking institution”
“domestic entity”
“foreign association”
“health maintenance organization”
“jurisdiction of formation”
“organic law”

§ 332. Plan of merger.

(a) General rule.—A domestic entity may become a party to a merger by approving a plan of merger. The plan shall be in record form and contain all of the following:

(1) As to each merging association, its name, jurisdiction of formation and type.

(2) If the surviving association is to be created in the merger, a statement to that effect and the association’s name, jurisdiction of formation and type.

(3) The manner, if any, of:

   (i) converting some or all of the interests in a merging association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

   (ii) canceling some or all of the interests in a merging association.

(4) If the surviving association exists before the merger, any proposed amendments to:

   (i) its public organic record, if any; or

   (ii) its private organic rules that are or are proposed to be in record form.
If the surviving association is to be created in the merger:

(i) its proposed public organic record, if any; and

(ii) the full text of its private organic rules that are proposed to be in record form.

(6) Provisions, if any, providing special treatment of interests in a merging association held by any interest holder or group of interest holders as authorized by, and subject to, section 329 (relating to special treatment of interest holders).

(7) The other terms and conditions of the merger.

(8) Any other provision required by:

(i) the law of this Commonwealth;

(ii) the law of the jurisdiction of formation of a foreign merging or surviving association; or

(iii) the organic rules of a merging association.

(b) Optional contents.—In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.

(c) Cross reference.—See section 316 (relating to contents of plan).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 202.

Subsection (a)(1) requires that the plan of merger identify the parties to the merger. The name of a merging association as it appears in the plan of merger will be its name in its jurisdiction of formation.

The special treatment authorized by 15 Pa.C.S. § 329 may be used, for example, to provide continuing interests in the surviving association for some holders of interests of a class or series of a merging association while paying some other form of consideration to other holders of the same class or series of interests in that merging association. Similarly, 15 Pa.C.S. § 329 may also be used to reorganize the capital structure of the surviving association.

The consideration paid to the interest holders of the merging associations may be supplied in whole or part by a person who is not a party to the merger. That person may be a party to the plan but is not considered a party to the transaction for purposes of this chapter. See 15 Pa.C.S. § 319.
Subsection (b) provides the statutory authority for a merging association to include a provision in a plan of merger that is not specifically listed in this section. One such possibility is contractual dissenters rights as provided in 15 Pa.C.S. § 317.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“merger”
“merging association”
“plan”
“surviving association”

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

“domestic entity”
“interests”
“jurisdiction of formation”
“obligations”
“organic rules”
“private organic rules”
“property”
“public organic record”
“record form”
“special treatment”
“type”

§ 333. Approval of merger.

(a) Approval by domestic entities.—A plan of merger shall not be effective unless it has been approved in both of the following ways:

(1) The plan is approved by a domestic entity that is a merging association in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(2) The plan is approved in record form by each interest holder, if any, of a domestic entity that is a merging association that will have interest holder liability for debts, obligations and other liabilities that arise after the merger becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:

(i) The organic rules of the domestic entity provide in record form for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders.
(ii) The interest holder consented in record form to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) Approval by foreign associations.—A merger under this subchapter in which a foreign association is a merging association is not effective unless the merger is approved by the foreign association in accordance with the law of its jurisdiction of formation.

(c) Approval by domestic banking institutions.—A merger under this subchapter in which a domestic banking institution that is not a domestic entity is a merging association is not effective unless the merger is approved by the domestic banking institution in accordance with the requirements in its organic law and organic rules for approval of a merger.

(d) Dissenters rights.—

(1) Except as provided in paragraph (2), if a shareholder of a domestic business corporation that is to be a merging association objects to the plan of merger and complies with Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to dissenters rights to the extent provided in that subchapter.

(2) Except as provided under section 317 (relating to contractual dissenters rights in entity transactions), dissenters rights shall not be available to shareholders of a domestic business corporation that is a merging association in a merger described in section 321(d)(1)(i) or (4) (relating to approval by business corporation).

(3) If a shareholder of a domestic banking institution that is to be a merging association objects to the plan of merger and complies with section 1222 of the act of November 30, 1965 (P.L. 847, No, 356), known as the Banking Code of 1965, the shareholder shall be entitled to the rights provided in that section.

(4) See section 329 (relating to special treatment of interest holders).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 203.

Approval under this section includes whatever actions or procedures by the governors and interest holders of a domestic entity are required by 15 Pa.C.S. Subch. 3B.

Subsection (a)(2) will be applicable, for example, to shareholders of a corporation that merges into a general partnership that is not a limited liability partnership if the shareholders become general partners of the surviving general partnership. If such a shareholder were to exercise dissenters rights, however, the shareholder would not become subject to owner liability because one effect of exercising dissenters rights is that the shareholder would not...
become a general partner in the surviving association; and, in that case, the consent of that shareholder would not be required under subsection (a)(2).

The consent of an interest holder required by subsection (a)(2)(ii) may be given by (i) signing or agreeing generally to the terms of organic rules that include the required provision permitting less than unanimous approval of a merger in which interest holders become subject to interest holder liability, (ii) voting for or consenting to an amendment to add such a provision, or (iii) becoming an interest holder after the provision has been adopted.

Where a foreign association is a party to a merger under this subchapter, subsection (b) defers to the law of the foreign jurisdiction for the requirements for approval of the merger by the foreign association. That law will include the organic law of the foreign association and other applicable laws. The law of the foreign jurisdiction will also control the application of any special approval requirements found in the organic rules of the foreign association.

The effect of subsection (c) is similar to that of subsection (b). When a domestic banking institution that is not a domestic entity is a party to a merger under this subchapter, the laws applicable to it as a banking institution will control how it must approve the merger.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“interest holder liability”  
“merger”  
“merging association”  
“plan”

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

“business corporation”  
“dissenters rights”  
“domestic banking institution”  
“domestic entity”  
“foreign association”  
“interest holder”  
“jurisdiction of formation”  
“obligations”  
“organic law”  
“organic rules”  
“record form”

§ 334. Amendment or abandonment of plan of merger.

(a) General rule.—A plan of merger may be amended or abandoned only with the consent of each party to the plan, except as otherwise provided in the plan.
(b) Approval of amendment. – A domestic entity that is a merging association may approve an amendment of a plan of merger in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan.

(ii) The public organic record, if any, or private organic rules of the surviving association that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving association under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(c) Approval of abandonment.—After a plan of merger has been approved by a domestic entity that is a merging association and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is a merging association may abandon the plan in the same manner as the plan was approved.

(d) Statement of abandonment.—If a plan of merger is abandoned after a statement of merger has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by a party to the plan, must be delivered to the department for filing before the statement of merger becomes effective.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 204.

An interest holder of a domestic entity that is a merging association is entitled to vote under subsection (b)(2)(iii) on any amendment of the plan of merger that will increase the
interest holder liability to which the interest holder will be subject, but the interest holder is
only entitled to vote by that provision on other amendments that will adversely affect the
interest holder in a material respect.

Rules on what constitutes delivery of documents to and by the Department of State are

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“interest holder liability”
“merger”
“merging association”
“plan”
“surviving association”

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

“department”
“domestic entity”
“governor”
“interest holder”
“interests”
“obligations”
“private organic rules”
“property”
“public organic record”

§ 335. Statement of merger; effectiveness.

(a) General rule.—A statement of merger shall be signed by each merging association
and delivered to the department for filing along with the certificates, if any, required by
section 139 (relating to tax clearance of certain fundamental transactions).

(b) Contents.—A statement of merger shall contain all of the following:

(1) With respect to each merging association that is not the surviving
association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;
(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address);

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the law of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(2) With respect to the surviving association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the law of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(3) If the statement of merger is not to be effective on filing, the later date or date and time on which it will become effective.
(4) A statement that the merger was approved in the following ways as applicable:

(i) By a domestic entity that is a merging association, in accordance with this chapter.

(ii) By a foreign merging association, in accordance with the law of its jurisdiction of formation.

(iii) By a domestic merging association that is not a domestic entity, in the same manner required by its organic law for approving a merger that requires the approval of its interest holders.

(5) If the surviving association exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger.

(6) If the surviving association is created by the merger and is a domestic filing entity, its public organic record, as an attachment. The public organic record does not need to state the name or address of an incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(7) If the surviving association is created by the merger and is a nonregistered foreign association, one of the following:

(i) The street and mailing addresses of its registered agent and registered office in its jurisdiction of formation if it is a filing entity.

(ii) The street and mailing address of its principal office if it is not a filing entity.

(8) If the surviving association is created by the merger and is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration, as an attachment.

(9) If the surviving association is created by the merger and is a domestic electing partnership, its statement of election as an attachment.

(c) Other provisions.—In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) Domestic surviving association.—If the surviving association is a domestic entity, its public organic record, if any, shall satisfy the requirements of the law of this Commonwealth, except that the public organic record does not need to be signed and may
omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.—A plan of merger that is signed by all of the merging associations and meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this chapter to a statement of merger refer to the plan of merger filed under this subsection.

(f) Effectiveness of statement of merger.—A statement of merger is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(g) Effectiveness of merger.—If the surviving association is a domestic association, the merger is effective when the statement of merger is effective. If the surviving association is a foreign association, the merger is effective on the later of:

(1) the date and time provided by the organic law of the surviving association; or
(2) when the statement of merger is effective.

(h) Cross references.—See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 316 (relating to contents of plan).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 205.

The filing of a statement of merger makes the transaction a matter of public record.

The name of a nonqualified foreign association that is a merging or surviving association does not need to satisfy the requirements of 15 Pa.C.S. Ch. 2, but if the surviving association is a nonqualified foreign association its name will need to satisfy the requirements of Chapter 2 at such time as it may register to do business in Pennsylvania.

The statement in subsection (b)(4) that the plan of merger was approved by each domestic entity in accordance with this chapter necessarily presupposes that the plan was approved in accordance with any valid, special requirements in the organic rules of each domestic entity.

The public organic record of a domestic surviving entity created by the merger that is attached to the statement of merger becomes the original, officially filed text of the public organic record of the surviving association when the statement of merger takes effect. It is not necessary, or appropriate, to make any other filing to create the surviving association.
Similarly, if the surviving association is a domestic limited liability partnership or
electing partnership its statement of registration or statement of election attached to the
statement of merger does not need to be filed separately.

Organic laws typically require an initial filing that creates an entity to be signed by the
person serving as the incorporator or other organizer. Subsection (d), however, provides that
the public organic record of the surviving association does not need to be signed since it is
itself attached to a signed document.

Subsection (d) also permits the public organic record of the surviving association to
omit any provision that is not required to be included in a restatement of the public organic
document. Pursuant to this provision, for example, the public organic record of a domestic
business corporation created as the surviving association in a merger would not need to state
the name and address of each incorporator even though that information would be required by
15 Pa.C.S. § 1306(a)(5) if the corporation were being incorporated outside the context of the
merger.

Subsection (e) permits a plan of merger that contains all the information required in the
statement of merger to be used as the document delivered to the Department of State for filing
instead of the statement of merger. The plan must be in record form and signed by each
merging party.

The effective time of the statement is the effective time of its filing, unless otherwise
specified. A statement may specify a delayed effective time and date, and if it does so the
statement becomes effective at the time and date specified.

A merger involving a regulated entity may require approval of a government agency
before it can become effective. See 15 Pa.C.S. § 103.

Rules on what constitutes delivery of documents to and by the Department of State are

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“merger”
“merging association”
“plan”
“surviving association”

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

department”
“domestic association”
“domestic entity”
“domestic filing association”
“domestic filing entity”
§ 336. Effect of merger.

(a) General rule.—When a merger under this subchapter becomes effective, all of the following apply:

1. The surviving association continues or comes into existence.
2. Each merging association that is not the surviving association ceases to exist.
3. All property of each merging association vests in the surviving association without reversion or impairment, and the merger shall not constitute a transfer of any of that property.
4. All debts, obligations and other liabilities of each merging association are debts, obligations and other liabilities of the surviving association.
5. Except as otherwise provided by law, all the rights, privileges, immunities and powers of each merging association vest in the surviving association.
6. If the surviving association exists before the merger, all of the following apply:

   i. All of its property continues to be vested in it without transfer, reversion or impairment.
   ii. It remains subject to all its debts, obligations and other liabilities.
   iii. All its rights, privileges, immunities and powers continue to be vested without change in it.
   iv. Its public organic record, if any, is amended to the extent provided in the statement of merger.
(v) Its private organic rules that are to be in record form, if any, are amended to the extent provided in the plan of merger.

(7) Liens of the property of the merging association shall not be impaired by the merger.

(8) A claim existing or an action or a proceeding pending by or against any of the merging associations may be prosecuted to judgment as if the merger had not taken place, or the surviving association may be proceeded against or substituted in place of the appropriate merging association.

(9) If the surviving association is created by the merger, its private organic rules are effective and the following apply:

(i) If it is a filing entity, its public organic record is effective.

(ii) If it is a limited liability partnership or a limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration is effective.

(iii) If it is an electing partnership, its statement of election is effective.

(10) The interests in each merging association that are to be converted or canceled as provided in the plan of merger are converted or canceled, and the interest holders of those interests are entitled only to the rights provided to them under the plan and to any dissenters rights they have pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or section 333(d) (relating to approval of merger).

(b) No dissolution rights.—Except as provided in the organic law or organic rules of a merging association, a merger under this subchapter does not give rise to any rights that an interest holder, governor or third party would have on a dissolution, liquidation or winding up of the merging association.

(c) New interest holder liability.—When a merger under this subchapter becomes effective, a person that becomes subject to interest holder liability with respect to an association as a result of the merger has interest holder liability only to the extent provided by the organic law of that association and only for those debts, obligations and other liabilities that arise after the merger becomes effective.

(d) Prior interest holder liability.—When a merger under this subchapter becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic entity that is a merging association with respect to which the person had interest holder liability shall be as follows:
(1) The merger does not discharge any interest holder liability under the organic law of the domestic entity to the extent the interest holder liability arose before the merger became effective.

(2) The person does not have interest holder liability under the organic law of the domestic entity for any debt, obligation or other liability that arises after the merger becomes effective.

(3) The organic law of the domestic entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by law other than this chapter or the organic rules of the domestic entity with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) Foreign surviving association.—When a merger under this subchapter becomes effective, a foreign association that is the surviving association may be served with process in this Commonwealth for the collection and enforcement of any debts, obligations or other liabilities of a domestic entity that is a merging association in accordance with applicable law.

(f) Registration of foreign association.—When a merger under this subchapter becomes effective, the registration to do business in this Commonwealth of a registered foreign association that is a merging association and is not the surviving association is canceled.

(g) Taxes.—Any taxes, interest, penalties and public accounts of the Commonwealth claimed against any of the merging associations that are settled, assessed or determined prior to or after the merger shall be the liability of the surviving association and, together with interest thereon, shall be a lien against the franchises and property of the surviving association.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 206. Subsection (g) is a generalization of former 15 Pa.C.S. § 1929(c).

Subsection (a) states the general understanding that in a merger the property and liabilities of the merging associations automatically vest in the surviving association. The surviving association becomes the owner of all real and personal property of the merged associations and is subject to all debts, obligations, and liabilities of the merging associations. A merger does not constitute a transfer, assignment, or conveyance of any property held by the merging associations prior to the merger. A merger also does not give rise to a claim that a contract with a merging association is no longer in effect on the grounds of nonassignability,
unless the contract specifically provides that it does not survive a merger. The contract rights that are vested in the surviving association include the right to enforce subscription agreements for interests and obligations to make capital contributions entered into or incurred before the merger.

Subsection (a) is intended to confirm the holding in *Sante Fe Energy Resources, Inc. v. Manners*, 635 A.2d 648 (Pa. Super. 1993), that the surviving association in a merger simply succeeds to the assets of each merging association and those assets are neither assigned nor transferred to the surviving association. This means, for example, that if a merging association is a party to a contract that requires prior consent to its assignment or transfer, the surviving association 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 on a successor to a party to the contract, the intention of subsection (a) is that the surviving association will nonetheless be a party to the contract; however in that situation the merger will constitute a breach of the contract for which the merging association (and thus the surviving association as well) may be liable.

The rule under subsection (a) that the surviving association is the successor to each merging association, with the result described in the preceding paragraph, applies to a merging association whether or not the merging association survives the merger. Thus the effect of a forward triangular merger is the same as that of a reverse triangular merger in this regard.

See 15 Pa.C.S. § 314(c) which modifies the provisions of this section with respect to the effects of a merger to the extent any of the parties holds property committed to charitable purposes.

All pending proceedings involving either the surviving association or a party whose separate existence ceased as a result of the merger are continued. Under subsection (a)(8), the name of the surviving association may be, but need not be, substituted in any pending proceeding for the name of a party to the merger whose separate existence ceased as a result of the merger. The substitution may be made whether the survivor is a complainant or a respondent, and may be made at the instance of either the survivor or an opposing party. Such a substitution has no substantive effect, because whether or not the survivor’s name is substituted, the survivor succeeds to the claims, and is subject to the liabilities, of any party to the merger whose separate existence ceased as a result of the merger.

The private organic rules of an unincorporated entity usually may be either oral or written. The plan of merger is not required to set forth amendments to oral provisions of the private organic rules of the surviving association if it exists before the merger, and thus subsection (a)(6)(v) is limited in scope just to amendments to the private organic rules that are to be in record form, if any.

Subsections (c) and (d) set forth rules for two circumstances that typically do not exist in a merger where all the entities involved are of the same type. Subsection (c) deals with the
situation where an interest holder that does not have interest holder liability with respect to an
association before the merger has interest holder liability after the merger. An example would
be a corporate shareholder who agrees to be the general partner in a general partnership that is
the surviving association in a merger between a corporation and a general partnership that is
not a limited liability partnership. Subsection (d) deals with the situation where an interest
holder has interest holder liability with respect to a merging association before the merger but
ceases to have any interest holder liability after the merger is effective. An example would be
a general partner in a general partnership that merges into a corporation.

When an obligation arises will be determined by other applicable law. The concept of
an “obligation” is defined very expansively in 15 Pa.C.S. § 102. The effects of subsections
(c) and (d) will depend to a certain extent on how a contractual liability is worded. For
example, a lease that provides that the entire rent is due when the lease is signed, but provides
that rent may be paid in future installments, will be treated differently from a lease that does
not provide that the entire rent is earned upon signing.

Under 15 Pa.C.S. § 333(a)(2), a merger cannot have the effect of making an interest
holder of a domestic entity that is a party to the plan of merger subject to interest holder
liability for the obligations or liabilities of any other person or association unless the interest
holder has executed a separate consent to become subject to such liability or previously
agreed to the effectuation of a transaction having that effect without the interest holder’s
consent.

The proceedings covered by subsection (e) include a proceeding to enforce the rights of
any interest holders of each domestic entity that is a party to the plan of merger who are
entitled to and exercise dissenters rights. One of the liabilities that a foreign surviving
association succeeds to is the obligation of a merging association to pay the amount, if any, to
which its interest holders that assert dissenters rights are entitled.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“interest holder liability”
“merger”
“merging association”
“plan”
“surviving association”

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

“association”
“dissenters rights”
“domestic entity”
“electing partnership”
“filing entity”
“foreign association”
“governor”
“interest holder”

“interests”

“limited liability partnership”

“limited liability limited partnership”

“obligations”

“organic law”

“organic rules”

“private organic rules”

“property”

“public organic record”

“record form”

“registered foreign association”

“transfer”

Subchapter D
Interest Exchange

Section

341. Interest exchange authorized.

342. Plan of interest exchange.

343. Approval of interest exchange.

344. Amendment or abandonment of plan of interest exchange.

345. Statement of interest exchange; effectiveness.

346. Effect of interest exchange.

§ 341. Interest exchange authorized.

(a) General rule.—Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this subchapter:

(1) A domestic or foreign association may acquire all of one or more classes or series of interests of a domestic entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing.

(2) A domestic entity may acquire all of one or more classes or series of interests of a foreign association in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(b) Foreign associations.— By complying with the applicable provisions of this subchapter:

(1) A foreign association may be the acquiring association in an interest exchange under this subchapter regardless of whether the law of its jurisdiction of formation authorizes an interest exchange.
(2) A foreign association may be the acquired association in an interest exchange under this subchapter only if the interest exchange is authorized by the law of its jurisdiction of formation.

(c) Protected agreements. – If a protected agreement of a domestic entity other than a business corporation contains a provision that applies to a merger of the entity but does not refer to an interest exchange, the provision shall apply to an interest exchange in which the domestic entity is the acquired association as if the interest exchange were a merger until the provision is amended after July 1, 2015.

(d) Excluded entities. – The following domestic entities shall not be the acquired association in an interest exchange:

(1) a health maintenance organization;

(2) a hospital plan corporation; or

(3) a professional health service organization.

(e) Transitional provision. – A reference to a share exchange in a provision of the organic rules of a domestic business corporation which took effect before July 1, 2015, shall be deemed to include an interest exchange.

(f) Cross reference.— See section 314 (relating to regulatory conditions and required notices and approvals).

Committee Comment 2014:

1. This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 301.

2. An interest exchange is the same type of transaction as the share exchange previously provided for in former 15 Pa.C.S. § 1931. The effect of an interest exchange is that: (1) the separate existence of the acquired association is not affected; and (2) the acquiring association acquires all of the interests of one or more classes or series of the acquired association. An interest exchange also allows an indirect acquisition through the use of consideration in the exchange that is not provided by the acquiring association (e.g., consideration from another or related association). Neither share exchanges nor interest exchanges are universally recognized in either corporation or unincorporated entity laws. Where there is no existing interest exchange statutory authority, a triangular merger in which the acquiring association forms a new subsidiary and the acquired association is then merged into the new subsidiary can produce the same result. This subchapter allows the interest exchange to be accomplished directly in a single step, rather than indirectly through the triangular merger route.
The “classes or series” referenced in subsection (a) are commonly found in corporation law. Specific provisions authorizing classes and series are less common in unincorporated entity law.

3. The acquiring association is not required to acquire all of the interests in the acquired association. For example, assume that an LLC with three classes of membership interests enters into an interest exchange with another entity. The acquiring association need only acquire all of one or more classes of the LLC membership interests.

4. Subsection (b) allows a foreign association to be the acquired association in an interest exchange with a domestic entity if the interest exchange is authorized by the organic law of the foreign association. If a foreign association is the acquiring association in an interest exchange with a domestic entity, the foreign law is not required to authorize the interest exchange because the foreign association is simply providing the consideration for the transaction and the transaction does not affect the capital structure of the foreign association. The foreign law may be relevant to the transaction, however, if it applies to the payment of the consideration in the transaction. For example, if the foreign association is a business corporation and the foreign law includes the provision in section 6.21 of the Model Business Corporation Act that requires shareholder approval of the issuance of more than 20% of a corporation’s shares, the corporation will need to obtain shareholder approval if it is using more than 20% of its shares as the consideration in an interest exchange.

5. Subsection (c) deals with rights of parties to protected agreements (defined in 15 Pa.C.S. § 312) when an interest exchange takes place. Because the concept of an interest exchange is new for associations other than business corporations, a person contracting with an association or loaning it money who drafted and negotiated special rights relating to the transaction before the enactment of this subchapter should not be charged with the consequences of not having dealt with the concept of an interest exchange in the context of those special rights. Subsection (c) accordingly provides a transitional rule that is intended to protect such special rights as to third parties. If, for example, a domestic entity is a party to a contract that provides that the domestic entity cannot participate in a merger without the consent of the other party to the contract, the requirement to obtain the consent of the other party will also apply to an interest exchange in which the domestic entity is the acquired entity. If the entity fails to obtain the consent, the result will be that the other party will have the same rights it would have had if the domestic entity were to participate in a merger without the required consent.

The transitional rule in subsection (c) ceases to make sense at such time as the provisions of the agreement giving rise to the special rights is first amended after the effective date of this chapter because at that time the provision may be amended to address expressly an interest exchange. The transitional rule will continue to apply, however, if just a provision other than the specific provisions giving rise to the special rights is amended.

6. The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
The following terms used in this section are defined in 15 Pa.C.S. § 102: “business corporation” “domestic association” “domestic entity” “foreign association” “health maintenance organization” “hospital plan corporation” “interests” “jurisdiction of formation” “obligations” “organic rules” “professional health services organization” “property”

§ 342. Plan of interest exchange.

(a) General rule.—A domestic entity may be the acquired association in an interest exchange under this chapter by approving a plan of interest exchange. The plan shall be in record form and contain all of the following:

(1) The name and type of the acquired association.

(2) The name, jurisdiction of formation and type of the acquiring association.

(3) The manner of:

   (i) exchanging the interests in the acquired association to be acquired in the interest exchange into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; and

   (ii) canceling, if desired, some or all other interests in the acquired association.

(4) Any proposed amendments to:

   (i) the public organic record, if any, of the acquired association; and

   (ii) the private organic rules of the acquired association that are or are proposed to be in record form.
(5) Provisions, if any, providing special treatment of interests in the acquired association held by any interest holder or group of interest holders as authorized by, and subject to, section 329 (relating to special treatment of interest holders).

(6) The other terms and conditions of the interest exchange.

(7) Any other provision required by:

   (i) the law of this Commonwealth; or

   (ii) the organic rules of the acquired association.

(b) Optional contents.—In addition to the requirements of subsection (a), a plan of interest exchange may contain any other provision not prohibited by law.

(c) Cross reference.—See section 316(c) (relating to contents of plan).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 302.

This section sets forth the requirements for the plan of interest exchange, which must be approved by the acquired association in accordance with 15 Pa.C.S. § 343. The content of the plan of interest exchange is similar to the content of a plan of merger. See 15 Pa.C.S. § 332. Subsection (a) lists the mandatory provisions that must be in the plan. Subsection (b) authorizes the plan to contain any other provision the parties wish to include, unless the provision is prohibited by law.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
“acquiring association”
“interest exchange”
“plan”

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

“domestic entity”
“interest holder”
“interests”
“jurisdiction of formation”
“obligations”
“organic rules”
“private organic rules”
§ 343. Approval of interest exchange.

(a) Approval by domestic entities.—A plan of interest exchange in which the acquired association is a domestic entity shall not be effective unless it has been approved in the following ways:

(1) By the acquired domestic entity in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(2) In record form, by each interest holder of the acquired domestic entity that will have interest holder liability for debts, obligations and other liabilities that arise after the interest exchange becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:

(i) The organic rules of the entity provide in record form for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders.

(ii) The interest holder voted for or consented in record form to that provision of the organic rules or became an interest holder after the adoption of that provision.

(3) Except as provided in the organic rules of the domestic entity, by the following class votes:

(i) the holders of any class or series of interests of the acquired association to be exchanged or canceled shall be entitled to vote as a class on the plan; and

(ii) the holders of any class or series of interests of the acquired association shall be entitled to vote as a class on the plan if the plan effects any change in the organic rules and those holders would have been entitled to vote as a class if the change had been made in any other manner.

(b) Approval by foreign associations.—An interest exchange in which the acquired association is a foreign association is not effective unless it is approved by the foreign association in accordance with the law of its jurisdiction of formation.
(c) Acquiring association.—Except as provided in its organic law or organic rules, the interest holders of the acquiring association are not required to approve the interest exchange.

(d) Dissenters rights.—If a shareholder of a domestic business corporation that is to be the acquired association in an interest exchange objects to the plan of exchange and complies with Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to dissenters rights to the extent provided in that subchapter.

(e) Cross references. – See sections 317 (relating to contractual dissenters rights in entity transactions) and 329 (relating to special treatment of interest holders).

Committee Comment (2014): This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 303.

This section sets forth the approval required for an interest exchange. An interest exchange transaction governed by this subchapter only requires approval by the acquired association, unless the organic rules of the acquiring association otherwise provide (see subsection (c)), a situation that rarely exists.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
“acquiring association”
“interest exchange”
“merger”
“plan”

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

“business corporation”
“dissenters rights”
“domestic entity”
“foreign association”
“interest holder”
“interest holder liability”
“interests”
“obligations”
“organic law”
“organic rules”
“record form”

§ 344. Amendment or abandonment of plan of interest exchange.
(a) General rule. – A plan of interest exchange may be amended or abandoned only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) Approval of amendment.—A domestic entity that is the acquired association may approve an amendment of a plan of interest exchange in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the entity under the plan.

(ii) The public organic record, if any, or private organic rules of the entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the entity under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(c) Approval of abandonment.—After a plan of interest exchange has been approved by a domestic entity that is the acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is the acquired association may abandon the plan in the same manner as the plan was approved.

(d) Statement of abandonment.—If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the acquired association, must be delivered to the department for filing before the time the statement of interest exchange becomes effective.

Committee Comment (2014):
This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 304. It parallels analogous provisions in this chapter relating to mergers, conversions, and divisions.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

"acquired association"
"interest exchange"
"plan"

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

"department"
"domestic entity"
"governor"
"interest holder"
"interest holder liability"
"interests"
"obligations"
"organic law"
"organic rules"
"private organic rules"
"property"
"public organic record"
"sign"

§ 345. Statement of interest exchange; effectiveness.

(a) General rule.—If the acquired association is a domestic entity, a statement of interest exchange shall be signed by that entity and delivered to the department for filing.

(b) Contents.—A statement of interest exchange shall contain all of the following:

(1) With respect to the acquired association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;
(iv) if it is a domestic filing association or domestic limited liability partnership, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address); and

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office.

(2) With respect to the acquiring association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the law of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(3) If the statement of interest exchange is not to be effective on filing, the later date or date and time on which it will become effective.

(4) A statement that the plan of interest exchange was approved by the acquired association in accordance with this chapter.

(5) Any amendments to the public organic record of the acquired association approved as part of the plan of interest exchange.

(c) Other provisions.—In addition to the requirements of subsection (b), a statement of interest exchange may contain any other provision not prohibited by law.
(d) Filing of plan—A plan of interest exchange that is signed by the domestic entity that is the acquired association and that meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of interest exchange and on filing shall have the same effect. If a plan of interest exchange is delivered to the department for filing as provided in this subsection, references in this chapter to a statement of interest exchange shall refer to the plan of interest exchange filed under this subsection.

(e) Effectiveness.—An interest exchange in which the acquired association is a domestic entity is effective when the statement of interest exchange is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(f) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 305.

The filing of a statement of interest exchange makes the transaction a matter of public record. A separate public filing by the acquiring entity is not required. The mandatory requirements for a statement of interest exchange are set forth in subsection (b). They are patterned after the requirements for a statement of merger in 15 Pa.C.S. § 335.

