
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 215 Session of
2001

INTRODUCED BY GREENLEAF, COSTA, LEMMOND, M. WHITE, HOLL,
KITCHEN, STOUT, THOMPSON, WOZNIAK AND O'PAKE,
JANUARY 31, 2001

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 22, 2001

AN ACT

1 Amending Titles 15 (Corporations and Unincorporated
2 Associations) and 54 (Names) of the Pennsylvania Consolidated
3 Statutes, relating to associations; making revisions,
4 corrections and additions; and making repeals.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the GAA
9 Amendments Act of (in preparing this act for printing in the
10 Laws of Pennsylvania, the Legislative Reference Bureau shall
11 insert here, in lieu of this statement, the calendar year of
12 enactment of this act).

13 Section 2. Amendment of Title 15.

14 As much of Title 15 as is hereinafter set forth is amended or
15 added to read:

16 § 102. Definitions.

17 Subject to additional or inconsistent definitions contained

1 in subsequent provisions of this title that are applicable to
2 specific provisions of this title, the following words and
3 phrases when used in this title shall have, unless the context
4 clearly indicates otherwise, the meanings given to them in this
5 section:

6 * * *

7 "Limited liability company." A domestic or foreign limited
8 liability company as defined in section 8903 (relating to
9 definitions and index of definitions).

10 "Profession." Includes the performance of any type of
11 personal service to the public that requires as a condition
12 precedent to the performance of the service the obtaining of a
13 license or admission to practice or other legal authorization
14 from the Supreme Court of Pennsylvania or a licensing board or
15 commission under the Bureau of Professional and Occupational
16 Affairs in the Department of State. Except as otherwise
17 expressly provided by law, this definition shall be applicable
18 to this title only and shall not affect the interpretation of
19 any other statute or any local zoning ordinance or other
20 official document heretofore or hereafter enacted or
21 promulgated.

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

25 * * *

26 § 134. Docketing statement.

27 (a) General rule.--The Department of State may, but shall
28 not be required to, prescribe by regulation one or more official
29 docketing statement forms designed to elicit from a person
30 effecting a filing under this title information that the

1 department has found to be necessary or desirable in connection
2 with the processing of a filing. [A docketing statement
3 submitted with the articles of incorporation or division of a
4 proposed domestic corporation for profit or not-for-profit, the
5 articles of domestication or application for a certificate of
6 authority of a foreign corporation for profit or not-for-profit
7 or the certificate of election of an electing partnership shall
8 set forth, inter alia, the kind or kinds of business in which
9 the association actually intends to engage in this Commonwealth
10 within one year of the submission of the docketing statement. A
11 docketing statement submitted with articles of incorporation,
12 consolidation or division of a domestic corporation not-for-
13 profit or an application for a certificate of authority of a
14 foreign corporation not-for-profit shall set forth with respect
15 to the new corporation or corporations resulting therefrom,
16 inter alia, the statute by or under which it was incorporated,
17 the date of incorporation, the names and residence addresses of
18 its chief executive officer, secretary and treasurer, regardless
19 of the names or titles by which they may be designated, the
20 address of its principal place of business and the amount, if
21 any, of its authorized and issued capital stock.] A form of
22 docketing statement prescribed under this subsection:

23 (1) Shall be published in the Pennsylvania Code.

24 (2) Shall not be integrated into a single document
25 covering the requirements of the filing and its related
26 docketing statement.

27 (3) May be required by the department in connection with
28 a filing only if notice of the requirement appears on the
29 official format for the filing prescribed under section
30 133(d) (relating to physical characteristics and copies of

documents).

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

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

(b) Transmission to Department of Revenue.--The department shall note on the docketing statement the fact and date of the filing [of articles of incorporation, consolidation, merger, division, conversion or domestication or certificate of election or issuance of the certificate of authority, as the case may be, upon the docketing statement] to which the docketing statement relates and shall transmit a copy of [it] the docketing statement or the information contained therein to the Department of Revenue. If a docketing statement is not required for a particular filing, the Department of State may transmit a copy of the filing or the information contained therein to the Department of Revenue at no cost to the person effecting the filing.

(c) Transmission to other agencies.--If the docketing statement delivered to the Department of State sets forth any kind of business in which a corporation, partnership or other association may not engage without the approval of or a license from any department, board or commission of the Commonwealth, the Department of State shall, upon [the filing of articles of incorporation, consolidation, division or domestication or certificate of election or issuance of the certificate of authority] processing the filing, promptly transmit a copy of the docketing statement or the information contained therein to

1 each such department, board or commission.

2 § 138. Statement of correction.

3 * * *

4 (b) Effect of filing.--

5 * * *

6 (2) A filing under this section shall not have the
7 effect of causing original articles of incorporation of a
8 corporation or a similar type of document creating any other
9 form of association to be stricken from the records of the
10 department but the articles or other document may be
11 corrected under this section.

12 * * *

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

15 § 139. Tax clearance of certain fundamental transactions.

16 [A] (a) General rule.--Except as provided in subsection (c),
17 a domestic association shall not file articles or a certificate
18 of merger or consolidation effecting a merger or consolidation
19 into a nonqualified foreign association or articles or a
20 certificate of dissolution or a statement of revival, a
21 qualified foreign association shall not file an application for
22 termination of authority or similar document in the Department
23 of State and a domestic association shall not file articles or a
24 certificate of division dividing solely into nonqualified
25 foreign associations unless the articles, certificate,
26 application or other document are accompanied by clearance
27 certificates from the Department of Revenue and the Office of
28 Employment Security of the Department of Labor and Industry,
29 evidencing the payment by the association of all taxes and
30 charges due the Commonwealth required by law.

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

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

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

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

16 § 155. DISPOSITION OF FUNDS.

17 * * *

18 (C) ADVISORY COMMITTEE.--THE SECRETARY OF THE COMMONWEALTH
19 SHALL APPOINT A CORPORATION BUREAU ADVISORY COMMITTEE. THE
20 COMMITTEE SHALL BE COMPOSED OF PERSONS KNOWLEDGEABLE IN MATTERS
21 COVERED BY THIS TITLE AND RELATED PROVISIONS OF LAW AND WHO HAVE
22 BEEN RECOMMENDED FOR APPOINTMENT TO THE COMMITTEE BY THE
23 ORGANIZED BAR OR OTHER ORGANIZED USERS OF THE FACILITIES AND
24 SERVICES OF THE BUREAU. MEMBERS SHALL SERVE WITHOUT COMPENSATION
25 OTHER THAN REIMBURSEMENT FOR REASONABLE AND NECESSARY EXPENSES
26 IN ACCORDANCE WITH COMMONWEALTH POLICY OR REGULATIONS, SHALL
27 SERVE FOR TERMS FIXED BY THE [SECRETARY] SECRETARY AND MAY BE
28 REAPPOINTED. THE CHAIRMAN OF THE COMMITTEE SHALL BE ELECTED BY
29 THE COMMITTEE. THE COMMITTEE SHALL MAKE RECOMMENDATIONS TO THE
30 GOVERNOR WITH RESPECT TO EACH BUDGET SUBMITTED UNDER SUBSECTION

(B) AND MAY CONSULT WITH THE [DEPARTMENT OF STATE] DEPARTMENT IN
THE ADMINISTRATION OF THIS TITLE AND RELATED PROVISIONS OF LAW.
THE COMMITTEE, IN CONSULTATION WITH THE BUREAU AND THE
DEPARTMENT, SHALL SUBMIT, BY JUNE 1 OF EACH ODD-NUMBERED YEAR, A
REPORT TO THE GENERAL ASSEMBLY DESCRIBING ITS ACTIVITIES UNDER
THIS TITLE AND ANY RECOMMENDED CHANGES TO THIS TITLE.

§ 161. Domestication of certain alien associations.

* * *

(b) Statement of domestication.--The statement of
domestication shall be executed 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), 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 [that upon domestication the association

1 will be a domestic association under the laws of this
2 Commonwealth] of the type of domestic association that the
3 association will be upon domestication.

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

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

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

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

22 (d) Effect of domestication.--Upon the filing of the
23 statement of domestication, the association shall be
24 domesticated in this Commonwealth and the association shall
25 thereafter be subject to any applicable provisions of this
26 title[, except Subpart B of Part II (relating to business
27 corporations),] and [to] any other provisions of law applicable
28 to associations existing under the laws of this Commonwealth. If
29 the association will be a type of domestic association that is
30 created by a filing in the department, the statement of

1 domestication shall constitute that filing. The domestication of
2 any association in this Commonwealth pursuant to this section
3 shall not be deemed to affect any obligations or liabilities of
4 the association incurred prior to its domestication.

5 (e) Exclusion.--An association that can be domesticated
6 under [section 4161 (relating to domestication) or 6161
7 (relating to domestication)] any of the following sections shall
8 not be domesticated under this section:

9 Section 4161 (relating to domestication).

10 Section 6161 (relating to domestication).

11 Section 8590 (relating to domestication).

12 Section 8982 (relating to domestication).

13 Section 9501(a)(1)(ii) (relating to application and
14 effect of chapter).

15 (f) Definition.--As used in this section, the term
16 "association," except as restricted by subsection (e), includes
17 any alien incorporated organization, private law corporation
18 (whether or not organized for business purposes), public law
19 corporation, partnership, proprietorship, joint venture,
20 foundation, trust, association or similar organization or entity
21 existing under the laws of any jurisdiction other than this
22 Commonwealth.

23 (g) Cross [reference] references.--See [section] sections
24 134 (relating to docketing statement) and 135 (relating to
25 requirements to be met by filed documents).

26 § 162. Contingent domestication of certain alien associations.

27 * * *

28 (c) Statement of consummation of domestication.--At any time
29 after the filing of a statement of contingent domestication, the
30 association may file in the department a statement of

1 consummation of domestication which shall be executed by the
2 association and shall set forth:

3 (1) The name of the association[. If the name is in a
4 foreign language, it shall be set forth in Roman letters or
5 characters or Arabic or Roman numerals.] as set forth in its
6 statement of contingent domestication.

7 * * *

8 (j) Cross [reference] references.--See [section] sections
9 134 (relating to docketing statement) and 135 (relating to
10 requirements to be met by filed documents).

11 § 1106. Uniform application of subpart.

12 * * *

13 (b) Exceptions.--

14 * * *

15 (3) Subsection (a) shall not adversely affect the rights
16 specifically provided for or saved in this subpart. See:

17 The provisions of section 1524(e) (relating to
18 transitional provision).

19 The provisions of section 1554(c) (relating to
20 transitional provision).

21 The cumulative voting rights set forth in section
22 1758(c)(2) (relating to cumulative voting).

23 The special voting requirements specified in section
24 1931(h) (relating to special requirements).

25 The [special voting requirements specified in section
26 1952(h) (relating to special requirements).] provisions
27 of section 1952(g) and (h) (relating to proposal and
28 adoption of plan of division).

29 The provisions of section 2301(d) (relating to
30 transitional provisions).

1 The provisions of section 2541(a)(2) and (3) and (c)
2 (relating to application and effect of subchapter).

3 The provisions of section 2543(b)(1) and (2)
4 (relating to exceptions generally).

5 The provisions of section 2551(b)(3)(i), (5) and (6)
6 (relating to exceptions).

7 The provisions of section 2553(b)(2) (relating to
8 exception).

9 * * *

10 § 1303. Corporate name.

11 * * *

12 (e) Remedies for violation of section.--The use of a name in
13 violation of this section shall not vitiate or otherwise affect
14 the corporate existence but any court having jurisdiction may
15 enjoin the corporation from using or continuing to use a name in
16 violation of this section, upon the application of:

17 (1) the Attorney General, acting on his own motion or at
18 the instance of any administrative department, board or
19 commission of this Commonwealth; or

20 (2) any person adversely affected. [;
21 may enjoin the corporation from using or continuing to use a
22 name in violation of this section.]

23 (f) Cross references.--See sections 135(e) (relating to
24 distinguishable names) and 1106(b)(2) (relating to uniform
25 application of subpart).

26 § 1304. Required name changes by senior corporations.

27 * * *

28 (b) Enforcement of undertaking to release name.--If a
29 corporation has used a name [which] that is not distinguishable
30 upon the records of the [department] Department of State from

1 the name of another corporation or other association as
2 permitted by section 1303(b)(1) (relating to duplicate use of
3 names) and the other corporation or other association continues
4 to use its name in this Commonwealth and does not change its
5 name, cease to do business, be wound up or withdraw as it
6 proposed to do in its consent or change its name as required by
7 subsection (a), any court having jurisdiction may enjoin the
8 other corporation or other association from continuing to use
9 its name or a name that is not distinguishable therefrom, upon
10 the application of:

11 (1) the Attorney General, acting on his own motion or at
12 the instance of any administrative department, board or
13 commission of this Commonwealth; or

14 (2) any person adversely affected[;
15 may enjoin the other corporation or other association from
16 continuing to use its name].

17 § 1311. Filing of statement of summary of record by certain
18 corporations.

19 (a) General rule.--Where any of the [valid] charter
20 documents of a business corporation are not on file in the
21 Department of State or there is an error in any such document as
22 transferred to the department pursuant to section 140 (relating
23 to custody and management of orphan corporate and business
24 records), and the corporation desires to file any document in
25 the department under any other provision of this subpart or the
26 corporation desires to secure from the department any
27 certificate to the effect that the corporation is a corporation
28 duly incorporated and existing under the laws of this
29 Commonwealth or a certified copy of the articles of the
30 corporation or the corporation desires to correct the text of

1 its charter documents as on file in the department, the
2 corporation shall file in the department a statement of summary
3 of record which shall be executed by the corporation and shall
4 set forth:

5 (1) The name of the corporation and, subject to section
6 109 (relating to name of commercial registered office
7 provider in lieu of registered address), the location,
8 including street and number, if any, of its registered
9 office.

10 (2) The statute by or under which the corporation was
11 incorporated.

12 (3) The name under which, the manner in which and the
13 date on which the corporation was originally incorporated,
14 including the date when and the place where the original
15 articles were recorded.

16 (4) The place or places, including volume and page
17 numbers or their equivalent, where the documents
18 [constituting the currently effective articles are] that are
19 not on file in the department or that require correction in
20 the records of the department were originally filed or
21 recorded, the date or dates of each filing or recording and
22 the correct text of the [currently effective articles.]
23 documents. The information specified in this paragraph may be
24 omitted in a statement of summary of record that is delivered
25 to the department contemporaneously with amended and restated
26 articles of the corporation filed under this subpart.

27 [(5) Each name by which the corporation was known, if
28 any, other than its original name and its current name, and
29 the date or dates on which each change of name of the
30 corporation became effective.

1 (6) In the case of any entity brought within the scope
2 of Chapter 29 (relating to professional corporations) by or
3 pursuant to section 2905 (relating to election of
4 professional associations to become professional
5 corporations), amended and restated articles of incorporation
6 which shall include all of the information required to be set
7 forth in restated articles of a professional corporation.
8 A corporation shall be required to make only one filing under
9 this subsection.]

10 (b) Validation of prior defects in incorporation.--Upon the
11 filing of a statement by a corporation under this section or the
12 transfer to the department of the records relating to a
13 corporation pursuant to section 140, the corporation [named in
14 the statement] shall be deemed to be a validly subsisting
15 corporation to the same extent as if it had been duly
16 incorporated and was existing under this subpart and the
17 department shall so certify regardless of any absence of or
18 defect in the prior proceedings relating to incorporation.

19 (c) Cross [reference] references.--See [section] sections
20 134 (relating to docketing statement), 135 (relating to
21 requirements to be met by filed documents) and 1106(b)(2)
22 (relating to uniform application of subpart).

23 § 1505. Persons bound by bylaws.

24 Except as otherwise provided by section 1713 (relating to
25 personal liability of directors) or any similar provision of
26 law, the bylaws of a business corporation shall operate only as
27 regulations among the shareholders, directors and officers of
28 the corporation and shall not affect contracts or other dealings
29 with other persons unless those persons have actual knowledge of
30 the bylaws.

1 § 1508. Corporate records; inspection by shareholders.

2 (a) Required records.--Every business corporation shall keep
3 complete and accurate books and records of account, minutes of
4 the proceedings of the incorporators, shareholders and directors
5 and a share register giving the names and addresses of all
6 shareholders and the number and class of shares held by each.
7 The share register shall be kept at [either] any of the
8 following locations:

9 (1) the registered office of the corporation in this
10 Commonwealth [or at its];

11 (2) the principal place of business of the corporation
12 wherever situated;

13 (3) any actual business office of the corporation; or
14 [at]

15 (4) the office of [its] the registrar or transfer agent
16 of the corporation. [Any books, minutes or other records may
17 be in written form or any other form capable of being
18 converted into written form within a reasonable time.]

19 (b) Right of inspection by a shareholder.--Every shareholder
20 shall, upon written verified demand stating the purpose thereof,
21 have a right to examine, in person or by agent or attorney,
22 during the usual hours for business for any proper purpose, the
23 share register, books and records of account, and records of the
24 proceedings of the incorporators, shareholders and directors and
25 to make copies or extracts therefrom. A proper purpose shall
26 mean a purpose reasonably related to the interest of the person
27 as a shareholder. In every instance where an attorney or other
28 agent is the person who seeks the right of inspection, the
29 demand shall be accompanied by a verified power of attorney or
30 other writing that authorizes the attorney or other agent to so

1 act on behalf of the shareholder. The demand shall be directed
2 to the corporation:

- 3 (1) at its registered office in this Commonwealth [or];
4 (2) at its principal place of business wherever
5 situated; or
6 (3) in care of the person in charge of an actual
7 business office of the corporation.

8 (c) Proceedings for the enforcement of inspection by a
9 shareholder.--If the corporation, or an officer or agent
10 thereof, refuses to permit an inspection sought by a shareholder
11 or attorney or other agent acting for the shareholder pursuant
12 to subsection (b) or does not reply to the demand within five
13 business days after the demand has been made, the shareholder
14 may apply to the court for an order to compel the inspection.
15 The court shall determine whether or not the person seeking
16 inspection is entitled to the inspection sought. The court may
17 summarily order the corporation to permit the shareholder to
18 inspect the share register and the other books and records of
19 the corporation and to make copies or extracts therefrom, or the
20 court may order the corporation to furnish to the shareholder a
21 list of its shareholders as of a specific date on condition that
22 the shareholder first pay to the corporation the reasonable cost
23 of obtaining and furnishing the list and on such other
24 conditions as the court deems appropriate. Where the shareholder
25 seeks to inspect the books and records of the corporation, other
26 than its share register or list of shareholders, he shall first
27 establish:

- 28 (1) That he has complied with the provisions of this
29 section respecting the form and manner of making demand for
30 inspection of the document.

1 (2) That the inspection he seeks is for a proper
2 purpose.

3 Where the shareholder seeks to inspect the share register or
4 list of shareholders of the corporation and he has complied with
5 the provisions of this section respecting the form and manner of
6 making demand for inspection of the documents, the burden of
7 proof shall be upon the corporation to establish that the
8 inspection he seeks is for an improper purpose. The court may,
9 in its discretion, prescribe any limitations or conditions with
10 reference to the inspection or award such other or further
11 relief as the court deems just and proper. The court may order
12 books, documents and records, pertinent extracts therefrom, or
13 duly authenticated copies thereof, to be brought into this
14 Commonwealth and kept in this Commonwealth upon such terms and
15 conditions as the order may prescribe.

16 (d) Certain provisions of articles ineffective.--This
17 section may not be relaxed by any provision of the articles.

18 (e) Cross [reference] references.--See [section] sections
19 107 (relating to form of records), 1512 (relating to
20 informational rights of a director) and 1763(c) (relating to
21 certification by nominee).

22 § 1512. Informational rights of a director.

23 (a) General rule.--To the extent reasonably related to the
24 performance of the duties of the director, including those
25 arising from service as a member of a committee of the board of
26 directors, a director of a business corporation is entitled:

27 (1) in person or by any attorney or other agent, at any
28 reasonable time, to inspect and copy corporate books, records
29 and documents and, in addition, to inspect, and receive
30 information regarding, the assets, liabilities and operations

1 of the corporation and any subsidiaries of the corporation
2 incorporated or otherwise organized or created under the laws
3 of this Commonwealth that are controlled directly or
4 indirectly by the corporation; and

5 (2) to demand that the corporation exercise whatever
6 rights it may have to obtain information regarding any other
7 subsidiaries of the corporation.

8 (b) Proceedings for enforcement of inspection by a
9 director.--If the corporation, or an officer or agent thereof,
10 refuses to permit an inspection or obtain or provide information
11 sought by a director or attorney or other agent acting for the
12 director pursuant to subsection (a) or does not reply to the
13 request within two business days after the request has been
14 made, the director may apply to the court for an order to compel
15 the inspection or the obtaining or providing of the information.
16 The court shall summarily order the corporation to permit the
17 requested inspection or to obtain the information unless the
18 corporation establishes that the information to be obtained by
19 the exercise of the right is not reasonably related to the
20 performance of the duties of the director or that the director
21 or the attorney or agent of the director is likely to use the
22 information in a manner that would violate the duty of the
23 director to the corporation. The order of the court may contain
24 provisions protecting the corporation from undue burden or
25 expense and prohibiting the director from using the information
26 in a manner that would violate the duty of the director to the
27 corporation.

28 (c) Cross references.--See sections 107 (relating to form of
29 records) and 1508 (relating to corporate records; inspection by
30 shareholders) and 42 Pa.C.S. § 2503(7) (relating to right of

1 participants to receive counsel fees).

2 § 1521. Authorized shares.

3 * * *

4 (b) Provisions specifically authorized.--

5 (1) Without limiting the authority contained in
6 subsection (a), a corporation, when so authorized in its
7 articles, may issue classes or series of shares:

8 (i) Subject to the right or obligation of the
9 corporation to redeem any of the shares for the
10 consideration, if any, fixed by or in the manner provided
11 by the articles for the redemption thereof. Unless
12 otherwise provided in the articles, any shares subject to
13 redemption shall be redeemable only pro rata or by lot or
14 by such other equitable method as may be selected by the
15 corporation. [An amendment of the articles to add or
16 amend a provision permitting the redemption of any shares
17 by a method that is not pro rata nor by lot nor otherwise
18 equitable may be effected only pursuant to section 1906
19 (relating to special treatment of holders of shares of
20 same class or series).]

21 (ii) Entitling the holders thereof to cumulative,
22 noncumulative or partially cumulative dividends.

23 (iii) Having preference over any other shares as to
24 dividends or assets or both.

25 (iv) Convertible into shares of any other class or
26 series, or into obligations of the corporation.

27 (2) Any of the terms of a class or series of shares may
28 be made dependent upon:

29 (i) Facts ascertainable outside of the articles if
30 the manner in which the facts will operate upon the terms

1 of the class or series is set forth in the articles. Such
2 facts may include, without limitation, actions or events
3 within the control of or determinations made by the
4 corporation or a representative of the corporation.

5 * * *

6 (d) Status and rights.--Shares of a business corporation
7 shall be deemed personal property. Except as otherwise provided
8 by the articles or, when so permitted by subsection (c), by one
9 or more bylaws adopted by the shareholders, each share shall be
10 in all respects equal to every other share. See section
11 1906(d)(4) (relating to special treatment of holders of shares
12 of same class or series).

13 § 1526. Liability of [subscribers and] shareholders.

14 [A subscriber to, or holder or owner of, shares of a business
15 corporation shall not be under any liability to the corporation
16 or any creditor thereof with respect to the shares other than
17 the personal obligation of a shareholder who has acquired his
18 shares by subscription to comply with the terms of the
19 subscription.] (a) General rule.--A shareholder of a business
20 corporation shall not be liable, solely by reason of being a
21 shareholder, under an order of a court or in any other manner
22 for a debt, obligation or liability of the corporation of any
23 kind or for the acts of any shareholder or representative of the
24 corporation.

25 (b) Professional relationship unaffected.--Subsection (a)
26 shall not afford the shareholders of a business corporation that
27 is not a professional corporation, but that provides
28 professional services, with greater immunity than is available
29 to the officers, shareholders, employees or agents of a business
30 corporation that is a professional corporation. See section 2925

1 (relating to professional relationship retained).

2 (c) Disciplinary jurisdiction unaffected.--A business
3 corporation providing professional services shall be subject to
4 the applicable rules and regulations adopted by, and all the
5 disciplinary powers of, the court, department, board, commission
6 or other government unit regulating the profession in which the
7 corporation is engaged. The court, department, board or other
8 government unit may require that a corporation include in its
9 articles provisions that conform to any rule or regulation
10 heretofore or hereafter promulgated for the purpose of enforcing
11 the ethics of a profession. This subpart shall not affect or
12 impair the disciplinary powers of the court, department, board,
13 commission or other government unit over licensed persons or any
14 law, rule or regulation pertaining to the standards for
15 professional conduct of licensed persons or to the professional
16 relationship between any licensed person rendering professional
17 services and the person receiving professional services.

18 § 1554. Financial reports to shareholders.

19 (a) General rule.--Except as otherwise provided in
20 subsection (d) or unless otherwise agreed between a business
21 corporation and a shareholder, every corporation shall furnish
22 to its shareholders annual financial statements, including at
23 least a balance sheet as of the end of each fiscal year and a
24 statement of income and expenses for the fiscal year. The
25 financial statements shall be prepared on the basis of generally
26 accepted accounting principles, if the corporation prepares
27 financial statements for the fiscal year on that basis for any
28 purpose, and may be consolidated statements of the corporation
29 and one or more of its subsidiaries. The financial statements
30 shall be mailed by the corporation to each of its shareholders

1 entitled thereto within 120 days after the close of each fiscal
2 year and, after the mailing and upon written request, shall be
3 mailed by the corporation to any shareholder or beneficial owner
4 entitled thereto to whom a copy of the most recent annual
5 financial statements has not previously been mailed. In lieu of
6 mailing the statements, the corporation may send them by
7 facsimile, e-mail or other electronic transmission to any
8 shareholder who has supplied the corporation with a facsimile
9 number or address for electronic transmissions for the purpose
10 of receiving financial statements from the corporation.

11 Statements that are audited or reviewed by a certified public
12 accountant or a public accountant shall be accompanied by the
13 report of the accountant; in other cases, each copy shall be
14 accompanied by a statement of the person in charge of the
15 financial records of the corporation:

16 (1) Stating his reasonable belief as to whether or not
17 the financial statements were prepared in accordance with
18 generally accepted accounting principles and, if not,
19 describing the basis of presentation.

20 (2) Describing any material respects in which the
21 financial statements were not prepared on a basis consistent
22 with those prepared for the previous year.

23 * * *

24 § 1571. Application and effect of subchapter.

25 (a) General rule.--Except as otherwise provided in
26 subsection (b), any shareholder (as defined in section 1572
27 (relating to definitions)) of a business corporation shall have
28 the right to dissent from, and to obtain payment of the fair
29 value of his shares in the event of, any corporate action, or to
30 otherwise obtain fair value for his shares, only where this part

expressly provides that a shareholder shall have the rights and remedies provided in this subchapter. See:

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 [that, at] shall not have the right to dissent and obtain payment of the fair value of the shares under this subchapter if, on the

1 record date fixed to determine the shareholders entitled to
2 notice of and to vote at the meeting at which a plan
3 specified in any of section 1930, 1931(d), 1932(c) or 1952(d)
4 is to be voted on, or on the date of the first public
5 announcement that such a plan has been approved by the
6 shareholders by consent without a meeting, the shares are
7 either:

8 (i) listed on a national securities exchange or
9 designated as a national market system security on an
10 interdealer quotation system by the National Association
11 of Securities Dealers, Inc.; or

12 (ii) held beneficially or of record by more than
13 2,000 [shareholders;
14 shall not have the right to obtain payment of the fair value
15 of any such shares under this subchapter.] persons.

16 (2) Paragraph (1) shall not apply to and dissenters
17 rights shall be available without regard to the exception
18 provided in that paragraph in the case of:

19 (i) [Shares converted by a plan if the shares are
20 not converted solely into shares of the acquiring,
21 surviving, new or other corporation or solely into such
22 shares and money in lieu of fractional shares.]

23 (Repealed.)

24 (ii) Shares of any preferred or special class or
25 series unless the articles, the plan or the terms of the
26 transaction entitle all shareholders of the class or
27 series to vote thereon and require for the adoption of
28 the plan or the effectuation of the transaction the
29 affirmative vote of a majority of the votes cast by all
30 shareholders of the class or series.

(iii) Shares entitled to dissenters rights under section 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.

* * *

(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.

~~[(g)]~~ (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).

§ 1572. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Corporation." The issuer of the shares held or owned by the
3 dissenter before the corporate action or the successor by
4 merger, consolidation, division, conversion or otherwise of that
5 issuer. A plan of division may designate which one or more of
6 the resulting corporations is the successor corporation for the
7 purposes of this subchapter. The designated successor
8 corporation or corporations in a division shall have sole
9 responsibility for payments to dissenters and other liabilities
10 under this subchapter except as otherwise provided in the plan
11 of division.

12 "Dissenter." A shareholder [or beneficial owner] who is
13 entitled to and does assert dissenters rights under this
14 subchapter and who has performed every act required up to the
15 time involved for the assertion of those rights.

16 * * *

17 "Shareholder." A shareholder as defined in section 1103
18 (relating to definitions), or an ultimate beneficial owner of
19 shares, including without limitation a holder of depository
20 receipts, where the beneficial interest owned includes an
21 interest in the assets of the corporation upon dissolution.

22 § 1702. Manner of giving notice.

23 (a) General rule.--[Whenever written]

24 (1) Any notice [is] required to be given to any person
25 under the provisions of this subpart or by the articles or
26 bylaws of any business corporation[, it may] shall be given
27 to the person either personally or by sending a copy thereof
28 [by] :

29 (i) By first class or express mail, postage prepaid,
30 [or by telegram (with messenger service specified), telex

1 or TWX (with answerback received)] or courier service,
2 charges prepaid, [or by facsimile transmission,] to his
3 postal address [(or to his telex, TWX or facsimile
4 number)] appearing on the books of the corporation or, in
5 the case of directors, supplied by him to the corporation
6 for the purpose of notice. [If the notice is sent by
7 mail, telegraph or courier service, it shall be deemed to
8 have been given to the person entitled thereto when
9 deposited in the United States mail or with a telegraph
10 office or courier service for delivery to that person or,
11 in the case of telex or TWX, when dispatched.] Notice
12 pursuant to this subparagraph shall be deemed to have
13 been given to the person entitled thereto when deposited
14 in the United States mail or with a courier service for
15 delivery to that person.

16 (ii) By facsimile transmission, e-mail or other
17 electronic communication to his facsimile number or
18 address for e-mail or other electronic communications
19 supplied by him to the corporation for the purpose of
20 notice. Notice pursuant to this subparagraph shall be
21 deemed to have been given to the person entitled thereto
22 when sent.

23 (2) A notice of meeting shall specify the [place,] day
24 and hour and geographic location, if any, of the meeting and
25 any other information required by any other provision of this
26 subpart.

