

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 GREENLEAF, JUDICIARY, AS AMENDED, MARCH 10, 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.

1 § 135. Requirements to be met by filed documents.

2 * * *

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

8 (1) the use of punctuation marks;

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

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

17 § 138. Statement of correction.

18 * * *

19 (b) Effect of filing.--

20 * * *

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

27 * * *

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

30 § 139. TAX CLEARANCE OF CERTAIN FUNDAMENTAL TRANSACTIONS.

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

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

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

19 (f) Cross references.--See sections 135(e) (relating to
20 distinguishable names) and 1106(b)(2) (relating to uniform
21 application of subpart).

22 § 1304. Required name changes by senior corporations.

23 * * *

24 (b) Enforcement of undertaking to release name.--If a
25 corporation has used a name [the same as or confusingly similar
26 to] that is not distinguishable upon the records of the
27 Department of State from the name of another corporation or
28 other association as permitted by section [1303(b)(1)(i)]
29 1303(b)(1) (relating to duplicate use of names) and the other
30 corporation or other association continues to use its name in

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

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

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

13 § 1311. Filing of statement of summary of record by certain
14 corporations.

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

1 (1) The name of the corporation and, subject to section
2 109 (relating to name of commercial registered office
3 provider in lieu of registered address), the location,
4 including street and number, if any, of its registered
5 office.

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

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

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

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

27 (6) In the case of any entity brought within the scope
28 of Chapter 29 (relating to professional corporations) by or
29 pursuant to section 2905 (relating to election of
30 professional associations to become professional

corporations), amended and restated articles of incorporation which shall include all of the information required to be set forth in restated articles of a professional corporation.

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

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

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

§ 1504. Adoption, amendment and contents of bylaws.

* * *

(d) Amendment of voting provisions.--

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

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

§ 1505. Persons bound by bylaws.

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

§ 1508. Corporate records; inspection by shareholders.

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

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

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

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

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

1 (b) Right of inspection by a shareholder.--Every shareholder
2 shall, upon written verified demand stating the purpose thereof,
3 have a right to examine, in person or by agent or attorney,
4 during the usual hours for business for any proper purpose, the
5 share register, books and records of account, and records of the
6 proceedings of the incorporators, shareholders and directors and
7 to make copies or extracts therefrom. A proper purpose shall
8 mean a purpose reasonably related to the interest of the person
9 as a shareholder. In every instance where an attorney or other
10 agent is the person who seeks the right of inspection, the
11 demand shall be accompanied by a verified power of attorney or
12 other writing that authorizes the attorney or other agent to so
13 act on behalf of the shareholder. The demand shall be directed
14 to the corporation:

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

16 (2) at its principal place of business wherever
17 situated; or

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

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

1 the corporation and to make copies or extracts therefrom, or the
2 court may order the corporation to furnish to the shareholder a
3 list of its shareholders as of a specific date on condition that
4 the shareholder first pay to the corporation the reasonable cost
5 of obtaining and furnishing the list and on such other
6 conditions as the court deems appropriate. Where the shareholder
7 seeks to inspect the books and records of the corporation, other
8 than its share register or list of shareholders, he shall first
9 establish:

10 (1) That he has complied with the provisions of this
11 section respecting the form and manner of making demand for
12 inspection of the document.

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

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

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

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

107 (relating to form of records), 1512 (relating to informational rights of a director) and 1763(c) (relating to certification by nominee).

§ 1512. 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 business 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 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 sought by a director or attorney or other agent acting for the director pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may apply to the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that the information to be obtained by

1 the exercise of the right is not reasonably related to the
2 performance of the duties of the director or that the director
3 or the attorney or agent of the director is likely to use the
4 information in a manner that would violate the duty of the
5 director to the corporation. The order of the court may contain
6 provisions protecting the corporation from undue burden or
7 expense and prohibiting the director from using the information
8 in a manner that would violate the duty of the director to the
9 corporation.

10 (c) Cross references.--See sections 107 (relating to form of
11 records) and 1508 (relating to corporate records; inspection by
12 shareholders) and 42 Pa.C.S. § 2503(7) (relating to right of
13 participants to receive counsel fees).

14 § 1521. Authorized shares.

15 * * *

16 (b) Provisions specifically authorized.--

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

20 (i) Subject to the right or obligation of the
21 corporation to redeem any of the shares for the
22 consideration, if any, fixed by or in the manner provided
23 by the articles for the redemption thereof. Unless
24 otherwise provided in the articles, any shares subject to
25 redemption shall be redeemable only pro rata or by lot or
26 by such other equitable method as may be selected by the
27 corporation. [An amendment of the articles to add or
28 amend a provision permitting the redemption of any shares
29 by a method that is not pro rata nor by lot nor otherwise
30 equitable may be effected only pursuant to section 1906

(relating to special treatment of holders of shares of same class or series).]

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

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

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

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

(i) Facts ascertainable outside of the articles if the manner in which the facts will operate upon the terms of the class or series is set forth in the articles. Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.

* * *

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

§ 1526. Liability of [subscribers and] shareholders.

[A subscriber to, or holder or owner of, shares of a business corporation shall not be under any liability to the corporation or any creditor thereof with respect to the shares other than the personal obligation of a shareholder who has acquired his shares by subscription to comply with the terms of the

1 subscription.] (a) General rule.--A shareholder of a business
2 corporation shall not be liable, solely by reason of being a
3 shareholder, under an order of a court or in any other manner
4 for a debt, obligation or liability of the corporation of any
5 kind or for the acts of any shareholder or representative of the
6 corporation.

7 (b) Professional relationship unaffected.--Subsection (a)
8 shall not afford the shareholders of a business corporation that
9 is not a professional corporation, but that provides
10 professional services, with greater immunity than is available
11 to the officers, shareholders, employees or agents of a business
12 corporation that is a professional corporation. See section 2925
13 (relating to professional relationship retained).

14 (c) Disciplinary jurisdiction unaffected.--A business
15 corporation providing professional services shall be subject to
16 the applicable rules and regulations adopted by, and all the
17 disciplinary powers of, the court, department, board, commission
18 or other government unit regulating the profession in which the
19 corporation is engaged. The court, department, board or other
20 government unit may require that a corporation include in its
21 articles provisions that conform to any rule or regulation
22 heretofore or hereafter promulgated for the purpose of enforcing
23 the ethics of a profession. This subpart shall not affect or
24 impair the disciplinary powers of the court, department, board,
25 commission or other government unit over licensed persons or any
26 law, rule or regulation pertaining to the standards for
27 professional conduct of licensed persons or to the professional
28 relationship between any licensed person rendering professional
29 services and the person receiving professional services.

30 § 1571. Application and effect of subchapter.

1 (a) General rule.--Except as otherwise provided in
2 subsection (b), any shareholder (as defined in section 1572
3 (relating to definitions)) of a business corporation shall have
4 the right to dissent from, and to obtain payment of the fair
5 value of his shares in the event of, any corporate action, or to
6 otherwise obtain fair value for his shares, only where this part
7 expressly provides that a shareholder shall have the rights and
8 remedies provided in this subchapter. See:

9 Section 1906(c) (relating to dissenters rights upon
10 special treatment).

11 Section 1930 (relating to dissenters rights).

12 Section 1931(d) (relating to dissenters rights in share
13 exchanges).

14 Section 1932(c) (relating to dissenters rights in asset
15 transfers).

16 Section 1952(d) (relating to dissenters rights in
17 division).

18 Section 1962(c) (relating to dissenters rights in
19 conversion).

20 Section 2104(b) (relating to procedure).

21 Section 2324 (relating to corporation option where a
22 restriction on transfer of a security is held invalid).

23 Section 2325(b) (relating to minimum vote requirement).

24 Section 2704(c) (relating to dissenters rights upon
25 election).

26 Section 2705(d) (relating to dissenters rights upon
27 renewal of election).

28 Section 2904(b) (relating to procedure).

29 Section 2907(a) (relating to proceedings to terminate
30 breach of qualifying conditions).

1 Section 7104(b)(3) (relating to procedure).

2 (b) Exceptions.--

3 (1) Except as otherwise provided in paragraph (2), the
4 holders of the shares of any class or series of shares [that,
5 at] shall not have the right to dissent and obtain payment of
6 the fair value of the shares under this subchapter if, on the
7 record date fixed to determine the shareholders entitled to
8 notice of and to vote at the meeting at which a plan
9 specified in any of section 1930, 1931(d), 1932(c) or 1952(d)
10 is to be voted on, or on the date of the first public
11 announcement that such a plan has been approved by the
12 shareholders by written consent without a meeting, the shares
13 are either:

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

18 (ii) held beneficially or of record by more than
19 2,000 [shareholders;
20 shall not have the right to obtain payment of the fair value
21 of any such shares under this subchapter.] persons.

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

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

29 (Repealed.)

30 (ii) Shares of any preferred or special class or

1 series unless the articles, the plan or the terms of the
2 transaction entitle all shareholders of the class or
3 series to vote thereon and require for the adoption of
4 the plan or the effectuation of the transaction the
5 affirmative vote of a majority of the votes cast by all
6 shareholders of the class or series.

7 (iii) Shares entitled to dissenters rights under
8 section 1906(c) (relating to dissenters rights upon
9 special treatment).

10 (3) The shareholders of a corporation that acquires by
11 purchase, lease, exchange or other disposition all or
12 substantially all of the shares, property or assets of
13 another corporation by the issuance of shares, obligations or
14 otherwise, with or without assuming the liabilities of the
15 other corporation and with or without the intervention of
16 another corporation or other person, shall not be entitled to
17 the rights and remedies of dissenting shareholders provided
18 in this subchapter regardless of the fact, if it be the case,
19 that the acquisition was accomplished by the issuance of
20 voting shares of the corporation to be outstanding
21 immediately after the acquisition sufficient to elect a
22 majority or more of the directors of the corporation.

23 * * *

24 (g) Computation of beneficial ownership.--For purposes of
25 subsection (b)(1)(ii), shares that are held beneficially as
26 joint tenants, tenants by the entireties, tenants in common or
27 in trust by two or more persons, as fiduciaries or otherwise,
28 shall be deemed to be held beneficially by one person.

29 [(g)] (h) Cross references.--See sections 1105 (relating to
30 restriction on equitable relief), 1904 (relating to de facto

1 transaction doctrine abolished), 1763(c) (relating to
2 determination of shareholders of record) and 2512 (relating to
3 dissenters rights procedure).

4 § 1572. Definitions.

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

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

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

22 * * *

23 "Shareholder." A shareholder as defined in section 1103
24 (relating to definitions), or an ultimate beneficial owner of
25 shares, including without limitation a holder of depository
26 receipts, where the beneficial interest owned includes an
27 interest in the assets of the corporation upon dissolution.

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

29 (a) Place.--Meetings of shareholders may be held at such
30 place within or without this Commonwealth as may be provided in

1 or fixed pursuant to the bylaws. Unless otherwise provided in or
2 pursuant to the bylaws, all meetings of the shareholders shall
3 be held [in this Commonwealth at the registered office of the
4 corporation] at the executive office of the corporation wherever
5 situated.

6 * * *

7 § 1709. Conduct of shareholders meeting.

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

15 (b) Authority of the presiding officer.--Except as otherwise
16 provided in the bylaws, the presiding officer shall determine
17 the order of business and shall have the authority to establish
18 rules for the conduct of the meeting.

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

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

28 § 1729. Voting rights of directors.

29 (a) General rule.--Unless otherwise provided in a bylaw
30 adopted by the shareholders, every director of a business

1 corporation shall be entitled to one vote. Without limiting the
2 generality of the foregoing, a bylaw adopted by the shareholders
3 may provide that a class or other defined group of directors
4 shall have multiple or fractional voting rights, or no right to
5 vote, either generally or under specified circumstances.

6 (b) [Multiple and fractional voting] Application of
7 procedural requirements.--Any requirement of this subpart for
8 the presence of or vote or other action by a specified
9 percentage of directors shall be satisfied by the presence of or
10 vote or other action by directors entitled to cast the specified
11 percentage of the votes that all voting directors in office are
12 entitled to cast.

13 § 1731. Executive and other committees of the board.

14 (a) Establishment and powers.--Unless otherwise restricted
15 in the bylaws:

16 * * *

17 (2) Any committee, to the extent provided in the
18 resolution of the board of directors or in the bylaws, shall
19 have and may exercise all of the powers and authority of the
20 board of directors except that a committee shall not have any
21 power or authority as to the following:

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

24 (ii) The creation or filling of vacancies in the
25 board of directors.

26 (iii) The adoption, amendment or repeal of the
27 bylaws.

28 (iv) The amendment or repeal of any resolution of
29 the board that by its terms is amendable or repealable
30 only by the board.

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

* * *

§ 1745. Advancing expenses.

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

§ 1748. Application to surviving or new corporations.

[For] (a) General rule.--Except as provided in subsection (b), for the purposes of this subchapter, references to "the corporation" include all constituent corporations absorbed in a consolidation, merger or division, as well as the surviving or new corporations surviving or resulting therefrom, so that any person who is or was a representative of the constituent, surviving or new corporation, or is or was serving at the request of the constituent, surviving or new corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, shall stand in the same position under the

provisions of this subchapter with respect to the surviving or new corporation as he would if he had served the surviving or new corporation in the same capacity.

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

§ 1756. Quorum.

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

* * *

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

* * *

§ 1758. Voting rights of shareholders.

* * *

(b) Procedures for election of directors.--[If the bylaws provide a fair and reasonable procedure for the nomination of candidates for any office, only candidates who have been duly nominated in accordance therewith shall be eligible for election.] Unless otherwise restricted in the bylaws, in elections for directors, voting need not be by ballot unless required by vote of the shareholders before the voting for

1 election of directors begins. The candidates for election as
2 directors receiving the highest number of votes from each class
3 or group of classes, if any, entitled to elect directors
4 separately up to the number of directors to be elected by the
5 class or group of classes shall be elected. If at any meeting of
6 shareholders, directors of more than one class are to be
7 elected, each class of directors shall be elected in a separate
8 election.

9 * * *

10 (e) Advance notice of nominations and other business.--If
11 the bylaws provide a fair and reasonable procedure for the
12 nomination of candidates for election as directors, only
13 candidates who have been duly nominated in accordance therewith
14 shall be eligible for election. If the bylaws impose a fair and
15 reasonable requirement of advance notice of proposals to be made
16 by a shareholder at the annual meeting of the shareholders, only
17 proposals for which advance notice has been properly given may
18 be acted upon at the meeting.

19 § 1759. VOTING AND OTHER ACTION BY PROXY.

<—

20 * * *

21 (B) EXECUTION AND FILING.--EVERY PROXY SHALL BE EXECUTED [IN
22 WRITING] OR AUTHENTICATED BY THE SHAREHOLDER OR BY HIS DULY
23 AUTHORIZED ATTORNEY-IN-FACT AND FILED WITH OR TRANSMITTED TO THE
24 SECRETARY OF THE CORPORATION OR ITS DESIGNATED AGENT. A
25 SHAREHOLDER OR HIS DULY AUTHORIZED ATTORNEY-IN-FACT MAY EXECUTE
26 OR AUTHENTICATE A WRITING OR TRANSMIT AN ELECTRONIC MESSAGE
27 AUTHORIZING ANOTHER PERSON TO ACT FOR HIM BY PROXY. A TELEGRAM,
28 TELEX, CABLEGRAM, DATAGRAM OR [SIMILAR] OTHER MEANS OF
29 ELECTRONIC TRANSMISSION FROM A SHAREHOLDER OR ATTORNEY-IN-FACT,
30 OR A PHOTOGRAPHIC, FACSIMILE OR SIMILAR REPRODUCTION OF A

1 WRITING EXECUTED BY A SHAREHOLDER OR ATTORNEY-IN-FACT:

2 (1) MAY BE TREATED AS PROPERLY EXECUTED OR AUTHENTICATED
3 FOR PURPOSES OF THIS SUBSECTION; AND

4 (2) SHALL BE SO TREATED IF IT SETS FORTH OR UTILIZES A
5 CONFIDENTIAL AND UNIQUE IDENTIFICATION NUMBER OR OTHER MARK
6 FURNISHED BY THE CORPORATION TO THE SHAREHOLDER FOR THE
7 PURPOSES OF A PARTICULAR MEETING OR TRANSACTION.

8 (C) REVOCATION.--A PROXY, UNLESS COUPLED WITH AN INTEREST,
9 SHALL BE REVOCABLE AT WILL, NOTWITHSTANDING ANY OTHER AGREEMENT
10 OR ANY PROVISION IN THE PROXY TO THE CONTRARY, BUT THE
11 REVOCATION OF A PROXY SHALL NOT BE EFFECTIVE UNTIL [WRITTEN]
12 NOTICE THEREOF HAS BEEN GIVEN TO THE SECRETARY OF THE
13 CORPORATION OR ITS DESIGNATED AGENT IN WRITING OR BY ELECTRONIC
14 TRANSMISSION. AN UNREVOKED PROXY SHALL NOT BE VALID AFTER THREE
15 YEARS FROM THE DATE OF ITS EXECUTION, AUTHENTICATION OR
16 TRANSMISSION UNLESS A LONGER TIME IS EXPRESSLY PROVIDED THEREIN.
17 A PROXY SHALL NOT BE REVOKED BY THE DEATH OR INCAPACITY OF THE
18 MAKER UNLESS, BEFORE THE VOTE IS COUNTED OR THE AUTHORITY IS
19 EXERCISED, WRITTEN NOTICE OF THE DEATH OR INCAPACITY IS GIVEN TO
20 THE SECRETARY OF THE CORPORATION OR ITS DESIGNATED AGENT.

