

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 1157** Session of
1997

INTRODUCED BY WENGER, HART, GREENLEAF, MADIGAN, SALVATORE,
LEMMOND, O'PAKE, STOUT, RHOADES, WOZNIAK AND THOMPSON,
OCTOBER 14, 1997

SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
JUNE 1, 1998

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
18 in subsequent provisions of this title that are applicable to

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

5 * * *

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

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

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

24 * * *

25 § 134. Docketing statement.

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

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

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

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

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

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

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

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

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

§ 135. Requirements to be met by filed documents.

* * *

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

(1) the use of punctuation marks;

(2) the use of the definite or indefinite article; or

(3) the use of any of the following terms to designate the status of an association: "corporation," "company," "incorporated," "limited," "association," "fund," "syndicate," "limited partnership," "limited liability company," "trust" or "business trust" or abbreviations of any of the foregoing terms or words or abbreviations of like import in languages other than English.

§ 138. Statement of correction.

* * *

(b) Effect of filing.--

* * *

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

* * *

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

§ 139. Tax clearance of certain fundamental transactions.

1 [A] (a) General rule.--Except as provided in subsection (c),
2 a domestic association shall not file articles or a certificate
3 of merger or consolidation effecting a merger or consolidation
4 into a nonqualified foreign association or articles or a
5 certificate of dissolution or a statement of revival, a
6 qualified foreign association shall not file an application for
7 termination of authority or similar document in the Department
8 of State and a domestic association shall not file articles or a
9 certificate of division dividing solely into nonqualified
10 foreign associations unless the articles, certificate,
11 application or other document are accompanied by clearance
12 certificates from the Department of Revenue and the Office of
13 Employment Security of the Department of Labor and Industry,
14 evidencing the payment by the association of all taxes and
15 charges due the Commonwealth required by law.

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

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

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

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

1 § 161. Domestication of certain alien associations.

2 * * *

3 (b) Statement of domestication.--The statement of
4 domestication shall be executed by the association and shall set
5 forth in the English language:

6 (1) The name of the association. If the name is in a
7 foreign language, it shall be set forth in Roman letters or
8 characters or Arabic or Roman numerals. If the name is one
9 that is rendered unavailable for use by a corporation by any
10 provision of section 1303(b) or (c) (relating to corporate
11 name), the association shall adopt a new name, in accordance
12 with any procedures for changing the name of the association
13 that are applicable prior to the domestication of the
14 association, and shall set forth the new name in the
15 statement.

16 (2) The name of the jurisdiction under the laws of which
17 and the date on which it was first formed, incorporated or
18 otherwise came into being.

19 (3) The name of the jurisdiction that constituted the
20 seat, siege social or principal place of business or control
21 administration of the association, or any equivalent under
22 applicable law, immediately prior to the filing of the
23 statement.

24 (4) A statement [that upon domestication the association
25 will be a domestic association under the laws of this
26 Commonwealth] of the type of domestic association that the
27 association will be upon domestication.

28 (5) A statement that the filing of the statement of
29 domestication and, if desired, the renunciation of the prior
30 domicile has been authorized (unless its charter or other

1 organic documents require a greater vote) by a majority in
2 interest of the shareholders, members or other proprietors of
3 the association.

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

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

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

16 (d) Effect of domestication.--Upon the filing of the
17 statement of domestication, the association shall be
18 domesticated in this Commonwealth and the association shall
19 thereafter be subject to any applicable provisions of this
20 title[, except Subpart B of Part II (relating to business
21 corporations),] and [to] any other provisions of law applicable
22 to associations existing under the laws of this Commonwealth. If
23 the association will be a type of domestic association that is
24 created by a filing in the department, the statement of
25 domestication shall constitute that filing. The domestication of
26 any association in this Commonwealth pursuant to this section
27 shall not be deemed to affect any obligations or liabilities of
28 the association incurred prior to its domestication.

29 (e) Exclusion.--An association that can be domesticated
30 under [section 4161 (relating to domestication) or 6161

1 (relating to domestication)] any of the following sections shall
2 not be domesticated under this section:

3 Section 4161 (relating to domestication).

4 Section 6161 (relating to domestication).

5 Section 8590 (relating to domestication).

6 Section 8982 (relating to domestication).

7 Section 9501(a)(1)(ii) (relating to application and
8 effect of chapter).

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

17 (g) Cross [reference] references.--See [section] sections
18 134 (relating to docketing statement) and 135 (relating to
19 requirements to be met by filed documents).

20 § 162. Contingent domestication of certain alien associations.

21 * * *

22 (c) Statement of consummation of domestication.--At any time
23 after the filing of a statement of contingent domestication, the
24 association may file in the department a statement of
25 consummation of domestication which shall be executed by the
26 association and shall set forth:

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

1 * * *

2 (j) 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 § 1303. Corporate name.

6 * * *

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

10 (1) The name of any other domestic corporation for
11 profit or not-for-profit which is either in existence or for
12 which articles of incorporation have been filed but have not
13 yet become effective, or of any foreign corporation for
14 profit or not-for-profit which is either authorized to do
15 business in this Commonwealth or for which an application for
16 a certificate of authority has been filed but has not yet
17 become effective, [or of any domestic or foreign limited
18 partnership that has filed in the Department of State a
19 certificate or qualified under Chapter 85 (relating to
20 limited partnerships) or under corresponding provisions of
21 prior law,] or the name of any association registered at any
22 time under 54 Pa.C.S. Ch. 5 (relating to corporate and other
23 association names), unless[: (i) where the name is the same
24 or confusingly similar,] the other association:

25 [(A)] (i) has stated that it is about to change
26 its name, or to cease to do business, or is being
27 wound up, or is a foreign association about to
28 withdraw from doing business in this Commonwealth,
29 and the statement and [the] a written consent [of the
30 other association] to the adoption of the name

1 executed by the other association is filed in the
2 Department of State;

3 [(B)] (ii) has filed with the Department of
4 Revenue a certificate of out of existence, or has
5 failed for a period of three successive years to file
6 with the Department of Revenue a report or return
7 required by law and the fact of such failure has been
8 certified by the Department of Revenue to the
9 Department of State;

10 [(C)] (iii) has abandoned its name under the
11 laws of its jurisdiction of incorporation, by
12 amendment, merger, consolidation, division,
13 expiration, dissolution or otherwise, without its
14 name being adopted by a successor in a merger,
15 consolidation, division or otherwise, and an official
16 record of that fact, certified as provided by 42
17 Pa.C.S. § 5328 (relating to proof of official
18 records), is presented by any person to the
19 department; or

20 [(D)] (iv) has had the registration of its name
21 under 54 Pa.C.S. Ch. 5 terminated and, if the
22 termination was effected by operation of 54 Pa.C.S. §
23 504 (relating to effect of failure to make decennial
24 filings), the application for the use of the name is
25 accompanied by a verified statement stating that at
26 least 30 days' written notice of intention to
27 appropriate the name was given to the delinquent
28 association at its [registered office] last known
29 place of business and that, after diligent search by
30 the affiant, the affiant believes the association to

1 be out of existence_[]; or
2 (ii) where the name is confusingly similar, the
3 consent of the other association to the adoption of the
4 name is filed in the Department of State.

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

7 * * *

8 (C) REQUIRED APPROVALS OR CONDITIONS.--

<—

9 * * *

10 (2) THE CORPORATE NAME SHALL NOT CONTAIN:

11 * * *

12 (III) THE WORDS "ENGINEER" OR "ENGINEERING" OR
13 "SURVEYOR" OR "SURVEYING" OR ANY OTHER WORD IMPLYING THAT
14 ANY FORM OF THE PRACTICE OF ENGINEERING OR SURVEYING AS
15 DEFINED IN THE ACT OF MAY 23, 1945 (P.L.913, NO.367),
16 KNOWN AS THE [PROFESSIONAL ENGINEERS] ENGINEER, LAND
17 SURVEYOR AND GEOLOGIST REGISTRATION LAW, IS PROVIDED
18 UNLESS AT LEAST ONE OF THE INCORPORATORS OF A PROPOSED
19 CORPORATION OR THE DIRECTORS OF THE EXISTING CORPORATION
20 HAS BEEN PROPERLY REGISTERED WITH THE STATE REGISTRATION
21 BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND
22 GEOLOGISTS IN THE PRACTICE OF ENGINEERING OR SURVEYING
23 AND THERE IS SUBMITTED TO THE DEPARTMENT A CERTIFICATE
24 FROM THE BOARD TO THAT EFFECT.

25 * * *

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

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

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

7 (f) Cross references.--See sections 135(e) (relating to
8 distinguishable names) and 1106(b)(2) (relating to uniform
9 application of subpart).

10 § 1304. Required name changes by senior corporations.

11 * * *

12 (b) Enforcement of undertaking to release name.--If a
13 corporation has used a name [the same as or confusingly similar
14 to] that is not distinguishable upon the records of the
15 Department of State from the name of another corporation or
16 other association as permitted by section [1303(b)(1)(i)]
17 1303(b)(1) (relating to duplicate use of names) and the other
18 corporation or other association continues to use its name in
19 this Commonwealth and does not change its name, cease to do
20 business, be wound up or withdraw as it proposed to do in its
21 consent or change its name as required by subsection (a), any
22 court having jurisdiction may enjoin the other corporation or
23 other association from continuing to use its name or a name that
24 is not distinguishable therefrom, upon the application of:

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

28 (2) any person adversely affected.];
29 may enjoin the other corporation or other association from
30 continuing to use its name or a confusingly similar name.]

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

(a) General rule.--Where any of the [valid] charter documents of a business corporation are not on file in the Department of State or there is an error in any such document as transferred to the department pursuant to section 140 (relating to custody and management of orphan corporate and business records), and the corporation desires to file any document in the department under any other provision of this subpart or the corporation desires to secure from the department any certificate to the effect that the corporation is a corporation duly incorporated and existing under the laws of this Commonwealth or a certified copy of the articles of the corporation or the corporation desires to correct the text of its charter documents as on file in the department, the corporation shall file in the department a statement of summary of record which shall be executed by the corporation and shall set forth:

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

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

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

(4) The place or places, including volume and page

1 numbers or their equivalent, where the documents
2 [constituting the currently effective articles are] that are
3 not on file in the department or that require correction in
4 the records of the department were originally filed or
5 recorded, the date or dates of each filing or recording and
6 the correct text of the [currently effective articles.]
7 documents. The information specified in this paragraph may be
8 omitted in a statement of summary of record that is delivered
9 to the department contemporaneously with amended and restated
10 articles of the corporation filed under this subpart.

11 [(5) Each name by which the corporation was known, if
12 any, other than its original name and its current name, and
13 the date or dates on which each change of name of the
14 corporation became effective.

15 (6) In the case of any entity brought within the scope
16 of Chapter 29 (relating to professional corporations) by or
17 pursuant to section 2905 (relating to election of
18 professional associations to become professional
19 corporations), amended and restated articles of incorporation
20 which shall include all of the information required to be set
21 forth in restated articles of a professional corporation.

22 A corporation shall be required to make only one filing under
23 this subsection.]

24 (b) Validation of prior defects in incorporation.--Upon the
25 filing of a statement by a corporation under this section or the
26 transfer to the department of the records relating to a
27 corporation pursuant to section 140, the corporation [named in
28 the statement] shall be deemed to be a validly subsisting
29 corporation to the same extent as if it had been duly
30 incorporated and was existing under this subpart and the

1 department shall so certify regardless of any absence of or
2 defect in the prior proceedings relating to incorporation.

3 (c) Cross [reference] references.--See [section] sections
4 134 (relating to docketing statement), 135 (relating to
5 requirements to be met by filed documents) and 1106(b)(2)
6 (relating to uniform application of subpart).

7 § 1504. Adoption, amendment and contents of bylaws.

8 * * *

9 (d) Amendment of voting provisions.--

10 (1) Unless otherwise provided in a bylaw adopted by the
11 shareholders, whenever [the bylaws require] a bylaw adopted
12 by the shareholders requires for the taking of any action by
13 the shareholders or a class of shareholders a specific number
14 or percentage of votes, the provision of the bylaws setting
15 forth that requirement shall not be amended or repealed by
16 any lesser number or percentage of votes of the shareholders
17 or of the class of shareholders or only by action of the
18 board of directors.

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

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 § 1571. Application and effect of subchapter.

19 (a) General rule.--Except as otherwise provided in
20 subsection (b), any shareholder (as defined in section 1572
21 (relating to definitions)) of a business corporation shall have
22 the right to dissent from, and to obtain payment of the fair
23 value of his shares in the event of, any corporate action, or to
24 otherwise obtain fair value for his shares, only where this part
25 expressly provides that a shareholder shall have the rights and
26 remedies provided in this subchapter. See:

27 Section 1906(c) (relating to dissenters rights upon
28 special treatment).

29 Section 1930 (relating to dissenters rights).

30 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 record date fixed to determine the shareholders entitled to notice of and to vote at the meeting at which a plan specified in any of section 1930, 1931(d), 1932(c) or 1952(d) is to be voted on, or on the date of the first public announcement that such a plan has been approved by the shareholders by written consent without a meeting, the shares

are either:

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

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

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

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

(Repealed.)

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

(iii) Shares entitled to dissenters rights under
section 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 context clearly indicates otherwise:

"Corporation." The issuer of the shares held or owned by the dissenter before the corporate action or the successor by merger, consolidation, division, conversion or otherwise of that issuer. A plan of division may designate which one or more of the resulting corporations is the successor corporation for the

1 purposes of this subchapter. The designated successor
2 corporation or corporations in a division shall have sole
3 responsibility for payments to dissenters and other liabilities
4 under this subchapter except as otherwise provided in the plan
5 of division.

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

10 * * *

11 "Shareholder." A shareholder as defined in section 1103
12 (relating to definitions), or an ultimate beneficial owner of
13 shares, including without limitation a holder of depository
14 receipts, where the beneficial interest owned includes an
15 interest in the assets of the corporation upon dissolution.

16 § 1704. Place and notice of meetings of shareholders.

17 (a) Place.--Meetings of shareholders may be held at such
18 place within or without this Commonwealth as may be provided in
19 or fixed pursuant to the bylaws. Unless otherwise provided in or
20 pursuant to the bylaws, all meetings of the shareholders shall
21 be held [in this Commonwealth at the registered office of the
22 corporation] at the executive office of the corporation wherever
23 situated.

24 * * *

25 § 1709. Conduct of shareholders meeting.

26 (a) Presiding officer.--There shall be a presiding officer
27 at every meeting of the shareholders. The presiding officer
28 shall be appointed in the manner provided in the bylaws or, in
29 the absence of such provision, by the board of directors. If the
30 bylaws are silent on the appointment of the presiding officer

1 and the board fails to designate a presiding officer, the
2 president shall be the presiding officer.

3 (b) Authority of the presiding officer.--Except as otherwise
4 provided in the bylaws, the presiding officer shall determine
5 the order of business and shall have the authority to establish
6 rules for the conduct of the meeting.

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

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

16 § 1729. Voting rights of directors.

17 (a) General rule.--Unless otherwise provided in a bylaw
18 adopted by the shareholders, every director of a business
19 corporation shall be entitled to one vote. Without limiting the
20 generality of the foregoing, a bylaw adopted by the shareholders
21 may provide that a class or other defined group of directors
22 shall have multiple or fractional voting rights, or no right to
23 vote, either generally or under specified circumstances.

24 (b) [Multiple and fractional voting] Application of
25 procedural requirements.--Any requirement of this subpart for
26 the presence of or vote or other action by a specified
27 percentage of directors shall be satisfied by the presence of or
28 vote or other action by directors entitled to cast the specified
29 percentage of the votes that all voting directors in office are
30 entitled to cast.

1 § 1731. Executive and other committees of the board.

2 (a) Establishment and powers.--Unless otherwise restricted
3 in the bylaws:

4 * * *

5 (2) Any committee, to the extent provided in the
6 resolution of the board of directors or in the bylaws, shall
7 have and may exercise all of the powers and authority of the
8 board of directors except that a committee shall not have any
9 power or authority as to the following:

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

12 (ii) The creation or filling of vacancies in the
13 board of directors.

14 (iii) The adoption, amendment or repeal of the
15 bylaws.

16 (iv) The amendment or repeal of any resolution of
17 the board that by its terms is amendable or repealable
18 only by the board.

19 (v) Action on matters committed by the bylaws or
20 resolution of the board of directors exclusively to
21 another committee of the board.

22 * * *

23 § 1745. Advancing expenses.

24 Expenses (including attorneys' fees) incurred in defending
25 any action or proceeding referred to in this subchapter may be
26 paid by a business corporation in advance of the final
27 disposition of the action or proceeding upon receipt of an
28 undertaking by or on behalf of the representative to repay the
29 amount if it is ultimately determined that he is not entitled to
30 be indemnified by the corporation as authorized in this

1 subchapter or otherwise. Except as otherwise provided in the
2 bylaws, advancement of expenses shall be authorized by the board
3 of directors. Sections 1728 (relating to interested directors or
4 officers; quorum) and 2538 (relating to approval of transactions
5 with interested shareholders) shall not be applicable to the
6 advancement of expenses under this section.

7 § 1748. Application to surviving or new corporations.

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

22 (b) Divisions.--Notwithstanding subsection (a), the
23 obligations of a dividing corporation to indemnify and advance
24 expenses to its representatives, whether arising under this
25 subchapter or otherwise, may be allocated in a division in the
26 same manner and with the same effect as any other liability of
27 the dividing corporation.

28 § 1756. Quorum.

29 (a) General rule.--A meeting of shareholders of a business
30 corporation duly called shall not be organized for the

1 transaction of business unless a quorum is present. Unless
2 otherwise provided in a bylaw adopted by the shareholders:

3 * * *

4 (4) If a proxy casts a vote on behalf of a shareholder
5 on any issue considered at a meeting of shareholders, the
6 shareholder shall be deemed to be present during the entire
7 meeting for purposes of determining whether a quorum is
8 present for consideration of any other issue.

9 * * *

10 § 1758. Voting rights of shareholders.

11 * * *

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

27 * * *

28 (e) Advance notice of nominations and other business.--If
29 the bylaws provide a fair and reasonable procedure for the
30 nomination of candidates for election as directors, only

1 candidates who have been duly nominated in accordance therewith
2 shall be eligible for election. If the bylaws impose a fair and
3 reasonable requirement of advance notice of proposals to be made
4 by a shareholder at the annual meeting of the shareholders, only
5 proposals for which advance notice has been properly given may
6 be acted upon at the meeting.

7 § 1759. Voting and other action by proxy.

8 * * *

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

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

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

26 (c) Revocation.--A proxy, unless coupled with an interest,
27 shall be revocable at will, notwithstanding any other agreement
28 or any provision in the proxy to the contrary, but the
29 revocation of a proxy shall not be effective until [written]
30 notice thereof has been given to the secretary of the

1 corporation or its designated agent in writing or by electronic
2 transmission. An unrevoked proxy shall not be valid after three
3 years from the date of its execution, authentication or
4 transmission unless a longer time is expressly provided therein.
5 A proxy shall not be revoked by the death or incapacity of the
6 maker unless, before the vote is counted or the authority is
7 exercised, written notice of the death or incapacity is given to
8 the secretary of the corporation or its designated agent.

9 * * *

10 § 1906. Special treatment of holders of shares of same class or
11 series.

12 (a) General rule.--Except as otherwise restricted in the
13 articles, [an amendment or] a plan may contain a provision
14 classifying the holders of shares of a class or series into one
15 or more separate groups by reference to any facts or
16 circumstances that are not manifestly unreasonable and providing
17 mandatory treatment for shares of the class or series held by
18 particular shareholders or groups of shareholders that differs
19 materially from the treatment accorded other shareholders or
20 groups of shareholders holding shares of the same class or
21 series (including a provision modifying or rescinding rights
22 previously created under this section) if:

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

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

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

8 (b) Statutory voting rights upon special treatment.--Except
9 as provided in subsection (c), if [an amendment or] a plan
10 contains a provision for special treatment, each group of
11 holders of any outstanding shares of a class or series who are
12 to receive the same special treatment under the [amendment or]
13 plan shall be entitled to vote as a special class in respect to
14 the plan regardless of any limitations stated in the articles or
15 bylaws on the voting rights of any class or series.

16 (c) Dissenters rights upon special treatment.--If any
17 [amendment or] plan contains a provision for special treatment
18 without requiring for the adoption of the [amendment or] plan
19 the statutory class vote required by subsection (b), the holder
20 of any outstanding shares the statutory class voting rights of
21 which are so denied, who objects to the [amendment or] plan and
22 complies with Subchapter D of Chapter 15 (relating to dissenters
23 rights), shall be entitled to the rights and remedies of
24 dissenting shareholders provided in that subchapter.

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

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

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

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

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

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

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

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

26 § 1912. Proposal of amendments.

27 * * *

28 (c) Terms of amendment.--The resolution or petition may set
29 forth the manner and basis of reclassifying the shares of the
30 corporation. Any of the terms of a plan of reclassification or

1 other action contained in an amendment may be made dependent
2 upon facts ascertainable outside of the amendment if the manner
3 in which the facts will operate upon the terms of the amendment
4 is set forth in the amendment. Such facts may include, without
5 limitation, actions or events within the control of or
6 determinations made by the corporation or a representative of
7 the corporation.

8 § 1914. Adoption of amendments.

9 * * *

10 (b) Statutory voting rights.--Except as provided in this
11 subpart, the holders of the outstanding shares of a class or
12 series of shares shall be entitled to vote as a class in respect
13 of a proposed amendment regardless of any limitations stated in
14 the articles or bylaws on the voting rights of any class or
15 series if [a proposed] the amendment would:

16 (1) authorize the board of directors to fix and
17 determine the relative rights and preferences, as between
18 series, of any preferred or special class;

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

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

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

30 (5) make the outstanding shares of a class or series

1 redeemable by a method that is not pro rata, by lot or
2 otherwise equitable.

