Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 15 Pa.C.S.A. Corporations and Unincorporated Associations
Part I. Preliminary Provisions
Chapter 3. Entity Transactions
Subchapter F. Division

T. 15 Pa.C.S.A., Pt. I, Ch. 3, Subch. F, Refs & Annos
Currentness

T. 15 Pa.C.S.A., Pt. I, Ch. 3, Subch. F, Refs & Annos, PA ST T. 15 Pa.C.S.A., Pt. I, Ch. 3, Subch. F, Refs & Annos
Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

End of Document

15 Pa.C.S.A. § 361
Formerly cited as PA ST 15 Pa.C.S.A. § 1951; PA ST 15 Pa.C.S.A. § 5951; PA ST 15 Pa.C.S.A. § 8576; PA ST 15 Pa.C.S.A. § 8961

§ 361. Division authorized

Currentness

(a) Domestic entities.--Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this subchapter, a domestic entity may divide into:

(1) the dividing association and one or more new associations that are either domestic entities or foreign associations; or

(2) two or more new associations that are either domestic entities or foreign associations.

(b) Foreign associations.--

(1) A foreign association may be created by the division of a domestic entity only if the division is authorized by the laws of the jurisdiction of formation of the foreign association.

(2) If the division is authorized by the laws of the jurisdiction of formation of the foreign association, one or more of the resulting associations created in a division of a foreign association may be a domestic entity.

(c) Exception.--A domestic banking institution that is a domestic entity may be a dividing association only if all of the resulting associations are domestic banking institutions.

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

Credits
2014, Oct. 22, P.L. 2640, No. 172, § 9, effective July 1, 2015.

Editors' Notes

COMMENTS AND SOURCE NOTES

Committee Comment--2014

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1951.

The division transaction authorized by this subchapter is the reverse of a merger. Instead of two or more associations being merged into one association, in a division one existing association is divided into two or more resulting associations. The dividing association may or may not survive the division, and one or more of the resulting associations may be foreign associations if the laws of each resulting association's jurisdiction of organization permit the division. As part of the division, the property and liabilities of the dividing association are allocated to the resulting associations as provided in the plan of division to the extent permitted by this subchapter.

This subchapter does not authorize a dividing association that is a domestic entity and survives the division to change its jurisdiction of organization as part of the division. That result may be accomplished, however, by subsequently domesticating the dividing entity in a new jurisdiction of organization if domestications are authorized by its organic law or by merging it into another association organized under the law of the foreign jurisdiction.

If the organic law of a foreign association authorizes a division of that association into one or more resulting associations incorporated or organized under the laws of another state, subsection (c) permits those resulting associations to be incorporated or organized in Pennsylvania.

It is not necessary to use this subchapter to accomplish a spin-off or similar transaction. Those types of transactions may continue to be conducted in the same manner as they were before this subchapter was enacted. Among other uses of this subchapter are situations in which this subchapter provides a more effective way to allocate property and liabilities.

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

“division”

“dividing association”

“new association”

“resulting association”

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

“association”

“domestic banking institution”

“domestic entity”

“foreign association”

“jurisdiction of formation”

15 Pa.C.S.A. § 361, PA ST 15 Pa.C.S.A. § 361

Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

End of Document

15 Pa.C.S.A. § 362
Formerly cited as PA ST 15 Pa.C.S.A. § 1952; PA ST 15 Pa.C.S.A. § 1957; PA ST 15 Pa.C.S.A. § 5952; PA ST 15 Pa.C.S.A. § 8962

§ 362. Plan of division

Currentness

(a) General rule.--A domestic entity may become a dividing association under this chapter by approving a plan of division. The plan shall be in record form and contain all of the following:

(1) The name and type of the dividing association.

(2) A statement as to whether the dividing association will survive the division.

(3) The name, jurisdiction of formation and type of each new association.

(4) The manner of:

(i) If the dividing association survives the division and it is desired:

(A) Canceling some, but less than all, of the interests in the dividing association.

(B) Converting some, but less than all, of the interests in the dividing association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(ii) If the dividing association does not survive the division, canceling or converting the interests in the dividing association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(iii) Allocating between or among the resulting associations the property of the dividing association that will not be owned by all of the resulting associations as tenants in common pursuant to section 367(a)(4) (relating to effect of division) and those liabilities of the dividing association as to which not all of the resulting associations will be liable jointly and severally pursuant to section 368(a)(3) (relating to allocation of liabilities in division).

(iv) Distributing the interests of the new associations.

(5) For each new association:

(i) its proposed public organic record if it will be a filing association; and

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

(6) If the dividing association will survive the division, any proposed amendments to its public organic record or private organic rules that are or will be in record form.