27 * * *

28 § 1704. Place and notice of meetings of shareholders.

29 (a) Place.--Meetings of shareholders may be held at such
30 [place] geographic location within or without this Commonwealth

1 as may be provided in or fixed pursuant to the bylaws. Unless
2 otherwise provided in or pursuant to the bylaws, all meetings of
3 the shareholders shall be held [in this Commonwealth at the
4 registered office of the corporation] at the executive office of
5 the corporation wherever situated. If a meeting of the
6 shareholders is held by means of the Internet or other
7 electronic communications technology in a fashion pursuant to
8 which the shareholders have the opportunity to read or hear the
9 proceedings substantially concurrently with their occurrence,
10 vote on matters submitted to the shareholders and pose questions
11 to the directors, the meeting need not be held at a particular
12 geographic location.

13 * * *

14 § 1708. Use of conference telephone [and similar equipment] or
15 other electronic technology.

16 (a) Incorporators and directors.--Except as otherwise
17 provided in the bylaws, one or more persons may participate in a
18 meeting of the incorporators[,] or the board of directors [or
19 the shareholders] of a business corporation by means of
20 conference telephone or [similar communications equipment] other
21 electronic technology by means of which all persons
22 participating in the meeting can hear each other. Participation
23 in a meeting pursuant to this section shall constitute presence
24 in person at the meeting.

25 (b) Shareholders.--Except as otherwise provided in the
26 bylaws, the presence or participation, including voting and
27 taking other action, at a meeting of shareholders, or the
28 expression of consent or dissent to corporate action, by a
29 shareholder by conference telephone or other electronic means,
30 including, without limitation, the Internet, shall constitute

1 the presence of, or vote or action by, or consent or dissent of
2 the shareholder for the purposes of this subpart.

3 § 1709. Conduct of shareholders meeting.

4 (a) Presiding officer.--There shall be a presiding officer
5 at every meeting of the shareholders. The presiding officer
6 shall be appointed in the manner provided in the bylaws or, in
7 the absence of such provision, by the board of directors. If the
8 bylaws are silent on the appointment of the presiding officer
9 and the board fails to designate a presiding officer, the
10 president shall be the presiding officer.

11 (b) Authority of the presiding officer.--Except as otherwise
12 provided in the bylaws, the presiding officer shall determine
13 the order of business and shall have the authority to establish
14 rules for the conduct of the meeting.

15 (c) Procedural standard.--Any action by the presiding
16 officer in adopting rules for, and in conducting, a meeting
17 shall be fair to the shareholders.

18 (d) Closing of the polls.--The presiding officer shall
19 announce at the meeting when the polls close for each matter
20 voted upon. If no announcement is made, the polls shall be
21 deemed to have closed upon the final adjournment of the meeting.
22 After the polls close, no ballots, proxies or votes, nor any
23 revocations or changes thereto, may be accepted.

24 § 1721. Board of directors.

25 (a) General rule.--Unless otherwise provided by statute or
26 in a bylaw adopted by the shareholders, all powers enumerated in
27 section 1502 (relating to general powers) and elsewhere in this
28 subpart or otherwise vested by law in a business corporation
29 shall be exercised by or under the authority of, and the
30 business and affairs of every business corporation shall be

1 managed under the direction of, a board of directors. If any
2 such provision is made in the bylaws, the powers and duties
3 conferred or imposed upon the board of directors by this subpart
4 shall be exercised or performed to such extent and by such
5 person or persons as shall be provided in the bylaws. Persons
6 upon whom the liabilities of directors are imposed by this
7 section shall to that extent be entitled to the rights and
8 immunities conferred by or pursuant to this part and other
9 provisions of law upon directors of a corporation.

10 (b) Cross reference.--See section 2527 (relating to
11 authority of board of directors).

12 § 1727. Quorum of and action by directors.

13 * * *

14 (b) Action by [written] consent.--Unless otherwise
15 restricted in the bylaws, any action required or permitted to be
16 taken at a meeting of the directors may be taken without a
17 meeting if, prior or subsequent to the action, a consent or
18 consents thereto by all of the directors in office is filed with
19 the secretary of the corporation.

20 § 1729. Voting rights of directors.

21 * * *

22 (c) Cross reference.--See section 2526 (relating to voting
23 rights of directors).

24 § 1731. Executive and other committees of the board.

25 (a) Establishment and powers.--Unless otherwise restricted
26 in the bylaws:

27 * * *

28 (2) Any committee, to the extent provided in the
29 resolution of the board of directors or in the bylaws, shall
30 have and may exercise all of the powers and authority of the

1 board of directors except that a committee shall not have any
2 power or authority as to the following:

3 (i) The submission to shareholders of any action
4 requiring approval of shareholders under this subpart.

5 (ii) The creation or filling of vacancies in the
6 board of directors.

7 (iii) The adoption, amendment or repeal of the
8 bylaws.

9 (iv) The amendment or repeal of any resolution of
10 the board that by its terms is amendable or repealable
11 only by the board.

12 (v) Action on matters committed by the bylaws or
13 resolution of the board of directors exclusively to
14 another committee of the board.

15 * * *

16 § 1745. Advancing expenses.

17 Expenses (including attorneys' fees) incurred in defending
18 any action or proceeding referred to in this subchapter may be
19 paid by a business corporation in advance of the final
20 disposition of the action or proceeding upon receipt of an
21 undertaking by or on behalf of the representative to repay the
22 amount if it is ultimately determined that he is not entitled to
23 be indemnified by the corporation as authorized in this
24 subchapter or otherwise. Except as otherwise provided in the
25 bylaws, advancement of expenses shall be authorized by the board
26 of directors. Sections 1728 (relating to interested directors or
27 officers; quorum) and 2538 (relating to approval of transactions
28 with interested shareholders) shall not be applicable to the
29 advancement of expenses under this section.

30 § 1748. Application to surviving or new corporations.

1 [For] (a) General rule.--Except as provided in subsection
2 (b), for the purposes of this subchapter, references to "the
3 corporation" include all constituent corporations absorbed in a
4 consolidation, merger or division, as well as the surviving or
5 new corporations surviving or resulting therefrom, so that any
6 person who is or was a representative of the constituent,
7 surviving or new corporation, or is or was serving at the
8 request of the constituent, surviving or new corporation as a
9 representative of another domestic or foreign corporation for
10 profit or not-for-profit, partnership, joint venture, trust or
11 other enterprise, shall stand in the same position under the
12 provisions of this subchapter with respect to the surviving or
13 new corporation as he would if he had served the surviving or
14 new corporation in the same capacity.

15 (b) Divisions.--Notwithstanding subsection (a), the
16 obligations of a dividing corporation to indemnify and advance
17 expenses to its representatives, whether arising under this
18 subchapter or otherwise, may be allocated in a division in the
19 same manner and with the same effect as any other liability of
20 the dividing corporation.

21 § 1756. Quorum.

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

26 * * *

27 (4) If a proxy casts a vote on behalf of a shareholder
28 on any issue other than a procedural motion considered at a
29 meeting of shareholders, the shareholder shall be deemed to
30 be present during the entire meeting for purposes of

1 determining whether a quorum is present for consideration of
2 any other issue.

3 * * *

4 § 1758. Voting rights of shareholders.

5 * * *

6 (b) Procedures for election of directors.--[If the bylaws
7 provide a fair and reasonable procedure for the nomination of
8 candidates for any office, only candidates who have been duly
9 nominated in accordance therewith shall be eligible for
10 election.] Unless otherwise restricted in the bylaws, in
11 elections for directors, voting need not be by ballot unless
12 required by vote of the shareholders before the voting for
13 election of directors begins. The candidates for election as
14 directors receiving the highest number of votes from each class
15 or group of classes, if any, entitled to elect directors
16 separately up to the number of directors to be elected by the
17 class or group of classes shall be elected. If at any meeting of
18 shareholders, directors of more than one class are to be
19 elected, each class of directors shall be elected in a separate
20 election.

21 * * *

22 (e) Advance notice of nominations and other business.--If
23 the bylaws provide a fair and reasonable procedure for the
24 nomination of candidates for election as directors, only
25 candidates who have been duly nominated in accordance therewith
26 shall be eligible for election. If the bylaws impose a fair and
27 reasonable requirement of advance notice of proposals to be made
28 by a shareholder at the annual meeting of the shareholders, only
29 proposals for which advance notice has been properly given may
30 be acted upon at the meeting.

1 § 1759. Voting and other action by proxy.

2 * * *

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

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

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

21 (c) Revocation.--A proxy, unless coupled with an interest,
22 shall be revocable at will, notwithstanding any other agreement
23 or any provision in the proxy to the contrary, but the
24 revocation of a proxy shall not be effective until [written]
25 notice thereof has been given to the secretary of the
26 corporation or its designated agent in writing or by electronic
27 transmission. An unrevoked proxy shall not be valid after three
28 years from the date of its execution, authentication or
29 transmission unless a longer time is expressly provided therein.
30 A proxy shall not be revoked by the death or incapacity of the

1 maker unless, before the vote is counted or the authority is
2 exercised, written notice of the death or incapacity is given to
3 the secretary of the corporation or its designated agent.

4 * * *

5 § 1766. Consent of shareholders in lieu of meeting.

6 * * *

7 (b) Partial [written] consent.--If the bylaws so provide,
8 any action required or permitted to be taken at a meeting of the
9 shareholders or of a class of shareholders may be taken without
10 a meeting upon the [written] consent of shareholders who would
11 have been entitled to cast the minimum number of votes that
12 would be necessary to authorize the action at a meeting at which
13 all shareholders entitled to vote thereon were present and
14 voting. The consents shall be filed with the secretary of the
15 corporation.

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

22 * * *

23 § 1906. Special treatment of holders of shares of same class or
24 series.

25 (a) General rule.--Except as otherwise restricted in the
26 articles, [an amendment or] a plan may contain a provision
27 classifying the holders of shares of a class or series into one
28 or more separate groups by reference to any facts or
29 circumstances that are not manifestly unreasonable and providing
30 mandatory treatment for shares of the class or series held by

1 particular shareholders or groups of shareholders that differs
2 materially from the treatment accorded other shareholders or
3 groups of shareholders holding shares of the same class or
4 series (including a provision modifying or rescinding rights
5 previously created under this section) if:

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

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

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

21 (b) Statutory voting rights upon special treatment.--Except
22 as provided in subsection (c), if [an amendment or] a plan
23 contains a provision for special treatment, each group of
24 holders of any outstanding shares of a class or series who are
25 to receive the same special treatment under the [amendment or]
26 plan shall be entitled to vote as a special class in respect to
27 the plan regardless of any limitations stated in the articles or
28 bylaws on the voting rights of any class or series.

29 (c) Dissenters rights upon special treatment.--If any
30 [amendment or] plan contains a provision for special treatment

1 without requiring for the adoption of the [amendment or] plan
2 the statutory class vote required by subsection (b), the holder
3 of any outstanding shares the statutory class voting rights of
4 which are so denied, who objects to the [amendment or] plan and
5 complies with Subchapter D of Chapter 15 (relating to dissenters
6 rights), shall be entitled to the rights and remedies of
7 dissenting shareholders provided in that subchapter.

8 (d) Exceptions.--This section shall not apply to:

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

14 (2) A provision of [an amendment or] a plan that offers
15 to all holders of shares of a class or series the same option
16 to elect certain treatment.

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

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

1 (e) Definition.--As used in this section, the term "plan"
2 includes:

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

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

9 § 1912. Proposal of amendments.

10 * * *

11 (c) Terms of amendment.--The resolution or petition may set
12 forth the manner and basis of reclassifying the shares of the
13 corporation. Any of the terms of a plan of reclassification or
14 other action contained in an amendment may be made dependent
15 upon facts ascertainable outside of the amendment if the manner
16 in which the facts will operate upon the terms of the amendment
17 is set forth in the amendment. Such facts may include, without
18 limitation, actions or events within the control of or
19 determinations made by the corporation or a representative of
20 the corporation.

21 § 1914. Adoption of amendments.

22 * * *

23 (b) Statutory voting rights.--Except as provided in this
24 subpart, the holders of the outstanding shares of a class or
25 series of shares shall be entitled to vote as a class in respect
26 of a proposed amendment regardless of any limitations stated in
27 the articles or bylaws on the voting rights of any class or
28 series if [a proposed] the amendment would:

29 (1) authorize the board of directors to fix and
30 determine the relative rights and preferences, as between

series, of any preferred or special class;

(2) make any change in the preferences, limitations or special rights (other than preemptive rights or the right to vote cumulatively) of the shares of a class or series adverse to the class or series;

(3) authorize a new class or series of shares having a preference as to dividends or assets which is senior to the shares of a class or series; [or]

(4) increase the number of authorized shares of any class or series having a preference as to dividends or assets which is senior in any respect to the shares of a class or series; or

(5) make the outstanding shares of a class or series redeemable by a method that is not pro rata, by lot or otherwise equitable.

[then the holders of the outstanding shares of the class or series shall be entitled to vote as a class in respect to the amendment regardless of any limitations stated in the articles or bylaws on the voting rights of any class or series.]

(c) Adoption by board of directors.--Unless otherwise restricted in the articles, an amendment of articles shall not require the approval of the shareholders of the corporation if:

(1) shares have not been issued;

(2) the amendment is restricted to [any] one or more of the following:

(i) changing the corporate name;

(ii) providing for perpetual existence;

(iii) reflecting a reduction in authorized shares effected by operation of section 1552(a) (relating to power of corporation to acquire its own shares) and, if

appropriate, deleting all references to a class or series of shares that is no longer outstanding; [or]

(iv) adding or deleting a provision authorized by section 1528(f) (relating to uncertificated shares)[.];

or

(v) adding, changing or eliminating the par value of any class or series of shares if the par value of that class or series does not have any substantive effect under the terms of that or any other class or series of shares;

(3) (i) the corporation has only one class or series of voting shares outstanding;

(ii) the corporation does not have any class or series of shares outstanding that is:

(A) convertible into those voting shares;

(B) junior in any way to those voting shares; or

(C) entitled to participate on any basis in distributions with those voting shares; and

(iii) the amendment is effective solely to accomplish one of the following purposes with respect to those voting shares:

[(i)] (A) in connection with effectuating a stock dividend of voting shares on the voting shares, to increase the number of authorized shares [to the extent necessary to permit the board of directors to effectuate a stock dividend in the shares of the corporation] of the voting shares in the same proportion that the voting shares to be distributed in the stock dividend increase the issued voting shares; or

[(ii) effectuate a] (B) to split the voting shares

1 and, if desired, increase the number of authorized shares
2 of the voting shares or change the par value of [the
3 authorized] the voting shares, or both, in proportion
4 thereto;

5 (4) to the extent the amendment has not been approved by
6 the shareholders, it restates without change all of the
7 operative provisions of the articles as theretofore amended
8 or as amended thereby; or

9 (5) the amendment accomplishes any combination of
10 purposes specified in this subsection.

11 Whenever a provision of this subpart authorizes the board of
12 directors to take any action without the approval of the
13 shareholders and provides that a statement, certificate, plan or
14 other document relating to such action shall be filed in the
15 Department of State and shall operate as an amendment of the
16 articles, the board upon taking such action may, in lieu of
17 filing the statement, certificate, plan or other document, amend
18 the articles under this subsection without the approval of the
19 shareholders to reflect the taking of such action. An amendment
20 of articles under this subsection shall be deemed adopted by the
21 corporation when it has been adopted by the board of directors
22 pursuant to section 1912 (relating to proposal of amendments).

23 * * *

24 (f) Definition.--As used in this section, the term "voting
25 shares" has the meaning specified in section 2552 (relating to
26 definitions).

27 § 1922. Plan of merger or consolidation.

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

30 * * *

1 (5) Such other provisions as are deemed desirable.
2 [Any of the terms of the plan may be made dependent upon facts
3 ascertainable outside of the plan if the manner in which the
4 facts will operate upon the terms of the plan is set forth in
5 the plan.]

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

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

18 (2) Any [term] provision of the articles of the
19 surviving or new corporation [to be effected by] as it is to
20 be in effect immediately following consummation of the merger
21 or consolidation, except provisions that may be amended
22 without the approval of the shareholders under section
23 1914(c)(2) (relating to adoption of amendments).

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

27 (c) Proposal.--[Every] Except where the approval of the
28 board of directors is unnecessary under this subchapter, every
29 merger or consolidation shall be proposed in the case of each
30 domestic business corporation by the adoption by the board of

1 directors of a resolution approving the plan of merger or
2 consolidation. Except where the approval of the shareholders is
3 unnecessary under this subchapter, the board of directors shall
4 direct that the plan be submitted to a vote of the shareholders
5 entitled to vote thereon at a regular or special meeting of the
6 shareholders.

7 * * *

8 (e) Reference to outside facts.--Any of the terms of a plan
9 of merger or consolidation may be made dependent upon facts
10 ascertainable outside of the plan if the manner in which the
11 facts will operate upon the terms of the plan is set forth in
12 the plan. Such facts may include, without limitation, actions or
13 events within the control of or determinations made by a party
14 to the plan or a representative of a party to the plan.

15 § 1923. Notice of meeting of shareholders.

16 (a) General rule.--Written notice of the meeting of
17 shareholders that will act on the proposed plan shall be given
18 to each shareholder of record, whether or not entitled to vote
19 thereon, of each domestic business corporation that is a party
20 to the merger or consolidation. There shall be included in, or
21 enclosed with, the notice a copy of the proposed plan or a
22 summary thereof and, if Subchapter D of Chapter 15 (relating to
23 dissenters rights) is applicable to the holders of shares of any
24 class or series, a copy of that subchapter and of section 1930
25 (relating to dissenters rights) shall be furnished to the
26 holders of shares of that class or series. If the surviving or
27 new corporation will be a nonregistered corporation, the notice
28 shall state that a copy of its bylaws, as they will be in effect
29 immediately following the merger or consolidation, will be
30 furnished to any shareholder on request and without cost.

1 * * *

2 § 1924. Adoption of plan.

3 * * *

4 (b) Adoption by board of directors.--

5 (1) Unless otherwise required by its bylaws, a plan of
6 merger or consolidation shall not require the approval of the
7 shareholders of a constituent domestic business corporation
8 if:

9 * * *

10 (ii) immediately prior to the adoption of the plan
11 and at all times thereafter prior to its effective date,
12 another corporation that is a party to the [merger or
13 consolidation] plan owns directly or indirectly 80% or
14 more of the outstanding shares of each class of the
15 constituent corporation; or

16 * * *

17 (3) If a merger or consolidation of a subsidiary
18 corporation with a parent corporation is effected pursuant to
19 paragraph (1)(ii), the plan of merger or consolidation shall
20 be deemed adopted by the subsidiary corporation when it has
21 been adopted by the board of the parent corporation and
22 neither approval of the plan by the board of directors of the
23 subsidiary corporation nor execution of articles of merger or
24 consolidation by the subsidiary corporation shall [not] be
25 necessary.

26 (4) (i) Unless other required by its bylaws, a plan of
27 merger or consolidation providing for the merger or
28 consolidation of a domestic business corporation
29 (referred to in this paragraph as the "constituent
30 corporation") with or into a single indirect wholly owned

1 subsidiary (referred to in this paragraph as the
2 "subsidiary corporation") of the constituent corporation
3 shall not require the approval of the shareholders of
4 either the constituent corporation or the subsidiary
5 corporation if all of the provisions of this paragraph
6 are satisfied.

7 (ii) A merger or consolidation under this paragraph
8 shall satisfy the following conditions:

9 (A) The constituent corporation and the
10 subsidiary corporation are the only parties to the
11 merger or consolidation, other than the resulting
12 corporation, if any, in a consolidation (the
13 corporation that survives or results from the merger
14 or consolidation is referred to in this paragraph as
15 the "resulting subsidiary").

16 (B) Each share or fraction of a share of the
17 capital stock of the constituent corporation
18 outstanding immediately prior to the effective time
19 of the merger or consolidation is converted in the
20 merger or consolidation into a share or equal
21 fraction of a share of capital stock of a holding
22 company having the same designations, rights, powers
23 and preferences and the qualifications, limitations
24 and restrictions as the share of stock of the
25 constituent corporation being converted in the merger
26 or consolidation.

27 (C) The holding company and the resulting
28 subsidiary are each domestic business corporations.

29 (D) Immediately following the effective time of
30 the merger or consolidation, the articles of

1 incorporation and bylaws of the holding company are
2 identical to the articles of incorporation and bylaws
3 of the constituent corporation immediately before the
4 effective time of the merger or consolidation, except
5 for changes that could be made without shareholder
6 approval under section 1914(c) (relating to adoption
7 by board of directors).

8 (E) Immediately following the effective time of
9 the merger or consolidation, the resulting subsidiary
10 is a direct or indirect wholly owned subsidiary of
11 the holding company.

12 (F) The directors of the constituent corporation
13 become or remain the directors of the holding company
14 upon the effective time of the merger or
15 consolidation.

16 (G) The board of directors of the constituent
17 corporation has made a good faith determination that
18 the shareholders of the constituent corporation will
19 not recognize gain or loss for United States Federal
20 Income Tax purposes.

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

28 (iv) If the holding company is a registered
29 corporation, the shares of the holding company issued in
30 connection with the merger or consolidation shall be

1 deemed to have been acquired at the time that the shares
2 of the constituent corporation converted in the merger or
3 consolidation were acquired.

4 (5) A plan of merger or consolidation adopted by the
5 board of directors under this subsection without the approval
6 of the shareholders shall not, by itself, create or impair
7 any rights or obligations on the part of any person under
8 section 2538 (relating to approval of transactions with
9 interested shareholders) or under Subchapters E (relating to
10 control transactions), F (relating to business combinations),
11 G (relating to control-share acquisitions), H (relating to
12 disgorgement by certain controlling shareholders following
13 attempts to acquire control), I (relating to severance
14 compensation for employees terminated following certain
15 control-share acquisitions) and J (relating to business
16 combination transactions - labor contracts) of Chapter 25,
17 nor shall it change the standard of care applicable to the
18 directors under Subchapter B of Chapter 17 (relating to
19 fiduciary duty).

20 * * *

21 § 1929. Effect of merger or consolidation.

22 * * *

23 (b) Property rights.--All the property, real, personal and
24 mixed, and franchises of each of the corporations parties to the
25 merger or consolidation, and all debts due on whatever account
26 to any of them, including subscriptions for shares and other
27 choses in action belonging to any of them, shall be deemed to be
28 [transferred to and] vested in and shall belong to the surviving
29 or new corporation, as the case may be, without further action,
30 and the title to any real estate, or any interest therein,

1 vested in any of the corporations shall not revert or be in any
2 way impaired by reason of the merger or consolidation. The
3 surviving or new corporation shall thenceforth be responsible
4 for all the liabilities of each of the corporations so merged or
5 consolidated. Liens upon the property of the merging or
6 consolidating corporations shall not be impaired by the merger
7 or consolidation and any claim existing or action or proceeding
8 pending by or against any of the corporations may be prosecuted
9 to judgment as if the merger or consolidation had not taken
10 place or the surviving or new corporation may be proceeded
11 against or substituted in its place.

12 (c) Taxes.--Any taxes, interest, penalties and public
13 accounts of the Commonwealth[,] claimed against any of the <—
14 merging or consolidating corporations [but not] that are
15 settled, assessed or determined prior to or after the merger or
16 consolidation[,] shall be [settled, assessed or determined <—
17 against] the liability of the surviving or new corporation and,
18 together with interest thereon, shall be a lien against the
19 franchises and property, both real and personal, of the
20 surviving or new corporation.

21 * * *

22 § 1930. Dissenters rights.

23 * * *

24 (b) Plans adopted by directors only.--Except as otherwise
25 provided pursuant to section 1571(c) (relating to grant of
26 optional dissenters rights), Subchapter D of Chapter 15 shall
27 not apply to any of the shares of a corporation that is a party
28 to a merger or consolidation pursuant to section 1924(b)(1)(i)
29 or (4) (relating to adoption by board of directors).

30 * * *

1 § 1931. Share exchanges.

2 (a) General rule.--All the outstanding shares of one or more
3 classes or series of a domestic business corporation, designated
4 in this section as the exchanging corporation, may, in the
5 manner provided in this section, be acquired by any person,
6 designated in this section as the acquiring person, through an
7 exchange of all the shares pursuant to a plan of exchange. The
8 plan of exchange may also provide for the conversion of any
9 other shares of the exchanging corporation into shares, other
10 securities or obligations of any person or cash, property or
11 rights. The procedure authorized by this section shall not be
12 deemed to limit the power of any person to acquire all or part
13 of the shares or other securities of any class or series of a
14 corporation through a voluntary exchange or otherwise by
15 agreement with the holders of the shares or other securities.

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

18 (1) The terms and conditions of the exchange.

19 (2) The manner and basis of exchanging or converting the
20 shares of the exchanging corporation into shares or other
21 securities or obligations of the acquiring person, and, if
22 any of the shares of the exchanging corporation are not to be
23 exchanged or converted solely into shares or other securities
24 or obligations of the acquiring person, the shares or other
25 securities or obligations of any other person or cash,
26 property or rights that the holders of the shares of the
27 exchanging corporation are to receive in exchange for, or
28 upon conversion of, the shares and the surrender of any
29 certificates evidencing them, which securities or
30 obligations, if any, of any other person or cash, property

1 and rights may be in addition to or in lieu of the shares or
2 other securities or obligations of the acquiring person.

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

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

13 (5) Such other provisions as are deemed desirable.
14 [Any of the terms of the plan may be made dependent upon facts
15 ascertainable outside of the plan if the manner in which the
16 facts will operate upon the terms of the plan is set forth in
17 the plan.]

18 (c) Proposal and adoption.--The plan of exchange shall be
19 proposed and adopted and may be amended after its adoption and
20 terminated by the exchanging corporation in the manner provided
21 by this subchapter for the proposal, adoption, amendment and
22 termination of a plan of merger except section 1924(b) (relating
23 to adoption by board of directors). There shall be included in,
24 or enclosed with, the notice of the meeting of shareholders to
25 act on the plan a copy or a summary of the plan and, if
26 Subchapter D of Chapter 15 (relating to dissenters rights) is
27 applicable, a copy of the subchapter and of subsection (d). The
28 holders of any class of shares to be [acquired] exchanged or
29 converted pursuant to the plan of exchange shall be entitled to
30 vote as a class on the plan if they would have been entitled to

1 vote on a plan of merger that affects the class in substantially
2 the same manner as the plan of exchange.

3 (d) Dissenters rights in share exchanges.--Any holder of
4 shares that are to be [acquired] exchanged or converted pursuant
5 to a plan of exchange who objects to the plan and complies with
6 the provisions of Subchapter D of Chapter 15 shall be entitled
7 to the rights and remedies of dissenting shareholders therein
8 provided, if any. See section 1906(c) (relating to dissenter
9 rights upon special treatment).

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

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

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

22 (3) The manner in which the plan was adopted by the
23 exchanging corporation.

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

27 The articles of exchange shall be filed in the Department of
28 State. See [section] sections 134 (relating to docketing
29 statement) and 135 (relating to requirements to be met by filed
30 documents.

1 * * *

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

9 § 1932. Voluntary transfer of corporate assets.

10 * * *

11 (b) Shareholder approval required.--

12 (1) A sale, lease, exchange or other disposition of all,
13 or substantially all, the property and assets, with or
14 without the goodwill, of a business corporation, if not made
15 pursuant to subsection (a) or (d) or to section 1551
16 (relating to distributions to shareholders) or Subchapter D
17 (relating to division), may be made only pursuant to a plan
18 of asset transfer[.] in the manner provided in this
19 subsection. A corporation selling, leasing or otherwise
20 disposing of all, or substantially all, its property and
21 assets is referred to in this subsection and in subsection
22 (c) as the "transferring corporation."

23 (2) The property or assets of a direct or indirect
24 subsidiary corporation that is controlled by a parent
25 corporation shall also be deemed the property or assets of
26 the parent corporation for the purposes of this subsection
27 and of subsection (c). A merger or consolidation to which
28 such a subsidiary corporation is a party and in which a third
29 party acquires direct or indirect ownership of the property
30 or assets of the subsidiary corporation constitutes an "other

1 disposition" of the property or assets of the parent
2 corporation within the meaning of that term as used in this
3 section.

4 (3) The plan of asset transfer shall set forth the terms
5 and conditions of the sale, lease, exchange or other
6 disposition or may authorize the board of directors to fix
7 any or all of the terms and conditions, including the
8 consideration to be received by the corporation therefor. The
9 plan may provide for the distribution to the shareholders of
10 some or all of the consideration to be received by the
11 corporation, including provisions for special treatment of
12 shares held by any shareholder or group of shareholders as
13 authorized by, and subject to the provisions of, section 1906
14 (relating to special treatment of holders of shares of same
15 class or series). It shall not be necessary for the person
16 acquiring the property or assets of the transferring
17 corporation to be a party to the plan. Any of the terms of
18 the plan may be made dependent upon facts ascertainable
19 outside of the plan if the manner in which the facts will
20 operate upon the terms of the plan is set forth in the plan.
21 Such facts may include, without limitation, actions or events
22 within the control of or determinations made by the
23 corporation or a representative of the corporation.

24 (4) The plan of asset transfer shall be proposed and
25 adopted, and may be amended after its adoption and
26 terminated, by [a business] the transferring corporation in
27 the manner provided in this subchapter for the proposal,
28 adoption, amendment and termination of a plan of merger,
29 except section 1924(b) (relating to adoption by board of
30 directors). The procedures of this subchapter shall not be

1 applicable to the person acquiring the property or assets of
2 the transferring corporation. There shall be included in, or
3 enclosed with, the notice of the meeting of the shareholders
4 of the transferring corporation to act on the plan a copy or
5 a summary of the plan and, if Subchapter D of Chapter 15
6 (relating to dissenters rights) is applicable, a copy of the
7 subchapter and of subsection (c).

8 (5) In order to make effective the plan of asset
9 transfer so adopted, it shall not be necessary to file any
10 articles or other documents in the Department of State.

11 (c) Dissenters rights in asset transfers.--

12 (1) If a shareholder of a transferring corporation that
13 adopts a plan of asset transfer objects to the plan and
14 complies with Subchapter D of Chapter 15, the shareholder
15 shall be entitled to the rights and remedies of dissenting
16 shareholders therein provided, if any.

17 (2) Paragraph (1) shall not apply to a sale pursuant to
18 an order of court having jurisdiction in the premises or a
19 sale [for money on terms requiring] pursuant to a plan of
20 asset transfer that requires that all or substantially all of
21 the net proceeds of sale be distributed to the shareholders
22 in accordance with their respective interests within one year
23 after the date of sale or to a liquidating trust.