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

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

10 (1) shares have not been issued;

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

13 (i) changing the corporate name;

14 (ii) providing for perpetual existence;

15 (iii) reflecting a reduction in authorized shares
16 effected by operation of section 1552(a) (relating to
17 power of corporation to acquire its own shares) and, if
18 appropriate, deleting all references to a class or series
19 of shares that is no longer outstanding; [or]

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

22 or

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

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

30 (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
and, if desired, increase the number of authorized shares
of the voting shares or change the par value of [the
authorized] the voting shares, or both, in proportion
thereto;

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

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

Whenever a provision of this subpart authorizes the board of
directors to take any action without the approval of the
shareholders and provides that a statement, certificate, plan or

1 other document relating to such action shall be filed in the
2 Department of State and shall operate as an amendment of the
3 articles, the board upon taking such action may, in lieu of
4 filing the statement, certificate, plan or other document, amend
5 the articles under this subsection without the approval of the
6 shareholders to reflect the taking of such action. An amendment
7 of articles under this subsection shall be deemed adopted by the
8 corporation when it has been adopted by the board of directors
9 pursuant to section 1912 (relating to proposal of amendments).

10 * * *

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

14 § 1922. Plan of merger or consolidation.

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

17 * * *

18 (5) Such other provisions as are deemed desirable.
19 [Any of the terms of the plan may be made dependent upon facts
20 ascertainable outside of the plan if the manner in which the
21 facts will operate upon the terms of the plan is set forth in
22 the plan.]

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

30 (1) The amount or kind of shares, obligations, cash,

1 property or rights to be received in exchange for or on
2 conversion of all or any of the shares of the constituent
3 domestic business corporation adversely to the holders of
4 those shares.

5 (2) Any [term] provision of the articles of the
6 surviving or new corporation [to be effected by] as it is to
7 be in effect immediately following consummation of the merger
8 or consolidation, except provisions that may be amended
9 without the approval of the shareholders under section
10 1914(c)(2) (relating to adoption of amendments).

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

14 (c) Proposal.--[Every] Except where the approval of the
15 board of directors is unnecessary under this subchapter, every
16 merger or consolidation shall be proposed in the case of each
17 domestic business corporation by the adoption by the board of
18 directors of a resolution approving the plan of merger or
19 consolidation. Except where the approval of the shareholders is
20 unnecessary under this subchapter, the board of directors shall
21 direct that the plan be submitted to a vote of the shareholders
22 entitled to vote thereon at a regular or special meeting of the
23 shareholders.

24 * * *

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

1 to the plan or a representative of a party to the plan.

2 § 1923. Notice of meeting of shareholders.

3 (a) General rule.--Written notice of the meeting of
4 shareholders that will act on the proposed plan shall be given
5 to each shareholder of record, whether or not entitled to vote
6 thereon, of each domestic business corporation that is a party
7 to the merger or consolidation. There shall be included in, or
8 enclosed with, the notice a copy of the proposed plan or a
9 summary thereof and, if Subchapter D of Chapter 15 (relating to
10 dissenters rights) is applicable to the holders of shares of any
11 class or series, a copy of that subchapter and of section 1930
12 (relating to dissenters rights) shall be furnished to the
13 holders of shares of that class or series. The notice shall
14 state that a copy of the bylaws of the surviving or new
15 corporation will be furnished to any shareholder on request and
16 without cost.

17 * * *

18 § 1924. Adoption of plan.

19 * * *

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

21 (1) Unless otherwise required by its bylaws, a plan of
22 merger or consolidation shall not require the approval of the
23 shareholders of a constituent domestic business corporation
24 if:

25 * * *

26 (ii) immediately prior to the adoption of the plan
27 and at all times thereafter prior to its effective date,
28 another corporation that is a party to the [merger or
29 consolidation] plan owns directly or indirectly 80% or
30 more of the outstanding shares of each class of the

1 constituent corporation; or

2 * * *

3 (3) If a merger or consolidation of a subsidiary
4 corporation with a parent corporation is effected pursuant to
5 paragraph (1)(ii), the plan of merger or consolidation shall
6 be deemed adopted by the subsidiary corporation when it has
7 been adopted by the board of the parent corporation and
8 neither approval of the plan by the board of directors of the
9 subsidiary corporation nor execution of articles of merger or
10 consolidation by the subsidiary corporation shall [not] be
11 necessary.

12 (4) (i) Unless other required by its bylaws, a plan of
13 merger or consolidation providing for the merger or
14 consolidation of a domestic business corporation
15 (referred to in this paragraph as the "constituent
16 corporation") with or into a single indirect wholly owned
17 subsidiary (referred to in this paragraph as the
18 "subsidiary corporation") of the constituent corporation
19 shall not require the approval of the shareholders of
20 either the constituent corporation or the subsidiary
21 corporation if all of the provisions of this paragraph
22 are satisfied.

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

25 (A) The constituent corporation and the
26 subsidiary corporation are the only parties to the
27 merger or consolidation, other than the resulting
28 corporation, if any, in a consolidation (the
29 corporation that survives or results from the merger
30 or consolidation is referred to in this paragraph as

1 the "resulting subsidiary").

2 (B) Each share or fraction of a share of the
3 capital stock of the constituent corporation
4 outstanding immediately prior to the effective time
5 of the merger or consolidation is converted in the
6 merger or consolidation into a share or equal
7 fraction of a share of capital stock of a holding
8 company having the same designations, rights, powers
9 and preferences and the qualifications, limitations
10 and restrictions as the share of stock of the
11 constituent corporation being converted in the merger
12 or consolidation.

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

15 (D) Immediately following the effective time of
16 the merger or consolidation, the articles of
17 incorporation and bylaws of the holding company are
18 identical to the articles of incorporation and bylaws
19 of the constituent corporation immediately before the
20 effective time of the merger or consolidation, except
21 for changes that could be made without shareholder
22 approval under section 1914(c) (relating to adoption
23 by board of directors).

24 (E) Immediately following the effective time of
25 the merger or consolidation, the resulting subsidiary
26 is a direct or indirect wholly owned subsidiary of
27 the holding company.

28 (F) The directors of the constituent corporation
29 become or remain the directors of the holding company
30 upon the effective time of the merger or

1 consolidation.

2 (G) The board of directors of the constituent
3 corporation has made a good faith determination that
4 the shareholders of the constituent corporation will
5 not recognize gain or loss for United States Federal
6 Income Tax purposes.

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

14 (iv) If the holding company is a registered
15 corporation, the shares of the holding company issued in
16 connection with the merger or consolidation shall be
17 deemed to have been acquired at the time that the shares
18 of the constituent corporation converted in the merger or
19 consolidation were acquired.

20 (5) A plan of merger or consolidation adopted by the
21 board of directors under this subsection without the approval
22 of the shareholders shall not, by itself, create or impair
23 any rights or obligations on the part of any person under
24 section 2538 (relating to approval of transactions with
25 interested shareholders) or under Subchapters E (relating to
26 control transactions), F (relating to business combinations),
27 G (relating to control-share acquisitions), H (relating to
28 disgorgement by certain controlling shareholders following
29 attempts to acquire control), I (relating to severance
30 compensation for employees terminated following certain

1 control-share acquisitions) and J (relating to business
2 combination transactions - labor contracts) of Chapter 25,
3 nor shall it change the standard of care applicable to the
4 directors under Subchapter B of Chapter 17 (relating to
5 fiduciary duty).

6 * * *

7 § 1929. Effect of merger or consolidation.

8 * * *

9 (b) Property rights.--All the property, real, personal and
10 mixed, and franchises of each of the corporations parties to the
11 merger or consolidation, and all debts due on whatever account
12 to any of them, including subscriptions for shares and other
13 choses in action belonging to any of them, shall be deemed to be
14 [transferred to and] vested in and shall belong to the surviving
15 or new corporation, as the case may be, without further action,
16 and the title to any real estate, or any interest therein,
17 vested in any of the corporations shall not revert or be in any
18 way impaired by reason of the merger or consolidation. The
19 surviving or new corporation shall thenceforth be responsible
20 for all the liabilities of each of the corporations so merged or
21 consolidated. Liens upon the property of the merging or
22 consolidating corporations shall not be impaired by the merger
23 or consolidation and any claim existing or action or proceeding
24 pending by or against any of the corporations may be prosecuted
25 to judgment as if the merger or consolidation had not taken
26 place or the surviving or new corporation may be proceeded
27 against or substituted in its place.

28 * * *

29 § 1930. Dissenters rights.

30 * * *

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

* * *

§ 1931. Share exchanges.

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

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

(1) The terms and conditions of the exchange.

(2) The manner and basis of exchanging or converting the shares of the exchanging corporation into shares or other securities or obligations of the acquiring person, and, if any of the shares of the exchanging corporation are not to be exchanged or converted solely into shares or other securities

1 or obligations of the acquiring person, the shares or other
2 securities or obligations of any other person or cash,
3 property or rights that the holders of the shares of the
4 exchanging corporation are to receive in exchange for, or
5 upon conversion of, the shares and the surrender of any
6 certificates evidencing them, which securities or
7 obligations, if any, of any other person or cash, property
8 and rights may be in addition to or in lieu of the shares or
9 other securities or obligations of the acquiring person.

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

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

20 (5) Such other provisions as are deemed desirable.
21 [Any of the terms of the plan may be made dependent upon facts
22 ascertainable outside of the plan if the manner in which the
23 facts will operate upon the terms of the plan is set forth in
24 the plan.]

25 (c) Proposal and adoption.--The plan of exchange shall be
26 proposed and adopted and may be amended after its adoption and
27 terminated by the exchanging corporation in the manner provided
28 by this subchapter for the proposal, adoption, amendment and
29 termination of a plan of merger except section 1924(b) (relating
30 to adoption by board of directors). There shall be included in,

1 or enclosed with, the notice of the meeting of shareholders to
2 act on the plan a copy or a summary of the plan and, if
3 Subchapter D of Chapter 15 (relating to dissenters rights) is
4 applicable, a copy of the subchapter and of subsection (d). The
5 holders of any class of shares to be [acquired] exchanged or
6 converted pursuant to the plan of exchange shall be entitled to
7 vote as a class on the plan if they would have been entitled to
8 vote on a plan of merger that affects the class in substantially
9 the same manner as the plan of exchange.

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

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

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

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

29 (3) The manner in which the plan was adopted by the
30 exchanging corporation.

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

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

* * *

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

§ 1932. Voluntary transfer of corporate assets.

* * *

(b) Shareholder approval required.--

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

(2) The property or assets of a direct or indirect

1 subsidiary corporation that is controlled by a parent
2 corporation shall also be deemed the property or assets of
3 the parent corporation for the purposes of this subsection
4 and of subsection (c). A merger or consolidation to which
5 such a subsidiary corporation is a party and in which a third
6 party acquires direct or indirect ownership of the property
7 or assets of the subsidiary corporation constitutes an "other
8 disposition" of the property or assets of the parent
9 corporation within the meaning of that term as used in this
10 section.

11 (3) The plan of asset transfer shall set forth the terms
12 and conditions of the sale, lease, exchange or other
13 disposition or may authorize the board of directors to fix
14 any or all of the terms and conditions, including the
15 consideration to be received by the corporation therefor. The
16 plan may provide for the distribution to the shareholders of
17 some or all of the consideration to be received by the
18 corporation, including provisions for special treatment of
19 shares held by any shareholder or group of shareholders as
20 authorized by, and subject to the provisions of, section 1906
21 (relating to special treatment of holders of shares of same
22 class or series). It shall not be necessary for the person
23 acquiring the property or assets of the transferring
24 corporation to be a party to the plan. Any of the terms of
25 the plan 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
30 corporation or a representative of the corporation.

1 (4) The plan of asset transfer shall be proposed and
2 adopted, and may be amended after its adoption and
3 terminated, by [a business] the transferring corporation in
4 the manner provided in this subchapter for the proposal,
5 adoption, amendment and termination of a plan of merger,
6 except section 1924(b) (relating to adoption by board of
7 directors). The procedures of this subchapter shall not be
8 applicable to the person acquiring the property or assets of
9 the transferring corporation. There shall be included in, or
10 enclosed with, the notice of the meeting of the shareholders
11 of the transferring corporation to act on the plan a copy or
12 a summary of the plan and, if Subchapter D of Chapter 15
13 (relating to dissenters rights) is applicable, a copy of the
14 subchapter and of subsection (c).

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

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

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

24 (2) Paragraph (1) shall not apply to a sale pursuant to
25 an order of court having jurisdiction in the premises or a
26 sale [for money on terms requiring] pursuant to a plan of
27 asset transfer that requires that all or substantially all of
28 the net proceeds of sale be distributed to the shareholders
29 in accordance with their respective interests within one year
30 after the date of sale or to a liquidating trust.

1 * * *

2 § 1952. Proposal and adoption of plan of division.

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

5 (1) The terms and conditions of the division, including
6 the manner and basis of:

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

21 (ii) The disposition of the shares and other
22 securities or obligations, if any, of the new corporation
23 or corporations resulting from the division.

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

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

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

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

6 (6) Such other provisions as are deemed desirable.
7 [Any of the terms of the plan may be made dependent upon facts
8 ascertainable outside of the plan if the manner in which the
9 facts will operate upon the terms of the plan is set forth in
10 the plan.]

11 * * *

12 (g) [Action by] Rights of holders of indebtedness.--[Unless
13 otherwise provided by an indenture or other contract by which
14 the dividing corporation is bound, a plan of division shall not
15 require the approval of the holders of any debt securities or
16 other obligations of the dividing corporation or of any
17 representative of the holders, if the transfer of assets
18 effected by the division, if effected by means of a sale, lease,
19 exchange or other disposition, and any related distribution,
20 would not require the approval of the holders or representatives
21 thereof.] If any debt securities, notes or similar evidences of
22 indebtedness for money borrowed, whether secured or unsecured,
23 indentures or other contracts were issued, incurred or executed
24 by the dividing corporation before (the Legislative Reference
25 Bureau shall insert here the effective date of the amendments of
26 this section) and have not been amended subsequent to that date,
27 the liability of the dividing corporation thereunder shall not
28 be affected by the division nor shall the rights of the obligees
29 thereunder be impaired by the division, and each of the
30 resulting corporations may be proceeded against or substituted

1 in place of the dividing corporation as joint and several
2 obligors on such liability, regardless of any provision of the
3 plan of division apportioning the liabilities of the dividing
4 corporations.

5 * * *

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

13 § 1953. Division without shareholder approval.

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

23 (1) the dividing corporation has only one class of
24 shares outstanding and the shares and other securities, if
25 any, of each corporation resulting from the plan are
26 distributed pro rata to the shareholders of the dividing
27 corporation;

28 (2) the dividing corporation survives the division and
29 all the shares and other securities and obligations, if any,
30 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) shall be filed in the Department of State.

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

§ 1957. Effect of division.

1 * * *

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

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

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

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

28 (iv) [One] To the extent allocations of liabilities
29 are contemplated by the plan of division, the liabilities
30 of the dividing corporation shall be deemed without

1 further action to be allocated to and become the
2 liabilities of the resulting corporations on such a
3 manner and basis and with such effect as is specified in
4 the plan; and one or more, but less than all, of the
5 resulting corporations shall be free of the liabilities
6 of the dividing corporation to the extent, if any,
7 specified in the plan, if in either case:

8 (A) no fraud [of corporate creditors, or of] on
9 minority shareholders or shareholders without voting
10 rights or violation of law shall be effected thereby,
11 and [if applicable provisions of law are complied
12 with.]

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

16 (v) If the conditions in subparagraph (iv) for
17 freeing one or more of the resulting corporations from
18 the liabilities of the dividing corporation, or for
19 allocating some or all of the liabilities of the dividing
20 corporation, are not satisfied, the liabilities of the
21 dividing corporation as to which those conditions are not
22 satisfied shall not be affected by the division nor shall
23 the rights of creditors [thereof or of any person dealing
24 with the corporation] thereunder be impaired by the
25 division and any claim existing or action or proceeding
26 pending by or against the corporation with respect to
27 those liabilities may be prosecuted to judgment as if the
28 division had not taken place, or the resulting
29 corporations may be proceeded against or substituted in
30 [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 liabilities of the dividing corporation.

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

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

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

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

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

3 (D) A declaration of acquisition setting forth
4 the value of real estate holdings in such county of
5 the corporation 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 corporation] to a new corporation under this
11 section or under a similar law of any other jurisdiction
12 but any such [transfer] allocation shall be effective
13 only upon compliance with the requirements of 75 Pa.C.S.
14 § 1116 (relating to issuance of new certificate following
15 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 corporation to be allocated to a new corporation so long as
19 those assets and liabilities are described in a reasonable
20 manner.

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

27 * * *

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

30 (1) The effect of a division of a domestic business

1 corporation shall be governed solely by the laws of this
2 Commonwealth and any other jurisdiction under the laws of
3 which any of the resulting corporations is incorporated.

4 (2) The effect of a division on the assets and
5 liabilities of the dividing corporation shall be governed
6 solely by the laws of this Commonwealth and any other
7 jurisdiction under the laws of which any of the resulting
8 corporations is incorporated.

9 (3) The validity of any allocations of assets or
10 liabilities by a plan of division of a domestic business
11 corporation, regardless of whether or not any of the new
12 corporations is a foreign business corporation, shall be
13 governed solely by the laws of this Commonwealth.

14 (4) In addition to the express provisions of this
15 subsection, this subchapter shall otherwise generally be
16 granted the protection of full faith and credit under the
17 Constitution of the United States.

18 § 1962. Proposal and adoption of plan of conversion.

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

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

22 (2) A restatement of the articles of the resulting
23 corporation, which articles shall comply with the
24 requirements of this part relating to nonprofit corporations.

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

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

1 [Any of the terms of the plan may be made dependent upon facts
2 ascertainable outside of the plan if the manner in which the
3 facts will operate upon the terms of the plan is set forth in
4 the plan.]

5 * * *

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

13 § 1972. Proposal of voluntary dissolution.

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

1 of same class or series).

2 (b) Submission to shareholders.--The board of directors
3 shall direct that the [question of] resolution recommending
4 dissolution be submitted to a vote of the shareholders of the
5 corporation entitled to vote thereon at a regular or special
6 meeting of the shareholders.

7 * * *

8 § 1973. Notice of meeting of shareholders.

9 (a) General rule.--Written notice of the meeting of
10 shareholders that will consider the [advisability of voluntarily
11 dissolving a] resolution recommending dissolution of the
12 business corporation shall be given to each shareholder of
13 record entitled to vote thereon and the purpose shall be
14 included in the notice of the meeting.

15 * * *

16 § 1975. Predissolution provision for liabilities.

17 (a) Powers of board.--The board of directors of a business
18 corporation that has elected to proceed under this section shall
19 have full power to wind up and settle the affairs of [a
20 business] the corporation in accordance with this section prior
21 to filing articles of dissolution in accordance with section
22 1977 (relating to articles of dissolution).

23 (b) Notice to creditors and taxing authorities.--After the
24 approval by the shareholders of the [proposal] resolution
25 recommending that the corporation dissolve voluntarily, the
26 corporation shall immediately cause notice of the winding up
27 proceedings to be officially published and to be mailed by
28 certified or registered mail to each known creditor and claimant
29 and to each municipal corporation in which [its registered
30 office or principal] it has a place of business in this

1 Commonwealth [is located].

2 (c) Winding up and distribution.--The corporation shall, as
3 speedily as possible, proceed to collect all sums due it,
4 convert into cash all corporate assets the conversion of which
5 into cash is required to discharge its liabilities and, out of
6 the assets of the corporation, discharge or make adequate
7 provision for the discharge of all liabilities of the
8 corporation, according to their respective priorities. Any
9 surplus remaining after paying or providing for all liabilities
10 of the corporation shall be distributed to the shareholders
11 according to their respective rights and preferences. See
12 section 1972(a) (relating to proposal of voluntary dissolution).

13 § 1976. Judicial supervision of proceedings.

14 A business corporation that has elected to proceed under
15 section 1975 (relating to predissolution provision for
16 liabilities), at any time during the winding up proceedings, may
17 apply to the court to have the proceedings continued under the
18 supervision of the court and thereafter the proceedings shall
19 continue under the supervision of the court as provided in
20 Subchapter G (relating to involuntary liquidation and
21 dissolution).

22 § 1977. Articles of dissolution.

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

27 (1) all liabilities of the business corporation have
28 been discharged, or adequate provision has been made
29 therefor, in accordance with section 1975 (relating to
30 predissolution provision for liabilities), and all of the

1 remaining assets of the corporation have been distributed as
2 provided in section 1975 (or in case its assets are not
3 sufficient to discharge its liabilities, when all the assets
4 have been fairly and equitably applied, as far as they will
5 go, to the payment of such liabilities); or

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

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

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

11 * * *

12 (5) A statement that:

13 (i) [that] all liabilities of the corporation have
14 been discharged or that adequate provision has been made
15 therefor; [or]

16 (ii) [that] the assets of the corporation are not
17 sufficient to discharge its liabilities, and that all the
18 assets of the corporation have been fairly and equitably
19 applied, as far as they will go, to the payment of such
20 liabilities[. An election by]; or

21 (iii) the corporation has elected to proceed under
22 Subchapter H [shall constitute the making of adequate
23 provision for the liabilities of the corporation,
24 including any judgment or decree that may be obtained
25 against the corporation in any pending action or
26 proceeding].

27 * * *

28 (7) [A] In the case of a corporation that has not
29 elected to proceed under Subchapter H, a statement that no
30 actions or proceedings are pending against the corporation in

1 any court, or that adequate provision has been made for the
2 satisfaction of any judgment or decree that may be obtained
3 against the corporation in each pending action or proceeding.

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

12 * * *

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

16 § 1978. Winding up of corporation after dissolution.

17 * * *

18 (b) Standard of care of directors and officers.--The
19 dissolution of the corporation shall not subject its directors
20 or officers to standards of conduct different from those
21 prescribed by or pursuant to Chapter 17 (relating to officers,
22 directors and shareholders). Directors of a dissolved
23 corporation who have complied with section 1975 (relating to
24 predissolution provision for liabilities) or Subchapter H
25 (relating to postdissolution provision for liabilities) shall
26 not be personally liable to the creditors of the dissolved
27 corporation.

28 § 1979. Survival of remedies and rights after dissolution.

29 (a) General rule.--The dissolution of a business
30 corporation, either under this subchapter or under Subchapter G

1 (relating to involuntary liquidation and dissolution) or by
2 expiration of its period of duration or otherwise, shall not
3 eliminate nor impair any remedy available to or against the
4 corporation or its directors, officers or shareholders for any
5 right or claim existing, or liability incurred, prior to the
6 dissolution, if an action or proceeding thereon is brought on
7 behalf of:

8 (1) the corporation within the time otherwise limited by
9 law; or

10 (2) any other person before or within two years after
11 the date of the dissolution or within the time otherwise
12 limited by this subpart or other provision of law, whichever
13 is less. See sections 1987 (relating to proof of claims),
14 1993 (relating to acceptance or rejection of matured claims)
15 and 1994 (relating to disposition of unmatured claims).