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

(8) The other terms and conditions of the division.

(9) Any other provision required by:

(i) the laws of this Commonwealth;

(ii) the laws of the jurisdiction of formation of any of the resulting associations; or

(iii) the organic rules of the dividing association.

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

(c) Description of property and liabilities.--It shall not be necessary for a plan of division to list each individual liability or item of property of the dividing association to be allocated to a resulting association so long as the liabilities and property are described in a reasonable manner.

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

Credits
2014, Oct. 22, P.L. 2640, No. 172, § 9, effective July 1, 2015.

Editors' Notes

COMMENTS AND SOURCE NOTES

Committee Comment--2014

This section was added in 2014 by the Association Transactions Act. Subsections (a) and (b) are a generalization of former 15 Pa.C.S. § 1952(a) and (b). Subsection (c) is a generalization of former 15 Pa.C.S. § 1957(b)(3).

This section parallels analogous provisions in Subchapters C (mergers), D (interest exchanges), and E (conversions). Subsection (a)(4)(iii) is different from the other analogous provisions, however, because in a division some or all of the property and liabilities are allocated between the dividing association and the resulting associations, which does not occur in the other types of transactions authorized by this chapter.

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

"division"

"dividing association"

"new association"

"resulting association"

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

"domestic entity"

"filing association"

"interest holder"

"interests"

"jurisdiction of formation"

"obligations"

"organic rules"

"private organic rules"

"property"

"public organic record"

"record form"

"special treatment"

"type"

15 Pa.C.S.A. § 362, PA ST 15 Pa.C.S.A. § 362
Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

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15 Pa.C.S.A. § 363
Formerly cited as PA ST 15 Pa.C.S.A. § 1952; PA ST 15 Pa.C.S.A. § 5952; PA ST 15 Pa.C.S.A. § 8577; PA ST 15 Pa.C.S.A. § 8963

§ 363. Approval of division

Currentness

(a) Approval by domestic entities.--Except as provided in section 364 (relating to division without interest holder approval) or subsection (d), a plan of division in which the dividing association is a domestic entity is not effective unless it has been approved in both of the following ways:

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

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

(i) The organic rules of the domestic entity provide in record form for the approval of a division in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders.

(ii) The interest holder voted for or consented in record form to that provision of the organic rules or became an interest holder after the adoption of the provision.

(b) Approval by foreign associations.--A division of a foreign association in which one or more of the resulting associations is a domestic entity is not effective unless it is approved by the foreign association in accordance with the laws of its jurisdiction of formation.

(c) Dissenters rights.--Except in the case of a plan of division adopted under section 364, if a shareholder of a domestic business corporation that is to be a dividing association objects to the plan of division and complies with Subchapter D of Chapter 15 (relating to dissenters rights), [2] the shareholder shall be entitled to dissenters rights to the extent provided in that subchapter. See sections 317 (relating to contractual dissenters rights in entity transactions) and 329 (relating to special treatment of interest holders).

(d) Transitional approval requirements.--

(1) If a provision of the organic rules of a dividing association that is a domestic entity of the type described was adopted before the date indicated and requires for the proposal or adoption of a plan of merger a specific number or percentage of votes of governors or interest holders or other special procedures, a plan of division shall not be proposed or adopted by the governors or interest holders without that number or percentage of votes or compliance with the other special procedures:

(i) For a dividing association that is a domestic business corporation, before October 1, 1989.

(ii) For a dividing association that is a general partnership, before July 1, 2015.

(iii) For a dividing association that is a limited partnership, before February 5, 1995.

(iv) For a dividing association that is an unincorporated nonprofit association, before July 1, 2015.

(2) If a provision of any debt securities, notes or similar evidences of indebtedness for money borrowed, whether secured or unsecured, indentures or other contracts that were issued, incurred or executed by a dividing association that is a domestic entity of the type described before the date indicated, and the provision requires the consent of the obligee to a merger of the dividing association or treats such a merger as a default, the provision shall apply to a division of the dividing association as if it were a merger:

(i) For a dividing association that is a domestic business corporation, before August 21, 2001.

(ii) For a dividing association that is a general partnership, before July 1, 2015.

(iii) For a dividing association that is a limited partnership, before July 1, 2015.

(iv) For a dividing association that is an unincorporated nonprofit association, before July 1, 2015.

(3) When a provision described in paragraph (1) or (2) has been amended after the applicable date, the provision shall cease to be subject to the respective paragraph and shall thereafter apply only in accordance with its express terms.

Credits

2014, Oct. 22, P.L. 2640, No. 172, § 9, effective July 1, 2015. Amended 2022, Nov. 3, P.L. 1791, No. 122, § 16, effective in 60 days [Jan. 3, 2023].