24 * * *

25 (G) PRESUMPTION.--A CORPORATION WILL CONCLUSIVELY BE DEEMED <—
26 NOT TO HAVE SOLD, LEASED, EXCHANGED OR OTHERWISE DISPOSED OF
27 ALL, OR SUBSTANTIALLY ALL, OF ITS PROPERTY AND ASSETS, WITH OR
28 WITHOUT GOODWILL, IF THE CORPORATION OR ANY DIRECT OR INDIRECT
29 SUBSIDIARY CONTROLLED BY THE CORPORATION RETAINS A BUSINESS
30 ACTIVITY THAT REPRESENTED AT THE END OF ITS MOST RECENTLY

1 COMPLETED FISCAL YEAR, ON A CONSOLIDATED BASIS, AT LEAST:

2 (1) 25% OF TOTAL ASSETS; AND

3 (2) 25% OF EITHER:

4 (I) INCOME FROM CONTINUING OPERATIONS BEFORE TAXES;

5 OR

6 (II) REVENUES FROM CONTINUING OPERATIONS.

7 § 1952. Proposal and adoption of plan of division.

8 (a) Preparation of plan.--A plan of division shall be
9 prepared, setting forth:

10 (1) The terms and conditions of the division, including
11 the manner and basis of:

12 (i) The reclassification of the shares of the
13 surviving corporation, if there be one, and, if any of
14 the shares of the dividing corporation are not to be
15 converted solely into shares or other securities or
16 obligations of one or more of the resulting corporations,
17 the shares or other securities or obligations of any
18 other person, or cash, property or rights that the
19 holders of such shares are to receive in exchange for or
20 upon conversion of such shares, and the surrender of any
21 certificates evidencing them, which securities or
22 obligations, if any, of any other person or cash,
23 property or rights may be in addition to or in lieu of
24 shares or other securities or obligations of one or more
25 of the resulting corporations.

26 (ii) The disposition of the shares and other
27 securities or obligations, if any, of the new corporation
28 or corporations resulting from the division.

29 (2) A statement that the dividing corporation will, or
30 will not, survive the division.

1 (3) Any changes desired to be made in the articles of
2 the surviving corporation, if there be one, including a
3 restatement of the articles.

4 (4) The articles of incorporation required by subsection
5 (b).

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

11 (6) Such other provisions as are deemed desirable.

12 [Any of the terms of the plan may be made dependent upon facts
13 ascertainable outside of the plan if the manner in which the
14 facts will operate upon the terms of the plan is set forth in
15 the plan.]

16 * * *

17 (g) [Action by] Rights of holders of indebtedness.--[Unless
18 otherwise provided by an indenture or other contract by which
19 the dividing corporation is bound, a plan of division shall not
20 require the approval of the holders of any debt securities or
21 other obligations of the dividing corporation or of any
22 representative of the holders, if the transfer of assets
23 effected by the division, if effected by means of a sale, lease,
24 exchange or other disposition, and any related distribution,
25 would not require the approval of the holders or representatives
26 thereof.] If any debt securities, notes or similar evidences of
27 indebtedness for money borrowed, whether secured or unsecured,
28 indentures or other contracts were issued, incurred or executed
29 by the dividing corporation before (the Legislative Reference
30 Bureau shall insert here the effective date of the amendments of

1 this section) and have not been amended subsequent to that date,
2 the liability of the dividing corporation thereunder shall not
3 be affected by the division nor shall the rights of the obligees
4 thereunder be impaired by the division, and each of the
5 resulting corporations may be proceeded against or substituted
6 in place of the dividing corporation as joint and several
7 obligors on such liability, regardless of any provision of the
8 plan of division apportioning the liabilities of the dividing
9 corporation.

10 * * *

11 (i) Reference to outside facts.--Any of the terms of a plan
12 of division may be made dependent upon facts ascertainable
13 outside of the plan if the manner in which the facts will
14 operate upon the terms of the plan is set forth in the plan.
15 Such facts may include, without limitation, actions or events
16 within the control of or determinations made by the dividing
17 corporation or a representative of the dividing corporation.

18 § 1953. Division without shareholder approval.

19 (a) General rule.--Unless otherwise restricted by its bylaws
20 or required by section 1952(f) (relating to action by holders of
21 preferred or special shares), a plan of division that does not
22 alter the state of incorporation of a business corporation,
23 provide for special treatment nor amend in any respect the
24 provisions of its articles (except amendments which under
25 section 1914(c) (relating to adoption by board of directors) may
26 be made without shareholder action) shall not require the
27 approval of the shareholders of the corporation if:

28 (1) the dividing corporation has only one class of
29 shares outstanding and the shares and other securities, if
30 any, of each corporation resulting from the plan are

distributed pro rata to the shareholders of the dividing corporation;

(2) the dividing corporation survives the division and all the shares and other securities and obligations, if any, of all new corporations resulting from the plan are owned solely by the surviving corporation; or

(3) the [transfers] allocation of assets among the resulting corporations effected by the division, if effected by means of a sale, lease, exchange or other disposition, would not require the approval of shareholders under section 1932(b) (relating to shareholder approval required).

(b) Limitation.--A plan of division adopted by the board of directors under this section without the approval of the shareholders shall not, by itself, create or impair any rights or obligations on the part of any person under section 2538 (relating to approval of transactions with interested shareholders) or under 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).

§ 1955. Filing of articles of division.

(a) General rule.--The articles of division, and the certificates or statement, if any, required by section 139 (relating to tax clearance of certain fundamental transactions)

1 shall be filed in the Department of State.

2 (b) Cross [reference] references.--See [section] sections
3 134 (relating to docketing statement) and 135 (relating to
4 requirements to be met by filed documents).

5 § 1957. Effect of division.

6 * * *

7 (b) Property rights; allocations of assets and
8 liabilities.--

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

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

1 (iii) Liens upon the property of the dividing
2 corporation shall not be impaired by the division.

3 (iv) [One] To the extent allocations of liabilities
4 are contemplated by the plan of division, the liabilities
5 of the dividing corporation shall be deemed without
6 further action to be allocated to and become the
7 liabilities of the resulting corporations on such a
8 manner and basis and with such effect as is specified in
9 the plan; and one or more, but less than all, of the
10 resulting corporations shall be free of the liabilities
11 of the dividing corporation to the extent, if any,
12 specified in the plan, if in either case:

13 (A) no fraud [of corporate creditors, or of] on
14 minority shareholders or shareholders without voting
15 rights or violation of law shall be effected thereby,
16 and [if applicable provisions of law are complied
17 with.]

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

21 (v) If the conditions in subparagraph (iv) for
22 freeing one or more of the resulting corporations from
23 the liabilities of the dividing corporation, or for
24 allocating some or all of the liabilities of the dividing
25 corporation, are not satisfied, the liabilities of the
26 dividing corporation as to which those conditions are not
27 satisfied shall not be affected by the division nor shall
28 the rights of creditors [thereof or of any person dealing
29 with the corporation] thereunder be impaired by the
30 division and any claim existing or action or proceeding

1 pending by or against the corporation with respect to
2 those liabilities may be prosecuted to judgment as if the
3 division had not taken place, or the resulting
4 corporations may be proceeded against or substituted in
5 [its] place of the dividing corporation as joint and
6 several obligors on [such liability] those liabilities,
7 regardless of any provision of the plan of division
8 apportioning the liabilities of the dividing corporation.

9 (vi) The conditions in subparagraph (iv) for freeing
10 one or more of the resulting corporations from the
11 liabilities of the dividing corporation and for
12 allocating some or all of the liabilities of the dividing
13 corporation shall be conclusively deemed to have been
14 satisfied if the plan of division has been approved by
15 the Department of Banking, the Insurance Department or
16 the Pennsylvania Public Utility Commission in a final
17 order issued after (the Legislative Reference Bureau
18 shall insert here the effective date of the amendments of
19 this section) that has become not subject to further
20 appeal.

21 (2) (i) The [transfer] allocation of any fee or
22 freehold interest or leasehold having a remaining term of
23 30 years or more in any tract or parcel of real property
24 situate in this Commonwealth owned by a dividing
25 corporation (including property owned by a foreign
26 business corporation dividing solely under the law of
27 another jurisdiction) to a new corporation resulting from
28 the division shall not be effective until one of the
29 following documents is filed in the office for the
30 recording of deeds of the county, or each of them, in

1 which the tract or parcel is situated:

2 (A) A deed, lease or other instrument of
3 confirmation describing the tract or parcel.

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

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

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

11 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
12 to transfer of vehicle by operation of law) shall not be
13 applicable to [a transfer] an allocation of ownership of
14 any motor vehicle, trailer or semitrailer [from a
15 dividing corporation] to a new corporation under this
16 section or under a similar law of any other jurisdiction
17 but any such [transfer] allocation shall be effective
18 only upon compliance with the requirements of 75 Pa.C.S.
19 § 1116 (relating to issuance of new certificate following
20 transfer).

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

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

1 law.

2 (C) TAXES.--ANY TAXES, INTEREST, PENALTIES AND PUBLIC <—
3 ACCOUNTS OF THE COMMONWEALTH[,] CLAIMED AGAINST THE DIVIDING
4 CORPORATION [BUT NOT] THAT ARE SETTLED, ASSESSED OR DETERMINED
5 PRIOR TO OR AFTER THE DIVISION[,] SHALL BE [SETTLED, ASSESSED OR
6 DETERMINED AGAINST] THE LIABILITY OF ANY OF THE RESULTING
7 CORPORATIONS AND, TOGETHER WITH INTEREST THEREON, SHALL BE A
8 LIEN AGAINST THE FRANCHISES AND PROPERTY, BOTH REAL AND
9 PERSONAL, OF ALL THE CORPORATIONS. UPON THE APPLICATION OF THE
10 DIVIDING CORPORATION, THE DEPARTMENT OF REVENUE, WITH THE
11 CONCURRENCE OF THE OFFICE OF EMPLOYMENT SECURITY OF THE
12 DEPARTMENT OF LABOR AND INDUSTRY, SHALL RELEASE ONE OR MORE, BUT
13 LESS THAN ALL, OF THE RESULTING CORPORATIONS FROM LIABILITY AND
14 LIENS FOR ALL TAXES, INTEREST, PENALTIES AND PUBLIC ACCOUNTS OF
15 THE DIVIDING CORPORATION DUE THE COMMONWEALTH FOR PERIODS PRIOR
16 TO THE EFFECTIVE DATE OF THE DIVISION IF THOSE DEPARTMENTS ARE
17 SATISFIED THAT THE PUBLIC REVENUES WILL BE ADEQUATELY SECURED.

18 * * *

19 (h) Conflict of laws.--It is the intent of the General
20 Assembly that:

21 (1) The effect of a division of a domestic business
22 corporation shall be governed solely by the laws of this
23 Commonwealth and any other jurisdiction under the laws of
24 which any of the resulting corporations is incorporated.

25 (2) The effect of a division on the assets and
26 liabilities of the dividing corporation shall be governed
27 solely by the laws of this Commonwealth and any other
28 jurisdiction under the laws of which any of the resulting
29 corporations is incorporated.

30 (3) The validity of any allocations of assets or

1 liabilities by a plan of division of a domestic business
2 corporation, regardless of whether or not any of the new
3 corporations is a foreign business corporation, shall be
4 governed solely by the laws of this Commonwealth.

5 (4) In addition to the express provisions of this
6 subsection, this subchapter shall otherwise generally be
7 granted the protection of full faith and credit under the
8 Constitution of the United States.

9 § 1962. Proposal and adoption of plan of conversion.

10 (a) Preparation of plan.--A plan of conversion shall be
11 prepared, setting forth:

12 (1) The terms and conditions of the conversion.

13 (2) A restatement of the articles of the resulting
14 corporation, which articles shall comply with the
15 requirements of this part relating to nonprofit corporations.

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

21 (4) Such other provisions as are deemed desirable.

22 [Any of the terms of the plan may be made dependent upon facts
23 ascertainable outside of the plan if the manner in which the
24 facts will operate upon the terms of the plan is set forth in
25 the plan.]

26 * * *

27 (d) Reference to outside facts.--Any of the terms of a plan
28 of conversion may be made dependent upon facts ascertainable
29 outside of the plan if the manner in which the facts will
30 operate upon the terms of the plan is set forth in the plan.

1 Such facts may include, without limitation, actions or events
2 within the control of or determinations made by the corporation
3 or a representative of the corporation.

4 § 1972. Proposal of voluntary dissolution.

5 (a) General rule.--Any business corporation that has
6 commenced business may dissolve voluntarily in the manner
7 provided in this subchapter and wind up its affairs in the
8 manner provided in section 1975 (relating to predissolution
9 provision for liabilities) or Subchapter H (relating to
10 postdissolution provision for liabilities). Voluntary
11 dissolution shall be proposed by the adoption by the board of
12 directors of a resolution recommending that the corporation be
13 dissolved voluntarily. The resolution shall contain a statement
14 either that the dissolution shall proceed under section 1975 or
15 that the dissolution shall proceed under Subchapter H. The
16 resolution may set forth provisions for the distribution to
17 shareholders of any surplus remaining after paying or providing
18 for all liabilities of the corporation, including provisions for
19 special treatment of shares held by any shareholder or group of
20 shareholders as authorized by, and subject to the provisions of,
21 section 1906 (relating to special treatment of holders of shares
22 of same class or series).

23 (b) Submission to shareholders.--The board of directors
24 shall direct that the [question of] resolution recommending
25 dissolution be submitted to a vote of the shareholders of the
26 corporation entitled to vote thereon at a regular or special
27 meeting of the shareholders.

28 * * *

29 § 1973. Notice of meeting of shareholders.

30 (a) General rule.--Written notice of the meeting of

1 shareholders that will consider the [advisability of voluntarily
2 dissolving a] resolution recommending dissolution of the
3 business corporation shall be given to each shareholder of
4 record entitled to vote thereon and the purpose shall be
5 included in the notice of the meeting.

6 * * *

7 § 1975. Predissolution provision for liabilities.

8 (a) Powers of board.--The board of directors of a business
9 corporation that has elected to proceed under this section shall
10 have full power to wind up and settle the affairs of [a
11 business] the corporation in accordance with this section prior
12 to filing articles of dissolution in accordance with section
13 1977 (relating to articles of dissolution).

14 (b) Notice to creditors and taxing authorities.--After the
15 approval by the shareholders of the [proposal] resolution
16 recommending that the corporation dissolve voluntarily, the
17 corporation shall immediately cause notice of the winding up
18 proceedings to be officially published and to be mailed by
19 certified or registered mail to each known creditor and claimant
20 and to each municipal corporation in which [its registered
21 office or principal] it has a place of business in this
22 Commonwealth [is located].

23 (c) Winding up and distribution.--The corporation shall, as
24 speedily as possible, proceed to collect all sums due it,
25 convert into cash all corporate assets the conversion of which
26 into cash is required to discharge its liabilities and, out of
27 the assets of the corporation, discharge or make adequate
28 provision for the discharge of all liabilities of the
29 corporation, according to their respective priorities. Any
30 surplus remaining after paying or providing for all liabilities

1 of the corporation shall be distributed to the shareholders
2 according to their respective rights and preferences. See
3 section 1972(a) (relating to proposal of voluntary dissolution).

4 § 1976. Judicial supervision of proceedings.

5 A business corporation that has elected to proceed under
6 section 1975 (relating to predissolution provision for
7 liabilities), at any time during the winding up proceedings, may
8 apply to the court to have the proceedings continued under the
9 supervision of the court and thereafter the proceedings shall
10 continue under the supervision of the court as provided in
11 Subchapter G (relating to involuntary liquidation and
12 dissolution).

13 § 1977. Articles of dissolution.

14 (a) General rule.--Articles of dissolution and the
15 certificates or statement required by section 139 (relating to
16 tax clearance of certain fundamental transactions) shall be
17 filed in the Department of State when:

18 (1) all liabilities of the business corporation have
19 been discharged, or adequate provision has been made
20 therefor, in accordance with section 1975 (relating to
21 predissolution provision for liabilities), and all of the
22 remaining assets of the corporation have been distributed as
23 provided in section 1975 (or in case its assets are not
24 sufficient to discharge its liabilities, when all the assets
25 have been fairly and equitably applied, as far as they will
26 go, to the payment of such liabilities); or

27 (2) an election to proceed under Subchapter H (relating
28 to postdissolution provision for liabilities) has been made.

29 [See section 134 (relating to docketing statement).]

30 (b) Contents of articles.--The articles of dissolution shall

1 be executed by the corporation and shall set forth:

2 * * *

3 (5) A statement that:

4 (i) [that] all liabilities of the corporation have
5 been discharged or that adequate provision has been made
6 therefor; [or]

7 (ii) [that] the assets of the corporation are not
8 sufficient to discharge its liabilities, and that all the
9 assets of the corporation have been fairly and equitably
10 applied, as far as they will go, to the payment of such
11 liabilities[. An election by]; or

12 (iii) the corporation has elected to proceed under
13 Subchapter H [shall constitute the making of adequate
14 provision for the liabilities of the corporation,
15 including any judgment or decree that may be obtained
16 against the corporation in any pending action or
17 proceeding].

18 * * *

19 (7) [A] In the case of a corporation that has not
20 elected to proceed under Subchapter H, a statement that no
21 actions or proceedings are pending against the corporation in
22 any court, or that adequate provision has been made for the
23 satisfaction of any judgment or decree that may be obtained
24 against the corporation in each pending action or proceeding.

25 (8) [A] In the case of a corporation that has not
26 elected to proceed under Subchapter H, a statement that
27 notice of the winding-up proceedings of the corporation was
28 mailed by certified or registered mail to each known creditor
29 and claimant and to each municipal corporation in which the
30 [registered office or principal place of business of the]

1 corporation has a place of business in this Commonwealth [is
2 located].

3 * * *

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

7 § 1978. Winding up of corporation after dissolution.

8 * * *

9 (b) Standard of care of directors and officers.--The
10 dissolution of the corporation shall not subject its directors
11 or officers to standards of conduct different from those
12 prescribed by or pursuant to Chapter 17 (relating to officers,
13 directors and shareholders). Directors of a dissolved
14 corporation who have complied with section 1975 (relating to
15 predissolution provision for liabilities) or Subchapter H
16 (relating to postdissolution provision for liabilities) shall
17 not be personally liable to the creditors of the dissolved
18 corporation.

19 § 1979. Survival of remedies and rights after dissolution.

20 (a) General rule.--The dissolution of a business
21 corporation, either under this subchapter or under Subchapter G
22 (relating to involuntary liquidation and dissolution) or by
23 expiration of its period of duration or otherwise, shall not
24 eliminate nor impair any remedy available to or against the
25 corporation or its directors, officers or shareholders for any
26 right or claim existing, or liability incurred, prior to the
27 dissolution, if an action or proceeding thereon is brought on
28 behalf of:

29 (1) the corporation within the time otherwise limited by
30 law; or

1 (2) any other person before or within two years after
2 the date of the dissolution or within the time otherwise
3 limited by this subpart or other provision of law, whichever
4 is less. See sections 1987 (relating to proof of claims),
5 1993 (relating to acceptance or rejection of matured claims)
6 and 1994 (relating to disposition of unmatured claims).

7 [The actions or proceedings may be prosecuted against and
8 defended by the corporation in its corporate name.]

9 * * *

10 (e) Conduct of actions.--An action or proceeding may be
11 prosecuted against and defended by a dissolved corporation in
12 its corporate name.

13 § 1980. Dissolution by domestication.

14 Whenever a domestic business corporation has domesticated
15 itself under the laws of another jurisdiction by action similar
16 to that provided by section 4161 (relating to domestication) and
17 has authorized that action by the vote required by this
18 subchapter for the approval of a proposal that the corporation
19 dissolve voluntarily, the corporation may surrender its charter
20 under the laws of this Commonwealth by filing in the Department
21 of State articles of dissolution under this subchapter
22 containing the statement specified by section [1977(a)(1)]
23 1977(b)(1) through (4) (relating to [preparation of articles].]
24 articles of dissolution). If the corporation as domesticated in
25 the other jurisdiction qualifies to do business in this
26 Commonwealth either prior to or simultaneously with the filing
27 of the articles of dissolution under this section, the
28 corporation shall not be required to file with the articles of
29 dissolution the tax clearance certificates that would otherwise
30 be required by section 139 (relating to tax clearance of certain

1 fundamental transactions).

2 § 1989. Articles of involuntary dissolution.

3 (a) General rule.--In a proceeding under this subchapter,
4 the court shall enter an order dissolving the business
5 corporation when the costs and expenses of the proceeding and
6 all liabilities of the corporation have been discharged, and all
7 of its remaining assets have been distributed to its
8 shareholders or, in case its assets are not sufficient to
9 discharge such costs, expenses and liabilities, when all the
10 assets have been applied, as far as they will go, to the payment
11 of such costs, expenses and liabilities. See section 139(b)
12 (relating to tax clearance in judicial proceedings).

13 (b) Filing.--After entry of an order of dissolution, the
14 office of the clerk of the court of common pleas shall prepare
15 and execute articles of dissolution substantially in the form
16 provided by section 1977 (relating to articles of dissolution),
17 attach thereto a certified copy of the order and transmit the
18 articles and attached order to the Department of State. [A
19 certificate or statement provided for by section 139 (relating
20 to tax clearance of certain fundamental transactions) shall not
21 be required, and the] The department shall not charge a fee in
22 connection with the filing of articles of dissolution under this
23 section. See [section] sections 134 (relating to docketing
24 statement) and 135 (relating to requirements to be met by filed
25 documents).

26 * * *

27 § 1991.1. Authority of board of directors.

28 (a) General rule.--The board of directors of a business
29 corporation that has elected to proceed under this subchapter
30 shall have full power to wind up and settle the affairs of the

1 corporation in accordance with this subchapter both prior to and
2 after the filing of articles of dissolution in accordance with
3 section 1977 (relating to articles of dissolution).

4 (b) Winding up.--The corporation shall, as speedily as
5 possible, proceed to comply with the requirements of this
6 subchapter while simultaneously collecting all sums due it and
7 converting into cash all corporate assets, the conversion of
8 which into cash is required to make adequate provision for its
9 liabilities.

10 § 1992. Notice to claimants.

11 * * *

12 (c) Publication and service of notices.--

13 (1) The notices required by this section shall be
14 officially published at least once a week for two consecutive
15 weeks and, in the case of a corporation having \$10,000,000 or
16 more in total assets at the time of its dissolution, at least
17 once in all editions of a daily newspaper with a national
18 circulation.

19 (2) Concurrently with or preceding the publication, the
20 corporation or successor entity shall send a copy of the
21 notice by certified or registered mail, return receipt
22 requested, to each:

23 (i) known creditor or claimant;

24 (ii) holder of a claim described in subsection (b);

25 and

26 (iii) municipal corporation in which [the registered
27 office or principal] a place of business of the
28 corporation in this Commonwealth was located at the time
29 of filing the articles of dissolution in the department.

30 * * *

1 § 1997. Payments and distributions.

2 * * *

3 (b) Disposition.--The claims and liabilities shall be paid
4 in full and any provision for payment shall be made in full if
5 there are sufficient assets. If there are insufficient assets,
6 the claims and liabilities shall be paid or provided for in
7 order of their priority, and, among claims of equal priority,
8 ratably to the extent of funds legally available therefor. Any
9 remaining assets shall be distributed to the shareholders of the
10 corporation according to their respective rights and
11 preferences, except that the distribution shall not be made less
12 than 60 days after the last notice of rejection, if any, was
13 given under section 1993 (relating to acceptance or rejection of
14 matured claims). See section 1972(a) (relating to proposal of
15 voluntary dissolution).

16 * * *

17 [(d) Liability of directors.--Directors of a dissolved
18 corporation or governing persons of a successor entity that has
19 complied with this section shall not be personally liable to the
20 claimants of the dissolved corporation.]

21 § 2105. Termination of nonstock corporation status.

22 * * *

23 (c) Mutual insurance companies.--With respect to the
24 termination of the status of a mutual insurance company as a
25 nonstock corporation, see section 103 (relating to subordination
26 of title to regulatory laws) and [the act of December 10, 1970
27 (P.L.884, No.279), referred to as the Mutual Insurance Company
28 Conversion Law.] Article VIII-A of the act of May 17, 1921
29 (P.L.682, No.284), known as The Insurance Company Law of 1921.

30 § 2524. Consent of shareholders in lieu of meeting.

1 (a) General rule.--An action may be authorized by the
2 shareholders of a registered corporation without a meeting by
3 less than unanimous [written] consent only if permitted by its
4 articles.

5 (b) Effectiveness of action.--An action authorized by the
6 shareholders of a registered corporation without a meeting by
7 less than unanimous [written] consent may become effective
8 immediately upon its authorization, but prompt notice of the
9 action shall be given to those shareholders entitled to vote
10 thereon who have not consented.

11 § 2526. Voting rights of directors.

12 Every director of a registered corporation described in
13 section 2502(1) (relating to registered corporation status)
14 shall be entitled to one vote, except as otherwise provided in:

15 (1) the articles; or

16 (2) a bylaw adopted by the shareholders either:

17 (i) on or before (the Legislative Reference Bureau
18 shall insert here the effective date of this section); or

19 (ii) at a time when the corporation was not a
20 registered corporation described in section 2502(1).

21 § 2527. Authority of board of directors.

22 The authority, powers and functions of the board of directors
23 of a registered corporation described in section 2502(1)
24 (relating to registered corporation status) may not be varied,
25 and a committee of the board of such a corporation may not be
26 established, by a bylaw adopted by the shareholders, unless the
27 bylaw has been adopted:

28 (1) with the approval of the board of directors;

29 (2) on or before (the Legislative Reference Bureau shall
30 insert here the effective date of this section); or

1 (3) at a time when the corporation was not a registered
2 corporation described in section 2502(1).

3 § 2902. Definitions and index of definitions.

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

7 "Disqualified person." [A] The term "disqualified person" as
8 used in this chapter means a licensed person who for any reason
9 is or becomes legally disqualified (temporarily or permanently)
10 to render the same professional services that the particular
11 professional corporation of which he is an officer, director,
12 shareholder or employee is or was rendering.

13 ["Licensed person." Any natural person who is duly licensed
14 or admitted to practice his profession by a court, department,
15 board, commission or other agency of this Commonwealth or
16 another jurisdiction to render a professional service that is or
17 will be rendered by the professional corporation of which he is,
18 or intends to become, an officer, director, shareholder,
19 employee or agent.

20 "Profession." Includes the performance of any type of
21 personal service to the public that requires as a condition
22 precedent to the performance of the service the obtaining of a
23 license or admission to practice or other legal authorization,
24 including all personal services that prior to the enactment of
25 the act of July 9, 1970 (P.L.461, No.160), known as the
26 Professional Corporation Law, could not lawfully be rendered by
27 means of a corporation. By way of example, and without limiting
28 the generality of the foregoing, the term includes for the
29 purposes of this chapter personal services rendered as an
30 architect, chiropractor, dentist, funeral director, osteopath,

1 podiatrist, physician, professional engineer, veterinarian,
2 certified public accountant or surgeon and, except as otherwise
3 prescribed by general rules, an attorney at law. Except as
4 otherwise expressly provided by law, the definition specified in
5 this paragraph shall be applicable to this chapter only and
6 shall not affect the interpretation of any other statute or any
7 local zoning ordinance or other official document heretofore or
8 hereafter enacted or promulgated.

9 "Professional services." Any type of services that may be
10 rendered by the member of any profession within the purview of
11 his profession.]

12 (b) Index of other definitions.--Other definitions applying
13 to this chapter and the sections in which they appear are:

14 "Licensed person." Section 102 (relating to definitions).

15 "Profession." Section 102.

16 "Professional services." Section 102.

17 § 2904. Election of an existing business corporation to become
18 a professional corporation.

19 * * *

20 (b) Procedure.--The amendment shall be adopted in accordance
21 with the requirements of Subchapter B of Chapter 19 (relating to
22 amendment of articles) [except that the amendment must be
23 approved by the unanimous consent of all shareholders of the
24 corporation regardless of any limitations on voting rights
25 stated in the articles or bylaws]. If any shareholder of a
26 business corporation that proposes to amend its articles to
27 become a professional corporation objects to that amendment and
28 complies with the provisions of Subchapter D of Chapter 15
29 (relating to dissenters rights), the shareholder shall be
30 entitled to the rights and remedies of dissenting shareholders

1 therein provided, if any.

2 § 2922. Stated purposes.

3 * * *

4 (b) Additional powers.--A professional corporation may be [a
5 partner in or a shareholder] an equity owner of a partnership
6 [or], limited liability company, corporation or other
7 association engaged in the business of rendering the
8 professional service or services for which the professional
9 corporation was incorporated.

10 § 2923. Issuance and retention of shares.

11 (a) General rule.--Except as otherwise provided by a
12 statute, rule or regulation applicable to a particular
13 profession, all of the ultimate beneficial owners of shares in a
14 professional corporation [may be beneficially owned, directly or
15 indirectly, only by one or more] shall be licensed persons and
16 any issuance or transfer of shares in violation of this
17 restriction shall be void. A shareholder of a professional
18 corporation shall not enter into a voting trust, proxy or any
19 other arrangement vesting another person (other than [another
20 licensed] a person who is qualified to be a direct or indirect
21 shareholder of the same corporation) with the authority to
22 exercise the voting power of any or all of his shares, and any
23 such purported voting trust, proxy or other arrangement shall be
24 void.

25 (b) Ownership by estate.--Unless a lesser period of time is
26 provided in a bylaw [of the corporation] adopted by the
27 shareholders or in a written agreement among the shareholders of
28 the corporation, the estate of a deceased shareholder may
29 continue to hold shares of the professional corporation for a
30 reasonable period of administration of the estate, but the

1 personal representative of the estate shall not by reason of the
2 retention of shares be authorized to participate in any
3 decisions concerning the rendering of professional service.

4 * * *

5 § 3133. Notice of meetings of members of mutual insurance
6 companies.

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

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

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

22 * * *

23 § 4123. Requirements for foreign corporation names.

24 * * *

25 (b) Exceptions.--

26 (1) The provisions of section 1303(b) (relating to
27 duplicate use of names) shall not prevent the issuance of a
28 certificate of authority to a foreign business corporation
29 setting forth a name that is [confusingly similar to] not
30 distinguishable upon the records of the department from the

1 name of any other domestic or foreign corporation for profit
2 or corporation not-for-profit, [or of any domestic or foreign
3 limited partnership that has filed a certificate or qualified
4 under Chapter 85 (relating to limited partnerships) or
5 corresponding provisions of prior law,] or of any corporation
6 or other association then registered under 54 Pa.C.S. Ch. 5
7 (relating to corporate and other association names) or to any
8 name reserved or registered as provided in this part, if the
9 foreign business corporation applying for a certificate of
10 authority files in the department [one of the following:

11 (i) A] a resolution of its board of directors
12 adopting a fictitious name for use in transacting
13 business in this Commonwealth, which fictitious name is
14 [not confusingly similar to] distinguishable upon the
15 records of the department from the name of the other
16 corporation or other association or [to] from any name
17 reserved or registered as provided in this part and that
18 is otherwise available for use by a domestic business
19 corporation.