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

18 * * *

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

22 § 1980. Dissolution by domestication.

23 Whenever a domestic business corporation has domesticated
24 itself under the laws of another jurisdiction by action similar
25 to that provided by section 4161 (relating to domestication) and
26 has authorized that action by the vote required by this
27 subchapter for the approval of a proposal that the corporation
28 dissolve voluntarily, the corporation may surrender its charter
29 under the laws of this Commonwealth by filing in the Department
30 of State articles of dissolution under this subchapter

1 containing the statement specified by section [1977(a)(1)]
2 1977(b)(1) through (4) (relating to [preparation of articles].]
3 articles of dissolution). If the corporation as domesticated in
4 the other jurisdiction qualifies to do business in this
5 Commonwealth either prior to or simultaneously with the filing
6 of the articles of dissolution under this section, the
7 corporation shall not be required to file with the articles of
8 dissolution the tax clearance certificates that would otherwise
9 be required by section 139 (relating to tax clearance of certain
10 fundamental transactions).

11 § 1989. Articles of involuntary dissolution.

12 (a) General rule.--In a proceeding under this subchapter,
13 the court shall enter an order dissolving the business
14 corporation when the costs and expenses of the proceeding and
15 all liabilities of the corporation have been discharged, and all
16 of its remaining assets have been distributed to its
17 shareholders or, in case its assets are not sufficient to
18 discharge such costs, expenses and liabilities, when all the
19 assets have been applied, as far as they will go, to the payment
20 of such costs, expenses and liabilities. See section 139(b)
21 (relating to tax clearance in judicial proceedings).

22 (b) Filing.--After entry of an order of dissolution, the
23 office of the clerk of the court of common pleas shall prepare
24 and execute articles of dissolution substantially in the form
25 provided by section 1977 (relating to articles of dissolution),
26 attach thereto a certified copy of the order and transmit the
27 articles and attached order to the Department of State. [A
28 certificate or statement provided for by section 139 (relating
29 to tax clearance of certain fundamental transactions) shall not
30 be required, and the] The department shall not charge a fee in

1 connection with the filing of articles of dissolution under this
2 section. See [section] sections 134 (relating to docketing
3 statement) and 135 (relating to requirements to be met by filed
4 documents).

5 * * *

6 § 1991.1. Authority of board of directors.

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

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

19 § 1992. Notice to claimants.

20 * * *

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

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

28 (2) Concurrently with or preceding the publication, the
29 corporation or successor entity shall send a copy of the
30 notice by certified or registered mail, return receipt

requested, to each:

(i) known creditor or claimant;

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

and

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

* * *

§ 1997. Payments and distributions.

* * *

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

* * *

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

§ 2902. Definitions and index of definitions.

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

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

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

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

1 otherwise expressly provided by law, the definition specified in
2 this paragraph shall be applicable to this chapter only and
3 shall not affect the interpretation of any other statute or any
4 local zoning ordinance or other official document heretofore or
5 hereafter enacted or promulgated.

6 "Professional services." Any type of services that may be
7 rendered by the member of any profession within the purview of
8 his profession.]

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

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

12 "Profession." Section 102.

13 "Professional services." Section 102.

14 § 2904. Election of an existing business corporation to become
15 a professional corporation.

16 * * *

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

29 § 2922. Stated purposes.

30 * * *

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

§ 2923. Issuance and retention of shares.

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

(b) Ownership by estate.--Unless a lesser period of time is provided in a bylaw [of the corporation] adopted by the shareholders or in a written agreement among the shareholders of the corporation, the estate of a deceased shareholder may continue to hold shares of the professional corporation for a reasonable period of administration of the estate, but the personal representative of the estate shall not by reason of the retention of shares be authorized to participate in any decisions concerning the rendering of professional service.

1 * * *

2 § 3133. Notice of meetings of members of mutual insurance
3 companies.

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

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

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

19 * * *

20 § 4123. Requirements for foreign corporation names.

21 * * *

22 (b) Exceptions.--

23 (1) The provisions of section 1303(b) (relating to
24 duplicate use of names) shall not prevent the issuance of a
25 certificate of authority to a foreign business corporation
26 setting forth a name that is [confusingly similar to] not
27 distinguishable upon the records of the department from the
28 name of any other domestic or foreign corporation for profit
29 or corporation not-for-profit, [or of any domestic or foreign
30 limited partnership that has filed a certificate or qualified

1 under Chapter 85 (relating to limited partnerships) or
2 corresponding provisions of prior law,] or of any corporation
3 or other association then registered under 54 Pa.C.S. Ch. 5
4 (relating to corporate and other association names) or to any
5 name reserved or registered as provided in this part, if the
6 foreign business corporation applying for a certificate of
7 authority files in the department [one of the following:

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

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

22 * * *

23 § 4126. Amended certificate of authority.

24 (a) General rule.--After receiving a certificate of
25 authority, a qualified foreign business corporation may, subject
26 to the provisions of this subchapter, change [the name under
27 which it is authorized to transact business in this
28 Commonwealth] or correct any of the information set forth in its
29 application for a certificate of authority or previous filings
30 under this section by filing in the Department of State an

1 application for an amended certificate of authority. The
2 application shall be executed by the corporation and shall
3 state:

4 (1) The name under which the applicant corporation
5 currently holds a certificate of authority to do business in
6 this Commonwealth.

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

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

12 (4)] (2) Subject to section 109 (relating to name of
13 commercial registered office provider in lieu of registered
14 address), the address, including street and number, if any,
15 of its registered office in this Commonwealth[, which may
16 constitute a change in the address of its registered office.

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

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

19 (4) If the application reflects a change in the name of
20 the corporation, the application shall include a statement
21 that either:

22 (i) the change of name reflects a change effected in
23 the jurisdiction of incorporation; or

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

26 (b) Issuance of amended certificate of authority.--Upon the
27 filing of the application, the applicant corporation shall be
28 deemed to hold an amended certificate of authority.

29 (c) Cross reference.--See section 134 (relating to docketing
30 statement).

1 § 4146. Provisions applicable to all foreign corporations.

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

6 Section 1503 (relating to defense of ultra vires), as to
7 contracts and conveyances [made in] governed by the laws of
8 this Commonwealth and conveyances affecting real property
9 situated in this Commonwealth.

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

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

19 * * *

20 § 4161. Domestication.

21 * * *

22 (b) Articles of domestication.--The articles of
23 domestication shall be executed by the corporation and shall set
24 forth in the English language:

25 (1) The name of the corporation. If the name is in a
26 foreign language, it shall be set forth in Roman letters or
27 characters or Arabic or Roman numerals. If the name is one
28 that is rendered unavailable by any provision of section
29 1303(b) or (c) (relating to corporate name), the corporation
30 shall adopt, in accordance with any procedures for changing

1 the name of the corporation that are applicable prior to the
2 domestication of the corporation, and shall set forth in the
3 articles of domestication an available name.

4 * * *

5 (c) Cross [reference] references.--See [section] sections
6 134 (relating to docketing statement) and 135 (relating to
7 requirements to be met by filed documents).

8 § 4162. Effect of domestication.

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

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

29 (2) the liability of the corporation for its debts,
30 obligations, penalties and public accounts due the

1 Commonwealth;

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

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

7 (b) Reclassification of shares.--The shares of the
8 domesticated corporation shall be unaffected by the
9 domestication except to the extent, if any, reclassified in the
10 articles of domestication.

11 § 5303. Corporate name.

12 * * *

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

16 (1) The name of any other domestic corporation for
17 profit or not-for-profit which is either in existence or for
18 which articles of incorporation have been filed but have not
19 yet become effective, or of any foreign corporation for
20 profit or not-for-profit which is either authorized to do
21 business in this Commonwealth or for which an application for
22 a certificate of authority has been filed but which has not
23 yet become effective, [or of any domestic or foreign limited
24 partnership that has filed in the Department of State a
25 certificate or qualified under Chapter 85 (relating to
26 limited partnerships) or under corresponding provisions of
27 prior law,] or the name of any association registered at any
28 time under 54 Pa.C.S. Ch. 5 (relating to corporate and other
29 association names), unless[:

30 (i) where the name is the same or confusingly

1 similar,] the other association:

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

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

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

27 [(D)] (iv) has had the registration of its name
28 under 54 Pa.C.S. Ch. 5 terminated and, if the
29 termination was effected by operation of 54 Pa.C.S. §
30 504 (relating to effect of failure to make decennial

1 filings), the application for the use of the name is
2 accompanied by a verified statement stating that at
3 least 30 days' written notice of intention to
4 appropriate the name was given to the delinquent
5 association at its [registered office] last known
6 place of business and that, after diligent search by
7 the affiant, the affiant believes the association to
8 be out of existence_[]; or

9 (ii) where the name is confusingly similar, the
10 consent of the other association to the adoption of the
11 name is filed in the Department of State.

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

14 * * *

15 (C) REQUIRED APPROVALS OR CONDITIONS.--

<—

16 * * *

17 (2) THE CORPORATE NAME SHALL NOT CONTAIN:

18 * * *

19 (III) THE WORDS "ENGINEER" OR "ENGINEERING" OR
20 "SURVEYOR" OR "SURVEYING" OR ANY OTHER WORD IMPLYING THAT
21 ANY FORM OF THE PRACTICE OF ENGINEERING OR SURVEYING AS
22 DEFINED IN THE ACT OF MAY 23, 1945 (P.L.913, NO.367),
23 KNOWN AS THE [PROFESSIONAL ENGINEERS] ENGINEER, LAND
24 SURVEYOR AND GEOLOGIST REGISTRATION LAW, IS PROVIDED
25 UNLESS AT LEAST ONE OF THE INCORPORATORS OF A PROPOSED
26 CORPORATION OR THE DIRECTORS OF THE EXISTING CORPORATION
27 HAS BEEN PROPERLY REGISTERED WITH THE STATE REGISTRATION
28 BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND
29 GEOLOGISTS IN THE PRACTICE OF ENGINEERING OR SURVEYING
30 AND THERE IS SUBMITTED TO THE DEPARTMENT A CERTIFICATE

1 FROM THE BOARD TO THAT EFFECT.

2 * * *

3 (e) Remedies for violation of section.--The use of a name in
4 violation of this section shall not vitiate or otherwise affect
5 the corporate existence but any court having jurisdiction may
6 enjoin the corporation from using or continuing to use a name in
7 violation of this section, 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) any person adversely affected. [;
12 may enjoin the corporation from using or continuing to use a
13 name in violation of this section.]

14 (f) Cross references.--See sections 135(e) (relating to
15 distinguishable names) and 5106(b)(2) (relating to limited
16 uniform application of subpart).

17 § 5304. Required name changes by senior corporations.

18 (a) Adoption of new name upon reactivation.--Where a
19 corporate name is made available on the basis that the
20 corporation or [nonprofit unincorporated] other association
21 [which] that formerly registered [such] the name has failed to
22 file with the Department of Revenue [or in the Department of
23 State] a report or a return required by law or where the
24 corporation or [nonprofit unincorporated] other association has
25 filed with the Department of Revenue a certificate of out of
26 existence, [such] the corporation or other association shall
27 cease to have by virtue of its prior registration any right to
28 the use of [such] the name[, and such]. The corporation or other
29 association, upon withdrawal of the certificate of out of
30 existence or upon the removal of its delinquency in the filing

1 of the required reports or returns, shall make inquiry with the
2 Department of State with regard to the availability of its
3 name[,] and, if [such] the name has been made available to
4 another domestic or foreign corporation for profit or not-for-
5 profit or other association by virtue of [the above] these
6 conditions, shall adopt a new name in accordance with law before
7 resuming its activities.

8 (b) Enforcement of undertaking to release name.--If a
9 corporation has used a name [the same as, or deceptively similar
10 to,] that is not distinguishable upon the records of the
11 Department of State from the name of another corporation or
12 [nonprofit unincorporated] other association as permitted by
13 section 5303(b)(1)[(i)] (relating to duplicate use of names) and
14 the other corporation or [nonprofit unincorporated] other
15 association continues to use its name in this Commonwealth and
16 does not change its name, cease to do business, be wound up, or
17 withdraw as it proposed to do in its consent or change its name
18 as required by subsection (a), any court [of competent] having
19 jurisdiction may enjoin the other corporation or other
20 association from continuing to use its name or a name that is
21 not distinguishable therefrom, upon the application of:

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

25 (2) upon the application of any person adversely
26 affected[, may enjoin the other corporation or association
27 from continuing to use its name or a name deceptively similar
28 thereto].

29 § 5311. Filing of statement of summary of record by certain
30 corporations.

1 (a) General rule.--Where any of the [valid] charter
2 documents of a nonprofit corporation are not on file in the
3 Department of State or there is an error in any such document as
4 transferred to the department pursuant to section 140 (relating
5 to custody and management of orphan corporate and business
6 records), and the corporation desires to file any document in
7 the department under any other provision of this [article]
8 subpart or the corporation desires to secure from the department
9 any certificate to the effect that the corporation is a
10 corporation duly incorporated and existing under the laws of
11 this Commonwealth or a certified copy of the articles of the
12 corporation or the corporation desires to correct the text of
13 its charter documents as on file in the department, the
14 corporation shall file in the department a statement of summary
15 of record which shall be executed by the corporation and shall
16 set forth:

17 (1) The name of the corporation and, subject to section
18 109 (relating to name of commercial registered office
19 provides in lieu of registered address), the location,
20 including street and number, if any, of its registered
21 office.

22 (2) The statute by or under which the corporation was
23 incorporated.

24 (3) The name under which, the manner in which and the
25 date on which the corporation was originally incorporated,
26 including the date when and the place where the original
27 articles were recorded.

28 (4) The place or places, including volume and page
29 numbers or their equivalent, where the documents
30 [constituting the currently effective articles are] that are

1 not on file in the department or that require correction in
2 the records of the department were originally filed or
3 recorded, the date or dates of each [such] filing or
4 recording and the correct text of [such currently effective
5 articles] the documents. The information specified in this
6 paragraph may be omitted in a statement of summary of record
7 that is delivered to the department contemporaneously with
8 amended and restated articles of the corporation filed under
9 this subpart.

10 [(5) Each name by which the corporation was known, if
11 any, other than its original name and its current name, and
12 the date or dates on which each change of name of the
13 corporation became effective.

14 A corporation shall be required to make only one filing under
15 this subsection.]

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

25 (c) Cross [reference] references.--See [section] sections
26 134 (relating to docketing statement), 135 (relating to
27 requirements to be met by filed documents) and 5106(b)(2)
28 (relating to uniform application of subpart).

29 § 5503. Defense of ultra vires.

30 (a) General rule.--[No] A limitation upon the business,

1 [purpose or] purposes[,] or powers of a nonprofit corporation,
2 expressed or implied in its articles or bylaws or implied by
3 law, shall not be asserted in order to defend any action at law
4 or in equity between the corporation and a third person, or
5 between a member and a third person, involving any contract to
6 which the corporation is a party or any right of property or any
7 alleged liability of [whatsoever] whatever nature[; but such],
8 but the limitation may be asserted:

9 (1) In an action by a member against the corporation to
10 enjoin the doing of unauthorized acts or the transaction or
11 continuation of unauthorized business. If the unauthorized
12 acts or business sought to be enjoined are being transacted
13 pursuant to any contract to which the corporation is a party,
14 the court may, if all of the parties to the contract are
15 parties to the action[,] and if it deems [such action] the
16 result to be equitable, set aside and enjoin the performance
17 of [such] the contract, and in so doing shall allow to the
18 corporation, or to the other parties to the contract, as the
19 case may be, such compensation as may be [equitable]
20 appropriate for the loss or damage sustained by any of them
21 from the action of the court in setting aside and enjoining
22 the performance of [such] the contract, but anticipated
23 profits to be derived from the performance of the contract
24 shall not be awarded by the court as a loss or damage
25 sustained.

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

30 (3) In a proceeding by the Commonwealth under section

1 503 (relating to actions to revoke corporate franchises)[,]
2 or in a proceeding by the Commonwealth to enjoin the
3 corporation from the doing of unauthorized or unlawful
4 business.

5 (b) Conveyances of property by or to a corporation.--[No] A
6 conveyance or transfer by or to a nonprofit corporation of
7 property, real or personal, of any kind or description, shall
8 not be invalid or fail because in making [such] the conveyance
9 or transfer, or in acquiring the property, real or personal,
10 [the board of directors or other body or any of the officers]
11 any representative of the corporation acting within the scope of
12 the actual or apparent authority given to [them] him by the
13 [board of directors or other body, have] corporation has
14 exceeded any of the purposes or powers of the corporation.

15 (c) [Nonqualified foreign corporations.--The provisions of
16 this section shall extend to contracts and conveyances made by
17 nonqualified foreign corporations in this Commonwealth and to
18 conveyances by nonqualified foreign corporations of real
19 property situated in this Commonwealth.] Cross reference.--See
20 section 6146 (relating to provisions applicable to all foreign
21 corporations).

22 § 5505. Persons bound by bylaws.

23 Except as otherwise provided by section 5713 (relating to
24 personal liability of directors) or any similar provision of
25 law, bylaws of a nonprofit corporation shall operate only as
26 regulations among the members, directors, members of an other
27 body and officers of the corporation, and shall not affect
28 contracts or other dealings with other persons, unless those
29 persons have actual knowledge of the bylaws.

30 § 5506. Form of execution of instruments.

1 (a) General rule.--Any form of execution provided in the
2 articles or bylaws to the contrary notwithstanding, any note,
3 mortgage, evidence of indebtedness, contract[,] or other
4 [instrument in writing] document, or any assignment or
5 endorsement thereof, executed or entered into between any
6 nonprofit corporation and any other person, when signed by one
7 or more officers or agents having actual or apparent authority
8 to sign it, or by the president or vice-president and secretary
9 or assistant secretary or treasurer or assistant treasurer of
10 [such] the corporation, shall be held to have been properly
11 executed for and in behalf of the corporation.

12 (b) Seal unnecessary.--[Except as otherwise required by
13 statute, the] The affixation of the corporate seal shall not be
14 necessary to the valid execution, assignment or endorsement by a
15 corporation of any instrument [in writing] or other document.

16 (c) [Nonqualified foreign corporations.--The provisions of
17 this section shall extend to instruments in writing made or to
18 be performed in this Commonwealth by a nonqualified foreign
19 corporation and to instruments executed by nonqualified foreign
20 corporations affecting real property situated in this
21 Commonwealth.] Cross reference.--See section 6146 (relating to
22 provisions applicable to all foreign corporations).

23 § 5508. Corporate records; inspection by members.

24 (a) Required records.--Every nonprofit corporation shall
25 keep [an original or duplicate record] minutes of the
26 proceedings of the members [and], the directors[,] and [of] any
27 other body [exercising powers or performing duties which under
28 this article may be exercised or performed by such other body,
29 the original or a copy of its bylaws, including all amendments
30 thereto to date, certified by the secretary of the corporation],

1 and [an original or] a [duplicate] membership register, giving
2 the names [of the members, and showing their respective] and
3 addresses of all members and the class and other details of the
4 membership of each. [Every such] The corporation shall also keep
5 appropriate, complete and accurate books or records of account.
6 The records provided for in this subsection shall be kept at
7 [either] any of the following locations:

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

10 (2) the principal place of business wherever
11 situated[.]; or

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

13 (b) Right of inspection by a member.--Every member shall,
14 upon written verified demand [under oath] stating the purpose
15 thereof, have a right to examine, in person or by agent or
16 attorney, during the usual hours for business for any proper
17 purpose, the membership register, books and records of account,
18 and records of the proceedings of the members, directors and
19 [such] any other body, and to make copies or extracts therefrom.
20 A proper purpose shall mean a purpose reasonably related to the
21 interest of [such] the person as a member. In every instance
22 where an attorney or other agent [shall be] is the person who
23 seeks the right [to] of inspection, the demand [under oath]
24 shall be accompanied by a verified power of attorney or [such]
25 other writing [which] that authorizes the attorney or other
26 agent to so act on behalf of the member. The demand [under oath]
27 shall be directed to the corporation:

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

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

1 (3) in care of the person in charge of an actual
2 business office of the corporation.

3 (c) Proceedings for the enforcement of inspection by a
4 member.--If the corporation, or an officer or agent thereof,
5 refuses to permit an inspection sought by a member or attorney
6 or other agent acting for the member pursuant to subsection (b)
7 [of this section] or does not reply to the demand within five
8 business days after the demand has been made, the member may
9 apply to the court for an order to compel [such] the inspection.

10 The court shall determine whether or not the person seeking
11 inspection is entitled to the inspection sought. The court may
12 summarily order the corporation to permit the member to inspect
13 the membership register and the other books and records of the
14 corporation and to make copies or extracts therefrom; or the
15 court may order the corporation to furnish to the member a list
16 of its members as of a specific date on condition that the
17 member first pay to the corporation the reasonable cost of
18 obtaining and furnishing [such] the list and on such other
19 conditions as the court deems appropriate. Where the member
20 seeks to inspect the books and records of the corporation, other
21 than its membership register or list of members, he shall first
22 establish:

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

26 (2) that the inspection he seeks is for a proper
27 purpose.

28 Where the member seeks to inspect the membership register or
29 list of members of the corporation and he has complied with the
30 provisions of this section respecting the form and manner of

1 making demand for inspection of [such] the documents, the burden
2 of proof shall be upon the corporation to establish that the
3 inspection he seeks is for an improper purpose. The court may,
4 in its discretion, prescribe any limitations or conditions with
5 reference to the inspection, or award such other or further
6 relief as the court [may deem] deems just and proper. The court
7 may order books, documents and records, pertinent extracts
8 therefrom, or duly authenticated copies thereof, to be brought
9 [within] into this Commonwealth and kept in this Commonwealth
10 upon such terms and conditions as the order may prescribe.

11 (d) Cross references.--See sections 107 (relating to form of
12 records) and 5512 (relating to informational rights of a
13 director).

14 § 5510. [(Reserved).] Certain specifically authorized debt
15 terms.