21 * * *

22 § 1906. Special treatment of holders of shares of same class or
23 series.

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

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

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

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

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

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

28 (c) Dissenters rights upon special treatment.--If any
29 [amendment or] plan contains a provision for special treatment
30 without requiring for the adoption of the [amendment or] plan

1 the statutory class vote required by subsection (b), the holder
2 of any outstanding shares the statutory class voting rights of
3 which are so denied, who objects to the [amendment or] plan and
4 complies with Subchapter D of Chapter 15 (relating to dissenters
5 rights), shall be entitled to the rights and remedies of
6 dissenting shareholders provided in that subchapter.

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

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

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

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

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

30 (e) Definition.--As used in this section, the term "plan"

1 includes:

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

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

8 § 1912. Proposal of amendments.

9 * * *

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

20 § 1914. Adoption of amendments.

21 * * *

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

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

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

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

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

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

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

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

22 (1) shares have not been issued;

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

25 (i) changing the corporate name;

26 (ii) providing for perpetual existence;

27 (iii) reflecting a reduction in authorized shares
28 effected by operation of section 1552(a) (relating to
29 power of corporation to acquire its own shares) and, if
30 appropriate, deleting all references to a class or series

of shares that is no longer outstanding; [or]

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

or

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

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

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

(A) convertible into those voting shares;

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

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

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

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

[(ii) effectuate a] (B) to split the voting shares and, if desired, increase the number of authorized shares

1 of the voting shares or change the par value of [the
2 authorized] the voting shares, or both, in proportion
3 thereto;

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

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

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

22 * * *

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

26 § 1922. Plan of merger or consolidation.

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

29 * * *

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

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

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

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

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

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

6 * * *

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

14 § 1923. Notice of meeting of shareholders.

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

29 * * *

30 § 1924. Adoption of plan.

1 * * *

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

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

7 * * *

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

14 * * *

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

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

1 shall not require the approval of the shareholders of
2 either the constituent corporation or the subsidiary
3 corporation if all of the provisions of this paragraph
4 are satisfied.

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

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

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

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

27 (D) Immediately following the effective time of
28 the merger or consolidation, the articles of
29 incorporation and bylaws of the holding company are
30 identical to the articles of incorporation and bylaws

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

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

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

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

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

26 (iv) If the holding company is a registered
27 corporation, the shares of the holding company issued in
28 connection with the merger or consolidation shall be
29 deemed to have been acquired at the time that the shares
30 of the constituent corporation converted in the merger or

1 consolidation were acquired.

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

18 * * *

19 § 1929. Effect of merger or consolidation.

20 * * *

21 (b) Property rights.--All the property, real, personal and
22 mixed, and franchises of each of the corporations parties to the
23 merger or consolidation, and all debts due on whatever account
24 to any of them, including subscriptions for shares and other
25 choses in action belonging to any of them, shall be deemed to be
26 [transferred to and] vested in and shall belong to the surviving
27 or new corporation, as the case may be, without further action,
28 and the title to any real estate, or any interest therein,
29 vested in any of the corporations shall not revert or be in any
30 way impaired by reason of the merger or consolidation. The

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

10 * * *

11 § 1930. Dissenters rights.

12 * * *

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

19 * * *

20 § 1931. Share exchanges.

21 (a) General rule.--All the outstanding shares of one or more
22 classes or series of a domestic business corporation, designated
23 in this section as the exchanging corporation, may, in the
24 manner provided in this section, be acquired by any person,
25 designated in this section as the acquiring person, through an
26 exchange of all the shares pursuant to a plan of exchange. The
27 plan of exchange may also provide for the conversion of any
28 other shares of the exchanging corporation into shares, other
29 securities or obligations of any person or cash, property or
30 rights. The procedure authorized by this section shall not be

1 deemed to limit the power of any person to acquire all or part
2 of the shares or other securities of any class or series of a
3 corporation through a voluntary exchange or otherwise by
4 agreement with the holders of the shares or other securities.

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

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

8 (2) The manner and basis of exchanging or converting the
9 shares of the exchanging corporation into shares or other
10 securities or obligations of the acquiring person, and, if
11 any of the shares of the exchanging corporation are not to be
12 exchanged or converted solely into shares or other securities
13 or obligations of the acquiring person, the shares or other
14 securities or obligations of any other person or cash,
15 property or rights that the holders of the shares of the
16 exchanging corporation are to receive in exchange for, or
17 upon conversion of, the shares and the surrender of any
18 certificates evidencing them, which securities or
19 obligations, if any, of any other person or cash, property
20 and rights may be in addition to or in lieu of the shares or
21 other securities or obligations of the acquiring person.

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

25 (4) 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). Notwithstanding subsection (a), a plan that
30 provides special treatment may affect less than all of the

1 outstanding shares of a class or series.

2 (5) Such other provisions as are deemed desirable.

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

7 (c) Proposal and adoption.--The plan of exchange shall be
8 proposed and adopted and may be amended after its adoption and
9 terminated by the exchanging corporation in the manner provided
10 by this subchapter for the proposal, adoption, amendment and
11 termination of a plan of merger except section 1924(b) (relating
12 to adoption by board of directors). There shall be included in,
13 or enclosed with, the notice of the meeting of shareholders to
14 act on the plan a copy or a summary of the plan and, if
15 Subchapter D of Chapter 15 (relating to dissenters rights) is
16 applicable, a copy of the subchapter and of subsection (d). The
17 holders of any class of shares to be [acquired] exchanged or
18 converted pursuant to the plan of exchange shall be entitled to
19 vote as a class on the plan if they would have been entitled to
20 vote on a plan of merger that affects the class in substantially
21 the same manner as the plan of exchange.

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

29 (e) Articles of exchange.--Upon adoption of a plan of
30 exchange, as provided in this section, articles of exchange

shall be executed by the exchanging corporation and shall set forth:

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

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

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

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

The articles of exchange shall be filed in the Department of State. See [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 (1) A sale, lease, exchange or other disposition of all,
2 or substantially all, the property and assets, with or
3 without the goodwill, of a business corporation, if not made
4 pursuant to subsection (a) or (d) or to section 1551
5 (relating to distributions to shareholders) or Subchapter D
6 (relating to division), may be made only pursuant to a plan
7 of asset transfer[.] in the manner provided in this
8 subsection. A corporation selling, leasing or otherwise
9 disposing of all, or substantially all, its property and
10 assets is referred to in this subsection and in subsection
11 (c) as the "transferring corporation."

12 (2) The property or assets of a direct or indirect
13 subsidiary corporation that is controlled by a parent
14 corporation shall also be deemed the property or assets of
15 the parent corporation for the purposes of this subsection
16 and of subsection (c). A merger or consolidation to which
17 such a subsidiary corporation is a party and in which a third
18 party acquires direct or indirect ownership of the property
19 or assets of the subsidiary corporation constitutes an "other
20 disposition" of the property or assets of the parent
21 corporation within the meaning of that term as used in this
22 section.

23 (3) The plan of asset transfer shall set forth the terms
24 and conditions of the sale, lease, exchange or other
25 disposition or may authorize the board of directors to fix
26 any or all of the terms and conditions, including the
27 consideration to be received by the corporation therefor. The
28 plan may provide for the distribution to the shareholders of
29 some or all of the consideration to be received by the
30 corporation, including provisions for special treatment of

1 shares held by any shareholder or group of shareholders as
2 authorized by, and subject to the provisions of, section 1906
3 (relating to special treatment of holders of shares of same
4 class or series). It shall not be necessary for the person
5 acquiring the property or assets of the transferring
6 corporation to be a party to the plan. Any of the terms of
7 the plan 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
12 corporation or a representative of the corporation.

13 (4) The plan of asset transfer shall be proposed and
14 adopted, and may be amended after its adoption and
15 terminated, by [a business] the transferring corporation in
16 the manner provided in this subchapter for the proposal,
17 adoption, amendment and termination of a plan of merger,
18 except section 1924(b) (relating to adoption by board of
19 directors). The procedures of this subchapter shall not be
20 applicable to the person acquiring the property or assets of
21 the transferring corporation. There shall be included in, or
22 enclosed with, the notice of the meeting of the shareholders
23 of the transferring corporation to act on the plan a copy or
24 a summary of the plan and, if Subchapter D of Chapter 15
25 (relating to dissenters rights) is applicable, a copy of the
26 subchapter and of subsection (c).

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

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

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

6 (2) Paragraph (1) shall not apply to a sale pursuant to
7 an order of court having jurisdiction in the premises or a
8 sale [for money on terms requiring] pursuant to a plan of
9 asset transfer that requires that all or substantially all of
10 the net proceeds of sale be distributed to the shareholders
11 in accordance with their respective interests within one year
12 after the date of sale or to a liquidating trust.

13 * * *

14 § 1952. Proposal and adoption of plan of division.

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

17 (1) The terms and conditions of the division, including
18 the manner and basis of:

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

1 shares or other securities or obligations of one or more
2 of the resulting corporations.

3 (ii) The disposition of the shares and other
4 securities or obligations, if any, of the new corporation
5 or corporations resulting from the division.

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

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

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

13 (5) 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).

18 (6) 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 * * *

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

1 exchange or other disposition, and any related distribution,
2 would not require the approval of the holders or representatives
3 thereof.] If any debt securities, notes or similar evidences of
4 indebtedness for money borrowed, whether secured or unsecured,
5 indentures or other contracts were issued, incurred or executed
6 by the dividing corporation 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 corporation thereunder shall not
10 be affected by the division nor shall the rights of the obligees
11 thereunder be impaired by the division, and each of the
12 resulting corporations may be proceeded against or substituted
13 in place of the dividing corporation as joint and several
14 obligors on such liability, regardless of any provision of the
15 plan of division apportioning the liabilities of the dividing
16 corporations.

17 * * *

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

25 § 1953. Division without shareholder approval.

26 (a) General rule.--Unless otherwise restricted by its bylaws
27 or required by section 1952(f) (relating to action by holders of
28 preferred or special shares), a plan of division that does not
29 alter the state of incorporation of a business corporation,
30 provide for special treatment nor amend in any respect the

1 provisions of its articles (except amendments which under
2 section 1914(c) (relating to adoption by board of directors) may
3 be made without shareholder action) shall not require the
4 approval of the shareholders of the corporation if:

5 (1) the dividing corporation has only one class of
6 shares outstanding and the shares and other securities, if
7 any, of each corporation resulting from the plan are
8 distributed pro rata to the shareholders of the dividing
9 corporation;

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

14 (3) the [transfers] allocation of assets among the
15 resulting corporations effected by the division, if effected
16 by means of a sale, lease, exchange or other disposition,
17 would not require the approval of shareholders under section
18 1932(b) (relating to shareholder approval required).

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

* * *

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

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

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

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

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

20 (A) no fraud [of corporate creditors, or of] on
21 minority shareholders or shareholders without voting
22 rights or violation of law shall be effected thereby,
23 and [if applicable provisions of law are complied
24 with.]

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

28 (v) If the conditions in subparagraph (iv) for
29 freeing one or more of the resulting corporations from
30 the liabilities of the dividing corporation, or for

1 allocating some or all of the liabilities of the dividing
2 corporation, are not satisfied, the liabilities of the
3 dividing corporation as to which those conditions are not
4 satisfied shall not be affected by the division nor shall
5 the rights of creditors [thereof or of any person dealing
6 with the corporation] thereunder be impaired by the
7 division and any claim existing or action or proceeding
8 pending by or against the corporation with respect to
9 those liabilities may be prosecuted to judgment as if the
10 division had not taken place, or the resulting
11 corporations may be proceeded against or substituted in
12 [its] place of the dividing corporation as joint and
13 several obligors on [such liability] those liabilities,
14 regardless of any provision of the plan of division
15 apportioning the liabilities of the dividing corporation.

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

28 (2) (i) The [transfer] allocation of any fee or
29 freehold interest or leasehold having a remaining term of
30 30 years or more in any tract or parcel of real property

1 situate in this Commonwealth owned by a dividing
2 corporation (including property owned by a foreign
3 business corporation dividing solely under the law of
4 another jurisdiction) to a new corporation resulting from
5 the division shall not be effective until one of the
6 following documents is filed in the office for the
7 recording of deeds of the county, or each of them, in
8 which the tract or parcel is situated:

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

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

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

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

18 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
19 to transfer of vehicle by operation of law) shall not be
20 applicable to [a transfer] an allocation of ownership of
21 any motor vehicle, trailer or semitrailer [from a
22 dividing corporation] to a new corporation under this
23 section or under a similar law of any other jurisdiction
24 but any such [transfer] allocation shall be effective
25 only upon compliance with the requirements of 75 Pa.C.S.
26 § 1116 (relating to issuance of new certificate following
27 transfer).

28 (3) It shall not be necessary for a plan of division to
29 list each individual asset or liability of the dividing
30 corporation to be allocated to a new corporation so long as

1 those assets and liabilities are described in a reasonable
2 manner.

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

9 * * *

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

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

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

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

26 (4) In addition to the express provisions of this
27 subsection, this subchapter shall otherwise generally be
28 granted the protection of full faith and credit under the
29 Constitution of the United States.

30 § 1962. Proposal and adoption of plan of conversion.

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

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

4 (2) A restatement of the articles of the resulting
5 corporation, which articles shall comply with the
6 requirements of this part relating to nonprofit corporations.

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

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

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

17 * * *

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

25 § 1972. Proposal of voluntary dissolution.

26 (a) General rule.--Any business corporation that has
27 commenced business may dissolve voluntarily in the manner
28 provided in this subchapter and wind up its affairs in the
29 manner provided in section 1975 (relating to predissolution
30 provision for liabilities) or Subchapter H (relating to

1 postdissolution provision for liabilities). Voluntary
2 dissolution shall be proposed by the adoption by the board of
3 directors of a resolution recommending that the corporation be
4 dissolved voluntarily. The resolution shall contain a statement
5 either that the dissolution shall proceed under section 1975 or
6 that the dissolution shall proceed under Subchapter H. The
7 resolution may set forth provisions for the distribution to
8 shareholders of any surplus remaining after paying or providing
9 for all liabilities of the corporation, including provisions for
10 special treatment of shares held by any shareholder or group of
11 shareholders as authorized by, and subject to the provisions of,
12 section 1906 (relating to special treatment of holders of shares
13 of same class or series).

14 (b) Submission to shareholders.--The board of directors
15 shall direct that the [question of] resolution recommending
16 dissolution be submitted to a vote of the shareholders of the
17 corporation entitled to vote thereon at a regular or special
18 meeting of the shareholders.

19 * * *

20 § 1973. Notice of meeting of shareholders.

21 (a) General rule.--Written notice of the meeting of
22 shareholders that will consider the [advisability of voluntarily
23 dissolving a] resolution recommending dissolution of the
24 business corporation shall be given to each shareholder of
25 record entitled to vote thereon and the purpose shall be
26 included in the notice of the meeting.

27 * * *

28 § 1975. Predissolution provision for liabilities.

29 (a) Powers of board.--The board of directors of a business
30 corporation that has elected to proceed under this section shall

1 have full power to wind up and settle the affairs of [a
2 business] the corporation in accordance with this section prior
3 to filing articles of dissolution in accordance with section
4 1977 (relating to articles of dissolution).

5 (b) Notice to creditors and taxing authorities.--After the
6 approval by the shareholders of the [proposal] resolution
7 recommending that the corporation dissolve voluntarily, the
8 corporation shall immediately cause notice of the winding up
9 proceedings to be officially published and to be mailed by
10 certified or registered mail to each known creditor and claimant
11 and to each municipal corporation in which [its registered
12 office or principal] it has a place of business in this
13 Commonwealth [is located].

14 (c) Winding up and distribution.--The corporation shall, as
15 speedily as possible, proceed to collect all sums due it,
16 convert into cash all corporate assets the conversion of which
17 into cash is required to discharge its liabilities and, out of
18 the assets of the corporation, discharge or make adequate
19 provision for the discharge of all liabilities of the
20 corporation, according to their respective priorities. Any
21 surplus remaining after paying or providing for all liabilities
22 of the corporation shall be distributed to the shareholders
23 according to their respective rights and preferences. See
24 section 1972(a) (relating to proposal of voluntary dissolution).
25 § 1976. Judicial supervision of proceedings.

26 A business corporation that has elected to proceed under
27 section 1975 (relating to predissolution provision for
28 liabilities), at any time during the winding up proceedings, may
29 apply to the court to have the proceedings continued under the
30 supervision of the court and thereafter the proceedings shall

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

4 § 1977. Articles of dissolution.

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

9 (1) all liabilities of the business corporation have
10 been discharged, or adequate provision has been made
11 therefor, in accordance with section 1975 (relating to
12 predissolution provision for liabilities), and all of the
13 remaining assets of the corporation have been distributed as
14 provided in section 1975 (or in case its assets are not
15 sufficient to discharge its liabilities, when all the assets
16 have been fairly and equitably applied, as far as they will
17 go, to the payment of such liabilities); or

18 (2) an election to proceed under Subchapter H (relating
19 to postdissolution provision for liabilities) has been made.
20 [See section 134 (relating to docketing statement).]

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

23 * * *

24 (5) A statement that:

25 (i) [that] all liabilities of the corporation have
26 been discharged or that adequate provision has been made
27 therefor; [or]

28 (ii) [that] the assets of the corporation are not
29 sufficient to discharge its liabilities, and that all the
30 assets of the corporation have been fairly and equitably

1 applied, as far as they will go, to the payment of such
2 liabilities[. An election by]; or

3 (iii) the corporation has elected to proceed under
4 Subchapter H [shall constitute the making of adequate
5 provision for the liabilities of the corporation,
6 including any judgment or decree that may be obtained
7 against the corporation in any pending action or
8 proceeding].