An interest exchange involving a regulated entity may require approval of a government agency before it can become effective. See 15 Pa.C.S. § 103.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
“acquiring association”
“interest exchange”

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

department”
“domestic association”
“domestic entity”
“domestic filing association”
“jurisdiction of formation”
“limited liability partnership”
“nonregistered foreign association”
“principal office”
§ 346. Effect of interest exchange.

(a) General rule.—When an interest exchange in which the acquired association is a domestic entity becomes effective, all of the following apply:

(1) Interests in the acquired association are exchanged or canceled as provided in the plan of exchange, and the interest holders of those interests are entitled only to the rights provided to them under the plan and to any dissenters rights they have pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or section 343(d) (relating to approval of interest exchange).

(2) The acquiring association becomes the interest holder of the interests in the acquired association stated in the plan of interest exchange to be acquired by the acquiring entity.

(3) The public organic record, if any, of the acquired association is amended to the extent provided in the statement of interest exchange.

(4) The private organic rules of the acquired association that are to be in record form, if any, are amended to the extent provided in the plan of interest exchange.

(b) No dissolution rights. – Except as provided in the organic rules of the acquired association, the interest exchange shall not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the acquired association.

(c) New interest holder liability.—When an interest exchange becomes effective, a person that becomes subject to interest holder liability with respect to an association as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the association and only for those debts, obligations and other liabilities that arise after the interest exchange becomes effective.

(d) Prior interest holder liability.—When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired association with respect to which the person had interest holder liability is as follows:

(1) The interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired association to the extent the interest holder liability arose before the interest exchange became effective.
(2) The person does not have interest holder liability under the organic law of the domestic acquired association for any debt, obligation or other liability that arises after the interest exchange becomes effective.

(3) The organic law of the domestic acquired association continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by law other than this title or the organic law or organic rules of the domestic acquired association with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 306.

In contrast to a merger, an interest exchange does not in and of itself affect the separate existence of the parties, vest in the acquiring association the property of the acquired association, or render the acquiring association liable for the liabilities of the acquired association. Thus, subsection (a) is significantly simpler than 15 Pa.C.S. § 336(a) with respect to the effects of a merger.

When an interest exchange becomes effective:

(1) the interests of the acquired association are exchanged or canceled as provided in the plan;

(2) the only rights of the former interest holders of the acquired association whose interests are affected by the interest exchange are those rights related to the exchange or cancelation;

(3) the acquiring association becomes the owner of the acquired association’s interests as provided in the plan; and

(4) the organic rules of the acquired association are amended as provided in the statement of interest exchange, thus obviating the need for repetitive filings (i.e., a filing as to the interest exchange and another filing to reflect amendments to the public organic record of the acquired association).

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”
“acquiring association”
“interest exchange”
The following terms used in this section are defined in 15 Pa.C.S. § 102:

- association
- dissenters rights
- domestic entity
- governor
- interest holder
- interests
- obligations
- organic law
- organic rules
- private organic rules
- public organic record
- record form

Subchapter E
Conversion

§ 351. Conversion authorized.

(a) Domestic converting associations.—Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this chapter:

(1) A domestic entity may become a domestic entity of a different type or a domestic banking institution.

(2) A domestic banking institution may become a domestic association of a different type.

(3) A domestic entity may become a foreign association of a different type, if the conversion is authorized by the law of the foreign jurisdiction.
(b) Foreign converting associations.—By complying with the applicable provisions of this subchapter, a foreign association may become a domestic entity of a different type if the conversion is authorized by the law of the jurisdiction of formation of the foreign association.

(c) Protected governance agreements.—If a protected governance agreement that is binding on a domestic entity immediately before the effectiveness of a transaction under this chapter contains a provision that applies to a merger of the domestic entity but does not refer to a conversion, the provision shall apply to a conversion of the entity as if the conversion were a merger until the provision is amended after July 1, 2015.

(d) Exceptions.—This subchapter may not be used to accomplish a transaction that has the same effect as a transaction under any of the following provisions:

(1) Section 7104 (relating to election of an existing business corporation to become a cooperative corporation).

(2) Section 7105 (relating to termination of status as a cooperative corporation for profit).

(3) Section 7106 (relating to election of an existing nonprofit corporation to become a cooperative corporation).

(4) Section 7107 (relating to termination of nonprofit cooperative corporation status).

(e) Cross reference.—See section 314 (relating to regulatory conditions and required notices and approvals).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) – (c) are patterned generally after Model Entity Transactions Act (2007) (Last Amended 2013) § 401.

The procedure in this subchapter permits an association subject to this subchapter to change to a different type of association. A transaction in which an association simply changes its jurisdiction of formation, but does not change its type, is a domestication transaction and is not covered by this subchapter.

Subsection (b) allows a foreign association to effectuate a conversion into a domestic entity only if the conversion is permitted by the laws of the foreign association’s jurisdiction of formation. When a foreign association becomes a domestic entity pursuant to this subchapter, the effect of the conversion for purposes of Pennsylvania law will be as provided in 15 Pa.C.S. § 356. The procedures by which the conversion is approved, however, will be determined by the laws of the jurisdiction of formation of the foreign association.
Subsection (a)(3) permits a domestic entity to become a foreign association if the conversion is authorized by the law of the foreign jurisdiction. If this is not the case, it may be possible to achieve the same result by forming an association of the type desired in the foreign jurisdiction and then merging the domestic entity into the new foreign association under Subchapter 3C.

This subchapter does not authorize a transaction of the types provided for in the following sections of the Business Corporation Law because those sections do not involve a change in the basic type of entity involved:

- section 2104 (relating to election of an existing business corporation to become a nonstock corporation);
- section 2105 (relating to termination of nonstock corporation status);
- section 2305 (relating to election of an existing business corporation to become a statutory close corporation);
- section 2307 (relating to voluntary termination of statutory close corporation status by amendment of articles);
- section 2704 (relating to election of an existing business corporation to become a management corporation);
- section 2705 (relating to termination and renewal of status as a management corporation);
- section 2904 (relating to election of an existing business corporation to become a professional corporation); or
- section 2906 (relating to termination of professional corporation status).

Instead, in each of the transactions listed, the entity involved is a business corporation both before the transaction and after its completion. Similarly, the election or termination of the status of an entity as a limited liability partnership, limited liability limited partnership, or electing partnership does not involve a change in the type of entity involved.

Certain types of entities are prohibited from engaging in a conversion under this subchapter by either 15 Pa.C.S. § 318 or subsection (d).

The following terms used in this section are defined in 15 Pa.C.S. § 312:

- “conversion”
- “merger”
- “protected governance agreement”

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

- “domestic association”
- “domestic banking institution”
- “domestic entity”
- “foreign association”
- “jurisdiction of formation”
§ 352. Plan of conversion.

(a) General rule.—A domestic entity or domestic banking institution may be a party to a conversion by approving a plan of conversion. The plan shall be in record form and contain all of the following:

1. The name and type of the converting association.

2. The name, jurisdiction of formation and type of the converted association.

3. The manner of:
   (i) canceling, if desired, some, but less than all, of the interests in the converting association;
   (ii) converting at least some of the interests in the converting association into interests in the converted association; and
   (iii) converting the interests in the converting association not canceled under subparagraph (i) or converted under subparagraph (ii) into interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing.

4. The proposed public organic record of the converted association if it will be a filing entity.

5. The full text of the private organic rules of the converted association that are proposed to be in record form.

6. Provisions, if any, providing special treatment of interests in the converting association held by any interest holder or group of interest holders as authorized by and subject to section 329 (relating to special treatment of interest holders).

7. The other terms and conditions of the conversion.

8. Any other provision required by:
   (i) the law of this Commonwealth;
   (ii) the law of the jurisdiction of formation of the converted association if it is to be a foreign association; or
   (iii) the organic rules of the converting association.
(b) Optional contents.—In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

(c) Terms of interests. – The ownership, voting and other rights of the interest holders in the converted association shall be substantially the same as they were in the converting association except:

(1) as provided in the express terms of the plan of conversion;

(2) as provided in the express terms of the organic rules of the converted association that are in record form; or

(3) to the extent a difference in those rights is required by a provision of the organic law of the converted association that cannot be varied in its organic rules.

(d) Cross reference.—See section 316(c) (relating to contents of plan).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) and (b) are patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 402. This section sets forth the requirements for the plan of conversion which must be approved by the converting association in accordance with 15 Pa.C.S. § 353. The contents of a plan of conversion are similar to the contents of plans relating to other forms of transactions under this chapter. Subsection (a) lists the mandatory provisions that must be in the plan. Subsection (b) authorizes the plan to contain any other provision the parties wish to include, unless the provision is prohibited by law.

Subsection (c) confirms that the governance of the converting association and the rights of its interest holders remain the same after the conversion except as provided in subsection (c). Consistent with that basic policy, 15 Pa.C.S. § 356(a)(11) confirms that a conversion does not constitute and shall not be deemed to result in a change of control of the converting association except as provided in the plan of conversion or organic rules of the converted association. The manner in which a plan of conversion will usually vary the rights of interest holders or control of the converting association is by (i) specifying which interest holders will receive what types of interests in the converted association and which interest holders will not have a continuing interest in the converted association, or (ii) changing the rights of one or more classes or series of interests in the converted association. If the converting association and the converted association each has only one class or series of interests and the plan of conversion does not provide for special treatment of any of the interest holders of the converting association, the governance and control of the association will remain with the same persons who governed and controlled the converting association immediately before the conversion.
The plan of conversion may be used as a substitute for a statement of conversion as provided in 15 Pa.C.S. § 355(e), so long as it contains all of the information required to be in the statement of conversion and is delivered to the Department of State for filing after the plan has been adopted and approved.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

- “conversion”
- “converted association”
- “converting association”
- “plan”

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

- “domestic banking institution”
- “domestic entity”
- “filing entity”
- “foreign association”
- “interest holder”
- “interests”
- “jurisdiction of formation”
- “obligations”
- “organic law”
- “organic rules”
- “private organic rules”
- “property”
- “public organic record”
- “record form”
- “special treatment”
- “type”

§ 353. Approval of conversion.

(a) Approval by domestic associations.—A plan of conversion in which the converting association is a domestic entity or domestic banking institution shall not be effective unless it has been approved in the following ways:

(1) In the case of a domestic entity, in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(2) In the case of a domestic banking institution that is a corporation, by at least:

    (i) In the case of a mutual savings bank:
(A) two-thirds of the trustees present at a meeting at which the plan is proposed; and

(B) two-thirds of all the trustees at a subsequent meeting held upon not less than ten days' notice to all the trustees.

(ii) In the case of any other institution:

(A) a majority of the directors; and

(B) the shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast thereon, and, if any class of shares is entitled to vote thereon as a class, the holders of at least two-thirds of the outstanding shares of such class, at a meeting held upon not less than ten days' notice to all shareholders.

(3) In record form, by each interest holder, if any, of the converting association that will have interest holder liability for debts, obligations and other liabilities that arise after the conversion becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:

(i) The organic rules of the converting association provide in record form for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders.

(ii) The interest holder voted for or consented in record form to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) Approval by foreign associations.—A conversion in which the converting association is a foreign association shall not be effective unless it is approved by the foreign association in accordance with the law of its jurisdiction of formation.

(c) Dissenters rights.—The following apply with respect to the rights of an interest holder of the converting association:

(1) A shareholder of a domestic business corporation that is to be a converting association shall be entitled to dissenters rights if:

(i) the shareholder objects to the plan of conversion and complies with Subchapter D of Chapter 15 (relating to dissenters rights); and

(ii) the conversion involves a change in the rights of the shareholder pursuant to section 352(c)(1) or (2) (relating to plan of conversion).
(2) A shareholder of a domestic banking institution that is to be a converting association shall be entitled to the rights provided in section 1222 of the act of November 30, 1965 (P.L. 847, No. 356), known as the Banking Code of 1965, if:

(i) the shareholder objects to the plan of conversion and complies with Section 1222 of the Banking Code of 1965; and

(ii) the conversion involves a change in the rights of the shareholder pursuant to section 352(c)(1) or (2).

(3) See sections 317 (relating to contractual dissenters rights in entity transactions) and 329 (relating to special treatment of interest holders).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 403. Subsection (c)(2) is derived from Sections 1222 and 1607 of the act of November 30, 1965 (P.L. 847, No. 356), known as the Banking Code of 1965, 7 P.S. §§ 1222 and 1607.

In the case of a foreign association that is converting into a Pennsylvania entity, the required approval is determined by the laws of the foreign association’s jurisdiction of formation.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

conversion
converting association
interest holder liability
merger
plan

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

business corporation
dissenters rights
domestic banking institution
domestic entity
foreign association
interest holder
jurisdiction of formation
obligations
organic rules
record form
§ 354. Amendment or abandonment of plan of conversion.

(a) Approval of amendment.—A plan of conversion in which the converting association is a domestic association may be amended in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting association under the plan.

(ii) The public organic record, if any, or private organic rules of the converted association that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted association under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(b) Approval of abandonment.—After a plan of conversion has been approved by a converting association that is a domestic association and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting association may abandon the plan in the same manner as the plan was approved.

(c) Statement of abandonment.—If a plan of conversion is abandoned after a statement of conversion has been delivered to the department for filing and before the statement of conversion becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the converting association, must be delivered to the department for filing before the statement of conversion becomes effective.

Committee Comment (2014):
This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 404. It parallels analogous provisions in Subchapters C (mergers), D (interest exchanges), F (divisions), and G (domestication).

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“conversion”
“converted association”
“converting association”
“interest holder liability”
“plan”

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

“domestic association”
“department”
“governor”
“interest holder”
“interests”
“obligations”
“organic law”
“organic rules”
“private organic rules”
“property”
“public organic record”
“sign”

§ 355. Statement of conversion; effectiveness.

(a) General rule.—A statement of conversion shall be signed by the converting association and delivered to the department for filing along with the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions).

(b) Contents.—A statement of conversion shall contain all of the following:

(1) With respect to the converting association:

(i) its name;

(ii) its jurisdiction of formation:
(iii) its type;

(iv) the date on which it was first created, incorporated, formed or otherwise came into existence;

(v) if it is a domestic filing association, the statute under which it was first created, incorporated, formed or otherwise came into existence;

(vi) if it is a domestic filing association, domestic limited liability partnership or registered foreign association:

(A) the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address); or

(B) if it is not required to maintain a registered office in this Commonwealth, the address, including street and number, if any, of its principal office;

(vii) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(viii) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(2) With respect to the converted association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association:

(A) the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109; or
(B) if it is not required to maintain a registered office in this
Commonwealth, the address, including street and number, if any, of its
principal office;

(v) if it is a domestic association that is not a domestic filing association or
limited liability partnership, the address, including street and number, if any, of its
principal office; and

(vi) if it is a nonregistered foreign association, the address, including street
and number, if any, of:

(A) its registered or similar office, if any, required to be maintained
by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its
principal office.

(3) If the statement of conversion is not to be effective on filing, the later date or
date and time on which it will become effective.

(4) if the converting association is a domestic association, a statement that the
plan of conversion was approved in accordance with this chapter or, if the converting
association is a foreign association, a statement that the conversion was approved by the
foreign association in accordance with the law of its jurisdiction of formation.

(5) If the converted association is a domestic filing entity or domestic banking
institution, its public organic record as an attachment. The public organic record does
not need to state the name or address of an incorporator of a corporation, organizer of a
limited liability company or similar person with respect to any other type of entity.

(6) If the converted association is a domestic limited liability partnership or a
domestic limited liability limited partnership that is not using the alternative procedure
in section 8201(f) (relating to scope), its statement of registration as an attachment.

(7) If the converted association is a domestic electing partnership, its statement
of election as an attachment.

(8) If the converted association is a nonregistered foreign association, one of the
following:

(i) The street and mailing addresses of its registered agent and registered
office in its jurisdiction of formation if it is a filing entity.

(ii) The street and mailing address of its principal office if it is not a filing
entity.
(c) Other provisions.—In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) Domestic converted association.—If the converted association is a domestic association, its public organic record, if any, must satisfy the requirements of the law of this Commonwealth, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.—A plan of conversion that is signed by the converting association and meets all the requirements of subsection (b) may be delivered to the department for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this chapter to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) Effectiveness of statement of conversion.—A statement of conversion is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(g) Effectiveness of conversion. – If the converted association is a domestic association, the conversion is effective when the statement of conversion is effective. If the converted association is a foreign association, the conversion is effective on the later of:

(1) the date and time provided by the organic law of the converted association;

or

(2) when the statement of conversion is effective.

(h) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 405. Subsection (b)(1)(iv) is patterned after 6 Del. Code § 18-214(c)(1).

The filing of a statement of conversion makes the transaction a matter of public record. The mandatory requirements for a statement of conversion are set forth in subsection (b) and are similar to the requirements for a statement of merger in 15 Pa.C.S. § 335.

A plan of conversion can be used as a substitute for the statement of conversion so long as the plan satisfies the requirements in subsection (e).

A conversion of a regulated entity may require approval of a government agency before it can become effective. See 15 Pa.C.S. § 103.
Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“conversion”
“converted association”
“converting association”

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

“department”
“domestic association”
“domestic banking institution”
“domestic filing association”
“domestic filing entity”
“electing partnership”
“foreign association”
“jurisdiction of formation”
“limited liability company”
“limited liability partnership”
“limited liability limited partnership”
“nonregistered foreign association”
“organic law”
“principal office”
“public organic record”
“registered foreign association”
“sign”
“type”

§ 356. Effect of conversion.

(a) General rule.—When a conversion becomes effective, all of the following apply:

(1) The converted association is:

(i) Organized under and subject to the organic law of the converted association.

(ii) The same association without interruption as the converting association.

(iii) Deemed to have commenced its existence on the date the converting association commenced its existence in the jurisdiction in which the converting association was first created, incorporated, formed or otherwise came into
existence, except for purposes of determining how the converted association is
taxed.

(2) All property of the converting association continues to be vested in the
converted association without reversion or impairment, and the conversion shall not
constitute a transfer of any of that property.

(3) All debts, obligations and other liabilities of the converting association
continue as debts, obligations and other liabilities of the converted association.

(4) Except as provided by law, all of the rights, privileges, immunities and
powers of the converting association continue to be vested without change in the
converted association.

(5) Liens on the property of the converting association shall not be impaired by
the conversion.

(6) A claim existing or an action or a proceeding pending by or against the
converting association may be prosecuted to judgment as if the conversion had not taken
place, and the name of the converted association may be substituted for the name of the
converting association in any pending action or proceeding.

(7) If the converted association is a filing association, its public organic record is
effective.

(8) If the converted association is a limited liability partnership or a limited
liability limited partnership that is not using the alternative procedure in section 8201(f)
relating to scope, its statement of registration is effective.

(9) If the converted association is an electing partnership, its statement of
election is effective.

(10) Any private organic rules of the converted association that are to be in record
form and were approved as part of the plan of conversion are effective.

(11) The interests in the converting association are converted or canceled in
accordance with and as provided in the plan of conversion, and the interest holders of
the converting association are entitled only to the rights provided to them under the plan
and to any dissenters rights they have pursuant to section 317 (relating to contractual
dissenters rights in entity transactions) or section 353(c) (relating to approval of
conversion).

(12) Except as otherwise provided in the plan of conversion or organic rules
pursuant to section 352(c) (relating to plan of conversion), the conversion does not
constitute and shall not be deemed to result in a change of control of the converting
association, and the converted association shall remain under the control of the same persons that controlled the converting association immediately before the conversion.

(b) No other rights.—The conversion does not give rise to any rights:

(1) that a third party would have upon a transfer of assets, merger, dissolution, liquidation or winding up of the converting association, except as provided in subsection (a)(1); or

(2) that an interest holder or governor would have upon a dissolution, liquidation or winding up of the converting association, except as provided in the organic law or organic rules of the converting association.

c) New interest holder liability.—When a conversion becomes effective, a person that becomes subject to interest holder liability with respect to a domestic association as a result of the conversion has interest holder liability only to the extent provided by the organic law of the association and only for those debts, obligations and other liabilities that arise after the conversion becomes effective.

d) Prior interest holder liability.—When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting association with respect to which the person had interest holder liability is as follows:

(1) The conversion does not discharge any interest holder liability under the organic law of the domestic converting association to the extent the interest holder liability arose before the conversion became effective.

(2) The person does not have interest holder liability under the organic law of the domestic converting association for any debt, obligation or other liability that arises after the conversion becomes effective.

(3) The organic law of the domestic converting association continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic law or organic rules of the domestic converting association with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

e) Foreign converted association.—When a conversion becomes effective, a foreign association that is the converted association may be served with process in this Commonwealth for the collection and enforcement of any of its debts, obligations and other liabilities in accordance with applicable law.
(f) Association not dissolved.—A conversion does not require a domestic converting association to liquidate, dissolve or wind up its affairs and does not constitute or cause the liquidation or dissolution of the association.

(g) Taxes.—Any taxes, interest, penalties and public accounts of the Commonwealth claimed against the converting association that are settled, assessed or determined prior to or after the conversion shall be the liability of the converted association and, together with interest thereon, shall be a lien against the franchises and property of the converted association.

(h) Cross references. – See sections 416 (relating to withdrawal deemed on certain transactions) and 417 (relating to required withdrawal on certain transactions).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 406. Subsection (a)(1)(iii) is patterned after 6 Del. Code § 18-214(d). Subsection (g) is a generalization of former 15 Pa.C.S. § 1929(c).

A converted association is the same association as it was before the conversion; it is just of a different legal type. The effects of this are set forth in subsection (a). The converted association remains the owner of all real and personal property and remains subject to all the binding agreements and liabilities, actual or contingent, of the converted association. A conversion is not a conveyance, transfer, or assignment of any property. It does not give rise to claims of reverter or impairment of title based on a prohibited conveyance or transfer.

The converted association remains a party to all of the contracts to which the converting association was a party without assignment. If a contract to which the converting association is a party provides that it is an event of default for a party to the contract to engage in a conversion; the converted association will nonetheless be a party to the contract but will be in breach. The contract rights that remain in the converted association include, without limitation, the right to enforce subscription agreements for interests and obligations to make capital contributions entered into or incurred before the conversion.

If a contract provides that a change in control of a person is an event of default under the contract or triggers other remedies or obligations, it will not be an event of default or trigger those remedies or obligations if the person converts to a different type of association unless the conversion also involves a change of control under 15 Pa.C.S. § 352(c)(1) or (2).

Consistent with the fact that the converted association is the same association as existed before the conversion, albeit in a different form, subsection (a)(1)(iii) provides that the existence of the converted association is deemed to have commenced when the existence of the converting association commenced. The exception to that rule recognizes that the converted association may be taxed in a different manner than the converting association was taxed. The fact that the converted association is deemed to have existed since the converting
association was formed does not mean that the tax status of the converting association should be recharacterized and its tax liabilities recomputed as if the converting association had existed throughout its life prior to the conversion in the form of the converted association.

When a conversion becomes effective, the internal affairs of the converting association are no longer governed by its former organic law but instead by the organic law of the converted association. Although the converted association is considered to have been in existence without interruption since the beginning of the existence of the converting association, there is an unavoidable change in the organic law that governs the internal affairs of the association at the time of the conversion. As a result, filings that may have been made under the organic law of the converting association, such as the following, will no longer be effective: a statement of registration as a limited liability partnership under 15 Pa.C.S. § 8201 or a statement of authority under 15 Pa.C.S. § 9125.

When a conversion takes effect, the association continues to exist – simply as a different type. Subsection (f) thus makes clear that the conversion does not require the association to wind up its affairs and does not constitute or cause the dissolution of the association.

The term “transfer” is defined in 15 Pa.C.S. § 102 to include an assignment, and thus the statement in subsection (a)(2) that a conversion does not constitute a transfer means that property of the converting association continues to be vested after the conversion in the converted association without assignment. That result is consistent with the established Pennsylvania policy with respect to mergers that the surviving association in a merger succeeds to the property of the merging association without assignment or conveyance. See the Committee Comment to 15 Pa.C.S. § 336 and Sante Fe Energy Resources, Inc. v. Manners, 635 A.2d 648 (Pa. Super. 1993).

15 Pa.C.S. § 315 confirms that the doctrine of independent legal significance applies to conversions and that a conversion should not be recharacterized as a merger or other type of transaction.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“conversion”
“converted association”
“converting association”
“interest holder liability”
“merger”

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

“association”
“dissenters rights”
“electing partnership”
“filing association”
“foreign association”
§ 361. Division authorized.

(a) Domestic entities.—Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this subchapter, a domestic entity may divide into:

(1) the dividing association and one or more new associations that are either domestic entities or foreign associations; or

(2) two or more new associations that are either domestic entities or foreign associations.

(b) Foreign associations.—

(1) A foreign association may be created by the division of a domestic entity only if the division is authorized by the law of the jurisdiction of formation of the foreign association.
(2) If the division is authorized by the law of the jurisdiction of formation of the foreign association, one or more of the resulting associations created in a division of a foreign association may be a domestic entity.

(c) Exception. – A domestic banking institution that is a domestic entity may be a dividing association only if all of the resulting associations are domestic banking institutions.

(d) Cross reference.— See section 314 (relating to regulatory conditions and required notices and approvals).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1951.

The division transaction authorized by this subchapter is the reverse of a merger. Instead of two or more associations being merged into one association, in a division one existing association is divided into two or more resulting associations. The dividing association may or may not survive the division, and one or more of the resulting associations may be foreign associations if the laws of each resulting association’s jurisdiction of organization permit the division. As part of the division, the property and liabilities of the dividing association are allocated to the resulting associations as provided in the plan of division to the extent permitted by this subchapter.

This subchapter does not authorize a dividing association that is a domestic entity and survives the division to change its jurisdiction of organization as part of the division. That result may be accomplished, however, by subsequently domesticating the dividing entity in a new jurisdiction of organization if domestications are authorized by its organic law or by merging it into another association organized under the law of the foreign jurisdiction.

If the organic law of a foreign association authorizes a division of that association into one or more resulting associations incorporated or organized under the laws of another state, subsection (c) permits those resulting associations to be incorporated or organized in Pennsylvania.

It is not necessary to use this subchapter to accomplish a spin-off or similar transaction. Those types of transactions may continue to be conducted in the same manner as they were before this subchapter was enacted. Among other uses of this subchapter are situations in which this subchapter provides a more effective way to allocate property and liabilities.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“division”
“dividing association”
“new association”
“resulting association”
The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”
“domestic banking institution”
“domestic entity”
“foreign association”
“jurisdiction of formation”

§ 362. Plan of division.

(a) General rule.—A domestic entity may become a dividing association under this chapter by approving a plan of division. The plan shall be in record form and contain all of the following:

(1) The name and type of the dividing association.

(2) A statement as to whether the dividing association will survive the division.

(3) The name, jurisdiction of formation and type of each new association.

(4) The manner of:

(i) If the dividing association survives the division and it is desired:

(A) Canceling some, but less than all, of the interests in the dividing association.

(B) Converting some, but less than all, of the interests in the dividing association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(ii) If the dividing association does not survive the division, canceling or converting the interests in the dividing association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(iii) Allocating between or among the resulting associations the property of the dividing association that will not be owned by all of the resulting associations as tenants in common pursuant to section 367(a)(4) (relating to effect of division) and those liabilities of the dividing association as to which not all of the resulting associations will be liable jointly and severally pursuant to section 368(a)(3) (relating to allocation of liabilities in division).

(iv) Distributing the interests of the new associations.
(5) For each new association:

(i) its proposed public organic record if it will be a filing association; and

(ii) the full text of its private organic rules that will be in record form.

(6) If the dividing association will survive the division, any proposed amendments to its public organic record or private organic rules that are or will be in record form.

(7) Provisions, if any, providing special treatment of interests in the dividing association held by any interest holder or group of interest holders as authorized by and subject to section 329 (relating to special treatment of interest holders).

(8) The other terms and conditions of the division.

(9) Any other provision required by:

(i) the law of this Commonwealth;

(ii) the law of the jurisdiction of formation of any of the resulting associations; or

(iii) the organic rules of the dividing association.

(b) Optional contents.—In addition to the requirements of subsection (a), a plan of division may contain any other provision not prohibited by law.

(c) Description of property and liabilities.—It shall not be necessary for a plan of division to list each individual liability or item of property of the dividing association to be allocated to a resulting association so long as the liabilities and property are described in a reasonable manner.

(d) Cross reference.—See section 316(c) (relating to contents of plan).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) and (b) are a generalization of former 15 Pa.C.S. § 1952(a) and (b). Subsection (c) is a generalization of former 15 Pa.C.S. § 1957(b)(3).

This section parallels analogous provisions in Subchapters C (mergers), D (interest exchanges), and E (conversions). Subsection (a)(4)(iii) is different from the other analogous provisions, however, because in a division some or all of the property and liabilities are
allocated between the dividing association and the resulting associations, which does not occur in the other types of transactions authorized by this chapter.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“division”
“dividing association”
“new association”
“resulting association”

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

“domestic entity”
“filing association”
“interest holder”
“interests”
“jurisdiction of formation”
“obligations”
“organic rules”
“private organic rules”
“property”
“public organic record”
“record form”
“special treatment”
“type”

§ 363. Approval of division.

(a) Approval by domestic entities.—Except as provided in section 364 (relating to division without interest holder approval) or subsection (d), a plan of division in which the dividing association is a domestic entity is not effective unless it has been approved in both of the following ways:

(1) The plan is approved by the domestic entity in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(2) The plan is approved in record form by each interest holder, if any, of the domestic entity that will have interest holder liability for debts, obligations and other liabilities that arise after the division becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:

(i) The organic rules of the domestic entity provide in record form for the approval of a division in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders.
(ii) The interest holder voted for or consented in record form to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) Approval by foreign associations.—A division of a foreign association in which one or more of the resulting associations is a domestic entity is not effective unless it is approved by the foreign association in accordance with the law of its jurisdiction of formation.

(c) Dissenters rights.—If a shareholder of a domestic business corporation that is to be a dividing association objects to the plan of division and complies with Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to dissenters rights to the extent provided in that subchapter. See sections 317 (relating to contractual dissenters rights in entity transactions) and 329 (relating to special treatment of interest holders).

(d) Transitional approval requirements.—

(1) If a provision of the organic rules of a dividing association that is a domestic entity of the type described was adopted before the date indicated and requires for the proposal or adoption of a plan of merger a specific number or percentage of votes of governors or interest holders or other special procedures, a plan of division shall not be proposed or adopted by the governors or interest holders without that number or percentage of votes or compliance with the other special procedures:

(i) For a dividing association that is a domestic business corporation, before October 1, 1989.