20 [(ii) The written consent of the other corporation
21 or other association or holder of a reserved or
22 registered name to use the same or confusingly similar
23 name and one or more words are added to make the name
24 applied for distinguishable from the other name.]

25 * * *

26 § 4126. Amended certificate of authority.

27 (a) General rule.--After receiving a certificate of
28 authority, a qualified foreign business corporation may, subject
29 to the provisions of this subchapter, change [the name under
30 which it is authorized to transact business in this

1 Commonwealth] or correct any of the information set forth in its
2 application for a certificate of authority or previous filings
3 under this section by filing in the Department of State an
4 application for an amended certificate of authority. The
5 application shall be executed by the corporation and shall
6 state:

7 (1) The name under which the applicant corporation
8 currently holds a certificate of authority to do business in
9 this Commonwealth.

10 [(2) The name of the jurisdiction under the laws of
11 which the corporation is incorporated.

12 (3) The address, including street and number, if any, of
13 its principal office under the laws of the jurisdiction in
14 which it is incorporated.

15 (4)] (2) Subject to section 109 (relating to name of
16 commercial registered office provider in lieu of registered
17 address), the address, including street and number, if any,
18 of its registered office in this Commonwealth[, which may
19 constitute a change in the address of its registered office.

20 (5) The new name of the corporation and]

21 (3) The information to be changed or corrected.

22 (4) If the application reflects a change in the name of
23 the corporation, the application shall include a statement
24 that either:

25 (i) the change of name reflects a change effected in
26 the jurisdiction of incorporation; or

27 (ii) documents complying with section 4123(b)
28 (relating to exception; name) accompany the application.

29 (b) Issuance of amended certificate of authority.--Upon the
30 filing of the application, the applicant corporation shall be

1 deemed to hold an amended certificate of authority.

2 (c) Cross [reference] references.--See [section] sections
3 134 (relating to docketing statement) and 135 (relating to
4 requirements to be met by filed documents).

5 § 4146. Provisions applicable to all foreign corporations.

6 The following provisions of this subpart shall, except as
7 otherwise provided in this section, be applicable to every
8 foreign corporation for profit, whether or not required to
9 procure a certificate of authority under this chapter:

10 Section 1503 (relating to defense of ultra vires), as to
11 contracts and conveyances [made in] governed by the laws of
12 this Commonwealth and conveyances affecting real property
13 situated in this Commonwealth.

14 Section 1506 (relating to form of execution of
15 instruments), as to instruments or other documents [made or
16 to be performed in] governed by the laws of this Commonwealth
17 or affecting real property situated in this Commonwealth.

18 Section 1510 (relating to certain specifically authorized
19 debt terms), as to obligations (as defined in the section)
20 [executed or effected in] governed by the laws of this
21 Commonwealth or affecting real property situated in this
22 Commonwealth.

23 * * *

24 § 4161. Domestication.

25 * * *

26 (b) Articles of domestication.--The articles of
27 domestication shall be executed by the corporation and shall set
28 forth in the English language:

29 (1) The name of the corporation. If the name is in a
30 foreign language, it shall be set forth in Roman letters or

1 characters or Arabic or Roman numerals. If the name is one
2 that is rendered unavailable by any provision of section
3 1303(b) or (c) (relating to corporate name), the corporation
4 shall adopt, in accordance with any procedures for changing
5 the name of the corporation that are applicable prior to the
6 domestication of the corporation, and shall set forth in the
7 articles of domestication an available name.

8 * * *

9 (c) Cross [reference] references.--See [section] sections
10 134 (relating to docketing statement) and 135 (relating to
11 requirements to be met by filed documents).

12 § 4162. Effect of domestication.

13 (a) General rule.--As a domestic business corporation, the
14 domesticated corporation shall no longer be a foreign business
15 corporation for the purposes of this subpart and shall [have],
16 instead, be a domestic business corporation with all the powers
17 and privileges and [be subject to] all the duties and
18 limitations granted and imposed upon domestic business
19 corporations. [The property, franchises, debts, liens, estates,
20 taxes, penalties and public accounts due the Commonwealth shall
21 continue to be vested in and imposed upon the corporation to the
22 same extent as if it were the successor by merger of the
23 domesticating corporation with and into a domestic business
24 corporation under Subchapter C of Chapter 19 (relating to
25 merger, consolidation, share exchanges and sale of assets).] In
26 all other respects, the domesticated corporation shall be deemed
27 to be the same corporation as it was prior to the domestication
28 without any change in or effect on its existence. Without
29 limiting the generality of the previous sentence, the
30 domestication shall not be deemed to have affected in any way:

1 (1) the right and title of the corporation in and to its
2 assets, property, franchises, estates and choses in action;

3 (2) the liability of the corporation for its debts,
4 obligations, penalties and public accounts due the
5 Commonwealth;

6 (3) any liens or other encumbrances on the property or
7 assets of the corporation; or

8 (4) any contract, license or other agreement to which
9 the corporation is a party or under which it has any rights
10 or obligations.

11 (b) Reclassification of shares.--The shares of the
12 domesticated corporation shall be unaffected by the
13 domestication except to the extent, if any, reclassified in the
14 articles of domestication.

15 § 5303. Corporate name.

16 * * *

17 (b) Duplicate use of names.--The corporate name shall [not
18 be the same as or confusingly similar to] be distinguishable
19 upon the records of the Department of State from:

20 (1) The name of any other domestic corporation for
21 profit or not-for-profit which is either in existence or for
22 which articles of incorporation have been filed but have not
23 yet become effective, or of any foreign corporation for
24 profit or not-for-profit which is either authorized to do
25 business in this Commonwealth or for which an application for
26 a certificate of authority has been filed but which has not
27 yet become effective, [or of any domestic or foreign limited
28 partnership that has filed in the Department of State a
29 certificate or qualified under Chapter 85 (relating to
30 limited partnerships) or under corresponding provisions of

1 prior law,] or the name of any association registered at any
2 time under 54 Pa.C.S. Ch. 5 (relating to corporate and other
3 association names), unless[:

4 (i) where the name is the same or confusingly
5 similar,] the other association:

6 [(A)] (i) has stated that it is about to change
7 its name, or to cease to do business, or is being
8 wound up, or is a foreign association about to
9 withdraw from doing business in this Commonwealth,
10 and the statement and [the] a written consent [of the
11 other association] to the adoption of the name
12 executed by the other association is filed in the
13 Department of State;

14 [(B)] (ii) has filed with the Department of
15 Revenue a certificate of out of existence, or has
16 failed for a period of three successive years to file
17 with the Department of Revenue a report or return
18 required by law and the fact of such failure has been
19 certified by the Department of Revenue to the
20 Department of State;

21 [(C)] (iii) has abandoned its name under the
22 laws of its jurisdiction of incorporation, by
23 amendment, merger, consolidation, division,
24 expiration, dissolution or otherwise, without its
25 name being adopted by a successor in a merger,
26 consolidation, division or otherwise, and an official
27 record of that fact, certified as provided by 42
28 Pa.C.S. § 5328 (relating to proof of official
29 records), is presented by any person to the
30 department; or

1 [(D)] (iv) has had the registration of its name
2 under 54 Pa.C.S. Ch. 5 terminated and, if the
3 termination was effected by operation of 54 Pa.C.S. §
4 504 (relating to effect of failure to make decennial
5 filings), the application for the use of the name is
6 accompanied by a verified statement stating that at
7 least 30 days' written notice of intention to
8 appropriate the name was given to the delinquent
9 association at its [registered office] last known
10 place of business and that, after diligent search by
11 the affiant, the affiant believes the association to
12 be out of existence.]; or

13 (ii) where the name is confusingly similar, the
14 consent of the other association to the adoption of the
15 name is filed in the Department of State.

16 The consent of the association shall be evidenced by a
17 statement to that effect executed by the association.]

18 * * *

19 (e) Remedies for violation of section.--The use of a name in
20 violation of this section shall not vitiate or otherwise affect
21 the corporate existence but any court having jurisdiction may
22 enjoin the corporation from using or continuing to use a name in
23 violation of this section, upon the application of:

24 (1) the Attorney General, acting on his own motion or at
25 the instance of any administrative department, board or
26 commission of this Commonwealth; or

27 (2) any person adversely affected.];
28 may enjoin the corporation from using or continuing to use a
29 name in violation of this section.]

30 (f) Cross references.--See sections 135(e) (relating to

1 distinguishable names) and 5106(b)(2) (relating to limited
2 uniform application of subpart).

3 § 5304. Required name changes by senior corporations.

4 (a) Adoption of new name upon reactivation.--Where a
5 corporate name is made available on the basis that the
6 corporation or [nonprofit unincorporated] other association
7 [which] that formerly registered [such] the name has failed to
8 file with the Department of Revenue [or in the Department of
9 State] a report or a return required by law or where the
10 corporation or [nonprofit unincorporated] other association has
11 filed with the Department of Revenue a certificate of out of
12 existence, [such] the corporation or other association shall
13 cease to have by virtue of its prior registration any right to
14 the use of [such] the name[, and such]. The corporation or other
15 association, upon withdrawal of the certificate of out of
16 existence or upon the removal of its delinquency in the filing
17 of the required reports or returns, shall make inquiry with the
18 Department of State with regard to the availability of its
19 name[, and] if [such] the name has been made available to
20 another domestic or foreign corporation for profit or not-for-
21 profit or other association by virtue of [the above] these
22 conditions, shall adopt a new name in accordance with law before
23 resuming its activities.

24 (b) Enforcement of undertaking to release name.--If a
25 corporation has used a name [the same as, or deceptively similar
26 to,] that is not distinguishable upon the records of the
27 Department of State from the name of another corporation or
28 [nonprofit unincorporated] other association as permitted by
29 section 5303(b)(1)[(i)] (relating to duplicate use of names) and
30 the other corporation or [nonprofit unincorporated] other

1 association continues to use its name in this Commonwealth and
2 does not change its name, cease to do business, be wound up, or
3 withdraw as it proposed to do in its consent or change its name
4 as required by subsection (a), any court [of competent] having
5 jurisdiction may enjoin the other corporation or other
6 association from continuing to use its name or a name that is
7 not distinguishable therefrom, upon the application of:

8 (1) the Attorney General, acting on his own motion or at
9 the instance of any administrative department, board or
10 commission of this Commonwealth[,]; or

11 (2) upon the application of any person adversely
12 affected[, may enjoin the other corporation or association
13 from continuing to use its name or a name deceptively similar
14 thereto].

15 § 5311. Filing of statement of summary of record by certain
16 corporations.

17 (a) General rule.--Where any of the [valid] charter
18 documents of a nonprofit corporation are not on file in the
19 Department of State or there is an error in any such document as
20 transferred to the department pursuant to section 140 (relating
21 to custody and management of orphan corporate and business
22 records), and the corporation desires to file any document in
23 the department under any other provision of this [article]
24 subpart or the corporation desires to secure from the department
25 any certificate to the effect that the corporation is a
26 corporation duly incorporated and existing under the laws of
27 this Commonwealth or a certified copy of the articles of the
28 corporation or the corporation desires to correct the text of
29 its charter documents as on file in the department, the
30 corporation shall file in the department a statement of summary

1 of record which shall be executed by the corporation and shall
2 set forth:

3 (1) The name of the corporation and, subject to section
4 109 (relating to name of commercial registered office
5 provides in lieu of registered address), the location,
6 including street and number, if any, of its registered
7 office.

8 (2) The statute by or under which the corporation was
9 incorporated.

10 (3) The name under which, the manner in which and the
11 date on which the corporation was originally incorporated,
12 including the date when and the place where the original
13 articles were recorded.

14 (4) The place or places, including volume and page
15 numbers or their equivalent, where the documents
16 [constituting the currently effective articles are] that are
17 not on file in the department or that require correction in
18 the records of the department were originally filed or
19 recorded, the date or dates of each [such] filing or
20 recording and the correct text of [such currently effective
21 articles] the documents. The information specified in this
22 paragraph may be omitted in a statement of summary of record
23 that is delivered to the department contemporaneously with
24 amended and restated articles of the corporation filed under
25 this subpart.

26 [(5) Each name by which the corporation was known, if
27 any, other than its original name and its current name, and
28 the date or dates on which each change of name of the
29 corporation became effective.

30 A corporation shall be required to make only one filing under

1 this subsection.]

2 (b) Validation of prior defects in incorporation.--Upon the
3 filing of a statement by a corporation under this section or the
4 transfer to the department of the records relating to a
5 corporation pursuant to section 140, the corporation [named in
6 the statement] shall be deemed to be a validly subsisting
7 corporation to the same extent as if it had been duly
8 incorporated and was existing under this subpart and the
9 department shall so certify regardless of any absence of or
10 defect in the prior proceedings relating to incorporation.

11 (c) Cross [reference] references.--See [section] sections
12 134 (relating to docketing statement), 135 (relating to
13 requirements to be met by filed documents) and 5106(b)(2)
14 (relating to uniform application of subpart).

15 § 5503. Defense of ultra vires.

16 (a) General rule.--[No] A limitation upon the business,
17 [purpose or] purposes[,] or powers of a nonprofit corporation,
18 expressed or implied in its articles or bylaws or implied by
19 law, shall not be asserted in order to defend any action at law
20 or in equity between the corporation and a third person, or
21 between a member and a third person, involving any contract to
22 which the corporation is a party or any right of property or any
23 alleged liability of [whatsoever] whatever nature[; but such],
24 but the limitation may be asserted:

25 (1) In an action by a member against the corporation to
26 enjoin the doing of unauthorized acts or the transaction or
27 continuation of unauthorized business. If the unauthorized
28 acts or business sought to be enjoined are being transacted
29 pursuant to any contract to which the corporation is a party,
30 the court may, if all of the parties to the contract are

1 parties to the action[,] and if it deems [such action] the
2 result to be equitable, set aside and enjoin the performance
3 of [such] the contract, and in so doing shall allow to the
4 corporation, or to the other parties to the contract, as the
5 case may be, such compensation as may be [equitable]
6 appropriate for the loss or damage sustained by any of them
7 from the action of the court in setting aside and enjoining
8 the performance of [such] the contract, but anticipated
9 profits to be derived from the performance of the contract
10 shall not be awarded by the court as a loss or damage
11 sustained.

12 (2) In any action by or in the right of the corporation
13 to procure a judgment in its favor against an incumbent or
14 former officer, director or member of an other body of the
15 corporation for loss or damage due to his unauthorized acts.

16 (3) In a proceeding by the Commonwealth under section
17 503 (relating to actions to revoke corporate franchises)[,]
18 or in a proceeding by the Commonwealth to enjoin the
19 corporation from the doing of unauthorized or unlawful
20 business.

21 (b) Conveyances of property by or to a corporation.--[No] A
22 conveyance or transfer by or to a nonprofit corporation of
23 property, real or personal, of any kind or description, shall
24 not be invalid or fail because in making [such] the conveyance
25 or transfer, or in acquiring the property, real or personal,
26 [the board of directors or other body or any of the officers]
27 any representative of the corporation acting within the scope of
28 the actual or apparent authority given to [them] him by the
29 [board of directors or other body, have] corporation has
30 exceeded any of the purposes or powers of the corporation.

1 (c) [Nonqualified foreign corporations.--The provisions of
2 this section shall extend to contracts and conveyances made by
3 nonqualified foreign corporations in this Commonwealth and to
4 conveyances by nonqualified foreign corporations of real
5 property situated in this Commonwealth.] Cross reference.--See
6 section 6146 (relating to provisions applicable to all foreign
7 corporations).

8 § 5505. Persons bound by bylaws.

9 Except as otherwise provided by section 5713 (relating to
10 personal liability of directors) or any similar provision of
11 law, bylaws of a nonprofit corporation shall operate only as
12 regulations among the members, directors, members of an other
13 body and officers of the corporation, and shall not affect
14 contracts or other dealings with other persons, unless those
15 persons have actual knowledge of the bylaws.

16 § 5506. Form of execution of instruments.

17 (a) General rule.--Any form of execution provided in the
18 articles or bylaws to the contrary notwithstanding, any note,
19 mortgage, evidence of indebtedness, contract[,] or other
20 [instrument in writing] document, or any assignment or
21 endorsement thereof, executed or entered into between any
22 nonprofit corporation and any other person, when signed by one
23 or more officers or agents having actual or apparent authority
24 to sign it, or by the president or vice-president and secretary
25 or assistant secretary or treasurer or assistant treasurer of
26 [such] the corporation, shall be held to have been properly
27 executed for and in behalf of the corporation.

28 (b) Seal unnecessary.--[Except as otherwise required by
29 statute, the] The affixation of the corporate seal shall not be
30 necessary to the valid execution, assignment or endorsement by a

1 corporation of any instrument [in writing] or other document.

2 (c) [Nonqualified foreign corporations.--The provisions of
3 this section shall extend to instruments in writing made or to
4 be performed in this Commonwealth by a nonqualified foreign
5 corporation and to instruments executed by nonqualified foreign
6 corporations affecting real property situated in this
7 Commonwealth.] Cross reference.--See section 6146 (relating to
8 provisions applicable to all foreign corporations).

9 § 5508. Corporate records; inspection by members.

10 (a) Required records.--Every nonprofit corporation shall
11 keep [an original or duplicate record] minutes of the
12 proceedings of the members [and], the directors[, and [of] any
13 other body [exercising powers or performing duties which under
14 this article may be exercised or performed by such other body,
15 the original or a copy of its bylaws, including all amendments
16 thereto to date, certified by the secretary of the corporation],
17 and [an original or] a [duplicate] membership register, giving
18 the names [of the members, and showing their respective] and
19 addresses of all members and the class and other details of the
20 membership of each. [Every such] The corporation shall also keep
21 appropriate, complete and accurate books or records of account.
22 The records provided for in this subsection shall be kept at
23 [either] any of the following locations:

24 (1) the registered office of the corporation in this
25 Commonwealth [or at its];

26 (2) the principal place of business wherever
27 situated[.]; or

28 (3) any actual business office of the corporation.

29 (b) Right of inspection by a member.--Every member shall,
30 upon written verified demand [under oath] stating the purpose

1 thereof, have a right to examine, in person or by agent or
2 attorney, during the usual hours for business for any proper
3 purpose, the membership register, books and records of account,
4 and records of the proceedings of the members, directors and
5 [such] any other body, and to make copies or extracts therefrom.
6 A proper purpose shall mean a purpose reasonably related to the
7 interest of [such] the person as a member. In every instance
8 where an attorney or other agent [shall be] is the person who
9 seeks the right [to] of inspection, the demand [under oath]
10 shall be accompanied by a verified power of attorney or [such]
11 other writing [which] that authorizes the attorney or other
12 agent to so act on behalf of the member. The demand [under oath]
13 shall be directed to the corporation:

14 (1) at its registered office in this Commonwealth [or];

15 (2) at its principal place of business wherever
16 situated[.]; or

17 (3) in care of the person in charge of an actual
18 business office of the corporation.

19 (c) Proceedings for the enforcement of inspection by a
20 member.--If the corporation, or an officer or agent thereof,
21 refuses to permit an inspection sought by a member or attorney
22 or other agent acting for the member pursuant to subsection (b)
23 [of this section] or does not reply to the demand within five
24 business days after the demand has been made, the member may
25 apply to the court for an order to compel [such] the inspection.
26 The court shall determine whether or not the person seeking
27 inspection is entitled to the inspection sought. The court may
28 summarily order the corporation to permit the member to inspect
29 the membership register and the other books and records of the
30 corporation and to make copies or extracts therefrom; or the

1 court may order the corporation to furnish to the member a list
2 of its members as of a specific date on condition that the
3 member first pay to the corporation the reasonable cost of
4 obtaining and furnishing [such] the list and on such other
5 conditions as the court deems appropriate. Where the member
6 seeks to inspect the books and records of the corporation, other
7 than its membership register or list of members, he shall first
8 establish:

9 (1) that he has complied with the provisions of this
10 section respecting the form and manner of making demand for
11 inspection of such document; and

12 (2) that the inspection he seeks is for a proper
13 purpose.

14 Where the member seeks to inspect the membership register or
15 list of members of the corporation and he has complied with the
16 provisions of this section respecting the form and manner of
17 making demand for inspection of [such] the documents, the burden
18 of proof shall be upon the corporation to establish that the
19 inspection he seeks is for an improper purpose. The court may,
20 in its discretion, prescribe any limitations or conditions with
21 reference to the inspection, or award such other or further
22 relief as the court [may deem] deems just and proper. The court
23 may order books, documents and records, pertinent extracts
24 therefrom, or duly authenticated copies thereof, to be brought
25 [within] into this Commonwealth and kept in this Commonwealth
26 upon such terms and conditions as the order may prescribe.

27 (d) Cross references.--See sections 107 (relating to form of
28 records) and 5512 (relating to informational rights of a
29 director).

30 § 5510. [(Reserved).] Certain specifically authorized debt

1 terms.

2 (a) Interest rates.--A nonprofit corporation shall not plead
3 or set up usury, or the taking of more than the lawful rate of
4 interest, or the taking of any finance, service or default
5 charge in excess of any maximum rate therefor provided or
6 prescribed by law, as a defense to any action or proceeding
7 brought against it to recover damages on, or to enforce payment
8 of, or to enforce any other remedy on, any obligation executed
9 or effected by the corporation.

10 (b) Yield maintenance premiums.--A prepayment premium
11 determined by reference to the approximate spread between the
12 yield at issuance, or at the date of amendment of any of the
13 terms, of an obligation of a corporation and the yield at or
14 about such date of an interest rate index of independent
15 significance and contingent upon a change in the ownership of or
16 memberships in the corporation or a default by or other change
17 in the condition or prospects of the corporation or any
18 affiliate of the corporation shall be deemed liquidated damages
19 and shall not constitute a penalty.

20 (c) Definitions.--As used in this section, the following
21 words and phrases shall have the meanings given to them in this
22 subsection:

23 "Affiliate." An affiliate or associate as defined in section
24 2552 (relating to definitions).

25 "Obligation." Includes an installment sale contract.

26 (d) Cross reference.--See section 6146 (relating to
27 provisions applicable to all foreign corporations).

28 § 5512. Informational rights of a director.

29 (a) General rule.--To the extent reasonably related to the
30 performance of the duties of the director, including those

1 arising from service as a member of a committee of the board of
2 directors, a director of a nonprofit corporation is entitled:

3 (1) in person or by any attorney or other agent, at any
4 reasonable time, to inspect and copy corporate books, records
5 and documents and, in addition, to inspect, and receive
6 information regarding, the assets, liabilities and operations
7 of the corporation and any subsidiaries of the corporation
8 incorporated or otherwise organized or created under the laws
9 of this Commonwealth that are controlled directly or
10 indirectly by the corporation; and

11 (2) to demand that the corporation exercise whatever
12 rights it may have to obtain information regarding any other
13 subsidiaries of the corporation.

14 (b) Proceedings for the enforcement of inspection by a
15 director.--If the corporation, or an officer or agent thereof,
16 refuses to permit an inspection or obtain or provide information
17 sought by a director or attorney or other agent acting for the
18 director pursuant to subsection (a) or does not reply to the
19 request within two business days after the request has been
20 made, the director may apply to the court for an order to compel
21 the inspection or the obtaining or providing of the information.
22 The court shall summarily order the corporation to permit the
23 requested inspection or to obtain the information unless the
24 corporation establishes that the information to be obtained by
25 the exercise of the right is not reasonably related to the
26 performance of the duties of the director or that the director
27 or the attorney or agent of the director is likely to use the
28 information in a manner that would violate the duty of the
29 director to the corporation. The order of the court may contain
30 provisions protecting the corporation from undue burden or

1 expense and prohibiting the director from using the information
2 in a manner that would violate the duty of the director to the
3 corporation.

4 (c) Cross references.--See sections 107 (relating to form of
5 records), 5508 (relating to corporate records; inspection by
6 members) and 42 Pa.C.S. § 2503(7) (relating to right of
7 participants to receive counsel fees).

8 § 5552. Liabilities of members.

9 (a) General rule.--[The members of a nonprofit corporation
10 shall not be personally liable for the debts, liabilities or
11 obligations of the corporation.] A member of a nonprofit
12 corporation shall not be liable, solely by reason of being a
13 member, under an order of a court or in any other manner for a
14 debt, obligation or liability of the corporation of any kind or
15 for the acts of any member or representative of the corporation.

16 (b) Obligations of member to corporation.--A member shall be
17 liable to the corporation only to the extent of any unpaid
18 portion of the capital contributions, membership dues or
19 assessments which the corporation may have lawfully imposed upon
20 him, or for any other indebtedness owed by him to the
21 corporation. No action shall be brought by any creditor of the
22 corporation to reach and apply any such liability to any debt of
23 the corporation until after:

24 (1) final judgment [shall have] has been rendered
25 against the corporation in favor of the creditor and
26 execution thereon returned unsatisfied[, or the corporation
27 shall have been adjudged bankrupt, or];

28 (2) a case involving the corporation has been brought
29 under 11 U.S.C. Ch. 7 (relating to liquidation) and a
30 distribution has been made and the case closed or a notice of

1 no assets has been issued; or

2 (3) a receiver [shall have] has been appointed with
3 power to collect debts, and [which] the receiver, on demand
4 of a creditor to bring an action thereon, has refused to sue
5 for [such] the unpaid amount, or the corporation [shall have]
6 has been dissolved or ceased its activities leaving debts
7 unpaid.

8 [No such] (c) Action by a creditor.--An action by a creditor
9 under subsection (b) shall not be brought more than three years
10 after the happening of [any one of such events.] the first to
11 occur of the events listed in subsection (b)(1) through (3).

12 § 5709. Conduct of members meeting.

13 (a) Presiding officer.--There shall be a presiding officer
14 at every meeting of the members. The presiding officer shall be
15 appointed in the manner provided in the bylaws or, in the
16 absence of such provision, by the board of directors. If the
17 bylaws are silent on the appointment of the presiding officer
18 and the board fails to designate a presiding officer, the
19 president shall be the presiding officer.

20 (b) Authority of the presiding officer.--Except as otherwise
21 provided in the bylaws, the presiding officer shall determine
22 the order of business and shall have the authority to establish
23 rules for the conduct of the meeting.

24 (c) Procedural standard.--Any action by the presiding
25 officer in adopting rules for, and in conducting, a meeting
26 shall be fair to the members.

27 (d) Closing of the polls.--The presiding officer shall
28 announce at the meeting when the polls close for each matter
29 voted upon. If no announcement is made, the polls shall be
30 deemed to have closed upon the final adjournment of the meeting.

1 After the polls close, no ballots, proxies or votes, nor any
2 revocations or changes thereto, may be accepted.

3 § 5731. Executive and other committees of the board.

4 (a) Establishment and powers.--Unless otherwise restricted
5 in the bylaws:

6 (1) The board of directors may, by resolution adopted by
7 a majority of the directors in office, establish one or more
8 committees to consist of one or more directors of the
9 corporation.

10 (2) Any [such] committee, to the extent provided in the
11 resolution of the board of directors or in the bylaws, shall
12 have and may exercise all of the powers and authority of the
13 board of directors, except that [no such] a committee shall
14 not have any power or authority as to the following:

15 (i) The submission to members of any action
16 requiring approval of members under this [article]
17 subpart.

18 (ii) The creation or filling of vacancies in the
19 board of directors.

20 (iii) The adoption, amendment or repeal of the
21 bylaws.

22 (iv) The amendment or repeal of any resolution of
23 the board that by its terms is amendable or repealable
24 only by the board.

25 (v) Action on matters committed by the bylaws or a
26 resolution of the board of directors exclusively to
27 another committee of the board.

28 [(2)] (3) The board may designate one or more directors
29 as alternate members of any committee, who may replace any
30 absent or disqualified member at any meeting of the

1 committee. In the absence or disqualification of a member of
2 a committee, the member or members thereof present at any
3 meeting and not disqualified from voting, whether or not he
4 or they constitute a quorum, may unanimously appoint another
5 director to act at the meeting in the place of any [such]
6 absent or disqualified member.

7 (b) Term.--Each committee of the board shall serve at the
8 pleasure of the board.

9 § 5745. Advancing expenses.

10 Expenses (including attorneys' fees) incurred in defending
11 any action or proceeding referred to in this subchapter may be
12 paid by a nonprofit corporation in advance of the final
13 disposition of the action or proceeding upon receipt of an
14 undertaking by or on behalf of the representative to repay the
15 amount if it is ultimately determined that he is not entitled to
16 be indemnified by the corporation as authorized in this
17 subchapter or otherwise. Except as otherwise provided in the
18 bylaws, advancement of expenses shall be authorized by the board
19 of directors. Section 5728 (relating to interested members,
20 directors or officers; quorum) shall not be applicable to the
21 advancement of expenses under this section.

22 § 5748. Application to surviving or new corporations.

23 [For] (a) General rule.--Except as provided in subsection
24 (b), for the purposes of this subchapter, references to "the
25 corporation" include all constituent corporations absorbed in a
26 consolidation, merger or division, as well as the surviving or
27 new corporations surviving or resulting therefrom, so that any
28 person who is or was a representative of the constituent,
29 surviving or new corporation, or is or was serving at the
30 request of the constituent, surviving or new corporation as a

1 representative of another domestic or foreign corporation for
2 profit or not-for-profit, partnership, joint venture, trust or
3 other enterprise, shall stand in the same position under the
4 provisions of this subchapter with respect to the surviving or
5 new corporation as he would if he had served the surviving or
6 new corporation in the same capacity.

7 (b) Divisions.--Notwithstanding subsection (a), the
8 obligations of a dividing corporation to indemnify and advance
9 expenses of its representatives, whether arising under this
10 subchapter or otherwise, may be allocated in a division in the
11 same manner and with the same effect as any other liability of
12 the dividing corporation.

13 § 5758. Voting rights of members.

14 (a) General rule.--Unless otherwise provided in a bylaw
15 adopted by the members, every member of a nonprofit corporation
16 shall be entitled to one vote.

17 (b) Procedures.--The manner of voting on any matter,
18 including changes in the articles or bylaws, may be by ballot,
19 mail or any reasonable means provided in a bylaw adopted by the
20 members. If a bylaw adopted by the members provides a fair and
21 reasonable procedure for the nomination of candidates for any
22 office, only candidates who have been duly nominated in
23 accordance therewith shall be eligible for election. Unless
24 otherwise provided in such a bylaw, in elections for directors,
25 voting shall be by ballot, and the candidates receiving the
26 highest number of votes from each class or group of classes, if
27 any, of members entitled to elect directors separately up to the
28 number of directors to be elected by such class or group of
29 classes shall be elected. If at any meeting of members directors
30 of more than one class are to be elected, each class of

1 directors shall be elected in a separate election.