9 * * *

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

16 (8) [A] In the case of a corporation that has not
17 elected to proceed under Subchapter H, a statement that
18 notice of the winding-up proceedings of the corporation was
19 mailed by certified or registered mail to each known creditor
20 and claimant and to each municipal corporation in which the
21 [registered office or principal place of business of the]
22 corporation has a place of business in this Commonwealth [is
23 located].

24 * * *

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

28 § 1978. Winding up of corporation after dissolution.

29 * * *

30 (b) Standard of care of directors and officers.--The

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

§ 1979. Survival of remedies and rights after dissolution.

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

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

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

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

* * *

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

4 § 1980. Dissolution by domestication.

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

23 § 1989. ARTICLES OF INVOLUNTARY DISSOLUTION.

<—

24 (A) GENERAL RULE.--IN A PROCEEDING UNDER THIS SUBCHAPTER,
25 THE COURT SHALL ENTER AN ORDER DISSOLVING THE BUSINESS
26 CORPORATION WHEN THE COSTS AND EXPENSES OF THE PROCEEDING AND
27 ALL LIABILITIES OF THE CORPORATION HAVE BEEN DISCHARGED, AND ALL
28 OF ITS REMAINING ASSETS HAVE BEEN DISTRIBUTED TO ITS
29 SHAREHOLDERS OR, IN CASE ITS ASSETS ARE NOT SUFFICIENT TO
30 DISCHARGE SUCH COSTS, EXPENSES AND LIABILITIES, WHEN ALL THE

1 ASSETS HAVE BEEN APPLIED, AS FAR AS THEY WILL GO, TO THE PAYMENT
2 OF SUCH COSTS, EXPENSES AND LIABILITIES. SEE SECTION 139(B)
3 (RELATING TO TAX CLEARANCE IN JUDICIAL PROCEEDINGS).

4 (B) FILING.--AFTER ENTRY OF AN ORDER OF DISSOLUTION, THE
5 OFFICE OF THE CLERK OF THE COURT OF COMMON PLEAS SHALL PREPARE
6 AND EXECUTE ARTICLES OF DISSOLUTION SUBSTANTIALLY IN THE FORM
7 PROVIDED BY SECTION 1977 (RELATING TO ARTICLES OF DISSOLUTION),
8 ATTACH THERETO A CERTIFIED COPY OF THE ORDER AND TRANSMIT THE
9 ARTICLES AND ATTACHED ORDER TO THE DEPARTMENT OF STATE. [A
10 CERTIFICATE OR STATEMENT PROVIDED FOR BY SECTION 139 (RELATING
11 TO TAX CLEARANCE OF CERTAIN FUNDAMENTAL TRANSACTIONS) SHALL NOT
12 BE REQUIRED, AND THE] THE DEPARTMENT SHALL NOT CHARGE A FEE IN
13 CONNECTION WITH THE FILING OF ARTICLES OF DISSOLUTION UNDER THIS
14 SECTION. SEE [SECTION] SECTIONS 134 (RELATING TO DOCKETING
15 STATEMENT) AND 135 (RELATING TO REQUIREMENTS TO BE MET BY FILED
16 DOCUMENTS).

17 * * *

18 § 1991.1. Authority of board of directors.

19 (a) General rule.--The board of directors of a business
20 corporation that has elected to proceed under this subchapter
21 shall have full power to wind up and settle the affairs of the
22 corporation in accordance with this subchapter both prior to and
23 after the filing of articles of dissolution in accordance with
24 section 1977 (relating to articles of dissolution).

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

1 § 1992. Notice to claimants.

2 * * *

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

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

10 (2) Concurrently with or preceding the publication, the
11 corporation or successor entity shall send a copy of the
12 notice by certified or registered mail, return receipt
13 requested, to each:

14 (i) known creditor or claimant;

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

16 and

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

21 * * *

22 § 1997. Payments and distributions.

23 * * *

24 (b) Disposition.--The claims and liabilities shall be paid
25 in full and any provision for payment shall be made in full if
26 there are sufficient assets. If there are insufficient assets,
27 the claims and liabilities shall be paid or provided for in
28 order of their priority, and, among claims of equal priority,
29 ratably to the extent of funds legally available therefor. Any
30 remaining assets shall be distributed to the shareholders of the

1 corporation according to their respective rights and
2 preferences, except that the distribution shall not be made less
3 than 60 days after the last notice of rejection, if any, was
4 given under section 1993 (relating to acceptance or rejection of
5 matured claims). See section 1972(a) (relating to proposal of
6 voluntary dissolution).

7 * * *

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

12 § 2902. Definitions and index of definitions.

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

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

22 ["Licensed person." Any natural person who is duly licensed
23 or admitted to practice his profession by a court, department,
24 board, commission or other agency of this Commonwealth or
25 another jurisdiction to render a professional service that is or
26 will be rendered by the professional corporation of which he is,
27 or intends to become, an officer, director, shareholder,
28 employee or agent.

29 "Profession." Includes the performance of any type of
30 personal service to the public that requires as a condition

1 precedent to the performance of the service the obtaining of a
2 license or admission to practice or other legal authorization,
3 including all personal services that prior to the enactment of
4 the act of July 9, 1970 (P.L.461, No.160), known as the
5 Professional Corporation Law, could not lawfully be rendered by
6 means of a corporation. By way of example, and without limiting
7 the generality of the foregoing, the term includes for the
8 purposes of this chapter personal services rendered as an
9 architect, chiropractor, dentist, funeral director, osteopath,
10 podiatrist, physician, professional engineer, veterinarian,
11 certified public accountant or surgeon and, except as otherwise
12 prescribed by general rules, an attorney at law. Except as
13 otherwise expressly provided by law, the definition specified in
14 this paragraph shall be applicable to this chapter only and
15 shall not affect the interpretation of any other statute or any
16 local zoning ordinance or other official document heretofore or
17 hereafter enacted or promulgated.

18 "Professional services." Any type of services that may be
19 rendered by the member of any profession within the purview of
20 his profession.]

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

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

24 "Profession." Section 102.

25 "Professional services." Section 102.

26 § 2904. Election of an existing business corporation to become
27 a professional corporation.

28 * * *

29 (b) Procedure.--The amendment shall be adopted in accordance
30 with the requirements of Subchapter B of Chapter 19 (relating to

1 amendment of articles) [except that the amendment must be
2 approved by the unanimous consent of all shareholders of the
3 corporation regardless of any limitations on voting rights
4 stated in the articles or bylaws]. If any shareholder of a
5 business corporation that proposes to amend its articles to
6 become a professional corporation objects to that amendment and
7 complies with the provisions of Subchapter D of Chapter 15
8 (relating to dissenters rights), the shareholder shall be
9 entitled to the rights and remedies of dissenting shareholders
10 therein provided, if any.

11 § 2922. Stated purposes.

12 * * *

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

19 § 2923. Issuance and retention of shares.

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

1 exercise the voting power of any or all of his shares, and any
2 such purported voting trust, proxy or other arrangement shall be
3 void.

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

13 * * *

14 § 3133. Notice of meetings of members of mutual insurance
15 companies.

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

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

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

* * *

§ 4123. Requirements for foreign corporation names.

* * *

(b) Exceptions.--

(1) The provisions of section 1303(b) (relating to duplicate use of names) shall not prevent the issuance of a certificate of authority to a foreign business corporation setting forth a name that is [confusingly similar to] not distinguishable upon the records of the department from the name of any other domestic or foreign corporation for profit or corporation not-for-profit, [or of any domestic or foreign limited partnership that has filed a certificate or qualified under Chapter 85 (relating to limited partnerships) or corresponding provisions of prior law,] or of any corporation or other association then registered under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names) or to any name reserved or registered as provided in this part, if the foreign business corporation applying for a certificate of authority files in the department [one of the following:

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

[(ii) The written consent of the other corporation or other association or holder of a reserved or

1 registered name to use the same or confusingly similar
2 name and one or more words are added to make the name
3 applied for distinguishable from the other name.]

4 * * *

5 § 4126. AMENDED CERTIFICATE OF AUTHORITY. <—

6 (A) GENERAL RULE.--AFTER RECEIVING A CERTIFICATE OF
7 AUTHORITY, A QUALIFIED FOREIGN BUSINESS CORPORATION MAY, SUBJECT
8 TO THE PROVISIONS OF THIS SUBCHAPTER, CHANGE [THE NAME UNDER
9 WHICH IT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS
10 COMMONWEALTH] OR CORRECT ANY OF THE INFORMATION SET FORTH IN ITS
11 APPLICATION FOR A CERTIFICATE OF AUTHORITY OR PREVIOUS FILINGS
12 UNDER THIS SECTION BY FILING IN THE DEPARTMENT OF STATE AN
13 APPLICATION FOR AN AMENDED CERTIFICATE OF AUTHORITY. THE
14 APPLICATION SHALL BE EXECUTED BY THE CORPORATION AND SHALL
15 STATE:

16 (1) THE NAME UNDER WHICH THE APPLICANT CORPORATION
17 CURRENTLY HOLDS A CERTIFICATE OF AUTHORITY TO DO BUSINESS IN
18 THIS COMMONWEALTH.

19 [(2) THE NAME OF THE JURISDICTION UNDER THE LAWS OF
20 WHICH THE CORPORATION IS INCORPORATED.

21 (3) THE ADDRESS, INCLUDING STREET AND NUMBER, IF ANY, OF
22 ITS PRINCIPAL OFFICE UNDER THE LAWS OF THE JURISDICTION IN
23 WHICH IT IS INCORPORATED.

24 (4)] (2) SUBJECT TO SECTION 109 (RELATING TO NAME OF
25 COMMERCIAL REGISTERED OFFICE PROVIDER IN LIEU OF REGISTERED
26 ADDRESS), THE ADDRESS, INCLUDING STREET AND NUMBER, IF ANY,
27 OF ITS REGISTERED OFFICE IN THIS COMMONWEALTH., WHICH MAY
28 CONSTITUTE A CHANGE IN THE ADDRESS OF ITS REGISTERED OFFICE.

29 (5) THE NEW NAME OF THE CORPORATION AND]

30 (3) THE INFORMATION TO BE CHANGED OR CORRECTED.

1 (4) IF THE APPLICATION REFLECTS A CHANGE IN THE NAME OF
2 THE CORPORATION, THE APPLICATION SHALL INCLUDE A STATEMENT
3 THAT EITHER:

4 (I) THE CHANGE OF NAME REFLECTS A CHANGE EFFECTED IN
5 THE JURISDICTION OF INCORPORATION; OR

6 (II) DOCUMENTS COMPLYING WITH SECTION 4123(B)
7 (RELATING TO EXCEPTION; NAME) ACCOMPANY THE APPLICATION.

8 (B) ISSUANCE OF AMENDED CERTIFICATE OF AUTHORITY.--UPON THE
9 FILING OF THE APPLICATION, THE APPLICANT CORPORATION SHALL BE
10 DEEMED TO HOLD AN AMENDED CERTIFICATE OF AUTHORITY.

11 (C) CROSS REFERENCE.--SEE SECTION 134 (RELATING TO DOCKETING
12 STATEMENT).

13 § 4146. Provisions applicable to all foreign corporations.

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

18 Section 1503 (relating to defense of ultra vires), as to
19 contracts and conveyances [made in] governed by the laws of
20 this Commonwealth and conveyances affecting real property
21 situated in this Commonwealth.

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

26 Section 1510 (relating to certain specifically authorized
27 debt terms), as to obligations (as defined in the section)
28 [executed or effected in] governed by the laws of this
29 Commonwealth or affecting real property situated in this
30 Commonwealth.

1 * * *

2 § 4161. Domestication.

3 * * *

4 (b) Articles of domestication.--The articles of
5 domestication shall be executed by the corporation and shall set
6 forth in the English language:

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

16 * * *

17 (c) 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 § 4162. Effect of domestication.

21 (a) General rule.--As a domestic business corporation, the
22 domesticated corporation shall no longer be a foreign business
23 corporation for the purposes of this subpart and shall [have],
24 instead, be a domestic business corporation with all the powers
25 and privileges and [be subject to] all the duties and
26 limitations granted and imposed upon domestic business
27 corporations. [The property, franchises, debts, liens, estates,
28 taxes, penalties and public accounts due the Commonwealth shall
29 continue to be vested in and imposed upon the corporation to the
30 same extent as if it were the successor by merger of the

domesticating corporation with and into a domestic business corporation under Subchapter C of Chapter 19 (relating to merger, consolidation, share exchanges and sale of assets).] In all other respects, the domesticated corporation shall be deemed to be the same corporation as it was prior to the domestication without any change in or effect on its existence. Without limiting the generality of the previous sentence, the domestication shall not be deemed to have affected in any way:

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

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

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

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

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

§ 5303. Corporate name.

* * *

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

(1) The name of any other domestic corporation for profit or not-for-profit which is either in existence or for which articles of incorporation have been filed but have not

1 yet become effective, or of any foreign corporation for
2 profit or not-for-profit which is either authorized to do
3 business in this Commonwealth or for which an application for
4 a certificate of authority has been filed but which has not
5 yet become effective, [or of any domestic or foreign limited
6 partnership that has filed in the Department of State a
7 certificate or qualified under Chapter 85 (relating to
8 limited partnerships) or under corresponding provisions of
9 prior law,] or the name of any association registered at any
10 time under 54 Pa.C.S. Ch. 5 (relating to corporate and other
11 association names), unless[:

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

14 [(A)] (i) has stated that it is about to change
15 its name, or to cease to do business, or is being
16 wound up, or is a foreign association about to
17 withdraw from doing business in this Commonwealth,
18 and the statement and [the] a written consent [of the
19 other association] to the adoption of the name
20 executed by the other association is filed in the
21 Department of State;

22 [(B)] (ii) has filed with the Department of
23 Revenue a certificate of out of existence, or has
24 failed for a period of three successive years to file
25 with the Department of Revenue a report or return
26 required by law and the fact of such failure has been
27 certified by the Department of Revenue to the
28 Department of State;

29 [(C)] (iii) has abandoned its name under the
30 laws of its jurisdiction of incorporation, by

1 amendment, merger, consolidation, division,
2 expiration, dissolution or otherwise, without its
3 name being adopted by a successor in a merger,
4 consolidation, division or otherwise, and an official
5 record of that fact, certified as provided by 42
6 Pa.C.S. § 5328 (relating to proof of official
7 records), is presented by any person to the
8 department; or

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

21 (ii) where the name is confusingly similar, the
22 consent of the other association to the adoption of the
23 name is filed in the Department of State.

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

26 * * *

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

1 violation of this section, upon the application of:

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

5 (2) any person adversely affected.;

6 may enjoin the corporation from using or continuing to use a
7 name in violation of this section.]

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

11 § 5304. Required name changes by senior corporations.

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

1 resuming its activities.

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

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

19 (2) upon the application of any person adversely
20 affected[, may enjoin the other corporation or association
21 from continuing to use its name or a name deceptively similar
22 thereto].

23 § 5311. Filing of statement of summary of record by certain
24 corporations.

25 (a) General rule.--Where any of the [valid] charter
26 documents of a nonprofit corporation are not on file in the
27 Department of State or there is an error in any such document as
28 transferred to the department pursuant to section 140 (relating
29 to custody and management of orphan corporate and business
30 records), and the corporation desires to file any document in

1 the department under any other provision of this [article]
2 subpart or the corporation desires to secure from the department
3 any certificate to the effect that the corporation is a
4 corporation duly incorporated and existing under the laws of
5 this Commonwealth or a certified copy of the articles of the
6 corporation or the corporation desires to correct the text of
7 its charter documents as on file in the department, the
8 corporation shall file in the department a statement of summary
9 of record which shall be executed by the corporation and shall
10 set forth:

11 (1) The name of the corporation and, subject to section
12 109 (relating to name of commercial registered office
13 provides in lieu of registered address), the location,
14 including street and number, if any, of its registered
15 office.

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

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

22 (4) The place or places, including volume and page
23 numbers or their equivalent, where the documents
24 [constituting the currently effective articles are] that are
25 not on file in the department or that require correction in
26 the records of the department were originally filed or
27 recorded, the date or dates of each [such] filing or
28 recording and the correct text of [such currently effective
29 articles] the documents. The information specified in this
30 paragraph may be omitted in a statement of summary of record

1 that is delivered to the department contemporaneously with
2 amended and restated articles of the corporation filed under
3 this subpart.

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

8 A corporation shall be required to make only one filing under
9 this subsection.]

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

19 (c) Cross [reference] references.--See [section] sections
20 134 (relating to docketing statement), 135 (relating to
21 requirements to be met by filed documents) and 5106(b)(2)
22 (relating to uniform application of subpart).

23 § 5503. Defense of ultra vires.

24 (a) General rule.--[No] A limitation upon the business,
25 [purpose or] purposes[,] or powers of a nonprofit corporation,
26 expressed or implied in its articles or bylaws or implied by
27 law, shall not be asserted in order to defend any action at law
28 or in equity between the corporation and a third person, or
29 between a member and a third person, involving any contract to
30 which the corporation is a party or any right of property or any

1 alleged liability of [whatsoever] whatever nature[; but such],
2 but the limitation may be asserted:

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

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

24 (3) In a proceeding by the Commonwealth under section
25 503 (relating to actions to revoke corporate franchises)[,]
26 or in a proceeding by the Commonwealth to enjoin the
27 corporation from the doing of unauthorized or unlawful
28 business.