(ii) For a dividing association that is a general partnership, before July 1, 2015.

(iii) For a dividing association that is a limited partnership, before February 5, 1995.

(iv) For a dividing association that is an unincorporated nonprofit association, before July 1, 2015.

(2) If a provision of any debt securities, notes or similar evidences of indebtedness for money borrowed, whether secured or unsecured, indentures or other contracts that were issued, incurred or executed by a dividing association that is a domestic entity of the type described before the date indicated, and the provision requires the consent of the obligee to a merger of the dividing association or treats such a merger as a default, the provision shall apply to a division of the dividing association as if it were a merger:
(i) For a dividing association that is a domestic business corporation, before August 21, 2001.

(ii) For a dividing association that is a general partnership, before July 1, 2015.

(iii) For a dividing association that is a limited partnership, before July 1, 2015.

(iv) For a dividing association that is an unincorporated nonprofit association, before July 1, 2015.

(3) When a provision described in paragraph (1) or (2) has been amended after the applicable date, the provision shall cease to be subject to the respective paragraph and shall thereafter apply only in accordance with its express terms.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1952(c). Subsection (d) is derived in part from former 15 Pa.C.S. § 1952(g) and (h) and 8577(f) and (g).

Where a foreign association is the dividing association, subsection (b) defers to the laws of the foreign association’s jurisdiction of formation for the requirements for approval of the division by the foreign association. Those laws will include the organic law of the foreign association and other applicable laws, such as this chapter (or any applicable regulatory law) if it has been adopted in the foreign jurisdiction. The laws of the foreign jurisdiction will also control the application of any special approval requirements found in the organic rules of the foreign association.

Subsection (c) is limited to providing dissenters rights for shareholders of a domestic business corporation. Dissenters rights have not been available under Pennsylvania law for interest holders of other types of entities, and the Committee decided that the adoption of Chapter 3 should not change that long-standing approach. A substitute for dissenters rights, however, may be available under 15 Pa.C.S. § 8933, which provides for the payment to a member of a limited liability company of the fair value of the member’s interest upon an event of dissociation.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“division”
“dividing association”
“interest holder liability”
“merger”
“plan”
The following terms used in this section are defined in 15 Pa.C.S. § 102:

- “business corporation”
- “dissenters rights”
- “domestic entity”
- “foreign association”
- “general partnership”
- “governor”
- “interest holder”
- “jurisdiction of formation”
- “limited partnership”
- “obligations”
- “organic rules”
- “private organic rules”
- “public organic record”
- “record form”
- “unincorporated nonprofit association”

§ 364. Division without interest holder approval.

(a) General rule. – Unless otherwise restricted by its organic rules, a plan of division of a domestic dividing association shall not require the approval of the interest holders of the dividing association if:

(1) The plan does not do any of the following:

(i) alter the jurisdiction of formation of the dividing association;

(ii) provide for special treatment; or

(iii) amend in any respect the provisions of the public organic record of the dividing association, except amendments which may be made without the approval of the interest holders.

(2) Either:

(i) the dividing association survives the division and all the interests and other securities and obligations, if any, of all of the new associations are owned solely by the dividing association; or

(ii) the interests in each new association are distributed as provided in subsection (b).

(b) Distribution of interests. – The requirements for distributing interests in each new association referred to in subsection (a)(2)(ii) are as follows:
(1) if the dividing association is not a limited partnership, the dividing association has only one class of interests outstanding and the interests and other securities and obligations, if any, of each new association are distributed pro rata to the interest holders of the dividing association; or

(2) if the dividing association is a limited partnership:

   (i) it has only one class of general partners and one class of limited partners;

   (ii) each new association is a limited partnership; and

   (iii) all of the following apply:

       (A) the general partner interests in each new association are distributed pro rata to the general partners of the dividing limited partnership;

       (B) the limited partner interests in each new association are distributed pro rata to the limited partners of the dividing limited partnership; and

       (C) no securities or obligations of any of the new associations are distributed to any of the interest holders of the dividing limited partnership.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1953(a). Former 15 Pa.C.S. § 1953(b) is supplied by 15 Pa.C.S. § 313.

The reference in subsection (b)(1) to one “class” is intended to refer to the substance of the interest rather than its label. For example, where a corporation has two series, one of which enjoys rights and preferences characteristic of a preferred stock, and the other of which is a residual security comparable to a common stock, the corporation has two “classes” of shares outstanding for the purposes of subsection (b)(1).

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“dividing association”
“division”
“new association”
“plan”

The following terms used in this section are defined in 15 Pa.C.S. § 102:
§ 365. Amendment or abandonment of plan of division.

(a) Approval of amendment.—A plan of division in which the dividing association is a domestic entity may be amended in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the dividing association under the plan.

(ii) The public organic record, if any, or private organic rules of any of the resulting associations that will be in effect immediately after the division becomes effective, except for changes that do not require approval of the interest holders of the resulting association under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(b) Approval of abandonment.—After a plan of division has been approved by a domestic entity that is the dividing association and before a statement of division becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is the dividing association may abandon the plan in the same manner as the plan was approved.
(c) Statement of abandonment.—If a plan of division is abandoned after a statement of division has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the dividing association, must be delivered to the department for filing before the time the statement of division becomes effective.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. It parallels analogous provisions in Subchapters C (merger), D (interest exchange), E (conversion), and G (domestication).

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“division”
“dividing association”
“interest holder liability”
“plan”
“resulting association”

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

“department”
“domestic entity”
“governor”
“interest holder”
“interests”
“obligations”
“organic law”
“organic rules”
“private organic rules”
“public organic record”
“sign”

§ 366. Statement of division; effectiveness.

(a) General rule.—A statement of division shall be signed by the dividing association and delivered to the department for filing along with the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions).

(b) Contents.—A statement of division shall contain all of the following:
With respect to the dividing association:

(i) its name;
(ii) its jurisdiction of formation;
(iii) its type;
(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address);
(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and
(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:
   (A) its registered or similar office, if any, required to be maintained by the law of its jurisdiction of formation; or
   (B) if it is not required to maintain a registered or similar office, its principal office.

A statement as to whether the dividing association will survive the division.

With respect to each resulting association created by the division:

(i) its name;
(ii) its jurisdiction of formation;
(iii) its type;
(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;
(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and
(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the law of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(4) If the statement of division is not to be effective on filing, the later date or date and time on which it will become effective.

(5) A statement that the division was approved in the following ways:

(i) By a dividing association that is a domestic entity, in accordance with this chapter.

(ii) By a dividing association that is a foreign association, in accordance with the law of its jurisdiction of formation.

(6) If the dividing association is a domestic filing entity and survives the division, any amendment to its public organic record approved as part of the plan of division.

(7) For each resulting association created by the division that is a domestic entity, its public organic record, if any, as an attachment. The public organic record does not need to state the name or address of an incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(8) For each new association that is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration as an attachment.

(9) For each new association that is an electing partnership, its statement of election as an attachment.

(10) The property and liabilities of the dividing association that are to be allocated to each resulting association, but it shall not be necessary to list in the statement of division each individual liability or item of property of the dividing association to be allocated to a resulting association so long as the liabilities and property are described in a reasonable manner.

(c) Other provisions.—In addition to the requirements of subsection (b), a statement of division may contain any other provision not prohibited by law.
(d) New domestic entity.—If a new association is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this Commonwealth, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.—A plan of division that is signed by the dividing association and meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of division and on filing has the same effect. If a plan of division is filed as provided in this subsection, references in this chapter to a statement of division refer to the plan of division filed under this subsection.

(f) Effectiveness of statement of division.—A statement of division is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(g) Effectiveness of division.—A division takes effect as follows:

(1) If the division is one in which all of the resulting associations are domestic associations, the division is effective when the statement of division is effective.

(2) If the division is one in which one or more of the resulting associations is a foreign association, the division is effective on the later of:

(i) the effectiveness of the statement of division; or

(ii) when the division is effective under the law of each of the jurisdictions of formation of the foreign resulting associations.

(h) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. §§ 1954, 1955, and 1956.

The filing of a statement of division makes the transaction a matter of public record. The mandatory requirements for a statement of division are set forth in subsection (b). They are similar to the requirements for a statement of merger in 15 Pa.C.S. § 335.

A division involving a regulated entity may require approval of a government agency before it can become effective. See 15 Pa.C.S. § 103.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:
§ 367. Effect of division.

(a) General rule. — When a division becomes effective, all of the following apply:

(1) If the dividing association is to survive the division:

   (i) It continues to exist.

   (ii) Its public organic record, if any, is amended as provided in the statement of division.

   (iii) Its private organic rules that are to be in record form, if any, are amended to the extent provided in the plan of division.

(2) If the dividing association is not to survive the division, the dividing association ceases to exist.
(3) With respect to each new association, all of the following apply:

(i) It comes into existence.

(ii) It holds any property allocated to it as the successor to the dividing association, and not by transfer, whether directly or indirectly, or by operation of law.

(iii) Its public organic record, if any, and private organic rules are effective.

(iv) If it is a limited liability partnership, its statement of registration is effective.

(v) If it is a limited liability limited partnership and is not using the alternative procedure in section 8201(f) (relating to scope) its statement of registration is effective.

(vi) If it is an electing partnership, its statement of election is effective.

(4) Property of the dividing association:

(i) That is allocated by the plan of division either:

(A) vests in the new associations as provided in the plan of division; or

(B) remains vested in the dividing association.

(ii) That is not allocated by the plan of division:

(A) remains vested in the dividing association, if the dividing association survives the division; or

(B) is allocated to and vests equally in the resulting associations as tenants in common, if the dividing association does not survive the division.

(iii) Vests as provided in this paragraph without transfer, reversion or impairment.

(5) A resulting association to which a cause of action is allocated as provided in paragraph (4) may be substituted or added in any pending action or proceeding to which the dividing association is a party at the effective time of the division.

(6) The liabilities of the dividing association are allocated between or among the resulting associations as provided in section 368 (relating to allocation of liabilities in division).
(7) The interests in the dividing association that are to be converted or canceled in the division are converted or canceled, and the interest holders of those interests are entitled only to the rights provided to them under the plan of division and to any dissenters rights they may have pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or section 363(c) (relating to approval of division).

(b) Dividing association not dissolved.—Except as provided in the organic law or organic rules of the dividing association, the division does not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the dividing association.

(c) New interest holder liability.—When a division becomes effective, a person that did not have interest holder liability with respect to the dividing association and that becomes subject to interest holder liability with respect to an association as a result of the division has interest holder liability only to the extent provided by the organic law of the association and only for those liabilities that arise after the division becomes effective.

(d) Prior interest holder liability.—When a division becomes effective, the interest holder liability of a person that ceases to hold an interest in the dividing association that is a domestic entity with respect to which the person had interest holder liability is as follows:

(1) The division does not discharge any interest holder liability under the organic law of the domestic entity to the extent the interest holder liability arose before the division became effective.

(2) The person does not have interest holder liability under the organic law of the domestic entity for any debt, obligation or other liability that arises after the division becomes effective.

(3) The organic law of the domestic entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the division had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic law or organic rules of the domestic entity with respect to any interest holder liability preserved by paragraph (1) as if the division had not occurred.

(e) Registration of registered foreign association.—When a division of a registered foreign association in which at least one of the resulting associations is a domestic entity becomes effective, the registration to do business of the dividing association is canceled if it does not survive the division.
(f) Real property.— Except with regard to the real property of a dividing association that is a domestic nonprofit corporation, 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 association, including property owned by a foreign association dividing solely under the law of another jurisdiction, to a new association is not 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:

(1) A deed, lease or other instrument of confirmation describing the tract or parcel.

(2) A duly executed duplicate original copy of the statement of division.

(3) A copy of the statement of division certified by the department.

(4) A declaration of acquisition setting forth the value of real estate holdings in the county of the new association as an acquired association.

(g) Secured collateral.—The allocation to a new association of property that is collateral covered by an effective financing statement shall not be effective until a new financing statement naming the new association as a debtor is effective under Article 9 of the Uniform Commercial Code as enacted in the relevant jurisdiction.

(h) Vehicles.—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 association 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), unless the dividing association is a domestic nonprofit corporation.

(i) Disposition of interests.—Unless otherwise provided in the plan of division, the interests and any securities or obligations of each new association shall be distributed to:

(1) the dividing association, if it survives the division; or

(2) the holders of the common or other residuary interest of the dividing association that do not assert dissenters rights, pro rata, if the dividing association does not survive the division.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1957.
This section parallels analogous provisions in Subchapters C (merger), D (interest exchange), E (conversion), and G (domestication), except for provisions relating to the allocation of property and liabilities which reflect the unique nature of a division.

The term “transfer” is defined in 15 Pa.C.S. § 102 to include an assignment. Thus the statement in subsection (a)(4)(iii) that property vests in a division without transfer means that the allocation of property in a division does not involve an assignment of the property, including by operation of law.

If interests in property are allocated to a resulting association as part of a division governed by this subchapter, title to those interests automatically passes to the resulting association, as between the dividing association and the resulting association. Subsection (f) reflects this concept and also makes it clear that the filing of the statement of division in the Department of State is not constructive notice of the change of record title (as opposed to legal title) to the resulting association, except in the case of a nonprofit corporation. Failure to file a confirmatory instrument in the land records containing appropriate legal descriptions of the property, however, has no impact on the validity and enforceability of the division as between the dividing and the resulting associations.

In most cases, the resulting association will want to file a confirmatory instrument at the time the division is effective in order to protect itself from being trumped by a bona fide purchaser who obtains the real property from the dividing association. There may be situations, however, where the dividing association does not have legal descriptions available for all of its real property at the time of the division and the plan of division will simply state that the dividing association is transferring to the dividing association all of its real estate, e.g., “in the State of Arkansas” or “west of the Mississippi River.”

The following terms used in this section are defined in 15 Pa.C.S. § 312:

- “division”
- “dividing association”
- “interest holder liability”
- “new association”
- “resulting association”

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

- “association”
- “dissenters rights”
- “domestic entity”
- “electing partnership”
- “foreign association”
- “governor”
- “interest holder”
- “interests”
- “limited liability limited partnership”
§ 368. Allocation of liabilities in division.

(a) General rule.—Except as provided in this section, when a division becomes effective, a resulting association is responsible:

(1) Individually for the liabilities the resulting association undertakes or incurs in its own name after the division.

(2) Individually for the liabilities of the dividing association that are allocated to or remain the liability of that resulting association to the extent specified in the plan of division.

(3) Jointly and severally with the other resulting associations for the liabilities of the dividing association that are not allocated by the plan of division.

(b) Joint and several liability.—If an allocation of property or liabilities in a division is ineffective or voidable pursuant to fraudulent transfer or similar law, both of the following apply:

(1) The allocations of liabilities in the plan of division are ineffective and the liabilities of the dividing association becomes liabilities of all of the resulting associations, jointly and severally.

(2) The validity and effectiveness of the division are not affected thereby.

(c) Breach of an obligation.—If a division breaches an obligation of the dividing association, all of the resulting associations are liable, jointly and severally, for the breach, but the validity and effectiveness of the division are not affected thereby.

(d) Application of fraudulent transfer law.—In applying the law governing fraudulent transfers to a division:

(1) The law applies to the dividing association as follows:
(i) If it does not survive the division, it is not subject to that law.

(ii) If it survives the division, it is subject to that law only in its capacity as a resulting association.

(2) The law applies to each resulting association as follows:

(i) The association is treated as a debtor.

(ii) The liabilities allocated to the association are treated as an obligation incurred by the debtor.

(iii) The association is treated as not having received a reasonably equivalent value in exchange for incurring the obligation.

(iv) The property allocated to the association is treated as remaining property.

(e) Distribution tests not applicable.—A direct or indirect allocation of property or liabilities in a division is not a distribution for purposes of the organic law of the dividing association or any of the resulting associations.

(f) Liens and other charges.—Liens, security interests and other charges on the property of the dividing association are not impaired by the division, notwithstanding any otherwise enforceable allocation of liabilities of the dividing association.

(g) Security agreements.—If the dividing association is bound by a security agreement governed by Article 9 of the Uniform Commercial Code as enacted in any jurisdiction and the security agreement provides that the security interest attaches to after-acquired collateral, each resulting association is bound by the security agreement.

(h) Creditors and guarantors.—An allocation of a liability does not:

(1) Affect the rights under other law of a creditor owed payment of the liability or performance of the obligation that creates the liability, except that those rights are available only against an association responsible for the liability or obligation under this section.

(2) Release or reduce the obligation of a surety or guarantor of the liability or obligation.

(i) Regulatory approvals.—The conditions in this section for freeing one or more of the resulting associations from the liabilities of the dividing association and for allocating some or all of the liabilities of the dividing association shall be conclusively deemed to have been satisfied if the plan of division has been approved by the Department of Banking and
Securities, the Insurance Department or the Pennsylvania Public Utility Commission in a final order issued after August 21, 2001, that is not subject to further appeal.

(j) Taxes.—Any taxes, interest, penalties and public accounts of the Commonwealth claimed against the dividing association that are settled, assessed or determined prior to or after the division shall be the liability of all of the resulting associations and, together with interest thereon, shall be a lien against the franchises and property of each resulting association. Upon the application of the dividing association, the Department of Revenue, with the concurrence of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting associations from liability and liens for all taxes, interest, penalties and public accounts of the dividing association 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.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1957.

The purpose of this section is to set out in detail how liabilities of the dividing association are allocated in a division between the dividing and resulting associations and which of the associations are responsible for those liabilities. The basic rule is that a liability is the responsibility of the association to which it has been allocated, but the resulting associations are jointly and severally liable for any liabilities that are not specifically allocated. The resulting associations will also be jointly and severally liable for a liability, even if allocated in the plan, where:

1. the liability arises from a breach of an obligation as a result of the division;
2. the allocation or property and liabilities is ineffective or voidable under fraudulent transfer statutes or other law.

If the resulting associations are jointly and severally liable under subsection (b) or (c) for a liability that has been allocated in the plan to less than all of them, the allocation in the plan will be binding on the resulting associations even though the third party may seek payment or performance from any or all of the resulting associations.

With respect to a liability incurred after the division is effective, only the association that undertakes or incurs the liability is liable for that liability, absent an agreement to the contrary.

Subsection (d) provides a set of rules that explain how fraudulent transfer law applies to a division.
Subsection (e) provides that the limitations on distributions in the organic law of the dividing association do not apply to a division. That rule is consistent with established Pennsylvania policy under the definition of “distribution” in 15 Pa.C.S. § 1103.

Where a dividing association has granted a security interest in after-acquired property, the effect of subsection (g) is that the resulting associations will have the status of “debtors” under UCC Article 9. See 15 Pa.C.S. § 367(g).

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“division”
“dividing association”
“resulting association”

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

“association”
“obligation”
“organic law”
“property”

**Subchapter G**

**Domestication**

§ 371. Domestication authorized.

(a) Domestic entities.—Except as provided in section 318 (relating to excluded entities and transactions), by complying with this chapter a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Foreign entities.—By complying with the applicable provisions of this subchapter, a foreign entity may become a domestic entity of the same type in this Commonwealth if this title provides for the formation of that type of entity.

(c) Cross reference.—See section 314 (relating to regulatory conditions and required notices and approvals).
Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 501.

A domestication under this subchapter differs from a conversion under 15 Pa.C.S. Subch. 3E in that a domestication requires that the domesticating entity be the same type of entity as the domesticated entity. In a conversion, by contrast, the converting association changes its type.

As with a conversion, all rights and privileges, debts and liabilities, and actions or proceedings of a domesticating entity vest unimpaired in the domesticated entity. A domestication is not a sale, transfer, assignment, or conveyance and does not give rise to a claim of reverter or impairment of title.

This subchapter governs the legal effect of a foreign entity domesticating in Pennsylvania. On the other hand, the organic laws of the foreign jurisdiction, and not this subchapter, will govern the legal effect of a domestication of a domestic entity in that jurisdiction. In the latter scenario, this subchapter authorizes the domestication of the domestic entity in the foreign jurisdiction, but this subchapter does not create a right in the domestic entity to be received in the foreign jurisdiction.

Where a foreign entity is domesticating in Pennsylvania, this subchapter does not require that the transaction be authorized by the law of the foreign entity’s jurisdiction of formation. The foreign entity will be able to become a Pennsylvania domestic entity as provided in this subchapter, but the status of the entity in the foreign jurisdiction will be controlled by that laws of that jurisdiction.

Under the former domestication provisions in the Business Corporation Law, a domesticating corporation was not required to surrender its foreign charter, thus permitting it to be incorporated in both the foreign jurisdiction and Pennsylvania at the same time. That policy of permitting dual incorporation is continued in Chapter 4 and generalized to apply to all types of entities. See 15 Pa.C.S. § 375(b)(8). If the internal affairs of an entity are governed by the laws of more than one jurisdiction at the same time, it will no longer be a “registered organization” under the Uniform Commercial Code. See 13 Pa.C.S. § 9102.

The term “domestication” used in this section is defined in 15 Pa.C.S. § 312.

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

“domestic entity”
“foreign entity”
“type”
§ 372. Plan of domestication.

(a) General rule.—A domestic entity may become a foreign entity of the same type by approving a plan of domestication. The plan shall be in record form and contain all of the following:

1. The name and type of the domesticating entity.
2. The name and jurisdiction of formation of the domesticated entity.
3. The manner, if any, of canceling or converting those interests in the domesticating entity, if any, that are to receive special treatment as authorized by and subject to section 329 (relating to special treatment of interest holders);
4. The proposed public organic record of the domesticated entity if it is a filing entity.
5. The full text of the private organic rules of the domesticated entity that are proposed to be in record form.
6. The other terms and conditions of the domestication.
7. Any other provision required by:
   (i) the law of this Commonwealth;
   (ii) the law of the jurisdiction of formation of the foreign domesticated entity; or
   (iii) the organic rules of the domesticating entity.

(b) Optional contents.—In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

(c) Terms of interests.—Except as provided in the plan of domestication pursuant to section 329, the terms of the interests in the domesticated entity and the rights of the interest holders in the domesticated entity shall be substantially the same as the terms of the interests and the rights of the interest holders in the domesticating entity, except to the extent a different term or right is required by a provision of the organic law of the domesticated entity that cannot be varied in its organic rules.

(d) Cross reference.—See section 316(c) (relating to contents of plan).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned
This section sets forth the requirements for the plan of domestication, which must be approved by the domesticating entity in accordance with 15 Pa.C.S. § 373. The content of a plan of domestication is similar to the content of a plan of merger. See 15 Pa.C.S. § 332. Subsection (a) lists the mandatory provisions that must be in the plan. Subsection (b) authorizes the plan to contain any other provision the parties wish to include, unless the provision is prohibited by law.

The plan of domestication, may be used as a substitute for the statement of domestication as provided in 15 Pa.C.S. § 375(e), so long as it contains all of the information required to be in the statement and is delivered to the Department of State for filing after the plan has been adopted and approved.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

- “domestication”
- “domesticated entity”
- “domesticating entity”
- “plan”

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

- “domestic entity”
- “filing entity”
- “foreign entity”
- “interest”
- “interest holder”
- “jurisdiction of formation”
- “organic law”
- “organic rules”
- “private organic rules”
- “public organic record”
- “record form”
- “special treatment”
- “type”

§ 373. Approval of domestication.

(a) Approval by domestic entities.—A plan of domestication in which the domesticating entity is a domestic entity is not effective unless it has been approved by the domestic entity in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(b) Approval by foreign entities.—A plan of domestication in which the
domesticating entity is a foreign entity is not effective unless it has been approved in one of the following ways:

(1) In accordance with the law of the jurisdiction of formation of the foreign entity.

(2) By at least a majority of the votes cast with respect to approval of the domestication by all interest holders of the foreign entity entitled to vote generally on a merger to which the foreign entity is a party if the law of the foreign entity’s jurisdiction of formation does not provide for a domestication of the foreign entity.

c) Cross references.—See sections 317 (relating to contractual dissenters rights in entity transactions) and 329 (relating to special treatment of interest holders).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 503.

If the law of a foreign entity’s jurisdiction of formation does not authorize a domestication, the foreign entity may nonetheless become a domestic Pennsylvania entity pursuant to this subchapter. In that event, the domestication must be approved as provided in subsection (b)(2). The status of the foreign entity in its jurisdiction of formation after the domestication will be determined by the law of the foreign jurisdiction, but for purposes of Pennsylvania law the entity will have the status of a domestic entity.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“domestication”
“domesticating entity”

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

“domestic entity”
“foreign entity”
“interest holder”
“jurisdiction of formation”

§ 374. Amendment or abandonment of plan of domestication.

(a) Approval of amendment.— A plan of domestication in which the domesticating entity is a domestic entity may be amended in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.
(2) By the governors or interest holders of the domestic entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan.

(ii) The public organic record, if any, or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) Approval of abandonment.—After a plan of domestication has been approved by a domestic entity that is the domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is the domesticating entity may abandon the plan in the same manner as the plan was approved.

(c) Statement of abandonment.—If a plan of domestication is abandoned after a statement of domestication has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the domesticating entity, must be delivered to the department for filing before the time the statement of domestication becomes effective.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 504. It parallels analogous provisions in Subchapters C (mergers), D (interest exchanges), E (conversions), and F (divisions).

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“domestication”

“domesticated entity”
§ 375. Statement of domestication; effectiveness.

(a) General rule.—A statement of domestication shall be signed by the domesticating entity and delivered to the department for filing along with the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions).

(b) Contents.—A statement of domestication shall contain all of the following:

(1) With respect to the domesticating entity:

   (i) its name;

   (ii) its jurisdiction of formation;

   (iii) its type;

   (iv) the date on which it was first created, incorporated, formed or otherwise came into existence;

   (v) if it is a domestic filing entity, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address);
(vi) if it is a domestic entity that is not a domestic filing entity or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vii) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the law of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(2) With respect to the domesticated entity:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing entity, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;

(v) if it is a domestic entity that is not a domestic filing entity or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the law of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(3) If the statement of domestication is not to be effective on filing, the later date or date and time on which it will become effective.

(4) If the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with Subchapter B (relating to approval of entity transactions) or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with section 373(b) (relating to approval of domestication).
(5) If the domesticated entity is a domestic filing entity, its public organic record as an attachment. The public organic record does not need to state the name or address of an incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(6) If the domesticated entity is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration as an attachment.

(7) If the domesticated entity is an electing partnership, its statement of election as an attachment.

(8) If the domesticating entity is to be a domestic entity in both this Commonwealth and the foreign jurisdiction, a statement to that effect.

(c) Other provisions.—In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) Public organic record of new domestic entity.—If the domesticated entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this Commonwealth, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.—A plan of domestication that is signed by a domesticating entity that is a domestic entity and meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this chapter to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) Effectiveness of domestication.—A domestication in which the domesticated entity is a domestic entity is effective when the statement of domestication is effective under section 136(c) (relating to processing of documents by Department of State). A domestication in which the domesticated entity is a foreign entity is effective on the later of:

(1) the date and time provided by the organic law of the domesticated entity; or

(2) when the statement of domestication is effective.

(g) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned
The filing of a statement of domestication makes the transaction a matter of public record.

A plan of domestication can be used as a substitute for the statement of domestication so long as the plan satisfies the requirements in subsection (e).

A domestication involving a regulated entity may require approval of a government agency before it can become effective. See 15 Pa.C.S. § 103.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

- “domestication”
- “domesticated entity”
- “domesticating entity”

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

- “department”
- “domestic entity”
- “domestic filing entity”
- “electing partnership”
- “entity”
- “foreign entity”
- “jurisdiction of formation”
- “limited liability company”
- “limited liability limited partnership”
- “limited liability partnership”
- “nonregistered foreign association”
- “organic law”
- “principal office”
- “public organic record”
- “registered foreign association”
- “sign”
- “type”

§ 376. Effect of domestication.

(a) General rule.—When a domestication becomes effective, all of the following apply:
(1) The domesticated entity is:
   (i) organized under and subject to the organic law of the domesticated entity;
   (ii) the same entity without interruption as the domesticating entity;
   (iii) deemed to have commenced its existence on the date the domesticating entity commenced its existence in the jurisdiction in which the domesticating entity was first created, formed, incorporated or otherwise came into existence; and
   (iv) also organized under and subject to the organic law of the domesticating entity if the statement of domestication includes the statement provided for in section 375(b)(8) (relating to statement of domestication; effectiveness).

(2) All property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion or impairment.

(3) All debts, obligations and other liabilities of the domesticating entity continue as debts, obligations and other liabilities of the domesticated entity.

(4) Except as provided by law, all of the rights, privileges, immunities and powers of the domesticating entity continue to be vested without change in the domesticated entity.

(5) The name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding.

(6) If the domesticated entity is a filing entity, its public organic record is effective and is binding on its interest holders.

(7) If the domesticated entity is a domestic limited liability partnership or a limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration is effective.

(8) If the domesticated entity is an electing partnership, its statement of election is effective.

(9) The private organic rules of the domesticated entity that are to be in record form, if any, approved as part of the plan of domestication are effective.

(10) The interest holders in the domesticating entity are interest holders in the domesticated entity except to the extent that an interest holder does not receive interests in the domesticated entity pursuant to a provision in the plan of domestication for
special treatment pursuant to section 329 (relating to special treatment of interest holders).

(b) No dissolution rights.—Except as otherwise provided in the organic law or organic rules of a domestic domiciliating entity, the domiciliation does not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the domiciliating entity.

c) Collection of liabilities.—When a domiciliation becomes effective, a foreign domiciliated entity may be served with process in this Commonwealth for the collection and enforcement of any of its debts, obligations and other liabilities in accordance with applicable law.

d) New interest holder liability. — When a domiciliation becomes effective, a person that becomes subject to interest holder liability with respect to a domiciliated association as a result of the domiciliation has interest holder liability only to the extent provided by the organic law of the association and only for those debts, obligations and other liabilities that arise after the domiciliation is effective.

e) Prior interest holder liability.— When a domiciliation becomes effective, the following rules apply:

(1) The domiciliation does not discharge any interest holder liability under the organic law of a domiciliating domiciliating entity to the extent the interest holder liability arose before the domiciliation became effective.

(2) A person does not have interest holder liability under the organic law of a domiciliating domiciliating entity for any debt, obligation or other liability that arises after the domiciliation becomes effective.

(3) The organic law of a domiciliating domiciliating entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the domiciliation had not occurred.