Editors' Notes

COMMENTS AND SOURCE NOTES

Committee Comment--2022

Section 363 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1952(c). Section 363(d) is derived in part from former 15 Pa.C.S. § 1952(g) and (h) and 8577(f) and (g).

Where a foreign association is the dividing association, section 363(b) defers to the laws of the foreign association's jurisdiction of formation for the requirements for approval of the division by the foreign association. Those laws will include the organic law of the foreign association and other applicable laws, such as this chapter (or any applicable regulatory law) if it has been adopted in the foreign jurisdiction. The laws of the foreign jurisdiction will also control the application of any special approval requirements found in the organic rules of the foreign association.

Section 363(c) is limited to providing dissenters rights for shareholders of a domestic business corporation. Dissenters rights have not been available under Pennsylvania law for interest holders of other types of entities, and the Committee decided that the adoption of Chapter 3 should not change that longstanding approach. A substitute for dissenters rights, however, may be available under 15 Pa.C.S. § 8844(e), which provides that a member of a limited liability company may elect payment under that section in lieu of the consideration payable under the terms of a division.

Section 363(c) was amended in 2022 to eliminate the availability of dissenters rights in the case of a division approved under 15 Pa.C.S. § 364. A shareholder vote on a division is not required under section 364 because a division permitted by section 364 does not involve a substantive change in a shareholder's ownership, and that same rationale supports not requiring dissenters rights in the case of such a transaction.

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

"dividing association"

"interest holder liability"

"resulting association"

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

"business corporation"

"dissenters rights"

"division"

"domestic entity"

"foreign association"

"general partnership"

"governor"

"interest holder"

"jurisdiction of formation"

"limited partnership"

"merger"

"obligations"

"organic rules"

"record form"

"unincorporated nonprofit association"

Footnotes

1 15 Pa.C.S.A. § 321 et seq.

2 15 Pa.C.S.A. § 1571 et seq.

15 Pa.C.S.A. § 363, PA ST 15 Pa.C.S.A. § 363
Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

End of Document

15 Pa.C.S.A. § 364
Formerly cited as PA ST 15 Pa.C.S.A. § 1953; PA ST 15 Pa.C.S.A. § 5953; PA ST 15 Pa.C.S.A. § 8578

§ 364. Division without interest holder approval

Currentness

(a) General rule.--Unless otherwise restricted by its organic rules, a plan of division of a domestic dividing association shall not require the approval of the interest holders of the dividing association if all of the following are satisfied:

(1) The plan does not do any of the following:

(i) alter the jurisdiction of formation of the dividing association;

(ii) provide for special treatment; or

(iii) amend in any respect the provisions of the organic rules of the dividing association, except amendments that may be made without the approval of the interest holders.

(2) Either:

(i) the dividing association survives the division and all the interests in the new associations are owned solely by the dividing association; or

(ii) the interests in each new association are distributed as provided in subsection (b).

(3) The organic rules of each new association do not change the rights, duties or obligations of the interest holders or governors from those of the interest holders or governors of the dividing association, regardless of whether the dividing association survives the division.

(b) Distribution of interests.--The requirements for distributing interests in each new association referred to in subsection (a)(2)(ii) are as follows:

(1) if the dividing association is not a limited partnership, the dividing association has only one class of interests outstanding and the interests in each new association and any securities issued by a new association are distributed pro rata to the interest holders of the dividing association; or

(2) if the dividing association is a limited partnership:

(i) it has only one class of general partners and one class of limited partners;

(ii) each new association is a limited partnership; and

(iii) all of the following apply:

(A) the general partner interests in each new association are distributed pro rata to the general partners of the dividing limited partnership;

(B) the limited partner interests in each new association are distributed pro rata to the limited partners of the dividing limited partnership; and

(C) no securities of any of the new associations are distributed to any of the interest holders of the dividing limited partnership.

Credits

2014, Oct. 22, P.L. 2640, No. 172, § 9, effective July 1, 2015. Amended 2022, Nov. 3, P.L. 1791, No. 122, § 16, effective in 60 days [Jan. 3, 2023].

Editors' Notes

COMMENTS AND SOURCE NOTES

Committee Comment--2022

Section 364 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1953(a). Former 15 Pa.C.S. § 1953(b) is supplied by 15 Pa.C.S. § 313.

Section 364 was amended in 2022 to delete the requirement that the obligations of all of the new associations must be owned by the dividing association. One of the things that may be allocated in a division is obligations of the dividing association. If section 364 were read to require that all obligations of the new associations must be owned by the dividing association after the division, that would negate some of the usefulness of section 364. What was intended by section 364 before the 2022 amendment was that obligations such as notes or warrants of the new associations must be owned by the dividing association, but not other types of obligations such as obligations to perform under a contract of the dividing association that are allocated to a new association.