2 (c) Cumulative voting.--[The members of a nonprofit
3 corporation shall have the right to cumulate their votes for the
4 election of directors only if and to the extent a bylaw adopted
5 by the members so provides.] If a bylaw adopted by the members
6 so provides, in each election of directors of a nonprofit
7 corporation every member entitled to vote shall have the right
8 to multiply the number of votes to which he may be entitled by
9 the total number of directors to be elected in the same election
10 by the members or the class of members to which he belongs and
11 he may cast the whole number of his votes for one candidate or
12 he may distribute them among any two or more candidates.

13 (d) Sale of votes.--No member shall sell his vote or issue a
14 proxy for money or anything of value.

15 (e) Voting lists.--Upon request of a member, the books or
16 records of membership shall be produced at any regular or
17 special meeting of the corporation. If at any meeting the right
18 of a person to vote is challenged, the presiding officer shall
19 require [such] the books or records to be produced as evidence
20 of the right of the person challenged to vote, and all persons
21 who appear by [such] the books or records to be members entitled
22 to vote may vote. See section 6145 (relating to applicability of
23 certain safeguards to foreign corporations).

24 § 5782. Actions against directors, members of an other body and
25 officers.

26 (a) General rule.--Except as provided in subsection (b), in
27 any action or proceeding brought to enforce a secondary right on
28 the part of one or more members of a nonprofit corporation
29 against any present or former officer, director or member of an
30 other body of the corporation because the corporation refuses to

1 enforce rights that may properly be asserted by it, each
2 plaintiff must aver and it must be made to appear that each
3 plaintiff was a member of the corporation at the time of the
4 transaction of which he complains.

5 (b) Exception.--Any member who, except for the provisions of
6 subsection (a), would be entitled to maintain the action or
7 proceeding and who does not meet such requirements may,
8 nevertheless in the discretion of the court, be allowed to
9 maintain the action or proceeding on preliminary showing to the
10 court, by application and upon such verified statements and
11 depositions as may be required by the court, that there is a
12 strong prima facie case in favor of the claim asserted on behalf
13 of the corporation and that without the action serious injustice
14 will result.

15 (c) Security for costs.--In any action or proceeding
16 instituted or maintained by less than the smaller of 50 members
17 of any class or 5% of the members of any class of the
18 corporation, the corporation in whose right the action or
19 proceeding is brought shall be entitled at any stage of the
20 proceedings to require the plaintiffs to give security for the
21 reasonable expenses, including attorney fees, that may be
22 incurred by it in connection therewith or for which it may
23 become liable pursuant to section 5743 (relating to mandatory
24 indemnification), but only insofar as relates to actions by or
25 in the right of the corporation, to which security the
26 corporation shall have recourse in such amount as the court
27 determines upon the termination of the action or proceeding. The
28 amount of security may, from time to time, be increased or
29 decreased in the discretion of the court upon showing that the
30 security provided has or may become inadequate or excessive. The

1 security may be denied or limited in the discretion of the court
2 upon preliminary showing to the court, by application and upon
3 such verified statements and depositions as may be required by
4 the court, establishing prima facie that the requirement of full
5 or partial security would impose undue hardship on plaintiffs
6 and serious injustice would result.

7 (d) Cross reference.--See section 6146 (relating to
8 provisions applicable to all foreign corporations).

9 § 5903. Bankruptcy or insolvency proceedings.

10 (a) General rule.--[Whenever] Unless otherwise provided in
11 the bylaws, whenever a nonprofit corporation is insolvent or in
12 financial difficulty, the board of directors may, by resolution
13 and without the consent of the members, authorize and designate
14 the officers of the corporation to execute a deed of assignment
15 for the benefit of creditors, or file a voluntary petition in
16 bankruptcy, or file an answer consenting to the appointment of a
17 receiver upon a complaint in the nature of an equity action
18 filed by creditors or members, or, if insolvent, file an answer
19 to an involuntary petition in bankruptcy admitting the
20 insolvency of the corporation and its willingness to be adjudged
21 a debtor on that ground.

22 (b) Bankruptcy proceedings.--[A] If authorized pursuant to
23 subsection (a), a nonprofit corporation may participate in
24 proceedings under and in the manner provided by Title 11 of the
25 United States Code (relating to bankruptcy) notwithstanding any
26 contrary provision of its articles or bylaws or this subpart,
27 other than [section] sections 103 (relating to subordination of
28 title to regulatory laws) and 5107 (relating to subordination of
29 subpart to canon law). The corporation shall have full power and
30 authority to put into effect and carry out a plan of

1 reorganization or arrangement and the decrees and orders of the
2 court, or judge or referee relative thereto, and may take any
3 proceeding and do any act provided in the plan or arrangement or
4 directed by such decrees and orders, without further action by
5 its directors or members. Such power and authority may be
6 exercised, and such proceedings and acts may be taken, as may be
7 directed by such decrees or orders, by the trustees or receivers
8 of the corporation appointed in the bankruptcy proceedings, or a
9 majority thereof, or, if none be appointed and acting, by
10 designated officers of the corporation, or by a master or other
11 representative appointed by the court or judge or referee, with
12 the effect as if exercised and taken by unanimous action of the
13 directors and members of the corporation. Without limiting the
14 generality or effect of the foregoing, the corporation may:

15 * * *

16 § 5912. Proposal of amendments.

17 (a) General rule.--Every amendment [to] of the articles of a
18 nonprofit corporation shall be proposed [by]:

19 (1) by the adoption by the board of directors or other
20 body of a resolution setting forth the proposed amendment;

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

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

29 [The] (b) Submission to members.--Except where the approval
30 of the members is unnecessary under this subchapter, the board

1 of directors or other body [or the petitioning members] shall
2 direct that the proposed amendment be submitted to a vote of the
3 members entitled to vote thereon at a regular or special meeting
4 of the members.

5 [(b)] (c) Form of amendment.--[The resolution or petition
6 shall contain the language of the proposed amendment to the
7 articles by providing that the articles shall be amended so as
8 to read as therein set forth in full, or that any provision
9 thereof be amended so as to read as therein set forth in full,
10 or that the matter stated in the resolution or petition be added
11 to or stricken from the articles. The resolution or petition may
12 set forth the manner and basis of reclassifying the shares of
13 the corporation.] The resolution or petition shall contain the
14 language of the proposed amendment of the articles:

15 (1) by setting forth the existing text of the articles
16 or the provision thereof that is proposed to be amended, with
17 brackets around language that is to be deleted and
18 underscoring under language that is to be added; or

19 (2) by providing that the articles shall be amended so
20 as to read as therein set forth in full, or that any
21 provision thereof be amended so as to read as therein set
22 forth in full, or that the matter stated in the resolution or
23 petition be added to or stricken from the articles.

24 (d) Terms of amendment.--The resolution or petition may set
25 forth the manner and basis of reclassifying the memberships in
26 or shares of the corporation. Any of the terms of a plan of
27 reclassification or other action contained in an amendment may
28 be made dependent upon facts ascertainable outside of the
29 amendment if the manner in which the facts will operate upon the
30 terms of the amendment is set forth in the amendment. Such facts

1 may include, without limitation, actions or events within the
2 control of or determinations made by the corporation or a
3 representative of the corporation.

4 § 5922. Plan of merger or consolidation.

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

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

9 [(2) The mode of carrying the merger or consolidation
10 into effect.

11 (3)] (2) If the surviving or new corporation is or is to
12 be a domestic nonprofit corporation:

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

16 (ii) in the case of a consolidation, all of the
17 statements required by this [article] subpart to be set
18 forth in restated articles.

19 [(4)] (3) Such other [details and] provisions as are
20 deemed desirable.

21 (b) Post-adoption amendment.--A plan of merger or
22 consolidation may contain a provision that the boards of
23 directors or other bodies of the constituent corporations may
24 amend the plan at any time prior to its effective date, except
25 that an amendment made subsequent to the adoption of the plan by
26 the members of any constituent corporation shall not change:

27 (1) The term of memberships or the amount or kind of
28 securities, obligations, cash, property or rights to be
29 received in exchange for or on conversion of all or any of
30 the memberships in the constituent corporation.

1 (2) Any term of the articles of the surviving or new
2 corporation to be effected by the merger or consolidation.

3 (3) Any of the terms and conditions of the plan if the
4 change would adversely affect the members of the constituent
5 corporation.

6 [(b)] (c) Proposal.--Every merger or consolidation shall be
7 proposed in the case of each domestic nonprofit corporation
8 [by]:

9 (1) by the adoption by the board of directors or other
10 body of a resolution approving the plan of merger or
11 consolidation;

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

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

20 [The] (d) Submission to members.--Except where the
21 corporation has no members entitled to vote thereon, the board
22 of directors or other body [or the petitioning members] shall
23 direct that the plan be submitted to a vote of the members
24 entitled to vote thereon at a regular or special meeting of the
25 members.

26 (e) Party to plan or transaction.--A corporation,
27 partnership, business trust or other association that approves a
28 plan in its capacity as a member or creditor of a merging or
29 consolidating corporation, or that furnishes all or a part of
30 the consideration contemplated by a plan, does not thereby

1 become a party to the plan or the merger or consolidation for
2 the purposes of this subchapter.

3 (f) Reference to outside facts.--Any of the terms of a plan
4 of merger or consolidation may be made dependent upon facts
5 ascertainable outside of the plan if the manner in which the
6 facts will operate upon the terms of the plan is set forth in
7 the plan. Such facts may include, without limitation, actions or
8 events within the control of or determinations made by a party
9 to the plan or a representative of a party to the plan.

10 § 5923. Notice of meeting of members.

11 (a) General rule.--Written notice of the meeting of members
12 that will act on the proposed plan shall[, not less than ten
13 days before the meeting of members called for the purpose of
14 considering the proposed plan,] be given to each member of
15 record, whether or not entitled to vote thereon, of each
16 domestic nonprofit corporation that is a party to the merger or
17 consolidation. There shall be included in, or enclosed with,
18 [such] the notice a copy of the proposed plan or a summary
19 thereof. The notice shall state that a copy of the bylaws of the
20 surviving or new corporation will be furnished to any member on
21 request and without cost.

22 (b) Cross reference.--See Subchapter A of Chapter 57
23 (relating to notice and meetings generally).

24 § 5929. Effect of merger or consolidation.

25 (a) Single surviving or new corporation.--Upon the merger or
26 consolidation becoming effective, the several corporations
27 parties to the [plan of] merger or consolidation shall be a
28 single corporation which, in the case of a merger, shall be
29 [that] the corporation designated in the plan of merger as the
30 surviving corporation[, and, in the case of a consolidation,

1 shall be the new corporation provided for in the plan of
2 consolidation. The separate existence of all corporations
3 parties to the [plan of] merger or consolidation shall cease,
4 except that of the surviving corporation, in the case of a
5 merger. The surviving or new corporation, as the case may be, if
6 it is a domestic nonprofit corporation, shall not thereby
7 acquire authority to engage in any business or exercise any
8 right [which] that a corporation may not be incorporated under
9 this [article] subpart to engage in or exercise.

10 (b) Property rights.--Except as otherwise provided by order,
11 if any, obtained pursuant to section [5547(b)] 5547(c) (relating
12 to nondiversion of certain property), all the property, real,
13 personal[,] and mixed, and franchises of each of the
14 corporations parties to the [plan of] merger or consolidation,
15 and all debts due on whatever account to any of them, including
16 subscriptions for membership and other choses in action
17 belonging to any of them, shall be [taken and] deemed to be
18 [transferred to and] vested in and shall belong to the surviving
19 or new corporation, as the case may be, without further [act or
20 deed] action, and the title to any real estate, or any interest
21 therein, vested in any of the corporations shall not revert or
22 be in any way impaired by reason of the merger or consolidation.
23 The surviving or new corporation shall thenceforth be
24 responsible for all the liabilities [and obligations] of each of
25 the corporations so merged or consolidated. [No liens] Liens
26 upon the property of the merging or consolidating corporations
27 shall not be impaired by [such] the merger or consolidation, and
28 any claim existing or action or proceeding pending by or against
29 any of [such] the corporations may be prosecuted to judgment as
30 if [such] the merger or consolidation had not taken place, or

1 the surviving or new corporation may be proceeded against or
2 substituted in its place. Any devise, gift or grant contained in
3 any will or other instrument, in trust or otherwise, made before
4 or after such merger or consolidation, to or for any of the
5 constituent corporations, shall inure to the surviving or new
6 corporation, as the case may be, subject to compliance with the
7 requirements of section 5550 (relating to devises, bequests and
8 gifts after certain fundamental changes).

9 ~~(c) Taxes. Any taxes, penalties and public accounts of the~~ <—
10 ~~Commonwealth, claimed against any of the merging or~~
11 ~~consolidating corporations, but not settled, assessed or~~
12 ~~determined prior to [such] the merger or consolidation, shall be~~
13 ~~settled, assessed or determined against the surviving or new~~
14 ~~corporation[,] and, together with interest thereon, shall be a~~
15 ~~lien against the franchises and property, both real and~~
16 ~~personal, of the surviving or new corporation.~~

17 (C) TAXES.--ANY TAXES, INTEREST, PENALTIES AND PUBLIC <—
18 ACCOUNTS OF THE COMMONWEALTH[,] CLAIMED AGAINST ANY OF THE
19 MERGING OR CONSOLIDATING CORPORATIONS[, BUT NOT] THAT ARE
20 SETTLED, ASSESSED OR DETERMINED PRIOR TO [SUCH] OR AFTER THE
21 MERGER OR CONSOLIDATION[,] SHALL BE [SETTLED, ASSESSED OR
22 DETERMINED AGAINST] THE LIABILITY OF THE SURVIVING OR NEW
23 CORPORATION[,] AND, TOGETHER WITH INTEREST THEREON, SHALL BE A
24 LIEN AGAINST THE FRANCHISES AND PROPERTY, BOTH REAL AND
25 PERSONAL, OF THE SURVIVING OR NEW CORPORATION.

26 (d) Articles of incorporation.--In the case of a merger, the
27 articles of incorporation of the surviving domestic nonprofit
28 corporation, if any, shall be deemed to be amended to the
29 extent, if any, that changes in its articles are stated in the
30 plan of merger[; and in]. In the case of a consolidation into a

1 domestic nonprofit corporation, the statements [which] that are
2 set forth in the plan of consolidation, or articles of
3 incorporation set forth therein, shall be deemed to be the
4 articles of incorporation of the new corporation.

5 § 5952. Proposal and adoption of plan of division.

6 (a) Preparation of plan.--A plan of division shall be
7 prepared, setting forth:

8 (1) The terms and conditions of the division, including
9 the manner and basis of:

10 (i) [the] The reclassification of the membership
11 interests or shares [or obligations] of the surviving
12 corporation, if there be one[; and].

13 (ii) [the] The disposition of the membership
14 interests or shares [and] or obligations, if any, of the
15 new corporation or corporations resulting from the
16 division.

17 [(2) The mode of carrying the division into effect.

18 (3)] (2) A statement that the dividing nonprofit
19 corporation will, or will not, survive the division.

20 [(4)] (3) Any changes desired to be made in the articles
21 of the surviving corporation, if there be one, including a
22 restatement of the articles.

23 [(5)] (4) The articles of incorporation required by
24 subsection (b) [of this section].

25 [(6)] (5) Such other [details and] provisions as are
26 deemed desirable.

27 (b) Articles of new corporations.--There shall be included
28 in or annexed to the plan of division:

29 (1) Articles of incorporation, which shall contain all
30 of the statements required by this [article] subpart to be

1 set forth in restated articles, for each of the new domestic
2 nonprofit corporations, if any, resulting from the division.

3 (2) Articles of incorporation, certificates of
4 incorporation[,] or other charter documents for each of the
5 new foreign nonprofit corporations [not-for-profit], if any,
6 resulting from the division.

7 (c) Proposal and adoption.--[The] Except as otherwise
8 provided in section 5953 (relating to division without member
9 approval), the plan of division shall be proposed and adopted,
10 and may be amended after its adoption and terminated, by a
11 domestic nonprofit corporation in the manner provided for the
12 proposal, adoption, amendment and termination of a plan of
13 merger in Subchapter C (relating to merger, consolidation and
14 sale of assets) or, if the dividing corporation is a foreign
15 nonprofit corporation [not-for-profit], in accordance with the
16 laws of the jurisdiction in which it is incorporated[.] and, in
17 the case of a foreign domiciliary corporation, the provisions of
18 this subpart to the extent provided by section 6145 (relating to
19 applicability of certain safeguards to foreign corporations).
20 There shall be included in or enclosed with the notice of the
21 meeting of members that will act on the plan a copy or summary
22 of the plan.

23 (d) Special requirements.--If any provision of the bylaws of
24 a dividing domestic nonprofit corporation adopted before January
25 1, 1972 shall require for the adoption of a plan of merger or
26 consolidation or a plan involving the sale, lease or exchange of
27 all or substantially all of the property and assets of the
28 corporation a specific number or percentage of votes of
29 directors, members, or members of an other body or other special
30 procedures, the plan of division shall not be adopted without

1 such number or percentage of votes or compliance with such other
2 special procedures.

3 (e) Financial status of resulting corporations.--Unless the
4 plan of division provides that the dividing corporation shall
5 survive the division and that all membership interests or shares
6 or obligations, if any, of all new corporations resulting from
7 the plan shall be owned solely by the surviving corporation, no
8 plan of division may be made effective at a time when the
9 dividing corporation is insolvent or when the division would
10 render any of the resulting corporations insolvent.

11 (f) Rights of holders of indebtedness.--If any debt
12 securities, notes or similar evidences of indebtedness for money
13 borrowed, whether secured or unsecured, indentures or other
14 contracts were issued, incurred or executed by the dividing
15 corporation before January 1, 1972, and have not been amended
16 subsequent to that date, the liability of the dividing
17 corporation thereunder shall not be affected by the division nor
18 shall the rights of the obligees thereunder be impaired by the
19 division, and each of the resulting corporations may be
20 proceeded against or substituted in place of the dividing
21 corporation as joint and several obligors on such liability,
22 regardless of any provision of the plan of division apportioning
23 the liabilities of the dividing corporation.

24 (g) Reference to outside facts.--Any of the terms of a plan
25 of division may be made dependent upon facts ascertainable
26 outside of the plan if the manner in which the facts will
27 operate upon the terms of the plan is set forth in the plan.
28 Such facts may include, without limitation, actions or events
29 within the control of or determinations made by the dividing
30 corporation or a representative of the dividing corporation.

1 § 5953. [(Reserved).] Division without member approval.

2 Unless otherwise required by its bylaws or by section 5952
3 (relating to proposal and adoption of plan of division), a plan
4 of division that does not alter the state of incorporation of a
5 nonprofit corporation nor amend in any respect the provisions of
6 its articles, except amendments that under section 5914(b)
7 (relating to adoption in absence of voting members) may be made
8 without member action, shall not require the approval of the
9 members of the corporation if the transfers of assets effected
10 by the division, if effected by means of a sale, lease, exchange
11 or other disposition, would not require the approval of members
12 under section 5930 (relating to voluntary transfer of corporate
13 assets).

14 § 5957. Effect of division.

15 (a) Multiple resulting corporations.--Upon the division
16 becoming effective, the dividing corporation shall be subdivided
17 into the distinct and independent resulting corporations named
18 in the plan of division and, if the dividing corporation is not
19 to survive the division, the existence of the dividing
20 corporation shall cease. The resulting corporations, if they are
21 domestic nonprofit corporations, shall not thereby acquire
22 authority to engage in any business or exercise any right
23 [which] that a corporation may not be incorporated under this
24 [article] subpart to engage in or exercise. Any resulting
25 foreign nonprofit corporation [which] that is stated in the
26 articles of division to be a qualified foreign nonprofit
27 corporation shall be a qualified foreign nonprofit corporation
28 under [this subpart] Article C (relating to foreign nonprofit
29 corporations), and the articles of division shall be deemed to
30 be the application for a certificate of authority and the

1 certificate of authority issued thereon of [such] the
2 corporation.

3 (b) Property rights; allocations of assets and
4 liabilities.--

5 (1) Except as otherwise provided by order, if any,
6 obtained pursuant to section [5547(b)] 5547(c) (relating to
7 nondiversion of certain property)[, all]:

8 (i) All the property, real, personal[, and mixed,
9 and franchises of the dividing corporation, and all debts
10 due on whatever account to it, including subscriptions
11 for membership and other choses in action belonging to
12 it, shall, to the extent allocations of assets are
13 contemplated by the plan of division, be [taken and]
14 deemed without further [act or deed] action to be
15 [transferred] allocated to and vested in the resulting
16 corporations on such a manner and basis and with such
17 effect as is specified in the plan [of division], or per
18 capita among the resulting corporations, as tenants in
19 common, if no [such] specification is made in the plan[.
20 The], and the title to any real estate, or interest
21 therein, vested in any of the corporations shall not
22 revert or be in any way impaired by reason of the
23 division.

24 (ii) Upon the division becoming effective, the
25 resulting corporations shall each thenceforth be
26 responsible as separate and distinct corporations only
27 for such liabilities [and obligations] as each
28 corporation may undertake or incur in its own name, but
29 shall be liable [inter se] for the [debts and]
30 liabilities of the dividing corporation in the manner and

on the basis [specified in the plan of division. No
liens] provided in paragraphs (4) and (5).

(iii) Liens upon the property of the dividing
corporation shall not be impaired by the division.

[One] (iv) To the extent allocations of liabilities
are contemplated by the plan of division, the liabilities
of the dividing corporation shall be deemed without
further action to be allocated to and become the
liabilities of the resulting corporations on such a
manner and basis and with such effect as is specified in
the plan; and one or more, but less than all, of the
resulting corporations shall be free of [all] the
liabilities [and obligations] of the dividing corporation
to the extent, if any, specified in the plan, if in
either case:

(A) no fraud [of corporate creditors or] on
members without voting rights [and if no] or
violation of law shall be effected thereby[,]; and
[if applicable provisions of law are complied with.
Otherwise, the liability]

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

(v) If the conditions in subparagraph (iv) for
freeing one or more of the resulting corporations from
the liabilities of the dividing corporation, or for
allocating some or all of the liabilities of the dividing
corporation, are not satisfied, the liabilities of the
dividing corporation[, or of its members, directors, or
officers,] as to which those conditions are not satisfied

shall not be affected by the division[,] nor shall the rights of [the] creditors [thereof or of any person dealing with such corporation] thereunder be impaired by [such] the division[,] and[, except as otherwise provided in this section,] any claim existing or action or proceeding pending by or against [such] the corporation with respect to those liabilities may be prosecuted to judgment as if [such] the division had not taken place, or the resulting corporations may be proceeded against or substituted in [its] place of the dividing corporation as joint and several obligors on [such liability] those liabilities, regardless of any provision of the plan of division apportioning the [debts and] liabilities of the dividing corporation.

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

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

(c) Taxes.--Any taxes, INTEREST, penalties and public accounts of the Commonwealth, ~~claimed against the dividing corporation, but not settled, assessed or determined prior to [such] the division, shall be settled, assessed or determined against any of the COMMONWEALTH[,] CLAIMED AGAINST THE DIVIDING~~

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<—

1 CORPORATION[, BUT NOT] THAT ARE SETTLED, ASSESSED OR DETERMINED
2 PRIOR TO [SUCH] OR AFTER THE DIVISION[,] SHALL BE [SETTLED,
3 ASSESSED OR DETERMINED AGAINST] THE LIABILITY OF ANY OF THE
4 resulting corporations[, and, together with interest thereon,
5 shall be a lien against the franchises and property, both real
6 and personal, of all [such] the corporations. [The] Upon the
7 application of the dividing corporation, the Department of
8 Revenue [may, upon the application of the dividing corporation],
9 with the concurrence of the Office of Employment Security of the
10 Department of Labor and Industry, shall release one or more, but
11 less than all, of the resulting corporations from liability and
12 liens for all taxes, INTEREST, penalties and public accounts of <—
13 the dividing corporation due the Commonwealth [or any other
14 taxing authority] for periods prior to the effective date of the
15 division, if [the Department of Revenue is] those departments
16 are satisfied that the public revenues will be adequately
17 secured.

18 (d) Articles of surviving corporation.--The articles of
19 incorporation of the surviving corporation, if there be one,
20 shall be deemed to be amended to the extent, if any, that
21 changes in its articles are stated in the plan of division.

22 (e) Articles of new corporations.--The statements [which]
23 that are set forth in the plan of division with respect to each
24 new domestic nonprofit corporation and [which] that are required
25 or permitted to be set forth in restated articles of
26 incorporation of corporations incorporated under this [article]
27 subpart, or the articles of incorporation of each new
28 corporation set forth therein, shall be deemed to be the
29 articles of incorporation of each [such] new corporation.

30 (f) Directors and officers.--Unless otherwise provided in

1 the plan, the directors and officers of the dividing corporation
2 shall be the initial directors and officers of each of the
3 resulting corporations.

4 (g) Disposition of memberships.--Unless otherwise provided
5 in the plan, the memberships and other securities or
6 obligations, if any, of each new corporation resulting from the
7 division shall be distributable to:

8 (1) the surviving corporation, if the dividing
9 corporation survives the division; or

10 (2) the members of the dividing corporation pro rata, in
11 any other case.

12 (h) Conflict of laws.--It is the intent of the General
13 Assembly that:

14 (1) The effect of a division of a domestic business
15 corporation shall be governed solely by the laws of this
16 Commonwealth and any other jurisdiction under the laws of
17 which any of the resulting corporations is incorporated.

18 (2) The effect of a division on the assets and
19 liabilities of the dividing corporation shall be governed
20 solely by the laws of this Commonwealth and any other
21 jurisdiction under the laws of which any of the resulting
22 corporations is incorporated.

23 (3) The validity of any allocations of assets or
24 liabilities by a plan of division of a domestic business
25 corporation, regardless of whether or not any of the new
26 corporations is a foreign business corporation, shall be
27 governed solely by the laws of this Commonwealth.

28 (4) In addition to the express provisions of this
29 subsection, this subchapter shall otherwise generally be
30 granted the protection of full faith and credit under the

1 Constitution of the United States.

2 § 5975. Predissolution provision for liabilities.

3 (a) Powers of board.--The board of directors or other body
4 of a nonprofit corporation that has elected to proceed under
5 this section shall have full power to wind up and settle the
6 affairs of [a nonprofit] the corporation in accordance with this
7 section prior to filing articles of dissolution in accordance
8 with section 5977 (relating to articles of dissolution).

9 (b) Notice to creditors and taxing authorities.--After the
10 approval by the members or the board of directors or other body
11 pursuant to section 5974(b) (relating to adoption in absence of
12 voting members) that the corporation dissolve voluntarily, the
13 corporation shall immediately cause notice of the winding up
14 proceedings to be officially published and to be mailed by
15 certified or registered mail to each known creditor and claimant
16 and to each municipal corporation in which [its registered
17 office or principal] it has a place of business in this
18 Commonwealth [is located].

19 (c) Winding up and distribution.--The corporation shall, as
20 speedily as possible, proceed to collect all sums due it,
21 convert into cash all corporate assets the conversion of which
22 into cash is required to discharge its liabilities and, out of
23 the assets of the corporation, discharge or make adequate
24 provision for the discharge of all liabilities of the
25 corporation, according to their respective priorities. Except as
26 otherwise provided in a bylaw adopted by the members or in this
27 subpart or by any other provision of law, any surplus remaining
28 after paying or providing for all liabilities of the corporation
29 shall be distributed to the shareholders, if any, pro rata, or
30 if there be no shareholders, among the members per capita. See

1 section 1972(a) (relating to proposal of voluntary dissolution).

2 § 5976. Judicial supervision of proceedings.

3 (a) General rule.--A nonprofit corporation that has elected
4 to proceed under section 1975 (relating to predissolution
5 provision for liabilities), at any time during the winding up
6 proceedings, may apply to the court to have the proceedings
7 continued under the supervision of the court and thereafter the
8 proceedings shall continue under the supervision of the court as
9 provided in Subchapter G (relating to involuntary liquidation
10 and dissolution).

11 * * *

12 § 5977. Articles of dissolution.

13 * * *

14 (b) Contents of articles.--The articles of dissolution shall
15 be executed by the corporation and shall set forth:

16 * * *

17 (5) A statement that:

18 (i) [that] all liabilities of the corporation have
19 been discharged or that adequate provision has been made
20 therefor; [or]

21 (ii) [that] the assets of the corporation are not
22 sufficient to discharge its liabilities, and that all the
23 assets of the corporation have been fairly and equitably
24 applied, as far as they will go, to the payment of such
25 liabilities[. An election by]; or

26 (iii) the corporation has elected to proceed under
27 Subchapter H [shall constitute the making of adequate
28 provision for the liabilities of the corporation,
29 including any judgment or decree that may be obtained
30 against the corporation in any pending action or

1 proceeding].

2 * * *

3 (7) [A] In the case of a corporation that has not
4 elected to proceed under Subchapter H, a statement that no
5 actions or proceedings are pending against the corporation in
6 any court, or that adequate provision has been made for the
7 satisfaction of any judgment or decree that may be obtained
8 against the corporation in each pending action or proceeding.

9 (8) [A] In the case of a corporation that has not
10 elected to proceed under Subchapter H, a statement that
11 notice of the winding-up proceedings of the corporation was
12 mailed by certified or registered mail to each known creditor
13 and claimant and to each municipal corporation in which the
14 [registered office or principal place of business of the]
15 corporation has a place of business in this Commonwealth [is
16 located].

17 * * *

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

21 § 5989. Articles of involuntary dissolution.

22 (a) General rule.--In a proceeding under this subchapter,
23 the court shall enter an order dissolving the nonprofit
24 corporation when the order, if any, obtained pursuant to section
25 5547(b) (relating to nondiversion of certain property) has been
26 entered and when the costs and expenses of the proceeding, and
27 all liabilities of the corporation have been discharged, and all
28 of its remaining assets have been distributed to the persons
29 entitled thereto, or, in case its assets are not sufficient to
30 discharge such costs, expenses and liabilities, when all the

assets have been applied, as far as they will go, to the payment of such costs, expenses and liabilities. See section 139(b) (relating to tax clearance in judicial proceedings).

(b) Filing.--After entry of an order of dissolution, the office of the clerk of the court of common pleas shall prepare and execute articles of dissolution substantially in the form provided by section 5977 (relating to articles of dissolution), attach thereto a certified copy of the order and transmit the articles and attached order to the Department of State. [A certificate or statement provided for by section 139 (relating to tax clearance of certain fundamental transactions) shall not be required, and the] The department shall not charge a fee in connection with the filing of articles of dissolution under this section. See [section] sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

* * *

§ 5991.1. Authority of board of directors.

(a) General rule.--The board of directors or other body of a nonprofit corporation that has elected to proceed under this subchapter shall have full power to wind up and settle the affairs of the corporation in accordance with this subchapter both prior to and after the filing of articles of dissolution in accordance with section 5977 (relating to articles of dissolution).

(b) Winding up.--The corporation shall, as speedily as possible, proceed to comply with the requirements of this subchapter while simultaneously collecting all sums due it and converting into cash all corporate assets, the conversion of which into cash is required to make adequate provision for its

1 liabilities.