16 (a) Interest rates.--A nonprofit corporation shall not plead
17 or set up usury, or the taking of more than the lawful rate of
18 interest, or the taking of any finance, service or default
19 charge in excess of any maximum rate therefor provided or
20 prescribed by law, as a defense to any action or proceeding
21 brought against it to recover damages on, or to enforce payment
22 of, or to enforce any other remedy on, any obligation executed
23 or effected by the corporation.

24 (b) Yield maintenance premiums.--A prepayment premium
25 determined by reference to the approximate spread between the
26 yield at issuance, or at the date of amendment of any of the
27 terms, of an obligation of a corporation and the yield at or
28 about such date of an interest rate index of independent
29 significance and contingent upon a change in the ownership of or
30 memberships in the corporation or a default by or other change

in the condition or prospects of the corporation or any affiliate of the corporation shall be deemed liquidated damages and shall not constitute a penalty.

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

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

"Obligation." Includes an installment sale contract.

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

§ 5512. Informational rights of a director.

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

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

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

(b) Proceedings for the enforcement of inspection by a director.--If the corporation, or an officer or agent thereof, refuses to permit an inspection or obtain or provide information

1 sought by a director or attorney or other agent acting for the
2 director pursuant to subsection (a) or does not reply to the
3 request within two business days after the request has been
4 made, the director may apply to the court for an order to compel
5 the inspection or the obtaining or providing of the information.
6 The court shall summarily order the corporation to permit the
7 requested inspection or to obtain the information unless the
8 corporation establishes that the information to be obtained by
9 the exercise of the right is not reasonably related to the
10 performance of the duties of the director or that the director
11 or the attorney or agent of the director is likely to use the
12 information in a manner that would violate the duty of the
13 director to the corporation. The order of the court may contain
14 provisions protecting the corporation from undue burden or
15 expense and prohibiting the director from using the information
16 in a manner that would violate the duty of the director to the
17 corporation.

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

22 § 5545. Income from corporate activities.

23 (a) General rule.--A nonprofit corporation whose lawful
24 activities involve among other things the charging of fees or
25 prices for its services or products, shall have the right to
26 receive [such] that income and, in so doing, may make [an
27 incidental] a profit. All [such incidental] profits shall be
28 applied to the maintenance and operation of the lawful
29 activities of the corporation, or any of its subordinate units
30 or of any not-for-profit association to which it is subordinate,

1 and [in no case] shall otherwise not be divided or distributed
2 in any manner whatsoever among the members, directors, members
3 of an other body or officers of the corporation. [As used in
4 this section the terms fees or prices do not include rates of
5 contribution, fees or dues levied under an insurance certificate
6 issued by a fraternal benefit society, so long as the
7 distribution of profits arising from said fees or prices is
8 limited to the purposes set forth in this section and section
9 5551 (relating to dividends prohibited; compensation and certain
10 payments authorized).]

11 (b) Cross references.--See sections 5511 (relating to
12 establishment of subordinate units) and 5551(relating to
13 dividends prohibited; compensation and certain payments
14 authorized).

15 § 5546. Purchase, sale[, mortgage] and lease of [real]
16 property.

17 [Except for an industrial development corporation whose
18 articles or bylaws otherwise provide, no purchase of real
19 property shall be made by a nonprofit corporation and no
20 corporation shall sell, mortgage, lease away or otherwise
21 dispose of its real property, unless authorized by the vote of
22 two-thirds of the members in office of the board of directors or
23 other body, except that if there are 21 or more directors or
24 members of such other body, the vote of a majority of the
25 members in office shall be sufficient. No application to or
26 confirmation of any court shall be required and, unless
27 otherwise restricted in the bylaws, no vote or consent of the
28 members shall be required to make effective such action by the
29 board or other body. If the real property is subject to a trust
30 the conveyance away shall be free of trust and the trust shall

1 be impinged upon the proceeds of such conveyance.] Except as
2 otherwise provided in this subpart and unless otherwise provided
3 in the bylaws, no application to or confirmation of any court
4 shall be required for the purchase by or the sale, lease or
5 other disposition of the real or personal property, or any part
6 thereof, of a nonprofit corporation, and, unless otherwise
7 restricted in section 5930 (relating to voluntary transfer of
8 corporate assets) or in the bylaws, no vote or consent of the
9 members shall be required to make effective such action by the
10 board or other body. If the property is subject to a trust, the
11 conveyance away shall be free of trust, and the trust shall be
12 impinged upon the proceeds of the conveyance.

13 § 5547. Authority to take and hold trust property.

14 (a) General rule.--Every nonprofit corporation incorporated
15 for a charitable purpose or purposes may take, receive and hold
16 such real and personal property as may be given, devised to[,]
17 or otherwise vested in [such] the corporation, in trust or
18 otherwise, for the purpose or purposes set forth in its
19 articles.

20 (b) Standard of conduct.--The board of directors or other
21 body of the corporation shall, as trustees of [such] trust
22 property, be held to the same degree of responsibility and
23 accountability as if not incorporated, unless:

24 (1) a less degree or a particular degree of
25 responsibility and accountability is prescribed in the trust
26 instrument, or [unless]

27 (2) the board of directors or such other body remain
28 under the control of the members of the corporation or third
29 persons who retain the right to direct, and do direct, the
30 actions of the board or other body as to the use of the trust

1 property from time to time.

2 [(b)] (c) Nondiversion of certain property.--[Property
3 committed to charitable purposes] Trust property shall not, by
4 any proceeding under Chapter 59 (relating to fundamental
5 changes) or otherwise, be diverted from the objects to which it
6 was donated, granted or devised, unless and until the [board of
7 directors or other body] corporation obtains from the court an
8 order under 20 Pa.C.S. Ch. 61 (relating to estates) specifying
9 the disposition of the property.

10 § 5551. Dividends prohibited; compensation and certain payments
11 authorized.

12 (a) General rule.--[A] Except as provided in section 5545
13 (relating to income from corporate activities), a nonprofit
14 corporation shall not pay dividends or distribute any part of
15 its net income or profits to its members, directors, members of
16 an other body or officers. [Nothing herein contained shall
17 prohibit a fraternal benefit society operating under the
18 insurance laws of Pennsylvania from paying dividends or refunds
19 by whatever name known pursuant to the terms of its insurance
20 contracts.] A contribution by a corporation to a not-for-profit
21 association made on or after February 13, 1973, shall not be
22 deemed a dividend or distribution for purposes of this subpart.

23 (b) Reasonable compensation for services.--A [nonprofit]
24 corporation may pay compensation in a reasonable amount to
25 members, directors, members of an other body or officers for
26 services rendered.

27 (c) Certain payments authorized.--A [nonprofit] corporation
28 may confer monetary or other benefits upon members or nonmembers
29 in conformity with its purposes, may repay capital
30 contributions, and may redeem its [subvention certificates or

1 evidences of indebtedness] subventions or obligations, as
2 authorized by this [article, except when the corporation is
3 currently insolvent or would thereby be made insolvent or
4 rendered unable to carry on its corporate purposes, or when the
5 fair value of the assets of the corporation remaining after such
6 conferring of benefits, payment or redemption would be
7 insufficient to meet its liabilities.] subpart unless, after
8 giving effect thereto, the corporation would be unable to pay
9 its debts as they become due in the usual course of its
10 business. A [nonprofit] corporation may make distributions of
11 cash or property to members upon dissolution or final
12 liquidation as permitted by this article.

13 § 5552. Liabilities of members.

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

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

29 (1) final judgment [shall have] has been rendered
30 against the corporation in favor of the creditor and

1 execution thereon returned unsatisfied[, or the corporation
2 shall have been adjudged bankrupt, or];

3 (2) a case involving the corporation has been brought
4 under 11 U.S.C. Ch. 7 (relating to liquidation) and a
5 distribution has been made and the case closed or a notice of
6 no assets has been issued; or

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

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

17 § 5709. Conduct of members meeting.

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

25 (b) Authority of the presiding officer.--Except as otherwise
26 provided in the bylaws, the presiding officer shall determine
27 the order of business and shall have the authority to establish
28 rules for the conduct of the meeting.

29 (c) Procedural standard.--Any action by the presiding
30 officer in adopting rules for, and in conducting, a meeting

1 shall be fair to the members.

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

8 § 5729. Voting rights of directors.

9 (a) General rule.--Unless otherwise provided in a bylaw
10 adopted by the members, every director of a nonprofit
11 corporation shall be entitled to one vote. Without limiting the
12 generality of the foregoing, a bylaw adopted by the members may
13 provide that a class or other defined group of directors shall
14 have multiple or fractional voting rights, or no right to vote,
15 either generally or under specified circumstances.

16 (b) [Multiple and fractional voting.--The requirement of
17 this article] Application of procedural requirements.--Any
18 requirement of this subpart for the presence of or vote or other
19 action by a specified percentage of directors shall be satisfied
20 by the presence of or vote or other action by directors entitled
21 to cast [such] the specified percentage of the votes [which all]
22 that all voting directors in office are entitled to cast.

23 § 5731. Executive and other committees of the board.

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

26 (1) The board of directors may, by resolution adopted by
27 a majority of the directors in office, establish one or more
28 committees to consist of one or more directors of the
29 corporation.

30 (2) Any [such] committee, to the extent provided in the

1 resolution of the board of directors or in the bylaws, shall
2 have and may exercise all of the powers and authority of the
3 board of directors, except that [no such] a committee shall
4 not have any power or authority as to the following:

5 (i) The submission to members of any action
6 requiring approval of members under this [article]
7 subpart.

8 (ii) The creation or filling of vacancies in the
9 board of directors.

10 (iii) The adoption, amendment or repeal of the
11 bylaws.

12 (iv) The amendment or repeal of any resolution of
13 the board that by its terms is amendable or repealable
14 only by the board.

15 (v) Action on matters committed by the bylaws or a
16 resolution of the board of directors exclusively to
17 another committee of the board.

18 [(2)] (3) The board may designate one or more directors
19 as alternate members of any committee, who may replace any
20 absent or disqualified member at any meeting of the
21 committee. In the absence or disqualification of a member of
22 a committee, the member or members thereof present at any
23 meeting and not disqualified from voting, whether or not he
24 or they constitute a quorum, may unanimously appoint another
25 director to act at the meeting in the place of any [such]
26 absent or disqualified member.

27 (b) Term.--Each committee of the board shall serve at the
28 pleasure of the board.

29 § 5745. Advancing expenses.

30 Expenses (including attorneys' fees) incurred in defending

1 any action or proceeding referred to in this subchapter may be
2 paid by a nonprofit corporation in advance of the final
3 disposition of the action or proceeding upon receipt of an
4 undertaking by or on behalf of the representative to repay the
5 amount if it is ultimately determined that he is not entitled to
6 be indemnified by the corporation as authorized in this
7 subchapter or otherwise. Except as otherwise provided in the
8 bylaws, advancement of expenses shall be authorized by the board
9 of directors. Section 5728 (relating to interested members,
10 directors or officers; quorum) shall not be applicable to the
11 advancement of expenses under this section.

12 § 5748. Application to surviving or new corporations.

13 [For] (a) General rule.--Except as provided in subsection
14 (b), for the purposes of this subchapter, references to "the
15 corporation" include all constituent corporations absorbed in a
16 consolidation, merger or division, as well as the surviving or
17 new corporations surviving or resulting therefrom, so that any
18 person who is or was a representative of the constituent,
19 surviving or new corporation, or is or was serving at the
20 request of the constituent, surviving or new corporation as a
21 representative of another domestic or foreign corporation for
22 profit or not-for-profit, partnership, joint venture, trust or
23 other enterprise, shall stand in the same position under the
24 provisions of this subchapter with respect to the surviving or
25 new corporation as he would if he had served the surviving or
26 new corporation in the same capacity.

27 (b) Divisions.--Notwithstanding subsection (a), the
28 obligations of a dividing corporation to indemnify and advance
29 expenses of its representatives, whether arising under this
30 subchapter or otherwise, may be allocated in a division in the

1 same manner and with the same effect as any other liability of
2 the dividing corporation.

3 § 5758. Voting rights of members.

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

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

22 (c) Cumulative voting.--[The members of a nonprofit
23 corporation shall have the right to cumulate their votes for the
24 election of directors only if and to the extent a bylaw adopted
25 by the members so provides.] If a bylaw adopted by the members
26 so provides, in each election of directors of a nonprofit
27 corporation every member entitled to vote shall have the right
28 to multiply the number of votes to which he may be entitled by
29 the total number of directors to be elected in the same election
30 by the members or the class of members to which he belongs and

1 he may cast the whole number of his votes for one candidate or
2 he may distribute them among any two or more candidates.

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

5 (e) Voting lists.--Upon request of a member, the books or
6 records of membership shall be produced at any regular or
7 special meeting of the corporation. If at any meeting the right
8 of a person to vote is challenged, the presiding officer shall
9 require [such] the books or records to be produced as evidence
10 of the right of the person challenged to vote, and all persons
11 who appear by [such] the books or records to be members entitled
12 to vote may vote. See section 6145 (relating to applicability of
13 certain safeguards to foreign corporations).

14 § 5782. Actions against directors, members of an other body and
15 officers.

16 (a) General rule.--Except as provided in subsection (b), in
17 any action or proceeding brought to enforce a secondary right on
18 the part of one or more members of a nonprofit corporation
19 against any present or former officer, director or member of an
20 other body of the corporation because the corporation refuses to
21 enforce rights that may properly be asserted by it, each
22 plaintiff must aver and it must be made to appear that each
23 plaintiff was a member of the corporation at the time of the
24 transaction of which he complains.

25 (b) Exception.--Any member who, except for the provisions of
26 subsection (a), would be entitled to maintain the action or
27 proceeding and who does not meet such requirements may,
28 nevertheless in the discretion of the court, be allowed to
29 maintain the action or proceeding on preliminary showing to the
30 court, by application and upon such verified statements and

1 depositions as may be required by the court, that there is a
2 strong prima facie case in favor of the claim asserted on behalf
3 of the corporation and that without the action serious injustice
4 will result.

5 (c) Security for costs.--In any action or proceeding
6 instituted or maintained by less than the smaller of 50 members
7 of any class or 5% of the members of any class of the
8 corporation, the corporation in whose right the action or
9 proceeding is brought shall be entitled at any stage of the
10 proceedings to require the plaintiffs to give security for the
11 reasonable expenses, including attorney fees, that may be
12 incurred by it in connection therewith or for which it may
13 become liable pursuant to section 5743 (relating to mandatory
14 indemnification), but only insofar as relates to actions by or
15 in the right of the corporation, to which security the
16 corporation shall have recourse in such amount as the court
17 determines upon the termination of the action or proceeding. The
18 amount of security may, from time to time, be increased or
19 decreased in the discretion of the court upon showing that the
20 security provided has or may become inadequate or excessive. The
21 security may be denied or limited in the discretion of the court
22 upon preliminary showing to the court, by application and upon
23 such verified statements and depositions as may be required by
24 the court, establishing prima facie that the requirement of full
25 or partial security would impose undue hardship on plaintiffs
26 and serious injustice would result.

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

29 § 5903. Bankruptcy or insolvency proceedings.

30 (a) General rule.--[Whenever] Unless otherwise provided in

1 the bylaws, whenever a nonprofit corporation is insolvent or in
2 financial difficulty, the board of directors may, by resolution
3 and without the consent of the members, authorize and designate
4 the officers of the corporation to execute a deed of assignment
5 for the benefit of creditors, or file a voluntary petition in
6 bankruptcy, or file an answer consenting to the appointment of a
7 receiver upon a complaint in the nature of an equity action
8 filed by creditors or members, or, if insolvent, file an answer
9 to an involuntary petition in bankruptcy admitting the
10 insolvency of the corporation and its willingness to be adjudged
11 a debtor on that ground.

12 (b) Bankruptcy proceedings.--[A] If authorized pursuant to
13 subsection (a), a nonprofit corporation may participate in
14 proceedings under and in the manner provided by Title 11 of the
15 United States Code (relating to bankruptcy) notwithstanding any
16 contrary provision of its articles or bylaws or this subpart,
17 other than [section] sections 103 (relating to subordination of
18 title to regulatory laws) and 5107 (relating to subordination of
19 subpart to canon law). The corporation shall have full power and
20 authority to put into effect and carry out a plan of
21 reorganization or arrangement and the decrees and orders of the
22 court, or judge or referee relative thereto, and may take any
23 proceeding and do any act provided in the plan or arrangement or
24 directed by such decrees and orders, without further action by
25 its directors or members. Such power and authority may be
26 exercised, and such proceedings and acts may be taken, as may be
27 directed by such decrees or orders, by the trustees or receivers
28 of the corporation appointed in the bankruptcy proceedings, or a
29 majority thereof, or, if none be appointed and acting, by
30 designated officers of the corporation, or by a master or other

1 representative appointed by the court or judge or referee, with
2 the effect as if exercised and taken by unanimous action of the
3 directors and members of the corporation. Without limiting the
4 generality or effect of the foregoing, the corporation may:

5 * * *

6 § 5912. Proposal of amendments.

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

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

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

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

19 [The] (b) Submission to members.--Except where the approval
20 of the members is unnecessary under this subchapter, the board
21 of directors or other body [or the petitioning members] shall
22 direct that the proposed amendment be submitted to a vote of the
23 members entitled to vote thereon at a regular or special meeting
24 of the members.

25 [(b)] (c) Form of amendment.--[The resolution or petition
26 shall contain the language of the proposed amendment to the
27 articles by providing that the articles shall be amended so as
28 to read as therein set forth in full, or that any provision
29 thereof be amended so as to read as therein set forth in full,
30 or that the matter stated in the resolution or petition be added

1 to or stricken from the articles. The resolution or petition may
2 set forth the manner and basis of reclassifying the shares of
3 the corporation.] The resolution or petition shall contain the
4 language of the proposed amendment of the articles:

5 (1) by setting forth the existing text of the articles
6 or the provision thereof that is proposed to be amended, with
7 brackets around language that is to be deleted and
8 underscoring under language that is to be added; or

9 (2) by providing that the articles shall be amended so
10 as to read as therein set forth in full, or that any
11 provision thereof be amended so as to read as therein set
12 forth in full, or that the matter stated in the resolution or
13 petition be added to or stricken from the articles.

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

24 § 5922. Plan of merger or consolidation.

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

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

29 [(2) The mode of carrying the merger or consolidation
30 into effect.

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

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

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

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

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

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

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

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

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

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

1 consolidation;

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

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

10 [The] (d) Submission to members.--Except where the
11 corporation has no members entitled to vote thereon, the board
12 of directors or other body [or the petitioning members] shall
13 direct that the plan be submitted to a vote of the members
14 entitled to vote thereon at a regular or special meeting of the
15 members.

16 (e) Party to plan or transaction.--A corporation,
17 partnership, business trust or other association that approves a
18 plan in its capacity as a member or creditor of a merging or
19 consolidating corporation, or that furnishes all or a part of
20 the consideration contemplated by a plan, does not thereby
21 become a party to the plan or the merger or consolidation for
22 the purposes of this subchapter.

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

30 § 5923. Notice of meeting of members.

1 (a) General rule.--Written notice of the meeting of members
2 that will act on the proposed plan shall[, not less than ten
3 days before the meeting of members called for the purpose of
4 considering the proposed plan,] be given to each member of
5 record, whether or not entitled to vote thereon, of each
6 domestic nonprofit corporation that is a party to the merger or
7 consolidation. There shall be included in, or enclosed with,
8 [such] the notice a copy of the proposed plan or a summary
9 thereof. The notice shall state that a copy of the bylaws of the
10 surviving or new corporation will be furnished to any member on
11 request and without cost.

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

14 § 5929. Effect of merger or consolidation.

15 (a) Single surviving or new corporation.--Upon the merger or
16 consolidation becoming effective, the several corporations
17 parties to the [plan of] merger or consolidation shall be a
18 single corporation which, in the case of a merger, shall be
19 [that] the corporation designated in the plan of merger as the
20 surviving corporation[, and, in the case of a consolidation,21 shall be the new corporation provided for in the plan of
22 consolidation. The separate existence of all corporations
23 parties to the [plan of] merger or consolidation shall cease,
24 except that of the surviving corporation, in the case of a
25 merger. The surviving or new corporation, as the case may be, if
26 it is a domestic nonprofit corporation, shall not thereby
27 acquire authority to engage in any business or exercise any
28 right [which] that a corporation may not be incorporated under
29 this [article] subpart to engage in or exercise.

30 (b) Property rights.--Except as otherwise provided by order,

1 if any, obtained pursuant to section [5547(b)] 5547(c) (relating
2 to nondiversion of certain property), all the property, real,
3 personal[,] and mixed, and franchises of each of the
4 corporations parties to the [plan of] merger or consolidation,
5 and all debts due on whatever account to any of them, including
6 subscriptions for membership and other choses in action
7 belonging to any of them, shall be [taken and] deemed to be
8 [transferred to and] vested in and shall belong to the surviving
9 or new corporation, as the case may be, without further [act or
10 deed] action, and the title to any real estate, or any interest
11 therein, vested in any of the corporations shall not revert or
12 be in any way impaired by reason of the merger or consolidation.
13 The surviving or new corporation shall thenceforth be
14 responsible for all the liabilities [and obligations] of each of
15 the corporations so merged or consolidated. [No liens] Liens
16 upon the property of the merging or consolidating corporations
17 shall not be impaired by [such] the merger or consolidation, and
18 any claim existing or action or proceeding pending by or against
19 any of [such] the corporations may be prosecuted to judgment as
20 if [such] the merger or consolidation had not taken place, or
21 the surviving or new corporation may be proceeded against or
22 substituted in its place. Any devise, gift or grant contained in
23 any will or other instrument, in trust or otherwise, made before
24 or after such merger or consolidation, to or for any of the
25 constituent corporations, shall inure to the surviving or new
26 corporation, as the case may be, subject to compliance with the
27 requirements of section 5550 (relating to devises, bequests and
28 gifts after certain fundamental changes).

29 (c) Taxes.--Any taxes, penalties and public accounts of the
30 Commonwealth, claimed against any of the merging or

1 consolidating corporations, but not settled, assessed or
2 determined prior to [such] the merger or consolidation, shall be
3 settled, assessed or determined against the surviving or new
4 corporation[,] and, together with interest thereon, shall be a
5 lien against the franchises and property, both real and
6 personal, of the surviving or new corporation.