The reference in section 364(b)(1) to one "class" is intended to refer to the substance of the interest rather than its label. For example, where a corporation has two series, one of which enjoys rights and preferences characteristic of a preferred stock, and the other of which is a residual security comparable to a common stock, the corporation has two "classes" of shares outstanding for the purposes of section 364(b)(1).

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

"dividing association"

"new association"

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

"division"

"governors"

"interest"

"interest holder"

"jurisdiction of formation"

"limited partnership"

"organic rules"

15 Pa.C.S.A. § 364, PA ST 15 Pa.C.S.A. § 364
Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

End of Document

15 Pa.C.S.A. § 365

§ 365. Amendment or abandonment of plan of division

Currentness

(a) Approval of amendment.--A plan of division in which the dividing association is a domestic entity may be amended in one of the following ways:

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

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

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

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

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

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

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

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

(c) Statement of abandonment.--If a plan of division is abandoned after a statement of division has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the dividing association, must be delivered to the department for filing before the time the statement of division becomes effective. The statement of abandonment shall take effect on filing, and the division shall be abandoned and shall not become effective.

Credits

2014, Oct. 22, P.L. 2640, No. 172, § 9, effective July 1, 2015.

Editors' Notes

COMMENTS AND SOURCE NOTES

Committee Comment--2014

This section was added in 2014 by the Association Transactions Act. It parallels analogous provisions in Subchapters C (merger), D (interest exchange), E (conversion), and G (domestication).

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

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

“division”

“dividing association”

“interest holder liability”

“plan”

“resulting association”

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

“department”

“domestic entity”

“governor”

“interest holder”

“interests”

“obligations”

“organic law”

“organic rules”

“private organic rules”

"public organic record"

"sign"

15 Pa.C.S.A. § 365, PA ST 15 Pa.C.S.A. § 365
Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

15 Pa.C.S.A. § 366

Formerly cited as PA ST 15 Pa.C.S.A. § 1954; PA ST 15 Pa.C.S.A. § 1955; PA ST 15 Pa.C.S.A. § 1956; PA ST 15 Pa.C.S.A. § 5954; PA ST 15 Pa.C.S.A. § 5955; PA ST 15 Pa.C.S.A. § 5956; PA ST 15 Pa.C.S.A. § 8579; PA ST 15 Pa.C.S.A. § 8964

§ 366. Statement of division; effectiveness

Currentness

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

(b) Contents.--A statement of division shall contain all of the following:

(1) With respect to the dividing association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

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

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

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

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

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

(2) A statement as to whether the dividing association will survive the division.

(3) With respect to each resulting association created by the division:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

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

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

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

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

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

(4) If the statement of division is not to be effective on filing, the later date or date and time on which it will become effective.

(5) A statement that the division was approved in the following ways:

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

(ii) By a dividing association that is a foreign association, in accordance with the laws of its jurisdiction of formation.

(6) If the dividing association is a domestic filing entity and survives the division, any amendment to its public organic record approved as part of the plan of division.

(7) For each resulting association created by the division that is a domestic entity, its public organic record, if any, as an attachment. The public organic record does not need to state the name or address of an incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(8) For each new association that is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration as an attachment.

(9) For each new association that is an electing partnership, its statement of election as an attachment.

(10) The property and liabilities of the dividing association that are to be allocated to each resulting association, but it shall not be necessary to list in the statement of division each individual liability or item of property of the dividing association to be allocated to a resulting association so long as the liabilities and property are described in a reasonable manner.

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

(d) New domestic entity.--If a new association is a domestic entity, its public organic record, if any, must satisfy the requirements of the laws of this Commonwealth, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

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

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

(g) Effectiveness of division.--A division takes effect as follows:

(1) If the division is one in which all of the resulting associations are domestic associations, the division is effective when the statement of division is effective.

(2) If the division is one in which one or more of the resulting associations is a foreign association, the division is effective on the later of:

(i) the effectiveness of the statement of division; or

(ii) when the division is effective under the laws of each of the jurisdictions of formation of the foreign resulting associations.

(h) Coordination of transactions.--A new association may be a party to another transaction under this chapter that takes effect simultaneously with the division. The new association shall be deemed to exist before the effectiveness of the other transaction, but solely for the purpose of being a party to the other transaction. The plan relating to the other transaction shall be deemed to have been approved by the new association if the plan is approved by the dividing association in connection with its approval of the plan of division. The statement that is delivered to the department for filing with respect to the other transaction shall state that it was approved by the new association under this subsection.