2 § 6126. Amended certificate of authority.

3 (a) General rule.--After receiving a certificate of
4 authority, a qualified foreign nonprofit corporation may,
5 subject to the provisions of this subchapter, change [the name
6 under which it is authorized to transact business in this
7 Commonwealth] or correct any of the information set forth in its
8 application for a certificate of authority or previous filings
9 under this section by filing in the Department of State an
10 application for an amended certificate of authority. The
11 application shall be executed by the corporation and shall
12 state:

13 (1) The name under which the applicant corporation
14 currently holds a certificate of authority to do business in
15 this Commonwealth.

16 [(2) The name of the jurisdiction under the laws of
17 which the corporation is incorporated.

18 (3) The address, including street and number, if any, of
19 its principal office under the laws of the jurisdiction in
20 which it is incorporated.

21 (4)] (2) Subject to section 109 (relating to name of
22 commercial registered office provider in lieu of registered
23 address), the address, including street and number, if any,
24 of its registered office in this Commonwealth. [which may
25 constitute a change in the address of its registered office.

26 (5) The new name of the corporation and]

27 (3) The information to be changed or corrected.

28 (4) If the application reflects a change in the name of
29 the corporation, the application shall include a statement
30 that either:

1 (i) the change of name reflects a change effected in
2 the jurisdiction of incorporation; or

3 (ii) documents complying with section 6123(b)
4 (relating to exceptions) accompany the application.

5 (b) Issuance of amended certificate of authority.--Upon the
6 filing of the application, the applicant corporation shall be
7 deemed to hold an amended certificate of authority.

8 (c) Cross reference.--See section 134 (relating to docketing
9 statement).

10 § 6146. Provisions applicable to all foreign corporations.

11 The following provisions of this subpart shall, except as
12 otherwise provided in this section, be applicable to every
13 foreign corporation not-for-profit, whether or not required to
14 procure a certificate of authority under this chapter:

15 Section 5503 (relating to defense of ultra vires), as to
16 contracts and conveyances governed by the laws of this
17 Commonwealth and conveyances affecting real property situated
18 in this Commonwealth.

19 Section 5506 (relating to form of execution of
20 instruments), as to instruments or other documents governed
21 by the laws of this Commonwealth or affecting real property
22 situated in this Commonwealth.

23 Section 5510 (relating to certain specifically authorized
24 debt terms), as to obligations (as defined in the section)
25 governed by the laws of this Commonwealth or affecting real
26 property situated in this Commonwealth.

27 Section 5782 (relating to actions against directors,
28 members of an other body and officers), as to any action or
29 proceeding brought in a court of this Commonwealth.

30 § 8105. Ownership of certain professional partnerships.

1 Except as otherwise provided by statute, rule or regulation
2 applicable to a particular profession, all of the [partners in]
3 ultimate beneficial owners of the partnership interests in a
4 partnership that renders one or more restricted professional
5 services shall be licensed persons. As used in this section,
6 the term "restricted professional services" shall have the
7 meaning specified in section 8903 (relating to definitions and
8 index of definitions).

9 § 8201. Scope.

10 * * *

11 (e) Prohibited termination.--A registration under this
12 subchapter may not be terminated while the partnership is a
13 bankrupt as that term is defined in section 8903 (relating to
14 definitions and index of definitions). See section 8221(f)
15 (relating to annual registration).

16 (f) Alternative procedure.--In lieu of filing a statement of
17 registration as provided in subsection (a), a limited
18 partnership may register as a registered limited liability
19 partnership by including in its certificate of limited
20 partnership, either originally or by amendment, the statements
21 required by subsection (a)(3) and (4). To terminate its
22 registration, a limited partnership that uses the procedure
23 authorized by this subsection shall amend its certificate of
24 limited partnership to delete the statements required by this
25 subsection.

26 (g) Constructive notice.--Filing under this section shall
27 constitute constructive notice that the partnership is a
28 registered limited liability partnership and that the partners
29 are entitled to the protections from liability provided by this
30 subchapter.

1 [(e)] (h) Cross references.--See sections 134 (relating to
2 docketing statement) and 135 (relating to requirements to be met
3 by filed documents).

4 § 8202. Definitions.

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

8 * * *

9 "Partner." Includes a person who is or was a partner in a
10 registered limited liability partnership at any time while the
11 registration of the partnership under this subchapter is or was
12 in effect.

13 * * *

14 § 8204. Limitation on liability of partners.

15 (a) General rule.--Except as provided in subsection (b), a
16 partner in a registered limited liability partnership shall not
17 be individually liable directly or indirectly, whether by way of
18 indemnification, contribution or otherwise, for debts and
19 obligations of, or chargeable to, the partnership, whether
20 sounding in contract or tort or otherwise, that arise from any
21 negligent or wrongful acts or misconduct committed by another
22 partner or other representative of the partnership while the
23 registration of the partnership under this subchapter is in
24 effect.

25 (b) Exceptions.--

26 (1) [Subsection (a) shall not apply to any debt or
27 obligation with respect to which the partnership is not in
28 compliance with section 8206(a) (relating to insurance).]

29 (Repealed).

30 * * *

(3) Subsection (a) shall not affect in any way:

(i) the liability of the partnership itself for all its debts and obligations; [or]

(ii) the availability of the entire assets of the partnership to satisfy its debts and obligations; or

(iii) any obligation undertaken by a partner in writing to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

* * *

§ 8205. Liability of withdrawing partner.

* * *

(b) Exceptions.--Subsection (a) shall not affect the liability of a partner:

* * *

(7) For any obligation undertaken by a partner in writing to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

* * *

(e) Permissive filing.--Filing under this section is permissive, and failure to make a filing under this section by a partner entitled to do so shall not affect the right of that partner to the limitation on liability provided by section 8204 (relating to limitation on liability of partners).

(f) Constructive notice.--Filing under this section shall constitute constructive notice that the partner has withdrawn from the partnership and is entitled to the protection from liability provided by this section.

(g) Variation of section.--A written provision of the

1 partnership agreement may restrict or condition the application
2 of this section to some or all of the partners of the
3 partnership.

4 (h) Application of section.--A partner in a foreign
5 registered limited liability partnership, regardless of whether
6 or not it has registered to do business in this Commonwealth
7 under section 8211 (relating to foreign registered limited
8 liability partnerships), shall not be entitled to make a filing
9 under this section with regard to that partnership.

10 [(e)] (i) Cross references.--See sections 134 (relating to
11 docketing statement) and 135 (relating to requirements to be met
12 by filed documents).

13 § 8211. Foreign registered limited liability partnerships.

14 (a) Governing law.--Subject to the Constitution of
15 Pennsylvania:

16 (1) The laws of the jurisdiction under which a foreign
17 registered limited liability partnership is organized govern
18 its organization and internal affairs and the liability of
19 its partners, except as provided in subsection (c).

20 (2) A foreign registered limited liability partnership
21 may not be denied registration by reason of any difference
22 between those laws and the laws of this Commonwealth.

23 (b) Registration to do business.--A foreign registered
24 limited liability partnership, regardless of whether or not it
25 is also a foreign limited partnership, shall be subject to
26 Subchapter K of Chapter 85 (relating to foreign limited
27 partnerships) as if it were a foreign limited partnership,
28 except that [the]:

29 (1) Its application for registration shall state that it
30 is a registered limited liability partnership.

1 (2) The name under which [the foreign registered limited
2 liability partnership] it registers and conducts business in
3 this Commonwealth shall comply with the requirements of

4 section 8203 (relating to name).

5 (3) Section 8582(a)(5) and (6) (relating to
6 registration) shall not be applicable to the application for
7 registration of a foreign limited liability partnership that

8 is not a foreign limited partnership.

9 (c) Exception.--The liability of the partners in a foreign
10 registered limited liability partnership shall be governed by
11 the laws of the jurisdiction under which it is organized, except
12 that the partners shall not be entitled to greater protection
13 from liability than is available to the partners in a domestic
14 registered limited liability partnership.

15 § 8221. Annual registration.

16 * * *

17 (e) [Annual fee to be lien] Failure to pay annual fee.--

18 (1) Failure to [pay the annual registration fee imposed]
19 file the certificate of annual registration required by this
20 section [shall not affect the existence or] for five
21 consecutive years shall result in the automatic termination
22 of the status of the registered limited liability partnership
23 as such[, but the]. In addition, any annual registration fee
24 that is not paid when due shall be a lien in the manner
25 provided in this subsection from the time the annual
26 registration fee is due and payable [upon]. If a certificate
27 of annual registration is not filed within 30 days after the
28 date on which it is due, the department shall assess a
29 penalty of \$500 against the partnership, which shall also be
30 a lien in the manner provided in this subsection. The

1 imposition of that penalty shall not be construed to relieve
2 the partnership from liability for any other penalty or
3 interest provided for under other applicable law.

4 (2) If the annual registration fee paid by a registered
5 limited liability partnership is subsequently determined to
6 be less than should have been paid because it was based on an
7 incorrect number of general partners or was otherwise
8 incorrectly computed, that fact shall not affect the
9 existence or status of the registered limited liability
10 partnership as such, but the amount of the additional annual
11 registration fee that should have been paid shall be a lien
12 in the manner provided in this subsection from the time the
13 incorrect payment is discovered by the department.

14 (3) The annual registration fee shall bear simple
15 interest from the date that it becomes due and payable until
16 paid. The interest rate shall be that provided for in section
17 806 of the act of April 9, 1929 (P.L.343, No.176), known as
18 The Fiscal Code, with respect to unpaid taxes. The penalty
19 provided for in paragraph (1) shall not bear interest. The
20 payment of interest shall not relieve the registered limited
21 liability partnership from liability for any other penalty or
22 interest provided for under other applicable law.

23 (4) The lien created by this subsection shall attach to
24 all of the property and proceeds thereof of the registered
25 limited liability partnership in which a security interest
26 can be perfected in whole or in part by filing in the
27 department under 13 Pa.C.S. Div. 9 (relating to secured
28 transactions; sales of accounts, contract rights and chattel
29 paper), whether the property and proceeds are owned by the
30 partnership at the time the annual registration fee or any

1 penalty or interest becomes due and payable or whether the
2 property and proceeds are acquired thereafter. Except as
3 otherwise provided by statute, the lien created by this
4 subsection shall have priority over all other liens, security
5 interests or other charges, except liens for taxes or other
6 charges due the Commonwealth. The lien created by this
7 subsection shall be entered on the records of the department
8 and indexed in the same manner as a financing statement filed
9 under 13 Pa.C.S. Div. 9. At the time an annual registration
10 fee, penalty or interest that has resulted in the creation of
11 a lien under this subsection is paid, the department shall
12 terminate the lien with respect to that annual registration
13 fee, penalty or interest without requiring a separate filing
14 by the partnership for that purpose.

15 (5) If the annual registration fee paid by a registered
16 limited liability partnership is subsequently determined to
17 be more than should have been paid for any reason, no refund
18 of the additional fee shall be made.

19 (6) Termination of the status of a registered limited
20 liability partnership as such, whether voluntarily or
21 involuntarily, shall not release it from the obligation to
22 pay any accrued fees, penalties and interest and shall not
23 release the lien created by this subsection.

24 (f) Exception for bankrupt partnerships.--A partnership that
25 would otherwise be required to pay the annual registration fee
26 set forth in subsection (b) shall not be required to pay that
27 fee with respect to any year during any part of which the
28 partnership is a bankrupt as defined in section 8903 (relating
29 to definitions and index of definitions). The partnership shall,
30 instead, indicate on its certificate of annual registration for

that year that it is exempt from payment of the annual registration fee pursuant to this subsection. If the partnership fails to file timely a certificate of annual registration, a lien shall be entered on the records of the department pursuant to subsection (e) which shall not be removed until the partnership files a certificate of annual registration indicating its entitlement to an exemption from payment of the annual registration fee as provided in this subsection. See section 8201(e) (relating to scope).

§ 8359. Right to wind up affairs.

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership, or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs except that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. See section 139(b) (relating to tax clearance in judicial proceedings).

§ 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) or this part. If an amendment of the certificate of limited partnership or a certificate of merger or division made in the manner

1 permitted by this chapter restates the certificate in its
2 entirety or if there is a certificate of consolidation,
3 thenceforth the "certificate of limited partnership" shall not
4 include any prior documents and any certificate issued by the
5 department with respect thereto shall so state.

6 * * *

7 "Court." Subject to any inconsistent general rule prescribed
8 by the Supreme Court of Pennsylvania:

9 (1) the court of common pleas of the judicial district
10 embracing the county where the registered office of the
11 limited partnership is or is to be located; or

12 (2) where a limited partnership results from a merger,
13 consolidation, division or other transaction without
14 establishing a registered office in this Commonwealth or
15 withdraws as a foreign limited partnership, the court of
16 common pleas in which venue would have been laid immediately
17 prior to the transaction or withdrawal.

18 ["Department." The Department of State of the Commonwealth.]

19 * * *

20 "Partnership agreement." Any agreement, written or oral, of
21 the partners as to the affairs of a limited partnership and the
22 conduct of its business. [A written partnership agreement:

23 (1) May provide that a person shall be admitted as a
24 limited partner, or shall become an assignee of a partnership
25 interest or other rights or powers of a limited partner to
26 the extent assigned, and shall become bound by the
27 partnership agreement:

28 (i) if such person (or a representative authorized
29 by such person orally, in writing or by other action such
30 as payment for a partnership interest) executes the

1 partnership agreement or any other writing evidencing the
2 intent of such person to become a limited partner or
3 assignee; or

4 (ii) without such execution, if such person (or a
5 representative authorized by such person orally, in
6 writing or by other action such as payment for a
7 partnership interest) complies with the conditions for
8 becoming a limited partner or assignee as set forth in
9 the partnership agreement or any other writing and
10 requests (orally, in writing or by other action such as
11 payment for a partnership interest) that the records of
12 the limited partnership reflect such admission or
13 assignment.

14 (2) Shall not be unenforceable by reason of its not
15 having been signed by a person being admitted as a limited
16 partner or becoming an assignee as provided in paragraph (1)
17 or by reason of its having been signed by a representative as
18 provided in section 8514(b) (relating to attorney-in-fact).

19 (3) May provide that, whenever a provision of this
20 chapter requires the vote or consent of a specified number or
21 percentage of partners or of a class of partners for the
22 taking of any action, a higher number or percentage of votes
23 or consents shall be required for the action. Except as
24 otherwise provided in the partnership agreement, whenever the
25 partnership agreement requires for the taking of any action
26 by the partners or a class of partners a specific number or
27 percentage of votes or consents, the provision of the
28 partnership agreement setting forth that requirement shall
29 not be amended or repealed by any lesser number or percentage
30 of votes or consents of the partners or the class of

partners.]

* * *

"Relax." When used with respect to a provision of the certificate of limited partnership or partnership agreement, means to provide lesser rights for an affected representative or partner.

(b) Index of definitions.--Other definitions applying to this chapter and the sections in which they appear are:

"Act" or "action." Section 102.

"Department." Section 102.

"Licensed person." Section 102.

"Professional services." Section 102.

§ 8510. Indemnification.

* * *

(b) When indemnification is not to be made.--Indemnification pursuant to subsection (a) shall not be made in any case where the act [or failure to act] giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. The certificate of limited partnership or partnership agreement may not provide for indemnification in the case of willful misconduct or recklessness.

* * *

(f) Mandatory indemnification.--Without regard to whether indemnification or advancement of expenses is provided under subsections (a) and (d), a limited partnership shall be subject to section 8331(2) (relating to rules determining rights and duties of partners).

SUBCHAPTER B

FORMATION[; CERTIFICATE OF LIMITED PARTNERSHIP]

1 § 8511. Certificate of limited partnership.

2 (a) General rule.--In order to form a limited partnership, a
3 certificate of limited partnership must be executed and filed in
4 the Department of State. The certificate shall set forth:

5 (1) The name of the limited partnership.

6 (2) Subject to section 109 (relating to name of
7 commercial registered office provider in lieu of registered
8 address), the address, including street and number, if any,
9 of its registered office.

10 (3) The name and business address of each general
11 partner.

12 (4) If a partner's interest in the limited partnership
13 is to be evidenced by a certificate of partnership interest,
14 a statement to that effect.

15 (5) Any other [matters the partners determine to include
16 therein. A provision included in the certificate of limited
17 partnership pursuant to this paragraph shall be deemed to be
18 a provision of the partnership agreement for purposes of any
19 provision of this chapter that refers to a rule as set forth
20 in the partnership agreement.] provision, whether or not
21 specifically authorized by or in contravention of this
22 chapter, that the partners elect to set out in the
23 certificate of limited partnership for the regulation of the
24 internal affairs of the limited partnership, except where a
25 provision of this chapter expressly provides that the
26 certificate of limited partnership shall not relax or
27 contravene any provision on a specified subject.

28 (b) Effective date of formation.--A limited partnership is
29 formed at the time of the filing of the certificate of limited
30 partnership in the department or at any later time specified in

1 the certificate of limited partnership if, in either case, there
2 has been substantial compliance with the requirements of this
3 section or the corresponding provisions of prior law.

4 (c) [Duties of recorders of deeds.--Each recorder of deeds
5 shall continue to keep open for public inspection the record of
6 limited partnership certificates recorded under the statutes
7 supplied by this chapter and by prior law the custody of which
8 has not been transferred to the department pursuant to section
9 140 (relating to custody and management of orphan corporate and
10 business records).] (Repealed).

11 (d) Transitional provision.--A limited partnership formed
12 under prior law shall not be required to set forth in its
13 certificate of limited partnership a registered office or the
14 business address of each general partner until such time as it
15 first amends its certificate of limited partnership under this
16 chapter.

17 (e) Effect of provisions.--A provision of the certificate of
18 limited partnership shall be deemed to be a provision of the
19 partnership agreement for purposes of any provision of this
20 chapter that refers to a rule as set forth in the partnership
21 agreement.

22 [(e)] (f) Cross references.--See sections 134 (relating to
23 docketing statement), 135 (relating to requirements to be met by
24 filed documents) and 8514 (relating to execution of
25 certificates).

26 § 8517. Notice.

27 The fact that a certificate of limited partnership is on file
28 in the Department of State is not notice of any fact other than:

29 (1) that the partnership is a limited partnership and
30 that all partners are limited partners except the persons

1 designated therein as general partners[, but it is not notice
2 of any other fact]; and

3 (2) if it is registered under Chapter 82 (relating to
4 registered limited liability partnerships), that it is also a
5 registered limited liability partnership.

6 § 8519. Filing of certificate of summary of record by limited
7 partnerships formed prior to 1976.

8 (a) General rule.--[Any limited partnership that was not
9 formed under this chapter, has never made any filing under this
10 section or corresponding provisions of prior law and] Where any
11 of the organic documents of a limited partnership are not on
12 file in the Department of State or there is an error in any such
13 document as transferred to the department pursuant to section
14 140 (relating to custody and management of orphan corporate and
15 business records), and the limited partnership desires to file
16 any document in the [Department of State] department under any
17 other provision of this chapter or [that desires] to secure from
18 the department a certified copy of the certificate of limited
19 partnership or to correct the text of its organic documents as
20 on file in the department, the limited partnership shall file in
21 the department a certificate of summary of record which shall
22 set forth:

23 (1) The name of the limited partnership.

24 (2) Subject to section 109 (relating to name of
25 commercial registered office provider in lieu of registered
26 address), the address, including street and number, if any,
27 of its registered office.

28 (3) The statute under which the limited partnership was
29 formed.

30 (4) The name under which, and the date on which, the

1 limited partnership was originally formed, including the date
2 when and the place where the original certificate was
3 recorded.

4 (5) The place or places, including the volume and page
5 numbers or their equivalent, where the documents
6 [constituting the currently effective certificate are] that
7 are not on file in the department or that require correction
8 in the records of the department where originally recorded,
9 the date or dates of each recording and the correct text of
10 the [currently effective certificate] documents. The
11 information specified in this paragraph may be omitted in a
12 certificate of summary of record that is delivered to the
13 department contemporaneously with an amended certificate
14 filed under this chapter that restates the certificate in its
15 entirety.

16 [(6) Each name by which the limited partnership was
17 known, if any, other than its original name and its current
18 name and the date or dates on which each change of name of
19 the partnership became effective.]

20 (b) Cross references.--See sections 134 (relating to
21 docketing statement), 135 (relating to requirements to be met by
22 filed documents) and 8514 (relating to execution of
23 certificates).

24 § 8520. Partnership agreement.

25 (a) Admission of limited partners.--A partnership agreement
26 may provide in writing that a person shall be admitted as a
27 limited partner, or shall become an assignee of a partnership
28 interest or other rights or powers of a limited partner to the
29 extent assigned, and shall become bound by the partnership
30 agreement:

1 (1) if such person (or a representative authorized by
2 such person orally, in writing or by other action such as
3 payment for a partnership interest) executes the partnership
4 agreement or any other writing evidencing the intent of such
5 person to become a limited partner or assignee; or

6 (2) without such execution, if such person (or a
7 representative authorized by such person orally, in writing
8 or by other action such as payment for a partnership
9 interest) complies with the conditions for becoming a limited
10 partner or assignee as set forth in the partnership agreement
11 or any other writing and requests (orally, in writing or by
12 other action such as payment for a partnership interest) that
13 the records of the limited partnership reflect such admission
14 or assignment.

15 (b) Signature by limited partners.--A written partnership
16 agreement shall not be unenforceable by reason of its not having
17 been signed by a person being admitted as a limited partner or
18 becoming an assignee as provided in subsection (a) or by reason
19 of its having been signed by a representative as provided in
20 section 8514(b) (relating to attorney-in-fact).

21 (c) Voting requirements.--A partnership agreement may
22 provide in writing that, whenever a provision of this chapter
23 requires the vote or consent of a specified number or percentage
24 of partners or of a class of partners for the taking of any
25 action, a higher number or percentage of votes or consents shall
26 be required for the action. Except as otherwise provided in the
27 partnership agreement, whenever the partnership agreement
28 requires for the taking of any action by the partners or a class
29 of partners a specific number or percentage of votes or
30 consents, the provision of the partnership agreement setting

1 forth that requirement shall not be amended or repealed by any
2 lesser number or percentage of votes or consents of the partners
3 or the class of partners.

4 (d) Freedom of contract.--A written partnership agreement
5 may contain any provision for the regulation of the internal
6 affairs of the limited partnership agreed to by the partners,
7 whether or not specifically authorized by or in contravention of
8 this chapter, except where this chapter:

9 (1) refers only to a rule as set forth in the
10 certificate of limited partnership; or

11 (2) expressly provides that the partnership agreement
12 shall not relax or contravene any provision on a specified
13 subject.

14 (e) Oral provisions.--A partnership agreement may provide in
15 writing that it cannot be amended or modified except in writing,
16 in which case an oral agreement, amendment or modification shall
17 not be enforceable.

18 (f) Cross reference.--See section 8511(a)(5) (relating to
19 certificate of limited partnership).

20 § 8523. Liability of limited partners to third parties.

21 (a) General rule.--A limited partner is not liable [for the
22 obligations of a limited partnership unless he is also a general
23 partner or, in addition to the exercise of his rights and powers
24 as a limited partner, he participates in the control of the
25 business. However, if the limited partner participates in the
26 control of the business, he is liable only to persons who
27 transact business with the limited partnership reasonably
28 believing, based upon the conduct of the limited partner, that
29 the limited partner is a general partner.], solely by reason of
30 being a limited partner, under an order of a court or in any

1 other manner, for a debt, obligation or liability of the limited
2 partnership of any kind or for the acts of any partner, agent or
3 employee of the limited partnership.

4 (b) [Activities compatible with limited partner status.--A
5 limited partner does not participate in the control of the
6 business within the meaning of subsection (a) solely by doing
7 one or more of the following:

8 (1) Being a contractor for, or an agent or employee of
9 the limited partnership or of a general partner, or being an
10 officer, director, trustee, partner or shareholder of a
11 general partner.

12 (2) Consulting with and advising a general partner with
13 respect to any matter, including, without limitation, the
14 business of the limited partnership.

15 (3) (i) Acting as surety for the limited partnership,
16 or guaranteeing, endorsing or assuming one or more
17 specific obligations of the limited partnership, or a
18 general partner.

19 (ii) Borrowing money from the limited partnership or
20 a general partner.

21 (iii) Lending money to the limited partnership or a
22 general partner.

23 (iv) Providing collateral for the limited
24 partnership or a general partner.

25 (4) Taking any action required or permitted by law to
26 bring, pursue or settle or otherwise terminate a derivative
27 action in the right of the limited partnership.

28 (5) Requesting or attending a meeting of partners.

29 (6) Acting or causing the taking or refraining from the
30 taking of any action, including, without limitation, by

1 proposing, approving, consenting or disapproving, by voting
2 or otherwise, with respect to one or more of the following
3 matters:

4 (i) The dissolution and winding up of the limited
5 partnership, or an election to continue the limited
6 partnership or the business of the limited partnership.

7 (ii) The sale, exchange, lease, mortgage, pledge or
8 other transfer of, or the grant of a security interest
9 in, any asset or assets of the limited partnership.

10 (iii) The incurrence, renewal, refinancing or
11 payment or other discharge of indebtedness by the limited
12 partnership.

13 (iv) A change in the nature of the business.

14 (v) The admission or removal of a general partner.

15 (vi) The admission or removal of a limited partner.

16 (vii) A transaction involving an actual or potential
17 conflict of interest between a general partner and the
18 limited partnership or the limited partners.

19 (viii) An amendment to the partnership agreement or
20 certificate of limited partnership.

21 (ix) The merger or consolidation of the limited
22 partnership.

23 (x) The indemnification of any partner or other
24 person.

25 (xi) Matters related to the business of the limited
26 partnership not otherwise enumerated in this subsection,
27 which the partnership agreement states in writing may be
28 subject to the approval or disapproval of limited
29 partners.

30 (7) Applying for dissolution of the partnership pursuant

1 to section 8572 (relating to judicial dissolution).

2 (8) Winding up the limited partnership pursuant to
3 section 8573 (relating to winding up).

4 (9) In the case of a registered investment company,
5 voting on one or more of the following matters:

6 (i) The approval or termination of investment
7 advisory or underwriting contracts.

8 (ii) The approval of auditors.

9 (iii) Any other matter that by reason of the
10 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
11 80a-1 et seq.) the general partners consider to be a
12 proper matter for the vote of the holders of voting
13 securities or beneficial interests in the limited
14 partnership.

15 (10) Serving on a committee of the limited partnership
16 or the limited partners.

17 (11) Exercising any right or power permitted to limited
18 partners under this chapter and not specifically enumerated
19 in this subsection.

20 (12) Exercising any other right or power stated in the
21 partnership agreement.] (Repealed).

22 (c) [Enumeration nonexclusive.--The enumeration in
23 subsection (b) does not mean that the possession or exercise of
24 any other powers, or having or acting in other capacities, by a
25 limited partner constitutes participation by him in the control
26 of the business of the limited partnership.] (Repealed).

27 (d) Use of name of limited partner.--A limited partner does
28 not [participate in the control of the business within the
29 meaning of subsection (a)] become liable for the obligations of
30 a limited partnership by reason of the fact that all or any part

1 of the name of the limited partner is included in the name of
2 the limited partnership.

3 (e) [Effect of section.--This section does not create rights
4 or powers of limited partners. Such rights and powers may be
5 created only by the certificate of limited partnership,
6 partnership agreement or any other agreement or other provisions
7 of this chapter.] (Repealed).

8 * * *

9 § 8546. Approval of merger or consolidation.

10 (a) Preparation of plan of merger or consolidation.--A plan
11 of merger or consolidation, as the case may be, shall be
12 prepared, setting forth:

13 * * *

14 (3) The manner and basis of converting the partnership
15 interests of each limited partnership into partnership
16 interests, securities or obligations of the surviving or new
17 limited partnership, as the case may be, and, if any of the
18 partnership interests of any of the limited partnerships that
19 are parties to the [plan] merger or consolidation are not to
20 be converted solely into partnership interests, securities or
21 obligations of the surviving or new limited partnership, the
22 partnership interests, securities or obligations of any other
23 person or cash, property or rights that the holders of such
24 partnership interests are to receive in exchange for, or upon
25 conversion of, such partnership interests, and the surrender
26 of any certificates evidencing them, which securities or
27 obligations, if any, of any other person or cash, property or
28 rights may be in addition to or in lieu of the partnership
29 interests, securities or obligations of the surviving or new
30 limited partnership.

1 (4) Such other provisions as are deemed desirable.
2 [Any of the terms of the plan may be made dependent upon facts
3 ascertainable outside of the plan if the manner in which the
4 facts will operate upon the terms of the plan is set forth in
5 the plan.]

6 (b) Post-adoption amendment of plan of merger or
7 consolidation.--A plan of merger or consolidation may contain a
8 provision that the general partners of the constituent limited
9 partnerships may amend the plan at any time prior to its
10 effective date, except that an amendment made subsequent to any
11 adoption of the plan by the limited partners of any constituent
12 domestic limited partnership shall not change:

13 (1) The amount or kind of partnership interests,
14 obligations, cash, property or rights to be received in
15 exchange for or on conversion of all or any of the
16 partnership interests of the constituent domestic limited
17 partnership adversely to the holders of those partnership
18 interests.

19 (2) Any term of the certificate of limited partnership
20 or partnership agreement of the surviving or new limited
21 partnership [to be effected by] as it is to be in effect
22 immediately following consummation of the merger or
23 consolidation except provisions that may be amended without
24 the approval of the limited partners.

25 (3) Any of the other terms and conditions of the plan if
26 the change would adversely affect the holders of any
27 partnership interests of the constituent domestic limited
28 partnership.

29 * * *

30 (d) Party to plan.--[A limited partnership] An association

1 that approves a plan in its capacity as a partner or creditor of
2 a merging or consolidating limited partnership, or that
3 furnishes all or a part of the consideration contemplated by a
4 plan, does not thereby become a party to the [plan] merger or
5 consolidation for the purposes of this subchapter.

6 (e) Notice of meeting of limited partners.--Notwithstanding
7 any other provision of the partnership agreement, written notice
8 of the meeting of limited partners called for the purpose of
9 considering the proposed plan shall be given to each limited
10 partner of record, whether or not entitled to vote thereon, of
11 each domestic limited partnership that is a party to the [plan]
12 proposed merger or consolidation. There shall be included in, or
13 enclosed with, the notice a copy of the proposed plan or a
14 summary thereof. The provisions of this subsection may not be
15 relaxed by the certificate of limited partnership or partnership
16 agreement.

17 (f) Adoption of plan by limited partners.--The plan of
18 merger or consolidation shall be adopted upon receiving a
19 majority of the votes cast by all limited partners, if any,
20 entitled to vote thereon of each of the domestic limited
21 partnerships that is a party to the [plan] proposed merger or
22 consolidation and, if any class of limited partners is entitled
23 to vote thereon as a class, a majority of the votes cast in each
24 class vote. A proposed plan of merger or consolidation shall not
25 be deemed to have been adopted by the limited partnership unless
26 it has also been approved by the general partners, regardless of
27 the fact that the general partners have directed or suffered the
28 submission of the plan to the limited partners for action.