(4) A person has whatever rights of contribution from any other person as are provided by other law or the organic rules of a domiciliating domiciliating entity with respect to any interest holder liability preserved under paragraph (1) as if the domiciliation had not occurred.

(f) Service of process.—When a domiciliation becomes effective, a foreign domiciliated entity may be served with process in this Commonwealth for the collection and enforcement of any of its debts, obligations and other liabilities in accordance with applicable law.

(g) No dissolution.—A domiciliation does not require a domiciliating domiciliating entity to liquidate, dissolve or wind up its affairs and does not constitute or cause the
liquidation or dissolution of the entity.

(h) Taxes.—Any taxes, interest, penalties and public accounts of the Commonwealth claimed against the domesticating entity that are settled, assessed or determined prior to or after the domestication shall be the liability of the domesticated entity and, together with interest thereon, shall be a lien against the franchises and property of the domesticated entity.

(i) Cross references. – See sections 416 (relating to withdrawal deemed on certain transactions) and 417 (relating to required withdrawal on certain transactions).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 506. Subsection (h) is a generalization of former 15 Pa.C.S. § 1929(c).

The domesticated entity is the same entity as the domesticating entity; it has merely changed the organic law to which it is subject. Thus a domestication is not a sale, conveyance, transfer, or assignment and does not give rise to claims of reverter or impairment of title that may be based on a prohibition on transfer, assignment, or conveyance.

All pending proceedings involving the domesticating entity are continued. The name of the domesticated entity may be, but need not be, substituted in any pending proceeding for the name of the domesticating entity.

Subsection (d) provides the rule for future interest holder liability and parallels analogous provisions in Subchapters C (mergers), D (interest exchanges), E (conversions), and F (divisions). Subsection (e) similarly provides the rule for past interest holder liability and parallels analogous provisions in this chapter.

When a domestication takes effect, the entity continues to exist – simply as a domestic entity under the laws of a different state. Subsection (g) thus makes clear that the domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

A domestication of an insurance corporation requires compliance with Section 357 of The Insurance Company Law of 1921, 40 P.S. § 477e. See 15 Pa.C.S. § 103.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

domestication

domesticated entity

domesticating entity

The following terms used in this section are defined in 15 Pa.C.S. § 102:
Chapter 4
Foreign Associations

Subchapter A
General Provisions

Section
401. Application of chapter.
402. Governing law.
403. Activities not constituting doing business.

§ 401. Application of chapter.

(a) General rule.—Except as otherwise provided in this section or in subsequent provisions of this chapter, this chapter shall apply to all foreign associations.

(b) Application to foreign banking institutions. – The words "foreign filing association" or "foreign association" in this chapter include an association that, if a domestic association, would be a banking institution or credit union, but do not include an interstate bank as defined in section 102 of the act of November 30, 1965 (P.L. 847, No. 356), known as the Banking Code of 1965.

(c) Domestic Federal financial association exclusion.—Except as permitted by act of
Congress, this chapter shall not apply to:

(1) Any of the following institutions or similar federally chartered institutions engaged in this Commonwealth in activities similar to those conducted by banking institutions or credit unions:


(iii) Federal credit unions organized under the Federal Credit Union Act (48 Stat. 1216, 12 U.S.C. § 1751 et seq.).

(2) Any other Federal association intended by the Congress to be treated for State law purposes as a domestic association of this Commonwealth.

(d) Foreign insurance corporations. – A foreign insurance corporation shall be subject to this chapter, except as provided in section 402(e) (relating to governing law) or 411(g) (relating to registration to do business in this Commonwealth).

(e) Government entities. – This chapter shall apply to and the words “association” and “foreign association” shall include a government or other sovereign, other than the Commonwealth or any of its political subdivisions, and any governmental corporation, agency or other entity thereof.

(f) Admitted foreign fraternal benefit society exclusion. – This chapter shall not apply to any foreign corporation not-for-profit licensed to transact business in this Commonwealth under section 2455 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) through (c) are substantially a reenactment of former 15 Pa.C.S. § 4101, except for the provision on interstate banks in subsection (b) which is new. Subsections (e) and (f) are substantially a reenactment of former 15 Pa.C.S. § 6101(b) and (c). A financial institution organized under the law of another jurisdiction is subject to this chapter unless it is an interstate bank or Federal financial institution described in subsection (b). An interstate bank is defined in section 102 of the Banking Code of 1965 as:

… a banking institution existing under the laws of another state, the District of Columbia or a territory or possession of the United States and authorized to engage in
the business of receiving demand deposits or a national bank having a head office in
another state, the District of Columbia or a territory or possession of the United States
and authorized to engage in the business of receiving demand deposits, which lawfully
maintains one or more branch offices in this Commonwealth.

7 P.S. § 102 (“interstate bank”). Thus, a foreign bank that does not have a branch office in
Pennsylvania and is not a Federal financial institution is treated for purposes of this chapter
the same as a foreign association that is not a financial institution. For example, a state-
chartered bank that does not have a branch office in Pennsylvania will be required to register
under this chapter if its activities in Pennsylvania are such that if they were conducted by a
regular business corporation would require that corporation to register.

Subsection (d) provides as a general rule that foreign insurance corporations are subject
to this chapter, but the effect of the other provisions cited in subsection (d) is to limit the
application of this chapter to foreign insurance corporations as follows:

1. All foreign insurance corporations are subject to 15 Pa.C.S. § 402(a), (e), and (f).
2. A foreign insurance corporation, insofar as it is engaged in the business of writing
insurance or reinsurance as principal in Pennsylvania, is subject to Pennsylvania
law regulating the conduct of the business of insurance by a foreign insurance
corporation in lieu of 15 Pa.C.S. § 402(d).
3. A foreign insurance corporation that is not engaged in the business of writing
insurance or reinsurance as principal in Pennsylvania, is not subject to
Pennsylvania law regulating the conduct of the business of insurance by a foreign
insurance corporation and is subject to 15 Pa.C.S. § 402(d).
4. All foreign insurance corporations are exempt from the provisions relating to
registration to do business in Pennsylvania (15 Pa.C.S. §§ 402(b) and (c), and 411
through 419) pursuant to 15 Pa.C.S. § 411(g).

Foreign insurance corporations are also subject to 15 Pa.C.S. § 4146.

The statute cited in subsection (f) is found at 40 P.S. § 991.2455.

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

“association”
“banking institution”
“credit union”
“domestic association”
“foreign association”
“foreign corporation not-for-profit”
“foreign filing association”
“insurance corporation”

§ 402. Governing law.

(a) General rule. – The law of the jurisdiction of formation of a foreign association
governs the following:

1. The internal affairs of the association.
2. The liability that a person has as an interest holder or governor for a debt, obligation or other liability of the association.
3. The liability of a series or protected cell of a foreign association.

(b) Effect of differences in law. – A foreign association is not precluded from registering to do business in this Commonwealth because of any difference between the law of the jurisdiction of formation of the foreign association and the law of this Commonwealth.

c) Limitations on domestic associations applicable. – Registration of a foreign association to do business in this Commonwealth does not authorize the foreign association to engage in any activities and affairs or exercise any power that a domestic association of the same type may not engage in or exercise in this Commonwealth.

d) Equal rights and privileges of registered foreign associations. – Except as otherwise provided by law, a registered foreign association, so long as its registration to do business is not terminated or canceled, shall enjoy the same rights and privileges as a domestic entity and shall be subject to the same liabilities, restrictions, duties and penalties now in force or hereafter imposed on domestic entities, to the same extent as if it had been formed under this title. A foreign insurance corporation shall be deemed a registered foreign association except as provided in subsection (e).

(e) Foreign insurance corporations.—A foreign insurance corporation shall, insofar as it is engaged in the business of writing insurance or reinsurance as principal, be subject to the law of this Commonwealth regulating the conduct of the business of insurance by a foreign insurance corporation in lieu of the provisions of subsection (d) regarding its rights, privileges, liabilities, restrictions and duties and the penalties to which it may be subject.

(f) Agricultural lands. – Interests in agricultural land shall be subject to the restrictions of, and escheatable as provided by, the act of April 6, 1980 (P.L. 102, No. 39), referred to as the Agricultural Land Acquisition by Aliens Law.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) – (c) are patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-501. Subsections (d) – (f) are substantially a reenactment of former 15 Pa.C.S. § 4142.

Subsection (a) provides that the law of the jurisdiction of formation of a foreign association, rather than the law of Pennsylvania, governs both the internal affairs of the association and the liability of its interest holders and governors for the obligations of the association.
Unincorporated associations of certain types are authorized by the law of some states to create series. If series are properly created, a debt, obligation, or liability associated with the property of a particular series is enforceable only against property of that series, and not against the property of the trust generally or any other series thereof. Subsection (a)(3) respects that type of internal shield in any form of unincorporated association that is authorized to create series.

Subsections (b) and (c) together make clear that although a foreign association may not be denied registration simply because of a difference between the laws of its jurisdiction of formation and the laws of Pennsylvania, the foreign association may not engage in any activity or exercise any power in Pennsylvania that a domestic entity of the same type may not engage in or exercise. Thus subsection (c) puts a registered foreign association on the same, but no better, footing as a domestic entity.

The effect of qualification in Pennsylvania of a foreign association is, in effect, to domesticate the association under Pennsylvania law with respect to external matters (as opposed to internal affairs). Thus the association acquires the privileges of a domestic association vis a vis third parties, even in such an exceptional area as the acquisition of the power of eminent domain. See, e.g., Warren Silica Company's Petition, 21 Pa.Dist. 367 (1911), Lindsay v. Keystone State Tel. & Tel. Co., 9 Del.Co. 295 (1904), In re Ohio Valley Gas Co., 6 Pa.Dist. 200 (1897), Gralapp v. Mississippi Power Co., 194 So.2d 527 (Ala. 1967), 29A C.J.S. Eminent Domain § 25 at pp. 242-43 (1965). And the association is subject to the burdens of domestic status, e.g., process may be served on it under 42 Pa.C.S. § 5301(a)(2)(i) with respect to any cause of action, including a cause of action not qualifying for service of process under 42 Pa.C.S. § 5322 or another similar long arm statute. Of course, this concept of equality can be superseded by express statutory provision, e.g., in the area of state corporate taxation. Registration under this chapter has no effect on the application of Pennsylvania law to the internal affairs of a foreign association. But see 15 Pa.C.S. §§ 4145 and 4146.

It is the intention of this section to equalize the rights of licensed foreign insurers to hold and invest in real estate and other property with the rights of nonlicensed foreign insurers, which for many years have had the same investment and property owning powers in Pennsylvania as business corporations generally. Subsection (e), in reverting to the law of insurance regulation, is not intended to make licensed foreign insurers subject to investment restrictions expressly applicable under Pennsylvania insurance regulatory law to domestic insurers.

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

- “association”
- “domestic association”
- “domestic entity”
- “foreign association”
- “governor”
§ 403. Activities not constituting doing business.

(a) General rule. – Activities of a foreign filing association or foreign limited liability partnership that do not constitute doing business in this Commonwealth under this chapter shall include the following:

(1) Maintaining, defending, mediating, arbitrating or settling an action or proceeding;

(2) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors.

(3) Maintaining accounts in financial institutions.

(4) Maintaining offices or agencies for the transfer, exchange and registration of securities of the association or maintaining trustees or depositories with respect to the securities.

(5) Selling through independent contractors.

(6) Soliciting or obtaining orders by any means if the orders require acceptance outside of this Commonwealth before the orders become contracts.

(7) Creating or acquiring indebtedness, mortgages or security interests in property.

(8) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting or maintaining property so acquired.

(9) Conducting an isolated transaction that is not in the course of similar transactions.

(10) Owning, without more, property.

(11) Doing business in interstate or foreign commerce.

(b) Participation in other associations. – Being an interest holder or governor of a foreign association that does business in this Commonwealth shall not by itself constitute
(c) Applicability. – This section does not apply in determining the contacts or
activities that may subject a foreign filing association or foreign limited liability partnership to
service of process, taxation or regulation under law of this Commonwealth other than this
title.

Committee Comment (2014):
This section was added in 2014 by the Association Transactions Act and is patterned

This section does not attempt to formulate an inclusive definition of what constitutes
doing business in Pennsylvania. Rather, the concept is defined in a negative fashion by
subsections (a) and (b), which state that certain activities do not constitute doing business. In
general terms, any conduct more regular, systematic, or extensive than that described in
subsection (a) constitutes doing business and requires the foreign association to register to do
business. Typical conduct requiring registration includes maintaining an office to conduct
local intrastate business, selling personal property not in interstate commerce, entering into
contracts relating to the local business or sales, and owning or using real estate for general
purposes. But the passive owning of real estate for investment purposes does not constitute
doing business. See subsection (a)(10).

The test of “doing business” defined in a negative way in subsections (a) and (b) applies
only to the question whether the association’s contacts with Pennsylvania are such that it must
register under this chapter. It is not applicable to other questions such as whether the
association is amenable to service of process or liable for state or local taxes. An association
that has registered (or is required to register) will generally be subject to suit and state
taxation, while an association that is subject to service of process or state taxation will not
necessarily be required to register.

The list of activities set forth in subsection (a) is not exhaustive.

1. Engaging in Litigation
A foreign association is not “doing business” solely because it resorts to the courts of
Pennsylvania to recover an indebtedness, enforce an obligation, recover possession of
personal property, obtain the appointment of a receiver, intervene in a pending proceeding,
bring a petition to compel arbitration, file an appeal bond, or pursue appellate remedies.
Similarly, a foreign association is not required to register merely because it files a complaint
with a governmental agency or participates in an administrative proceeding within
Pennsylvania.

2. Internal Affairs of the Corporation
A foreign association does not “do business” within Pennsylvania under this section merely because some of its internal affairs occur within Pennsylvania. Thus, an association may hold meetings of its governors or interest holders in Pennsylvania without first registering. It also may maintain offices or agencies within Pennsylvania relating solely to the transfer, exchange, or registration of its interests without registering. Other activities relating to the internal affairs of the association that do not constitute doing business under this section include having officers or representatives who reside within or are physically present in Pennsylvania; while there, the officers or representatives may make executive decisions relating to the internal affairs of the association without imposing on the association the requirement that it register, if these activities are not so regular and systematic as to cause the residence to be viewed as a business office.

3. **Sales through Independent Contractors**

Under subsection (a)(5), a foreign association does not need to register if it sells goods in Pennsylvania through independent contractors. These transactions are viewed as transactions by the independent contractors, not by the association itself even though the association sets some limits or ground rules for its contractors. If these controls are sufficiently pervasive, however, the association may be deemed to be selling for itself in intrastate commerce, and not through the independent contractors and therefore engaged in doing business in Pennsylvania.

4. **Creating, Acquiring, or Collecting Debts**

The mere act of making a loan in Pennsylvania by a foreign association that is not in the business of making loans does not constitute doing business in Pennsylvania. On the same theory a foreign association may obtain security for the repayment of a loan, and foreclose or enforce the lien or security interest to collect the loan, without being deemed to be doing business. Similarly, a refunding or “roll over” of a loan or its adjustment or compromise does not involve doing business.

5. **Isolated Transactions**

The concept of “doing business” involves regular, repeated, and continuing business contacts of a local nature.

Former 15 Pa.C.S. § 4122(a)(10) included the limitation found in Section 15.01(b)(10) of the Model Business Corporation Act that an isolated transaction be completed within 30 days. The Committee decided to eliminate that requirement and follow the approach of the Uniform Business Organizations Code which does not require a foreign association to register simply because it engages in an isolated transaction that takes longer than 30 days to complete.

6. **Interstate Transactions**
A foreign association is not “doing business” within the meaning of this section if it is transacting business in interstate commerce (subsection (a)(11)) or soliciting or obtaining orders that must be accepted outside Pennsylvania before they become contracts (subsection (a)(6)). These limitations reflect the provisions of the United States Constitution that grant to the United States Congress exclusive power over interstate commerce, and preclude states from imposing restrictions or conditions upon this commerce. These sections should be construed in a manner consistent with judicial decisions under the United States Constitution. Under these decisions, a foreign association is not required to register even though it sells goods within Pennsylvania if they are shipped to the purchasers in interstate commerce. An association need not register even if it also does work and performs acts within Pennsylvania incidental to the interstate business, e.g., if it takes or enforces a security interest incidental to these transactions. Nor is it required to register merely because it sends traveling salesmen or solicitors into Pennsylvania so long as contracts are not made within Pennsylvania. Similarly, an office may be maintained by an association in Pennsylvania without registering if the office’s functions relate solely to interstate commerce.

Purchases of goods may of course be in interstate commerce as readily as sales. Thus, the purchase of personal property by a foreign association for shipment in interstate commerce out of Pennsylvania does not require the association to register.

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

- “association”
- “foreign association”
- “foreign filing association”
- “governor”
- “interest holder”
- “limited liability partnership”
- “property”
- “transfer”

Subchapter B
Registration

Section
411. Registration to do business in this Commonwealth.
412. Foreign registration statement.
413. Amendment of foreign registration statement.
414. Noncomplying name of foreign association.
415. Voluntary withdrawal of registration.
416. Withdrawal deemed on certain transactions.
417. Required withdrawal on certain transactions.
418. Transfer of registration.
419. Termination of registration.
§ 411. Registration to do business in this Commonwealth.

(a) Registration required. – Except as provided in section 401 (relating to application of chapter) or subsection (g), a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter.

(b) Penalty for failure to register. – A foreign filing association or foreign limited liability partnership doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business under this chapter.

(c) Contracts and acts not impaired by failure to register. – The failure of a foreign filing association or foreign limited liability partnership to register to do business in this Commonwealth does not impair the validity of a contract or act of the foreign filing association or foreign limited liability partnership or preclude it from defending an action or proceeding in this Commonwealth.

(d) Limitations on liability preserved. – A limitation on the liability of an interest holder or governor of a foreign filing association or of a partner of a foreign limited liability partnership is not waived solely because the foreign filing association or foreign limited liability partnership does business in this Commonwealth without registering.

(e) Governing law not affected. – Section 402 (relating to governing law) applies even if a foreign association fails to register under this chapter.

(f) Registered office. – Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), every registered foreign association shall have, and continuously maintain, in this Commonwealth a registered office, which may but need not be the same as its place of business in this Commonwealth.

(g) Foreign insurance corporations. -- A foreign insurance corporation is not required to register under this chapter.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsections (a) – (e) are patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-502. Subsection (f) is a generalization of former 15 Pa.C.S. § 4144. Subsection (g) is a reenactment of former 15 Pa.C.S. § 4121(c).

The purpose of subsection (b) is to induce foreign associations to register without imposing harsh or erratic sanctions. Often the failure to register is a result of inadvertence or bona fide disagreement as to the scope of 15 Pa.C.S. § 403 which is necessarily imprecise; and the imposition of harsh sanctions in those situations is inappropriate.

The sanction in subsection (b) of closing Pennsylvania courts to suits brought by foreign
associations that should have registered is not a punitive one. Subsection (c) makes clear that
the failure to register does not impair the validity of an association’s acts and subsection (d)
preserves the effectiveness of any liability shields applicable under the association’s organic
law. If an association should have registered and failed to do so, it may still enforce its
contracts simply by registering.

Subsection (b) does not prevent a foreign association that has failed to register from
“defending” an action or proceeding. The distinction between “maintaining” and “defending”
an action or proceeding under subsection (b) is determined on the basis of whether affirmative
relief is sought. A nonregistered foreign association may interpose any defense or permissive
or mandatory counterclaim to defeat a claimed recovery, but may not obtain an affirmative
judgment based on the counterclaim unless it has registered.

Subsection (g) exempts all foreign insurance corporations from the requirement to
register under this chapter. If a foreign insurance corporation conducts an insurance business
in Pennsylvania, it must obtain a certificate of authority from the Insurance Department under
Section 208 of The Insurance Department Act of 1921, 40 P.S. § 46. Although not required to
register under this chapter, a foreign insurance corporation is otherwise subject to this chapter
with respect to activities that do not involve the writing of insurance or reinsurance as
principal. See 15 Pa.C.S. § 402(e).

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

“department”
“foreign association”
“foreign filing association”
“governor”
“insurance corporation”
“interest holder”
“limited liability partnership”
“registered foreign association”

§ 412. Foreign registration statement.

(a) General rule. – To register to do business in this Commonwealth, a foreign filing
association or foreign limited liability partnership must deliver a foreign registration statement
to the department for filing. The statement must be signed by the association and state all of
the following:

(1) Both:

(i) The name of the foreign filing association or foreign limited liability
partnership.

(ii) If that name does not comply with section 202 (relating to requirements
for names generally), an alternate name adopted pursuant to section 414(a)
(relating to noncomplying name of foreign association).

(2) The type of association and, if it is a foreign limited partnership, whether it is
a foreign limited liability limited partnership.

(3) The association’s jurisdiction of formation.

(4) The street and mailing addresses of the association’s principal office and, if
the law of the association’s jurisdiction of formation requires the association to maintain
an office in that jurisdiction, the street and mailing addresses of the office.

(5) 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 registered office in this Commonwealth.

(6) If the association may have one or more series, a statement to that effect.

(b) Qualification or registration under former statutes.—The effect of a foreign
association qualifying or registering to do business under prior provisions of law shall be as
follows:

(1) With respect to corporations for profit, the following apply:

(i) If a foreign corporation for profit was admitted to do business in this
Commonwealth by the filing of a power of attorney and statement under the act of
June 8, 1911 (P.L. 710, No. 283) on July 1, 2015, the power of attorney and
statement shall be deemed a filed registration statement under this chapter. The
 corporation shall include in its first amended registration statement under this
chapter the information required by this chapter to be set forth in a registration
statement.

(ii) A certificate of authority issued under the former provisions of the
Business Corporation Law of 1933 or the Business Corporation Law of 1988 that
is in effect on July 1, 2015, shall be deemed to be a registration statement under
this chapter and shall be deemed not to contain any reference to the kind of
business that the corporation proposes to do in this Commonwealth.

(iii) A certificate of authority issued under former 15 Pa.C.S. Subchapter
41B that is in effect on July 1, 2015, shall be deemed to be a registration statement
under this chapter.

(2) With respect to corporations not-for-profit, the following apply:

(i) If a foreign corporation not-for-profit was admitted to do business in
this Commonwealth by the filing of a power of attorney and statement under the
act of June 8, 1911 (P.L. 710, No. 283) on July 1, 2015, the power of attorney and
statement shall be deemed a filed registration statement under this chapter. The
corporation shall include in its first amended registration statement under this
chapter the information required by this chapter to be set forth in a registration
statement.

(ii) A certificate of authority issued under the former provisions of the
Nonprofit Corporation Law of 1933 or former 15 Pa.C.S. Pt. III Art. B, known as
the Nonprofit Corporation Law of 1972 that is in effect on July 1, 2015, shall be
deemed to be a registration statement under this chapter and shall be deemed not to
contain any reference to the kind of business that the corporation proposes to do in
this Commonwealth.

(iii) A certificate of authority issued under former 15 Pa.C.S. Subchapter
61B that is in effect on July 1, 2015, shall be deemed to be a registration statement
under this chapter.

(3) With respect to limited partnerships, the following apply:

(i) An application for registration filed under former 59 Pa.C.S. § 563
(relating to registration) that is in effect on July 1, 2015, shall be deemed to be a
registration statement under this chapter and shall be deemed not to contain any
reference to:

(A) the general character of the business the limited partnership
proposes to transact in this Commonwealth; or
(B) the names and addresses of the limited partners.

(ii) An application for registration filed under former 15 Pa.C.S. § 8582
(relating to registration) that is in effect on July 1, 2015, shall be deemed to be a
registration statement under this chapter and shall be deemed not to contain:

(A) any reference to the address of the office at which is kept a list of
the names and addresses of the limited partners and their capital
contributions; or
(B) an undertaking to the keep those records until the registration of
the limited partnership in this Commonwealth is canceled or withdrawn.

(4) An application for registration filed by a limited liability company under
former 15 Pa.C.S. § 8981 (relating to foreign limited liability companies) that is in effect
on July 1, 2015, shall be deemed to be a registration statement under this chapter.

(5) A certificate of authority issued to a business trust under former 15 Pa.C.S. §
9507 that is in effect on July 1, 2015, shall be deemed to be a registration statement.
under this chapter.

(c) Cross references. – See:

- Section 134 (relating to docketing statement).
- Section 135 (relating to requirements to be met by filed documents).
- Section 4124 (relating to advertisement of registration to do business).
- Section 6124 (relating to advertisement of registration to do business).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-503. Subsection (b)(1)(i) and (ii) and (b)(2)(i) and (ii) are substantially a reenactment of former 15 Pa.C.S. §§ 4121(b) and 6121(b), respectively.

The foreign registration statement provides certain basic information about the foreign association to ensure that citizens of Pennsylvania have access to that information in their dealings with the foreign association. The statement also facilitates the subjection of the association to the courts of Pennsylvania.

Since 1978, Pennsylvania has not required express consent to service of process, relying instead on 42 Pa.C.S. Ch. 53B, the Uniform Interstate and International Procedure Act, and 42 Pa.C.S. § 5301(a)(2)(i).

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

- “association”
- “business trust”
- “corporation for profit”
- “corporation not-for-profit”
- “department”
- “foreign association”
- “foreign corporation for profit”
- “foreign corporation not-for-profit”
- “foreign filing association”
- “jurisdiction of formation”
- “limited liability company”
- “limited liability limited partnership”
- “limited liability partnership”
- “limited partnership”
- “principal office”
- “sign”
§ 413. Amendment of foreign registration statement.

(a) General rule. – A registered foreign association shall deliver to the department for filing an amendment to its foreign registration statement if there is a change in any of the following:

(1) The name of the association.

(2) The type of association, including, if it is a foreign limited partnership, whether the association became or ceased to be a foreign limited liability limited partnership.

(3) The association’s jurisdiction of formation.

(4) An address required by section 412(a)(4) (relating to foreign registration statement).

(5) Its registered office.

(6) The authority of the association to have one or more series.

(b) Contents of amendment. – An amendment of a foreign registration statement shall be signed by the registered foreign association and state all of the following:

(1) The name under which the registered foreign association is registered to do business in this Commonwealth.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu to registered address), the address, including street and number, if any, of its registered office in this Commonwealth.

(3) If the amendment is not to be effective on filing, the later date or date and time on which it will become effective.

(4) The information that is to be changed.

(c) Cross references. – See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-504.
Subsection (a)(6) requires a foreign association to amend its registration (i) to delete the statement that it may have one or more series if the association ceases to have that authority or (ii) to add a statement that it may have one or more series if the association acquires that authority.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

“association”
“department”
“jurisdiction of formation”
“limited liability limited partnership”
“limited partnership”
“registered foreign association”
“sign”
“type”

§ 414. Noncomplying name of foreign association.

(a) General rule. – A foreign filing association or foreign limited liability partnership whose name does not comply with Subchapter A of Chapter 2 (relating to names) may not register to do business in this Commonwealth until it adopts, for the purpose of doing business in this Commonwealth, an alternate name that complies with Subchapter A of Chapter 2. A foreign association that registers under an alternate name under this subsection is not required to comply with 54 Pa.C.S. Ch. 3 (relating to fictitious names) with respect to the alternate name. After registering to do business in this Commonwealth under an alternate name, a foreign association shall do business in this Commonwealth under any of the following:

(1) The alternate name.

(2) Its proper name under the laws of its jurisdiction of formation, with the addition of the name of its jurisdiction of formation.

(3) A name the foreign association is authorized to use under 54 Pa.C.S. Ch. 3.

(b) Change of name. – If a registered foreign association changes its name to one that does not comply with Subchapter A of Chapter 2, it may not do business in this Commonwealth until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with Subchapter A of Chapter 2.

(c) Filed documents. – If a registered foreign association adopts an alternate name under subsection (a), the association shall use the alternate name in response to a requirement
in this title that a document delivered to the department for filing state the name of the
association.

**Committee Comment (2014):**

This section was added in 2014 by the Association Transactions Act and is patterned

A foreign association must register under its proper name under the laws of its
jurisdiction of formation if that name satisfies the requirements of 15 Pa.C.S. § 202. If the
proper name is unavailable because it is not distinguishable on the records of the Department
of State from a name already in use or reserved or registered, the association may use an
alternate name.

Subsection (a)(2) permits a foreign association to do business in Pennsylvania under its
proper name, even if the association has registered under an alternate name, if the association
adds its jurisdiction of formation whenever it uses its proper name. For example, if the name
of a Delaware corporation is “XYZ, Inc.” in its Delaware certificate of incorporation, and that
name is not available in Pennsylvania, the corporation may register under the alternate name
“XYZ-1, Inc.” if that name is available. After registering, the corporation will have three
choices for the name under which it does business in Pennsylvania: (i) the alternate name
“XYZ-1, Inc.”; (ii) “XYZ, Inc., Delaware”; or (iii) a fictitious name that the corporation
registers under Title 54.

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

“foreign association”

“foreign filing association”

“jurisdiction of formation”

“limited liability partnership”

“registered foreign association”

**§ 415. Voluntary withdrawal of registration.**

(a) General rule. – A registered foreign association may withdraw its registration by
delivering a statement of withdrawal to the department for filing. The statement of withdrawal
shall be signed by the association and state all of the following:

(1) The name of the association and its jurisdiction of formation.

(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 registered office in this Commonwealth.

(3) That the association is not doing business in this Commonwealth.
(b) Filing. – The statement of withdrawal and the certificates required by section 139 (relating to tax clearance of certain fundamental transactions) shall be delivered to the department for filing and shall take effect on filing.

(c) Cross references. – See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-507(a).

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

“association”
“department”
“jurisdiction of formation”
“registered foreign association”
“sign”

§ 416. Withdrawal deemed on certain transactions.

(a) Merger. – A registered foreign association that merges into a domestic filing entity or domestic limited liability partnership shall be deemed to have withdrawn its registration on the effective date of the merger.

(b) Conversion. – A registered foreign association that converts to any type of domestic filing entity or to a domestic limited liability partnership shall be deemed to have withdrawn its registration on the effective date of the conversion.

(c) Domestication. – A registered foreign association that domesticates in this Commonwealth as a domestic filing entity or a domestic limited liability partnership shall be deemed to have withdrawn its registration on the effective date of the domestication.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act. Subsection (a) is
When a registered foreign association has converted to or domesticated as a domestic filing entity or domestic limited liability partnership, information about the entity in its capacity as a domestic entity will continue to be of record in the department. At that point, there is no further reason for it to be registered and this section automatically treats its prior registration as withdrawn.