7 (d) Articles of incorporation.--In the case of a merger, the
8 articles of incorporation of the surviving domestic nonprofit
9 corporation, if any, shall be deemed to be amended to the
10 extent, if any, that changes in its articles are stated in the
11 plan of merger[; and in]. In the case of a consolidation into a
12 domestic nonprofit corporation, the statements [which] that are
13 set forth in the plan of consolidation, or articles of
14 incorporation set forth therein, shall be deemed to be the
15 articles of incorporation of the new corporation.

16 § 5952. Proposal and adoption of plan of division.

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

19 (1) The terms and conditions of the division, including
20 the manner and basis of:

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

24 (ii) [the] The disposition of the membership
25 interests or shares [and] or obligations, if any, of the
26 new corporation or corporations resulting from the
27 division.

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

29 (3)] (2) A statement that the dividing nonprofit
30 corporation will, or will not, survive the division.

1 [(4)] (3) Any changes desired to be made in the articles
2 of the surviving corporation, if there be one, including a
3 restatement of the articles.

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

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

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

10 (1) Articles of incorporation, which shall contain all
11 of the statements required by this [article] subpart to be
12 set forth in restated articles, for each of the new domestic
13 nonprofit corporations, if any, resulting from the division.

14 (2) Articles of incorporation, certificates of
15 incorporation[,] or other charter documents for each of the
16 new foreign nonprofit corporations [not-for-profit], if any,
17 resulting from the division.

18 (c) Proposal and adoption.--[The] Except as otherwise
19 provided in section 5953 (relating to division without member
20 approval), the plan of division shall be proposed and adopted,
21 and may be amended after its adoption and terminated, by a
22 domestic nonprofit corporation in the manner provided for the
23 proposal, adoption, amendment and termination of a plan of
24 merger in Subchapter C (relating to merger, consolidation and
25 sale of assets) or, if the dividing corporation is a foreign
26 nonprofit corporation [not-for-profit], in accordance with the
27 laws of the jurisdiction in which it is incorporated[.] and, in
28 the case of a foreign domiciliary corporation, the provisions of
29 this subpart to the extent provided by section 6145 (relating to
30 applicability of certain safeguards to foreign corporations).

1 There shall be included in or enclosed with the notice of the
2 meeting of members that will act on the plan a copy or summary
3 of the plan.

4 (d) Special requirements.--If any provision of the bylaws of
5 a dividing domestic nonprofit corporation adopted before January
6 1, 1972 shall require for the adoption of a plan of merger or
7 consolidation or a plan involving the sale, lease or exchange of
8 all or substantially all of the property and assets of the
9 corporation a specific number or percentage of votes of
10 directors, members, or members of an other body or other special
11 procedures, the plan of division shall not be adopted without
12 such number or percentage of votes or compliance with such other
13 special procedures.

14 (e) Financial status of resulting corporations.--Unless the
15 plan of division provides that the dividing corporation shall
16 survive the division and that all membership interests or shares
17 or obligations, if any, of all new corporations resulting from
18 the plan shall be owned solely by the surviving corporation, no
19 plan of division may be made effective at a time when the
20 dividing corporation is insolvent or when the division would
21 render any of the resulting corporations insolvent.

22 (f) Rights of holders of indebtedness.--If any debt
23 securities, notes or similar evidences of indebtedness for money
24 borrowed, whether secured or unsecured, indentures or other
25 contracts were issued, incurred or executed by the dividing
26 corporation before January 1, 1972, and have not been amended
27 subsequent to that date, the liability of the dividing
28 corporation thereunder shall not be affected by the division nor
29 shall the rights of the obligees thereunder be impaired by the
30 division, and each of the resulting corporations may be

1 proceeded against or substituted in place of the dividing
2 corporation as joint and several obligors on such liability,
3 regardless of any provision of the plan of division apportioning
4 the liabilities of the dividing corporation.

5 (g) Reference to outside facts.--Any of the terms of a plan
6 of division may be made dependent upon facts ascertainable
7 outside of the plan if the manner in which the facts will
8 operate upon the terms of the plan is set forth in the plan.
9 Such facts may include, without limitation, actions or events
10 within the control of or determinations made by the dividing
11 corporation or a representative of the dividing corporation.

12 § 5953. [(Reserved).] Division without member approval.

13 Unless otherwise required by its bylaws or by section 5952
14 (relating to proposal and adoption of plan of division), a plan
15 of division that does not alter the state of incorporation of a
16 nonprofit corporation nor amend in any respect the provisions of
17 its articles, except amendments that under section 5914(b)
18 (relating to adoption in absence of voting members) may be made
19 without member action, shall not require the approval of the
20 members of the corporation if the transfers of assets effected
21 by the division, if effected by means of a sale, lease, exchange
22 or other disposition, would not require the approval of members
23 under section 5930 (relating to voluntary transfer of corporate
24 assets).

25 § 5957. Effect of division.

26 (a) Multiple resulting corporations.--Upon the division
27 becoming effective, the dividing corporation shall be subdivided
28 into the distinct and independent resulting corporations named
29 in the plan of division and, if the dividing corporation is not
30 to survive the division, the existence of the dividing

1 corporation shall cease. The resulting corporations, if they are
2 domestic nonprofit corporations, shall not thereby acquire
3 authority to engage in any business or exercise any right
4 [which] that a corporation may not be incorporated under this
5 [article] subpart to engage in or exercise. Any resulting
6 foreign nonprofit corporation [which] that is stated in the
7 articles of division to be a qualified foreign nonprofit
8 corporation shall be a qualified foreign nonprofit corporation
9 under [this subpart] Article C (relating to foreign nonprofit
10 corporations), and the articles of division shall be deemed to
11 be the application for a certificate of authority and the
12 certificate of authority issued thereon of [such] the
13 corporation.

14 (b) Property rights; allocations of assets and
15 liabilities.--

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

19 (i) All the property, real, personal[,] and mixed,
20 and franchises of the dividing corporation, and all debts
21 due on whatever account to it, including subscriptions
22 for membership and other choses in action belonging to
23 it, shall, to the extent allocations of assets are
24 contemplated by the plan of division, be [taken and]
25 deemed without further [act or deed] action to be
26 [transferred] allocated to and vested in the resulting
27 corporations on such a manner and basis and with such
28 effect as is specified in the plan [of division], or per
29 capita among the resulting corporations, as tenants in
30 common, if no [such] specification is made in the plan[.

1 Therein, and the title to any real estate, or interest
2 therein, vested in any of the corporations shall not
3 revert or be in any way impaired by reason of the
4 division.

5 (ii) Upon the division becoming effective, the
6 resulting corporations shall each thenceforth be
7 responsible as separate and distinct corporations only
8 for such liabilities [and obligations] as each
9 corporation may undertake or incur in its own name, but
10 shall be liable [inter se] for the [debts and]
11 liabilities of the dividing corporation in the manner and
12 on the basis [specified in the plan of division. No
13 liens] provided in paragraphs (4) and (5).

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

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

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

1 Otherwise, the liability]

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

5 (v) If the conditions in subparagraph (iv) for
6 freeing one or more of the resulting corporations from
7 the liabilities of the dividing corporation, or for
8 allocating some or all of the liabilities of the dividing
9 corporation, are not satisfied, the liabilities of the
10 dividing corporation[, or of its members, directors, or
11 officers,] as to which those conditions are not satisfied
12 shall not be affected by the division[,] nor shall the
13 rights of [the] creditors [thereof or of any person
14 dealing with such corporation] thereunder be impaired by
15 [such] the division[,] and[, except as otherwise provided
16 in this section,] any claim existing or action or
17 proceeding pending by or against [such] the corporation
18 with respect to those liabilities may be prosecuted to
19 judgment as if [such] the division had not taken place,
20 or the resulting corporations may be proceeded against or
21 substituted in [its] place of the dividing corporation as
22 joint and several obligors on [such liability] those
23 liabilities, regardless of any provision of the plan of
24 division apportioning the [debts and] liabilities of the
25 dividing corporation.

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

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

7 (c) Taxes.--Any taxes, penalties and public accounts of the
8 Commonwealth, claimed against the dividing corporation, but not
9 settled, assessed or determined prior to [such] the division,
10 shall be settled, assessed or determined against any of the
11 resulting corporations[, and, together with interest thereon,12 shall be a lien against the franchises and property, both real
13 and personal, of all [such] the corporations. [The] Upon the
14 application of the dividing corporation, the Department of
15 Revenue [may, upon the application of the dividing corporation],
16 with the concurrence of the Office of Employment Security of the
17 Department of Labor and Industry, shall release one or more, but
18 less than all, of the resulting corporations from liability and
19 liens for all taxes, penalties and public accounts of the
20 dividing corporation due the Commonwealth [or any other taxing
21 authority] for periods prior to the effective date of the
22 division, if [the Department of Revenue is] those departments
23 are satisfied that the public revenues will be adequately
24 secured.

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

29 (e) Articles of new corporations.--The statements [which]
30 that are set forth in the plan of division with respect to each

1 new domestic nonprofit corporation and [which] that are required
2 or permitted to be set forth in restated articles of
3 incorporation of corporations incorporated under this [article]
4 subpart, or the articles of incorporation of each new
5 corporation set forth therein, shall be deemed to be the
6 articles of incorporation of each [such] new corporation.

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

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

15 (1) the surviving corporation, if the dividing
16 corporation survives the division; or

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

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 § 5961. Conversion authorized.

10 (a) General rule.--Any nonprofit corporation may, in the
11 manner provided in this subchapter, be converted into a business
12 corporation, [hereinafter] designated in this subchapter as the
13 resulting corporation.

14 (b) Exceptions.--

15 (1) This subchapter shall not authorize any conversion
16 involving:

17 [(i) A cooperative corporation.

18 (ii)] (i) Beneficial, benevolent, fraternal or
19 fraternal benefit societies having a lodge system and a
20 representative form of government, or transacting any
21 type of insurance whatsoever.

22 [(iii)] (ii) Any corporation [which] that by the
23 laws of this Commonwealth is subject to the supervision
24 of the Department of Banking, the Insurance Department or
25 the Pennsylvania Public Utility Commission, unless the
26 agency expressly approves the transaction in writing.

27 (2) [Paragraph (1) of this subsection] Subsection (a)
28 shall not be construed as repealing any statute [which] that
29 provides a procedure for the conversion of a nonprofit
30 corporation into an insurance corporation.

1 § 5962. Proposal and adoption of plan of conversion.

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

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

5 [(2) The mode of carrying the conversion into effect.

6 (3)] (2) A restatement of the articles of the resulting
7 corporation, which articles shall comply with the
8 requirements of [Subpart B of Part II (relating to business
9 corporations)] this part relating to business corporations.

10 [(4)] (3) Such other [details and] provisions as are
11 deemed desirable.

12 (b) Proposal and adoption.--The plan of conversion shall be
13 proposed and adopted, and may be amended after its adoption and
14 terminated, by the nonprofit corporation in the manner provided
15 for the proposal, adoption, amendment and termination of a plan
16 of merger in Subchapter C (relating to merger, consolidation and
17 sale of assets). There shall be included in or enclosed with the
18 notice of meeting of members of the nonprofit corporation that
19 will act upon the plan a copy or a summary of the plan.

20 (c) Reference to outside facts.--Any of the terms of a plan
21 of conversion may be made dependent upon facts ascertainable
22 outside of the plan if the manner in which the facts will
23 operate upon the terms of the plan is set forth in the plan.
24 Such facts may include, without limitation, actions or events
25 within the control of or determinations made by the corporation
26 or a representative of the corporation.

27 § 5964. Filing of articles of conversion.

28 (a) General rule.--The articles of conversion shall be filed
29 in the Department of State.

30 (b) Cross [reference.--See section] references.--See

1 sections 134 (relating to docketing statement) and 135 (relating
2 to requirements to be met by filed documents).

3 § 5965. Effective date of conversion.

4 Upon the filing of articles of conversion in the Department
5 of State[,] or upon the effective date specified in the plan of
6 conversion, whichever is later, the conversion shall become
7 effective.

8 § 5966. Effect of conversion.

9 Upon the conversion becoming effective, the converting
10 nonprofit corporation shall be deemed to be a business
11 corporation subject to the provisions of this part relating to
12 business corporations for all purposes, shall cease to be a
13 nonprofit corporation[,] and may thereafter operate for a
14 purpose or purposes resulting in pecuniary profit, incidental or
15 otherwise, to its members or shareholders. [The] Unless the
16 shares of the corporation are to be uncertificated, the
17 corporation shall issue share certificates to each shareholder
18 entitled thereto. The corporation shall remain liable for all
19 existing obligations, public [and] or private, and taxes due the
20 Commonwealth or any other taxing authority for periods prior to
21 the effective date of the conversion, and, as [such] a business
22 corporation, it shall continue to be entitled to all assets
23 theretofore pertaining to it as a nonprofit corporation except
24 as otherwise provided by order, if any, obtained pursuant to
25 section 5547(b) (relating to nondiversion of certain property).

26 § 5975. Predissolution provision for liabilities.

27 (a) Powers of board.--The board of directors or other body
28 of a nonprofit corporation that has elected to proceed under
29 this section shall have full power to wind up and settle the
30 affairs of [a nonprofit] the corporation in accordance with this

1 section prior to filing articles of dissolution in accordance
2 with section 5977 (relating to articles of dissolution).

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

13 (c) Winding up and distribution.--The corporation shall, as
14 speedily as possible, proceed to collect all sums due it,
15 convert into cash all corporate assets the conversion of which
16 into cash is required to discharge its liabilities and, out of
17 the assets of the corporation, discharge or make adequate
18 provision for the discharge of all liabilities of the
19 corporation, according to their respective priorities. Except as
20 otherwise provided in a bylaw adopted by the members or in this
21 subpart or by any other provision of law, any surplus remaining
22 after paying or providing for all liabilities of the corporation
23 shall be distributed to the shareholders, if any, pro rata, or
24 if there be no shareholders, among the members per capita. See
25 section 1972(a) (relating to proposal of voluntary dissolution).
26 § 5976. Judicial supervision of proceedings.

27 (a) General rule.--A nonprofit corporation that has elected
28 to proceed under section 1975 (relating to predissolution
29 provision for liabilities), at any time during the winding up
30 proceedings, may apply to the court to have the proceedings

1 continued under the supervision of the court and thereafter the
2 proceedings shall continue under the supervision of the court as
3 provided in Subchapter G (relating to involuntary liquidation
4 and dissolution).

5 * * *

6 § 5977. Articles of dissolution.

7 * * *

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

10 * * *

11 (5) A statement that:

12 (i) [that] all liabilities of the corporation have
13 been discharged or that adequate provision has been made
14 therefor; [or]

15 (ii) [that] the assets of the corporation are not
16 sufficient to discharge its liabilities, and that all the
17 assets of the corporation have been fairly and equitably
18 applied, as far as they will go, to the payment of such
19 liabilities[. An election by]; or

20 (iii) the corporation has elected to proceed under
21 Subchapter H [shall constitute the making of adequate
22 provision for the liabilities of the corporation,
23 including any judgment or decree that may be obtained
24 against the corporation in any pending action or
25 proceeding].

26 * * *

27 (7) [A] In the case of a corporation that has not
28 elected to proceed under Subchapter H, a statement that no
29 actions or proceedings are pending against the corporation in
30 any court, or that adequate provision has been made for the

1 satisfaction of any judgment or decree that may be obtained
2 against the corporation in each pending action or proceeding.

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

11 * * *

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

15 § 5989. Articles of involuntary dissolution.

16 (a) General rule.--In a proceeding under this subchapter,
17 the court shall enter an order dissolving the nonprofit
18 corporation when the order, if any, obtained pursuant to section
19 5547(b) (relating to nondiversion of certain property) has been
20 entered and when the costs and expenses of the proceeding, and
21 all liabilities of the corporation have been discharged, and all
22 of its remaining assets have been distributed to the persons
23 entitled thereto, or, in case its assets are not sufficient to
24 discharge such costs, expenses and liabilities, when all the
25 assets have been applied, as far as they will go, to the payment
26 of such costs, expenses and liabilities. See section 139(b)
27 (relating to tax clearance in judicial proceedings).

28 (b) Filing.--After entry of an order of dissolution, the
29 office of the clerk of the court of common pleas shall prepare
30 and execute articles of dissolution substantially in the form

1 provided by section 5977 (relating to articles of dissolution),
2 attach thereto a certified copy of the order and transmit the
3 articles and attached order to the Department of State. [A
4 certificate or statement provided for by section 139 (relating
5 to tax clearance of certain fundamental transactions) shall not
6 be required, and the] The department shall not charge a fee in
7 connection with the filing of articles of dissolution under this
8 section. See [section] sections 134 (relating to docketing
9 statement) and 135 (relating to requirements to be met by filed
10 documents).

11 * * *

12 § 5991.1. Authority of board of directors.

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

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

26 § 6126. Amended certificate of authority.

27 (a) General rule.--After receiving a certificate of
28 authority, a qualified foreign nonprofit corporation may,
29 subject to the provisions of this subchapter, change [the name
30 under 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 6123(b)
28 (relating to exceptions) 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.--See section 134 (relating to docketing
3 statement).

4 § 6146. Provisions applicable to all foreign corporations.

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

9 Section 5503 (relating to defense of ultra vires), as to
10 contracts and conveyances governed by the laws of this
11 Commonwealth and conveyances affecting real property situated
12 in this Commonwealth.

13 Section 5506 (relating to form of execution of
14 instruments), as to instruments or other documents governed
15 by the laws of this Commonwealth or affecting real property
16 situated in this Commonwealth.

17 Section 5510 (relating to certain specifically authorized
18 debt terms), as to obligations (as defined in the section)
19 governed by the laws of this Commonwealth or affecting real
20 property situated in this Commonwealth.

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

24 § 8105. Ownership of certain professional partnerships.

25 Except as otherwise provided by statute, rule or regulation
26 applicable to a particular profession, all of the [partners in]
27 ultimate beneficial owners of the partnership interests in a
28 partnership that renders one or more restricted professional
29 services shall be licensed persons. As used in this section,
30 the term "restricted professional services" shall have the

1 meaning specified in section 8903 (relating to definitions and
2 index of definitions).

3 § 8201. Scope.

4 * * *

5 (e) Prohibited termination.--A registration under this
6 subchapter may not be terminated while the partnership is a
7 bankrupt as that term is defined in section 8903 (relating to
8 definitions and index of definitions). See section 8221(f)
9 (relating to annual registration).

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

20 (g) Constructive notice.--Filing under this section shall
21 constitute constructive notice that the partnership is a
22 registered limited liability partnership and that the partners
23 are entitled to the protections from liability provided by this
24 subchapter.

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

28 § 8202. Definitions.

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

1 context clearly indicates otherwise:

2 * * *

3 "Partner." Includes a person who is or was a partner in a
4 registered limited liability partnership at any time while the
5 registration of the partnership under this subchapter is or was
6 in effect.

7 * * *

8 § 8204. Limitation on liability of partners.

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

19 (b) Exceptions.--

20 (1) [Subsection (a) shall not apply to any debt or
21 obligation with respect to which the partnership is not in
22 compliance with section 8206(a) (relating to insurance).]
23 (Repealed).

24 * * *

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

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

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

30 (iii) any obligation undertaken by a partner in

1 writing to individually indemnify another partner of the
2 partnership or to individually contribute toward a
3 liability of another partner.

4 * * *

5 § 8205. Liability of withdrawing partner.

6 * * *

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

9 * * *

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

14 * * *

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

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

24 (g) Variation of section.--A written provision of the
25 partnership agreement may restrict or condition the application
26 of this section to some or all of the partners of the
27 partnership.

28 (h) Application of section.--A partner in a foreign
29 registered limited liability partnership, regardless of whether
30 or not it has registered to do business in this Commonwealth

1 under section 8211 (relating to foreign registered limited
2 liability partnerships), shall not be entitled to make a filing
3 under this section with regard to that partnership.

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

7 § 8211. Foreign registered limited liability partnerships.

8 (a) Governing law.--Subject to the Constitution of
9 Pennsylvania:

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

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

17 (b) Registration to do business.--A foreign registered
18 limited liability partnership, regardless of whether or not it
19 is also a foreign limited partnership, shall be subject to
20 Subchapter K of Chapter 85 (relating to foreign limited
21 partnerships) as if it were a foreign limited partnership,
22 except that [the]:

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

25 (2) The name under which [the foreign registered limited
26 liability partnership] it registers and conducts business in
27 this Commonwealth shall comply with the requirements of
28 section 8203 (relating to name).

29 (3) Section 8582(a)(5) and (6) (relating to
30 registration) shall not be applicable to the application for

registration of a foreign limited liability partnership that
is not a foreign limited partnership.

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

§ 8221. Annual registration.

* * *

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

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

(2) If the annual registration fee paid by a registered
limited liability partnership is subsequently determined to
be less than should have been paid because it was based on an

1 incorrect number of general partners or was otherwise
2 incorrectly computed, that fact shall not affect the
3 existence or status of the registered limited liability
4 partnership as such, but the amount of the additional annual
5 registration fee that should have been paid shall be a lien
6 in the manner provided in this subsection from the time the
7 incorrect payment is discovered by the department.

8 (3) The annual registration fee shall bear simple
9 interest from the date that it becomes due and payable until
10 paid. The interest rate shall be that provided for in section
11 806 of the act of April 9, 1929 (P.L.343, No.176), known as
12 The Fiscal Code, with respect to unpaid taxes. The penalty
13 provided for in paragraph (1) shall not bear interest. The
14 payment of interest shall not relieve the registered limited
15 liability partnership from liability for any other penalty or
16 interest provided for under other applicable law.

17 (4) The lien created by this subsection shall attach to
18 all of the property and proceeds thereof of the registered
19 limited liability partnership in which a security interest
20 can be perfected in whole or in part by filing in the
21 department under 13 Pa.C.S. Div. 9 (relating to secured
22 transactions; sales of accounts, contract rights and chattel
23 paper), whether the property and proceeds are owned by the
24 partnership at the time the annual registration fee or any
25 penalty or interest becomes due and payable or whether the
26 property and proceeds are acquired thereafter. Except as
27 otherwise provided by statute, the lien created by this
28 subsection shall have priority over all other liens, security
29 interests or other charges, except liens for taxes or other
30 charges due the Commonwealth. The lien created by this

subsection shall be entered on the records of the department and indexed in the same manner as a financing statement filed under 13 Pa.C.S. Div. 9. At the time an annual registration fee, penalty or interest that has resulted in the creation of a lien under this subsection is paid, the department shall terminate the lien with respect to that annual registration fee, penalty or interest without requiring a separate filing by the partnership for that purpose.