29 (b) Conveyances of property by or to a corporation.--[No] A
30 conveyance or transfer by or to a nonprofit corporation of

1 property, real or personal, of any kind or description, shall
2 not be invalid or fail because in making [such] the conveyance
3 or transfer, or in acquiring the property, real or personal,
4 [the board of directors or other body or any of the officers]
5 any representative of the corporation acting within the scope of
6 the actual or apparent authority given to [them] him by the
7 [board of directors or other body, have] corporation has
8 exceeded any of the purposes or powers of the corporation.

9 (c) [Nonqualified foreign corporations.--The provisions of
10 this section shall extend to contracts and conveyances made by
11 nonqualified foreign corporations in this Commonwealth and to
12 conveyances by nonqualified foreign corporations of real
13 property situated in this Commonwealth.] Cross reference.--See
14 section 6146 (relating to provisions applicable to all foreign
15 corporations).

16 § 5505. Persons bound by bylaws.

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

24 § 5506. Form of execution of instruments.

25 (a) General rule.--Any form of execution provided in the
26 articles or bylaws to the contrary notwithstanding, any note,
27 mortgage, evidence of indebtedness, contract[,] or other
28 [instrument in writing] document, or any assignment or
29 endorsement thereof, executed or entered into between any
30 nonprofit corporation and any other person, when signed by one

1 or more officers or agents having actual or apparent authority
2 to sign it, or by the president or vice-president and secretary
3 or assistant secretary or treasurer or assistant treasurer of
4 [such] the corporation, shall be held to have been properly
5 executed for and in behalf of the corporation.

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

10 (c) [Nonqualified foreign corporations.--The provisions of
11 this section shall extend to instruments in writing made or to
12 be performed in this Commonwealth by a nonqualified foreign
13 corporation and to instruments executed by nonqualified foreign
14 corporations affecting real property situated in this
15 Commonwealth.] Cross reference.--See section 6146 (relating to
16 provisions applicable to all foreign corporations).

17 § 5508. Corporate records; inspection by members.

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

1 [either] any of the following locations:

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

4 (2) the principal place of business wherever
5 situated[.]; or

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

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

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

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

25 (3) in care of the person in charge of an actual
26 business office of the corporation.

27 (c) Proceedings for the enforcement of inspection by a
28 member.--If the corporation, or an officer or agent thereof,
29 refuses to permit an inspection sought by a member or attorney
30 or other agent acting for the member pursuant to subsection (b)

1 [of this section] or does not reply to the demand within five
2 business days after the demand has been made, the member may
3 apply to the court for an order to compel [such] the inspection.
4 The court shall determine whether or not the person seeking
5 inspection is entitled to the inspection sought. The court may
6 summarily order the corporation to permit the member to inspect
7 the membership register and the other books and records of the
8 corporation and to make copies or extracts therefrom; or the
9 court may order the corporation to furnish to the member a list
10 of its members as of a specific date on condition that the
11 member first pay to the corporation the reasonable cost of
12 obtaining and furnishing [such] the list and on such other
13 conditions as the court deems appropriate. Where the member
14 seeks to inspect the books and records of the corporation, other
15 than its membership register or list of members, he shall first
16 establish:

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

20 (2) that the inspection he seeks is for a proper
21 purpose.

22 Where the member seeks to inspect the membership register or
23 list of members of the corporation and he has complied with the
24 provisions of this section respecting the form and manner of
25 making demand for inspection of [such] the documents, the burden
26 of proof shall be upon the corporation to establish that the
27 inspection he seeks is for an improper purpose. The court may,
28 in its discretion, prescribe any limitations or conditions with
29 reference to the inspection, or award such other or further
30 relief as the court [may deem] deems just and proper. The court

1 may order books, documents and records, pertinent extracts
2 therefrom, or duly authenticated copies thereof, to be brought
3 [within] into this Commonwealth and kept in this Commonwealth
4 upon such terms and conditions as the order may prescribe.

5 (d) Cross references.--See sections 107 (relating to form of
6 records) and 5512 (relating to informational rights of a
7 director).

8 § 5510. [(Reserved).] Certain specifically authorized debt
9 terms.

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

18 (b) Yield maintenance premiums.--A prepayment premium
19 determined by reference to the approximate spread between the
20 yield at issuance, or at the date of amendment of any of the
21 terms, of an obligation of a corporation and the yield at or
22 about such date of an interest rate index of independent
23 significance and contingent upon a change in the ownership of or
24 memberships in the corporation or a default by or other change
25 in the condition or prospects of the corporation or any
26 affiliate of the corporation shall be deemed liquidated damages
27 and shall not constitute a penalty.

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

1 "Affiliate." An affiliate or associate as defined in section
2 2552 (relating to definitions).

3 "Obligation." Includes an installment sale contract.

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

6 § 5512. Informational rights of a director.

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

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

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

22 (b) Proceedings for the enforcement of inspection by a
23 director.--If the corporation, or an officer or agent thereof,
24 refuses to permit an inspection or obtain or provide information
25 sought by a director or attorney or other agent acting for the
26 director pursuant to subsection (a) or does not reply to the
27 request within two business days after the request has been
28 made, the director may apply to the court for an order to compel
29 the inspection or the obtaining or providing of the information.
30 The court shall summarily order the corporation to permit the

1 requested inspection or to obtain the information unless the
2 corporation establishes that the information to be obtained by
3 the exercise of the right is not reasonably related to the
4 performance of the duties of the director or that the director
5 or the attorney or agent of the director is likely to use the
6 information in a manner that would violate the duty of the
7 director to the corporation. The order of the court may contain
8 provisions protecting the corporation from undue burden or
9 expense and prohibiting the director from using the information
10 in a manner that would violate the duty of the director to the
11 corporation.

12 (c) Cross references.--See sections 107 (relating to form of
13 records), 5508 (relating to corporate records; inspection by
14 members) and 42 Pa.C.S. § 2503(7) (relating to right of
15 participants to receive counsel fees).
16 § 5545. Income from corporate activities.

17 (a) General rule.--A nonprofit corporation whose lawful
18 activities involve among other things the charging of fees or
19 prices for its services or products, shall have the right to
20 receive [such] that income and, in so doing, may make [an
21 incidental] a profit. All [such incidental] profits shall be
22 applied to the maintenance and operation of the lawful
23 activities of the corporation, or any of its subordinate units
24 or of any not-for-profit association to which it is subordinate,
25 and [in no case] shall otherwise not be divided or distributed
26 in any manner whatsoever among the members, directors, members
27 of an other body or officers of the corporation. [As used in
28 this section the terms fees or prices do not include rates of
29 contribution, fees or dues levied under an insurance certificate
30 issued by a fraternal benefit society, so long as the

1 distribution of profits arising from said fees or prices is
2 limited to the purposes set forth in this section and section
3 5551 (relating to dividends prohibited; compensation and certain
4 payments authorized).]

5 (b) Cross references.--See sections 5511 (relating to
6 establishment of subordinate units) and 5551(relating to
7 dividends prohibited; compensation and certain payments
8 authorized).

9 § 5546. Purchase, sale[, mortgage] and lease of [real]
10 property.

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

1 restricted in section 5930 (relating to voluntary transfer of
2 corporate assets) or in the bylaws, no vote or consent of the
3 members shall be required to make effective such action by the
4 board or other body. If the property is subject to a trust, the
5 conveyance away shall be free of trust, and the trust shall be
6 impinged upon the proceeds of the conveyance.

7 § 5547. Authority to take and hold trust property.

8 (a) General rule.--Every nonprofit corporation incorporated
9 for a charitable purpose or purposes may take, receive and hold
10 such real and personal property as may be given, devised to[,]
11 or otherwise vested in [such] the corporation, in trust or
12 otherwise, for the purpose or purposes set forth in its
13 articles.

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

18 (1) a less degree or a particular degree of
19 responsibility and accountability is prescribed in the trust
20 instrument, or [unless]

21 (2) the board of directors or such other body remain
22 under the control of the members of the corporation or third
23 persons who retain the right to direct, and do direct, the
24 actions of the board or other body as to the use of the trust
25 property from time to time.

26 [(b)] (c) Nondiversion of certain property.--[Property
27 committed to charitable purposes] Trust property shall not, by
28 any proceeding under Chapter 59 (relating to fundamental
29 changes) or otherwise, be diverted from the objects to which it
30 was donated, granted or devised, unless and until the [board of

1 directors or other body] corporation obtains from the court an
2 order under 20 Pa.C.S. Ch. 61 (relating to estates) specifying
3 the disposition of the property.

4 § 5551. Dividends prohibited; compensation and certain payments
5 authorized.

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

17 (b) Reasonable compensation for services.--A [nonprofit]
18 corporation may pay compensation in a reasonable amount to
19 members, directors, members of an other body or officers for
20 services rendered.

21 (c) Certain payments authorized.--A [nonprofit] corporation
22 may confer monetary or other benefits upon members or nonmembers
23 in conformity with its purposes, may repay capital
24 contributions, and may redeem its [subvention certificates or
25 evidences of indebtedness] subventions or obligations, as
26 authorized by this [article, except when the corporation is
27 currently insolvent or would thereby be made insolvent or
28 rendered unable to carry on its corporate purposes, or when the
29 fair value of the assets of the corporation remaining after such
30 conferring of benefits, payment or redemption would be

1 insufficient to meet its liabilities.] subpart unless, after
2 giving effect thereto, the corporation would be unable to pay
3 its debts as they become due in the usual course of its
4 business. A [nonprofit] corporation may make distributions of
5 cash or property to members upon dissolution or final
6 liquidation as permitted by this article.

7 § 5552. Liabilities of members.

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

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

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

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

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

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

11 § 5709. Conduct of members meeting.

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

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

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

26 (d) Closing of the polls.--The presiding officer shall
27 announce at the meeting when the polls close for each matter
28 voted upon. If no announcement is made, the polls shall be
29 deemed to have closed upon the final adjournment of the meeting.
30 After the polls close, no ballots, proxies or votes, nor any

1 revocations or changes thereto, may be accepted.

2 § 5729. Voting rights of directors.

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

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

17 § 5731. Executive and other committees of the board.

18 (a) Establishment and powers.--Unless otherwise restricted
19 in the bylaws:

20 (1) The board of directors may, by resolution adopted by
21 a majority of the directors in office, establish one or more
22 committees to consist of one or more directors of the
23 corporation.

24 (2) Any [such] committee, to the extent provided in the
25 resolution of the board of directors or in the bylaws, shall
26 have and may exercise all of the powers and authority of the
27 board of directors, except that [no such] a committee shall
28 not have any power or authority as to the following:

29 (i) The submission to members of any action
30 requiring approval of members under this [article]

1 subpart.

2 (ii) The creation or filling of vacancies in the
3 board of directors.

4 (iii) The adoption, amendment or repeal of the
5 bylaws.

6 (iv) The amendment or repeal of any resolution of
7 the board that by its terms is amendable or repealable
8 only by the board.

9 (v) Action on matters committed by the bylaws or a
10 resolution of the board of directors exclusively to
11 another committee of the board.

12 [(2)] (3) The board may designate one or more directors
13 as alternate members of any committee, who may replace any
14 absent or disqualified member at any meeting of the
15 committee. In the absence or disqualification of a member of
16 a committee, the member or members thereof present at any
17 meeting and not disqualified from voting, whether or not he
18 or they constitute a quorum, may unanimously appoint another
19 director to act at the meeting in the place of any [such]
20 absent or disqualified member.

21 (b) Term.--Each committee of the board shall serve at the
22 pleasure of the board.

23 § 5745. 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 nonprofit 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. Section 5728 (relating to interested members,
4 directors or officers; quorum) shall not be applicable to the
5 advancement of expenses under this section.

6 § 5748. Application to surviving or new corporations.

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

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

27 § 5758. Voting rights of members.

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

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

16 (c) Cumulative voting.--[The members of a nonprofit
17 corporation shall have the right to cumulate their votes for the
18 election of directors only if and to the extent a bylaw adopted
19 by the members so provides.] If a bylaw adopted by the members
20 so provides, in each election of directors of a nonprofit
21 corporation every member entitled to vote shall have the right
22 to multiply the number of votes to which he may be entitled by
23 the total number of directors to be elected in the same election
24 by the members or the class of members to which he belongs and
25 he may cast the whole number of his votes for one candidate or
26 he may distribute them among any two or more candidates.

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

29 (e) Voting lists.--Upon request of a member, the books or
30 records of membership shall be produced at any regular or

1 special meeting of the corporation. If at any meeting the right
2 of a person to vote is challenged, the presiding officer shall
3 require [such] the books or records to be produced as evidence
4 of the right of the person challenged to vote, and all persons
5 who appear by [such] the books or records to be members entitled
6 to vote may vote. See section 6145 (relating to applicability of
7 certain safeguards to foreign corporations).

8 § 5782. Actions against directors, members of an other body and
9 officers.

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

19 (b) Exception.--Any member who, except for the provisions of
20 subsection (a), would be entitled to maintain the action or
21 proceeding and who does not meet such requirements may,
22 nevertheless in the discretion of the court, be allowed to
23 maintain the action or proceeding on preliminary showing to the
24 court, by application and upon such verified statements and
25 depositions as may be required by the court, that there is a
26 strong prima facie case in favor of the claim asserted on behalf
27 of the corporation and that without the action serious injustice
28 will result.

29 (c) Security for costs.--In any action or proceeding
30 instituted or maintained by less than the smaller of 50 members

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

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

23 § 5903. Bankruptcy or insolvency proceedings.

24 (a) General rule.--[Whenever] Unless otherwise provided in
25 the bylaws, whenever a nonprofit corporation is insolvent or in
26 financial difficulty, the board of directors may, by resolution
27 and without the consent of the members, authorize and designate
28 the officers of the corporation to execute a deed of assignment
29 for the benefit of creditors, or file a voluntary petition in
30 bankruptcy, or file an answer consenting to the appointment of a

1 receiver upon a complaint in the nature of an equity action
2 filed by creditors or members, or, if insolvent, file an answer
3 to an involuntary petition in bankruptcy admitting the
4 insolvency of the corporation and its willingness to be adjudged
5 a debtor on that ground.

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

29 * * *

30 § 5912. Proposal of amendments.

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

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

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

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

13 [The] (b) Submission to members.--Except where the approval
14 of the members is unnecessary under this subchapter, the board
15 of directors or other body [or the petitioning members] shall
16 direct that the proposed amendment be submitted to a vote of the
17 members entitled to vote thereon at a regular or special meeting
18 of the members.

19 [(b)] (c) Form of amendment.--[The resolution or petition
20 shall contain the language of the proposed amendment to the
21 articles by providing that the articles shall be amended so as
22 to read as therein set forth in full, or that any provision
23 thereof be amended so as to read as therein set forth in full,
24 or that the matter stated in the resolution or petition be added
25 to or stricken from the articles. The resolution or petition may
26 set forth the manner and basis of reclassifying the shares of
27 the corporation.] The resolution or petition shall contain the
28 language of the proposed amendment of the articles:

29 (1) by setting forth the existing text of the articles
30 or the provision thereof that is proposed to be amended, with

brackets around language that is to be deleted and
underscoring under language that is to be added; or

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

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

§ 5922. Plan of merger or consolidation.

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

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

[(2) The mode of carrying the merger or consolidation
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 consolidation;

(2) unless otherwise provided in the articles, by petition of members entitled to cast at least 10% of the votes [which] that all members are entitled to cast thereon, setting forth the proposed plan of merger or consolidation, which petition shall be directed to the board of directors

1 and filed with the secretary of the corporation; or

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

4 [The] (d) Submission to members.--Except where the
5 corporation has no members entitled to vote thereon, the board
6 of directors or other body [or the petitioning members] shall
7 direct that the plan be submitted to a vote of the members
8 entitled to vote thereon at a regular or special meeting of the
9 members.

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

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

24 § 5923. Notice of meeting of members.

25 (a) General rule.--Written notice of the meeting of members
26 that will act on the proposed plan shall[, not less than ten
27 days before the meeting of members called for the purpose of
28 considering the proposed plan,] be given to each member of
29 record, whether or not entitled to vote thereon, of each
30 domestic nonprofit corporation that is a party to the merger or

1 consolidation. There shall be included in, or enclosed with,
2 [such] the notice a copy of the proposed plan or a summary
3 thereof. The notice shall state that a copy of the bylaws of the
4 surviving or new corporation will be furnished to any member on
5 request and without cost.

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

8 § 5929. Effect of merger or consolidation.

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

24 (b) Property rights.--Except as otherwise provided by order,
25 if any, obtained pursuant to section [5547(b)] 5547(c) (relating
26 to nondiversion of certain property), all the property, real,
27 personal[,] and mixed, and franchises of each of the
28 corporations parties to the [plan of] merger or consolidation,
29 and all debts due on whatever account to any of them, including
30 subscriptions for membership and other choses in action

1 belonging to any of them, shall be [taken and] deemed to be
2 [transferred to and] vested in and shall belong to the surviving
3 or new corporation, as the case may be, without further [act or
4 deed] action, and the title to any real estate, or any interest
5 therein, vested in any of the corporations shall not revert or
6 be in any way impaired by reason of the merger or consolidation.