29 * * *

30 (h) Termination of plan.--Prior to the time when a merger or

1 consolidation becomes effective, the merger or consolidation may
2 be terminated pursuant to provisions therefor, if any, set forth
3 in the plan. If a certificate of merger or consolidation has
4 been filed in the department prior to the termination, a
5 certificate of termination executed by each limited partnership
6 that is a party to the [plan] merger or consolidation, unless
7 the plan permits termination by less than all of the limited
8 partnerships, in which case the certificate shall be executed on
9 behalf of the limited partnership exercising the right to
10 terminate, shall be filed in the department. The certificate of
11 termination shall set forth:

12 (1) A copy of the certificate of merger or consolidation
13 relating to the plan that is terminated.

14 (2) A statement that the plan has been terminated in
15 accordance with the provisions therefor set forth therein.

16 See sections 134 (relating to docketing statement), 135
17 (relating to requirements to be met by filed documents), 138
18 (relating to statement of correction) and 8514 (relating to
19 execution of certificates).

20 * * *

21 (j) Reference to outside facts.--Any of the terms of a plan
22 of merger or consolidation may be made dependent upon facts
23 ascertainable outside of the plan if the manner in which the
24 facts will operate upon the terms of the plan is set forth in
25 the plan. Such facts may include, without limitation, actions or
26 events within the control of or determinations made by a party
27 to the plan or a representative of a party to the plan.

28 § 8549. Effect of merger or consolidation.

29 * * *

30 (b) Property rights.--All the property, real, personal and

1 mixed, of each of the limited partnerships parties to the plan
2 of merger or consolidation, and all debts due on whatever
3 account to any of them, as well as all other things and causes
4 of action belonging to any of them, shall be deemed to be
5 [transferred to and] vested in and shall belong to the surviving
6 or new limited partnership, as the case may be, without further
7 action, and the title to any real estate, or any interest
8 therein, vested in any of the limited partnerships shall not
9 revert or be in any way impaired by reason of the merger or
10 consolidation. The surviving or new limited partnership shall
11 thenceforth be responsible for all the liabilities of each of
12 the limited partnerships so merged or consolidated. Liens upon
13 the property of the merging or consolidating limited
14 partnerships shall not be impaired by the merger or
15 consolidation, and any claim existing or action or proceeding
16 pending by or against any of the limited partnerships may be
17 prosecuted to judgment as if the merger or consolidation had not
18 taken place or the surviving or new limited partnership may be
19 proceeded against or substituted in its place.

20 (c) Taxes.--Any taxes, interest, penalties and public
21 accounts of the Commonwealth claimed against any of the merging
22 or consolidating limited partnerships [but not] that are
23 settled, assessed or determined prior to or after the merger or
24 consolidation shall be [settled, assessed or determined against]
25 the liability of the surviving or new limited partnership and,
26 together with interest thereon, shall be a lien against the
27 property, both real and personal, of the surviving or new
28 limited partnership.

29 * * *

30 § 8553. Voluntary withdrawal of limited partner.

1 (a) General rule.--A limited partner may withdraw from a
2 limited partnership only at the time or upon the happening of
3 events specified in writing in the partnership agreement. [If
4 the partnership agreement does not specify in writing the time
5 or the events upon the happening of which a limited partner may
6 withdraw or a definite time for the dissolution and winding up
7 of the limited partnership, a limited partner may withdraw upon
8 not less than six months' prior written notice to each general
9 partner at his address on the books of the limited partnership.]

10 (b) [Prohibition of withdrawal.--The partnership agreement
11 may provide that a limited partner may not withdraw from the
12 limited partnership or assign a partnership interest in the
13 limited partnership prior to the dissolution and winding up of
14 the limited partnership.] (Repealed).

15 (c) Transitional rule.--This section applies to all limited
16 partnerships formed on or after January 1, 2002. If the
17 partnership agreement of a limited partnership formed before
18 January 1, 2002, did not on December 31, 2001, specify in
19 writing the time or the events upon the happening of which a
20 limited partner could withdraw or a definite time for the
21 dissolution and winding up of the limited partnership, the
22 provisions of this section that were in effect prior to January
23 1, 2002, shall apply until such time, if any, as the partnership
24 agreement is amended in writing after January 1, 2002, to
25 specify:

26 (1) a time or the events upon the happening of which a
27 limited partner may withdraw;

28 (2) a definite time for the dissolution and winding up
29 of the limited partnership; or

30 (3) that this section as effective January 1, 2002,

1 shall apply to the limited partnership.

2 § 8557. [Limitations on distribution.] Distributions and
3 allocation of profits and losses.

4 [A partner may not receive a distribution from a limited
5 partnership to the extent that, after giving effect to the
6 distribution, all liabilities of the limited partnership, other
7 than liabilities to partners on account of their partnership
8 interests and liabilities as to which recourse of creditors is
9 limited to specified property of the limited partnership, exceed
10 the fair value of the partnership assets. The fair value of any
11 property that is subject to a liability as to which recourse of
12 creditors is so limited shall be included in the partnership
13 assets only to the extent that the fair value of the property
14 exceeds that liability.] A limited partnership may from time to
15 time make distributions and allocate the profits and losses of
16 its business to the partners upon the basis stipulated in the
17 partnership agreement or, if not stipulated in the partnership
18 agreement, per capita. The allocation of losses pursuant to this
19 section shall not affect the limitation on liability of limited
20 partners as provided in section 8523 (relating to liability of
21 limited partners to third parties).

22 § 8558. Liability upon return of contribution.

23 * * *

24 (c) Determination of return of contribution.--A partner
25 receives a return of his contribution to the extent that a
26 distribution to him reduces his share of the fair value of the
27 net assets of the limited partnership[, as determined under
28 section 8557 (relating to limitations on distribution),] below
29 the value (as stated or determined in the manner provided in the
30 partnership agreement, if stated or provided for therein) of his

1 contribution (to the extent it has been received by the limited
2 partnership) that has not been distributed to him, and otherwise
3 to the extent of the fair value of the distribution.

4 (d) Fair value of net assets.--For purposes of computing the
5 fair value of the net assets of the limited partnership under
6 subsection (c):

7 (1) liabilities of the limited partnership to partners
8 on account of their partnership interests and liabilities as
9 to which recourse of creditors is limited to specified
10 property of the limited partnership shall not be considered;
11 and

12 (2) the fair value of property that is subject to a
13 liability as to which recourse of creditors is so limited
14 shall be included in the partnership assets only to the
15 extent that the fair value of the property exceeds that
16 liability.

17 § 8571. Nonjudicial dissolution.

18 (a) General rule.--A limited partnership is dissolved and
19 its affairs shall be wound up upon the happening of the first to
20 occur of the following:

21 (1) At the time or upon the happening of events
22 specified in the certificate of limited partnership.

23 (2) At the time or upon the happening of events
24 specified in writing in the partnership agreement.

25 (3) Written consent of all partners.

26 (4) An event of withdrawal of a general partner unless
27 at the time there is at least one other general partner and
28 the written provisions of the partnership agreement permit
29 the business of the limited partnership to be carried on by
30 the remaining general partner and that partner does so. The

1 limited partnership is not dissolved and is not required to
2 be wound up by reason of any event of withdrawal if, within
3 180 days after the withdrawal, [all] a majority in interest,
4 or such greater number as shall be provided in writing in the
5 partnership agreement, of the partners agree in writing to
6 continue the business of the limited partnership or to the
7 appointment of one or more replacement general partners.

8 (5) Entry of an order of judicial dissolution under
9 section 8572 (relating to judicial dissolution).

10 * * *

11 (c) Dissolution by domestication.--Whenever a domestic
12 limited partnership has domesticated itself under the laws of
13 another jurisdiction by action similar to that provided by
14 section 8590 (relating to domestication) and has authorized that
15 action in the manner required by this subchapter for the
16 approval of a proposal that the partnership dissolve
17 voluntarily, the partnership may surrender its certificate of
18 limited partnership under the laws of this Commonwealth by
19 filing in the department a certificate of cancellation under
20 section 8513 (relating to cancellation of certificate). If the
21 partnership, as domesticated in the other jurisdiction,
22 registers to do business in this Commonwealth either prior to or
23 simultaneously with the filing of the certificate of
24 cancellation under this subsection, the partnership shall not be
25 required to file with the certificate of cancellation the tax
26 clearance certificates that would otherwise be required by
27 section 139 (relating to tax clearance of certain fundamental
28 transactions).

29 [(c)] (d) Cross [references] reference.--See [sections 8103
30 (relating to continuation of certain limited partnerships) and]

1 section 8512(b) (relating to events requiring amendment).

2 § 8573. Winding up.

3 Except as otherwise provided in the partnership agreement,
4 the general partners who have not wrongfully dissolved a limited
5 partnership or, if none, the limited partners, or a person
6 approved by the limited partners or, if there is more than one
7 class or group of limited partners, by each class or group of
8 limited partners, in either case by a majority in interest of
9 the limited partners in each class or group, may wind up the
10 affairs of the limited partnership, but the court may wind up
11 the affairs of the limited partnership upon application of any
12 partner, his legal representative or assignee, and in connection
13 therewith, may appoint a liquidating trustee. See section 139(b)
14 (relating to tax clearance in judicial proceedings).

15 § 8577. Proposal and adoption of plan of division.

16 * * *

17 (b) Reference to outside facts.--Any of the terms of the
18 plan may be made dependent upon facts ascertainable outside of
19 the plan if the manner in which the facts will operate upon the
20 terms of the plan is set forth in the plan. Such facts may
21 include, without limitation, actions or events within the
22 control of or determinations made by the dividing limited
23 partnership or a representative of the dividing limited
24 partnership.

25 * * *

26 (e) [Restrictions on certain distributions.--A plan of
27 division may not be made effective if the effect of the plan is
28 to make a distribution to the holders of any class or series of
29 partnership interests of the dividing limited partnership unless
30 the distribution is permitted by section 8557 (relating to

1 limitations on distribution.] (Repealed).

2 (f) [Action by] Rights of holders of indebtedness.--[Unless
3 otherwise provided by an indenture or other contract by which
4 the dividing limited partnership is bound, a plan of division
5 shall not require the approval of the holders of any debt
6 securities or other obligations of the dividing limited
7 partnership or of any representative of the holders if the
8 transfer of assets effected by the division, if effected by
9 means of a sale, lease, exchange or other disposition, and any
10 related distribution would not require the approval of the
11 holders or representatives thereof.] If any such debt
12 securities, notes, similar evidences of indebtedness, indentures
13 or other contracts were issued, incurred or executed by the
14 dividing limited partnership before (the Legislative Reference
15 Bureau shall insert here the effective date of the amendments of
16 this section) and have not been amended subsequent to that date,
17 the liability of the dividing limited partnership thereunder
18 shall not be affected by the division nor shall the rights of
19 the obligees thereunder be impaired by the division, and each of
20 the resulting limited partnerships may be proceeded against or
21 substituted in place of the dividing limited partnership as
22 joint and several obligors on such liability, regardless of any
23 provision of the plan of division apportioning the liabilities
24 of the dividing limited partnership.

25 * * *

26 § 8580. Effect of division.

27 * * *

28 (b) Property rights; allocations of assets and
29 liabilities.--

30 (1) (i) All the property, real, personal and mixed, of

1 the dividing limited partnership, and all debts due on
2 whatever account to it, including subscriptions for
3 partnership interests or other causes of action belonging
4 to it, shall, except as otherwise provided in paragraph
5 (2), to the extent [transfers] allocations of assets are
6 contemplated by the plan of division, be deemed without
7 further action to be [transferred] allocated to and
8 vested in the resulting limited partnerships on such a
9 manner and basis and with such effect as is specified in
10 the plan, or per capita among the resulting limited
11 partnerships, as tenants in common, if no specification
12 is made in the plan, and the title to any real estate or
13 interest therein vested in any of the limited
14 partnerships shall not revert or be in any way impaired
15 by reason of the division.

16 (ii) Upon the division becoming effective, the
17 resulting limited partnerships shall each thenceforth be
18 responsible as separate and distinct limited partnerships
19 only for such liabilities as each limited partnership may
20 undertake or incur in its own name but shall be liable
21 for the liabilities of the dividing limited partnership
22 in the manner and on the basis provided in subparagraphs
23 (iv) and (v).

24 (iii) Liens upon the property of the dividing
25 limited partnership shall not be impaired by the
26 division.

27 (iv) [One] To the extent allocations of liabilities
28 are contemplated by the plan of division, the liabilities
29 of the dividing limited partnership shall be deemed
30 without further action to be allocated to and become the

1 liabilities of the resulting limited partnerships on such
2 a manner and basis and with such effect as is specified
3 in the plan; and one or more but less than all of the
4 resulting limited partnerships shall be free of the
5 liabilities of the dividing limited partnership to the
6 extent, if any, specified in the plan [if no fraud of
7 creditors or partners or violation of law shall be
8 effected thereby and if all applicable provisions of law
9 are complied with.], if in either case:

10 (A) no fraud of partners or violation of law
11 shall be effected thereby; and

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

15 (v) If the conditions in subparagraph (iv) for
16 freeing one or more of the resulting limited partnerships
17 from the liabilities of the dividing limited partnership,
18 or for allocating some or all of the liabilities of the
19 dividing limited partnership, are not satisfied, the
20 liabilities of the dividing limited partnership as to
21 which those conditions are not satisfied shall not be
22 affected by the division nor shall the rights of
23 creditors [thereof] thereunder or of any person dealing
24 with the limited partnership be impaired by the division,
25 and any claim existing or action or proceeding pending by
26 or against the limited partnership with respect to those
27 liabilities may be prosecuted to judgment as if the
28 division had not taken place, or the resulting limited
29 partnerships may be proceeded against or substituted in
30 [its] place of the dividing limited partnership as joint

1 and several obligors on [such liability] those
2 liabilities, regardless of any provision of the plan of
3 division apportioning the liabilities of the dividing
4 limited partnership.

5 (vi) The conditions in subparagraph (iv) for freeing
6 one or more of the resulting limited partnerships from
7 the liabilities of the dividing limited partnership and
8 for allocating some or all of the liabilities of the
9 dividing limited partnership shall be conclusively deemed
10 to have been satisfied if the plan of division has been
11 approved by the Pennsylvania Public Utility Commission in
12 a final order issued after (the Legislative Reference
13 Bureau shall insert here the effective date of the
14 amendments of this section) that has become not subject
15 to further appeal.

16 (2) (i) The [transfer] allocation of any fee or
17 freehold interest or leasehold having a remaining term of
18 30 years or more in any tract or parcel of real property
19 situate in this Commonwealth owned by a dividing limited
20 partnership (including property owned by a foreign
21 limited partnership dividing solely under the law of
22 another jurisdiction) to a new limited partnership
23 resulting from the division shall not be effective until
24 one of the following documents is filed in the office for
25 the recording of deeds of the county, or each of them, in
26 which the tract or parcel is situated:

27 (A) A deed, lease or other instrument of
28 confirmation describing the tract or parcel.

29 (B) A duly executed duplicate original copy of
30 the certificate of division.

1 (C) A copy of the certificate of division
2 certified by the Department of State.

3 (D) A declaration of acquisition setting forth
4 the value of real estate holdings in the county of
5 the limited partnership as an acquired company.

6 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
7 to transfer of vehicle by operation of law) shall not be
8 applicable to [a transfer] an allocation of ownership of
9 any motor vehicle, trailer or semitrailer [from a
10 dividing limited partnership] to a new limited
11 partnership under this section or under a similar law of
12 any other jurisdiction, but any such [transfer]
13 allocation shall be effective only upon compliance with
14 the requirements of 75 Pa.C.S. § 1116 (relating to
15 issuance of new certificate following transfer).

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

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

27 (C) TAXES.--ANY TAXES, INTEREST, PENALTIES AND PUBLIC
28 ACCOUNTS OF THE COMMONWEALTH CLAIMED AGAINST THE DIVIDING
29 LIMITED PARTNERSHIP [BUT NOT] THAT ARE SETTLED, ASSESSED OR
30 DETERMINED PRIOR TO OR AFTER THE DIVISION SHALL BE [SETTLED,

<—

1 ASSESSED OR DETERMINED AGAINST] THE LIABILITY OF ANY OF THE
2 RESULTING LIMITED PARTNERSHIPS AND, TOGETHER WITH INTEREST
3 THEREON, SHALL BE A LIEN AGAINST THE FRANCHISES AND PROPERTY,
4 BOTH REAL AND PERSONAL, OF ALL THE LIMITED PARTNERSHIPS. UPON
5 THE APPLICATION OF THE DIVIDING LIMITED PARTNERSHIP, THE
6 DEPARTMENT OF REVENUE, WITH THE CONCURRENCE OF THE OFFICE OF
7 EMPLOYMENT SECURITY OF THE DEPARTMENT OF LABOR AND INDUSTRY,
8 SHALL RELEASE ONE OR MORE, BUT LESS THAN ALL, OF THE RESULTING
9 LIMITED PARTNERSHIPS FROM LIABILITY AND LIENS FOR ALL TAXES,
10 INTEREST, PENALTIES AND PUBLIC ACCOUNTS OF THE DIVIDING LIMITED
11 PARTNERSHIP DUE THE COMMONWEALTH FOR PERIODS PRIOR TO THE
12 EFFECTIVE DATE OF THE DIVISION IF THOSE DEPARTMENTS ARE
13 SATISFIED THAT THE PUBLIC REVENUES WILL BE ADEQUATELY SECURED.

14 * * *

15 (g) Conflict of laws.--It is the intent of the General
16 Assembly that:

17 (1) The effect of a division of a domestic limited
18 partnership shall be governed solely by the laws of this
19 Commonwealth and any other jurisdiction under the laws of
20 which any of the resulting limited partnerships is organized.

21 (2) The effect of a division on the assets and
22 liabilities of the dividing limited partnership shall be
23 governed solely by the laws of this Commonwealth and any
24 other jurisdiction under the laws of which any of the
25 resulting limited partnerships is organized.

26 (3) The validity of any allocations of assets or
27 liabilities by a plan of division of a domestic limited
28 partnership, regardless of whether or not any of the new
29 limited partnerships is a foreign limited partnership, shall
30 be governed solely by the laws of this Commonwealth.

1 (4) In addition to the express provisions of this
2 subsection, this subchapter shall otherwise generally be
3 granted the protection of full faith and credit under the
4 Constitution of the United States.

5 § 8590. Domestication.

6 * * *

7 (b) Certificate of domestication.--The certificate of
8 domestication shall be executed by the limited partnership and
9 shall set forth in the English language:

10 (1) The name of the limited partnership. If the name is
11 in a foreign language, it shall be set forth in Roman letters
12 or characters or Arabic or Roman numerals. If the name is one
13 that is rendered unavailable for use by any provision of
14 section 8505 (relating to name), the limited partnership
15 shall adopt, in accordance with any procedures for changing
16 the name of the limited partnership that are applicable prior
17 to the domestication of the limited partnership, and shall
18 set forth in the certificate of domestication an available
19 name.

20 * * *

21 (c) Effect of domestication.--

22 (1) As a domestic limited partnership, the domesticated
23 limited partnership shall no longer be a foreign limited
24 partnership for the purposes of this chapter and shall [have]
25 instead be a domestic limited partnership with all the powers
26 and privileges and [be subject to] all the duties and
27 limitations granted and imposed upon domestic limited
28 partnerships. [The property, debts, liens, estates, taxes,
29 penalties and public accounts due the Commonwealth shall
30 continue to be vested in and imposed upon the limited

1 partnership to the same extent as if it were the successor by
2 merger of the domesticating limited partnership with and into
3 a domestic limited partnership under Subchapter F (relating
4 to merger and consolidation).] In all other respects, the
5 domesticated limited partnership shall be deemed to be the
6 same limited partnership as it was prior to the domestication
7 without any change in or effect on its existence. Without
8 limiting the generality of the previous sentence, the
9 domestication shall not be deemed to have dissolved the
10 limited partnership or to have affected in any way:

11 (i) the right and title of the limited partnership
12 in and to its assets, property, franchises, estates and
13 choses in action;

14 (ii) the liability of the limited partnership for
15 its debts, obligations, penalties and public accounts due
16 the Commonwealth;

17 (iii) any liens or other encumbrances on the
18 property or assets of the limited partnership; or

19 (iv) any contract, license or other agreement to
20 which the limited partnership is a party or under which
21 it has any rights or obligations.

22 (2) The partnership interests in the domesticated
23 limited partnership shall be unaffected by the domestication
24 except to the extent, if any, reclassified in the certificate
25 of domestication.

26 § 8903. Definitions and index of definitions.

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

30 * * *

1 ["Department." The Department of State of the Commonwealth.]

2 * * *

<—

3 ~~"Event of dissociation." An event that causes a person to~~
4 ~~cease to be a member of a limited liability company. See~~
5 ~~section [8971(a)(4)] 8971(4) (relating to dissolution).~~

6 * * *

7 ["Licensed person." A natural person who is duly licensed or
8 admitted to practice his profession by a court, department,
9 board, commission or other agency of this Commonwealth or
10 another jurisdiction to render a professional service that is or
11 will be rendered by the professional company of which he is or
12 intends to become a manager, member, employee or agent.]

13 "Limited liability company," "domestic limited liability
14 company" or "company." An association that is a limited
15 liability company organized and existing under this chapter.

16 * * *

17 "Operating agreement." Any [agreement of the members as to]
18 rules or procedures adopted for the regulation and governance of
19 the affairs of a limited liability company and the conduct of
20 its business. [The operating agreement need not be in writing
21 except where this chapter refers to a written provision of the
22 operating agreement. The operating agreement may contain any
23 provision for the regulation of the internal affairs of the
24 company agreed to by the members, whether or not specifically
25 authorized by or in contravention of this chapter, except where
26 this chapter:

27 (1) refers only to a rule as set forth in the
28 certificate of organization; or

29 (2) expressly provides that the operating agreement
30 shall not relax or contravene any provision on a specified

subject. See sections 8913(8) (relating to certificate of organization) and 8915 (relating to modification by agreement).]

* * *

["Professional services." The term shall have the meaning specified in section 2902 (relating to definitions).]

* * *

(b) Index of other definitions.--Other definitions applying to this chapter and the sections in which they appear are:

"Act" or "action." Section 102.

"Department." Section 102.

"Licensed person." Section 102.

"Professional services." Section 102.

SUBCHAPTER B

ORGANIZATION[; CERTIFICATE OF ORGANIZATION]

§ 8915. Modification by agreement.

The provisions of this chapter are intended to permit a limited liability company to qualify for taxation as an entity that is not an association taxable as a corporation under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). Notwithstanding the limitations in [the definition of "operating agreement" in section 8903 (relating to definitions) and the limitations in section] sections 8913(8) (relating to certificate of organization) and 8916(b) (relating to operating agreement), the certificate of organization and operating agreement may effect any change in the form of organization of the company, in addition to or in contravention of the provisions of this chapter, that may be necessary to accomplish that purpose.

§ 8916. Operating agreement.

1 (a) General rule.--The operating agreement of a limited
2 liability company need not be in writing except where this
3 chapter refers to a written provision of the operating
4 agreement. If a written operating agreement provides that it
5 cannot be amended or modified except in writing, an oral
6 agreement, amendment or modification shall not be enforceable.

7 (b) Freedom of contract.--An operating agreement may contain
8 any provision for the regulation of the internal affairs of a
9 limited liability company adopted by the members, whether or not
10 specifically authorized by or in contravention of this chapter,
11 except where this chapter:

12 (1) refers only to a rule as set forth in the
13 certificate of organization; or

14 (2) expressly provides that the operating agreement
15 shall not relax or contravene any provision on a specified
16 subject.

17 (c) Cross references.--See sections 8913(8) (relating to
18 certificate of organization) and 8915 (relating to modification
19 by agreement).

20 § 8922. Liability of members [and managers].

21 (a) General rule.--[Neither] Except as provided in
22 subsection (e), the members of a limited liability company [nor
23 the managers of a company managed by one or more managers are]
24 shall not be liable, solely by reason of being a member [or a
25 manager], under an order of a court or in any other manner for a
26 debt, obligation or liability of the company of any kind or for
27 the acts [or omissions] of any [other] member, manager, agent or
28 employee of the company.

29 (b) Professional relationship unaffected.--Subsection (a)
30 shall not afford members [and managers] of a professional

1 company with greater immunity than is available to the officers,
2 shareholders, employees or agents of a professional corporation.
3 See section 2925 (relating to professional relationship
4 retained).

5 * * *

6 (d) Conflict of laws.--The personal liability of a member of
7 a company to any person or in any action or proceeding for the
8 debts, obligations or liabilities of the company or for the acts
9 [or omissions] of other members, managers, employees or agents
10 of the company shall be governed solely and exclusively by this
11 chapter and the laws of this Commonwealth. Whenever a conflict
12 arises between the laws of this Commonwealth and the laws of any
13 other state with regard to the liability of members of a company
14 organized and existing under this chapter for the debts,
15 obligations and liabilities of the company or for the acts [or
16 omissions] of the other members, managers, employees or agents
17 of the company, the laws of this Commonwealth shall govern in
18 determining such liability.

19 (e) Expansion of liability.--The certificate of organization
20 may provide that some or all of the members shall be liable for
21 some or all of the debts, obligations and liabilities of the
22 company to the extent and under the circumstances provided in
23 the certificate.

24 (f) Medical professional liability.--A professional company
25 shall be deemed to be a partnership for purposes of section 811
26 of the act of October 15, 1975 (P.L.390, No.111), known as the
27 Health Care Services Malpractice Act.

28 [(e)] (g) Cross reference.--See section 8904(b) (relating to
29 rules for cases not provided for in this chapter).

30 § 8924. Limited transferability of membership interest.

1 (a) General rule.--The interest of a member in a limited
2 liability company constitutes the personal estate of the member
3 and may be transferred or assigned as provided in writing in the
4 operating agreement. Unless otherwise provided in writing in
5 the operating agreement, if all of the other members of the
6 company other than the member proposing to dispose of his
7 interest do not approve of the proposed transfer or assignment
8 by unanimous vote or written consent, which approval may be
9 unreasonably withheld by any of the other members, the
10 transferee of the interest of the member shall have no right to
11 participate in the management of the business and affairs of the
12 company or to become a member. The transferee shall only be
13 entitled to receive the distributions and the return of
14 contributions to which that member would otherwise be entitled.

15 (b) Certificate of membership interest.--The certificate of
16 organization may provide that a member's interest in a company
17 may be evidenced by a certificate of membership interest issued
18 by the company [and]. If such provision is made for the issuance
19 of certificates of membership interest, the operating agreement
20 may [also] provide for the assignment or transfer of any
21 membership interest represented by such a certificate and make
22 other provisions with respect to such certificates. [See 13
23 Pa.C.S. § 8102 (relating to definitions and index of
24 definitions).]

25 § 8932. Distributions and allocation of profits and losses.

26 A limited liability company may from time to time [divide]
27 make distributions and allocate the profits and losses of its
28 business [and distribute the same] to [and allocate any losses
29 among] the members of the company upon the basis stipulated in
30 the operating agreement or, if not stipulated in the operating

1 agreement, per capita. The allocation of losses pursuant to this
2 section shall not affect the limitation on liability of members
3 as provided in section 8922 (relating to liability of members).

4 § 8942. Voting.

5 * * *

6 (c) Exception.--An amendment of the certificate of
7 organization that:

8 (1) restates without change all of the operative
9 provisions of the certificate of organization as theretofore
10 in effect;

11 (2) changes the name or registered office of the
12 company; or

13 (3) accomplishes any combination of the foregoing
14 purposes;

15 is not an amendment of the certificate of organization for the
16 purposes of subsection (b). Unless otherwise provided in writing
17 in the operating agreement, an amendment described in this
18 subsection may be made by the affirmative vote of a majority of
19 the managers or, in the case of a company that is not managed by
20 one or more managers, of a majority of the members.

21 * * *

22 § 8943. Duties of managers and members.

23 * * *

24 (b) Companies with managers.--If the certificate of
25 organization provides that the company shall be managed by one
26 or more managers:

27 (1) [Unless otherwise provided in writing in the
28 operating agreement, the provisions of Subchapter B of
29 Chapter 17 (relating to officers, directors and
30 shareholders)] Sections 1711 (relating to alternative

provisions) through 1717 (relating to limitation on standing) shall be applicable to representatives of the company. A written provision of the operating agreement may increase, but not relax, the duties of representatives of the company to its members under those sections. For purposes of applying the provisions of those sections, references to the "articles of incorporation," "bylaws," "directors" and "shareholders" shall mean the certificate of organization, operating agreement, managers and members, respectively.

(2) A member who is not a manager shall have no duties to the company or to the other members solely by reason of acting in his capacity as a member.

§ 8944. [Classes of members.] Members.

(a) General rule.--A limited liability company may have one or more members.

(b) Classes of members.--An operating agreement may provide for:

(1) classes or groups of members having such relative rights, powers and duties as the operating agreement may provide;

(2) the future creation in the manner provided in the operating agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members; and

(3) the taking of an action, including, without limitation, amendment of the certificate of organization or operating agreement or creation of a class or group of interests in the limited liability company that was not

1 previously outstanding, without the vote or approval of any
2 member or class or group of members.

3 [(b)] (c) Class voting.--The operating agreement may grant
4 to all or certain identified members or a specified class or
5 group of members the right to vote (on a per capita or other
6 basis), separately or with all or any class or group of members,
7 upon any matter.

8 § 8945. Indemnification.

9 * * *

10 (f) Mandatory indemnification.--Without regard to whether
11 indemnification or advancement of expenses is provided under
12 subsections (a) and (d), a limited liability company shall be
13 subject to section 8331(2) (relating to rules determining rights
14 and duties of partners) and both the members and the managers,
15 if any, shall be deemed to be general partners for purposes of
16 applying that section.

17 § 8948. [Dissociation of member limited.] Limitation on
18 dissociation or assignment of membership interest.

19 Notwithstanding anything to the contrary set forth in this
20 part, an operating agreement may provide that a member may not
21 voluntarily dissociate from the limited liability company or
22 assign his membership interest prior to the dissolution and
23 winding-up of the company, and an attempt by a member to
24 dissociate voluntarily from the company or to assign his
25 membership interest in violation of the operating agreement
26 shall be ineffective.

27 § 8957. Approval of merger or consolidation.

28 * * *

29 (b) Reference to outside facts.--Any of the terms of the
30 plan may be made dependent upon facts ascertainable outside of

1 the plan if the manner in which the facts will operate upon the
2 terms of the plan is set forth in the plan. Such facts may
3 include, without limitation, actions or events within the
4 control of or determinations made by a party to the plan or a
5 representative of a party to the plan.