If a conversion or domestication results in a domestic nonfiling entity, a filing must be made by the converted or domesticated entity under 15 Pa.C.S. § 413 or 417 to update the records in the department relating to the entity.

Tax clearance certificates are not required in connection with a transaction subject to this section.

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

“domestic filing entity”
“limited liability partnership”
“registered foreign association”

§ 417. **Required withdrawal on certain transactions.**

(a) Application of section. – This section shall apply to a registered foreign association that has been:

(1) a nonsurviving party to a merger in which the survivor is a nonregistered foreign association;

(2) a dividing association which did not survive the division;

(3) dissolved and completed winding up;

(4) converted to a domestic or foreign nonfiling association other than a limited liability partnership; or

(5) the domesticating entity in a domestication in which the domesticated entity is a domestic or foreign nonfiling association other than a limited liability partnership.

(b) Statement of withdrawal. – A registered foreign association described in subsection (a) shall deliver a statement of withdrawal and the certificates required by section 139 (relating to tax clearance of certain fundamental transactions) to the department for filing. The statement shall be signed by the dissolved or converted association and state as follows:

(1) In the case of a foreign association that has completed winding up, all of the
following:

(i) The name under which the association is registered to do business in this Commonwealth and its jurisdiction of formation.

(ii) That the association withdraws its registration to do business in this Commonwealth.

(2) In the case of a foreign association that has converted to a domestic or foreign nonfiling association other than a limited liability partnership, all of the following:

(i) The name under which the association is registered to do business in this Commonwealth and its jurisdiction of formation.

(ii) The type of nonfiling association to which the association has converted and its jurisdiction of formation.

(iii) That the association withdraws its registration to do business in this Commonwealth.

(3) In the case of a foreign association that has domesticated as a domestic or foreign nonfiling association other than a limited liability partnership in a jurisdiction other than this Commonwealth, all of the following:

(i) The name under which the association is registered to do business in this Commonwealth and its jurisdiction of formation.

(ii) The jurisdiction of formation of the domesticated association.

(iii) That the association withdraws its registration to do business in this Commonwealth.

(c) Cross references. – See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-509.

When a registered foreign association has dissolved and completed winding up, or has converted to a nonfiling association other than a limited liability partnership, there is no further reason for information about it to appear in the records of the department. This section thus requires delivery of a statement of withdrawal for the purpose of removing the association from the rolls of active associations.
Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

“association”
“department”
“foreign association”
“jurisdiction of formation”
“limited liability partnership”
“nonfiling association”
“registered foreign association”
“sign”
“type”

§ 418. Transfer of registration.

(a) General rule. — If a registered foreign association merges into a nonregistered foreign association or converts to a foreign association required to register with the department to do business in this Commonwealth, the association shall deliver to the department for filing an application for transfer of registration. The application shall be signed by the surviving or converted association and state all of the following:

(1) The name of the association before the merger or conversion.

(2) The type of association it was before the merger or conversion.

(3) The name of the applicant association and, if the name does not comply with section 202 (relating to requirements for names generally), an alternate name adopted in accordance with section 414(a) (relating to noncomplying name of foreign association).

(4) The type of association of the applicant association and its jurisdiction of formation.

(5) If different than the information for the foreign association before the merger or conversion, all of the following information regarding the applicant association:

(i) The street and mailing addresses of the principal office of the association and, if the law of the association’s jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office.

(ii) Subject to section 109 (relating to name of commercial registered office provide in lieu of registered address), the address of its registered office in this Commonwealth.
(b) Effect of application. – When an application for transfer of registration takes effect, the registration of the registered foreign association to do business in this Commonwealth is transferred without interruption to the association into which it has merged or to which it has been converted.

(c) Cross references. – See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-510.

The purpose of this section is to clarify the status of the registered foreign association in the public records of the Department of State. A filing under this section has the two-fold effect of canceling the authority of the foreign association to do business in Pennsylvania while at the same time reregistering it as the new type of foreign association. If the reregistered foreign association subsequently wishes to terminate its registration to do business, it may do so under 15 Pa.C.S. § 419.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

“association”
“department”
“foreign association”
“jurisdiction of formation”
“nonregistered foreign association”
“principal office”
“registered foreign association”
“sign”
“type”

§ 419. Termination of registration.

(a) General rule. – The department may terminate the registration of a registered foreign association in the manner provided in subsections (b) and (c) if the department finds that the association:

(1) has not amended its registration when required by section 413 (relating to amendment of foreign registration statement); or
(2) has been administratively, voluntarily or involuntarily dissolved under the law of its jurisdiction of formation.

(b) Notice by department. – The department may terminate the registration of a registered foreign association by taking both of the following actions:

(1) Filing a notice of termination or noting the termination in the records of the department.

(2) Delivering a copy of the notice or the information in the notation to the association’s registered office or, if the association does not have a registered office, to the association’s principal office.

(c) Contents. – The notice shall state, or the information in the notation under subsection (b) shall include, both of the following:

(1) The effective date of the termination, which shall be no less than 60 days after the date the department delivers the copy.

(2) The grounds for termination under subsection (a).

(d) Effectiveness or cure. – The registration of a registered foreign association to do business in this Commonwealth shall cease on the effective date of the notice of termination or notation under subsection (b), unless before that date the association cures each ground for termination stated in the notice or notation. If the association cures each ground, the department shall file a record stating as such.

Committee Comment (2014):

This section was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-511.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

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

“association”
“department”
“jurisdiction of formation”
“principal office”
“registered foreign association”

Subpart B.
§ 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 Part I (relating to preliminary provisions) or in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

***

“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), Chapter 3 (relating to entity transactions) 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] a statement filed under Chapter 3 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.

***

[“Dissenters rights.” The rights and remedies provided by Subchapter D of Chapter 15 (relating to dissenters rights).]

***

“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 3 (relating to entity transactions) or 19 (relating to fundamental changes) with the approval of the shareholders shall constitute a distribution for the purposes of this subpart.

***

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

* * *

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

* * *

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

* * *

[“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.]

* * *

["Registered corporation." A corporation defined in section 2502 (relating to registered corporation status).]

* * *

Amended Committee Comment (2014):

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. The articles also include any statements filed under 15 Pa.C.S. Ch. 3 with respect to a transaction under that chapter (i.e., a merger, interest exchange, conversion, division, or domestication). A statement with respect to continuation of procedure filed under Section 107 of the General Association Act of 1988 (15 P.S. § 20107) is made part of the “articles” as defined in this section by Section 107(c) (15 P.S. § 20107(c)).
“Board of directors.” Under 15 Pa.C.S. § 1731(c), references to 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. That is a different approach from the law with respect to unincorporated entities. The statutory paradigm for unincorporated entities as developed by the Uniform Law Commission is to view the existence of the entity as never formally terminating even though its activities have ceased, and thus the statutes governing those entities do not provide expressly for a final filing that terminates the existence of the entity.

“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. 3 or 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 3 or 19. The GAA Amendments Act of 2013 added the phrase “or allocation of assets or liabilities” in recognition of the fact that some transactions 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. § 367 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.

§ 1105. Restriction on equitable relief.

A shareholder of a business corporation shall not have any right to obtain, in the absence of fraud or fundamental unfairness, an injunction against any proposed plan or amendment of articles authorized under any provision of this [subpart] title, nor any right to claim the right to valuation and payment of the fair value of his shares because of the plan or amendment, except that he may dissent and claim such payment if and to the extent provided in Subchapter D of Chapter 15 (relating to dissenters rights) where this [subpart] title expressly provides that dissenting shareholders shall have the rights and remedies provided in that subchapter. Absent fraud or fundamental unfairness, the rights and remedies so provided shall be exclusive. Structuring a plan or transaction for the purpose or with the effect of eliminating or avoiding the application of dissenters rights is not fraud or fundamental unfairness within the meaning of this section.

Amended Committee Comment (2014):

The last sentence, together with 15 Pa.C.S. §§ 315 (nature of transactions) and 1904 (de facto transaction doctrine abolished), are intended to make Pennsylvania an attractive situs for business organization by assuring the incorporators and shareholders that the Pennsylvania courts will not be authorized to recharacterize a transaction on a form-over-substance basis. The goal of the 1988 BCL is to reject as emphatically as possible that practice of the 1940's and 1950's, which gave Pennsylvania law a reputation of unpredictability and which was incompatible with modern business and financial practices.
The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”
“articles”
“business corporation”
“dissenters rights”
“shareholder”
“shares”

§ 1106. Uniform application of subpart.

(a) General rule.—Except as provided in subsection (b), Part I (relating to preliminary provisions) and this subpart [and its amendments] are intended to provide uniform rules for the government and regulation of the affairs of business corporations and of their officers, directors and shareholders regardless of the date or manner of incorporation or qualification, or of the issuance of any shares thereof.

(b) Exceptions.—

(1) Unless expressly provided otherwise in any amendment to this subpart, the amendment shall take effect only prospectively.

(2) An existing corporation lawfully using a name or, as part of its name, a word that could not be used as or included in the name of a corporation subsequently incorporated or qualified under this subpart may continue to use the name or word as part of its name if the use or inclusion of the word or name was lawful when first adopted by the corporation in this Commonwealth.

(3) Subsection (a) shall not adversely affect the rights specifically provided for or saved in this [subpart] title. See:

The provisions of section 341(c) (relating to interest exchange authorized).

The provisions of section 351(c) (relating to conversion authorized).

The transitional approval requirements set forth in section 363(d) (relating to approval of division).

The provisions of section 1524(e) (relating to transitional provision).

The provisions of section 1554(c) (relating to transitional provision).

The cumulative voting rights set forth in section 1758(c)(2) (relating to cumulative voting).
The special voting requirements specified in section 1931(h) (relating to special requirements).

The provisions of section 1952(g) and (h) (relating to proposal and adoption of plan of division).

The provisions of section 2301(d) (relating to transitional provisions).

The provisions of section 2541(a)(2) and (3) and (c) (relating to application and effect of subchapter).

The provisions of section 2543(b)(1) and (2) (relating to exceptions generally).

The provisions of section 2551(b)(3)(i), (5) and (6) (relating to exceptions).

The provisions of section 2553(b)(2) (relating to exception).

(4) Except as otherwise expressly provided in the articles, a domestic corporation for profit that, on September 30, 1989, was not subject to the Business Corporation Law of 1933 and that thereafter becomes subject to this subpart by operation of law shall be deemed to have in effect articles that provide that the following provisions of this subpart shall not be applicable to the corporation:

(i) Section 1726(a)(1) (relating to removal by the shareholders) insofar as it provides a statutory right on the part of shareholders to remove directors from office without assigning any cause.

(ii) Section 1755(b)(2) (relating to special meetings).

(iii) Section 1912(a)(2) (relating to proposal of amendments).

Amended Committee Comment (2014):

Under the prior statutory law an argument could be made that corporate rights had a vintage concept, related to the statutory law in effect at the time the shares were issued. The application of such a practice in the real world is wholly impractical, and has seldom been seriously advanced. Section 3 of Article X of the Pennsylvania Constitution of 1968, originally adopted November 8, 1966, expressly authorizes the General Assembly to legislate in this area and this section seeks to exercise that authority to the fullest extent possible. Thus the currently-effective text of Title 15 will be applicable to a transaction affecting shares issued prior to the adoption of that text, subject only “to the constitutional requirements of due process, equal protection of the laws, and the prohibition against impairing contracts.” Report of Committee No. 13 on Corporations, 34 Pa. B.A.Q. 315, 319-20 (1963) (accompanying the proposed text of the 1966 constitutional amendment).
The listing of a particular section in the table in subsection (b)(3) 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 list was last amended contained exceptions to the general rule of uniform application in subsection (a).

Paragraph (b)(4) is applicable to public utility corporations (which were made subject to the 1988 BCL by the General Association Act of 1988) and insurance corporations (which were made subject to the 1988 BCL by the GAA Amendments Act of 1990). See 15 Pa.C.S. § 1102.

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

“articles”
“business corporation”
“directors”
“domestic corporation for profit”
“issuance” (see “issue”)
“officer”
“shareholder”
“shares”

Chapter 13
Incorporation

Subchapter A
Incorporation Generally

§ 1303. Corporate name. (Repealed.)

§ 1304. Required name changes by senior corporations. (Repealed.)

§ 1305. Reservation of corporate name. (Repealed.)

§ 1306. Articles of incorporation.

(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 3 (relating to entity transactions), 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 provision of those chapters that
otherwise provides that the articles shall not relax or be inconsistent with any provision on a
specified subject.

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Amended Committee Comment (2014):

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 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).

For rules on when articles of incorporation containing a delayed effective date will be
effective, see 15 Pa.C.S. 136(c).

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. §§ 329 and 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 3 and 13 through 19. 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
§ 1554
Subchapter 15D (see § 1571(f))
Subchapter 17A (see § 1701(b))
Subchapter 17B (see § 1718)
§ 1726(a)
§ 1746
§ 1766(c)
§ 1767

The effect of limiting the rule of subsection (b) to Chapters 3 and 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 3 and 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 3. See 15 Pa.C.S. § 316(c). 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”
- “directors”
- “incorporator”
- “issue”
- “officer”
- “preference”
- “registered office”
- “relax”
- “shareholders”
- “shares”

Subchapter B
Revival

§ 1341. Statement of revival.

* * *

(b) Contents of statement.—The statement of revival shall be executed in the name of the forfeited or expired corporation and shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), set forth:
(3) The name that the corporation adopts as its new name if the adoption of a
new name is required by section [1304] 207 (relating to required name changes by
senior [corporations] associations).

(d) Cross [reference] references.--See [section] sections 134 (relating to docketing
statement) and 135 (relating to requirements to be met by filed documents).

[No change to Committee Comment (1988).]

Chapter 15
Corporate Powers, Duties and Safeguards

Subchapter D
Dissenters Rights

§ 1571. Application and effect of subchapter.

(a) General rule.—Except as otherwise provided in subsection (b), any shareholder (as
defined in section 1572 (relating to definitions)) of a business corporation shall have the
[right to dissent from, and to obtain payment of the fair value of his shares in the event
of, any corporate action, or to otherwise obtain fair value for his shares,] rights and
remedies provided in this subchapter in connection with a transaction under this title only
where this [part] title expressly provides that a shareholder shall have the rights and remedies
provided in this subchapter. See:

Section 329(c) (relating to special treatment of interest holders).
Section 333 (relating to approval of merger).
Section 343 (relating to approval of interest exchange).
Section 353 (relating to approval of conversion).
Section 363 (relating to approval of division).
Section 1906(c) (relating to dissenters rights upon special treatment).
[Section 1930 (relating to dissenters rights).
Section 1931(d) (relating to dissenters rights in share exchanges).]
Section 1932(c) (relating to dissenters rights in asset transfers).

[Section 1952(d) (relating to dissenters rights in division).

Section 1962(c) (relating to dissenters rights in conversion).]

Section 2104(b) (relating to procedure).

Section 2324 (relating to corporation option where a restriction on transfer of a security is held invalid).

Section 2325(b) (relating to minimum vote requirement).

Section 2704(c) (relating to dissenters rights upon election).

Section 2705(d) (relating to dissenters rights upon renewal of election).

Section 2904(b) (relating to procedure).

Section 2907(a) (relating to proceedings to terminate breach of qualifying conditions).

Section 7104(b)(3) (relating to procedure).

(b) Exceptions.—

(1) Except as otherwise provided in paragraph (2), the holders of the shares of any class or series of shares shall not have the right to dissent and obtain payment of the fair value of the shares under this subchapter if, on the record date fixed to determine the shareholders entitled to notice of and to vote at the meeting at which a plan specified in any of section 333, 343, 353, 363 or [1930, 1931(d),] 1932(c) [or 1952(d)] is to be voted on or on the date of the first public announcement that such a plan has been approved by the shareholders by consent without a meeting, the shares are either:

(i) listed on a national securities exchange [or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.] registered under Section 6 of the Exchange Act; or

(ii) held beneficially or of record by more than 2,000 persons.

(2) Paragraph (1) shall not apply to and dissenters rights shall be available without regard to the exception provided in that paragraph in the case of:

(i) (Repealed.)
(ii) Shares of any preferred or special class or series unless the articles, the plan or the terms of the transaction entitle all shareholders of the class or series to vote thereon and require for the adoption of the plan or the effectuation of the transaction the affirmative vote of a majority of the votes cast by all shareholders of the class or series.

(iii) Shares entitled to dissenters rights under section 329(d) or 1906(c) (relating to dissenters rights upon special treatment).

(3) The shareholders of a corporation that acquires by purchase, lease, exchange or other disposition all or substantially all of the shares, property or assets of another corporation by the issuance of shares, obligations or otherwise, with or without assuming the liabilities of the other corporation and with or without the intervention of another corporation or other person, shall not be entitled to the rights and remedies of dissenting shareholders provided in this subchapter regardless of the fact, if it be the case, that the acquisition was accomplished by the issuance of voting shares of the corporation to be outstanding immediately after the acquisition sufficient to elect a majority or more of the directors of the corporation.

(c) Grant of optional dissenters rights.—The bylaws or a resolution of the board of directors may direct that all or a part of the shareholders shall have dissenters rights in connection with any corporate action or other transaction that would otherwise not entitle such shareholders to dissenters rights. See section 317 (relating to contractual dissenters rights in entity transactions).

(d) Notice of dissenters rights.—Unless otherwise provided by statute, if a proposed corporate action that would give rise to dissenters rights under this subpart is submitted to a vote at a meeting of shareholders, there shall be included in or enclosed with the notice of meeting:

(1) a statement of the proposed action and a statement that the shareholders have a right to dissent and obtain payment of the fair value of their shares by complying with the terms of this subchapter; and

(2) a copy of this subchapter.

(e) Other statutes.—The procedures of this subchapter shall also be applicable to any transaction described in any statute other than this part that makes reference to this subchapter for the purpose of granting dissenters rights.

(f) Certain provisions of articles ineffective.—This subchapter may not be relaxed by any provision of the articles.

(g) Computation of beneficial ownership.—For purposes of subsection (b)(1)(ii), shares that are held beneficially as joint tenants, tenants by the entireties, tenants in common
or in trust by two or more persons, as fiduciaries or otherwise, shall be deemed to be held beneficially by one person.

(h) Cross references.—See [sections 1105 (relating to restriction on equitable relief), 1904 (relating to de facto transaction doctrine abolished), 1763(c) (relating to determination of shareholders of record) and 2512 (relating to dissenters rights procedure)].:

Section 315 (relating to nature of transactions).
Section 1105 (relating to restriction on equitable relief).
Section 1763(c) (relating to determination of shareholders of record).
Section 2512 (relating to dissenters rights procedure).

Amended Committee Comment (2014):

The procedures for the exercise of dissenters rights in Subchapter 15D are patterned generally after the dissenters rights provisions of Chapter 13 of the Model Business Corporation Act.

The provision of the 1933 BCL regarding the elimination of dissenters rights with respect to listed or widely-held shares in certain fundamental transactions is continued with some modifications by subsection (b)(1).

The failure of a dissenter to institute court proceedings under this subchapter within a specified period continues to operate as an acceptance of the valuation proposed by the corporation.

The relationship with the savings provision of the statute (15 Pa.C.S. § 1105) is clarified by expressly providing that the existence of dissenters rights does not bar an injunction against a plan or amendment of articles if the court finds fraud or fundamental unfairness present. Cf., In re Jones & Laughlin Steel Corp., 488 Pa. 524, 412 A.2d 1099 (1980).

The table of sections in subsection (a) is not intended to have independent substantive effect. It has been included for purposes of reference and merely collects all those sections that at the time the list was last amended provided for dissenters rights.

The first sentence of subsection (a), however, is intended to have independent substantive effect. It is intended to be read with 15 Pa.C.S. § 1105 to say that statutory dissenters rights are available only where expressly conferred by another statutory provision, and in this sense is a limitation on the creation of additional dissenters rights. In addition, it operates as a limitation on the elimination of dissenters rights because subsection (f) protects it from being relaxed by a provision in the articles. An articles provision, for example, that purported to make 15 Pa.C.S. § 333 (which confers dissenters rights in the context of mergers) inapplicable to the corporation, although not prohibited by the express terms of § 333, would have been ineffective under subsection (f) as an attempt to relax subsection (a).
The definition of "shareholder" in 15 Pa.C.S. § 1572 which is referred to in the first sentence of subsection (a) includes certain beneficial owners. Although that definition is not applicable outside of Subchapter 15D, the effect of the first sentence of subsection (a) is to confer dissenters rights on the beneficial owners included within the definition of "shareholder" in 15 Pa.C.S. § 1572 wherever the 1988 BCL expressly confers dissenters rights on shareholders.

The GAA Amendments Act of 2001 added the reference in the lead-in paragraph of subsection (b)(1) to the date of the first public announcement that a plan has been approved by written consent of the shareholders. Without that reference, the language of subsection (b)(1) could have been read incorrectly to suggest that the "market-out" in that subsection was applicable only when a formal shareholders meeting was held to approve a plan.

The GAA Amendments Act of 2001 also added the concept of beneficial ownership in subsection (b)(1)(ii) and the explanation in subsection (g) of how that concept is to be applied. The Committee concluded that, with the increasing use of central depositories that hold shares in "street name," the number of record owners is no longer a good indication of the liquidity of the market for a security. 15 Pa.C.S. § 1763(c) provides a procedure that can help a corporation to determine the number of beneficial owners of its shares. The list of nonobjecting beneficial owners that is required to be supplied under Rule 14b-1(b)(3) of the Securities and Exchange Commission will also help a corporation compute whether it has the requisite number of beneficial owners.

The GAA Amendments Act of 2001 repealed former subsection (b)(2)(i) which provided that the market out would not be applicable, and thus that holders of liquid shares would be entitled to dissenters rights, where shares were converted by a plan into something other than shares and money. Typically, shares of a public company not converted into shares or money will be converted into some form of debt security of the surviving acquired corporation or the acquiring corporation. The Committee concluded that the market for control of public companies is sufficiently liquid and efficient that it was not necessary to provide an exception to the market out in that instance.

The GAA Amendments Act of 2001 added the references to "series" of shares in subsection (b)(2)(ii) to avoid the possibility that the mere title by which a group of shares is designated will control the substantive result under that provision. Where there are three series of preferred shares, for example, each of the three series will be treated independently; so that if only two series are given class votes on a plan, the third series will have dissenters rights. Likewise, if a class of preferred shares is given a class vote, but the class includes separate series that are not given separate class votes, then the shares of each series will be entitled to dissenters rights; this will be the case even if a majority of the shares of each series votes in favor because the separate class votes of each series were not "required" for the adoption of the plan.

In subsection (b)(2)(ii) the statutory voting requirement is conformed to the general 1988 BCL approach which excludes abstentions from the negative vote total. Subsection (b)(3) repeals the "mouse-swallows-the-lion" provision of Section 311F of the 1933 BCL and
is further intended to overrule the suggestion in footnote seven of *Terry v. Penn Central Corp.*, 668 F.2d 188, 194 (3d Cir. 1981), that extra-statutory dissenters rights might be made available depending on the relative sizes of the parties to a fundamental transaction. It is intended that no common law dissenters rights of any type shall have survived the enactment of the 1988 BCL. *See also* the last sentence of 15 Pa.C.S. § 1105.

Subsection (c) permits the bylaws or the board of directors to confer dissenters rights even though they would not be required by the 1988 BCL. Under 15 Pa.C.S. § 1504(c), the provision of the bylaws conferring nonstatutory dissenters rights may also be set forth in the articles. Under 15 Pa.C.S. § 1731(a)(2), the grant of nonstatutory dissenters rights may be made by a duly authorized committee of the board of directors if the transaction is not to be submitted to the shareholders for action, subject to compliance by the committee with any procedure applicable to action by the full board.

The statutes referred to in subsection (e) include 7 P.S. § 1222 (banks).

In addition to its application in the context of subsection (a) discussed above, subsection (f) also protects the procedural provisions of Subchapter 15D from being relaxed in the articles. *Cf.* 15 Pa.C.S. § 1306(b).

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

"articles"
"board of directors"
"business corporation"
"bylaws"
"casting a vote" (*see* "voting")
"dissenters rights"
"entitled to vote"
"issue"
"obligations"
"relax"
"shareholder"
"shares"

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

"corporation"
"fair value"

§ 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*] deliver 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 approved by the shareholders by less than unanimous consent
without a meeting or is taken without the need for approval by the shareholders, the
corporation shall [send] deliver 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] delivery of
the notice.

Amended Committee Comment (2014):

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 prior law.

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 may 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 opens 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, 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. – 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 transaction
under Chapter 3 (relating to entity transactions) or 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.

(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 (2014):

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 transactions that may be conducted under Chapter 3 are mergers, interest exchanges, conversions, divisions, and domestications. The transactions that may be conducted under Chapter 19 are amendments to the articles, sales of all or substantially all assets, and dissolution.

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.
Subchapter E
Shareholders

§ 1757. Action by shareholders.

(a) General rule.—Except as otherwise provided in this [subpart] title or in a bylaw adopted by the shareholders, whenever any corporate action is to be taken by vote of the shareholders of a business corporation, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by all shareholders entitled to vote thereon and, if any shareholders are entitled to vote thereon as a class, upon receiving the affirmative vote of a majority of the votes cast by the shareholders entitled to vote as a class.

(b) Changes in required vote.—Whenever a provision of this [subpart] title requires a specified number or percentage of votes of shareholders or of a class of shareholders for the taking of any action, a business corporation may prescribe in a bylaw adopted by the shareholders that a higher number or percentage of votes shall be required for the action. See sections 1504(d) (relating to amendment of voting provisions) and 1914(e) (relating to amendment of voting provisions).

(c) Expenses. – Unless otherwise restricted in the articles, the corporation shall pay the reasonable expenses of solicitation of votes, proxies or consents of shareholders by or on behalf of the board of directors or its nominees for election to the board, including solicitation by professional proxy solicitors and otherwise, and may pay the reasonable expenses of a solicitation by or on behalf of other persons.

(d) Cross reference. – See section 321 (relating to approval by business corporation).

Amended Committee Comment (2014):

Adoption of a bylaw under subsection (b) increasing the required vote for an action will require the minimum vote applicable at the time for an amendment of the bylaws and not the increased vote to be required in the bylaw.

Subsection (c) was intended as a codification of existing law and practice at the time it was adopted in 1988.

The definition of voting or “casting a vote” in 15 Pa.C.S. § 1103 provides that an abstention is not a vote.

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

Subsection (d) is a reminder that rules for shareholder approval of fundamental transactions under Chapter 3 are found in 15 Pa.C.S. § 321.
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”
“except as otherwise provided” (see “unless otherwise provided”)
“shareholders”
“shares”
“unless otherwise restricted”

§ 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 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 shareholders who would be entitled to vote at a meeting for such purpose. The consent or consents must be filed with the 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 minutes of the proceedings of the shareholders.

(c) Effectiveness of action by partial consent. – An action taken pursuant to subsection (b) to approve a transaction under Chapter 3 (relating to entity transactions) 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. Any other action may become effective immediately, but prompt notice that the action has been taken shall be given to each shareholder entitled to vote thereon that has not consented. This subsection may not be relaxed by any provision of the articles.

(d) Cross references. – See sections 1702 (relating to manner of giving notice) and 2524 (relating to consent of shareholders in lieu of meeting).

Amended Committee Comment (2014):

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). In the case of action approving a plan under 15 Pa.C.S. Ch. 3, the notice will provide 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 Association Transactions Act limited the circumstances in which notice under subsection (c) must be given ten days before an action is effective just to approval of transactions under 15 Pa.C.S. Ch. 3. Notice of other actions (such as election of directors or amendment of the articles or bylaws) is also required, but in those cases the notice may be given after the action has become effective.

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 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 with respect to when consents may be signed. 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 provided that this section and as much of the GAA as necessary to make this section 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). 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”
The following terms used in this section are defined in 15 Pa.C.S. § 102:

“voting”

“action”

“record form”

“signed”

Chapter 19

[Fundamental Changes]

Amendments, Sale of Assets and Dissolution

Subchapter A

Preliminary Provisions

§ 1901. Omission of certain provisions from filed plans. (Repealed.)

§ 1902. Statement of termination.

(a) General rule. – If [a statement with respect to shares,] articles of amendment [or
articles of merger, consolidation, exchange, division or conversion of a business
corporation or to which it is a party] have been filed in the [Department of State]
department prior to the termination of the amendment [or plan] pursuant to provisions
therefor set forth in the resolution or petition relating to the amendment [or in the plan], the
termination shall not be effective unless the corporation shall, prior to the time the amendment
[or plan] is to become effective, file in the department a statement of termination. The
statement of termination shall be [executed] signed by the corporation that filed the
amendment [or by each corporation that is a party to the plan, unless the plan permits
termination by less than all of the corporations, in which case the statement shall be
executed on behalf of the corporation or corporations exercising the right to terminate,]
and shall set forth:

(1) A copy of the [statement with respect to shares,] articles of amendment [or
articles of merger, consolidation, exchange, division or conversion relating to the
amendment or plan that is terminated].

(2) A statement that the amendment [or plan] has been terminated in accordance
with the provisions therefor set forth therein.

(b) Cross references.--See sections 134 (relating to docketing statement) and 138
(relating to statement of correction).

Amended Committee Comment (2014):
The following terms used in this section are defined in 15 Pa.C.S. § 1103:

- “amendment”
- “business corporation”
- “department”

§ 1904. De facto transaction doctrine abolished.

The doctrine of de facto mergers, consolidations and other fundamental transactions is abolished and the rules laid down by Bloch v. Baldwin Locomotive Works, 75 Pa. D. & C. 24 (C.P. Del. Cty. 1950), and Marks v. The Autocar Co., 153 F.Supp. 768 (E.D. Pa. 1954), and similar cases are overruled. A transaction that in form satisfies the requirements of this [subpart] title may be challenged by reason of its substance only to the extent permitted by section 1105 (relating to restriction on equitable relief).

Amended Committee Comment (2014):

The prior abolition of the de facto merger doctrine is reaffirmed and expanded by this section which adopts the Delaware principle that a transaction that in form satisfies the requirements of the statute may be challenged by reason of its substance only if fraud or fundamental unfairness is shown. See 15 Pa.C.S. § 315.

No provision comparable to new 15 Pa.C.S. § 1904 is required with respect to nonprofit corporations since members of a nonprofit corporation, by reason of the absence of any expectation of gain from the activities of the corporation, have never been considered to enjoy the vested rights that triggered common law dissenters rights.