7 The surviving or new corporation shall thenceforth be
8 responsible for all the liabilities [and obligations] of each of
9 the corporations so merged or consolidated. [No liens] Liens
10 upon the property of the merging or consolidating corporations
11 shall not be impaired by [such] the merger or consolidation, and
12 any claim existing or action or proceeding pending by or against
13 any of [such] the corporations may be prosecuted to judgment as
14 if [such] the merger or consolidation had not taken place, or
15 the surviving or new corporation may be proceeded against or
16 substituted in its place. Any devise, gift or grant contained in
17 any will or other instrument, in trust or otherwise, made before
18 or after such merger or consolidation, to or for any of the
19 constituent corporations, shall inure to the surviving or new
20 corporation, as the case may be, subject to compliance with the
21 requirements of section 5550 (relating to devises, bequests and
22 gifts after certain fundamental changes).

23 (c) Taxes.--Any taxes, penalties and public accounts of the
24 Commonwealth, claimed against any of the merging or
25 consolidating corporations, but not settled, assessed or
26 determined prior to [such] the merger or consolidation, shall be
27 settled, assessed or determined against the surviving or new
28 corporation[,] and, together with interest thereon, shall be a
29 lien against the franchises and property, both real and
30 personal, of the surviving or new corporation.

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

§ 5952. Proposal and adoption of plan of division.

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

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

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

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

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

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

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

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

[(6)] (5) Such other [details and] provisions as are

1 deemed desirable.

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

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

8 (2) Articles of incorporation, certificates of
9 incorporation[,] or other charter documents for each of the
10 new foreign nonprofit corporations [not-for-profit], if any,
11 resulting from the division.

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

28 (d) Special requirements.--If any provision of the bylaws of
29 a dividing domestic nonprofit corporation adopted before January
30 1, 1972 shall require for the adoption of a plan of merger or

1 consolidation or a plan involving the sale, lease or exchange of
2 all or substantially all of the property and assets of the
3 corporation a specific number or percentage of votes of
4 directors, members, or members of an other body or other special
5 procedures, the plan of division shall not be adopted without
6 such number or percentage of votes or compliance with such other
7 special procedures.

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

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

29 (g) Reference to outside facts.--Any of the terms of a plan
30 of division may be made dependent upon facts ascertainable

1 outside of the plan if the manner in which the facts will
2 operate upon the terms of the plan is set forth in the plan.
3 Such facts may include, without limitation, actions or events
4 within the control of or determinations made by the dividing
5 corporation or a representative of the dividing corporation.

6 § 5953. [(Reserved).] Division without member approval.

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

19 § 5957. Effect of division.

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

1 articles of division to be a qualified foreign nonprofit
2 corporation shall be a qualified foreign nonprofit corporation
3 under [this subpart] Article C (relating to foreign nonprofit
4 corporations), and the articles of division shall be deemed to
5 be the application for a certificate of authority and the
6 certificate of authority issued thereon of [such] the
7 corporation.

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

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

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

29 (ii) Upon the division becoming effective, the
30 resulting corporations shall each thenceforth be

1 responsible as separate and distinct corporations only
2 for such liabilities [and obligations] as each
3 corporation may undertake or incur in its own name, but
4 shall be liable [inter se] for the [debts and]
5 liabilities of the dividing corporation in the manner and
6 on the basis [specified in the plan of division. No
7 liens] provided in paragraphs (4) and (5).

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

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

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

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

29 (v) If the conditions in subparagraph (iv) for
30 freeing one or more of the resulting corporations from

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) In addition to the express provisions of this
30 subsection, this subchapter shall otherwise generally be

1 granted the protection of full faith and credit under the
2 Constitution of the United States.

3 § 5961. Conversion authorized.

4 (a) General rule.--Any nonprofit corporation may, in the
5 manner provided in this subchapter, be converted into a business
6 corporation, [hereinafter] designated in this subchapter as the
7 resulting corporation.

8 (b) Exceptions.--

9 (1) This subchapter shall not authorize any conversion
10 involving:

11 [(i) A cooperative corporation.

12 (ii)] (i) Beneficial, benevolent, fraternal or
13 fraternal benefit societies having a lodge system and a
14 representative form of government, or transacting any
15 type of insurance whatsoever.

16 [(iii)] (ii) Any corporation [which] that by the
17 laws of this Commonwealth is subject to the supervision
18 of the Department of Banking, the Insurance Department or
19 the Pennsylvania Public Utility Commission, unless the
20 agency expressly approves the transaction in writing.

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

25 § 5962. Proposal and adoption of plan of conversion.

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

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

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

30 (3)] (2) A restatement of the articles of the resulting

corporation, which articles shall comply with the requirements of [Subpart B of Part II (relating to business corporations)] this part relating to business corporations.

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

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

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

§ 5964. Filing of articles of conversion.

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

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

§ 5965. Effective date of conversion.

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

1 effective.

2 § 5966. Effect of conversion.

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

20 § 5975. Predissolution provision for liabilities.

21 (a) Powers of board.--The board of directors or other body
22 of a nonprofit corporation that has elected to proceed under
23 this section shall have full power to wind up and settle the
24 affairs of [a nonprofit] the corporation in accordance with this
25 section prior to filing articles of dissolution in accordance
26 with section 5977 (relating to articles of dissolution).

27 (b) Notice to creditors and taxing authorities.--After the
28 approval by the members or the board of directors or other body
29 pursuant to section 5974(b) (relating to adoption in absence of
30 voting members) that the corporation dissolve voluntarily, the

1 corporation shall immediately cause notice of the winding up
2 proceedings to be officially published and to be mailed by
3 certified or registered mail to each known creditor and claimant
4 and to each municipal corporation in which [its registered
5 office or principal] it has a place of business in this
6 Commonwealth [is located].

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

21 (a) General rule.--A nonprofit corporation that has elected
22 to proceed under section 1975 (relating to predissolution
23 provision for liabilities), at any time during the winding up
24 proceedings, may apply to the court to have the proceedings
25 continued under the supervision of the court and thereafter the
26 proceedings shall continue under the supervision of the court as
27 provided in Subchapter G (relating to involuntary liquidation
28 and dissolution).

29 * * *

30 § 5977. Articles of dissolution.

1 * * *

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

4 * * *

5 (5) A statement that:

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

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

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

20 * * *

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

27 (8) [A] In the case of a corporation that has not
28 elected to proceed under Subchapter H, a statement that
29 notice of the winding-up proceedings of the corporation was
30 mailed by certified or registered mail to each known creditor

1 and claimant and to each municipal corporation in which the
2 [registered office or principal place of business of the]
3 corporation has a place of business in this Commonwealth [is
4 located].

5 * * *

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

9 § 5989. ARTICLES OF INVOLUNTARY DISSOLUTION. <—

10 (A) GENERAL RULE.--IN A PROCEEDING UNDER THIS SUBCHAPTER,
11 THE COURT SHALL ENTER AN ORDER DISSOLVING THE NONPROFIT
12 CORPORATION WHEN THE ORDER, IF ANY, OBTAINED PURSUANT TO SECTION
13 5547(B) (RELATING TO NONDIVERSION OF CERTAIN PROPERTY) HAS BEEN
14 ENTERED AND 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 THE PERSONS
17 ENTITLED THERETO, 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 5977 (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 § 5991.1. Authority of board of directors.

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

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

20 § 6126. AMENDED CERTIFICATE OF AUTHORITY.

<—

21 (A) GENERAL RULE.--AFTER RECEIVING A CERTIFICATE OF
22 AUTHORITY, A QUALIFIED FOREIGN NONPROFIT CORPORATION MAY,
23 SUBJECT TO THE PROVISIONS OF THIS SUBCHAPTER, CHANGE [THE NAME
24 UNDER WHICH IT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS
25 COMMONWEALTH] OR CORRECT ANY OF THE INFORMATION SET FORTH IN ITS
26 APPLICATION FOR A CERTIFICATE OF AUTHORITY OR PREVIOUS FILINGS
27 UNDER THIS SECTION BY FILING IN THE DEPARTMENT OF STATE AN
28 APPLICATION FOR AN AMENDED CERTIFICATE OF AUTHORITY. THE
29 APPLICATION SHALL BE EXECUTED BY THE CORPORATION AND SHALL
30 STATE:

1 (1) THE NAME UNDER WHICH THE APPLICANT CORPORATION
2 CURRENTLY HOLDS A CERTIFICATE OF AUTHORITY TO DO BUSINESS IN
3 THIS COMMONWEALTH.

4 [(2) THE NAME OF THE JURISDICTION UNDER THE LAWS OF
5 WHICH THE CORPORATION IS INCORPORATED.

6 (3) THE ADDRESS, INCLUDING STREET AND NUMBER, IF ANY, OF
7 ITS PRINCIPAL OFFICE UNDER THE LAWS OF THE JURISDICTION IN
8 WHICH IT IS INCORPORATED.

9 (4)] (2) SUBJECT TO SECTION 109 (RELATING TO NAME OF
10 COMMERCIAL REGISTERED OFFICE PROVIDER IN LIEU OF REGISTERED
11 ADDRESS), THE ADDRESS, INCLUDING STREET AND NUMBER, IF ANY,
12 OF ITS REGISTERED OFFICE IN THIS COMMONWEALTH. [WHICH MAY
13 CONSTITUTE A CHANGE IN THE ADDRESS OF ITS REGISTERED OFFICE.

14 (5) THE NEW NAME OF THE CORPORATION AND]

15 (3) THE INFORMATION TO BE CHANGED OR CORRECTED.

16 (4) IF THE APPLICATION REFLECTS A CHANGE IN THE NAME OF
17 THE CORPORATION, THE APPLICATION SHALL INCLUDE A STATEMENT
18 THAT EITHER:

19 (I) THE CHANGE OF NAME REFLECTS A CHANGE EFFECTED IN
20 THE JURISDICTION OF INCORPORATION; OR

21 (II) DOCUMENTS COMPLYING WITH SECTION 6123(B)
22 (RELATING TO EXCEPTIONS) ACCOMPANY THE APPLICATION.

23 (B) ISSUANCE OF AMENDED CERTIFICATE OF AUTHORITY.--UPON THE
24 FILING OF THE APPLICATION, THE APPLICANT CORPORATION SHALL BE
25 DEEMED TO HOLD AN AMENDED CERTIFICATE OF AUTHORITY.

26 (C) CROSS REFERENCE.--SEE SECTION 134 (RELATING TO DOCKETING
27 STATEMENT).

28 § 6146. Provisions applicable to all foreign corporations.

29 The following provisions of this subpart shall, except as
30 otherwise provided in this section, be applicable to every

foreign corporation not-for-profit, whether or not required to procure a certificate of authority under this chapter:

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

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

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

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

§ 8105. Ownership of certain professional partnerships.

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

§ 8201. Scope.

* * *

(e) Prohibited termination.--A registration under this subchapter may not be terminated while the partnership is a

bankrupt as that term is defined in section 8903 (relating to definitions and index of definitions). See section 8221(f) (relating to annual registration).

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

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

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

§ 8202. 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:

* * *

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

1 * * *

2 § 8204. Limitation on liability of partners.

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

13 (b) Exceptions.--

14 (1) [Subsection (a) shall not apply to any debt or
15 obligation with respect to which the partnership is not in
16 compliance with section 8206(a) (relating to insurance).]
17 (Repealed).

18 * * *

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

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

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

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

28 * * *

29 § 8205. Liability of withdrawing partner.

30 * * *

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

* * *

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

* * *

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

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

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

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

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

§ 8211. Foreign registered limited liability partnerships.

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

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

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

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

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

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

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

(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 incorrect number of general partners or was otherwise incorrectly computed, that fact shall not affect the existence or status of the registered limited liability partnership as such, but the amount of the additional annual registration fee that should have been paid shall be a lien in the manner provided in this subsection from the time the

1 incorrect payment is discovered by the department.

2 (3) The annual registration fee shall bear simple
3 interest from the date that it becomes due and payable until
4 paid. The interest rate shall be that provided for in section
5 806 of the act of April 9, 1929 (P.L.343, No.176), known as
6 The Fiscal Code, with respect to unpaid taxes. The penalty
7 provided for in paragraph (1) shall not bear interest. The
8 payment of interest shall not relieve the registered limited
9 liability partnership from liability for any other penalty or
10 interest provided for under other applicable law.

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

1 fee, penalty or interest without requiring a separate filing
2 by the partnership for that purpose.

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

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

12 (f) Exception for bankrupt partnerships.--A partnership that
13 would otherwise be required to pay the annual registration fee
14 set forth in subsection (b) shall not be required to pay that
15 fee with respect to any year during any part of which the
16 partnership is a bankrupt as defined in section 8903 (relating
17 to definitions and index of definitions). The partnership shall,
18 instead, indicate on its certificate of annual registration for
19 that year that it is exempt from payment of the annual
20 registration fee pursuant to this subsection. If the partnership
21 fails to file timely a certificate of annual registration, a
22 lien shall be entered on the records of the department pursuant
23 to subsection (e) which shall not be removed until the
24 partnership files a certificate of annual registration
25 indicating its entitlement to an exemption from payment of the
26 annual registration fee as provided in this subsection. See
27 section 8201(e) (relating to scope).

28 § 8359. RIGHT TO WIND UP AFFAIRS.

29 UNLESS OTHERWISE AGREED, THE PARTNERS WHO HAVE NOT WRONGFULLY
30 DISSOLVED THE PARTNERSHIP, OR THE LEGAL REPRESENTATIVE OF THE

1 LAST SURVIVING PARTNER, NOT BANKRUPT, HAS THE RIGHT TO WIND UP
2 THE PARTNERSHIP AFFAIRS EXCEPT THAT ANY PARTNER, HIS LEGAL
3 REPRESENTATIVE OR HIS ASSIGNEE, UPON CAUSE SHOWN, MAY OBTAIN
4 WINDING UP BY THE COURT. SEE SECTION 139(B) (RELATING TO TAX
5 CLEARANCE IN JUDICIAL PROCEEDINGS).

6 § 8503. Definitions and index of definitions.

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

10 "Certificate of limited partnership." The certificate
11 referred to in section 8511 (relating to certificate of limited
12 partnership) and the certificate as amended. The term includes
13 any other statements or certificates permitted or required to be
14 filed in the Department of State by sections 108 (relating to
15 change in location or status of registered office provided by
16 agent) and 138 (relating to statement of correction) or this
17 part. If an amendment of the certificate of limited partnership
18 or a certificate of merger or division made in the manner
19 permitted by this chapter restates the certificate in its
20 entirety or if there is a certificate of consolidation,
21 thenceforth the "certificate of limited partnership" shall not
22 include any prior documents and any certificate issued by the
23 department with respect thereto shall so state.

24 * * *

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

27 (1) the court of common pleas of the judicial district
28 embracing the county where the registered office of the
29 limited partnership is or is to be located; or

30 (2) where a limited partnership results from a merger,

1 consolidation, division or other transaction without
2 establishing a registered office in this Commonwealth or
3 withdraws as a foreign limited partnership, the court of
4 common pleas in which venue would have been laid immediately
5 prior to the transaction or withdrawal.

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

7 * * *

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

11 (1) May provide that a person shall be admitted as a
12 limited partner, or shall become an assignee of a partnership
13 interest or other rights or powers of a limited partner to
14 the extent assigned, and shall become bound by the
15 partnership agreement:

16 (i) if such person (or a representative authorized
17 by such person orally, in writing or by other action such
18 as payment for a partnership interest) executes the
19 partnership agreement or any other writing evidencing the
20 intent of such person to become a limited partner or
21 assignee; or

22 (ii) without such execution, if such person (or a
23 representative authorized by such person orally, in
24 writing or by other action such as payment for a
25 partnership interest) complies with the conditions for
26 becoming a limited partner or assignee as set forth in
27 the partnership agreement or any other writing and
28 requests (orally, in writing or by other action such as
29 payment for a partnership interest) that the records of
30 the limited partnership reflect such admission or

assignment.

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

(3) May provide that, whenever a provision of this chapter requires the vote or consent of a specified number or percentage of partners or of a class of partners for the taking of any action, a higher number or percentage of votes or consents shall be required for the action. Except as otherwise provided in the partnership agreement, whenever the partnership agreement requires for the taking of any action by the partners or a class of partners a specific number or percentage of votes or consents, the provision of the partnership agreement setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the partners or the class of partners.]

* * *

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

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

"Act" or "action." Section 102.

"Department." Section 102.

"Licensed person." Section 102.

"Professional services." Section 102.

1 § 8510. Indemnification.

2 * * *

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

11 * * *

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

17 SUBCHAPTER B

18 FORMATION[; CERTIFICATE OF LIMITED PARTNERSHIP]

19 § 8511. Certificate of limited partnership.

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

23 (1) The name of the limited partnership.

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

28 (3) The name and business address of each general
29 partner.

30 (4) If a partner's interest in the limited partnership

1 is to be evidenced by a certificate of partnership interest,
2 a statement to that effect.

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

16 (b) Effective date of formation.--A limited partnership is
17 formed at the time of the filing of the certificate of limited
18 partnership in the department or at any later time specified in
19 the certificate of limited partnership if, in either case, there
20 has been substantial compliance with the requirements of this
21 section or the corresponding provisions of prior law.

22 (c) [Duties of recorders of deeds.--Each recorder of deeds
23 shall continue to keep open for public inspection the record of
24 limited partnership certificates recorded under the statutes
25 supplied by this chapter and by prior law the custody of which
26 has not been transferred to the department pursuant to section
27 140 (relating to custody and management of orphan corporate and
28 business records).] (Repealed).

29 (d) Transitional provision.--A limited partnership formed
30 under prior law shall not be required to set forth in its

1 certificate of limited partnership a registered office or the
2 business address of each general partner until such time as it
3 first amends its certificate of limited partnership under this
4 chapter.