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

Credits

2014, Oct. 22, P.L. 2640, No. 172, § 9, effective July 1, 2015. Amended 2016, Nov. 21, P.L. 1328, No. 170, § 2.1, effective in 90 days [Feb. 21, 2017].

Editors' Notes

COMMENTS AND SOURCE NOTES

Committee Comment--2016

This section was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. §§ 1954, 1955, and 1956. Subsection (h) was added in 2016.

The filing of a statement of division makes the transaction a matter of public record. The mandatory requirements for a statement of division are set forth in subsection (b). They are similar to the requirements for a statement of merger in 15 Pa.C.S. § 335.

A division involving a regulated entity may require approval of a government agency before it can become effective. *See* 15 Pa.C.S. § 103.

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

Subsection (h) permits a division transaction to occur simultaneously with another transaction under Chapter 3. For example, an association may wish to divide and simultaneously with the division have a new association merge into another association. Subsection (h) provides special provisions that address the logical inconsistencies that would otherwise arise from the fact that in a customary division the new association does not come into existence until the time when the division takes effect.

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

“division”

“dividing association”

“new association”

“resulting association”

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

“department”

"domestic association"

"domestic entity"

"domestic filing association"

"domestic filing entity"

"electing partnership"

"entity"

"foreign association"

"jurisdiction of formation"

"limited liability company"

"limited liability limited partnership"

"limited liability partnership"

"nonregistered foreign association"

"principal office"

"property"

"public organic record"

"registered foreign association"

"sign"

"type"

15 Pa.C.S.A. § 366, PA ST 15 Pa.C.S.A. § 366
Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

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15 Pa.C.S.A. § 367
Formerly cited as PA ST 15 Pa.C.S.A. § 1957; PA ST 15 Pa.C.S.A. § 5957; PA ST 15 Pa.C.S.A. § 8580; PA ST 15 Pa.C.S.A. § 8965

§ 367. Effect of division

Currentness

(a) General rule.--When a division becomes effective, all of the following apply:

(1) If the dividing association is to survive the division:

(i) It continues to exist.

(ii) Its public organic record, if any, is amended as provided in the statement of division.

(iii) Its private organic rules that are to be in record form, if any, are amended to the extent provided in the plan of division.

(iv) Except as otherwise provided by law, all of its rights, privileges, immunities and powers continue to be vested in it without change.

(2) If the dividing association is not to survive the division, the separate existence of the dividing association ceases.

(3) With respect to each new association, all of the following apply:

(i) It comes into existence.

(ii) Any property allocated to it vests in the new association without reversion or impairment, and the division shall not constitute a transfer, directly or indirectly, of any of that property.

(iii) Its public organic record, if any, and private organic rules are effective.

(iv) If it is a limited liability partnership, its statement of registration is effective.

(v) If it is a limited liability limited partnership and is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration is effective.

(vi) If it is an electing partnership, its statement of election is effective.

(vii) Except as otherwise provided by law, all of the rights, privileges, immunities and powers of the dividing association necessary or desirable for the conduct of the affairs of the new association vest in it without change.

(4) Property of the dividing association:

(i) That is allocated by the plan of division either:

(A) vests in the new associations as provided in the plan of division; or

(B) remains vested in the dividing association.

(ii) That is not allocated by the plan of division:

(A) remains vested in the dividing association, if the dividing association survives the division; or

(B) is allocated to and vests equally in the resulting associations as tenants in common, if the dividing association does not survive the division.

(iii) Vests as provided in this paragraph without transfer, reversion or impairment.

(5) A resulting association to which a cause of action is allocated as provided in paragraph (4) may be substituted or added in any pending action or proceeding to which the dividing association is a party at the effective time of the division.

(6) The liabilities of the dividing association are allocated between or among the resulting associations as provided in section 368 (relating to allocation of liabilities in division) and the division shall not constitute a transfer, directly or indirectly, of any of those liabilities.

(7) The interests in the dividing association that are to be converted or canceled in the division are converted or canceled, and the interest holders of those interests are entitled only to the rights provided to them under the plan of division and to any dissenters rights they may have pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or 363(c) (relating to approval of division).

(b) Dividing association not dissolved.--Except as provided in the organic law or organic rules of the dividing association, the division does not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the dividing association.

(c) New interest holder liability.--When a division becomes effective, a person that did not have interest holder liability with respect to the dividing association and that becomes subject to interest holder liability with respect to an association as a result of the division has interest holder liability only to the extent provided by the organic law of the association and only for those liabilities that arise after the division becomes effective.

