

[West's Code of Georgia Annotated](#)

[Title 33. Insurance \(Refs & Annos\)](#)

[Chapter 14. Domestic Stock and Mutual Insurers \(Refs & Annos\)](#)

[Article 6. Division of Domestic Insurers](#)

Ga. Code Ann., § 33-14-120

## § 33-14-120. Definitions

Effective: July 1, 2019

[Currentness](#)

As used in this article, the term:

(1) “Capital” means the capital stock component of statutory surplus, as defined in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, version effective January 1, 2001, and subsequent revisions.

(2) “Director” means a person:

(A) By or under whose authority the powers of a corporation are exercised; and

(B) Under whose direction the business and affairs of the corporation are managed pursuant to the articles of incorporation or bylaws of the corporation.

(3) “Divide” or “division” means a transaction in which a domestic insurer divides into two or more resulting domestic insurers.

(4) “Dividing insurer” means a domestic insurer that approves a plan of division pursuant to [Code Section 33-14-122](#).

(5) “Liability” means a debt, obligation, or any other liability arising in any manner, regardless of whether it is secured or contingent.

(6) “New insurer” means a domestic insurer that is created by a division occurring on or after July 1, 2019.

(7) “Property” means all property, whether real, personal, or mixed, tangible or intangible, or any right or interest therein, including rights under contracts and other binding agreements.

(8) “Resulting insurer” means a new insurer or a dividing insurer that survives a division.

(9) “Share” means a share of membership in a corporation.

(10) “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(11) “Sign” or “signature” means any manual, facsimile, conformed, or electronic signature.

(12) “Surplus” means total statutory surplus less capital stock, adjusted for the par value of any treasury stock, calculated in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, version effective January 1, 2001, and subsequent revisions.

(13) “Transfer” means an assignment, conveyance, sale, lease, or encumbrance, including a mortgage or security interest, gift, or transfer by operation of law.

## Credits

[Laws 2019, Act 147, § 1, eff. July 1, 2019.](#)

Ga. Code Ann., § 33-14-120, GA ST § 33-14-120

The statutes and Constitution are current through Laws 2021, Act 27. Some statute sections may be more current, see credits for details. The statutes are subject to changes by the Georgia Code Commission.

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Article 6. Division of Domestic Insurers

Ga. Code Ann., § 33-14-121

§ 33-14-121. Plan of division

Effective: July 1, 2019

[Currentness](#)

(a) Any domestic insurer may, in accordance with the requirements of this article, divide into two or more resulting insurers pursuant to a plan of division.

(b)(1) A plan of division shall include:

(A) The name of the dividing insurer seeking to divide;

(B) The name of each resulting insurer or insurers that will be created by the proposed division, including its proposed articles of incorporation and proposed bylaws;

(C) The manner of allocating between or among the resulting insurers:

(i) The property of the dividing insurer that will not be owned by all of the resulting insurers as tenants in common pursuant to [Code Section 33-14-125](#); and

(ii) Those policies and other liabilities of the dividing insurer to which not all of the resulting insurers will be jointly and severally liable pursuant to paragraph (3) of subsection (a) of [Code Section 33-14-126](#);

(D) The manner of distributing shares in a new insurer to the dividing insurer or its shareholders;

(E) A reasonable description of liabilities, capital, surplus, or other property the dividing insurer proposes to allocate to a new insurer, including the manner by which each reinsurance contract is to be allocated;

(F) All terms and conditions required by the laws of this state or the articles of incorporation or bylaws of the dividing insurer; and

(G) All other terms and conditions of the division.

(2) If the dividing insurer will survive the division, the plan of division shall include, in addition to the information required by paragraph (1) of this subsection:

(A) All proposed amendments to the dividing insurer's articles of incorporation and bylaws, if any;

(B) If the dividing insurer desires to cancel some but not all shares in the dividing insurer, the manner in which it will cancel such shares; and

(C) If the dividing insurer desires to convert some but not all shares in the dividing insurer into interests, securities, shares, obligations, money, other property, or rights to acquire interests, securities, or shares, or any combination thereof, a statement disclosing the manner in which it will convert such shares.

(3) If the dividing insurer will not survive the proposed division, the plan of division shall contain, in addition to the information required by paragraph (1) of this subsection, the manner in which the dividing insurer will cancel or convert shares in the dividing insurer into interests, securities, shares, obligations, money, other property, or rights to acquire interests, securities, or shares, or any combination thereof.