5 (e) Effect of provisions.--A provision of the certificate of
6 limited partnership shall be deemed to be a provision of the
7 partnership agreement for purposes of any provision of this
8 chapter that refers to a rule as set forth in the partnership
9 agreement.

10 [(e)] (f) Cross references.--See sections 134 (relating to
11 docketing statement), 135 (relating to requirements to be met by
12 filed documents) and 8514 (relating to execution of
13 certificates).

14 § 8517. Notice.

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

17 (1) that the partnership is a limited partnership and
18 that all partners are limited partners except the persons
19 designated therein as general partners[, but it is not notice
20 of any other fact]; and

21 (2) if it is registered under Chapter 82 (relating to
22 registered limited liability partnerships), that it is also a
23 registered limited liability partnership.

24 § 8519. Filing of certificate of summary of record by limited
25 partnerships formed prior to 1976.

26 (a) General rule.--[Any limited partnership that was not
27 formed under this chapter, has never made any filing under this
28 section or corresponding provisions of prior law and] Where any
29 of the organic documents of a limited partnership are not on
30 file in the Department of State or there is an error in any such

1 document as transferred to the department pursuant to section
2 140 (relating to custody and management of orphan corporate and
3 business records), and the limited partnership desires to file
4 any document in the [Department of State] department under any
5 other provision of this chapter or [that desires] to secure from
6 the department a certified copy of the certificate of limited
7 partnership or to correct the text of its organic documents as
8 on file in the department, the limited partnership shall file in
9 the department a certificate of summary of record which shall
10 set forth:

11 (1) The name of the limited partnership.

12 (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.

16 (3) The statute under which the limited partnership was
17 formed.

18 (4) The name under which, and the date on which, the
19 limited partnership was originally formed, including the date
20 when and the place where the original certificate was
21 recorded.

22 (5) The place or places, including the volume and page
23 numbers or their equivalent, where the documents
24 [constituting the currently effective certificate are] that
25 are not on file in the department or that require correction
26 in the records of the department where originally recorded,
27 the date or dates of each recording and the correct text of
28 the [currently effective certificate] documents. The
29 information specified in this paragraph may be omitted in a
30 certificate of summary of record that is delivered to the

department contemporaneously with an amended certificate filed under this chapter that restates the certificate in its entirety.

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

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

§ 8520. Partnership agreement.

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

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

(2) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing and requests (orally, in writing or by other action such as payment for a partnership interest) that

1 the records of the limited partnership reflect such admission
2 or assignment.

3 (b) Signature by limited partners.--A written partnership
4 agreement shall not be unenforceable by reason of its not having
5 been signed by a person being admitted as a limited partner or
6 becoming an assignee as provided in subsection (a) or by reason
7 of its having been signed by a representative as provided in
8 section 8514(b) (relating to attorney-in-fact).

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

22 (d) Freedom of contract.--A written partnership agreement
23 may contain any provision for the regulation of the internal
24 affairs of the limited partnership agreed to by the partners,
25 whether or not specifically authorized by or in contravention of
26 this chapter, except where this chapter:

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

29 (2) expressly provides that the partnership agreement
30 shall not relax or contravene any provision on a specified

1 subject.

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

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

8 § 8523. Liability of limited partners to third parties.

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

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

26 (1) Being a contractor for, or an agent or employee of
27 the limited partnership or of a general partner, or being an
28 officer, director, trustee, partner or shareholder of a
29 general partner.

30 (2) Consulting with and advising a general partner with

1 respect to any matter, including, without limitation, the
2 business of the limited partnership.

3 (3) (i) Acting as surety for the limited partnership,
4 or guaranteeing, endorsing or assuming one or more
5 specific obligations of the limited partnership, or a
6 general partner.

7 (ii) Borrowing money from the limited partnership or
8 a general partner.

9 (iii) Lending money to the limited partnership or a
10 general partner.

11 (iv) Providing collateral for the limited
12 partnership or a general partner.

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

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

17 (6) Acting or causing the taking or refraining from the
18 taking of any action, including, without limitation, by
19 proposing, approving, consenting or disapproving, by voting
20 or otherwise, with respect to one or more of the following
21 matters:

22 (i) The dissolution and winding up of the limited
23 partnership, or an election to continue the limited
24 partnership or the business of the limited partnership.

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

28 (iii) The incurrence, renewal, refinancing or
29 payment or other discharge of indebtedness by the limited
30 partnership.

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

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

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

4 (vii) A transaction involving an actual or potential
5 conflict of interest between a general partner and the
6 limited partnership or the limited partners.

7 (viii) An amendment to the partnership agreement or
8 certificate of limited partnership.

9 (ix) The merger or consolidation of the limited
10 partnership.

11 (x) The indemnification of any partner or other
12 person.

13 (xi) Matters related to the business of the limited
14 partnership not otherwise enumerated in this subsection,
15 which the partnership agreement states in writing may be
16 subject to the approval or disapproval of limited
17 partners.

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

20 (8) Winding up the limited partnership pursuant to
21 section 8573 (relating to winding up).

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

24 (i) The approval or termination of investment
25 advisory or underwriting contracts.

26 (ii) The approval of auditors.

27 (iii) Any other matter that by reason of the
28 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
29 80a-1 et seq.) the general partners consider to be a
30 proper matter for the vote of the holders of voting

1 securities or beneficial interests in the limited
2 partnership.

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

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

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

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

15 (d) Use of name of limited partner.--A limited partner does
16 not [participate in the control of the business within the
17 meaning of subsection (a)] become liable for the obligations of
18 a limited partnership by reason of the fact that all or any part
19 of the name of the limited partner is included in the name of
20 the limited partnership.

21 (e) [Effect of section.--This section does not create rights
22 or powers of limited partners. Such rights and powers may be
23 created only by the certificate of limited partnership,
24 partnership agreement or any other agreement or other provisions
25 of this chapter.] (Repealed).

26 * * *

27 § 8546. Approval of merger or consolidation.

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

1 * * *

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

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

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

24 (b) Post-adoption amendment of plan of merger or
25 consolidation.--A plan of merger or consolidation may contain a
26 provision that the general partners of the constituent limited
27 partnerships may amend the plan at any time prior to its
28 effective date, except that an amendment made subsequent to any
29 adoption of the plan by the limited partners of any constituent
30 domestic limited partnership shall not change:

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

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

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

* * *

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

(e) Notice of meeting of limited partners.--Notwithstanding any other provision of the partnership agreement, written notice of the meeting of limited partners called for the purpose of considering the proposed plan shall be given to each limited partner of record, whether or not entitled to vote thereon, of each domestic limited partnership that is a party to the [plan] proposed merger or consolidation. There shall be included in, or

1 enclosed with, the notice a copy of the proposed plan or a
2 summary thereof. The provisions of this subsection may not be
3 relaxed by the certificate of limited partnership or partnership
4 agreement.

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

17 * * *

18 (h) Termination of plan.--Prior to the time when a merger or
19 consolidation becomes effective, the merger or consolidation may
20 be terminated pursuant to provisions therefor, if any, set forth
21 in the plan. If a certificate of merger or consolidation has
22 been filed in the department prior to the termination, a
23 certificate of termination executed by each limited partnership
24 that is a party to the [plan] merger or consolidation, unless
25 the plan permits termination by less than all of the limited
26 partnerships, in which case the certificate shall be executed on
27 behalf of the limited partnership exercising the right to
28 terminate, shall be filed in the department. The certificate of
29 termination shall set forth:

30 (1) A copy of the certificate of merger or consolidation

1 relating to the plan that is terminated.

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

4 See sections 134 (relating to docketing statement), 135
5 (relating to requirements to be met by filed documents), 138
6 (relating to statement of correction) and 8514 (relating to
7 execution of certificates).

8 * * *

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

16 § 8553. Voluntary withdrawal of limited partner.

17 (a) General rule.--A limited partner may withdraw from a
18 limited partnership only at the time or upon the happening of
19 events specified in writing in the partnership agreement. [If
20 the partnership agreement does not specify in writing the time
21 or the events upon the happening of which a limited partner may
22 withdraw or a definite time for the dissolution and winding up
23 of the limited partnership, a limited partner may withdraw upon
24 not less than six months' prior written notice to each general
25 partner at his address on the books of the limited partnership.]

26 (b) [Prohibition of withdrawal.--The partnership agreement
27 may provide that a limited partner may not withdraw from the
28 limited partnership or assign a partnership interest in the
29 limited partnership prior to the dissolution and winding up of
30 the limited partnership.] (Repealed).

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

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

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

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

18 § 8557. [Limitations on distribution.] Distributions and
19 allocation of profits and losses.

20 [A partner may not receive a distribution from a limited
21 partnership to the extent that, after giving effect to the
22 distribution, all liabilities of the limited partnership, other
23 than liabilities to partners on account of their partnership
24 interests and liabilities as to which recourse of creditors is
25 limited to specified property of the limited partnership, exceed
26 the fair value of the partnership assets. The fair value of any
27 property that is subject to a liability as to which recourse of
28 creditors is so limited shall be included in the partnership
29 assets only to the extent that the fair value of the property
30 exceeds that liability.] A limited partnership may from time to

time make distributions and allocate the profits and losses of its business to the partners upon the basis stipulated in the partnership agreement or, if not stipulated in the partnership agreement, per capita. The allocation of losses pursuant to this section shall not affect the limitation on liability of limited partners as provided in section 8523 (relating to liability of limited partners to third parties).

§ 8558. Liability upon return of contribution.

* * *

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

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

(1) liabilities of the limited partnership to partners on account of their partnership interests and liabilities as to which recourse of creditors is limited to specified property of the limited partnership shall not be considered; and

(2) the fair value of property that is subject to a liability as to which recourse of creditors is so limited shall be included in the partnership assets only to the

1 extent that the fair value of the property exceeds that
2 liability.

3 § 8571. Nonjudicial dissolution.

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

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

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

11 (3) Written consent of all partners.

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

24 (5) Entry of an order of judicial dissolution under
25 section 8572 (relating to judicial dissolution).

26 * * *

27 (c) Dissolution by domestication.--Whenever a domestic
28 limited partnership has domesticated itself under the laws of
29 another jurisdiction by action similar to that provided by
30 section 8590 (relating to domestication) and has authorized that

1 action in the manner required by this subchapter for the
2 approval of a proposal that the partnership dissolve
3 voluntarily, the partnership may surrender its certificate of
4 limited partnership under the laws of this Commonwealth by
5 filing in the department a certificate of cancellation under
6 section 8513 (relating to cancellation of certificate). If the
7 partnership, as domesticated in the other jurisdiction,
8 registers to do business in this Commonwealth either prior to or
9 simultaneously with the filing of the certificate of
10 cancellation under this subsection, the partnership shall not be
11 required to file with the certificate of cancellation the tax
12 clearance certificates that would otherwise be required by
13 section 139 (relating to tax clearance of certain fundamental
14 transactions).

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

18 § 8573. WINDING UP. <—

19 EXCEPT AS OTHERWISE PROVIDED IN THE PARTNERSHIP AGREEMENT,
20 THE GENERAL PARTNERS WHO HAVE NOT WRONGFULLY DISSOLVED A LIMITED
21 PARTNERSHIP OR, IF NONE, THE LIMITED PARTNERS, OR A PERSON
22 APPROVED BY THE LIMITED PARTNERS OR, IF THERE IS MORE THAN ONE
23 CLASS OR GROUP OF LIMITED PARTNERS, BY EACH CLASS OR GROUP OF
24 LIMITED PARTNERS, IN EITHER CASE BY A MAJORITY IN INTEREST OF
25 THE LIMITED PARTNERS IN EACH CLASS OR GROUP, MAY WIND UP THE
26 AFFAIRS OF THE LIMITED PARTNERSHIP, BUT THE COURT MAY WIND UP
27 THE AFFAIRS OF THE LIMITED PARTNERSHIP UPON APPLICATION OF ANY
28 PARTNER, HIS LEGAL REPRESENTATIVE OR ASSIGNEE, AND IN CONNECTION
29 THEREWITH, MAY APPOINT A LIQUIDATING TRUSTEE. SEE SECTION 139(B)
30 (RELATING TO TAX CLEARANCE IN JUDICIAL PROCEEDINGS).

1 § 8577. Proposal and adoption of plan of division.

2 * * *

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

11 * * *

12 (e) [Restrictions on certain distributions.--A plan of
13 division may not be made effective if the effect of the plan is
14 to make a distribution to the holders of any class or series of
15 partnership interests of the dividing limited partnership unless
16 the distribution is permitted by section 8557 (relating to
17 limitations on distribution.) (Repealed).

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

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

11 * * *

12 § 8580. Effect of division.

13 * * *

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

16 (1) (i) All the property, real, personal and mixed, of
17 the dividing limited partnership, and all debts due on
18 whatever account to it, including subscriptions for
19 partnership interests or other causes of action belonging
20 to it, shall, except as otherwise provided in paragraph
21 (2), to the extent [transfers] allocations of assets are
22 contemplated by the plan of division, be deemed without
23 further action to be [transferred] allocated to and
24 vested in the resulting limited partnerships on such a
25 manner and basis and with such effect as is specified in
26 the plan, or per capita among the resulting limited
27 partnerships, as tenants in common, if no specification
28 is made in the plan, and the title to any real estate or
29 interest therein vested in any of the limited
30 partnerships shall not revert or be in any way impaired

1 by reason of the division.

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

10 (iii) Liens upon the property of the dividing
11 limited partnership shall not be impaired by the
12 division.

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

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

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

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

21 (vi) The conditions in subparagraph (iv) for freeing
22 one or more of the resulting limited partnerships from
23 the liabilities of the dividing limited partnership and
24 for allocating some or all of the liabilities of the
25 dividing limited partnership shall be conclusively deemed
26 to have been satisfied if the plan of division has been
27 approved by the Pennsylvania Public Utility Commission in
28 a final order issued after (the Legislative Reference
29 Bureau shall insert here the effective date of the
30 amendments of this section) that has become not subject

1 to further appeal.

2 (2) (i) The [transfer] allocation of any fee or
3 freehold interest or leasehold having a remaining term of
4 30 years or more in any tract or parcel of real property
5 situate in this Commonwealth owned by a dividing limited
6 partnership (including property owned by a foreign
7 limited partnership dividing solely under the law of
8 another jurisdiction) to a new limited partnership
9 resulting from the division shall not be effective until
10 one of the following documents is filed in the office for
11 the recording of deeds of the county, or each of them, in
12 which the tract or parcel is situated:

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

15 (B) A duly executed duplicate original copy of
16 the certificate of division.

17 (C) A copy of the certificate of division
18 certified by the Department of State.

19 (D) A declaration of acquisition setting forth
20 the value of real estate holdings in the county of
21 the limited partnership as an acquired company.

22 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
23 to transfer of vehicle by operation of law) shall not be
24 applicable to [a transfer] an allocation of ownership of
25 any motor vehicle, trailer or semitrailer [from a
26 dividing limited partnership] to a new limited
27 partnership under this section or under a similar law of
28 any other jurisdiction, but any such [transfer]
29 allocation shall be effective only upon compliance with
30 the requirements of 75 Pa.C.S. § 1116 (relating to

issuance of new certificate following transfer).

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

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

* * *

(g) Conflict of laws.--It is the intent of the General Assembly that:

(1) The effect of a division of a domestic limited partnership shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting limited partnerships is organized.

(2) The effect of a division on the assets and liabilities of the dividing limited partnership shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting limited partnerships is organized.

(3) The validity of any allocations of assets or liabilities by a plan of division of a domestic limited partnership, regardless of whether or not any of the new limited partnerships is a foreign limited partnership, shall be governed solely by the laws of this Commonwealth.

(4) In addition to the express provisions of this

1 subsection, this subchapter shall otherwise generally be
2 granted the protection of full faith and credit under the
3 Constitution of the United States.

4 § 8590. Domestication.

5 * * *

6 (b) Certificate of domestication.--The certificate of
7 domestication shall be executed by the limited partnership and
8 shall set forth in the English language:

9 (1) The name of the limited partnership. If the name is
10 in a foreign language, it shall be set forth in Roman letters
11 or characters or Arabic or Roman numerals. If the name is one
12 that is rendered unavailable for use by any provision of
13 section 8505 (relating to name), the limited partnership
14 shall adopt, in accordance with any procedures for changing
15 the name of the limited partnership that are applicable prior
16 to the domestication of the limited partnership, and shall
17 set forth in the certificate of domestication an available
18 name.

19 * * *

20 (c) Effect of domestication.--

21 (1) As a domestic limited partnership, the domesticated
22 limited partnership shall no longer be a foreign limited
23 partnership for the purposes of this chapter and shall [have]
24 instead be a domestic limited partnership with all the powers
25 and privileges and [be subject to] all the duties and
26 limitations granted and imposed upon domestic limited
27 partnerships. [The property, debts, liens, estates, taxes,
28 penalties and public accounts due the Commonwealth shall
29 continue to be vested in and imposed upon the limited
30 partnership to the same extent as if it were the successor by

merger of the domesticating limited partnership with and into a domestic limited partnership under Subchapter F (relating to merger and consolidation).] In all other respects, the domesticated limited partnership shall be deemed to be the same limited partnership as it was prior to the domestication without any change in or affect on its existence. Without limiting the generality of the previous sentence, the domestication shall not be deemed to have dissolved the limited partnership or to have affected in any way:

(i) the right and title of the limited partnership in and to its assets, property, franchises, estates and choses in action;

(ii) the liability of the limited partnership for its debts, obligations, penalties and public accounts due the Commonwealth;

(iii) any liens or other encumbrances on the property or assets of the limited partnership; or

(iv) any contract, license or other agreement to which the limited partnership is a party or under which it has any rights or obligations.