§ 1905. Proposal of fundamental transactions.

Where any provision of this chapter requires that an amendment of the articles[, a plan] or the dissolution of a business corporation be proposed or approved by action of the board of directors, that requirement shall be construed to authorize and be satisfied by the written agreement or consent of all of the shareholders of the corporation entitled to vote thereon.

Amended Committee Comment (2014):

This section makes it clear that a unanimous vote by the shareholders constitutes the only approval needed for a transaction under this chapter. If that vote is obtained, the separate approval by the board of directors that would otherwise be required under 15 Pa.C.S. §§ 1914(a) (amendments) or 1974(a) (dissolution) is not required.

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

- “articles”
§ 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 if the plan is approved 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

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

(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.
(c.2) Notice to shareholders.—Any notice to shareholders of a meeting called to act on a plan that provides for special treatment must state that the plan provides for special treatment. The notice must identify those shareholders receiving special treatment unless the notice is accompanied by either a summary of the plan that includes that information or the full text of 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 disparate treatment of certain persons).] (Reserved.)

(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.

(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]

(1.1) a plan of asset transfer adopted under section 1932(b) (relating to voluntary transfer of corporate assets); or

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

Amended Committee Comment (2014):

This section applies only to a “plan” as defined in subsection (e), i.e., an amendment, plan of asset transfer, or resolution recommending dissolution. 15 Pa.C.S. § 329 is similar to this section and applies to the types of plans that may be adopted under Chapter 3, i.e., a plan of merger, interest exchange, conversion, division, or domestication.

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”
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.

§ 1908. Submission of matters to shareholders.

A business corporation may agree, in record form, to submit an amendment or other matter to its shareholders whether or not the board 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.

Amended Committee Comment (2014):

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 an amendment of the articles 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”
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.

This section is similar to 15 Pa.C.S. § 320 which applies to the submission to interest holders for approval of plans relating to transactions under Chapter 3. This section is not limited to plans relating to fundamental transactions and includes any matter that is submitted to shareholders for approval. It includes, for example, approval by the shareholders of the issuance of new shares when required by stock exchange rules such as Section 312.03 of the NYSE Listed Company Manual.

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

- "amendment"
- "board of directors"
- "business corporation"
- "shareholders"

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

Subchapter C
Merger[, Consolidation, Share Exchanges] Liabilities and Sale of Assets

§ 1921. Merger and consolidation authorized. (Repealed.)

§ 1922. Plan of merger or consolidation. (Repealed.)

§ 1923. Notice of meeting of shareholders. (Repealed.)

§ 1924. Adoption of plan. (Repealed.)

§ 1925. Authorization by foreign corporations. (Repealed.)

§ 1926. Articles of merger or consolidation. (Repealed.)

§ 1927. Filing of articles of merger or consolidation. (Repealed.)

§ 1928. Effective date of merger or consolidation. (Repealed.)

§ 1929. Effect of merger or consolidation. (Repealed.)

§ 1930. Dissenters rights. (Repealed.)
§ 1931. Share exchanges. (Repealed.)

§ 1932. Voluntary transfer of corporate assets

(a) Shareholder approval not required.—The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a business corporation, when made in the usual and regular course of the business of the corporation, or for the purpose of relocating all, or substantially all, of the business of the corporation, may be made upon such terms and conditions, and for such consideration, as shall be authorized by its board of directors. Except as otherwise restricted by the bylaws, authorization or consent of the shareholders shall not be required for such a transaction.

(b) Shareholder approval required.—

(1) A sale, lease, exchange or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a business corporation, if not made pursuant to subsection (a) or (d) or to section 1551 (relating to distributions to shareholders) or Subchapter [D] F of Chapter 3 (relating to division), may be made only pursuant to a plan of asset transfer in the manner provided in this subsection. A corporation selling, leasing or otherwise disposing of all, or substantially all, its property and assets is referred to in this subsection and in subsection (c) as the "transferring corporation."

(2) The property or assets of a direct or indirect subsidiary corporation that is controlled by a parent corporation shall also be deemed the property or assets of the parent corporation for the purposes of this subsection and of subsection (c). A merger or consolidation to which such a subsidiary corporation is a party and in which a third party acquires direct or indirect ownership of the property or assets of the subsidiary corporation constitutes an "other disposition" of the property or assets of the parent corporation within the meaning of that term as used in this section.

(3) The plan of asset transfer shall set forth the terms and conditions of the sale, lease, exchange or other disposition or may authorize the board of directors to fix any or all of the terms and conditions, including the consideration to be received by the corporation therefor. The plan may provide for the distribution to the shareholders of some or all of the consideration to be received by the corporation, including provisions for 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). It shall not be necessary for the person acquiring the property or assets of the transferring corporation to be a party to the plan. Any of the terms of the plan 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 the corporation or a representative of the corporation.
(4) The plan of asset transfer shall be proposed and adopted, and may be amended after its adoption and terminated, by the transferring corporation in the manner provided in [this subchapter] Chapter 3 (relating to entity transactions) for the proposal, adoption, amendment and termination of a plan of merger, except section [1924(b) (relating to adoption by board of directors)] 321(d) (relating to approval by business corporation). The procedures of [this subchapter] Chapter 3 shall not be applicable to the person acquiring the property or assets of the transferring corporation. There shall be included in, or enclosed with, the notice of the meeting of the shareholders of the transferring corporation 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 (c).

(5) In order to make effective the plan of asset transfer so adopted, it shall not be necessary to file any articles or other documents in the Department of State.

(c) Dissenters rights in asset transfers.—

(1) If a shareholder of a transferring corporation that adopts a plan of asset transfer objects to the plan and complies with Subchapter D of Chapter 15, the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided, if any.

(2) Paragraph (1) shall not apply to a sale pursuant to an order of court having jurisdiction in the premises or a sale pursuant to a plan of asset transfer that requires that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale or to a liquidating trust.

(3) See sections 1906(c) (relating to dissenters rights upon special treatment) and 2537 (relating to dissenters rights in asset transfers).

(d) Exceptions.—Subsections (b) and (c)(1) shall not apply to a sale, lease, exchange or other disposition of all, or substantially all, of the property and assets of a business corporation:

(1) that directly or indirectly owns all of the outstanding shares of another corporation to the other corporation if the voting rights, preferences, limitations or relative rights, granted to or imposed upon the shares of any class of the parent corporation are not altered by the sale, lease, exchange or other disposition;

(2) when made in connection with the dissolution or liquidation of the corporation, which transaction shall be governed by the provisions of Subchapter F (relating to voluntary dissolution and winding up) or G (relating to involuntary liquidation and dissolution), as the case may be; or
(3) when made in connection with a transaction pursuant to which all the assets sold, leased, exchanged or otherwise disposed of are simultaneously leased back to the corporation.

(e) Mortgage.—A mortgage, pledge, grant of a security interest or dedication of property to the repayment of indebtedness (with or without recourse) shall not be deemed a sale, lease, exchange or other disposition for the purposes of this section.

(f) Restrictions.—This section shall not be construed to authorize the conversion or exchange of property or assets in fraud of corporate creditors or in violation of law.

(g) Presumption.—A corporation will conclusively be deemed not to have sold, leased, exchanged or otherwise disposed of all, or substantially all, of its property and assets, with or without goodwill, if the corporation or any direct or indirect subsidiary controlled by the corporation retains a business activity that represented at the end of its most recently completed fiscal year, on a consolidated basis, at least:

(1) 25% of total assets; and

(2) 25% of either:

(i) income from continuing operations before taxes; or

(ii) revenues from continuing operations.

(h) Cross reference. – See section 315 (relating to nature of transactions).

Amended Committee Comment (2014):

The application of the sale of asset procedures and restrictions to parent-subsidiary systems is clarified in subsection (b)(2).

Because the term “action” is defined in 15 Pa.C.S. § 1103 to include failure to act, the outside facts that subsection (b)(3) 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 reference in subsection (b)(4) to the merger procedures of Chapter 3 is intended to incorporate also the procedural provisions of Title 15 applicable to a transaction governed by the merger provisions of Chapter 3. Because subsection (b)(4) makes the merger provisions of Chapter 3 applicable only to the transferring corporation, no notice is required by Title 15 to be given to the shareholders of the party to an asset transfer that is the acquiror.

As subsection (b)(5) makes clear, it is not necessary to file the plan of asset transfer in the Department of State. That provision, of course, does not affect the need to make other types of filings, such as amendments to UCC financing statements, deeds conveying real
In sales of assets, dissenters' rights are not provided for in transactions that (i) are on
terms requiring that the net proceeds of the sale be distributed to the shareholders within one
year, or (ii) are made in connection with a dissolution or liquidation of the corporation
governed by 15 Pa.C.S. Subchs. F or G. Dissenters' rights conferred by subsection (c)(1) are
subject to the "statutory market" exception of 15 Pa.C.S. § 1571(b)(1), as was the case under
prior law. Subsection (c)(1) is not applicable to a registered corporation. See 15 Pa.C.S. §
2537. The cross reference to 15 Pa.C.S. § 1906(c) in subsection (c)(3) is a reminder that
dissenters' rights may also be available in a transaction that involves special treatment.

References in subsection (e) to the treatment of security interests and the dedication of
property to the repayment of indebtedness are intended as a codification of existing law.

Subsection (g) was added by the GAA Amendments Act of 2001 and was patterned after
Model Business Corporation Act § 12.02(a). The application of this bright-line safe-harbor
test should, in most cases, produce a clear result substantially in conformity with the better
case law.

If a corporation disposes of assets for the purpose of reinvesting the proceeds of the
disposition in substantially the same business in a somewhat different form (for example, by
selling the corporation's only plant for the purpose of buying or building a replacement plant),
the disposition and reinvestment should be treated together, so that the transaction should not
be deemed to leave the corporation without a significant continuing business activity.

The reference in subsection (g) to a direct or indirect subsidiary controlled by the
corporation has been added to the Model Act to conform to the existing policy in subsection
(b)(2) of treating a disposition of assets by such a subsidiary as a disposition by the
corporation.

If all or a large part of a corporation's assets are held for investment, the corporation
actively manages those assets, and it has no other significant business, for purposes of
subsection (g) the corporation should be considered to be in the business of investing in such
assets, so that a sale of most of those assets without a reinvestment should be considered a
sale that would leave the corporation without a significant continuing business activity. In
applying the 25% tests of subsection (g), an issue could arise if a corporation had more than
one business activity, one or more of which might be traditional operating activities such as
manufacturing or distribution, and another of which might be considered managing
investments in other securities or enterprises. If the activity constituting the management of
investments is to be a continuing business activity as a result of the active engagement of the
management of the corporation in that process, and the 25% tests were met upon the
disposition of the other businesses, shareholder approval would not be required.

It is intended that a determination as to whether the tests in subsection (g) have been met
may be based on financial statements prepared in accordance with 15 Pa.C.S. § 1551(c).
Subsection (g) is not intended to imply that a transaction that does not meet all of the tests in subsection (g) will necessarily require shareholder approval.

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.

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

- “action”
- “board of directors”
- “business corporation”
- “bylaws”
- “except as otherwise restricted” (see “unless otherwise restricted”)
- “preferences”
- “representative”
- “shareholder”
- “shares”
- “special treatment”

The term “court” used in this section is intended to be broader than the “court” as defined in 15 Pa.C.S. § 1103.

Subchapter D
[Division] (Reserved)

§ 1951. Division authorized. (Repealed.)

§ 1952. Proposal and adoption of plan of division. (Repealed.)

§ 1953. Division without shareholder approval. (Repealed.)

§ 1954. Articles of division. (Repealed.)

§ 1955. Filing of articles of division. (Repealed.)

§ 1956. Effective date of division. (Repealed.)

§ 1957. Effect of division. (Repealed.)

Subchapter E
[Conversion] (Reserved)

§ 1961. Conversion authorized. (Repealed.)
§ 1962. Proposal and adoption of plan of conversion. (Repealed.)

§ 1963. Articles of conversion. (Repealed.)

§ 1964. Filing of articles of conversion. (Repealed.)

§ 1965. Effective date of conversion. (Repealed.)

§ 1966. Effect of conversion. (Repealed.)

Subchapter F
Voluntary Dissolution and Winding Up

§ 1980. Dissolution by domestication. (Repealed.)

Chapter 21
Nonstock Corporations

Subchapter A
Preliminary Provisions

§ 2101. Application and effect of chapter.

(a) General rule. – This chapter shall be applicable to:

(1) A business corporation that elects to become a nonstock corporation in the
manner provided by this chapter.

(2) A domestic corporation for profit subject to Subpart D (relating to
cooperative corporations) organized on a nonstock basis.

(3) A domestic insurance corporation that is a mutual insurance company.

(b) Application to business corporations generally. – The existence of a provision of
this chapter shall not of itself create any implication that a contrary or different rule of law is
or would be applicable to a business corporation that is not a nonstock corporation. This
chapter shall not affect any statute or rule of law that is or would be applicable to a business
corporation that is not a nonstock corporation.

(c) Laws applicable to nonstock corporations. – Except as otherwise provided in this
chapter, Part I (relating to preliminary provisions) and this subpart shall be generally
applicable to all nonstock corporations. The specific provisions of this chapter shall control.
over the general provisions of Part I and this subpart. In the case of a nonstock corporation, references in this part to “shares,” “shareholder,” “share register,” “share ledger,” “transfer book for shares,” “number of shares entitled to vote” or “class of shares” shall mean memberships, member, membership register, membership ledger, membership transfer book, number of votes entitled to be cast or class of members, respectively. Except as otherwise provided in this article, a nonstock corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

Amended Committee Comment (2014):

In addition to its required application to mutual insurance companies under subsection (a)(3), this chapter authorizes generally the organization of domestic corporations for profit on a nonstock basis. The chapter is also needed to support Chapter 71, which provides, inter alia, for incorporation of for profit cooperative corporations on a nonstock basis.

Because subsection (c) provides that the provisions of this chapter control over the provisions of Part I, this chapter will control over the provisions of Chapter 3 regarding entity transactions.

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

“business corporation”
“domestic corporation for profit”
“domestic insurance corporation” (see “insurance corporation”)
“mutual insurance company”
“nonstock corporation”

Subchapter B
Powers, Duties and Safeguards

§ 2121. Corporate name of nonstock corporations.

(a) General rule.—The corporate name of a nonstock corporation may contain the word "mutual."

(b) Insurance names.—See section [1303(c)(1)(iii) (relating to corporate name)] 202(c)(1)(iii) (relating to requirements for names generally).

Chapter 23
Statutory Close Corporations

Subchapter A
Preliminary Provisions
§ 2301. Application and effect of chapter.

(a) General rule. – This chapter shall be applicable to a business corporation, other than a management corporation, that:

(1) had elected to become a close corporation subject to Chapter B of Article III of the act of May 5, 1933 (P.L. 364, No. 106), known as the Business Corporation Law of 1933 (relating to close corporations), and that, as of the effective date of this chapter, had not terminated that election in the manner prescribed by statute; or

(2) elects to become a statutory close corporation in the manner provided by this chapter.

(b) Application of business corporation law generally. – The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a statutory close corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a statutory close corporation.

(c) Laws applicable to statutory close corporations. – Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all statutory close corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, a statutory close corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(d) Transitional provisions. – The following provisions of this chapter shall not apply to a statutory close corporation existing on September 30, 1989, unless otherwise provided in a bylaw adopted in the manner provided by section 2332(b) (relating to procedure):

Section 2321(b) (relating to preemptive rights) insofar as such provision authorizes the shareholders to adopt a bylaw eliminating or limiting the preemptive rights provided in that subsection.

Section 2322 (relating to share transfer restrictions).

Section 2323 (relating to transfer of shares in breach of transfer restrictions). If section 2323 is not applicable to the corporation, transfer restrictions (including a restriction that is held not to be authorized by section 1529 (relating to transfer of securities; restrictions)) shall be enforced in the same manner as if this article had not been enacted.

Section 2325 (relating to sale option of estate of shareholder).

Section 2336 (relating to fundamental changes).

(e) Cross reference. – See the definition of “closely held corporation” in section 1103 (relating to definitions).
Amended Committee Comment (2014):

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 15 Pa.C.S. § 1103, regardless of their number of shareholders, but not all “closely held corporations” are statutory close corporations.

A number of nonconforming amendments are made to the close corporation provisions of the prior law, e.g., preserving preemptive rights and the issuance of stock certificates, each of which would have otherwise automatically disappeared in view of the changes made to the applicable provisions of other chapters of this subpart. This chapter is revised generally along the lines of the Statutory Close Corporation Supplement to the Model Business Corporation Act (1982). A definition of “minimum vote” is added (§ 2302), a statutory form of notice of technical close corporation status is required on share certificates which supersedes the various notices heretofore required (§§ 2308, 2321, 2332, 2337), shares of a close corporation are subject to a right of first refusal in the corporation or its shareholders, unless otherwise provided in the bylaws (§§ 2322, 2323), the estate of a deceased shareholder has a put at fair value to the corporation and the other shareholders (unless otherwise provided in the bylaws (§ 2325)), and any merger, consolidated or other fundamental change may not be effected unless approved by the statutory minimum vote (§ 2336).

Because subsection (c) provides that the provisions of this chapter control over the provisions of Part I, this chapter will control over the provisions of Chapter 3 regarding entity transactions. For example, the requirement of approval of certain actions by a “minimum vote” will control over the provisions in 15 Pa.C.S. Subch. 3B for approving transactions under Chapter 3.

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

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

“business corporation”
“bylaw”
“management corporation”
“shareholders”
“statutory close corporation”
“unless otherwise provided”

Chapter 25
Registered Corporations

Subchapter A
Preliminary Provisions
§ 2501. Application and effect of chapter.

(a) General rule.--Except as otherwise provided in the scope provisions of subsequent subchapters of this chapter, this chapter shall be applicable to any business corporation that is a registered corporation as defined in section 2502 (relating to registered corporation status).

(b) Laws applicable to registered corporations. – Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all registered corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, a registered corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(c) Effect of a contrary provision of the articles. –

(1) Except as provided in section 2521 (relating to call of special meetings of shareholders), the articles of a registered corporation may provide either expressly or by necessary implication that any one or more of the provisions of Subchapters B (relating to powers, duties and safeguards), C (relating to directors and shareholders) and D (relating to fundamental changes generally) shall not be applicable in whole or in part to the corporation.

(2) The articles of a registered corporation may provide that any one or more of the provisions of Subchapter E (relating to control transactions) and following of this chapter shall not be applicable in whole or in part to the corporation only if, to the extent and in the manner, expressly permitted by the subchapter the applicability of which is so affected. Where any provision of Subchapter E and following of this chapter permits the applicability of a subchapter to be varied by a provision of the articles, the applicability may be varied by an amendment of the articles only if, to the extent and in the manner, expressly permitted by the subchapter the applicability of which is so affected.

(d) Rights cumulative. – The rights, remedies, prohibitions and requirements provided in Subchapter E and following of this chapter shall be in addition to and not in lieu of any other rights, remedies, prohibitions or requirements provided by this subpart, the articles or bylaws of the corporation, any securities, option rights or obligations of the corporation or otherwise.

Amended Committee Comment (2014):

This chapter sets forth special rules applicable to business corporations having a class or series of voting shares registered under the Securities Exchange Act of 1934 or otherwise subject to the reporting obligations of Section 13 of the 1934 Act. The provisions of Subchapters B, C and D are designed to reduce the regulatory burden of state law on those companies, since they are already subject to substantial regulatory and disclosure requirements imposed by federal law and the demands of the capital markets, by providing that certain provisions of the 1988 BCL that are designed to protect and inform shareholders
are not applicable to registered corporations. This chapter also collects the provisions of Pennsylvania law relating to changes in control of certain registered corporations. See Subchapters E through J. A corporation not required to be registered under the 1934 Act may elect the flexibility and protections provided by this chapter by voluntarily registering under the 1934 Act.

As an alternative to amending the articles to opt out of some or all of the provisions of Subchapters B, C and D as authorized by subsection (c)(1), Section 107 of the General Association Act of 1988 (15 P.S. § 20107) provided an alternative procedure for continuing as to a registered corporation certain rights of shareholders under the prior law that are not continued in Chapter 25. Section 107 provided for the filing of a statement with respect to continuation of procedure by either the corporation or certain shareholders owning 20% or more of its outstanding shares, which would have the effect of superseding some or all of the provisions of 15 Pa.C.S. §§ 1726(a), 2521, and 2535.

When Section 107 became effective on October 1, 1989 (the general effective date of the General Association Act of 1988), Section 107(c) provided that the articles of a registered corporation for which a statement with respect to continuation of procedure had been previously filed would be amended effective October 1, 1989 by adding the text set forth in the statement. Under Section 107(c) the added text may be subsequently amended or stricken in the same manner as other amendments to the articles are effected. Section 107 provides as follows:

(a) General rule.--A business corporation as defined in 15 Pa.C.S. § 1103 (relating to definitions) that was incorporated prior to the enactment of this act and that desires to continue in effect any of the provisions of prior law contained in paragraph (2) may file in the Department of State, prior to the general effective date of this act, a statement with respect to continuation of procedure executed by the corporation in the manner provided by 15 Pa.C.S. § 1108 (relating to execution of documents) setting forth:

(1) The name of the corporation.
(2) One or more of the following paragraphs, in haec verba:

The entire board of directors, or a class of the board, where the board is classified with respect to the power to elect directors, or any individual director may be removed from office without assigning any cause by the vote of shareholders entitled to cast at least a majority of the votes which all shareholders would be entitled to cast at any annual election of directors or of such class of directors. The preceding sentence shall be interpreted in the same manner as the first sentence of section 405 of the act of May 5, 1933 (P.L. 364, No. 106), known as the Business Corporation Law of 1933, as amended by the act of July 20, 1968 (P.L. 459, No. 216).

Special meetings of the shareholders may be called at any time by the president on the board of directors, or shareholders entitled to cast at least one-fifth of the votes which all shareholders are entitled to cast at the particular meeting, or by such other officers or persons as may be provided in the articles or bylaws. The preceding sentence shall be interpreted in the same manner as the first sentence of subsection C of section 501 of the Business Corporation Law of 1933, as amended by the act of August 27, 1963 (P.L. 1355, No. 534).

Every amendment to the articles shall be proposed by either the board of directors
by the adoption of a resolution setting forth the proposed amendment or by petition of shareholders entitled to cast at least ten percent of the votes which all shareholders are entitled to cast thereon, setting forth the proposed amendment which petition shall be directed to, and filed with, the board of directors. The preceding sentence shall be interpreted in the same manner as the first sentence of section 802 of the Business Corporation Law of 1933, as amended by the act of August 27, 1963 (P.L. 1355, No. 534).

(3) A statement that the filing of the statement with respect to continuation of procedure was authorized by the board of directors.

(b) Alternative procedure.--A qualified shareholder of a registered corporation as defined in 15 Pa.C.S. § 2502 (relating to registered corporation status) who desires to continue to enjoy the benefits of any of the provisions of prior law described in subsection (a)(2), may file in the Department of State, prior to the general effective date of this act, a statement with respect to continuation of procedure executed by the qualified shareholder setting forth:

(1) The name of the corporation.

(2) One or more of the following paragraphs, in haec verba:

On the petition of a qualified shareholder, as defined in section 107(f) of the General Association Act of 1988, which petition shall be directed to, and filed with the board of directors, the entire board of directors, or a class of the board, where the board is classified with respect to the power to elect directors (which term includes directors elected for terms of more than one year and directors elected by holders of specified classes of series of shares), or any individual director may be removed from office without assigning any cause by the vote of shareholders entitled to cast at least a majority of the votes which all shareholders would be entitled to cast at any annual election of directors or of such class of directors.

Special meetings of the shareholders may be called at any time by a qualified shareholder as defined in section 107(f) of the General Association Act of 1988.

Every amendment to the articles shall be proposed by either the board of directors by the adoption of a resolution setting forth the proposed amendment or by petition of any qualified shareholder as defined in section 107(f) of the General Association Act of 1988, setting forth the proposed amendment, which petition shall be directed to, and filed with, the board of directors.

(3) A statement that the person executing the statement is a qualified shareholder of the corporation as defined in section 107(f) of the General Association Act of 1988.

(c) Effect of filing.--Upon filing in the Department of State, the statement with respect to continuation of procedure shall operate as an amendment of the articles of the corporation effective as of the general effective date of this act. A provision of the articles set forth in a statement with respect to continuation of procedure may be amended or stricken in the manner provided by law and the articles of incorporation. For the purposes of 15 Pa.C.S. § 1103, the statement shall be a part of the “articles” as therein defined. The filing of a statement with respect to continuation of procedure as permitted by this section shall not be void or voidable by reason of the participation of one or more directors who are affiliated with any shareholder.

(d) Discretionary action or inaction.--A director or qualified shareholder shall not be held liable for taking or omitting to take any action permitted by subsection (a) or (b) respectively, it being the intention of this section that any such director or qualified
shareholder may exercise absolute discretion in taking or omitting to take any such
action.

(e) Statement of correction.--The provisions of 15 Pa.C.S. § 138 (relating to
statement of correction) shall be applicable to a filing under this section. The
corporation shall be deemed a person adversely affected by any filing under subsection
(b) that is erroneously executed.

(f) Definition.--As used in this section, the term “qualified shareholder” means a
shareholder who:

(1) on January 1, 1980 and continuously thereafter to the date of the exercise of
any power conferred upon a qualified shareholder by this section or the articles, or
(2) if the corporation was incorporated after January 1, 1980, and before the date
of enactment of this act within one year after the incorporation of the corporation and
continuously thereafter to the date of the exercise of any power conferred upon a
qualified shareholder by this section or the articles, held (together with its affiliates or
associates as defined in 15 Pa.C.S. § 2552 (relating to definitions)) sufficient shares
of a corporation to be entitled under the first sentence of subsection C of section 501
of the Business Corporation Law of 1933, to call a special meeting of shareholders of
the corporation.

A statement with respect to continuation of procedure filed under Section 107(a) is
generally applicable to the corporation, in contrast to a statement filed under Section
107(b) which is applicable only to the qualified shareholder filing the statement and any
other qualified shareholders of the corporation. Should a qualified shareholder who has
filed a statement of continuation of procedure cease to be such, and if there are no other
qualified shareholders of the corporation, the statement will no longer be “operative”
within the meaning of 15 Pa.C.S. § 1914(c)(4) and the board of directors may then
restate the articles without shareholder approval to remove the provisions of the
statement with respect to continuation of procedure.

Because subsection (b) provides that the provisions of this chapter control over the
provisions of Part I, this chapter will control over the provisions of Chapter 3 regarding entity
transactions. For example, the special requirements in 15 Pa.C.S. § 2556 for approval of
certain business combinations will control over the provisions in 15 Pa.C.S. Subch. 3B for
approving transactions under Chapter 3.

Subsection (c)(2) is an exception to the rule of 15 Pa.C.S. § 1306(a)(8)(ii) and (b)
(permitting the articles generally to vary the provisions of the 1988 BCL). A provision of the
articles of a registered corporation relating to any provision of Subchapter 25E and following
must be consistent with the statutory provision. Provisions for opting out of Subchapters 25E
and following are contained in 15 Pa.C.S. §§ 2541, 2551, 2561 and 2571.

Subsection (d) supplies former 15 Pa.C.S. §§ 2541(d) and 2551(c) and has been
expanded to apply to all of Subchapters 25E and following.

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

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

Subchapter C
Directors and Shareholders

§ 2521. Call of special meetings of shareholders.

(a) General rule. – The shareholders of a registered corporation shall not be entitled by statute to call a special meeting of the shareholders.

(b) Exception. – Subsection (a) shall not apply to the call of a special meeting by an interested shareholder (as defined in section 2553 (relating to interested shareholder)) for the purpose of approving a business combination under section 2555(3) or (4) (relating to requirements relating to certain business combinations).

(c) Contrary articles provision. – A provision of the articles of a registered corporation described in section 2502(1) (relating to registered corporation status) adopted after July 1, 2015, may not provide that a special meeting may be called by less than 25% of the votes that all shareholders would be entitled to cast at the meeting.

Amended Committee Comment (2014):

Subsection (a) follows the general approach of the Delaware General Corporation Law which does not confer on the shareholders a statutory right to call a special meeting of shareholders, except in the case of a corporation that has no directors in office. Cf. Delaware General Corporation Law § 211.

With respect to the meaning of the phrase “entitled to cast” in subsection (c), see the definition of “entitled to vote” in 15 Pa.C.S. § 1103.

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

“articles”
“shareholder”

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

Subchapter D
Fundamental Changes Generally

§ 2538. Approval of transactions with interested shareholders.
(a) General rule.—The following transactions shall require the affirmative vote of the shareholders entitled to cast at least a majority of the votes that all shareholders other than the interested shareholder are entitled to cast with respect to the transaction, without counting the vote of the interested shareholder:

1. Any transaction authorized under Subchapter C of Chapter 19 (relating to merger, consolidation, share exchanges, liabilities and sale of assets) or Subchapter C (relating to merger) or D (relating to interest exchange) of Chapter 3 between a registered corporation or subsidiary thereof and a shareholder of the registered corporation.

2. Any transaction authorized under Subchapter F of Chapter 19 (relating to division) in which the interested shareholder receives a disproportionate amount of any of the shares or other securities of any corporation surviving or resulting from the plan of division.

3. Any transaction authorized under Subchapter F of Chapter 19 (relating to voluntary dissolution and winding up) in which a shareholder is treated differently from other shareholders of the same class (other than any dissenting shareholders under Subchapter D of Chapter 15 (relating to dissenters rights)).

4. Any reclassification authorized under Subchapter B of Chapter 19 (relating to amendment of articles) in which the percentage of voting or economic share interest in the corporation of a shareholder is materially increased relative to substantially all other shareholders.

(b) Exceptions.—Subsection (a) shall not apply to a transaction:

1. that has been approved by a majority vote of the board of directors without counting the vote of directors who:

   (i) are directors or officers of, or have a material equity interest in, the interested shareholder; or

   (ii) were nominated for election as a director by the interested shareholder, and first elected as a director, within 24 months of the date of the vote on the proposed transaction;

2. in which the consideration to be received by the shareholders for shares of any class of which shares are owned by the interested shareholder is not less than the highest amount paid by the interested shareholder in acquiring shares of the same class; or

3. effected pursuant to section [1924(b)(1)(ii) (relating to adoption by board of directors)] [321(d)(1)(ii) (relating to approval by business corporation).]
(c) Additional approvals.—The approvals required by this section shall be in addition
to, and not in lieu of, any other approval required by this subpart, the articles of the
corporation the bylaws of the corporation or otherwise.