(c) A dividing insurer may amend a plan of division in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in any manner determined by the board of directors of the dividing insurer, except that a shareholder that was entitled to vote on or consent to approval of the plan of division is entitled to vote on or consent to any amendment of the plan that will change:

(1) The amount or kind of interests, securities, shares, obligations, money, other property, or rights to acquire interests, securities, or shares, or any combination thereof, to be received by any of the shareholders of the dividing insurer under the plan;

(2) The articles of incorporation of any resulting insurer that will be in effect when the division becomes effective, except for changes that do not require approval of the shareholders of the resulting insurer under its articles of incorporation; or

(3) Any other terms or conditions of the plan, if the change would adversely affect the shareholders in any material respect.

(d)(1) A dividing insurer may abandon a plan of division after it has approved the plan without any action by the shareholders and in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in a manner determined by the board of directors of the dividing insurer.

(2) A dividing insurer may abandon a plan of division after it has delivered a certificate of division to the Secretary of State by delivering to the Secretary of State a certificate of abandonment signed by the dividing insurer. The certificate of abandonment shall be effective on the date it is filed with the Secretary of State, and the dividing insurer shall be deemed to have abandoned its plan of division on such date.

(3) A dividing insurer may not abandon its plan of division once the division becomes effective.

#### Credits

[Laws 2019, Act 147, § 1, eff. July 1, 2019.](#)

Ga. Code Ann., § 33-14-121, GA ST § 33-14-121

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Ga. Code Ann., § 33-14-122

§ 33-14-122. Approval of plan of division; when required

Effective: July 1, 2019

[Currentness](#)

(a) Except as provided in subsections (b) and (c) of this Code section, a dividing insurer shall not file a plan of division with the Commissioner unless such plan has been approved in accordance with:

(1) All provisions of its articles of incorporation and bylaws; or

(2) If its articles of incorporation and bylaws do not provide for approval of a division, all provisions of its articles of incorporation and bylaws that provide for approval of a merger.

(b) Shareholder approval of a plan of division shall not be required unless:

(1) The articles of incorporation and bylaws of the dividing insurer require such approval;

(2) The plan makes an amendment to the articles of incorporation and bylaws requiring such approval; or

(3) The dividing insurer will not survive the proposed division and has only one class of shares outstanding and the shares of each new insurer will not be distributed pro rata to the shareholders.

(c)(1) If any provision of the articles of incorporation and bylaws of a dividing insurer adopted before July 1, 2019, requires that a specific number or percentage of directors or shareholders approve the proposal or adoption of a plan of merger, or imposes other special procedures for the proposal or adoption of a plan of merger, such dividing insurer shall adhere to such provision in proposing or adopting a plan of division.

(2) If a provision of any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, indenture or other contract relating to indebtedness, or a provision of any other type of contract other than an insurance policy, annuity, or reinsurance agreement, that was issued, incurred, or executed by the domestic insurer before July 1, 2019, requires the consent of the obligee to a merger of the insurer or treats such a merger as a default and does not provide that a division of the insurer does not require the consent of the obligee or treat a division as a default, as applicable, then such provision applies to a division of the insurer as if such division were a merger.

(3) If any provision described in paragraph (1) or (2) of this subsection is amended on or after July 1, 2019, such provision shall thereafter apply to a division only in accordance with its express terms.

### Credits

[Laws 2019, Act 147, § 1, eff. July 1, 2019.](#)

Ga. Code Ann., § 33-14-122, GA ST § 33-14-122

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Ga. Code Ann., § 33-14-123

§ 33-14-123. Approval of division; hearing

Effective: July 1, 2019

[Currentness](#)

(a) A division does not become effective until it is approved by the Commissioner after reasonable notice and a public hearing. A hearing conducted under this Code section must be conducted pursuant to Chapter 2 of this title.

(b) Subject to subsection (l) of this Code section, the Commissioner shall approve a plan of division unless the Commissioner finds any of the following:

(1) The interest of the policyholders of the dividing insurer that may become policyholders of a resulting insurer will not be adequately protected by the resulting insurer or acquiring party of a resulting insurer, if any;

(2) After the division, any resulting insurer would not be able to satisfy the requirements for the issuance of a certificate of authority;

(3) The division would substantially lessen competition in insurance in this state or tend to create a monopoly in this state;

(4) The financial condition of an acquiring party of a resulting insurer, if any, is such that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of a remaining shareholder that is unaffiliated with the acquiring party;

(5) The terms of the plan of division are unfair and unreasonable to the dividing insurer's policyholders or shareholders;