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

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

(f) Exception for bankrupt partnerships.--A partnership that would otherwise be required to pay the annual registration fee set forth in subsection (b) shall not be required to pay that fee with respect to any year during any part of which the partnership is a bankrupt as defined in section 8903 (relating to definitions and index of definitions). The partnership shall, 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 permitted by this chapter restates the certificate in its entirety or if there is a certificate of consolidation, thenceforth the "certificate of limited partnership" shall not include any prior documents and any certificate issued by the department with respect thereto shall so state.

* * *

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

3 (1) the court of common pleas of the judicial district
4 embracing the county where the registered office of the
5 limited partnership is or is to be located; or

6 (2) where a limited partnership results from a merger,
7 consolidation, division or other transaction without
8 establishing a registered office in this Commonwealth or
9 withdraws as a foreign limited partnership, the court of
10 common pleas in which venue would have been laid immediately
11 prior to the transaction or withdrawal.

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

13 * * *

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

17 (1) May provide that a person shall be admitted as a
18 limited partner, or shall become an assignee of a partnership
19 interest or other rights or powers of a limited partner to
20 the extent assigned, and shall become bound by the
21 partnership agreement:

22 (i) if such person (or a representative authorized
23 by such person orally, in writing or by other action such
24 as payment for a partnership interest) executes the
25 partnership agreement or any other writing evidencing the
26 intent of such person to become a limited partner or
27 assignee; or

28 (ii) without such execution, if such person (or a
29 representative authorized by such person orally, in
30 writing or by other action such as payment for a

1 partnership interest) complies with the conditions for
2 becoming a limited partner or assignee as set forth in
3 the partnership agreement or any other writing and
4 requests (orally, in writing or by other action such as
5 payment for a partnership interest) that the records of
6 the limited partnership reflect such admission or
7 assignment.

8 (2) Shall not be unenforceable by reason of its not
9 having been signed by a person being admitted as a limited
10 partner or becoming an assignee as provided in paragraph (1)
11 or by reason of its having been signed by a representative as
12 provided in section 8514(b) (relating to attorney-in-fact).

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

26 * * *

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

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

3 "Act" or "action." Section 102.

4 "Department." Section 102.

5 "Licensed person." Section 102.

6 "Professional services." Section 102.

7 § 8510. Indemnification.

8 * * *

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

17 * * *

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

23 SUBCHAPTER B

24 FORMATION[; CERTIFICATE OF LIMITED PARTNERSHIP]

25 § 8511. Certificate of limited partnership.

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

29 (1) The name of the limited partnership.

30 (2) Subject to section 109 (relating to name of

1 commercial registered office provider in lieu of registered
2 address), the address, including street and number, if any,
3 of its registered office.

4 (3) The name and business address of each general
5 partner.

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

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

22 (b) Effective date of formation.--A limited partnership is
23 formed at the time of the filing of the certificate of limited
24 partnership in the department or at any later time specified in
25 the certificate of limited partnership if, in either case, there
26 has been substantial compliance with the requirements of this
27 section or the corresponding provisions of prior law.

28 (c) [Duties of recorders of deeds.--Each recorder of deeds
29 shall continue to keep open for public inspection the record of
30 limited partnership certificates recorded under the statutes

1 supplied by this chapter and by prior law the custody of which
2 has not been transferred to the department pursuant to section
3 140 (relating to custody and management of orphan corporate and
4 business records).] (Repealed).

5 (d) Transitional provision.--A limited partnership formed
6 under prior law shall not be required to set forth in its
7 certificate of limited partnership a registered office or the
8 business address of each general partner until such time as it
9 first amends its certificate of limited partnership under this
10 chapter.

11 (e) Effect of provisions.--A provision of the certificate of
12 limited partnership shall be deemed to be a provision of the
13 partnership agreement for purposes of any provision of this
14 chapter that refers to a rule as set forth in the partnership
15 agreement.

16 [(e)] (f) Cross references.--See sections 134 (relating to
17 docketing statement), 135 (relating to requirements to be met by
18 filed documents) and 8514 (relating to execution of
19 certificates).

20 § 8517. Notice.

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

23 (1) that the partnership is a limited partnership and
24 that all partners are limited partners except the persons
25 designated therein as general partners[, but it is not notice
26 of any other fact]; and

27 (2) if it is registered under Chapter 82 (relating to
28 registered limited liability partnerships), that it is also a
29 registered limited liability partnership.

30 § 8519. Filing of certificate of summary of record by limited

1 partnerships formed prior to 1976.

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

17 (1) The name of the limited partnership.

18 (2) Subject to section 109 (relating to name of
19 commercial registered office provider in lieu of registered
20 address), the address, including street and number, if any,
21 of its registered office.

22 (3) The statute under which the limited partnership was
23 formed.

24 (4) The name under which, and the date on which, the
25 limited partnership was originally formed, including the date
26 when and the place where the original certificate was
27 recorded.

28 (5) The place or places, including the volume and page
29 numbers or their equivalent, where the documents
30 [constituting the currently effective certificate are] that

1 are not on file in the department or that require correction
2 in the records of the department where originally recorded,
3 the date or dates of each recording and the correct text of
4 the [currently effective certificate] documents. The
5 information specified in this paragraph may be omitted in a
6 certificate of summary of record that is delivered to the
7 department contemporaneously with an amended certificate
8 filed under this chapter that restates the certificate in its
9 entirety.

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

14 (b) Cross references.--See sections 134 (relating to
15 docketing statement), 135 (relating to requirements to be met by
16 filed documents) and 8514 (relating to execution of
17 certificates).

18 § 8520. Partnership agreement.

19 (a) Admission of limited partners.--A partnership agreement
20 may provide in writing that a person shall be admitted as a
21 limited partner, or shall become an assignee of a partnership
22 interest or other rights or powers of a limited partner to the
23 extent assigned, and shall become bound by the partnership
24 agreement:

25 (1) if such person (or a representative authorized by
26 such person orally, in writing or by other action such as
27 payment for a partnership interest) executes the partnership
28 agreement or any other writing evidencing the intent of such
29 person to become a limited partner or assignee; or

30 (2) without such execution, if such person (or a

1 representative authorized by such person orally, in writing
2 or by other action such as payment for a partnership
3 interest) complies with the conditions for becoming a limited
4 partner or assignee as set forth in the partnership agreement
5 or any other writing and requests (orally, in writing or by
6 other action such as payment for a partnership interest) that
7 the records of the limited partnership reflect such admission
8 or assignment.

9 (b) Signature by limited partners.--A written partnership
10 agreement shall not be unenforceable by reason of its not having
11 been signed by a person being admitted as a limited partner or
12 becoming an assignee as provided in subsection (a) or by reason
13 of its having been signed by a representative as provided in
14 section 8514(b) (relating to attorney-in-fact).

15 (c) Voting requirements.--A partnership agreement may
16 provide in writing that, whenever a provision of this chapter
17 requires the vote or consent of a specified number or percentage
18 of partners or of a class of partners for the taking of any
19 action, a higher number or percentage of votes or consents shall
20 be required for the action. Except as otherwise provided in the
21 partnership agreement, whenever the partnership agreement
22 requires for the taking of any action by the partners or a class
23 of partners a specific number or percentage of votes or
24 consents, the provision of the partnership agreement setting
25 forth that requirement shall not be amended or repealed by any
26 lesser number or percentage of votes or consents of the partners
27 or the class of partners.

28 (d) Freedom of contract.--A written partnership agreement
29 may contain any provision for the regulation of the internal
30 affairs of the limited partnership agreed to by the partners,

1 whether or not specifically authorized by or in contravention of
2 this chapter, except where this chapter:

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

5 (2) expressly provides that the partnership agreement
6 shall not relax or contravene any provision on a specified
7 subject.

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

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

14 § 8523. Liability of limited partners to third parties.

15 (a) General rule.--A limited partner is not liable [for the
16 obligations of a limited partnership unless he is also a general
17 partner or, in addition to the exercise of his rights and powers
18 as a limited partner, he participates in the control of the
19 business. However, if the limited partner participates in the
20 control of the business, he is liable only to persons who
21 transact business with the limited partnership reasonably
22 believing, based upon the conduct of the limited partner, that
23 the limited partner is a general partner.], solely by reason of
24 being a limited partner, under an order of a court or in any
25 other manner, for a debt, obligation or liability of the limited
26 partnership of any kind or for the acts of any partner, agent or
27 employee of the limited partnership.

28 (b) [Activities compatible with limited partner status.--A
29 limited partner does not participate in the control of the
30 business within the meaning of subsection (a) solely by doing

1 one or more of the following:

2 (1) Being a contractor for, or an agent or employee of
3 the limited partnership or of a general partner, or being an
4 officer, director, trustee, partner or shareholder of a
5 general partner.

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

9 (3) (i) Acting as surety for the limited partnership,
10 or guaranteeing, endorsing or assuming one or more
11 specific obligations of the limited partnership, or a
12 general partner.

13 (ii) Borrowing money from the limited partnership or
14 a general partner.

15 (iii) Lending money to the limited partnership or a
16 general partner.

17 (iv) Providing collateral for the limited
18 partnership or a general partner.

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

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

23 (6) Acting or causing the taking or refraining from the
24 taking of any action, including, without limitation, by
25 proposing, approving, consenting or disapproving, by voting
26 or otherwise, with respect to one or more of the following
27 matters:

28 (i) The dissolution and winding up of the limited
29 partnership, or an election to continue the limited
30 partnership or the business of the limited partnership.

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

4 (iii) The incurrence, renewal, refinancing or
5 payment or other discharge of indebtedness by the limited
6 partnership.

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

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

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

10 (vii) A transaction involving an actual or potential
11 conflict of interest between a general partner and the
12 limited partnership or the limited partners.

13 (viii) An amendment to the partnership agreement or
14 certificate of limited partnership.

15 (ix) The merger or consolidation of the limited
16 partnership.

17 (x) The indemnification of any partner or other
18 person.

19 (xi) Matters related to the business of the limited
20 partnership not otherwise enumerated in this subsection,
21 which the partnership agreement states in writing may be
22 subject to the approval or disapproval of limited
23 partners.

24 (7) Applying for dissolution of the partnership pursuant
25 to section 8572 (relating to judicial dissolution).

26 (8) Winding up the limited partnership pursuant to
27 section 8573 (relating to winding up).

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

30 (i) The approval or termination of investment

1 advisory or underwriting contracts.

2 (ii) The approval of auditors.

3 (iii) Any other matter that by reason of the
4 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
5 80a-1 et seq.) the general partners consider to be a
6 proper matter for the vote of the holders of voting
7 securities or beneficial interests in the limited
8 partnership.

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

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

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

16 (c) [Enumeration nonexclusive.--The enumeration in
17 subsection (b) does not mean that the possession or exercise of
18 any other powers, or having or acting in other capacities, by a
19 limited partner constitutes participation by him in the control
20 of the business of the limited partnership.] (Repealed).

21 (d) Use of name of limited partner.--A limited partner does
22 not [participate in the control of the business within the
23 meaning of subsection (a)] become liable for the obligations of
24 a limited partnership by reason of the fact that all or any part
25 of the name of the limited partner is included in the name of
26 the limited partnership.

27 (e) [Effect of section.--This section does not create rights
28 or powers of limited partners. Such rights and powers may be
29 created only by the certificate of limited partnership,
30 partnership agreement or any other agreement or other provisions

1 of this chapter.] (Repealed).

2 * * *

3 § 8546. Approval of merger or consolidation.

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

7 * * *

8 (3) The manner and basis of converting the partnership
9 interests of each limited partnership into partnership
10 interests, securities or obligations of the surviving or new
11 limited partnership, as the case may be, and, if any of the
12 partnership interests of any of the limited partnerships that
13 are parties to the [plan] merger or consolidation are not to
14 be converted solely into partnership interests, securities or
15 obligations of the surviving or new limited partnership, the
16 partnership interests, securities or obligations of any other
17 person or cash, property or rights that the holders of such
18 partnership interests are to receive in exchange for, or upon
19 conversion of, such partnership interests, and the surrender
20 of any certificates evidencing them, which securities or
21 obligations, if any, of any other person or cash, property or
22 rights may be in addition to or in lieu of the partnership
23 interests, securities or obligations of the surviving or new
24 limited partnership.

25 (4) Such other provisions as are deemed desirable.
26 [Any of the terms of the plan may be made dependent upon facts
27 ascertainable outside of the plan if the manner in which the
28 facts will operate upon the terms of the plan is set forth in
29 the plan.]

30 (b) Post-adoption amendment of plan of merger or

1 consolidation.--A plan of merger or consolidation may contain a
2 provision that the general partners of the constituent limited
3 partnerships may amend the plan at any time prior to its
4 effective date, except that an amendment made subsequent to any
5 adoption of the plan by the limited partners of any constituent
6 domestic limited partnership shall not change:

7 (1) The amount or kind of partnership interests,
8 obligations, cash, property or rights to be received in
9 exchange for or on conversion of all or any of the
10 partnership interests of the constituent domestic limited
11 partnership adversely to the holders of those partnership
12 interests.

13 (2) Any term of the certificate of limited partnership
14 or partnership agreement of the surviving or new limited
15 partnership [to be effected by] as it is to be in effect
16 immediately following consummation of the merger or
17 consolidation except provisions that may be amended without
18 the approval of the limited partners.

19 (3) Any of the other terms and conditions of the plan if
20 the change would adversely affect the holders of any
21 partnership interests of the constituent domestic limited
22 partnership.

23 * * *

24 (d) Party to plan.--[A limited partnership] An association
25 that approves a plan in its capacity as a partner or creditor of
26 a merging or consolidating limited partnership, or that
27 furnishes all or a part of the consideration contemplated by a
28 plan, does not thereby become a party to the [plan] merger or
29 consolidation for the purposes of this subchapter.

30 (e) Notice of meeting of limited partners.--Notwithstanding

1 any other provision of the partnership agreement, written notice
2 of the meeting of limited partners called for the purpose of
3 considering the proposed plan shall be given to each limited
4 partner of record, whether or not entitled to vote thereon, of
5 each domestic limited partnership that is a party to the [plan]
6 proposed merger or consolidation. There shall be included in, or
7 enclosed with, the notice a copy of the proposed plan or a
8 summary thereof. The provisions of this subsection may not be
9 relaxed by the certificate of limited partnership or partnership
10 agreement.

11 (f) Adoption of plan by limited partners.--The plan of
12 merger or consolidation shall be adopted upon receiving a
13 majority of the votes cast by all limited partners, if any,
14 entitled to vote thereon of each of the domestic limited
15 partnerships that is a party to the [plan] proposed merger or
16 consolidation and, if any class of limited partners is entitled
17 to vote thereon as a class, a majority of the votes cast in each
18 class vote. A proposed plan of merger or consolidation shall not
19 be deemed to have been adopted by the limited partnership unless
20 it has also been approved by the general partners, regardless of
21 the fact that the general partners have directed or suffered the
22 submission of the plan to the limited partners for action.

23 * * *

24 (h) Termination of plan.--Prior to the time when a merger or
25 consolidation becomes effective, the merger or consolidation may
26 be terminated pursuant to provisions therefor, if any, set forth
27 in the plan. If a certificate of merger or consolidation has
28 been filed in the department prior to the termination, a
29 certificate of termination executed by each limited partnership
30 that is a party to the [plan] merger or consolidation, unless

1 the plan permits termination by less than all of the limited
2 partnerships, in which case the certificate shall be executed on
3 behalf of the limited partnership exercising the right to
4 terminate, shall be filed in the department. The certificate of
5 termination shall set forth:

6 (1) A copy of the certificate of merger or consolidation
7 relating to the plan that is terminated.

8 (2) A statement that the plan has been terminated in
9 accordance with the provisions therefor set forth therein.

10 See sections 134 (relating to docketing statement), 135
11 (relating to requirements to be met by filed documents), 138
12 (relating to statement of correction) and 8514 (relating to
13 execution of certificates).

14 * * *

15 (j) Reference to outside facts.--Any of the terms of a plan
16 of merger or consolidation may be made dependent upon facts
17 ascertainable outside of the plan if the manner in which the
18 facts will operate upon the terms of the plan is set forth in
19 the plan. Such facts may include, without limitation, actions or
20 events within the control of or determinations made by a party
21 to the plan or a representative of a party to the plan.

22 § 8553. Voluntary withdrawal of limited partner.

23 (a) General rule.--A limited partner may withdraw from a
24 limited partnership only at the time or upon the happening of
25 events specified in writing in the partnership agreement. [If
26 the partnership agreement does not specify in writing the time
27 or the events upon the happening of which a limited partner may
28 withdraw or a definite time for the dissolution and winding up
29 of the limited partnership, a limited partner may withdraw upon
30 not less than six months' prior written notice to each general

1 partner at his address on the books of the limited partnership.]

2 (b) [Prohibition of withdrawal.--The partnership agreement
3 may provide that a limited partner may not withdraw from the
4 limited partnership or assign a partnership interest in the
5 limited partnership prior to the dissolution and winding up of
6 the limited partnership.] (Repealed).

7 (c) Transitional rule.--This section applies to all limited
8 partnerships formed on or after January 1, 1999. If the
9 partnership agreement of a limited partnership formed before
10 January 1, 1999, did not on December 31, 1998, specify in
11 writing the time or the events upon the happening of which a
12 limited partner could withdraw or a definite time for the
13 dissolution and winding up of the limited partnership, the
14 provisions of this section that were in effect prior to January
15 1, 1999, shall apply until such time, if any, as the partnership
16 agreement is amended in writing after January 1, 1999, to
17 specify:

18 (1) a time or the events upon the happening of which a
19 limited partner may withdraw;

20 (2) a definite time for the dissolution and winding up
21 of the limited partnership; or

22 (3) that this section as effective January 1, 1999,
23 shall apply to the limited partnership.

24 § 8557. [Limitations on distribution.] Distributions and
25 allocation of profits and losses.

26 [A partner may not receive a distribution from a limited
27 partnership to the extent that, after giving effect to the
28 distribution, all liabilities of the limited partnership, other
29 than liabilities to partners on account of their partnership
30 interests and liabilities as to which recourse of creditors is

1 limited to specified property of the limited partnership, exceed
2 the fair value of the partnership assets. The fair value of any
3 property that is subject to a liability as to which recourse of
4 creditors is so limited shall be included in the partnership
5 assets only to the extent that the fair value of the property
6 exceeds that liability.] A limited partnership may from time to
7 time make distributions and allocate the profits and losses of
8 its business to the partners upon the basis stipulated in the
9 partnership agreement or, if not stipulated in the partnership
10 agreement, per capita. The allocation of losses pursuant to this
11 section shall not affect the limitation on liability of limited
12 partners as provided in section 8523 (relating to liability of
13 limited partners to third parties).

14 § 8558. Liability upon return of contribution.

15 * * *

16 (c) Determination of return of contribution.--A partner
17 receives a return of his contribution to the extent that a
18 distribution to him reduces his share of the fair value of the
19 net assets of the limited partnership[, as determined under
20 section 8557 (relating to limitations on distribution),] below
21 the value (as stated or determined in the manner provided in the
22 partnership agreement, if stated or provided for therein) of his
23 contribution (to the extent it has been received by the limited
24 partnership) that has not been distributed to him, and otherwise
25 to the extent of the fair value of the distribution.

26 (d) Fair value of net assets.--For purposes of computing the
27 fair value of the net assets of the limited partnership under
28 subsection (c):

29 (1) liabilities of the limited partnership to partners
30 on account of their partnership interests and liabilities as

1 to which recourse of creditors is limited to specified
2 property of the limited partnership shall not be considered;
3 and

4 (2) the fair value of property that is subject to a
5 liability as to which recourse of creditors is so limited
6 shall be included in the partnership assets only to the
7 extent that the fair value of the property exceeds that
8 liability.

9 § 8571. Nonjudicial dissolution.

10 (a) General rule.--A limited partnership is dissolved and
11 its affairs shall be wound up upon the happening of the first to
12 occur of the following:

13 (1) At the time or upon the happening of events
14 specified in the certificate of limited partnership.

15 (2) At the time or upon the happening of events
16 specified in writing in the partnership agreement.

17 (3) Written consent of all partners.

18 (4) An event of withdrawal of a general partner unless
19 at the time there is at least one other general partner and
20 the written provisions of the partnership agreement permit
21 the business of the limited partnership to be carried on by
22 the remaining general partner and that partner does so. The
23 limited partnership is not dissolved and is not required to
24 be wound up by reason of any event of withdrawal if, within
25 180 days after the withdrawal, [all] a majority in interest,
26 or such greater number as shall be provided in writing in the
27 partnership agreement, of the partners agree in writing to
28 continue the business of the limited partnership or to the
29 appointment of one or more replacement general partners.

30 (5) Entry of an order of judicial dissolution under

1 section 8572 (relating to judicial dissolution).

2 * * *

3 (c) Dissolution by domestication.--Whenever a domestic
4 limited partnership has domesticated itself under the laws of
5 another jurisdiction by action similar to that provided by
6 section 8590 (relating to domestication) and has authorized that
7 action in the manner required by this subchapter for the
8 approval of a proposal that the partnership dissolve
9 voluntarily, the partnership may surrender its certificate of
10 limited partnership under the laws of this Commonwealth by
11 filing in the department a certificate of cancellation under
12 section 8513 (relating to cancellation of certificate). If the
13 partnership, as domesticated in the other jurisdiction,
14 registers to do business in this Commonwealth either prior to or
15 simultaneously with the filing of the certificate of
16 cancellation under this subsection, the partnership shall not be
17 required to file with the certificate of cancellation the tax
18 clearance certificates that would otherwise be required by
19 section 139 (relating to tax clearance of certain fundamental
20 transactions).

21 [(c)] (d) Cross [references] reference.--See [sections 8103
22 (relating to continuation of certain limited partnerships) and]
23 section 8512(b) (relating to events requiring amendment).

24 § 8573. Winding up.

25 Except as otherwise provided in the partnership agreement,
26 the general partners who have not wrongfully dissolved a limited
27 partnership or, if none, the limited partners, or a person
28 approved by the limited partners or, if there is more than one
29 class or group of limited partners, by each class or group of
30 limited partners, in either case by a majority in interest of

1 the limited partners in each class or group, may wind up the
2 affairs of the limited partnership, but the court may wind up
3 the affairs of the limited partnership upon application of any
4 partner, his legal representative or assignee, and in connection
5 therewith, may appoint a liquidating trustee. See section 139(b)
6 (relating to tax clearance in judicial proceedings).

