

**[15 Pa. Cons. Stat. §§ 311 through 320.]**

§§ 311 through 320: Entity Transactions Law — Preliminary Provisions

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

**§ 312. Definitions.**

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

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

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

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

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

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

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

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

"Domesticated entity." The domesticating entity as it continues in existence after a domestication.

"Domesticating entity." The domestic entity that approves a plan of domestication pursuant to section 373(a) (relating to approval of domestication) or the foreign entity that approves a domestication pursuant to section 373(b).

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

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

"Interest holder liability." Either of the following:

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

- (i) Solely by reason of the status of the person as an interest holder.
- (ii) By the organic rules of the association that make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity.

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

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

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

"New association." An association that is created by a division.

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

"Protected agreement." Either of the following:

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

"Protected governance agreement." Either of the following:

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

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

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

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

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

(b) Index of definitions.--Following is a nonexclusive list of definitions in section 102 (relating to definitions) that apply to this chapter:

"Act" or "action."  
"Banking institution."  
"Department."  
"Dissenters rights."  
"Domestic entity."  
"Entity."  
"Filing entity."  
"Foreign entity."  
"Governor."  
"Interest."  
"Interest holder."  
"Obligation."  
"Organic law."  
"Organic rules."  
"Private organic rules."  
"Property."  
"Public organic record."  
"Record form."  
"Registered foreign association."  
"Representative."  
"Sign."  
"Transfer."  
"Type."

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

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

(1) If the corporation does not survive the transaction, the transaction satisfies any requirements of the provision.

(2) If the corporation survives the transaction, the approval of the transaction is by a vote of the shareholders or directors which would be sufficient to impair the right or obligation under or make the corporation subject to the provision.

(b) Transitional provision.--

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

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

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

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

(i) is abandoned; or

(ii) takes effect.

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

**§ 314. Regulatory conditions and required notices and approvals.**

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

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

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

(d) Preservation of transfers.--Subject to subsection (c) and section 5550 (relating to devises, bequests and gifts after certain fundamental changes), a bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to:

(1) a merging association that is not the surviving association and that takes effect or remains payable after the merger inures to the surviving association; and

(2) a dividing association may be allocated in the division as if it were an asset of the dividing association and, if the bequest, devise, gift, grant or promise takes effect or remains payable after the division, vests as provided in section 367(a)(4) (relating to effect of division).

(e) Trust obligations.--A trust obligation that would govern property:

(1) if transferred to a merging association that is not the surviving association applies to property that is transferred after a merger to the surviving association; and

(2) if transferred to a dividing association that is not a resulting association applies to property that is transferred after a division to a resulting association.

(f) Cross reference.--See section 318 (relating to excluded entities and transactions).

Cross References. Section 314 is referred to in sections 318, 331, 341, 351, 361, 371 of this title.

### **§ 315. Nature of transactions.**

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

(b) Business purpose not required.--A transaction under this chapter does not require an independent business purpose in order for the transaction to be lawful.

Cross References. Section 315 is referred to in section 1571 of this title.

**§ 316. Contents of plan.**

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

- (1) are intended to amend or constitute the operative provisions of the public organic record of a domestic association as in effect subsequent to the effectiveness of the plan;
- (2) are required by this chapter in the statement in lieu of which the plan is being delivered to the department for filing; or
- (3) allocate or specify the respective property and liabilities of the resulting associations, in the case of a plan of division.

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

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

Cross References. Section 316 is referred to in sections 332, 335, 342, 352, 362, 372 of this title.

**§ 317. Contractual dissenters rights in entity transactions.**

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

- (1) in the entity's organic rules; or (2) in the plan.

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

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

Cross References. Section 317 is referred to in sections 333, 336, 343, 346, 353, 356, 363, 367, 373, 1571 of this title.

**§ 318. Excluded entities and transactions.**

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

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

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

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

(ii) transacting any type of insurance.

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

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

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

(c) Cross references.--See sections 103 (relating to subordination of title to regulatory laws) and 314 (relating to regulatory conditions and required notices and approvals).

Cross References. Section 318 is referred to in sections 314, 331, 341, 351, 361, 371 of this title.

**§ 319. Party to plan or transaction.**

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

**§ 320. Submission of matters to interest holders.**

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

(b) Cross references.--See sections 321(c) (relating to approval by business corporation) and 325(c)(2) (relating to approval by limited liability company).