(d) Prior interest holder liability.--When a division becomes effective, the interest holder liability of a person that ceases to hold an interest in the dividing association that is a domestic entity with respect to which the person had interest holder liability is as follows:

(1) The division does not discharge any interest holder liability under the organic law of the domestic entity to the extent the interest holder liability arose before the division became effective.

(2) The person does not have interest holder liability under the organic law of the domestic entity for any debt, obligation or other liability that arises after the division becomes effective.

(3) The organic law of the domestic entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the division had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic law or organic rules of the domestic entity with respect to any interest holder liability preserved by paragraph (1) as if the division had not occurred.

(e) Registration of registered foreign association.--When a division of a registered foreign association in which at least one of the resulting associations is a domestic entity becomes effective, the registration to do business of the dividing association is canceled if it does not survive the division.

(f) Real property.--Except with regard to the real property of a dividing association that is a domestic nonprofit corporation, the allocation of any fee or freehold interest or leasehold having a remaining term of 30 years or more in any tract or parcel of real property situate in this Commonwealth owned by a dividing association, including property owned by a foreign association dividing solely under the laws of another jurisdiction, to a new association is not effective until one of the following documents is filed by the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

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

(2) A duly executed duplicate original copy of the statement of division.

(3) A copy of the statement of division certified by the department.

(4) A declaration of acquisition stating the value of real estate holdings in the county of the new association as an acquired association.

(g) Secured collateral.--The allocation to a new association of property that is collateral covered by an effective financing statement shall not be effective until a new financing statement naming the new association as a debtor is effective under 13 Pa.C.S. Div. 9 (relating to secured transactions) as enacted in the relevant jurisdiction.

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

(i) Disposition of interests.--Unless otherwise provided in the plan of division, the interests and any securities or obligations of each new association shall be distributed to:

(1) the dividing association, if it survives the division; or

(2) the holders of the common or other residuary interest of the dividing association that do not assert dissenters rights, pro rata, if the dividing association does not survive the division.

(j) Distribution tests not applicable.--An allocation, directly or indirectly, of property, liabilities or interests in a division is not a distribution for purposes of the organic law of the dividing association or any of the resulting associations.

Credits

2014, Oct. 22, P.L. 2640, No. 172, § 9, effective July 1, 2015. Amended 2016, Nov. 21, P.L. 1328, No. 170, § 2.2, effective in 90 days [Feb. 21, 2017]; 2022, Nov. 3, P.L. 1791, No. 122, § 17, effective in 60 days [Jan. 3, 2023].

Editors' Notes

COMMENTS AND SOURCE NOTES

Committee Comment--2022

Section 367 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1957.

Section 367 parallels analogous provisions in Subchapters 3C (merger), 3D (interest exchange), 3E (conversion), and 3G (domestication), except for provisions relating to the allocation of property and liabilities which reflect the unique nature of a division.

The term "transfer" is defined in 15 Pa.C.S. § 102 to include an assignment. Thus the statement in section 367(a)(4)(iii) that property vests in a division without transfer means that the allocation of property in a division does not involve an assignment of the property, including by operation of law.

Section 367(a) applies to divisions the holding in *Sante Fe Energy Resources, Inc. v. Manners*, 635 A.2d 648 (Pa. Super. 1993), that in a merger the assets of each merging association vest in the survivor and those assets are neither assigned nor transferred to the surviving association. This means, for example, that if a dividing association is a party to a contract that requires prior consent to its assignment or transfer, a resulting association to which the contract is allocated in the division will be bound by the contract and will be entitled to its benefits without the need to seek consent from the other party to the contract. If such a contract were also specifically to provide that consent is required before the contract will be binding on a successor to a party to the contract, the intention of section 367(a) is that the resulting association will nonetheless be a party to the contract; however in that situation the division will constitute a breach of the contract for which the dividing association (and thus the resulting association as well) may be liable.

The reference in section 367(a)(1)(iv) includes section 367 itself, so that any rights, privileges, immunities, or powers allocated exclusively to a new association as permitted by section 367(a)(3)(vii) would no longer be vested in the dividing association.

If interests in property are allocated to a resulting association as part of a division governed by this Subchapter 3F, title to those interests automatically passes to the resulting association, as between the dividing association and the resulting association. Section 367(f) reflects this concept and also makes it clear that the filing of the statement of division in the Department of State is not constructive notice of the change of record title (as opposed to legal title) to the resulting association, except in the case of a nonprofit corporation. Failure to file a confirmatory instrument in the land records containing appropriate legal descriptions of the property, however, has no impact on the validity and enforceability of the division as between the dividing and the resulting associations.