(d) Definition of "interested shareholder".—As used in this section, the term
"interested shareholder" includes the shareholder who is a party to the transaction or who is
treated differently from other shareholders and any person, or group of persons, that is acting
jointly or in concert with the interested shareholder and any person who, directly or indirectly,
controls, is controlled by or is under common control with the interested shareholder. An
interested shareholder shall not include any person who, in good faith and not for the purpose
of circumventing this section, is an agent, bank, broker, nominee or trustee for one or more
other persons, to the extent that the other person or persons are not interested shareholders.

Amended Committee Comment (2014):

The requirements of this section for approval of interested transactions are intended to
be more restrictive than the requirements of 15 Pa.C.S. § 1728.

Subsection (b)(3) was added by the GAA Amendments Act of 1992 to make clear that
the requirements of this section are not applicable to short-form mergers. But see 15 Pa.C.S.
§ 2539.

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:

- "articles"
- "board of directors"
- "bylaws"
- "director"
- "entitled to vote"
- "reclassification"
- "shareholder"
- "shares"

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

§ 2539. Adoption of plan of merger by board of directors.

Section [1924(b)(1)(ii) (relating to adoption by board of directors)] 321(d)(1)(ii)
(relating to approval by business corporation) shall be applicable to a plan relating to a merger
[or consolidation] to which a registered corporation described in section 2502(1)(i) (relating
to registered corporation status) is a party only if the plan:
(1) has been approved by the board of directors of the registered corporation;
and
(2) is consistent with the requirements, if applicable, of Subchapter F (relating to business combinations).

Amended Committee Comment (2014):

This section was added by the GAA Amendments Act of 1992 in recognition of the lowering by that act of the threshold required to do a “short form” merger without a vote of the shareholders. See also 15 Pa.C.S. § 2538(b)(3).

The term “board of directors” 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.

Chapter 27
Management Corporations

Subchapter A
Preliminary Provisions

§ 2701. Application and effect of chapter.

(a) General rule. – This chapter shall be applicable to a business corporation, other than a statutory close corporation or a professional corporation, that elects to become a management corporation in the manner provided by this chapter.

(b) Laws applicable to management corporations. – Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all management corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, a management corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(c) Effect of a contrary provision of the bylaws. – The bylaws of a management corporation may provide either expressly or by necessary implication that any one or more of the provisions of this chapter, except this subchapter, shall not be applicable, in whole or in part, to the corporation.

Amended Committee Comment (2014):

Chapter 27 as originally enacted by the General Association Act of 1988 was revised generally by the GAA Amendments Act of 1990 to increase its flexibility in light of its
purpose of providing a form of organization intermediate in statutory requirements between a
general business corporation and a business trust.

Because subsection (b) provides that the provisions of this chapter control over the
provisions of Part I, this chapter will control over the provisions of Chapter 3 regarding entity
transactions.

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

“business corporation”
“bylaws”
“management corporation”
“professional corporation”
“statutory close corporation”

Subchapter C
Fundamental Changes

§ 2721. Bylaw and fundamental change procedures.

So long as a business corporation is a management corporation subject to this chapter:

(1) The board of directors shall have the full authority vested by this subpart in
the shareholders to amend the articles under section 2704(b) (relating to procedure) to
renew the election of the corporation to be subject to this chapter and to adopt or change
the bylaws, and a bylaw adopted by the board of directors pursuant to this section may
continue in effect as long as the corporation remains subject to this chapter.

(2) [An amendment or plan shall not be adopted under Chapter 19 (relating
to fundamental changes), and a bylaw shall not be adopted or changed by the
shareholders, without the approval of the board of directors.] None of the following
shall be adopted or changed by the shareholders without the approval of the board of
directors:

(i) a plan under Chapter 3 (relating to entity transactions);
(ii) an amendment of the articles;
(iii) an amendment, adoption or repeal of a bylaw;
(iv) a plan of asset transfer; or
(v) a resolution recommending dissolution.

(3) In the case of a corporation that in the ordinary course of business redeems
all outstanding shares at the option of the shareholder at the net asset value or at another
agreed method or amount of value thereof, [an amendment or plan under Chapter 19]
a plan under Chapter 3, an amendment of the articles or a plan of asset transfer under
section 1932 (relating to voluntary transfer of corporate assets) shall not require the
approval of the shareholders of the corporation for adoption by the corporation.

Committee Comment (2014):

Under paragraph (1), the board of directors of a management corporation may effect any
change in the bylaws, including one that under this subpart would ordinarily require
shareholder consent, but may not effect any change in the articles that under this subpart
requires shareholder consent, except an amendment continuing (but not originally effecting)
an election under 15 Pa.C.S. § 2704(b) or changing the number of authorized shares under 15
Pa.C.S. § 2712. Thus, the shareholders of a management corporation retain control of
fundamental transactions affecting their shares, but have no direct control over the selection
of management of the corporation, since they can “vote with their feet” by selling out in the
public market or, in the case of a nonregistered corporation, cashing out under the triennial
cash out required by 15 Pa.C.S. §§ 2704 and 2705(c).

Paragraph (2) imposes a “two-house” requirement with respect to action on the matters
listed in that paragraph.

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

“amendment”
“articles”
“board of directors”
“business corporation”
“bylaws”
“management corporation”
“shareholders”
“shares”

Chapter 29
Professional Corporations
Subchapter A
Preliminary Provisions

§ 2901. Application and effect of chapter.

(a) General rule. – This chapter shall be applicable to a business corporation, other
than a management corporation, that:
(1) on the effective date of this chapter was subject to the act of July 9, 1970 (P.L. 461, No. 160), known as the Professional Corporation Law; or

(2) elects to become a professional corporation in the manner provided by this chapter.

(b) Application to business corporations generally. – The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a professional corporation, and this chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a professional corporation. This chapter shall not alter or affect any right or privilege existing under any statute or general rule heretofore or hereafter enacted by the General Assembly or (with respect to attorneys at law) prescribed by the Supreme Court of Pennsylvania:

(1) not prohibiting; or

(2) in terms permitting;

performance of professional services in corporate form by a corporation that is not a professional corporation.

(c) Laws applicable to professional corporations. – Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all professional corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, a professional corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

Amended Committee Comment (2014):

Chapter 29 is basically a reenactment of the Professional Corporation Law, act of July 9, 1970 (P.L. 461, No. 160).

Professional partnership associations which on August 8, 1970 were subject to the act of June 2, 1874 (P.L. 271, No. 153), entitled “An act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances,” became subject to the Professional Corporation Law of 1970 and are accordingly brought within the scope of this chapter by subsection (a)(1).

Because subsection (c) provides that the provisions of this chapter control over the provisions of Part I, this chapter will control over the provisions of Chapter 2 regarding entity names and Chapter 3 regarding entity transactions.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:
“business corporation”
“management corporation”
“professional corporation”

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

Subchapter B
Powers, Duties and Safeguards

§ 2921. Corporate name.

(a) General rule.—A professional corporation may adopt any name that is not prohibited by law or the ethics of the profession in which the corporation is engaged or by a rule or regulation of the court, department, board, commission or other government unit regulating the profession.

(b) Additional names permitted.—The provisions of section [1303(a) (relating to corporate name)] 202 (relating to requirements for names generally) shall not prohibit the use of a name of a professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective or former shareholders or of individuals who were associated with a predecessor or whose individual name or names appeared in the name of the predecessor. The name may also contain:

(1) the word "and" or any symbol or substitute therefor;
(2) the word "associates";
(3) the term "P.C."; or
(4) any or all of the words or terms in paragraphs (1), (2) and (3).

[No change to Amended Committee Comment (1992).]

Chapter 31
Insurance Corporations

Subchapter A
Preliminary Provisions

§ 3101. Application and effect of chapter.

(a) General rule. – This chapter shall be applicable to a business corporation that is a
domestic insurance corporation.

(b) Application to business corporations generally. – The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not an insurance corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not an insurance corporation.

(c) Laws applicable to insurance corporations. – Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all insurance corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, an insurance corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

Committee Comment (2014):

Because subsection (c) provides that the provisions of this chapter control over the provisions of Part I, this chapter will control over the provisions of Chapter 2 regarding entity names and Chapter 3 regarding entity transactions.

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

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

Chapter 33
Benefit Corporations

Subchapter A
Preliminary Provisions

§ 3301. Application and effect of chapter.

(a) General rule. – This chapter shall apply to all benefit corporations.

(b) Application of business corporation law generally. – The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a benefit corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a benefit corporation.

(c) Laws applicable to benefit corporations. – Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall apply generally to benefit corporations. The [specific] provisions of this chapter shall control over [the general
provisions of this subpart} any inconsistent provision of this title. A benefit corporation
may be simultaneously subject to this chapter and one or more other chapters of this article.

(d) Organic records may not be inconsistent. – A provision of the articles or bylaws of
a benefit corporation may not relax, be inconsistent with or supersede any provision of this
chapter.

Amended Committee Comment (2014):

This chapter authorizes the organization of a form of business corporation that offers
entrepreneurs and investors the option to build, and invest in, businesses that operate in a
socially and environmentally responsible manner. Enforcement of those responsibilities
comes not from governmental oversight, but rather from new provisions on transparency and
accountability included in this chapter.

Because subsection (c) provides that the provisions of this chapter control over the
provisions of Part I, this chapter will control over the provisions of Chapter 3 regarding entity
transactions. For example, the requirement of approval of certain actions by a “minimum
status vote” will control over the provisions in 15 Pa.C.S. Subch. 3B for approving
transactions under Chapter 3.

The last sentence of subsection (c) makes clear that a corporation subject to one or more
other chapters of Article C, such as a statutory close corporation subject to Chapter 23, a
registered (or publicly traded) corporation subject to Chapter 25, and an insurance corporation
subject to Chapter 31 may also be a benefit corporation. In the case of a professional
corporation subject to Chapter 29, 15 Pa.C.S. § 3311(e) provides a special rule that eliminates
any conflict between this chapter and 15 Pa.C.S. § 2922(a) regarding the purposes of a
professional corporation.

As a result of subsection (d), a corporation that elects to be subject to this chapter will be
subject to all of the provisions of the chapter and will not be able to vary their application to
the corporation.

The Committee Comments to Chapter 33 are intended to form part of the legislative
history of Chapter 33 and to be citable as such under 1 Pa.C.S. § 1939.

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

“articles”
“business corporation”
“bylaws”
“relax”

The term “benefit corporation” used in this section is defined in 15 Pa.C.S. § 3302.
§ 3304. Election of benefit corporation status.

* * *

(b) Fundamental transactions. – If an association that is not a benefit corporation is a party to a merger, consolidation or division or is the exchanging association in a share interest exchange, and the surviving, new or any resulting association in the merger, consolidation, division or share interest exchange is to be a benefit corporation, then the plan of merger, consolidation, division or share interest exchange shall not be effective unless it is adopted by the corporation association by at least the minimum status vote.

Amended Committee Comment (2014):

This section provides the procedures for an existing corporation to become a benefit corporation. A corporation that is being newly formed may become a benefit corporation in the manner provided in 15 Pa.C.S. § 3303. Subsection (a) applies to a business corporation that is directly electing to be a benefit corporation by amending its articles of incorporation. Subsection (b) applies when a corporation is becoming a benefit corporation indirectly in the context of a fundamental transaction. In both cases, the change to benefit corporation status must be approved by at least the minimum status vote.

Subsection (b) also applies to an association that is not a corporation when the association is a party to a transaction that will result in a benefit corporation. In those situations, a supermajority vote of the owners of the association is required by subsection (b).

See 15 Pa.C.S. § 3311(d) with respect to changing the identification of a specific public benefit that it is the purpose of a benefit corporation to pursue.

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

“articles”
“business corporation”

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

“benefit corporation”
“minimum status vote”

Chapter 41
Foreign Business Corporations

Subchapter B
Qualification
§ 4121. Admission of foreign corporations. (Repealed.)

§ 4122. Excluded activities. (Repealed.)

§ 4123. Requirements for foreign corporation names. (Repealed.)

§ 4124. [Application for a certificate of authority] Advertisement of registration to do business.

(a) General rule.—An application for a certificate of authority shall be executed by the foreign business corporation and shall set forth:

(1) The name of the corporation.

(2) The name of the jurisdiction under the laws of which it is incorporated.

(3) The address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it is incorporated.

(4) 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 proposed registered office in this Commonwealth.

(5) A statement that it is a corporation incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise.

(b) Advertisement.—[A foreign business corporation shall officially publish notice of its intention to apply or its application for a certificate of authority] register to do business or its registration to do business in this Commonwealth under Chapter 4 (relating to foreign associations). The notice may appear prior to or after the day on which [application is made to the Department of State] a registration statement is delivered to the department for filing and shall set forth briefly:

(1) A statement that the corporation will apply or has applied for a certificate of authority under the provisions of the Business Corporation Law of 1988 register or has registered to do business in this Commonwealth under Chapter 4.

(2) The name of the corporation and [of the jurisdiction under the laws of which it is incorporated] its jurisdiction of formation.

(3) The address, including street and number, if any, of its principal office under the laws of [the jurisdiction in which it is incorporated] its jurisdiction of formation.

(4) Subject to section 109, the address, including street and number, if any, of its proposed registered office in this Commonwealth.
(c) [Filing.—The application for a certificate of authority shall be filed in the Department of State.] (Repealed.)

(d) [Cross reference.—See section 134 (relating to docketing statement).] (Repealed.)

Amended Committee Comment (2014):

The prior provisions of this section regarding applying for a certificate of authority have been supplied by Subchapter B of Chapter 4.

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

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

“department”
“jurisdiction of formation”
“officially publish”
“principal office”
“registered office”

§ 4125. Issuance of certificate of authority. (Repealed.)

§ 4126. Amended certificate of authority. (Repealed.)

§ 4127. Merger, consolidation or division of qualified foreign corporations. (Repealed.)

§ 4128. Revocation of certificate of authority. (Repealed.)


(a) General rule. – Any qualified foreign business corporation may withdraw from doing business in this Commonwealth and surrender its certificate of authority by filing in the Department of State an application for termination of authority, executed by the corporation, which shall set forth:

(1) The name of the corporation and, 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 last registered office in this Commonwealth.
(2) The name of the jurisdiction under the laws of which it is incorporated.
(3) The date on which it received a certificate of authority to do business in this Commonwealth.
(4) A statement that it surrenders its certificate of authority to do business in this Commonwealth.
(5) A statement that notice of its intention to withdraw from doing business in this Commonwealth was mailed by certified or registered mail to each municipal corporation in which the registered office or principal place of business of the corporation in this Commonwealth is located, and that the official publication required by subsection (b) has been effected.
(6) The post office address, including street and number, if any, to which process may be sent in an action or proceeding upon any liability incurred before the filing of the application for termination of authority.

(b) Advertisement.—] A [qualified] registered foreign business corporation shall, before filing [an application for termination of authority] a statement of withdrawal under section 415 (relating to voluntary withdrawal of registration), officially publish and mail a notice of its intention to withdraw from doing business in this Commonwealth in a manner similar to that required by section 1975(b) (relating to notice to creditors and taxing authorities). The notice shall set forth [briefly]:

(1) The name of the corporation and [the jurisdiction under the laws of which it is incorporated] its jurisdiction of formation.
(2) The address, including street and number, if any, of its principal office under the laws of its jurisdiction of [incorporation] formation.
(3) Subject to section 109, the address, including street and number, if any, of its last registered office in this Commonwealth.

(c) [Filing. – The application for termination of authority and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the department. See section 134 (relating to docketing statement). (Reserved.)

(d) [Effect of filing. – Upon the filing of the application for termination of authority, the authority of the corporation to do business in this Commonwealth shall cease. The termination of authority shall not affect any action or proceeding pending at the time thereof or affect any right of action arising with respect to the corporation before the filing of the application for termination of authority. Process against the corporation in an action upon any liability incurred before the filing of the application for termination of authority may be served as provided in 42 Pa.C.S. Ch. 53 (relating to
The prior provisions of this section regarding terminating the authority of a foreign corporation to do business in Pennsylvania have been supplied by Subchapter B of Chapter 4.

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

- “department”
- “jurisdiction of formation”
- “officially publish”
- “principal office”
- “registered office”

§ 4130. Change of address after withdrawal. (Repealed.)

§ 4131. Registration of name. (Repealed.)

Subchapter C
Powers, Duties and Liabilities

§ 4141. Penalty for doing business without certificate of authority. (Repealed.)

§ 4142. General powers and duties of qualified foreign corporations. (Repealed.)

§ 4143. General powers and duties of nonqualified foreign corporations. (Repealed.)

§ 4144. Registered office of qualified foreign corporations. (Repealed.)

Subchapter D
Domestication (Reserved)

§ 4161. Domestication. (Repealed.)

§ 4162. Effect of domestication. (Repealed.)

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 Part I (relating to preliminary provisions) or in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“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), Chapter 3 (relating to entity transactions) 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] a statement filed under Chapter 3 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.

* * *

“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] register under Chapter 4 (relating to foreign associations).

* * *

[“Nonqualified foreign corporation” or “nonqualified foreign nonprofit corporation.” A foreign corporation not-for-profit that is not a qualified foreign corporation, as defined in this section.]

* * *

[“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.]
§ 5106. Uniform application of subpart.

(a) General rule. – Except as provided in subsection (b), this [subpart] title and its amendments are intended to provide uniform rules for the 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 of a nonprofit corporation.

(b) Exceptions. –

(1) Unless expressly provided otherwise in any amendment to this [subpart] title, the amendment shall take effect only prospectively.

(2) Any existing corporation lawfully using a name or, as a part of its name, a word that could not be used as or included in the name of a corporation subsequently incorporated or qualified under this [subpart] title may continue to use the name or word as part of its name if the use or inclusion of the word or name was lawful when first adopted by the corporation in this Commonwealth.

(3) Subsection (a) shall not adversely affect the rights specifically provided for or saved 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)] 363 (relating to approval of division).

(4) Nothing in this [subpart] title 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.”
§ 5341. Statement of revival.

(a) General rule. – Any nonprofit corporation whose charter or articles have been forfeited by proclamation of the Governor pursuant to section 1704 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, or otherwise, or whose corporate existence has expired by reason of any limitation contained in its charter or articles and the failure to effect a timely renewal or extension of its corporate existence, may, at any time by filing delivering to the department for filing a statement of revival, procure a revival of its charter or articles, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities that had been vested in and imposed upon the corporation by its charter or articles as last in effect.

(b) Contents of statement. – The statement of revival shall be executed signed in the name of the forfeited or expired corporation and shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), set forth:

(1) The name of the corporation at the time its charter or articles were forfeited or expired and the address, including street and number, if any, of its last registered office.

(2) The statute by or under which the corporation was incorporated and the date of incorporation.

(3) The name that the corporation adopts as its new name if the adoption of a new name is required by section [5304] 207 (relating to required name changes by senior corporations associations).

(4) The address, including street and number, if any, of its registered office in this Commonwealth.

(5) A reference to the proclamation or other action by which its charter or articles were forfeited or a reference to the limitation contained in its expired charter or articles.

(6) A statement that the corporate existence of the corporation shall be revived.

(7) A statement that the filing of the statement of revival has been authorized by the corporation. Every forfeited or expired corporation may act by its last directors or may elect directors and officers in the manner provided by this subpart for the limited purpose of effecting a filing under this section.

(c) Filing and effect. – The statement of revival and, in the case of a forfeited corporation, the clearance certificates required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State delivered to the department for filing. Upon the filing of the statement of revival, the corporation shall be revived with the same effect as if its charter or articles had not been forfeited or expired by
limitation. The revival shall validate all contracts and other transactions made and effected within the scope of the articles of the corporation by its representatives during the time when its charter or articles were forfeited or expired to the same effect as if its charter or articles had not been forfeited or expired.

(d) Cross [reference. – See section] references. See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Chapter 57
Officers, Directors and Members

Subchapter A
Notice and Meetings Generally

§ 5704. Place and notice of meetings of members.

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

(b) Notice. – Notice in record form of every meeting of the members shall be given by, or at the direction of, the secretary or other authorized person to each member 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 transaction under Chapter 3 (relating to entity transactions) or a fundamental change under Chapter 59 (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 the members, 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.
Subchapter E
Members

§ 5757. Action by members.

(a) General rule. – Except as otherwise provided in this [subpart] title or in a bylaw adopted by the members, whenever any corporate action is to be taken by vote of the members of a nonprofit corporation, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by the members entitled to vote thereon and, if any members are entitled to vote thereon as a class, upon receiving the affirmative vote of a majority of the votes cast by the members entitled to vote as a class.

(b) Changes in required vote.--Whenever a provision of this [subpart] title requires a specified number or percentage of votes of members or of a class of members for the taking of any action, a nonprofit corporation may prescribe in a bylaw adopted by the members that a higher number or percentage of votes shall be required for the action. The number or percentage of members necessary to call a special meeting of members or to petition for the proposal of an amendment of articles under this subpart may not be increased under this subsection. See sections 5504(d) (relating to adoption, amendment and contents of bylaws) and 5914(d) (relating to adoption of amendments).

(c) Expenses.--Unless otherwise restricted in the articles, the corporation shall pay the reasonable expenses of solicitation of votes, proxies or consents of members by or on behalf of the board of directors or its nominees for election to the board, including solicitation by professional proxy solicitors and otherwise, and may pay the reasonable expenses of a solicitation by or on behalf of other persons.

(d) Cross reference. – See section 322 (relating to approval by nonprofit corporation).

§ 5766. Consent of members 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 members or of a class of members of a nonprofit corporation may be taken without a meeting if 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 members who would be entitled to vote at a meeting for that purpose. The consent or consents must be filed with the 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]** Notice 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.] Unless the bylaws require notice before an action pursuant to subsection (b) takes effect, prompt notice that an action has been taken shall be given to each member entitled to vote on the action that has not consented.

**Amended Committee Comment (2014):**

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.

Prior to its amendment in 2014 by the Associations Transactions Act, subsection (c) provided that an action taken by partial consent under subsection (b) could not become effective until after at least ten days’ notice had been given to non-consenting members. The purpose of the delay was to provide the foundation for an action in equity by a nonconsenting member to enjoin consummation of the corporate decision. The usual effect of the delay, however, was not to protect the members but rather to create an impediment to taking action beneficial to the corporation. The Committee decided that the interests of members of a nonprofit corporation are not substantial enough to justify the problems the delay caused and that the delay should not be required, but the bylaws of a nonprofit corporation may require advance notice if desired.

The following terms used in this section are defined in 15 Pa.C.S. § 5103:

- "bylaws"
- "entitled to vote"
- "member"
- "nonprofit corporation"
- "unless otherwise restricted"
- "voting"

The following terms used in this section are defined in 15 Pa.C.S. § 102:
Chapter 59
[Fundamental Changes]
Amendments, Sale of Assets and Dissolution

Subchapter A
Preliminary Provisions

§ 5901. Omission of certain provisions from filed plans. (Repealed.)

§ 5902. Statement of termination.

(a) General rule. – If articles of amendment [or articles of merger, consolidation, division or conversion of a nonprofit corporation or to which it is a party] have been filed in the [Department of State] department prior to the termination of the amendment [or plan] pursuant to provisions therefor set forth in the resolution or petition relating to the amendment [or in the plan], the termination shall not be effective unless the corporation shall, prior to the time the amendment [or plan] is to become effective, file in the department a statement of termination. The statement of termination shall be executed by the corporation that filed the amendment [or by each corporation that is a party to the plan, unless the plan permits termination by less than all of the corporations, in which case the statement shall be executed on behalf of the corporation or corporations exercising the right to terminate,] and shall set forth:

(1) A copy of the articles of amendment [or articles of merger, consolidation, division or conversion relating to the amendment or plan that is terminated].

(2) A statement that the amendment [or plan] has been terminated in accordance with the provisions therefor set forth therein.

(b) Cross references. – See sections 134 (relating to docketing statement) and 138 (relating to statement of correction).

§ 5905. Proposal of fundamental transactions.

Where any provision of this chapter requires that an amendment of the articles[ , a plan] or the dissolution of a nonprofit corporation be proposed or approved by action of the board of directors, that requirement shall be construed to authorize and be satisfied by the written agreement or consent of all of the members of the corporation entitled to vote thereon.
Subchapter C
[Merger, Consolidation and] Sale of Assets

§ 5921. Merger and consolidation authorized. (Repealed.)

§ 5922. Plan of merger or consolidation. (Repealed.)

§ 5923. Notice of meeting of members. (Repealed.)

§ 5924. Adoption of plan. (Repealed.)

§ 5925. Authorization by foreign corporations. (Repealed.)

§ 5926. Articles of merger or consolidation. (Repealed.)

§ 5927. Filing of articles of merger or consolidation. (Repealed.)

§ 5928. Effective date of merger or consolidation. (Repealed.)

§ 5929. Effect of merger or consolidation. (Repealed.)

§ 5930. Voluntary transfer of corporate assets.

(a) General rule. – A sale, lease, exchange or other disposition of all, or substantially all, of the property and assets, with or without goodwill, of a nonprofit corporation, if not made pursuant to Subchapter [D] F of Chapter [19] 3 (relating to division), may be made only pursuant to a plan of asset transfer. The property or assets of a direct or indirect subsidiary corporation that is controlled by a parent corporation shall also be deemed the property or assets of the parent corporation for purposes of this subsection. The plan of asset transfer shall set forth the terms and consideration of the sale, lease, exchange or other disposition or may authorize the board of directors or other body to fix any or all of the terms and conditions, including the consideration to be received by the corporation. Any of the terms of the plan 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. The plan of asset transfer shall be proposed and adopted, and may be amended after its adoption and terminated, by a nonprofit corporation in the manner provided in this subchapter for the proposal, adoption, amendment and termination of a plan of merger. A copy or summary of the plan shall be included in, or enclosed with, the notice of the meeting at which members will act on the plan. In order to make effective any plan so adopted, it shall not be necessary to file any articles or other document in the department, but the corporation shall comply with the requirements of section 5547(b) (relating to nondiversion of certain property).

* * *
Subchapter D
[Division] (Reserved)

§ 5951. Division authorized. (Repealed.)

§ 5952. Proposal and adoption of plan of division. (Repealed.)

§ 5953. Division without member approval. (Repealed.)

§ 5954. Articles of division. (Repealed.)

§ 5955. Filing of articles of division. (Repealed.)

§ 5956. Effective date of division. (Repealed.)

§ 5957. Effect of division. (Repealed.)

Subchapter E
[Conversion] (Reserved)

§ 5961. Conversion authorized. (Repealed.)

§ 5962. Proposal and adoption of plan of conversion. (Repealed.)

§ 5963. Articles of conversion. (Repealed.)

§ 5964. Filing of articles of conversion. (Repealed.)

§ 5965. Effective date of conversion. (Repealed.)

§ 5966. Effect of conversion. (Repealed.)

Subchapter F
Voluntary Dissolution and Winding Up

§ 5980. Dissolution by domestication. (Repealed.)

Chapter 61
Foreign Nonprofit Corporations
Subchapter B  
Qualification  

§ 6121. Admission of foreign corporations. *(Repealed.)*  

§ 6122. Excluded activities. *(Repealed.)*  

§ 6123. Requirements for foreign corporation names. *(Repealed.)*  

§ 6124. [Application for a certificate of authority] Advertisement of registration to do business.  

(a) General rule.—An application for a certificate of authority shall be executed by the foreign nonprofit corporation and shall set forth:  

(1) The name of the corporation.  

(2) The name of the jurisdiction under the laws of which it is incorporated.  

(3) The address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it is incorporated.  

(4) 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 proposed registered office in this Commonwealth.  

(5) A statement that it is a corporation incorporated for a purpose or purposes not involving pecuniary profit, incidental or otherwise.  

(b) Advertisement.—A foreign nonprofit corporation shall officially publish notice of its intention to [apply or its application for a certificate of authority] register to do business or its registration to do business in this Commonwealth under Chapter 4 (relating to foreign associations). The notice may appear prior to or after the day on which [application is made to the Department of State] a registration statement is delivered to the department for filing and shall set forth [briefly]:  

(1) A statement that the corporation will [apply or has applied for a certificate of authority under the provisions of the Nonprofit Corporation Law of 1988] register or has registered to do business in this Commonwealth under Chapter 4.  

(2) The name of the corporation and [of the jurisdiction under the laws of which it is incorporated] its jurisdiction of formation.  

(3) The address, including street and number, if any, of its principal office under the laws of [the jurisdiction in which it is incorporated] its jurisdiction of formation.
Subject to section 109, the address, including street and number, if any, of its proposed registered office in this Commonwealth.

(c) [Filing.—The application for a certificate of authority shall be filed in the Department of State.] (Repealed.)

(d) [Cross reference.—See section 134 (relating to docketing statement).] (Repealed.)

§ 6125. Issuance of certificate of authority. (Repealed.)

§ 6126. Amended certificate of authority. (Repealed.)

§ 6127. Merger, consolidation or division of qualified foreign corporations. (Repealed.)

§ 6128. Revocation of certificate of authority. (Repealed.)


(a) General rule. – Any qualified foreign nonprofit corporation may withdraw from doing business in this Commonwealth and surrender its certificate of authority by filing in the Department of State an application for termination of authority, executed by the corporation, which shall set forth:

(1) The name of the corporation and, 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 registered office in this Commonwealth.

(2) The name of the jurisdiction under the laws of which it is incorporated.

(3) The date on which it received a certificate of authority to do business in this Commonwealth.

(4) A statement that it surrenders its certificate of authority to do business in this Commonwealth.

(5) A statement that notice of its intention to withdraw from doing business in this Commonwealth was mailed by certified or registered mail to each municipal corporation in which the registered office or principal place of business of the corporation in this Commonwealth is located, and that the official publication
required by subsection (b) has been effected.

(6) The post office address, including street and number, if any, to which process may be sent in an action or proceeding upon any liability incurred before the filing of the application for termination of authority.

(b) Advertisement.—[A qualified registered foreign nonprofit corporation shall, before filing an application for termination of authority] a statement of withdrawal under section 415 (relating to voluntary withdrawal of registration), officially publish and mail a notice of its intention to withdraw from doing business in this Commonwealth in a manner similar to that required by section 5975(b) (relating to notice to creditors and taxing authorities). The notice shall set forth [briefly]:

(1) The name of the corporation and [the jurisdiction under the laws of which it is incorporated] its jurisdiction of formation.