(2) The partnership interests in the domesticated limited partnership shall be unaffected by the domestication except to the extent, if any, reclassified in the certificate of domestication.

§ 8903. Definitions and index of definitions.

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

* * *

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

1 * * *

2 "Event of dissociation." An event that causes a person to
3 cease to be a member of a limited liability company. See
4 section [8971(a)(4)] 8971(4) (relating to dissolution).

5 * * *

6 ["Licensed person." A natural person who is duly licensed or
7 admitted to practice his profession by a court, department,
8 board, commission or other agency of this Commonwealth or
9 another jurisdiction to render a professional service that is or
10 will be rendered by the professional company of which he is or
11 intends to become a manager, member, employee or agent.]

12 "Limited liability company," "domestic limited liability
13 company" or "company." An association that is a limited
14 liability company organized and existing under this chapter.

15 * * *

16 "Operating agreement." Any [agreement of the members as to]
17 rules or procedures adopted for the regulation and governance of
18 the affairs of a limited liability company and the conduct of
19 its business. [The operating agreement need not be in writing
20 except where this chapter refers to a written provision of the
21 operating agreement. The operating agreement may contain any
22 provision for the regulation of the internal affairs of the
23 company agreed to by the members, whether or not specifically
24 authorized by or in contravention of this chapter, except where
25 this chapter:

26 (1) refers only to a rule as set forth in the
27 certificate of organization; or

28 (2) expressly provides that the operating agreement
29 shall not relax or contravene any provision on a specified
30 subject. See sections 8913(8) (relating to certificate of

organization) and 8915 (relating to modification by agreement).]

* * *

["Professional services." The term shall have the meaning specified in section 2902 (relating to definitions).]

* * *

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

"Act" or "action." Section 102.

"Department." Section 102.

"Licensed person." Section 102.

"Professional services." Section 102.

SUBCHAPTER B

ORGANIZATION[; CERTIFICATE OF ORGANIZATION]

§ 8915. Modification by agreement.

The provisions of this chapter are intended to permit a limited liability company to qualify for taxation as an entity that is not an association taxable as a corporation under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). Notwithstanding the limitations in [the definition of "operating agreement" in section 8903 (relating to definitions) and the limitations in section] sections 8913(8) (relating to certificate of organization) and 8916(b) (relating to operating agreement), the certificate of organization and operating agreement may effect any change in the form of organization of the company, in addition to or in contravention of the provisions of this chapter, that may be necessary to accomplish that purpose.

§ 8916. Operating agreement.

(a) General rule.--The operating agreement of a limited

liability company need not be in writing except where this chapter refers to a written provision of the operating agreement. If a written operating agreement provides that it cannot be amended or modified except in writing, an oral agreement, amendment or modification shall not be enforceable.

(b) Freedom of contract.--An operating agreement may contain any provision for the regulation of the internal affairs of a limited liability company adopted by the members, whether or not specifically authorized by or in contravention of this chapter, except where this chapter:

(1) refers only to a rule as set forth in the certificate of organization; or

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

(c) Cross references.--See sections 8913(8) (relating to certificate of organization) and 8915 (relating to modification by agreement).

§ 8922. Liability of members [and managers].

(a) General rule.--[Neither] Except as provided in subsection (e), the members of a limited liability company [nor the managers of a company managed by one or more managers are] shall not be liable, solely by reason of being a member [or a manager], under an order of a court or in any other manner for a debt, obligation or liability of the company of any kind or for the acts [or omissions] of any [other] member, manager, agent or employee of the company.

(b) Professional relationship unaffected.--Subsection (a) shall not afford members [and managers] of a professional company with greater immunity than is available to the officers,

1 shareholders, employees or agents of a professional corporation.
2 See section 2925 (relating to professional relationship
3 retained).

4 * * *

5 (d) Conflict of laws.--The personal liability of a member of
6 a company to any person or in any action or proceeding for the
7 debts, obligations or liabilities of the company or for the acts
8 [or omissions] of other members, managers, employees or agents
9 of the company shall be governed solely and exclusively by this
10 chapter and the laws of this Commonwealth. Whenever a conflict
11 arises between the laws of this Commonwealth and the laws of any
12 other state with regard to the liability of members of a company
13 organized and existing under this chapter for the debts,
14 obligations and liabilities of the company or for the acts [or
15 omissions] of the other members, managers, employees or agents
16 of the company, the laws of this Commonwealth shall govern in
17 determining such liability.

18 (e) Expansion of liability.--The certificate of organization
19 may provide that some or all of the members shall be liable for
20 some or all of the debts, obligations and liabilities of the
21 company to the extent and under the circumstances provided in
22 the certificate.

23 (f) Medical professional liability.--A professional company
24 shall be deemed to be a partnership for purposes of section 811
25 of the act of October 15, 1975 (P.L.390, No.111), known as the
26 Health Care Services Malpractice Act.

27 ~~[(e)]~~ (g) Cross reference.--See section 8904(b) (relating to
28 rules for cases not provided for in this chapter).

29 § 8924. Limited transferability of membership interest.

30 (a) General rule.--The interest of a member in a limited

1 liability company constitutes the personal estate of the member
2 and may be transferred or assigned as provided in writing in the
3 operating agreement. Unless otherwise provided in writing in
4 the operating agreement, if all of the other members of the
5 company other than the member proposing to dispose of his
6 interest do not approve of the proposed transfer or assignment
7 by unanimous vote or written consent, which approval may be
8 unreasonably withheld by any of the other members, the
9 transferee of the interest of the member shall have no right to
10 participate in the management of the business and affairs of the
11 company or to become a member. The transferee shall only be
12 entitled to receive the distributions and the return of
13 contributions to which that member would otherwise be entitled.

14 (b) Certificate of membership interest.--The certificate of
15 organization may provide that a member's interest in a company
16 may be evidenced by a certificate of membership interest issued
17 by the company [and]. If such provision is made for the issuance
18 of certificates of membership interest, the operating agreement
19 may [also] provide for the assignment or transfer of any
20 membership interest represented by such a certificate and make
21 other provisions with respect to such certificates. [See 13
22 Pa.C.S. § 8102 (relating to definitions and index of
23 definitions).]

24 § 8932. Distributions and allocation of profits and losses.

25 A limited liability company may from time to time [divide]
26 make distributions and allocate the profits and losses of its
27 business [and distribute the same] to [and allocate any losses
28 among] the members of the company upon the basis stipulated in
29 the operating agreement or, if not stipulated in the operating
30 agreement, per capita. The allocation of losses pursuant to this

1 section shall not affect the limitation on liability of members
2 as provided in section 8922 (relating to liability of members).

3 § 8942. Voting.

4 * * *

5 (c) Exception.--An amendment of the certificate of
6 organization that:

7 (1) restates without change all of the operative
8 provisions of the certificate of organization as theretofore
9 in effect;

10 (2) changes the name or registered office of the
11 company; or

12 (3) accomplishes any combination of the foregoing
13 purposes;

14 is not an amendment of the certificate of organization for the
15 purposes of subsection (b). Unless otherwise provided in writing
16 in the operating agreement, an amendment described in this
17 subsection may be made by the affirmative vote of a majority of
18 the managers or, in the case of a company that is not managed by
19 one or more managers, of a majority of the members.

20 * * *

21 § 8943. Duties of managers and members.

22 * * *

23 (b) Companies with managers.--If the certificate of
24 organization provides that the company shall be managed by one
25 or more managers:

26 (1) [Unless otherwise provided in writing in the
27 operating agreement, the provisions of Subchapter B of
28 Chapter 17 (relating to officers, directors and
29 shareholders)] Sections 1711 (relating to alternative
30 provisions) through 1717 (relating to limitation on standing)

1 shall be applicable to representatives of the company. A
2 written provision of the operating agreement may increase,
3 but not relax, the duties of representatives of the company
4 to its members under those sections. For purposes of applying
5 the provisions of those sections, references to the "articles
6 of incorporation," "bylaws," "directors" and "shareholders"
7 shall mean the certificate of organization, operating
8 agreement, managers and members, respectively.

9 (2) A member who is not a manager shall have no duties
10 to the company or to the other members solely by reason of
11 acting in his capacity as a member.

12 § 8944. [Classes of members.] Members.

13 (a) General rule.--A limited liability company may have one
14 or more members.

15 (b) Classes of members.--An operating agreement may provide
16 for:

17 (1) classes or groups of members having such relative
18 rights, powers and duties as the operating agreement may
19 provide;

20 (2) the future creation in the manner provided in the
21 operating agreement of additional classes or groups of
22 members having such relative rights, powers and duties as may
23 from time to time be established, including rights, powers
24 and duties senior to existing classes and groups of members;
25 and

26 (3) the taking of an action, including, without
27 limitation, amendment of the certificate of organization or
28 operating agreement or creation of a class or group of
29 interests in the limited liability company that was not
30 previously outstanding, without the vote or approval of any

1 member or class or group of members.

2 [(b)] (c) Class voting.--The operating agreement may grant
3 to all or certain identified members or a specified class or
4 group of members the right to vote (on a per capita or other
5 basis), separately or with all or any class or group of members,
6 upon any matter.

7 § 8945. Indemnification.

8 * * *

9 (f) Mandatory indemnification.--Without regard to whether
10 indemnification or advancement of expenses is provided under
11 subsections (a) and (d), a limited liability company shall be
12 subject to section 8331(2) (relating to rules determining rights
13 and duties of partners) and both the members and the managers,
14 if any, shall be deemed to be general partners for purposes of
15 applying that section.

16 § 8948. [Dissociation of member limited.] Limitation on
17 dissociation or assignment of membership interest.

18 Notwithstanding anything to the contrary set forth in this
19 part, an operating agreement may provide that a member may not
20 voluntarily dissociate from the limited liability company or
21 assign his membership interest prior to the dissolution and
22 winding-up of the company, and an attempt by a member to
23 dissociate voluntarily from the company or to assign his
24 membership interest in violation of the operating agreement
25 shall be ineffective.

26 § 8957. Approval of merger or consolidation.

27 * * *

28 (b) Reference to outside facts.--Any of the terms of the
29 plan may be made dependent upon facts ascertainable outside of
30 the plan if the manner in which the facts will operate upon the

1 terms of the plan is set forth in the plan. Such facts may
2 include, without limitation, actions or events within the
3 control of or determinations made by a party to the plan or a
4 representative of a party to the plan.

5 (c) [Postadoption] Post-adoption amendment of plan of merger
6 or consolidation.--A plan of merger or consolidation may contain
7 a provision that the managers, if any, of the constituent
8 companies may amend the plan at any time prior to its effective
9 date, except that an amendment made subsequent to any adoption
10 of the plan by the members of any constituent domestic company
11 shall not, without the approval of the members, change:

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

17 (2) Any [term] provision of the certificate of
18 organization or operating agreement of the surviving or new
19 company [to be effected by] as it is to be in effect
20 immediately following consummation of the merger or
21 consolidation except provisions that may be amended without
22 the approval of the members.

23 (3) Any of the other terms and conditions of the plan if
24 the change would adversely affect the holders of any
25 membership interests of the constituent domestic company.

26 * * *

27 (e) Party to plan.--An association that approves a plan in
28 its capacity as a member or creditor of a merging or
29 consolidating company or that furnishes all or a part of the
30 consideration contemplated by a plan does not thereby become a

1 party to the [plan or the] merger or consolidation for the
2 purposes of this subchapter.

3 * * *

4 (i) Termination of plan.--Prior to the time when a merger or
5 consolidation becomes effective, the merger or consolidation may
6 be terminated pursuant to provisions therefor, if any, set forth
7 in the plan. If a certificate of merger or consolidation has
8 been filed in the department prior to the termination, a
9 certificate of termination executed by each company that is a
10 party to the merger or consolidation, unless the plan permits
11 termination by less than all of the companies, in which case the
12 certificate shall be executed on behalf of the company
13 exercising the right to terminate, shall be filed in the
14 department. The certificate of termination shall set forth:

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

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

19 See sections 134 (relating to docketing statement), 135
20 (relating to requirements to be met by filed documents), 138
21 (relating to statement of correction) and 8907 (relating to
22 execution of documents).

23 * * *

24 § 8962. Proposal and adoption of plan of division.

25 * * *

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

control of or determinations made by the dividing limited liability company or a representative of the dividing limited liability company.

* * *

(e) [Action by holders of indebtedness.--Unless otherwise provided by an indenture or other contract by which the dividing limited liability company is bound, a plan of division shall not require the approval of the holders of any debt securities or other obligations of the dividing company or of any representative of the holders if the transfer of assets effected by the division, if effected by means of a sale, lease, exchange or other disposition, and any related distribution would not require the approval of the holders or representatives thereof.]
(Repealed).

§ 8965. Effect of division.

* * *

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

(1) (i) All the property, real, personal and mixed, of the dividing company and all debts due on whatever account to it, including subscriptions for membership interests and other causes of action belonging to it, shall, except as otherwise provided in paragraph (2), to the extent [transfers] allocations of assets are contemplated by the plan of division, be deemed without further action to be [transferred] allocated to and vested in the resulting companies on such a manner and basis and with such effect as is specified in the plan, or per capita among the resulting companies as tenants in common if no specification is made in the plan, and the

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

4 (ii) Upon the division becoming effective, the
5 resulting companies shall each thenceforth be responsible
6 as separate and distinct companies only for such
7 liabilities as each company may undertake or incur in its
8 own name but shall be liable for the liabilities of the
9 dividing company in the manner and on the basis provided
10 in subparagraphs (iv) and (v).

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

13 (iv) [One] To the extent allocations of liabilities
14 are contemplated by the plan of division, the liabilities
15 of the dividing company shall be deemed without further
16 action to be allocated to and become the liabilities of
17 the resulting companies on such a manner and basis and
18 with such effect as is specified in the plan; and one or
19 more, but less than all, of the resulting companies shall
20 be free of the liabilities of the dividing company to the
21 extent, if any, specified in the plan [if no fraud of
22 creditors or members or violation of law shall be
23 effected thereby and if all applicable provisions of law
24 are complied with.], if in either case:

25 (A) no fraud on members or violation of law
26 shall be effected thereby; and

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

30 (v) If the conditions in subparagraph (iv) for

1 freeing one or more of the resulting companies from the
2 liabilities of the dividing company, or for allocating
3 some or all of the liabilities of the dividing company,
4 are not satisfied, the liabilities of the dividing
5 company as to which those conditions are not satisfied
6 shall not be affected by the division nor shall the
7 rights of creditors [thereof] thereunder or of any person
8 dealing with the company be impaired by the division, and
9 any claim existing or action or proceeding pending by or
10 against the company with respect to those liabilities may
11 be prosecuted to judgment as if the division had not
12 taken place, or the resulting companies may be proceeded
13 against or substituted in [its] place of the dividing
14 company as joint and several obligors on [such liability]
15 those liabilities, regardless of any provision of the
16 plan of division apportioning the liabilities of the
17 dividing company.

18 (vi) The conditions in subparagraph (iv) for freeing
19 one or more of the resulting companies from the
20 liabilities of the dividing company and for allocating
21 some or all of the liabilities of the dividing company
22 shall be conclusively deemed to have been satisfied if
23 the plan of division has been approved by the
24 Pennsylvania Public Utility Commission in a final order
25 issued after (the Legislative Reference Bureau shall
26 insert here the effective date of the amendments of this
27 section) that has become not subject to further appeal.

28 (2) (i) The [transfer] allocation of any fee or
29 freehold interest or leasehold having a remaining term of
30 30 years or more in any tract or parcel of real property

1 situate in this Commonwealth owned by a dividing company
2 (including property owned by a foreign limited liability
3 company dividing solely under the law of another
4 jurisdiction) to a new company resulting from the
5 division shall not be effective until one of the
6 following documents is filed in the office for the
7 recording of deeds of the county, or each of them, in
8 which the tract or parcel is situated:

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

11 (B) A duly executed duplicate original copy of
12 the certificate of division.

13 (C) A copy of the certificate of division
14 certified by the Department of State.

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

18 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
19 to transfer of vehicle by operation of law) shall not be
20 applicable to [a transfer] an allocation of ownership of
21 any motor vehicle, trailer or semitrailer [from a
22 dividing company] to a new company under this section or
23 under a similar law of any other jurisdiction but any
24 such [transfer] allocation shall be effective only upon
25 compliance with the requirements of 75 Pa.C.S. § 1116
26 (relating to issuance of new certificate following
27 transfer).

28 (3) It shall not be necessary for a plan of division to
29 list each individual asset or liability of the dividing
30 company to be allocated to a new company so long as those

1 assets and liabilities are described in a reasonable and
2 customary manner.

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

8 * * *

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

11 (1) The effect of a division of a domestic limited
12 liability company shall be governed by the laws of this
13 Commonwealth and any other jurisdiction under the laws of
14 which any of the resulting companies is organized.

15 (2) The effect of a division on the assets and
16 liabilities of the dividing company shall be governed solely
17 by the laws of this Commonwealth and any other jurisdiction
18 under the laws of which any of the resulting companies is
19 organized.

20 (3) The validity of any allocation of assets or
21 liabilities by a plan of division of a domestic limited
22 liability company, regardless of whether or not any of the
23 new companies is a foreign limited liability company, shall
24 be governed solely by the laws of this Commonwealth.