In most cases, the resulting association will want to file a confirmatory instrument at the time the division is effective in order to protect itself from being trumped by a bona fide purchaser who obtains the real property from the dividing association. There may be situations, however, where the dividing association does not have legal descriptions available for all of its real property at the time of the division and the plan of division will simply state that the dividing association is transferring to the dividing association all of its real estate, *e.g.*, "in the State of Arkansas" or "west of the Mississippi River."

Similar questions relating to the rights of a bona fide purchaser in other areas, such as title to intellectual property that is protected by a filing in a federal office, may also arise. In those instances as well, confirmatory filings should be considered.

Section 367(j) was added in 2022 and broadens language formerly contained in 15 Pa.C.S. § 368(e). Section 367(j) provides that the limitations on distributions in the organic law of the dividing association do not apply to a division. That rule is an extension of established Pennsylvania policy under the definition of "distribution" in 15 Pa.C.S. § 1103 to apply in all divisions, and not only to those approved by interest holders.

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

"dividing association"

"interest holder liability"

"new association"

“resulting association”

The term “acquired association” as used in section 367(f)(4) does not have the meaning provided in 15 Pa.C.S. § 312 because that definition only applies in the case of an interest exchange.

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

“association”

“department”

“dissenters rights”

“division”

“domestic entity”

“electing partnership”

“foreign association”

“governor”

“interest holder”

“interests”

“limited liability limited partnership”

“limited liability partnership”

“nonprofit corporation”

“obligation”

“organic law”

“organic rules”

“private organic rules”

“property”

“public organic record”

“record form”

“registered foreign association”

"transfer"

15 Pa.C.S.A. § 367, PA ST 15 Pa.C.S.A. § 367
Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

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15 Pa.C.S.A. § 368
Formerly cited as PA ST 15 Pa.C.S.A. § 1957

§ 368. Allocation of liabilities in division

Currentness

(a) General rule.--Except as provided in this section, when a division becomes effective, a resulting association is responsible:

(1) Individually for the liabilities the resulting association undertakes or incurs in its own name after the division.

(2) Individually for the liabilities of the dividing association that are allocated to or remain the liability of that resulting association to the extent specified in the plan of division, but not for liabilities allocated in the plan to another resulting association.

(3) Jointly and severally with the other resulting associations for the liabilities of the dividing association that are not allocated by the plan of division.

(b) Joint and several liability.--If the allocation of a liability in a division is determined by the court as defined in section 102 (relating to definitions) to be ineffective or voidable under 12 Pa.C.S. Ch. 51 (relating to voidable transactions) as of the effective date of the division, all of the following apply:

(1) The allocation of the liability in the plan of division is ineffective and the liability becomes the liability of all of the resulting associations, jointly and severally.

(2) The validity and effectiveness of the division are not affected by the action or proceeding or the determination of the court.

(c) Breach of obligation.--If a division breaches an obligation of the dividing association, all of the resulting associations are liable, jointly and severally, for the breach, but the validity and effectiveness of the division are not affected thereby.

(d) Application of voidable transactions law.--In applying 12 Pa.C.S. Ch. 51 to a division under subsection (b):

(1) 12 Pa.C.S. Ch. 51 applies to the dividing association as follows:

(i) If it does not survive the division, it is not subject to that chapter.

(ii) If it survives the division, it is subject to that chapter only in its capacity as a resulting association.

(2) 12 Pa.C.S. Ch. 51 applies to each resulting association as follows:

(i) The association is treated as a debtor.

(ii) Each liability allocated to the association is treated as an obligation incurred by the debtor.

(iii) The association is treated as not having received a reasonably equivalent value in exchange for incurring the obligation.

(iv) The property allocated to the association is treated as remaining property.

(3) The remedy of joint and several liability under subsection (b)(1) is deemed to be the remedy of avoidance of the transfer or obligation under 12 Pa.C.S. § 5107(a)(1) (relating to remedies of creditor).

(e) Deleted by 2022, Nov. 3, P.L. 1791, No. 122, § 18, effective in 60 days [Jan. 3, 2023].

(f) Liens and other charges.--Liens, security interests and other charges on the property of the dividing association are not impaired by the division, notwithstanding any otherwise enforceable allocation of liabilities of the dividing association.

(g) Security agreements.--If the dividing association is bound by a security agreement governed by 13 Pa.C.S. Div. 9 (relating to secured transactions) as enacted in any jurisdiction and the security agreement provides that the security interest attaches to after-acquired collateral, each resulting association is bound by the security agreement.

(h) Creditors and guarantors.--An allocation of a liability does not:

(1) Affect the rights under other law of a creditor owed payment of the liability or performance of the obligation that creates the liability, except that those rights are available only against an association responsible for the liability or obligation under this section.