(2) The address, including street and number, if any, of its principal office under the laws of its jurisdiction of [incorporation] formation.

(3) Subject to section 109, the address, including street and number, if any, of its last registered office in this Commonwealth.

(c) [Filing. – The application for termination of authority and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the department. See section 134 (relating to docketing statement). (Reserved.)

(d) [Effect of filing. – Upon the filing of the application for termination of authority, the authority of the corporation to do business in this Commonwealth shall cease. The termination of authority shall not affect any action or proceeding pending at the time thereof or affect any right of action arising with respect to the corporation before the filing of the application for termination of authority. Process against the corporation in an action upon any liability incurred before the filing of the application for termination of authority may be served as provided in 42 Pa.C.S. Ch. 53 (relating to bases of jurisdiction and interstate and international procedure) or as otherwise provided or prescribed by law.] (Reserved.)

§ 6130. Change of address after withdrawal. (Repealed.)

§ 6131. Registration of name. (Repealed.)

Subchapter C
Powers, Duties and Liabilities

§ 6141. Penalty for doing business without certificate of authority.
§ 6142. General powers and duties of qualified foreign corporations.  (Repealed.)

§ 6143. General powers and duties of nonqualified foreign corporations.  (Repealed.)

§ 6144. Registered office of qualified foreign corporations.  (Repealed.)

Subchapter D
Domestication (Reserved)

§ 6161. Domestication.  (Repealed.)

§ 6162. Effect of domestication.  (Repealed.)

Subpart D
Cooperative Corporations

Chapter 77
Workers’ Cooperative Corporations

§ 7702. 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:

“Bureau.”  The Corporation Bureau of the department.

“Corporation.”  A corporation organized for profit which has elected to be governed by this chapter.

* * *

§ 7703. Corporations.

(b) Name. –

(1) The corporation may adopt any name corporate name to indicate its cooperative character as long as the name has not been previously adopted.]  The name of the corporation must comply with section 202 (relating to requirements for names generally).
§ 7704. Articles of incorporation.

(d) Contents of articles. – The articles of incorporation shall be signed by the persons originally associating themselves together and shall state [distinctly]:

(1) The name [by which] of the corporation [shall be known, which may not be the same as, or confusingly similar to, the name of an association or corporation existing under the laws of the Commonwealth, the name of a foreign or alien association or corporation authorized to transact business in this Commonwealth, or a corporate name reserved or registered as provided by law].

§ 7723. Dissolution.

(a) General rule. – A corporation may dissolve and wind up; may merge [or consolidate] with other corporations; and may sell to, lease to or exchange with other corporations all or substantially all of its property and assets. Except as otherwise provided in this chapter, these actions are governed by Chapter 3 (relating to entity transactions) and Subchapter C of Chapter 19 (relating to merger, consolidation, share exchanges) liabilities and sale of assets). A workers' cooperative corporation which has not revoked its election to be governed by this chapter may not [consolidate or] merge with one or more corporations organized under any law other than this chapter. If a member objects to a corporation's merger [or consolidation], the member may terminate membership in the corporation. The price of redemption of the member's interest shall be the amount in the member's individual capital account on terms and conditions as the law, the articles of incorporation and the bylaws provide.

Part III
Partnerships and Limited Liability Companies

Chapter 82
Registered Limited Liability Partnerships

Subchapter A
Domestic Registered Limited Liability Partnerships
§ 8203. Name. (Repealed.)

Subchapter B
Foreign Registered Limited Liability Partnerships

§ 8211. Foreign registered limited liability partnerships.

(a) Governing law.—Subject to the Constitution of Pennsylvania:

(1) The laws of the jurisdiction under which a foreign registered limited liability partnership is organized govern its organization and internal affairs and the liability of its partners except as provided in subsection (c).

(2) A foreign registered limited liability partnership may not be denied registration by reason of any difference between those laws and the laws of this Commonwealth.

[(b) Registration to do business.—A foreign registered limited liability partnership, regardless of whether or not it is also a foreign limited partnership, shall be subject to Subchapter K of Chapter 85 (relating to foreign limited partnerships) as if it were a foreign limited partnership, except that:

(1) Its application for registration shall state that it is a registered limited liability partnership.

(2) The name under which it registers and conducts business in this Commonwealth shall comply with the requirements of section 8203 (relating to name).

(3) Section 8582(a)(5) and (6) (relating to registration) shall not be applicable to the application for registration of a foreign limited liability partnership that is not a foreign limited partnership.] (Repealed.)

(c) Exception.—The liability of the partners in a foreign registered limited liability partnership shall be governed by the laws of the jurisdiction under which it is organized, except that the partners shall not be entitled to greater protection from liability than is available to the partners in a domestic registered limited liability partnership.

Amended Committee Comment (2014):

A foreign registered limited liability company is subject to the registration and other provisions of 15 Pa.C.S. Ch. 4.

Subsection (c) was added by the GAA Amendments Act of 2001 to avoid a potentially significant loss of tax revenue by Pennsylvania. The registered limited liability partnership
statutes of some states, as well as the 1996 Limited Liability Partnership Act Amendments to the Uniform Partnership Act, provide general partners in registered limited liability partnerships with essentially the same limited liability as shareholders in a corporation. See Uniform Partnership Act (1997) § 306(c). If Pennsylvania were to honor that full limited liability, it would provide a significant incentive for Pennsylvania corporations to switch their form of organization to a registered limited liability partnership organized in a state providing full limited liability in order to avoid Pennsylvania corporate taxes. Under the rule in subsection (c), the partners in a foreign registered limited liability partnership will be in no worse position than partners in a domestic limited liability partnership, but there will be no incentive for corporations to switch their form because they would be giving up the limited liability enjoyed by their shareholders.

The following terms used in this section are defined in 15 Pa.C.S. § 8202:

- "domestic registered limited liability partnership"
- "foreign registered limited liability partnership"
- "partner"

### Chapter 85

**Limited Partnerships**

### Subchapter A

**Preliminary Provisions**

§ 8503. Definitions and index of definitions.

(a) 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:

“Certificate of limited partnership.” The certificate referred to in section 8511 (relating to certificate of limited partnership) and the certificate as amended. The term includes any other 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), Chapter 3 (relating to entity transactions) or this part. If an amendment of the certificate of limited partnership or a [certificate of merger or division made in the manner permitted by this chapter] statement filed under Chapter 3 restates the certificate in its entirety [or if there is a certificate of consolidation], thenceforth the “certificate of limited partnership” shall not include any prior documents and any certificate issued by the department with respect thereto shall so state.

* * *

“Foreign limited partnership.” A partnership formed under the laws of any jurisdiction other than this Commonwealth and having as partners one or more general partners and one or
more limited partners, whether or not required to register under [Subchapter K (relating to foreign limited partnerships)] Chapter 4 (relating to foreign associations).

* * *

[“Nonqualified foreign limited partnership.” A foreign limited partnership that is not a qualified foreign limited partnership as defined in this section.]

* * *

[“Qualified foreign limited partnership.” A foreign limited partnership that is registered under Subchapter K (relating to foreign limited partnerships) to do business in this Commonwealth.]

* * *

§ 8505. Name. (Repealed).

Subchapter B
Formation

§ 8513. Cancellation of certificate.

(a) General rule. – A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the limited partnership or at any other time there are no limited partners. The certificate of cancellation shall set forth:

(1) The name of the limited partnership.
(2) The date of filing of its original certificate of limited partnership.
(3) The reason for filing the certificate of cancellation.
(4) The effective date (which shall be a date certain) of cancellation if it is not to be effective upon the filing of the certificate.
(5) Any other information the general partners filing the certificate determine.

(b) Filing. – The certificate of cancellation and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the department.

(c) Effectiveness of certificate of cancellation. – Upon the filing of the certificate of cancellation in the department or upon the effective date specified in the certificate of
cancellation, whichever is later, the certificate of cancellation shall become effective and the certificate of limited partnership shall be canceled.

(d) Dissolution by domestication. – Whenever a domestic limited partnership has domesticated itself under the laws of another jurisdiction by action similar to that provided by section 8590 (relating to domestication) and has authorized that action by the vote required by this chapter for the approval of a proposal that the limited partnership dissolve voluntarily, the limited partnership may surrender its certificate of limited partnership under the laws of this Commonwealth by filing in the department a certificate of cancellation under subsection (a).

(e) Cross references. – See sections 134 (relating to docketing statement) and 8514 (relating to execution of certificates).

§ 8514. Execution of certificates.

(a) General rule. – Each certificate or other document required or permitted by this chapter to be [filed in] delivered to the Department of State for filing shall be [executed] signed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners named therein.

(2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner.

(3) A certificate of cancellation must be signed by all general partners or liquidating trustees or, if there is no general partner or liquidating trustee, by a majority in interest of the limited partners.

(4) A certificate of change of registered office must be signed by a general partner.

(5) A certificate of summary of record must be signed by all general partners.

(6) A certificate of withdrawal must be signed by the person withdrawing.

(7) A certificate of termination must be signed by a general partner.

(8) A [certificate of merger, consolidation or division] statement of merger, interest exchange, conversion, division or domestication must be signed by a general partner.

(9) [An application for registration as a foreign limited partnership] A foreign registration statement must be signed by a general partner.
(10) [A certificate of amendment of registration of a foreign limited partnership] An amendment of a foreign registration statement must be signed by a general partner.

(11) A [certificate of cancellation of registration of] statement of withdrawal by a foreign limited partnership must be signed by a general partner.

[(12) A certificate of domestication must be signed by a general partner.]

(b) Attorney-in-fact. – Except as otherwise provided in the partnership agreement, any person may sign a certificate or other document affecting the existence, organization or internal affairs of a limited partnership 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.

Amended Committee Comment (2014):

This section collects in one place the requirements for execution of all of the various certificates and statements provided for in Chapters 3 and 85.

The prior law required that the certificate of limited partnership and any amendments thereto be signed by all partners, and there developed an unnecessarily cumbersome practice of having the limited partners sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. Because the limited partners are not required to be named in the certificate of limited partnership, this section only requires signature by general partners.

Certificates of amendment are required to be signed by only one general partner, but a certificate of cancellation must be signed by all current general partners or liquidating trustees or a majority in interest of the limited partners if there is no general partner or liquidating trustee.

The requirement of the Revised Uniform Act that a power of attorney to sign a certificate relating to the admission of a partner must specifically describe the admission has been omitted. No such requirement is contained elsewhere in Title 15, and to retain it here would create a trap for the unwary. Subsection (b) does not impose any particular requirements on a power of attorney or authorization to sign a certificate or other document affecting the existence, organization or internal affairs of a limited partnership (including, without limitation, the partnership agreement), and it is intended that such a power of attorney or authorization need not be in writing (unless required by an applicable statute of frauds) and need not be notarized or acknowledged.

The last sentence of subsection (b) is patterned after 15 Pa.C.S. § 135(b) and has been included in this section simply for purposes of convenience and clarity since 15 Pa.C.S. § 135(b) would apply to filings under Chapter 85 in any event.
Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 8503:

- “certificate of limited partnership”
- “department”
- “foreign limited partnership”
- “general partner”
- “limited partners”
- “liquidating trustee”

Subchapter F
[Merger and Consolidation] (Reserved)

§ 8545. Merger and consolidation of limited partnerships authorized. (Repealed.)

§ 8546. Approval of merger or consolidation. (Repealed.)

§ 8547. Certificate of merger or consolidation. (Repealed.)

§ 8548. Effective date of merger or consolidation. (Repealed.)

§ 8549. Effect of merger of consolidation. (Repealed.)

Subchapter I
Dissolution

§ 8571. Nonjudicial dissolution.

* * *

[(c) Dissolution by domestication. – Whenever a domestic limited partnership has domesticated itself under the laws of another jurisdiction by action similar to that provided by section 8590 (relating to domestication) and has authorized that action in the manner required by this subchapter for the approval of a proposal that the partnership dissolve voluntarily, the partnership may surrender its certificate of limited partnership under the laws of this Commonwealth by filing in the department a certificate of cancellation under section 8513 (relating to cancellation of certificate). If the partnership, as domesticated in the other jurisdiction, registers to do business in this Commonwealth either prior to or simultaneously with the filing of the certificate of cancellation under this subsection, the partnership shall not be required to file with the}
certificate of cancellation the tax clearance certificates that would otherwise be required by section 139 (relating to tax clearance of certain fundamental transactions).

***

**Amended Committee Comment (2014):**

Subsection (a) collects in one place all of the events causing dissolution of a limited partnership. The 90 day grace period in the Revised Uniform Limited Partnership Act in subsection (a)(4) has been increased to 180 days to recognize the difficulties that may be encountered by limited partnerships with a large number of partners in attempting to avail themselves of it.

As originally enacted in 1988, subsection (a)(4) provided that the decision to continue the business of a limited partnership upon an event of withdrawal of a sole remaining general partner required the approval of all of the limited partners, but former subsection (c) permitted the partnership agreement to reduce the required consent of limited partners to not less than a majority in interest. At the time, no other state limited partnership statute contained a provision similar to former subsection (c) and the Internal Revenue Service considered the Pennsylvania approach so unique that it refused to issue a Revenue Ruling approving Chapter 85 so long as Chapter 85 contained former subsection (c). As a result, the GAA Amendments Act of 1990 repealed former subsection (c) and transferred its substance to 15 Pa.C.S. § 8103.

The Internal Revenue Service subsequently reversed its position and no longer objects to a state statute permitting a decision to continue the business of a limited partnership to be made by less than unanimous consent of the limited partners. The GAA Amendments Act of 2001 accordingly repealed 15 Pa.C.S. § 8103 and has adopted a majority in interest vote as the default rule in subsection (a)(4).

Subsection (b) is not found in the Revised Uniform Limited Partnership Act and adds a procedure to facilitate preservation of the business of the limited partnership pending a decision on its formal continuation.

Former subsection (c), which provided a procedure for a limited partnership that had domesticated from Pennsylvania to another state to withdraw as a domestic limited partnership, was repealed in 2014 by the Association Transaction Act and has been supplied by 15 Pa.C.S. Subch. 4B.

The following terms used in this section are defined in 15 Pa.C.S. § 8503:

- “certificate of limited partnership”
- “court”
- “event of withdrawal of a general partner”
- “general partner”
- “limited partner”
- “limited partnership”
Subchapter J

Division (Reserved)

§ 8576. Division authorized. (Repealed.)

§ 8577. Proposal and adoption of plan of division. (Repealed.)

§ 8578. Division without approval of limited partners. (Repealed.)

§ 8579. Certificate of division. (Repealed.)

§ 8580. Effect of division. (Repealed.)

Subchapter K

[Foreign Limited Partnerships] (Reserved)

§ 8581. Governing law. (Repealed.)

§ 8582. Registration. (Repealed.)

§ 8583. Effect of filing. (Repealed.)

§ 8584. Name. (Repealed.)

§ 8585. Changes and amendments. (Repealed.)

§ 8586. Cancellation of registration. (Repealed.)

§ 8587. Doing business without registration. (Repealed.)

§ 8588. Action by Attorney General. (Repealed.)

§ 8589. General powers and duties of qualified foreign limited partnerships. (Repealed.)

§ 8590. Domestication. (Repealed.)

Chapter 89
Limited Liability Companies
§ 8903. Definitions and index of definitions.

(a) 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:

“Certificate of organization.” The certificate of organization referred to in section 8913 (relating to certificate of organization) and the certificate of organization as amended. The term includes any other 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), Chapter 3 (relating to entity transactions) or this part. If an amendment of the certificate of organization or a statement filed under Chapter 3 restates the certificate of organization in its entirety [or if there is a certificate of consolidation or domestication], thenceforth the certificate of organization shall not include any prior documents, and any certificate issued by the Department of State with respect thereto shall so state.

“Foreign limited liability company.” An association organized under the laws of any jurisdiction other than this Commonwealth, whether or not required to register under [Subchapter J (relating to foreign companies)] Chapter 4 (relating to foreign associations), which would be a limited liability company if organized under the laws of this Commonwealth.

“Qualified foreign limited liability company.” A foreign limited liability company that is registered under [Subchapter J (relating to foreign companies)] to do business in this Commonwealth Chapter 4 (relating to foreign associations).

§ 8905. Name. (Repealed.)

§ 8908. Election of professional association to become limited liability company. (Repealed.)
§ 8956. Merger and consolidation of limited liability companies authorized. (Repealed.)

§ 8957. Approval of merger or consolidation. (Repealed.)

§ 8958. Certificate of merger or consolidation. (Repealed.)

§ 8959. Effect of merger of consolidation. (Repealed.)

Subchapter H
[Division] (Reserved)

§ 8961. Division authorized. (Repealed.)

§ 8962. Proposal and adoption of plan of division. (Repealed.)

§ 8963. Division without member approval. (Repealed.)

§ 8964. Certificate of division. (Repealed.)

§ 8965. Effect of division. (Repealed.)

Subchapter I
Dissolution

§ 8978. Dissolution by domestication. (Repealed.)

Subchapter J
[Foreign Companies] (Reserved)

§ 8981. Foreign limited liability companies. (Repealed.)

§ 8982. Domestication. (Repealed.)

Part IV
Unincorporated Associations

Chapter 91
Unincorporated Nonprofit Associations

§ 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:

**Star**

[“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.]

**Chapter 93**
**Professional Associations**

§ 9302. Application of chapter.

This chapter shall apply to and the word “association” in this chapter shall mean a professional association organized under the act of August 7, 1961 (P.L. 941, No. 416), known as the Professional Association Act, which has not:

1. Reorganized as an electing partnership under Chapter 87 (relating to electing partnerships).
2. Elected to become a professional corporation in the manner provided by section 2905 (relating to election of professional associations to become professional corporations).
3. Converted to a limited liability company under Subchapter E of Chapter 3 (relating to conversion).

An association may not be originally organized under this chapter.
§ 9502. Creation, status and termination of business trusts.

(a) Creation.—[A business trust may be created in real or personal property, or both, with power in] Except as provided in the instrument, the trustee has the power:

(1) To receive title to, hold, buy, sell, exchange, transfer and convey real and personal property for the use of the business trust.

(2) To take, receive, invest or disburse the receipts, earnings, rents, profits or returns from the trust estate.

(3) To carry on and conduct any lawful business designated in the deed or other instrument of trust, and generally to do any lawful act in relation to such trust property that any individual owning the same absolutely might do.

(4) To merge with another business trust or other association, to divide or to engage in any other fundamental or other transaction contemplated by the deed or other instrument of trust.

(b) Term.—Except as otherwise provided in the instrument, a business trust shall have perpetual existence.

(c) Separate entity.—A business trust is a separate legal entity. Except as otherwise provided in the instrument, title to real and personal property may be held in the name of the trust, without in any manner diminishing the rights, powers and duties of the trustees as provided in subsection (a).

(d) Termination.—Except as otherwise provided in the instrument:

(1) The business trust may not be terminated, dissolved or revoked by a beneficial owner or other person.

(2) The death, incapacity, dissolution, termination or bankruptcy of a beneficial owner or a trustee shall not result in the termination, dissolution or revocation of the business trust.

(e) Contents of instrument.—The instrument may contain any provision for the regulation of the internal affairs of the business trust included in the instrument by the settlor,
the trustee or the beneficiaries in accordance with the applicable procedures for the adoption or amendment of the instrument.

**Amended Committee Comment (2014):**

As originally enacted in 1988, subsection (a) provided that the powers enumerated in that subsection were to be exercised by the trustee "or a majority of the trustees." The quoted phrase was deleted by the GAA Amendments Act of 2001 because the Committee was concerned that it could be read incorrectly to require that, whenever a business trust had more than one trustee, the trustees could act only by an absolute majority of the trustees in office, as opposed to, for example, a majority of a quorum of the trustees present at a duly-convened meeting. It is intended that the instrument may provide for whatever governance mechanism and rules are considered appropriate by the parties. A similar reference to a majority of the trustees has been retained in 15 Pa.C.S. § 9503(c) because in that case it is expressly made applicable only in the absence of a controlling provision in the instrument.

The Association Transactions Act amended subsection (a) to make clear that the powers listed in that subsection do not have to be conferred expressly by the instrument and will exist unless the instrument provides otherwise.

Chapter 95 is intended to provide the widest possible freedom of contract for the parties involved in a business trust. The GAA Amendments Act of 2001 added subsection (e) to confirm that intent. The provisions of Chapter 95 have been deliberately kept very brief. The lack of detailed rules in Chapter 95 should be read in the context of subsection (e) and should not be seen to imply that statutory rules and restrictions on business trusts in other states should be imported into Pennsylvania. It is intended, for example, that Chapter 95 will permit the instrument of a Pennsylvania business trust to deal with all the issues treated in 12 Del. Code § 3806 with at least as much freedom as permitted by that section.

§ 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), Chapter 3 (relating to entity transactions) 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) a statement filed under Chapter 3 restates an instrument in its entirety, thenceforth the “instrument” shall not include any prior documents, and any certificate issued by the department with respect thereto shall so state.

* * *

§ 9507. Foreign business trusts.

(a) General rule. – A business trust organized under any laws other than those of this Commonwealth shall be subject to Subchapters B (relating to qualification) and C (relating to powers, duties and liabilities) of Chapter 41, as if it were a foreign business corporation, except that a qualified foreign business trust shall enjoy the same rights and privileges as a domestic business trust, but no more, and, except as otherwise provided by law, shall be subject to the same liabilities, restrictions, duties and penalties now in force or hereafter imposed upon domestic business trusts, to the same extent as if it were a domestic business trust.] (Repealed.)

(b) Provision applicable to all foreign business trusts. – Section 9506(c) (relating to certain specifically authorized debt terms) shall be applicable to any obligation, as defined in section 1510 (relating to certain specifically authorized debt terms), of a business trust organized under any laws other than those of this Commonwealth, whether or not required to qualify in this Commonwealth, executed or effected in this Commonwealth or affecting real property situated in this Commonwealth.

Title 54
Names

Chapter 3
Fictitious Names

§ 302. Definitions.

(a) Definitions. – The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Business.” Any commercial or professional activity.

“Entity.” Any individual or any corporation, association, partnership, joint-stock company, business trust, syndicate, joint adventureship or other combination or group of persons, regardless of whether it is organized or formed under the laws of this Commonwealth or any other jurisdiction.
“Fictitious name.” Any assumed or fictitious name, style or designation other than the proper name of the entity using such name. The term includes a name assumed by a general partnership, syndicate, joint adventureship or similar combination or group of persons.

“Proper name.” When used with respect to an association of a type listed in the following paragraphs, the term means the name set forth in:

1. [the articles of incorporation, for a corporation;] the public organic record, for a domestic filing association;
2. the statement of registration, for a limited liability partnership;
3. [(3) the certificate of limited partnership, for a limited partnership;]
4. the statement of election, for an electing partnership;
5. [(5) the certificate of organization, for a limited liability company;
6. the articles of association, for a professional association;
7. the deed of trust or other trust instrument, if any, that has been filed in the Department of State for a business trust; or
8. a publicly filed document in another jurisdiction which is of a type listed in paragraphs (1) through (7).]
9. the statement of registration of a foreign registered association under 15 Pa.C.S. § 412(a)(1)(i) (relating to foreign registration statement), or if that name does not comply with 15 Pa.C.S. § 202 (relating to requirements for names generally), the name set forth in the statement under 15 Pa.C.S. § 412(a)(1)(ii).

(b) Other defined terms. – The definitions in 15 Pa.C.S. § 102 (relating to definitions) apply to this title except to the extent they are inconsistent with the provisions of this title.

§ 303. Scope of chapter.

* * *

(d) Effect of registration.—The registration of a name under this chapter does not render the name unavailable for use by another entity.

§ 311. Registration.

* * *
(e) Duplicate use of names. – The fictitious name shall be distinguishable upon the records of the department from:

(1) The name of any domestic [corporation] [filing entity, domestic limited liability partnership, domestic electing partnership, or any] [registered foreign corporation authorized to do business in this Commonwealth] [association] or the name of any corporation or other association registered at any time under Chapter 5 (relating to corporate and other association names) unless such name is available or is made available for use under the provisions or procedures of 15 Pa.C.S. § 5303(b)(1)(i) or (ii) (relating to duplicate use of names) or the equivalent 202(b)(1) (relating to requirements for names generally).


(3) The name of any administrative department, board or commission or other agency of this Commonwealth.

(4) A name the exclusive right to which is at the time reserved or registered by any other person [whatsoever in the manner provided by] under 15 Pa.C.S. § 208 (relating to reservation of name) or 209 (relating to registration of name of nonregistered foreign association) or another statute.

* * *

Chapter 5
Corporate and Other Association Names

§ 501. Register established.

(a) General rule. – A register is established by this chapter which shall consist of such of the following names as are not deleted therefrom by operation of section 504 (relating to effect of failure to make filings) or 506 (relating to voluntary termination of registration by corporations and other associations):

(1) A name registered prior to February 13, 1973, under the act of May 16, 1923 (P.L. 246, No. 160), relating to registration of certain names.

(2) A name registered under section 502 (relating to certain additions to register).

(3) In the case of a domestic or [qualified] registered foreign corporation, a name rendered unavailable for corporate use by other corporations by reason of any filing in the department by such domestic or [qualified] registered foreign corporation.
(4) A name registered under 15 Pa.C.S. § [4131] 209 (relating to registration of name of nonregistered foreign association) or any similar provision of law.

(5) In the case of a business trust which exists subject to 15 Pa.C.S. Ch. 95 (relating to business trusts), the name of the trust as set forth in the instrument filed in the department under 15 Pa.C.S. § 9503 (relating to documentation of trust); or (ii) application for registration filed under 15 Pa.C.S. § 9507 (relating to foreign business trusts).

(6) In the case of a limited partnership or limited liability company subject to 15 Pa.C.S. Ch. 85 (relating to limited partnerships) or 89 (relating to limited liability companies), the name of the partnership or company as set forth in the certificate of limited partnership, certificate of organization or [application for] statement of registration as a [foreign limited partnership or foreign limited liability company, as the case may be] registered foreign association.

(7) (Repealed.)

(8) In the case of a registered limited liability partnership subject to 15 Pa.C.S. Ch. 82 (relating to registered limited liability partnerships) that is not also a limited partnership, the name of the partnership as set forth in the statement of registration [or application for registration as a foreign registered limited liability partnership] as a registered foreign association.

(b) Subsequent availability of certain names. – Whenever, by reason of change in name, withdrawal or dissolution of a domestic or [qualified] registered foreign [corporation] association, failure to renew a registration of its name by a [nonqualified] nonregistered foreign [corporation] association, or for any other cause, its name is no longer rendered unavailable by the express provisions of Title 15 (relating to corporations and unincorporated associations), such name shall no longer be deemed to be registered under subsection (a)(3) or (4) on the register established by this chapter.

§ 502. Certain additions to register.

(a) Corporation names. –

(1) A domestic corporation not-for-profit incorporated prior to May 16, 1923 may register its name with the department under this chapter by effecting the filing specified in 15 Pa.C.S. § 5311 (relating to filing of certificate of summary of record by certain corporations).

(2) Any person who is not eligible to make a filing under 15 Pa.C.S. § [4131 (relating to registration of name) or 6131 (relating to registration of name)] 209 (relating to registration of name of nonregistered foreign association) may register a
corporation name with the department by filing an application for registration of name, executed by the person, which shall set forth:

(i) The name of the corporation.

(ii) The address, including street and number, if any, of the person who executed the application.

(b) Associations generally. – An association other than a corporation may register with the department the name under which it is doing business or operating by filing an application for registration, which shall be executed by the association, and shall set forth:

(1) The name to be registered.

(2) The address, including street and number, if any, of the association.

(3) The length of time, if any, during which the name has been used by the applicant.

(4) Such other information necessary to the administration of this chapter as the department may specify by regulation.

(c) Limitation on names which may be registered. – Notwithstanding subsections (a) and (b), no new name shall be registered or deemed to be registered under this section which is not distinguishable upon the records of the department from any other name then registered or deemed to be registered under this chapter, without the consent of the senior registrant.

(d) Annual renewal. – A person who has in effect a registration of a corporate name may renew the registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration. A renewal application may be filed between October 1 and December 31 in each year and shall extend the registration for the following calendar year.

(e) Cross reference. – See 15 Pa.C.S. § 134 (relating to docketing statement).

§ 503. Decennial filings required.

(a) General rule. – Except as otherwise provided in this section, every corporation or other association whose name is registered under this chapter shall, during the year 2001 and every tenth year thereafter, file in the department a report, which shall be executed by the corporation or other association, and shall set forth:

(1) The name of the corporation or other association.
(2) The address, including street and number, if any, of its registered or other office.

(3) A statement that the corporation or other association continues to exist.

(4) Such other information necessary to the administration of this chapter as the department may specify by regulation.

(b) Exceptions. – Subsection (a) shall not apply to any of the following:

(1) A corporation or other association that during the ten years ending on December 31 of the year in which a filing would otherwise be required under subsection (a) has made any filing in the department pursuant to a provision of this title or 15 Pa.C.S. (relating to corporations and unincorporated associations) other than:

(i) a report required by subsection (a); or

(ii) a filing under:

(A) 15 Pa.C.S. § 1305 (relating to reservation of corporate name);

(B) 15 Pa.C.S. § 5305 (relating to reservation of corporate name);

(C) 15 Pa.C.S. § 8203(b) (relating to name);

(D) 15 Pa.C.S. § 8505(b) (relating to name); or

(E) 15 Pa.C.S. § 8905(b) (relating to name) 15 Pa.C.S. § 208 (relating to reservation of name) or 209 (relating to registration of name of nonregistered foreign association).

(2) A corporation whose name is registered pursuant to section 501(a)(4) (relating to register established).

(3) A corporation that has had officer information forwarded to the department by the Department of Revenue during the preceding ten years under 15 Pa.C.S. § 1110 (relating to annual report information).

(b.1) Deleted by 2001, June 22, P.L. 418, No. 34, § 3, effective in 60 days.

(c) Exemptions. – An association shall be exempt from the 2001 decennial filing if the association made a filing:

(1) After December 31, 1989, and before January 1, 1992, pursuant to a provision of this title or 15 Pa.C.S. other than a filing under:
(i) 15 Pa.C.S. § 1305;
(ii) 15 Pa.C.S. § 5305;
(iii) 15 Pa.C.S. § 8203(b);
(iv) 15 Pa.C.S. § 8505(b); or
(v) 15 Pa.C.S. § 8905(b).

(2) Under this section during the year 2000. | (Repealed.)

(d) Cross references. – See 15 Pa.C.S. §§ 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).