7 § 8577. Proposal and adoption of plan of division.

8 * * *

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

17 * * *

18 (e) [Restrictions on certain distributions.--A plan of
19 division may not be made effective if the effect of the plan is
20 to make a distribution to the holders of any class or series of
21 partnership interests of the dividing limited partnership unless
22 the distribution is permitted by section 8557 (relating to
23 limitations on distribution.) (Repealed).

24 (f) [Action by] Rights of holders of indebtedness.--[Unless
25 otherwise provided by an indenture or other contract by which
26 the dividing limited partnership is bound, a plan of division
27 shall not require the approval of the holders of any debt
28 securities or other obligations of the dividing limited
29 partnership or of any representative of the holders if the
30 transfer of assets effected by the division, if effected by

1 means of a sale, lease, exchange or other disposition, and any
2 related distribution would not require the approval of the
3 holders or representatives thereof.] If any such debt
4 securities, notes, similar evidences of indebtedness, indentures
5 or other contracts were issued, incurred or executed by the
6 dividing limited partnership before (the Legislative Reference
7 Bureau shall insert here the effective date of the amendments of
8 this section) and have not been amended subsequent to that date,
9 the liability of the dividing limited partnership thereunder
10 shall not be affected by the division nor shall the rights of
11 the obligees thereunder be impaired by the division, and each of
12 the resulting limited partnerships may be proceeded against or
13 substituted in place of the dividing limited partnership as
14 joint and several obligors on such liability, regardless of any
15 provision of the plan of division apportioning the liabilities
16 of the dividing limited partnership.

17 * * *

18 § 8580. Effect of division.

19 * * *

20 (b) Property rights; allocations of assets and
21 liabilities.--

22 (1) (i) All the property, real, personal and mixed, of
23 the dividing limited partnership, and all debts due on
24 whatever account to it, including subscriptions for
25 partnership interests or other causes of action belonging
26 to it, shall, except as otherwise provided in paragraph
27 (2), to the extent [transfers] allocations of assets are
28 contemplated by the plan of division, be deemed without
29 further action to be [transferred] allocated to and
30 vested in the resulting limited partnerships on such a

1 manner and basis and with such effect as is specified in
2 the plan, or per capita among the resulting limited
3 partnerships, as tenants in common, if no specification
4 is made in the plan, and the title to any real estate or
5 interest therein vested in any of the limited
6 partnerships shall not revert or be in any way impaired
7 by reason of the division.

8 (ii) Upon the division becoming effective, the
9 resulting limited partnerships shall each thenceforth be
10 responsible as separate and distinct limited partnerships
11 only for such liabilities as each limited partnership may
12 undertake or incur in its own name but shall be liable
13 for the liabilities of the dividing limited partnership
14 in the manner and on the basis provided in subparagraphs
15 (iv) and (v).

16 (iii) Liens upon the property of the dividing
17 limited partnership shall not be impaired by the
18 division.

19 (iv) [One] To the extent allocations of liabilities
20 are contemplated by the plan of division, the liabilities
21 of the dividing limited partnership shall be deemed
22 without further action to be allocated to and become the
23 liabilities of the resulting limited partnerships on such
24 a manner and basis and with such effect as is specified
25 in the plan; and one or more but less than all of the
26 resulting limited partnerships shall be free of the
27 liabilities of the dividing limited partnership to the
28 extent, if any, specified in the plan [if no fraud of
29 creditors or partners or violation of law shall be
30 effected thereby and if all applicable provisions of law

are complied with.], if in either case:

(A) no fraud of partners or violation of law shall be effected thereby; and

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

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

(vi) The conditions in subparagraph (iv) for freeing one or more of the resulting limited partnerships from the liabilities of the dividing limited partnership and for allocating some or all of the liabilities of the

1 dividing limited partnership shall be conclusively deemed
2 to have been satisfied if the plan of division has been
3 approved by the Pennsylvania Public Utility Commission in
4 a final order issued after (the Legislative Reference
5 Bureau shall insert here the effective date of the
6 amendments of this section) that has become not subject
7 to further appeal.

8 (2) (i) The [transfer] allocation of any fee or
9 freehold interest or leasehold having a remaining term of
10 30 years or more in any tract or parcel of real property
11 situate in this Commonwealth owned by a dividing limited
12 partnership (including property owned by a foreign
13 limited partnership dividing solely under the law of
14 another jurisdiction) to a new limited partnership
15 resulting from the division shall not be effective until
16 one of the following documents is filed in the office for
17 the recording of deeds of the county, or each of them, in
18 which the tract or parcel is situated:

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

21 (B) A duly executed duplicate original copy of
22 the certificate of division.

23 (C) A copy of the certificate of division
24 certified by the Department of State.

25 (D) A declaration of acquisition setting forth
26 the value of real estate holdings in the county of
27 the limited partnership as an acquired company.

28 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
29 to transfer of vehicle by operation of law) shall not be
30 applicable to [a transfer] an allocation of ownership of

1 any motor vehicle, trailer or semitrailer [from a
2 dividing limited partnership] to a new limited
3 partnership under this section or under a similar law of
4 any other jurisdiction, but any such [transfer]
5 allocation shall be effective only upon compliance with
6 the requirements of 75 Pa.C.S. § 1116 (relating to
7 issuance of new certificate following transfer).

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

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

19 * * *

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

22 (1) The effect of a division of a domestic limited
23 partnership shall be governed solely by the laws of this
24 Commonwealth and any other jurisdiction under the laws of
25 which any of the resulting limited partnerships is organized.

26 (2) The effect of a division on the assets and
27 liabilities of the dividing limited partnership shall be
28 governed solely by the laws of this Commonwealth and any
29 other jurisdiction under the laws of which any of the
30 resulting limited partnerships is organized.

1 (3) The validity of any allocations of assets or
2 liabilities by a plan of division of a domestic limited
3 partnership, regardless of whether or not any of the new
4 limited partnerships is a foreign limited partnership, shall
5 be governed solely by the laws of this Commonwealth.

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

10 § 8590. Domestication.

11 * * *

12 (b) Certificate of domestication.--The certificate of
13 domestication shall be executed by the limited partnership and
14 shall set forth in the English language:

15 (1) The name of the limited partnership. If the name is
16 in a foreign language, it shall be set forth in Roman letters
17 or characters or Arabic or Roman numerals. If the name is one
18 that is rendered unavailable for use by any provision of
19 section 8505 (relating to name), the limited partnership
20 shall adopt, in accordance with any procedures for changing
21 the name of the limited partnership that are applicable prior
22 to the domestication of the limited partnership, and shall
23 set forth in the certificate of domestication an available
24 name.

25 * * *

26 (c) Effect of domestication.--

27 (1) As a domestic limited partnership, the domesticated
28 limited partnership shall no longer be a foreign limited
29 partnership for the purposes of this chapter and shall [have]
30 instead be a domestic limited partnership with all the powers

1 and privileges and [be subject to] all the duties and
2 limitations granted and imposed upon domestic limited
3 partnerships. [The property, debts, liens, estates, taxes,
4 penalties and public accounts due the Commonwealth shall
5 continue to be vested in and imposed upon the limited
6 partnership to the same extent as if it were the successor by
7 merger of the domesticating limited partnership with and into
8 a domestic limited partnership under Subchapter F (relating
9 to merger and consolidation).] In all other respects, the
10 domesticated limited partnership shall be deemed to be the
11 same limited partnership as it was prior to the domestication
12 without any change in or affect on its existence. Without
13 limiting the generality of the previous sentence, the
14 domestication shall not be deemed to have dissolved the
15 limited partnership or to have affected in any way:

16 (i) the right and title of the limited partnership
17 in and to its assets, property, franchises, estates and
18 choses in action;

19 (ii) the liability of the limited partnership for
20 its debts, obligations, penalties and public accounts due
21 the Commonwealth;

22 (iii) any liens or other encumbrances on the
23 property or assets of the limited partnership; or

24 (iv) any contract, license or other agreement to
25 which the limited partnership is a party or under which
26 it has any rights or obligations.

27 (2) The partnership interests in the domesticated
28 limited partnership shall be unaffected by the domestication
29 except to the extent, if any, reclassified in the certificate
30 of domestication.

1 § 8903. Definitions and index of definitions.

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

5 * * *

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

7 * * *

8 "Event of dissociation." An event that causes a person to
9 cease to be a member of a limited liability company. See
10 section [8971(a)(4)] 8971(4) (relating to dissolution).

11 * * *

12 ["Licensed person." A natural person who is duly licensed or
13 admitted to practice his profession by a court, department,
14 board, commission or other agency of this Commonwealth or
15 another jurisdiction to render a professional service that is or
16 will be rendered by the professional company of which he is or
17 intends to become a manager, member, employee or agent.]

18 "Limited liability company," "domestic limited liability
19 company" or "company." An association that is a limited
20 liability company organized and existing under this chapter.

21 * * *

22 "Operating agreement." Any [agreement of the members as to]
23 rules or procedures adopted for the regulation and governance of
24 the affairs of a limited liability company and the conduct of
25 its business. [The operating agreement need not be in writing
26 except where this chapter refers to a written provision of the
27 operating agreement. The operating agreement may contain any
28 provision for the regulation of the internal affairs of the
29 company agreed to by the members, whether or not specifically
30 authorized by or in contravention of this chapter, except where

1 this chapter:

2 (1) refers only to a rule as set forth in the
3 certificate of organization; or

4 (2) expressly provides that the operating agreement
5 shall not relax or contravene any provision on a specified
6 subject. See sections 8913(8) (relating to certificate of
7 organization) and 8915 (relating to modification by
8 agreement).]

9 * * *

10 ["Professional services." The term shall have the meaning
11 specified in section 2902 (relating to definitions).]

12 * * *

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

15 "Act" or "action." Section 102.

16 "Department." Section 102.

17 "Licensed person." Section 102.

18 "Professional services." Section 102.

19 § 8911. PURPOSES.

←

20 (A) GENERAL RULE.--LIMITED LIABILITY COMPANIES MAY BE
21 ORGANIZED UNDER THIS CHAPTER FOR ANY LAWFUL PURPOSE, EXCEPT FOR
22 THE PURPOSE OF [BANKING OR INSURANCE] CONDUCTING THE BUSINESS OF
23 RECEIVING BANK DEPOSITS OR OF ASSUMING RISKS AS AN INSURER ON
24 POLICIES OF INSURANCE. UNLESS OTHERWISE RESTRICTED IN ITS
25 CERTIFICATE OF ORGANIZATION, EVERY LIMITED LIABILITY COMPANY HAS
26 AS ITS PURPOSE THE ENGAGING IN ALL LAWFUL BUSINESS FOR WHICH
27 LIMITED LIABILITY COMPANIES MAY BE ORGANIZED UNDER THIS CHAPTER.

28 * * *

29 SUBCHAPTER B

30 ORGANIZATION[; CERTIFICATE OF ORGANIZATION]

1 § 8915. Modification by agreement.

2 The provisions of this chapter are intended to permit a
3 limited liability company to qualify for taxation as an entity
4 that is not an association taxable as a corporation under the
5 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1
6 et seq.). Notwithstanding the limitations in [the definition of
7 "operating agreement" in section 8903 (relating to definitions)
8 and the limitations in section] sections 8913(8) (relating to
9 certificate of organization) and 8916(b) (relating to operating
10 agreement), the certificate of organization and operating
11 agreement may effect any change in the form of organization of
12 the company, in addition to or in contravention of the
13 provisions of this chapter, that may be necessary to accomplish
14 that purpose.

15 § 8916. Operating agreement.

16 (a) General rule.--The operating agreement of a limited
17 liability company need not be in writing except where this
18 chapter refers to a written provision of the operating
19 agreement. If a written operating agreement provides that it
20 cannot be amended or modified except in writing, an oral
21 agreement, amendment or modification shall not be enforceable.

22 (b) Freedom of contract.--An operating agreement may contain
23 any provision for the regulation of the internal affairs of a
24 limited liability company adopted by the members, whether or not
25 specifically authorized by or in contravention of this chapter,
26 except where 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

1 subject.

2 (c) Cross references.--See sections 8913(8) (relating to
3 certificate of organization) and 8915 (relating to modification
4 by agreement).

5 § 8922. Liability of members [and managers].

6 (a) General rule.--[Neither] Except as provided in
7 subsection (e), the members of a limited liability company [nor
8 the managers of a company managed by one or more managers are]
9 shall not be liable, solely by reason of being a member [or a
10 manager], under an order of a court or in any other manner for a
11 debt, obligation or liability of the company of any kind or for
12 the acts [or omissions] of any [other] member, manager, agent or
13 employee of the company.

14 (b) Professional relationship unaffected.--Subsection (a)
15 shall not afford members [and managers] of a professional
16 company with greater immunity than is available to the officers,
17 shareholders, employees or agents of a professional corporation.
18 See section 2925 (relating to professional relationship
19 retained).

20 * * *

21 (d) Conflict of laws.--The personal liability of a member of
22 a company to any person or in any action or proceeding for the
23 debts, obligations or liabilities of the company or for the acts
24 [or omissions] of other members, managers, employees or agents
25 of the company shall be governed solely and exclusively by this
26 chapter and the laws of this Commonwealth. Whenever a conflict
27 arises between the laws of this Commonwealth and the laws of any
28 other state with regard to the liability of members of a company
29 organized and existing under this chapter for the debts,
30 obligations and liabilities of the company or for the acts [or

1 omissions] of the other members, managers, employees or agents
2 of the company, the laws of this Commonwealth shall govern in
3 determining such liability.

4 (e) Expansion of liability.--The certificate of organization
5 may provide that some or all of the members shall be liable for
6 some or all of the debts, obligations and liabilities of the
7 company to the extent and under the circumstances provided in
8 the certificate.

9 ~~(f) Medical professional liability. A professional company~~ <—
10 ~~shall be deemed to be a partnership for purposes of section 811~~
11 ~~of the act of October 15, 1975 (P.L.390, No.111), known as the~~
12 ~~Health Care Services Malpractice Act.~~

13 [(e)] ~~(g)~~ (F) Cross reference.--See section 8904(b) <—
14 (relating to rules for cases not provided for in this chapter).
15 § 8924. Limited transferability of membership interest.

16 (a) General rule.--The interest of a member in a limited
17 liability company constitutes the personal estate of the member
18 and may be transferred or assigned as provided in writing in the
19 operating agreement. Unless otherwise provided in writing in
20 the operating agreement, if all of the other members of the
21 company other than the member proposing to dispose of his
22 interest do not approve of the proposed transfer or assignment
23 by unanimous vote or written consent, which approval may be
24 unreasonably withheld by any of the other members, the
25 transferee of the interest of the member shall have no right to
26 participate in the management of the business and affairs of the
27 company or to become a member. The transferee shall only be
28 entitled to receive the distributions and the return of
29 contributions to which that member would otherwise be entitled.

30 (b) Certificate of membership interest.--The certificate of

1 organization may provide that a member's interest in a company
2 may be evidenced by a certificate of membership interest issued
3 by the company [and]. If such provision is made for the issuance
4 of certificates of membership interest, the operating agreement
5 may [also] provide for the assignment or transfer of any
6 membership interest represented by such a certificate and make
7 other provisions with respect to such certificates. [See 13
8 Pa.C.S. § 8102 (relating to definitions and index of
9 definitions).]

10 § 8932. Distributions and allocation of profits and losses.

11 A limited liability company may from time to time [divide]
12 make distributions and allocate the profits and losses of its
13 business [and distribute the same] to [and allocate any losses
14 among] the members of the company upon the basis stipulated in
15 the operating agreement or, if not stipulated in the operating
16 agreement, per capita. The allocation of losses pursuant to this
17 section shall not affect the limitation on liability of members
18 as provided in section 8922 (relating to liability of members).

19 § 8942. Voting.

20 * * *

21 (c) Exception.--An amendment of the certificate of
22 organization that:

23 (1) restates without change all of the operative
24 provisions of the certificate of organization as theretofore
25 in effect;

26 (2) changes the name or registered office of the
27 company; or

28 (3) accomplishes any combination of the foregoing
29 purposes;

30 is not an amendment of the certificate of organization for the

purposes of subsection (b). Unless otherwise provided in writing in the operating agreement, an amendment described in this subsection may be made by the affirmative vote of a majority of the managers or, in the case of a company that is not managed by one or more managers, of a majority of the members.

* * *

§ 8943. Duties of managers and members.

* * *

(b) Companies with managers.--If the certificate of organization provides that the company shall be managed by one or more managers:

(1) [Unless otherwise provided in writing in the operating agreement, the provisions of Subchapter B of Chapter 17 (relating to officers, directors and 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.

1 (b) Classes of members.--An operating agreement may provide
2 for:

3 (1) classes or groups of members having such relative
4 rights, powers and duties as the operating agreement may
5 provide;

6 (2) the future creation in the manner provided in the
7 operating agreement of additional classes or groups of
8 members having such relative rights, powers and duties as may
9 from time to time be established, including rights, powers
10 and duties senior to existing classes and groups of members;
11 and

12 (3) the taking of an action, including, without
13 limitation, amendment of the certificate of organization or
14 operating agreement or creation of a class or group of
15 interests in the limited liability company that was not
16 previously outstanding, without the vote or approval of any
17 member or class or group of members.

18 ~~[(b)]~~ (c) Class voting.--The operating agreement may grant
19 to all or certain identified members or a specified class or
20 group of members the right to vote (on a per capita or other
21 basis), separately or with all or any class or group of members,
22 upon any matter.

23 § 8945. Indemnification.

24 * * *

25 (f) Mandatory indemnification.--Without regard to whether
26 indemnification or advancement of expenses is provided under
27 subsections (a) and (d), a limited liability company shall be
28 subject to section 8331(2) (relating to rules determining rights
29 and duties of partners) and both the members and the managers,
30 if any, shall be deemed to be general partners for purposes of

1 applying that section.

2 § 8948. [Dissociation of member limited.] Limitation on
3 dissociation or assignment of membership interest.

4 Notwithstanding anything to the contrary set forth in this
5 part, an operating agreement may provide that a member may not
6 voluntarily dissociate from the limited liability company or
7 assign his membership interest prior to the dissolution and
8 winding-up of the company, and an attempt by a member to
9 dissociate voluntarily from the company or to assign his
10 membership interest in violation of the operating agreement
11 shall be ineffective.

12 § 8957. Approval of merger or consolidation.

13 * * *

14 (b) Reference to outside facts.--Any of the terms of the
15 plan may be made dependent upon facts ascertainable outside of
16 the plan if the manner in which the facts will operate upon the
17 terms of the plan is set forth in the plan. Such facts may
18 include, without limitation, actions or events within the
19 control of or determinations made by a party to the plan or a
20 representative of a party to the plan.

21 (c) [Postadoption] Post-adoption amendment of plan of merger
22 or consolidation.--A plan of merger or consolidation may contain
23 a provision that the managers, if any, of the constituent
24 companies may amend the plan at any time prior to its effective
25 date, except that an amendment made subsequent to any adoption
26 of the plan by the members of any constituent domestic company
27 shall not, without the approval of the members, change:

28 (1) The amount or kind of membership interests,
29 obligations, cash, property or rights to be received in
30 exchange for or on conversion of all or any of the membership

1 interests of the constituent domestic company adversely to
2 the holders of those membership interests.

3 (2) Any [term] provision of the certificate of
4 organization or operating agreement of the surviving or new
5 company [to be effected by] as it is to be in effect
6 immediately following consummation of the merger or
7 consolidation except provisions that may be amended without
8 the approval of the members.

9 (3) Any of the other terms and conditions of the plan if
10 the change would adversely affect the holders of any
11 membership interests of the constituent domestic company.

12 * * *

13 (e) Party to plan.--An association that approves a plan in
14 its capacity as a member or creditor of a merging or
15 consolidating company or that furnishes all or a part of the
16 consideration contemplated by a plan does not thereby become a
17 party to the [plan or the] merger or consolidation for the
18 purposes of this subchapter.

19 * * *

20 (i) Termination of plan.--Prior to the time when a merger or
21 consolidation becomes effective, the merger or consolidation may
22 be terminated pursuant to provisions therefor, if any, set forth
23 in the plan. If a certificate of merger or consolidation has
24 been filed in the department prior to the termination, a
25 certificate of termination executed by each company that is a
26 party to the merger or consolidation, unless the plan permits
27 termination by less than all of the companies, in which case the
28 certificate shall be executed on behalf of the company
29 exercising the right to terminate, shall be filed in the
30 department. The certificate of termination shall set forth:

1 (1) A copy of the certificate of merger or consolidation
2 relating to the plan that is terminated.

3 (2) A statement that the plan has been terminated in
4 accordance with the provisions therefor set forth therein.

5 See sections 134 (relating to docketing statement), 135
6 (relating to requirements to be met by filed documents), 138
7 (relating to statement of correction) and 8907 (relating to
8 execution of documents).

9 * * *

10 § 8962. Proposal and adoption of plan of division.

11 * * *

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

20 * * *

21 (e) [Action by holders of indebtedness.--Unless otherwise
22 provided by an indenture or other contract by which the dividing
23 limited liability company is bound, a plan of division shall not
24 require the approval of the holders of any debt securities or
25 other obligations of the dividing company or of any
26 representative of the holders if the transfer of assets effected
27 by the division, if effected by means of a sale, lease, exchange
28 or other disposition, and any related distribution would not
29 require the approval of the holders or representatives thereof.]
30 (Repealed).

1 § 8965. Effect of division.

2 * * *

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

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

20 (ii) Upon the division becoming effective, the
21 resulting companies shall each thenceforth be responsible
22 as separate and distinct companies only for such
23 liabilities as each company may undertake or incur in its
24 own name but shall be liable for the liabilities of the
25 dividing company in the manner and on the basis provided
26 in subparagraphs (iv) and (v).