25 (4) In addition to the express provisions of this
26 subsection, this subchapter shall otherwise generally be
27 granted the protection of full faith and credit under the
28 Constitution of the United States.

29 § 8971. Dissolution.

30 [(a) General rule.--]A limited liability company is

1 dissolved and its affairs shall be wound up upon the happening
2 of the first to occur of the following events:

3 (1) At the time or upon the happening of events
4 specified in the certificate of organization.

5 (2) At the time or upon the happening of events
6 specified in writing in the operating agreement.

7 (3) By the unanimous written agreement or consent of all
8 members.

9 (4) [Upon] Except as otherwise provided in writing in
10 the operating agreement, upon a member becoming a bankrupt or
11 executing an assignment for the benefit of creditors or the
12 death, retirement, insanity, resignation, expulsion or
13 dissolution of a member or the occurrence of any other event
14 that terminates the continued membership of a member in the
15 company unless the business of the company is continued by
16 the vote or consent of [all] a majority in interest, or such
17 greater number as shall be provided in writing in the
18 operating agreement, of the remaining members given within
19 [90] 180 days following such event [or under a right to do so
20 stated in the operating agreement].

21 (5) Entry of an order of judicial dissolution under
22 section 8972 (relating to judicial dissolution).

23 [(b) Cross reference.--See section 8103 (relating to
24 continuation of certain limited partnerships and limited
25 liability companies).]

26 § 8973. WINDING UP.

<—

27 * * *

28 (B) JUDICIAL SUPERVISION.--THE COURT MAY WIND UP THE AFFAIRS
29 OF THE COMPANY UPON APPLICATION OF ANY MEMBER, HIS LEGAL
30 REPRESENTATIVE OR ASSIGNEE AND, IN CONNECTION THEREWITH, MAY

1 APPOINT A LIQUIDATING TRUSTEE. SEE SECTION 139(B) (RELATING TO
2 TAX CLEARANCE IN JUDICIAL PROCEEDINGS).

3 § 8974. Distribution of assets upon dissolution.

4 (a) General rule.--In settling accounts after dissolution,
5 the liabilities of the limited liability company shall be
6 entitled to payment in the following order:

7 (1) Those to creditors, including members or managers
8 who are creditors, in the order of priority as provided by
9 law, in satisfaction of the liabilities of the company,
10 whether by payment or the making of reasonable provision for
11 payment thereof, other than liabilities for distributions to
12 members under section 8932 (relating to distributions and
13 allocation of profits and losses) or 8933 (relating to
14 distributions upon an event of dissociation).

15 (2) Unless otherwise provided in the operating
16 agreement, to members and former members in satisfaction of
17 liabilities for distributions under section 8932 or 8933.

18 (3) Unless otherwise provided in the operating
19 agreement, to members in respect of:

20 (i) Their contributions to capital.

21 (ii) Their share of the profits and other
22 compensation by way of income on their contributions.

23 * * *

24 § 8978. Dissolution by domestication.

25 Whenever a domestic limited liability company has
26 domesticated itself under the laws of another jurisdiction by
27 action similar to that provided by section 8982 (relating to
28 domestication) and has authorized that action by the vote
29 required by this subchapter for the approval of a proposal that
30 the company dissolve voluntarily, the company may surrender its

1 certificate of organization under the laws of this Commonwealth
2 by filing in the Department of State a certificate of
3 dissolution under section 8975 (relating to certificate of
4 dissolution). In lieu of the statements required by section
5 8975(a)(2) through (4), the certificate of dissolution shall set
6 forth a statement that the company has domesticated itself under
7 the laws of another jurisdiction. If the company, as
8 domesticated in the other jurisdiction, registers to do business
9 in this Commonwealth either prior to or simultaneously with the
10 filing of the certificate of dissolution under this section, the
11 company shall not be required to file with the certificate of
12 dissolution the tax clearance certificates that would otherwise
13 be required by section 139 (relating to tax clearance of certain
14 fundamental transactions).

15 § 8982. Domestication.

16 * * *

17 (b) Certificate of domestication.--The certificate of
18 domestication shall be executed by the company and shall set
19 forth in the English language:

20 (1) The name of the company. If the name is in a foreign
21 language, it shall be set forth in Roman letters or
22 characters or Arabic or Roman numerals. If the name is one
23 that is rendered unavailable for use by any provision of
24 section 8905 (relating to name), the company shall adopt, in
25 accordance with any procedures for changing the name of the
26 company that are applicable prior to the domestication of the
27 company, and shall set forth in the certificate of
28 domestication, an available name.

29 * * *

30 (c) Effect of domestication.--

1 (1) As a domestic limited liability company, the
2 domesticated company shall no longer be a foreign limited
3 liability company for the purposes of this chapter and shall
4 [have] instead be a domestic limited liability company with
5 all the powers and privileges and [be subject to] all the
6 duties and limitations granted and imposed upon domestic
7 limited liability companies. [The property, debts, liens,
8 estates, taxes, penalties and public accounts due the
9 Commonwealth shall continue to be vested in and imposed upon
10 the company to the same extent as if it were the successor by
11 merger of the domesticating company with and into a domestic
12 limited liability company under Subchapter G (relating to
13 mergers and consolidations).] In all other respects, the
14 domesticated limited liability company shall be deemed to be
15 the same limited liability company as it was prior to the
16 domestication without any change in or affect on its
17 existence. Without limiting the generality of the previous
18 sentence, the domestication shall not be deemed to have
19 dissolved the company or to have affected in any way:

20 (i) the right and title of the company in and to its
21 assets, property, franchises, estates and choses in
22 action;

23 (ii) the liability of the company for its debts,
24 obligations, penalties and public accounts due the
25 Commonwealth;

26 (iii) any liens or other encumbrances on the
27 property or assets of the company; or

28 (iv) any contract, license or other agreement to
29 which the company is a party or under which it has any
30 rights or obligations.

1 (2) The [shares of] membership interests in the
2 domesticated company shall be unaffected by the domestication
3 except to the extent, if any, reclassified in the certificate
4 of domestication.

5 § 8996. Restrictions.

6 * * *

7 (b) Ownership and governance of restricted professional
8 companies.--Except as otherwise provided by a statute, rule or
9 regulation applicable to a particular profession, all of the
10 [members] ultimate beneficial owners of membership interests in
11 and all of the managers, if any, of a restricted professional
12 company shall be licensed persons.

13 * * *

14 (d) Application.--For purposes of applying subsection (a):

15 * * *

16 (3) The practice of the restricted professional service
17 of law shall be deemed to include:

18 (i) serving as an attorney-in-fact, guardian,
19 custodian, executor, personal representative, trustee or
20 fiduciary;

21 (ii) serving as a director or trustee of a
22 corporation for profit or not-for-profit, manager of a
23 limited liability company or a similar position with any
24 other form of association;

25 (iii) testifying, teaching, lecturing or writing
26 about any topic related to the law;

27 (iv) serving as a master, receiver, arbitrator or
28 similar official;

29 (v) providing actuarial, insurance, investment,
30 estate and trust administration, tax return preparation,

financial and other similar services and advice;

(vi) conducting intellectual property and other real
and personal property title searches and providing other
title insurance agency services; and

(vii) engaging in any activity incidental to any of
the foregoing.

§ 8998. Annual registration.

* * *

(f) Annual fee to be lien.--

(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 status of the
restricted professional company as such, but the annual
registration fee that would have been payable 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 company, 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 company from liability for any other penalty or interest
provided for under other applicable law.

(2) If the annual registration fee paid by a restricted
professional company is subsequently determined to be less
than should have been paid because it was based on an
incorrect number of members or was otherwise incorrectly
computed, that fact shall not affect the existence or status
of the restricted professional company as such, but the
amount of the additional annual registration fee that should

1 have been paid shall be a lien in the manner provided in this
2 subsection from the time the incorrect payment is discovered
3 by the department.

4 (3) The annual registration fee shall bear simple
5 interest from the date that it becomes due and payable until
6 paid. The interest rate shall be that provided for in section
7 806 of the act of April 9, 1929 (P.L.343, No.176), known as
8 The Fiscal Code, with respect to unpaid taxes. The penalty
9 provided for in paragraph (1) shall not bear interest. The
10 payment of interest shall not relieve the restricted
11 professional company from liability for any other penalty or
12 interest provided for under other applicable law.

13 (4) The lien created by this subsection shall attach to
14 all of the property and proceeds thereof of the restricted
15 professional company in which a security interest can be
16 perfected, in whole or in part, by filing in the department
17 under 13 Pa.C.S. Div. 9 (relating to secured transactions;
18 sales of accounts, contract rights and chattel paper),
19 whether the property and proceeds are owned by the company at
20 the time the annual registration fee or any penalty or
21 interest becomes due and payable or whether the property and
22 proceeds are acquired thereafter. Except as otherwise
23 provided by statute, the lien created by this subsection
24 shall have priority over all other liens, security interests
25 or other charges, except liens for taxes or other charges due
26 the Commonwealth. The lien created by this subsection shall
27 be entered on the records of the department and indexed in
28 the same manner as a financing statement filed under 13
29 Pa.C.S. Div. 9. At the time an annual registration fee,
30 penalty or interest that has resulted in the creation of

1 [the] a lien under this subsection is paid, the department
2 shall terminate the lien with respect to that annual
3 registration fee, penalty or interest without requiring a
4 separate filing by the company for that purpose.

5 (5) If the annual registration fee paid by a restricted
6 professional company is subsequently determined to be more
7 than should have been paid for any reason, no refund of the
8 additional fee shall be made.

9 * * *

10 § 9502. Creation, status and termination of business trusts.

11 (a) Creation.--A business trust may be created in real or
12 personal property, or both, with power in the trustee [or a
13 majority of the trustees]:

14 (1) To receive title to, hold, buy, sell, exchange,
15 transfer and convey real and personal property for the use of
16 the business trust.

17 (2) To take, receive, invest or disburse the receipts,
18 earnings, rents, profits or returns from the trust estate.

19 (3) To carry on and conduct any lawful business
20 designated in the deed or other instrument of trust, and
21 generally to do any lawful act in relation to such trust
22 property that any individual owning the same absolutely might
23 do.

24 (4) To merge with another business trust or other
25 association, to divide or to engage in any other fundamental
26 or other transaction contemplated by the deed or other
27 instrument of trust.

28 (b) Term.--Except as otherwise provided in the instrument, a
29 business trust shall have perpetual existence.

30 (c) Separate entity.--A business trust is a separate legal

1 entity. Except as otherwise provided in the instrument, title to
2 real and personal property may be held in the name of the trust,
3 without in any manner diminishing the rights, powers and duties
4 of the trustees as provided in subsection (a).

5 (d) Termination.--Except as otherwise provided in the
6 instrument:

7 (1) The business trust may not be terminated, dissolved
8 or revoked by a beneficial owner or other person.

9 (2) The death, incapacity, dissolution, termination or
10 bankruptcy of a beneficial owner or a trustee shall not
11 result in the termination, dissolution or revocation of the
12 business trust.

13 (e) Contents of instrument.--The instrument may contain any
14 provision for the regulation of the internal affairs of the
15 business trust included in the instrument by the settlor, the
16 trustee or the beneficiaries in accordance with the applicable
17 procedures for the adoption or amendment of the instrument.

18 § 9503. Documentation of trust.

19 (a) General rule.--A business trust shall not be valid
20 unless created by deed of trust or other written instrument
21 subscribed by one or more individuals, associations or other
22 entities. The trustees of a business trust shall promptly cause
23 the instrument or any amendment thereof, except an amendment
24 solely effecting or reflecting the substitution of or other
25 change in the trustees, to be filed in the Department of State.
26 [The failure to effect the filing shall not affect the validity
27 of a business trust. A trustee who violates the requirements of
28 this subsection shall be liable for a civil penalty in the
29 amount of \$1,000 payable to the department.]

30 * * *

1 § 9505. [Succession of trustees.] Trustees.

2 (a) Succession of trustees.--An instrument may provide for
3 the succession of title to [the] any trust property not titled
4 in the name of the trust to a successor trustee, in case of the
5 death, resignation, removal or incapacity of any trustee. In the
6 case of any such succession, the title to [the] such trust
7 property shall at once vest in the succeeding trustee.

8 (b) Nature of service.--Service as the trustee of a business
9 trust by an association that is not a banking institution shall
10 not be deemed to constitute acting as a fiduciary for purposes
11 of the act of November 30, 1965 (P.L.847, No.356), known as the
12 Banking Code of 1965.

13 § 9506. Liability of trustees and beneficiaries.

14 (a) General rule.--[Liability to third parties for any act,
15 omission or obligation of a trustee of a business trust when
16 acting in such capacity shall extend to so much of the trust
17 estate as may be necessary to discharge such liability, but
18 personal liability shall not attach to the trustee or the
19 beneficiaries of the trust for any such act, omission or
20 liability.]

21 (1) Except as otherwise provided in the instrument, the
22 beneficiaries of a business trust shall be entitled to the
23 same limitation of personal liability as is extended to
24 shareholders in a domestic business corporation.

25 (2) Except as otherwise provided in the instrument, the
26 trustees of a trust, when acting in that capacity, shall not
27 be personally liable to any person other than the trust or a
28 beneficiary for any act or obligation of the trust or any
29 trustee.

30 (3) An obligation of a trust based upon a writing may be

1 limited to a specific fund or other identified pool or group
2 of assets of the trust.

3 * * *

4 (f) Permissible beneficiaries.--Except as otherwise provided
5 by a statute, rule or regulation applicable to a particular
6 profession, all of the [beneficiaries of] ultimate beneficial
7 owners of interests in a business trust that renders one or more
8 restricted professional services shall be licensed persons. As
9 used in this subsection, the term "restricted professional
10 services" shall have the meaning specified in section 8903
11 (relating to definitions and index of definitions).

12 * * *

13 (h) Medical professional liability.--A business trust shall
14 be deemed to be a professional corporation for purposes of
15 section 811 of the act of October 15, 1975 (P.L.390, No.111),
16 known as the Health Care Services Malpractice Act.

17 Section 3. Amendment of Title 54.

18 As much of Title 54 as is hereinafter set forth is amended or
19 added to read:

20 § 302. Definitions.

21 The following words and phrases when used in this chapter
22 shall have, unless the context clearly indicates otherwise, the
23 meanings given to them in this section:

24 "Business." Any commercial or professional activity.

25 "Entity." Any individual[,] or any corporation, association,
26 partnership, joint-stock company, business trust, syndicate,
27 joint adventureship or other combination or group of persons,
28 regardless of whether it is organized or formed under the laws
29 of this Commonwealth or any other jurisdiction.

30 "Fictitious name." Any assumed or fictitious name, style or

1 designation other than the proper name of the entity using such
2 name. The term includes [the], without limitation, any name [of
3 any association,] assumed by any general partnership, [business
4 trust,] syndicate, joint adventureship or similar combination or
5 group of persons.

6 "Proper name." When used with respect to an entity of a type
7 listed in the following paragraphs, the term means the name set
8 forth in:

9 (1) the articles of incorporation, if it is a
10 corporation;

11 (2) the statement of registration, if it is a limited
12 liability partnership;

13 (3) the certificate of limited partnership, if it is a
14 limited partnership;

15 (4) the statement of election, if it is an electing
16 partnership;

17 (5) the certificate of organization, if it is a limited
18 liability company;

19 (6) the articles of association, if it is a professional
20 association;

21 (7) the deed of trust or other instrument, if it is a
22 business trust; or

23 (8) a publicly filed document of a type listed in any of
24 the foregoing paragraphs even though the document is referred
25 to by a different title under the laws of any other
26 jurisdiction.

27 § 303. Scope of chapter.

28 * * *

29 (b) Mandatory registration.--

30 * * *

(2) Paragraph (1) shall not apply to any:

(i) Nonprofit or professional activities.

(ii) Activities [which] that are expressly or impliedly prohibited by law from being carried on under a fictitious name.

(iii) [Limited partnership which is registered in the department pursuant to 15 Pa.C.S. Ch. 85 (relating to limited partnerships) or under corresponding provisions of prior law. The preceding sentence shall not apply to any entity which includes the limited partnership as a participant unless the entity is itself such a limited partnership.] (Repealed).

(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:

(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.

* * *

§ 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.

* * *

Section 4. Repeals.

The following acts and parts of acts are repealed:

SECTION 32 OF THE ACT OF JUNE 1, 1889 (P.L.420, NO.332),

<—

1 ENTITLED "A FURTHER SUPPLEMENT TO AN ACT ENTITLED 'AN ACT TO
2 PROVIDE REVENUE BY TAXATION,' APPROVED THE SEVENTH DAY OF JUNE,
3 ANNO DOMINI ONE THOUSAND EIGHT HUNDRED AND SEVENTY-NINE," TO THE
4 EXTENT THAT IT APPLIES TO THE JUDICIAL DISSOLUTION OF AN
5 ASSOCIATION UNDER 15 PA.C.S.

6 As much as reads ", and act as the attorney-in-fact and
7 authorized agent of such corporations for the service of process
8 thereon" in section 806 of the act of April 9, 1929 (P.L.177,
9 No.175), known as The Administrative Code of 1929.

10 Section 404(b) of the act of December 19, 1990 (P.L.834,
11 No.198), known as the GAA Amendments Act of 1990, insofar as it
12 applies to 15 Pa.C.S. §§ 1745 and 5745.

13 15 Pa.C.S. §§ 5543.1, 5546.1, 5764.1, 8103 and 8206.

14 Section 5. Effective date.

15 This act shall take effect in 60 days.