(2) Release or reduce the obligation of a surety or guarantor of the liability or obligation.

(i) Regulatory approvals.--The conditions in this section for freeing one or more of the resulting associations from the liabilities of the dividing association and for allocating some or all of the liabilities of the dividing association shall be conclusively deemed to have been satisfied if the plan of division has been approved by the Department of Banking and Securities, the

Insurance Department or the Pennsylvania Public Utility Commission in a final order issued after August 21, 2001, that is not subject to further appeal.

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

Credits

2014, Oct. 22, P.L. 2640, No. 172, § 9, effective July 1, 2015. Amended 2016, Nov. 21, P.L. 1328, No. 170, § 2.2, effective in 90 days [Feb. 21, 2017]; 2022, Nov. 3, P.L. 1791, No. 122, § 18, effective in 60 days [Jan. 3, 2023].

Editors' Notes

COMMENTS AND SOURCE NOTES

Committee Comment--2022

Section 368 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1957.

The purpose of section 368 is to set out in detail how liabilities of the dividing association are allocated in a division between the dividing and resulting associations and which of the associations are responsible for those liabilities. The basic rule is that a liability is the responsibility of the association to which it has been allocated, but the resulting associations are jointly and severally liable for any liabilities that are not specifically allocated. The resulting associations will also be jointly and severally liable for all of the liabilities of the dividing association where:

(1) the allocation of a liability of the dividing association is ineffective under the Pennsylvania Uniform Voidable Transactions Act (section 368(b)(1.1)); or

(2) the liability arises from a breach of an obligation of the dividing association caused by the occurrence of the division itself (section 368(c)).

The plan of division may allocate liabilities that may arise under section 368(b) or (c) as desired among the resulting associations, and the plan of division may also provide for contribution among the resulting associations if a liability is reallocated. Such provisions in a plan of division will not effect, however, any joint and several liability of the resulting associations to third parties and a third party may seek payment or performance from any or all of the resulting associations.

The 2022 amendment to section 368(b) makes clear that section 368(b) will impose joint and several liability only pursuant to an action in court that was timely filed under the requirements of 12 Pa.C.S. Ch. 51, and that section 368(b) is not intended to permit a challenge to an allocation of liabilities pursuant to a division to proceed if the time has expired for bringing the claim under that statute.

Prior to the 2022 amendment, section 368(b) provided that an allocation of "property" might be ineffective or voidable. That provision was eliminated as unnecessary and potentially confusing because section 368(d)(2)(iv) specifies how allocations of property affect the application of 12 Pa.C.S. Ch. 51.

With respect to a liability incurred after a division is effective, only the association that undertakes or incurs the liability is liable for that liability, absent an agreement to the contrary.

Section 368(d) specifies that 12 Pa.C.S. Ch. 51 is to be applied to a division as follows:

1. The relevant application of 12 Pa.C.S. Ch. 51 under section 368(d) is with respect to the resulting associations. Thus, section 368(d)(1) provides that the dividing association is part of the analysis only if it survives the division, and then only in its capacity as a resulting association.

2. Each resulting association that is in existence following a division is to be evaluated separately as a debtor (section 368(d)(2)(i)), and each liability allocated to the resulting association is considered as having been incurred by the resulting association (section 368(d)(2)(ii)).

3. One of the reasons under 12 Pa.C.S. Ch. 51 that an obligation incurred by a debtor is voidable is that the debtor incurred the obligation without receiving reasonable equivalent value and (i) the debtor was about to engage in a business for which the remaining assets of the debtor were unreasonably small in relation to the business; or (ii) the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due. 12 Pa.C.S. § 5104(a)(2). Because section 3687(d)(2)(iii) provides that the obligations allocated to a resulting association are not received for reasonably equivalent value, the voidability of an allocation of a liability in a division will depend on whether the resulting association (A) will be engaging in business after the division with an unreasonably small amount of remaining assets, or (B) should reasonably believe it will incur debts beyond its ability to pay. Section 368(d)(2)(iv) makes clear that property allocated to the resulting association constitutes remaining assets for this purpose.

Where a dividing association has granted a security interest in after-acquired property, the effect of section 368(f) is that the resulting associations will have the status of "debtors" under UCC Article 9. *See* 15 Pa.C.S. § 367(g).

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

"division"

"dividing association"

"resulting association"

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

"association"

"court"

"obligation"

"property"

15 Pa.C.S.A. § 368, PA ST 15 Pa.C.S.A. § 368
Current through Act 2 of the 2025 Regular Session. Some statute sections may be more current, see credits for details.

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