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

29 (iv) [One] To the extent allocations of liabilities
30 are contemplated by the plan of division, the liabilities

1 of the dividing company shall be deemed without further
2 action to be allocated to and become the liabilities of
3 the resulting companies on such a manner and basis and
4 with such effect as is specified in the plan; and one or
5 more, but less than all, of the resulting companies shall
6 be free of the liabilities of the dividing company to the
7 extent, if any, specified in the plan [if no fraud of
8 creditors or members or violation of law shall be
9 effected thereby and if all applicable provisions of law
10 are complied with.], if in either case:

11 (A) no fraud on members or violation of law
12 shall be effected thereby; and

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

16 (v) If the conditions in subparagraph (iv) for
17 freeing one or more of the resulting companies from the
18 liabilities of the dividing company, or for allocating
19 some or all of the liabilities of the dividing company,
20 are not satisfied, the liabilities of the dividing
21 company as to which those conditions are not satisfied
22 shall not be affected by the division nor shall the
23 rights of creditors [thereof] thereunder or of any person
24 dealing with the company be impaired by the division, and
25 any claim existing or action or proceeding pending by or
26 against the company with respect to those liabilities may
27 be prosecuted to judgment as if the division had not
28 taken place, or the resulting companies may be proceeded
29 against or substituted in [its] place of the dividing
30 company as joint and several obligors on [such liability]

1 those liabilities, regardless of any provision of the
2 plan of division apportioning the liabilities of the
3 dividing company.

4 (vi) The conditions in subparagraph (iv) for freeing
5 one or more of the resulting companies from the
6 liabilities of the dividing company and for allocating
7 some or all of the liabilities of the dividing company
8 shall be conclusively deemed to have been satisfied if
9 the plan of division has been approved by the
10 Pennsylvania Public Utility Commission in a final order
11 issued after (the Legislative Reference Bureau shall
12 insert here the effective date of the amendments of this
13 section) that has become not subject to further appeal.

14 (2) (i) The [transfer] allocation of any fee or
15 freehold interest or leasehold having a remaining term of
16 30 years or more in any tract or parcel of real property
17 situate in this Commonwealth owned by a dividing company
18 (including property owned by a foreign limited liability
19 company dividing solely under the law of another
20 jurisdiction) to a new company resulting from the
21 division shall not be effective until one of the
22 following documents is filed in the office for the
23 recording of deeds of the county, or each of them, in
24 which the tract or parcel is situated:

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

27 (B) A duly executed duplicate original copy of
28 the certificate of division.

29 (C) A copy of the certificate of division
30 certified by the Department of State.

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

4 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
5 to transfer of vehicle by operation of law) shall not be
6 applicable to [a transfer] an allocation of ownership of
7 any motor vehicle, trailer or semitrailer [from a
8 dividing company] to a new company under this section or
9 under a similar law of any other jurisdiction but any
10 such [transfer] allocation shall be effective only upon
11 compliance with the requirements of 75 Pa.C.S. § 1116
12 (relating to issuance of new certificate following
13 transfer).

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

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

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.--]A limited liability company is
17 dissolved and its affairs shall be wound up upon the happening
18 of the 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 the unanimous written agreement or consent of all
24 members.

25 (4) [Upon] Except as otherwise provided in writing in
26 the operating agreement, upon a member becoming a bankrupt or
27 executing an assignment for the benefit of creditors or the
28 death, retirement, insanity, resignation, expulsion or
29 dissolution of a member or the occurrence of any other event
30 that terminates the continued membership of a member in the

1 company unless the business of the company is continued by
2 the vote or consent of [all] a majority in interest, or such
3 greater number as shall be provided in writing in the
4 operating agreement, of the remaining members given within
5 [90] 180 days following such event [or under a right to do so
6 stated in the operating agreement].

7 (5) Entry of an order of judicial dissolution under
8 section 8972 (relating to judicial dissolution).

9 [(b) Cross reference.--See section 8103 (relating to
10 continuation of certain limited partnerships and limited
11 liability companies).]

12 § 8973. Winding up.

13 * * *

14 (b) Judicial supervision.--The court may wind up the affairs
15 of the company upon application of any member, his legal
16 representative or assignee and, in connection therewith, may
17 appoint a liquidating trustee. See section 139(b) (relating to
18 tax clearance in judicial proceedings).

19 § 8974. Distribution of assets upon dissolution.

20 (a) General rule.--In settling accounts after dissolution,
21 the liabilities of the limited liability company shall be
22 entitled to payment in the following order:

23 (1) Those to creditors, including members or managers
24 who are creditors, in the order of priority as provided by
25 law, in satisfaction of the liabilities of the company,
26 whether by payment or the making of reasonable provision for
27 payment thereof, other than liabilities for distributions to
28 members under section 8932 (relating to distributions and
29 allocation of profits and losses) or 8933 (relating to
30 distributions upon an event of dissociation).

1 (2) Unless otherwise provided in the operating
2 agreement, to members and former members in satisfaction of
3 liabilities for distributions under section 8932 or 8933.

4 (3) Unless otherwise provided in the operating
5 agreement, to members in respect of:

6 (i) Their contributions to capital.

7 (ii) Their share of the profits and other
8 compensation by way of income on their contributions.

9 * * *

10 § 8978. Dissolution by domestication.

11 Whenever a domestic limited liability company has
12 domesticated itself under the laws of another jurisdiction by
13 action similar to that provided by section 8982 (relating to
14 domestication) and has authorized that action by the vote
15 required by this subchapter for the approval of a proposal that
16 the company dissolve voluntarily, the company may surrender its
17 certificate of organization under the laws of this Commonwealth
18 by filing in the Department of State a certificate of
19 dissolution under section 8975 (relating to certificate of
20 dissolution). In lieu of the statements required by section
21 8975(a)(2) through (4), the certificate of dissolution shall set
22 forth a statement that the company has domesticated itself under
23 the laws of another jurisdiction. If the company, as
24 domesticated in the other jurisdiction, registers to do business
25 in this Commonwealth either prior to or simultaneously with the
26 filing of the certificate of dissolution under this section, the
27 company shall not be required to file with the certificate of
28 dissolution the tax clearance certificates that would otherwise
29 be required by section 139 (relating to tax clearance of certain
30 fundamental transactions).

1 § 8982. Domestication.

2 * * *

3 (b) Certificate of domestication.--The certificate of
4 domestication shall be executed by the company and shall set
5 forth in the English language:

6 (1) The name of the company. If the name is in a foreign
7 language, it shall be set forth in Roman letters or
8 characters or Arabic or Roman numerals. If the name is one
9 that is rendered unavailable for use by any provision of
10 section 8905 (relating to name), the company shall adopt, in
11 accordance with any procedures for changing the name of the
12 company that are applicable prior to the domestication of the
13 company, and shall set forth in the certificate of
14 domestication, an available name.

15 * * *

16 (c) Effect of domestication.--

17 (1) As a domestic limited liability company, the
18 domesticated company shall no longer be a foreign limited
19 liability company for the purposes of this chapter and shall
20 [have] instead be a domestic limited liability company with
21 all the powers and privileges and [be subject to] all the
22 duties and limitations granted and imposed upon domestic
23 limited liability companies. [The property, debts, liens,
24 estates, taxes, penalties and public accounts due the
25 Commonwealth shall continue to be vested in and imposed upon
26 the company to the same extent as if it were the successor by
27 merger of the domesticating company with and into a domestic
28 limited liability company under Subchapter G (relating to
29 mergers and consolidations).] In all other respects, the
30 domesticated limited liability company shall be deemed to be

1 the same limited liability company as it was prior to the
2 domestication without any change in or affect on its
3 existence. Without limiting the generality of the previous
4 sentence, the domestication shall not be deemed to have
5 dissolved the company or to have affected in any way:

6 (i) the right and title of the company in and to its
7 assets, property, franchises, estates and choses in
8 action;

9 (ii) the liability of the company for its debts,
10 obligations, penalties and public accounts due the
11 Commonwealth;

12 (iii) any liens or other encumbrances on the
13 property or assets of the company; or

14 (iv) any contract, license or other agreement to
15 which the company is a party or under which it has any
16 rights or obligations.

17 (2) The [shares of] membership interests in the
18 domesticated company shall be unaffected by the domestication
19 except to the extent, if any, reclassified in the certificate
20 of domestication.

21 § 8996. Restrictions.

22 * * *

23 (b) Ownership and governance of restricted professional
24 companies.--Except as otherwise provided by a statute, rule or
25 regulation applicable to a particular profession, all of the
26 [members] ultimate beneficial owners of membership interests in
27 and all of the managers, if any, of a restricted professional
28 company shall be licensed persons.

29 * * *

30 (d) Application.--For purposes of applying subsection (a):

1 * * *

2 (3) The practice of the restricted professional service
3 of law shall be deemed to include THE FOLLOWING ACTIVITIES <—
4 WHEN CONDUCTED INCIDENTAL TO THE PRACTICE OF LAW:

5 (i) serving as an attorney-in-fact, guardian,
6 custodian, executor, personal representative, trustee or
7 fiduciary;

8 (ii) serving as a director or trustee of a
9 corporation for profit or not-for-profit, manager of a
10 limited liability company or a similar position with any
11 other form of association;

12 (iii) testifying, teaching, lecturing or writing
13 about any topic related to the law;

14 (iv) serving as a master, receiver, arbitrator or
15 similar official;

16 (v) providing actuarial, insurance, investment,
17 estate and trust administration, tax return preparation,
18 financial and other similar services and advice; AND <—

19 (vi) conducting intellectual property and other real
20 and personal property title searches and providing other
21 title insurance agency services; and <—

22 ~~(vii) engaging in any activity incidental to any of~~
23 ~~the foregoing.~~

24 § 8998. Annual registration.

25 * * *

26 (f) Annual fee to be lien.--

27 (1) Failure to [pay the annual registration fee imposed]
28 file the certificate of annual registration required by this
29 section shall not affect the existence or status of the
30 restricted professional company as such, but the annual

1 registration fee that would have been payable shall be a lien
2 in the manner provided in this subsection from the time the
3 annual registration fee is due and payable [upon]. If a
4 certificate of annual registration is not filed within 30
5 days after the date on which it is due, the department shall
6 assess a penalty of \$500 against the company, which shall
7 also be a lien in the manner provided in this subsection. The
8 imposition of that penalty shall not be construed to relieve
9 the company from liability for any other penalty or interest
10 provided for under other applicable law.

11 (2) If the annual registration fee paid by a restricted
12 professional company is subsequently determined to be less
13 than should have been paid because it was based on an
14 incorrect number of members or was otherwise incorrectly
15 computed, that fact shall not affect the existence or status
16 of the restricted professional company as such, but the
17 amount of the additional annual registration fee that should
18 have been paid shall be a lien in the manner provided in this
19 subsection from the time the incorrect payment is discovered
20 by the department.

21 (3) The annual registration fee shall bear simple
22 interest from the date that it becomes due and payable until
23 paid. The interest rate shall be that provided for in section
24 806 of the act of April 9, 1929 (P.L.343, No.176), known as
25 The Fiscal Code, with respect to unpaid taxes. The penalty
26 provided for in paragraph (1) shall not bear interest. The
27 payment of interest shall not relieve the restricted
28 professional company from liability for any other penalty or
29 interest provided for under other applicable law.

30 (4) The lien created by this subsection shall attach to

1 all of the property and proceeds thereof of the restricted
2 professional company in which a security interest can be
3 perfected, in whole or in part, by filing in the department
4 under 13 Pa.C.S. Div. 9 (relating to secured transactions;
5 sales of accounts, contract rights and chattel paper),
6 whether the property and proceeds are owned by the company at
7 the time the annual registration fee or any penalty or
8 interest becomes due and payable or whether the property and
9 proceeds are acquired thereafter. Except as otherwise
10 provided by statute, the lien created by this subsection
11 shall have priority over all other liens, security interests
12 or other charges, except liens for taxes or other charges due
13 the Commonwealth. The lien created by this subsection shall
14 be entered on the records of the department and indexed in
15 the same manner as a financing statement filed under 13
16 Pa.C.S. Div. 9. At the time an annual registration fee,
17 penalty or interest that has resulted in the creation of
18 [the] a lien under this subsection is paid, the department
19 shall terminate the lien with respect to that annual
20 registration fee, penalty or interest without requiring a
21 separate filing by the company for that purpose.

22 (5) If the annual registration fee paid by a restricted
23 professional company is subsequently determined to be more
24 than should have been paid for any reason, no refund of the
25 additional fee shall be made.

26 * * *

27 § 9502. Creation, status and termination of business trusts.

28 (a) Creation.--A business trust may be created in real or
29 personal property, or both, with power in the trustee [or a
30 majority of the trustees]:

1 (1) To receive title to, hold, buy, sell, exchange,
2 transfer and convey real and personal property for the use of
3 the business trust.

4 (2) To take, receive, invest or disburse the receipts,
5 earnings, rents, profits or returns from the trust estate.

6 (3) To carry on and conduct any lawful business
7 designated in the deed or other instrument of trust, and
8 generally to do any lawful act in relation to such trust
9 property that any individual owning the same absolutely might
10 do.

11 (4) To merge with another business trust or other
12 association, to divide or to engage in any other fundamental
13 or other transaction contemplated by the deed or other
14 instrument of trust.

15 (b) Term.--Except as otherwise provided in the instrument, a
16 business trust shall have perpetual existence.

17 (c) Separate entity.--A business trust is a separate legal
18 entity. Except as otherwise provided in the instrument, title to
19 real and personal property may be held in the name of the trust,
20 without in any manner diminishing the rights, powers and duties
21 of the trustees as provided in subsection (a).

22 (d) Termination.--Except as otherwise provided in the
23 instrument:

24 (1) The business trust may not be terminated, dissolved
25 or revoked by a beneficial owner or other person.

26 (2) The death, incapacity, dissolution, termination or
27 bankruptcy of a beneficial owner or a trustee shall not
28 result in the termination, dissolution or revocation of the
29 business trust.

30 (e) Contents of instrument.--The instrument may contain any

provision for the regulation of the internal affairs of the business trust included in the instrument by the settlor, the trustee or the beneficiaries in accordance with the applicable procedures for the adoption or amendment of the instrument.

§ 9503. Documentation of trust.

(a) General rule.--A business trust shall not be valid unless created by deed of trust or other written instrument subscribed by one or more individuals, associations or other entities. The trustees of a business trust shall promptly cause the instrument or any amendment thereof, except an amendment solely effecting or reflecting the substitution of or other change in the trustees, to be filed in the Department of State.

[The failure to effect the filing shall not affect the validity of a business trust. A trustee who violates the requirements of this subsection shall be liable for a civil penalty in the amount of \$1,000 payable to the department.]

* * *

§ 9505. [Succession of trustees.] Trustees.

(a) Succession of trustees.--An instrument may provide for the succession of title to [the] any trust property not titled in the name of the trust to a successor trustee, in case of the death, resignation, removal or incapacity of any trustee. In the case of any such succession, the title to [the] such trust property shall at once vest in the succeeding trustee.

(b) Nature of service.--Service as the trustee of a business trust by an association that is not a banking institution shall not be deemed to constitute acting as a fiduciary for purposes of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

§ 9506. Liability of trustees and beneficiaries.

1 (a) General rule.--[Liability to third parties for any act,
2 omission or obligation of a trustee of a business trust when
3 acting in such capacity shall extend to so much of the trust
4 estate as may be necessary to discharge such liability, but
5 personal liability shall not attach to the trustee or the
6 beneficiaries of the trust for any such act, omission or
7 liability.]

8 (1) Except as otherwise provided in the instrument, the
9 beneficiaries of a business trust shall be entitled to the
10 same limitation of personal liability as is extended to
11 shareholders in a domestic business corporation.

12 (2) Except as otherwise provided in the instrument, the
13 trustees of a trust, when acting in that capacity, shall not
14 be personally liable to any person other than the trust or a
15 beneficiary for any act or obligation of the trust or any
16 trustee.

17 (3) An obligation of a trust based upon a writing may be
18 limited to a specific fund or other identified pool or group
19 of assets of the trust.

20 * * *

21 (f) Permissible beneficiaries.--Except as otherwise provided
22 by a statute, rule or regulation applicable to a particular
23 profession, all of the [beneficiaries of] ultimate beneficial
24 owners of interests in a business trust that renders one or more
25 restricted professional services shall be licensed persons. As
26 used in this subsection, the term "restricted professional
27 services" shall have the meaning specified in section 8903
28 (relating to definitions and index of definitions).

29 * * *

30 ~~(h) Medical professional liability. A business trust shall~~

<—

~~be deemed to be a professional corporation for purposes of
section 811 of the act of October 15, 1975 (P.L.390, No.111),
known as the Health Care Services Malpractice Act.~~

Section 3. Amendment of Title 54.

As much of Title 54 as is hereinafter set forth is amended or
added to read:

§ 302. Definitions.

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

"Business." Any commercial or professional activity.

"Entity." Any individual[,] or any corporation, association,
partnership, joint-stock company, business trust, syndicate,
joint adventureship or other combination or group of persons,
regardless of whether it is organized or formed under the laws
of this Commonwealth or any other jurisdiction.

"Fictitious name." Any assumed or fictitious name, style or
designation other than the proper name of the entity using such
name. The term includes [the], without limitation, any name [of
any association,] assumed by any general partnership, [business
trust,] syndicate, joint adventureship or similar combination or
group of persons.

"Proper name." When used with respect to an entity of a type
listed in the following paragraphs, the term means the name set
forth in:

(1) the articles of incorporation, if it is a
corporation;

(2) the statement of registration, if it is a limited
liability partnership;

(3) the certificate of limited partnership, if it is a

1 limited partnership;

2 (4) the statement of election, if it is an electing
3 partnership;

4 (5) the certificate of organization, if it is a limited
5 liability company;

6 (6) the articles of association, if it is a professional
7 association;

8 (7) the deed of trust or other instrument, if it is a
9 business trust; or

10 (8) a publicly filed document of a type listed in any of
11 the foregoing paragraphs even though the document is referred
12 to by a different title under the laws of any other
13 jurisdiction.

14 § 303. Scope of chapter.

15 * * *

16 (b) Mandatory registration.--

17 * * *

18 (2) Paragraph (1) shall not apply to any:

19 (i) Nonprofit or professional activities.

20 (ii) Activities [which] that are expressly or
21 impliedly prohibited by law from being carried on under a
22 fictitious name.

23 (iii) [Limited partnership which is registered in
24 the department pursuant to 15 Pa.C.S. Ch. 85 (relating to
25 limited partnerships) or under corresponding provisions
26 of prior law. The preceding sentence shall not apply to
27 any entity which includes the limited partnership as a
28 participant unless the entity is itself such a limited
29 partnership.] (Repealed).

30 (iv) Unincorporated nonprofit association.

(v) [Electing partnership existing under 15 Pa.C.S. Ch. 87 (relating to electing partnerships).] (Repealed).

(vi) [Limited liability company which is registered in the department pursuant to 15 Pa.C.S. Ch. 89 (relating to limited liability companies).] (Repealed).

(vii) [Registered limited liability partnership which is registered in the department pursuant to 15 Pa.C.S. Ch. 82 (relating to registered limited liability partnerships).] (Repealed).

(viii) [Business trust which is registered in the department pursuant to 15 Pa.C.S. Ch. 95 (relating to business trusts).] (Repealed).

* * *

§ 311. Registration.

* * *

(e) Duplicate use of names.--The fictitious name shall [not
be the same as or confusingly similar to:] BE DISTINGUISHABLE
UPON THE RECORDS OF THE DEPARTMENT FROM:

(1) The name of any domestic corporation, or any foreign corporation authorized to do business in this Commonwealth, or the name of any corporation or other association registered at any time under Chapter 5 (relating to corporate and other association names) unless such name is available or is made available for use under the provisions or procedures of 15 Pa.C.S. § [5303(b)(1)(i) or (ii)] 5303(b)(1) (relating to duplicate use of names) or the equivalent.

(2) [The name of any limited partnership organized under 15 Pa.C.S. Ch. 85 (relating to limited partnerships).] (Repealed).

(3) The name of any administrative department, board or

commission or other agency of this Commonwealth.

(4) A name the exclusive right to which is at the time reserved by any other person whatsoever in the manner provided by statute.

* * *

(F) REQUIRED APPROVALS.--THE FICTITIOUS NAME SHALL NOT CONTAIN:

* * *

(2) THE WORDS "ENGINEER" OR "ENGINEERING" OR "SURVEYOR" OR "SURVEYING" OR ANY OTHER WORD IMPLYING THAT ANY FORM OF THE PRACTICE OF ENGINEERING OR SURVEYING AS DEFINED IN THE ACT OF MAY 23, 1945 (P.L.913, NO.367), KNOWN AS THE [PROFESSIONAL ENGINEERS] ENGINEER, LAND SURVEYOR AND GEOLOGIST REGISTRATION LAW, IS PROVIDED UNLESS AT LEAST ONE OF THE INCORPORATORS OF A PROPOSED CORPORATION OR THE DIRECTORS OF THE EXISTING CORPORATION HAS BEEN PROPERLY REGISTERED WITH THE STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS IN THE PRACTICE OF ENGINEERING OR SURVEYING AND THERE IS SUBMITTED TO THE DEPARTMENT A CERTIFICATE FROM THE BOARD TO THAT EFFECT.

* * *

§ 502. Certain additions to register.

* * *

(c) Limitation on names which may be registered.-- Notwithstanding subsections (a) and (b), no new name shall be registered or deemed to be registered under this section [which is the same as or confusingly similar to] that is not distinguishable upon the records of the department from any other name then registered or deemed to be registered under this chapter, without the consent of the senior registrant.

1 * * *

2 Section 4. Repeals.

3 The following acts and parts of acts are repealed:

4 Section 32 of the act of June 1, 1889 (P.L.420, No.332),
5 entitled "A further supplement to an act entitled 'An act to
6 provide revenue by taxation,' approved the seventh day of June,
7 Anno Domini one thousand eight hundred and seventy-nine," to the
8 extent that it applies to the judicial dissolution of an
9 association under 15 Pa.C.S.

10 As much as reads ", and act as the attorney-in-fact and
11 authorized agent of such corporations for the service of process
12 thereon" in section 806 of the act of April 9, 1929 (P.L.177,
13 No.175), known as The Administrative Code of 1929.

14 Section 404(b) of the act of December 19, 1990 (P.L.834,
15 No.198), known as the GAA Amendments Act of 1990, insofar as it
16 applies to 15 Pa.C.S. §§ 1745 and 5745.

17 15 Pa.C.S. §§ 5543.1, 5546.1, 5764.1, 8103 and 8206.

18 Section 5. Effective date.

19 This act shall take effect in 60 days.