6 (c) [Postadoption] Post-adoption amendment of plan of merger
7 or consolidation.--A plan of merger or consolidation may contain
8 a provision that the managers, if any, of the constituent
9 companies may amend the plan at any time prior to its effective
10 date, except that an amendment made subsequent to any adoption
11 of the plan by the members of any constituent domestic company
12 shall not, without the approval of the members, change:

13 (1) The amount or kind of membership interests,
14 obligations, cash, property or rights to be received in
15 exchange for or on conversion of all or any of the membership
16 interests of the constituent domestic company adversely to
17 the holders of those membership interests.

18 (2) Any [term] provision of the certificate of
19 organization or operating agreement of the surviving or new
20 company [to be effected by] as it is to be in effect
21 immediately following consummation of the merger or
22 consolidation except provisions that may be amended without
23 the approval of the members.

24 (3) Any of the other terms and conditions of the plan if
25 the change would adversely affect the holders of any
26 membership interests of the constituent domestic company.

27 * * *

28 (e) Party to plan.--An association that approves a plan in
29 its capacity as a member or creditor of a merging or
30 consolidating company or that furnishes all or a part of the

1 consideration contemplated by a plan does not thereby become a
2 party to the [plan or the] merger or consolidation for the
3 purposes of this subchapter.

4 * * *

5 (i) Termination of plan.--Prior to the time when a merger or
6 consolidation becomes effective, the merger or consolidation may
7 be terminated pursuant to provisions therefor, if any, set forth
8 in the plan. If a certificate of merger or consolidation has
9 been filed in the department prior to the termination, a
10 certificate of termination executed by each company that is a
11 party to the merger or consolidation, unless the plan permits
12 termination by less than all of the companies, in which case the
13 certificate shall be executed on behalf of the company
14 exercising the right to terminate, shall be filed in the
15 department. The certificate of termination shall set forth:

16 (1) A copy of the certificate of merger or consolidation
17 relating to the plan that is terminated.

18 (2) A statement that the plan has been terminated in
19 accordance with the provisions therefor set forth therein.

20 See sections 134 (relating to docketing statement), 135
21 (relating to requirements to be met by filed documents), 138
22 (relating to statement of correction) and 8907 (relating to
23 execution of documents).

24 * * *

25 § 8959. Effect of merger or consolidation.

26 * * *

27 (b) Property rights.--All the property, real, personal and
28 mixed, of each of the companies parties to the merger or
29 consolidation and all debts due on whatever account to any of
30 them, as well as all other things and causes of action belonging

1 to any of them, shall be deemed to be [transferred to and]
2 vested in and shall belong to the surviving or new company, as
3 the case may be, without further action, and the title to any
4 real estate or any interest therein vested in any of the
5 companies shall not revert or be in any way impaired by reason
6 of the merger or consolidation. The surviving or new company
7 shall thenceforth be responsible for all the liabilities of each
8 of the companies so merged or consolidated. Liens upon the
9 property of the merging or consolidating companies shall not be
10 impaired by the merger or consolidation, and any claim existing
11 or action or proceeding pending by or against any of the
12 companies may be prosecuted to judgment as if the merger or
13 consolidation had not taken place or the surviving or new
14 company may be proceeded against or substituted in its place.

15 (c) Taxes.--Any taxes, interest, penalties and public
16 accounts of the Commonwealth claimed against any of the merging
17 or consolidating companies [but not] that are settled, assessed
18 or determined prior to or after the merger or consolidation
19 shall be [settled, assessed or determined against] the liability
20 of the surviving or new company and, together with interest
21 thereon, shall be a lien against the property, both real and
22 personal, of the surviving or new company.

23 * * *

24 § 8962. Proposal and adoption of plan of division.

25 * * *

26 (b) Reference to outside facts.--Any of the terms of the
27 plan may be made dependent upon facts ascertainable outside of
28 the plan if the manner in which the facts will operate upon the
29 terms of the plan is set forth in the plan. Such facts may
30 include, without limitation, actions or events within the

1 control of or determinations made by the dividing limited
2 liability company or a representative of the dividing limited
3 liability company.

4 * * *

5 (e) [Action by holders of indebtedness.--Unless otherwise
6 provided by an indenture or other contract by which the dividing
7 limited liability company is bound, a plan of division shall not
8 require the approval of the holders of any debt securities or
9 other obligations of the dividing company or of any
10 representative of the holders if the transfer of assets effected
11 by the division, if effected by means of a sale, lease, exchange
12 or other disposition, and any related distribution would not
13 require the approval of the holders or representatives thereof.]

14 (Repealed).

15 § 8965. Effect of division.

16 * * *

17 (b) Property rights; allocations of assets and
18 liabilities.--

19 (1) (i) All the property, real, personal and mixed, of
20 the dividing company and all debts due on whatever
21 account to it, including subscriptions for membership
22 interests and other causes of action belonging to it,
23 shall, except as otherwise provided in paragraph (2), to
24 the extent [transfers] allocations of assets are
25 contemplated by the plan of division, be deemed without
26 further action to be [transferred] allocated to and
27 vested in the resulting companies on such a manner and
28 basis and with such effect as is specified in the plan,
29 or per capita among the resulting companies as tenants in
30 common if no specification is made in the plan, and the

1 title to any real estate or interest therein vested in
2 any of the companies shall not revert or be in any way
3 impaired by reason of the division.

4 (ii) Upon the division becoming effective, the
5 resulting companies shall each thenceforth be responsible
6 as separate and distinct companies only for such
7 liabilities as each company may undertake or incur in its
8 own name but shall be liable for the liabilities of the
9 dividing company in the manner and on the basis provided
10 in subparagraphs (iv) and (v).

11 (iii) Liens upon the property of the dividing
12 company shall not be impaired by the division.

13 (iv) [One] To the extent allocations of liabilities
14 are contemplated by the plan of division, the liabilities
15 of the dividing company shall be deemed without further
16 action to be allocated to and become the liabilities of
17 the resulting companies on such a manner and basis and
18 with such effect as is specified in the plan; and one or
19 more, but less than all, of the resulting companies shall
20 be free of the liabilities of the dividing company to the
21 extent, if any, specified in the plan [if no fraud of
22 creditors or members or violation of law shall be
23 effected thereby and if all applicable provisions of law
24 are complied with.], if in either case:

25 (A) no fraud on members or violation of law
26 shall be effected thereby; and

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

30 (v) If the conditions in subparagraph (iv) for

1 freeing one or more of the resulting companies from the
2 liabilities of the dividing company, or for allocating
3 some or all of the liabilities of the dividing company,
4 are not satisfied, the liabilities of the dividing
5 company as to which those conditions are not satisfied
6 shall not be affected by the division nor shall the
7 rights of creditors [thereof] thereunder or of any person
8 dealing with the company be impaired by the division, and
9 any claim existing or action or proceeding pending by or
10 against the company with respect to those liabilities may
11 be prosecuted to judgment as if the division had not
12 taken place, or the resulting companies may be proceeded
13 against or substituted in [its] place of the dividing
14 company as joint and several obligors on [such liability]
15 those liabilities, regardless of any provision of the
16 plan of division apportioning the liabilities of the
17 dividing company.

18 (vi) The conditions in subparagraph (iv) for freeing
19 one or more of the resulting companies from the
20 liabilities of the dividing company and for allocating
21 some or all of the liabilities of the dividing company
22 shall be conclusively deemed to have been satisfied if
23 the plan of division has been approved by the
24 Pennsylvania Public Utility Commission in a final order
25 issued after (the Legislative Reference Bureau shall
26 insert here the effective date of the amendments of this
27 section) that has become not subject to further appeal.

28 (2) (i) The [transfer] allocation of any fee or
29 freehold interest or leasehold having a remaining term of
30 30 years or more in any tract or parcel of real property

1 situate in this Commonwealth owned by a dividing company
2 (including property owned by a foreign limited liability
3 company dividing solely under the law of another
4 jurisdiction) to a new company resulting from the
5 division shall not be effective until one of the
6 following documents is filed in the office for the
7 recording of deeds of the county, or each of them, in
8 which the tract or parcel is situated:

9 (A) A deed, lease or other instrument of
10 confirmation describing the tract or parcel.

11 (B) A duly executed duplicate original copy of
12 the certificate of division.

13 (C) A copy of the certificate of division
14 certified by the Department of State.

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

18 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
19 to transfer of vehicle by operation of law) shall not be
20 applicable to [a transfer] an allocation of ownership of
21 any motor vehicle, trailer or semitrailer [from a
22 dividing company] to a new company under this section or
23 under a similar law of any other jurisdiction but any
24 such [transfer] allocation shall be effective only upon
25 compliance with the requirements of 75 Pa.C.S. § 1116
26 (relating to issuance of new certificate following
27 transfer).

28 (3) It shall not be necessary for a plan of division to
29 list each individual asset or liability of the dividing
30 company to be allocated to a new company so long as those

1 assets and liabilities are described in a reasonable and
2 customary manner.

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

8 (C) TAXES.--ANY TAXES, INTEREST, PENALTIES AND PUBLIC <—
9 ACCOUNTS OF THE COMMONWEALTH CLAIMED AGAINST THE DIVIDING
10 COMPANY [BUT NOT] THAT ARE SETTLED, ASSESSED OR DETERMINED PRIOR
11 TO OR AFTER THE DIVISION SHALL BE [SETTLED, ASSESSED OR
12 DETERMINED AGAINST] THE LIABILITY OF ANY OF THE RESULTING
13 COMPANIES AND, TOGETHER WITH INTEREST THEREON, SHALL BE A LIEN
14 AGAINST THE FRANCHISES AND PROPERTY, BOTH REAL AND PERSONAL, OF
15 ALL THE COMPANIES. UPON THE APPLICATION OF THE DIVIDING COMPANY,
16 THE DEPARTMENT OF REVENUE, WITH THE CONCURRENCE OF THE OFFICE OF
17 EMPLOYMENT SECURITY OF THE DEPARTMENT OF LABOR AND INDUSTRY,
18 SHALL RELEASE ONE OR MORE, BUT LESS THAN ALL, OF THE RESULTING
19 COMPANIES FROM LIABILITY AND LIENS FOR ALL TAXES, INTEREST,
20 PENALTIES AND PUBLIC ACCOUNTS OF THE DIVIDING COMPANY DUE THE
21 COMMONWEALTH FOR PERIODS PRIOR TO THE EFFECTIVE DATE OF THE
22 DIVISION IF THOSE DEPARTMENTS ARE SATISFIED THAT THE PUBLIC
23 REVENUES WILL BE ADEQUATELY SECURED.

24 * * *

25 (h) Conflict of laws.--It is the intent of the General
26 Assembly that:

27 (1) The effect of a division of a domestic limited
28 liability company shall be governed by the laws of this
29 Commonwealth and any other jurisdiction under the laws of
30 which any of the resulting companies is organized.

1 (2) The effect of a division on the assets and
2 liabilities of the dividing company shall be governed solely
3 by the laws of this Commonwealth and any other jurisdiction
4 under the laws of which any of the resulting companies is
5 organized.

6 (3) The validity of any allocation of assets or
7 liabilities by a plan of division of a domestic limited
8 liability company, regardless of whether or not any of the
9 new companies is a foreign limited liability company, shall
10 be governed solely by the laws of this Commonwealth.

11 (4) In addition to the express provisions of this
12 subsection, this subchapter shall otherwise generally be
13 granted the protection of full faith and credit under the
14 Constitution of the United States.

15 § 8971. Dissolution.

16 (a) General rule.--limited liability company is dissolved
17 and its affairs shall be wound up upon the happening of the
18 first to occur of the following events:

19 (1) At the time or upon the happening of events
20 specified in the certificate of organization.

21 (2) At the time or upon the happening of events
22 specified in writing in the operating agreement.

23 (3) [By] Except as otherwise provided in the operating
24 agreement, by the unanimous written agreement or consent of
25 all members.

26 (4) [Upon] Except as otherwise provided in writing in
27 the operating agreement, upon a member becoming a bankrupt or
28 executing an assignment for the benefit of creditors or the
29 death, retirement, insanity, resignation, expulsion or
30 dissolution of a member or the occurrence of any other event

1 that terminates the continued membership of a member in the
2 company unless the business of the company is continued by
3 the vote or consent of [all] a majority in interest, or such
4 greater number as shall be provided in writing in the
5 operating agreement, of the remaining members given within
6 [90] 180 days following such event [or under a right to do so
7 stated in the operating agreement].

8 (5) Entry of an order of judicial dissolution under
9 section 8972 (relating to judicial dissolution).

10 [(b) Cross reference.--See section 8103 (relating to
11 continuation of certain limited partnerships and limited
12 liability companies).]

13 (b) Perpetual existence.--The certificate of organization
14 may provide that the company shall have perpetual existence, in
15 which case subsection (a)(4) shall not be applicable to the
16 company.

17 § 8973. Winding up.

18 * * *

19 (b) Judicial supervision.--The court may wind up the affairs
20 of the company upon application of any member, his legal
21 representative or assignee and, in connection therewith, may
22 appoint a liquidating trustee. See section 139(b) (relating to
23 tax clearance in judicial proceedings).

24 § 8974. Distribution of assets upon dissolution.

25 (a) General rule.--In settling accounts after dissolution,
26 the liabilities of the limited liability company shall be
27 entitled to payment in the following order:

28 (1) Those to creditors, including members or managers
29 who are creditors, in the order of priority as provided by
30 law, in satisfaction of the liabilities of the company,

1 whether by payment or the making of reasonable provision for
2 payment thereof, other than liabilities for distributions to
3 members under section 8932 (relating to distributions and
4 allocation of profits and losses) or 8933 (relating to
5 distributions upon an event of dissociation).

6 (2) Unless otherwise provided in the operating
7 agreement, to members and former members in satisfaction of
8 liabilities for distributions under section 8932 or 8933.

9 (3) Unless otherwise provided in the operating
10 agreement, to members in respect of:

11 (i) Their contributions to capital.

12 (ii) Their share of the profits and other
13 compensation by way of income on their contributions.

14 * * *

15 § 8978. Dissolution by domestication.

16 Whenever a domestic limited liability company has
17 domesticated itself under the laws of another jurisdiction by
18 action similar to that provided by section 8982 (relating to
19 domestication) and has authorized that action by the vote
20 required by this subchapter for the approval of a proposal that
21 the company dissolve voluntarily, the company may surrender its
22 certificate of organization under the laws of this Commonwealth
23 by filing in the Department of State a certificate of
24 dissolution under section 8975 (relating to certificate of
25 dissolution). In lieu of the statements required by section
26 8975(a)(2) through (4), the certificate of dissolution shall set
27 forth a statement that the company has domesticated itself under
28 the laws of another jurisdiction. If the company, as
29 domesticated in the other jurisdiction, registers to do business
30 in this Commonwealth either prior to or simultaneously with the

filing of the certificate of dissolution under this section, the company shall not be required to file with the certificate of dissolution the tax clearance certificates that would otherwise be required by section 139 (relating to tax clearance of certain fundamental transactions).

§ 8982. Domestication.

* * *

(b) Certificate of domestication.--The certificate of domestication shall be executed by the company and shall set forth in the English language:

(1) The name of the company. 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 any provision of section 8905 (relating to name), the company shall adopt, in accordance with any procedures for changing the name of the company that are applicable prior to the domestication of the company, and shall set forth in the certificate of domestication, an available name.

* * *

(c) Effect of domestication.--

(1) As a domestic limited liability company, the domesticated company shall no longer be a foreign limited liability company for the purposes of this chapter and shall [have] instead be a domestic limited liability company with all the powers and privileges and [be subject to] all the duties and limitations granted and imposed upon domestic limited liability companies. [The property, debts, liens, estates, taxes, penalties and public accounts due the Commonwealth shall continue to be vested in and imposed upon

1 the company to the same extent as if it were the successor by
2 merger of the domesticating company with and into a domestic
3 limited liability company under Subchapter G (relating to
4 mergers and consolidations).] In all other respects, the
5 domesticated limited liability company shall be deemed to be
6 the same limited liability company as it was prior to the
7 domestication without any change in or effect on its
8 existence. Without limiting the generality of the previous
9 sentence, the domestication shall not be deemed to have
10 dissolved the company or to have affected in any way:

11 (i) the right and title of the company in and to its
12 assets, property, franchises, estates and choses in
13 action;

14 (ii) the liability of the company for its debts,
15 obligations, penalties and public accounts due the
16 Commonwealth;

17 (iii) any liens or other encumbrances on the
18 property or assets of the company; or

19 (iv) any contract, license or other agreement to
20 which the company is a party or under which it has any
21 rights or obligations.

22 (2) The [shares of] membership interests in the
23 domesticated company shall be unaffected by the domestication
24 except to the extent, if any, reclassified in the certificate
25 of domestication.

26 § 8996. Restrictions.

27 * * *

28 (b) Ownership and governance of restricted professional
29 companies.--Except as otherwise provided by a statute, rule or
30 regulation applicable to a particular profession, all of the

1 [members] ultimate beneficial owners of membership interests in
2 and all of the managers, if any, of a restricted professional
3 company shall be licensed persons.

4 * * *

5 (d) Application.--For purposes of applying subsection (a):

6 * * *

7 (3) The practice of the restricted professional service
8 of law shall be deemed to include the following activities
9 when conducted incidental to the practice of law:

10 (i) serving as an attorney-in-fact, guardian,
11 custodian, executor, personal representative, trustee or
12 fiduciary;

13 (ii) serving as a director or trustee of a
14 corporation for profit or not-for-profit, manager of a
15 limited liability company or a similar position with any
16 other form of association;

17 (iii) testifying, teaching, lecturing or writing
18 about any topic related to the law;

19 (iv) serving as a master, receiver, arbitrator or
20 similar official;

21 (v) providing actuarial, insurance, investment,
22 estate and trust administration, tax return preparation,
23 financial and other similar services and advice; and

24 (vi) conducting intellectual property and other real
25 and personal property title searches and providing other
26 title insurance agency services.

27 § 8998. Annual registration.

28 * * *

29 (f) Annual fee to be lien.--

30 (1) Failure to [pay the annual registration fee imposed]

1 file the certificate of annual registration required by this
2 section shall not affect the existence or status of the
3 restricted professional company as such, but the annual
4 registration fee that would have been payable shall be a lien
5 in the manner provided in this subsection from the time the
6 annual registration fee is due and payable [upon]. If a
7 certificate of annual registration is not filed within 30
8 days after the date on which it is due, the department shall
9 assess a penalty of \$500 against the company, which shall
10 also be a lien in the manner provided in this subsection. The
11 imposition of that penalty shall not be construed to relieve
12 the company from liability for any other penalty or interest
13 provided for under other applicable law.

14 (2) If the annual registration fee paid by a restricted
15 professional company is subsequently determined to be less
16 than should have been paid because it was based on an
17 incorrect number of members or was otherwise incorrectly
18 computed, that fact shall not affect the existence or status
19 of the restricted professional company as such, but the
20 amount of the additional annual registration fee that should
21 have been paid shall be a lien in the manner provided in this
22 subsection from the time the incorrect payment is discovered
23 by the department.

24 (3) The annual registration fee shall bear simple
25 interest from the date that it becomes due and payable until
26 paid. The interest rate shall be that provided for in section
27 806 of the act of April 9, 1929 (P.L.343, No.176), known as
28 The Fiscal Code, with respect to unpaid taxes. The penalty
29 provided for in paragraph (1) shall not bear interest. The
30 payment of interest shall not relieve the restricted

1 professional company from liability for any other penalty or
2 interest provided for under other applicable law.

3 (4) The lien created by this subsection shall attach to
4 all of the property and proceeds thereof of the restricted
5 professional company in which a security interest can be
6 perfected, in whole or in part, by filing in the department
7 under 13 Pa.C.S. Div. 9 (relating to secured transactions;
8 sales of accounts, contract rights and chattel paper),
9 whether the property and proceeds are owned by the company at
10 the time the annual registration fee or any penalty or
11 interest becomes due and payable or whether the property and
12 proceeds are acquired thereafter. Except as otherwise
13 provided by statute, the lien created by this subsection
14 shall have priority over all other liens, security interests
15 or other charges, except liens for taxes or other charges due
16 the Commonwealth. The lien created by this subsection shall
17 be entered on the records of the department and indexed in
18 the same manner as a financing statement filed under 13
19 Pa.C.S. Div. 9. At the time an annual registration fee,
20 penalty or interest that has resulted in the creation of
21 [the] a lien under this subsection is paid, the department
22 shall terminate the lien with respect to that annual
23 registration fee, penalty or interest without requiring a
24 separate filing by the company for that purpose.

25 (5) If the annual registration fee paid by a restricted
26 professional company is subsequently determined to be more
27 than should have been paid for any reason, no refund of the
28 additional fee shall be made.

29 * * *

30 § 9502. Creation, status and termination of business trusts.

1 (a) Creation.--A business trust may be created in real or
2 personal property, or both, with power in the trustee [or a
3 majority of the trustees]:

4 (1) To receive title to, hold, buy, sell, exchange,
5 transfer and convey real and personal property for the use of
6 the business trust.

7 (2) To take, receive, invest or disburse the receipts,
8 earnings, rents, profits or returns from the trust estate.

9 (3) To carry on and conduct any lawful business
10 designated in the deed or other instrument of trust, and
11 generally to do any lawful act in relation to such trust
12 property that any individual owning the same absolutely might
13 do.

14 (4) To merge with another business trust or other
15 association, to divide or to engage in any other fundamental
16 or other transaction contemplated by the deed or other
17 instrument of trust.

18 (b) Term.--Except as otherwise provided in the instrument, a
19 business trust shall have perpetual existence.

20 (c) Separate entity.--A business trust is a separate legal
21 entity. Except as otherwise provided in the instrument, title to
22 real and personal property may be held in the name of the trust,
23 without in any manner diminishing the rights, powers and duties
24 of the trustees as provided in subsection (a).

25 (d) Termination.--Except as otherwise provided in the
26 instrument:

27 (1) The business trust may not be terminated, dissolved
28 or revoked by a beneficial owner or other person.

29 (2) The death, incapacity, dissolution, termination or
30 bankruptcy of a beneficial owner or a trustee shall not

1 result in the termination, dissolution or revocation of the
2 business trust.

3 (e) Contents of instrument.--The instrument may contain any
4 provision for the regulation of the internal affairs of the
5 business trust included in the instrument by the settlor, the
6 trustee or the beneficiaries in accordance with the applicable
7 procedures for the adoption or amendment of the instrument.

8 § 9503. Documentation of trust.

9 (a) General rule.--A business trust shall not be valid
10 unless created by deed of trust or other written instrument
11 subscribed by one or more individuals, associations or other
12 entities. The trustees of a business trust shall promptly cause
13 the instrument or any amendment thereof, except an amendment
14 solely effecting or reflecting the substitution of or other
15 change in the trustees, to be filed in the Department of State.
16 [The failure to effect the filing shall not affect the validity
17 of a business trust. A trustee who violates the requirements of
18 this subsection shall be liable for a civil penalty in the
19 amount of \$1,000 payable to the department.]

20 * * *

21 § 9505. [Succession of trustees.] Trustees.

22 (a) Succession of trustees.--An instrument may provide for
23 the succession of title to [the] any trust property not titled
24 in the name of the trust to a successor trustee, in case of the
25 death, resignation, removal or incapacity of any trustee. In the
26 case of any such succession, the title to [the] such trust
27 property shall at once vest in the succeeding trustee.

28 (b) Nature of service.--Service as the trustee of a business
29 trust by an association that is not a banking institution shall
30 not be deemed to constitute acting as a fiduciary for purposes

1 of the act of November 30, 1965 (P.L.847, No.356), known as the
2 Banking Code of 1965.

3 § 9506. Liability of trustees and beneficiaries.

4 (a) General rule.--[Liability to third parties for any act,
5 omission or obligation of a trustee of a business trust when
6 acting in such capacity shall extend to so much of the trust
7 estate as may be necessary to discharge such liability, but
8 personal liability shall not attach to the trustee or the
9 beneficiaries of the trust for any such act, omission or
10 liability.]

11 (1) Except as otherwise provided in the instrument, the
12 beneficiaries of a business trust shall be entitled to the
13 same limitation of personal liability as is extended to
14 shareholders in a domestic business corporation.

15 (2) Except as otherwise provided in the instrument, the
16 trustees of a trust, as such, shall not be personally liable
17 to any person for any act or obligation of the trust or any
18 other trustee.

19 (3) An obligation of a trust based upon a writing may be
20 limited to a specific fund or other identified pool or group
21 of assets of the trust.

22 * * *

23 (f) Permissible beneficiaries.--Except as otherwise provided
24 by a statute, rule or regulation applicable to a particular
25 profession, all of the [beneficiaries of] ultimate beneficial
26 owners of interests in a business trust that renders one or more
27 restricted professional services shall be licensed persons. As
28 used in this subsection, the term "restricted professional
29 services" shall have the meaning specified in section 8903
30 (relating to definitions and index of definitions).

1 * * *

2 (h) Medical professional liability.--A business trust shall
3 be deemed to be a professional corporation for purposes of
4 section 811 of the act of October 15, 1975 (P.L.390, No.111),
5 known as the Health Care Services Malpractice Act.

6 Section 3. Amendment of Title 54.

7 As much of Title 54 as is hereinafter set forth is amended or
8 added to read:

9 § 302. Definitions.

10 The following words and phrases when used in this chapter
11 shall have, unless the context clearly indicates otherwise, the
12 meanings given to them in this section:

13 "Business." Any commercial or professional activity.

14 "Entity." Any individual or any corporation, association,
15 partnership, joint-stock company, business trust, syndicate,
16 joint adventureship or other combination or group of persons,
17 regardless of whether it is organized or formed under the laws
18 of this Commonwealth or any other jurisdiction.

19 "Proper name." [The] When used with respect to an
20 association of a type listed in the following paragraphs, the
21 term means the name set forth in:

22 (1) the articles of incorporation, for a corporation;

23 (2) the statement of registration, for a limited
24 liability partnership;

25 (3) the certificate of limited partnership, for a
26 limited partnership;

27 (4) the statement of election, for an electing
28 partnership;

29 (5) the certificate of organization, for a limited
30 liability company;

1 (6) the articles of association, for a professional
2 association;

3 (7) the deed of trust or other trust instrument, if any,
4 that has been filed in the Department of State, for a
5 business trust; or

6 * * *

7 § 503. Decennial filings required.

8 * * *

9 (b) Exceptions.--Subsection (a) shall not apply to any of
10 the following:

11 (1) A corporation or other association [which] that
12 during the [preceding] ten years ending on December 31 of the
13 year in which a filing would otherwise be required under
14 subsection (a) has made any filing in the department pursuant
15 to a provision of this title or 15 Pa.C.S. (relating to
16 corporations and unincorporated associations), other than:

17 (i) a report required by subsection (a); or

18 (ii) a filing [required by] under:

19 (A) 15 Pa.C.S. § 1305 (relating to reservation
20 of corporate name);

21 (B) 15 Pa.C.S. § 5305 (relating to reservation
22 of corporate name);

23 (C) 15 Pa.C.S. § 8203(b) (relating to name);

24 (D) 15 Pa.C.S. § 8505(b) (relating to name); or

25 (E) 15 Pa.C.S. § 8905(b) (relating to name).

26 (2) A corporation whose name is registered pursuant to
27 section 501(a)(4) (relating to register established).

28 (3) A corporation [which] that has had officer
29 information forwarded to the department by the Department of
30 Revenue during the preceding ten years under 15 Pa.C.S. §

1 1110 (relating to annual report information).

2 [(b.1) Exemption.--An entity which made a filing after
3 December 31, 1989, and before January 1, 1991, pursuant to a
4 provision of this title or 15 Pa.C.S. (relating to corporations
5 and unincorporated associations) shall be exempt from the 2001
6 decennial filing. For purposes of this subsection, none of the
7 following shall be considered a filing:

8 (1) A filing under:

9 (i) 15 Pa.C.S. § 1305;

10 (ii) 15 Pa.C.S. § 5305;

11 (iii) 15 Pa.C.S. § 8203(b);

12 (iv) 15 Pa.C.S. § 8505(b); or

13 (v) 15 Pa.C.S. § 8905(b).

14 (2) A name registration under section 501(a)(4).

15 (3) Forwarding of information to the department by the
16 Department of Revenue under 15 Pa.C.S. § 1110.]

17 (c) Exemptions.--An association shall be exempt from the
18 2001 decennial filing if the association made a filing:

19 (1) After December 31, 1989 and before January 1, 1992,
20 pursuant to a provision of this title or 15 Pa.C.S. other
21 than a filing under:

22 (i) 15 Pa.C.S. § 1305;

23 (ii) 15 Pa.C.S. § 5305;

24 (iii) 15 Pa.C.S. § 8203(b);

25 (iv) 15 Pa.C.S. § 8505(b); or

26 (v) 15 Pa.C.S. § 8905(b).

27 (2) Under this section during the year 2000.

28 [(c) Cross reference] (d) Cross references.--See 15 Pa.C.S.
29 §§ 134 (relating to docketing statement) and 135 (relating to
30 requirements to be met by filed documents).

1 § 1314. Decennial filings required. * * *

2 (b) Requirement satisfied by other filings.--Subsection (a)
3 shall not apply to a registrant which during the [preceding] ten
4 years ending on December 31 of the year in which a filing would
5 otherwise be required under subsection (a) has made any filing
6 with the department under this chapter other than a report
7 required by subsection (a).

8 * * *

9 § 1515. Decennial filings required.

10 * * *

11 (b) Requirement satisfied by other filings.--Subsection (a)
12 shall not apply to a registrant which during the [preceding] ten
13 years ending on December 31 of the year in which a filing would
14 otherwise be required under subsection (a) has made any filing
15 with the department under this chapter other than a report
16 required by subsection (a).

17 * * *

18 Section 4. Repeals.

19 The following acts and parts of acts are repealed:

20 ~~Section 32 of the act of June 1, 1889 (P.L.420, No.332),~~ <—
21 ~~entitled "A further supplement to an act entitled 'An act to~~
22 ~~provide revenue by taxation,' approved the seventh day of June,~~
23 ~~Anno Domini one thousand eight hundred and seventy nine," to the~~
24 ~~extent that it applies to the judicial dissolution of an~~
25 ~~association under 15 Pa.C.S.~~

26 As much as reads ", and act as the attorney-in-fact and
27 authorized agent of such corporations for the service of process
28 thereon" in section 806 of the act of April 9, 1929 (P.L.177,
29 No.175), known as The Administrative Code of 1929.

30 Section 404(b) of the act of December 19, 1990 (P.L.834,

1 No.198), known as the GAA Amendments Act of 1990, insofar as it
2 applies to 15 Pa.C.S. §§ 1745 and 5745.

3 15 Pa.C.S. §§ 5543.1, 5546.1, 5764.1, 8103 and 8206.

4 Section 5. Effective date.

5 This act shall take effect in 60 days.