(6) An acquiring party of a resulting insurer, if any, has plans or proposals to liquidate the resulting insurer, sell its assets, or consolidate or merge the resulting insurer with a person, or to make any other material change in its business or



corporate structure or management, that are unfair and unreasonable to the resulting insurer's policyholders, and not in the public interest;

(7) The competence, experience, and integrity of the persons who would control the operation of a resulting insurer are such that it would not be in the interest of the resulting insurer's policyholders or the general public to permit the division;

(8) The division is likely to be hazardous or prejudicial to the insurance-buying public;

(9) The proposed division violates Article 4 of Chapter 2 of Title 18, the "Uniform Voidable Transactions Act";

(10) The division is being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors of the dividing insurer;

(11) One or more resulting insurers will not be solvent on the consummation of the division; or

(12) The assets allocated to one or more resulting insurers will be, on consummation of a division, unreasonably small in relation to the business and transactions in which the resulting insurer was engaged or is about to engage.

(c) If a division is undertaken in conjunction with the divestiture of one of the resulting insurers, the Commissioner shall not approve the division until the potential acquiring party has received the necessary approval under [Code Section 33-13-3](#).

(d) In determining whether the standard set forth in paragraph (9) of subsection (b) of this Code section has been satisfied, the Commissioner shall only apply the "Uniform Voidable Transactions Act" to a dividing insurer in its capacity as a resulting insurer and shall not apply the "Uniform Voidable Transactions Act" to any dividing insurer that is not proposed to survive the division.

(e) In determining whether the standards set forth in paragraphs (9), (10), (11), and (12) of subsection (b) this Code section have been satisfied, the Commissioner may consider, among other things, all assets, liabilities, and cash flows.

(f) In determining whether the standard set forth in paragraph (9) of subsection (b) of this Code section has been satisfied, with respect to each resulting insurer, the Commissioner shall, in applying the "Uniform Voidable Transactions Act," do all of the following:

(1) Treat the resulting insurer as a debtor;

- (2) Treat liabilities allocated to the resulting insurer as obligations incurred by a debtor;
- (3) Treat the resulting insurer as not having received reasonably equivalent value in exchange for incurring the obligations; and
- (4) Treat assets allocated to the resulting insurer as remaining property.
- (g) All information, documents, materials, and copies of documents and materials submitted to, obtained by, or disclosed to the Commissioner in connection with a plan of division or in contemplation of a plan of division, including any information, documents, materials, or copies provided by or on behalf of a domestic stock insurer in advance of its adoption or submission of a plan of division, are confidential and are subject to the same protection and treatment in accordance with [Code Section 33-2-14](#) as information and documents disclosed to or obtained by the Commissioner in the course of an examination or investigation made under [Code Section 33-2-11](#) until the time, if any, that a notice of the hearing contemplated by subsection (a) of this Code section is issued.
- (h) From and after the issuance of a notice of the hearing contemplated by subsection (a) of this Code section, all business, financial, and actuarial information for which the domestic stock insurer requests confidential treatment, other than the plan of division and any materials incorporated by reference into or otherwise made a part of the plan of division that must not be eligible for confidential treatment after the issuance of a notice of the hearing, continues to be confidential and is not available for public inspection and must be subject to the same protection and treatment in accordance with [Code Section 33-2-14](#) as information and documents disclosed to or obtained by the Commissioner in the course of an examination or investigation made under [Code Section 33-2-11](#). However, if the Commissioner determines that the interest of the public in making the information available for public inspection outweighs the interest of the dividing insurer in keeping the information confidential, the Commissioner may, after notice and an opportunity to be heard, make the information available to public inspection.
- (i) All expenses incurred by the Commissioner in connection with proceedings under this Code section, including expenses for the services of any attorneys, actuaries, accountants, and other experts not otherwise a part of the department staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed division, must be paid by the dividing insurer filing the plan of division. A dividing insurer may allocate expenses described in this subsection in a plan of division in the same manner as any other liability.
- (j) If the Commissioner approves a plan of division, the Commissioner shall issue an order approving the plan of division that must be accompanied by findings of fact and conclusions of law.
- (k) The conditions in this Code section for freeing one or more of the resulting insurers from the liabilities of the dividing insurer and for allocating some or all of the liabilities of the dividing insurer are conclusively satisfied if the plan of division has been approved by the Commissioner in a final order, after all relevant appeals relating to the final order have been exhausted.

(l) The Commissioner may establish any additional procedures necessary or appropriate in connection with his or her review of a plan of division.

**Credits**

[Laws 2019, Act 147, § 1, eff. July 1, 2019.](#)

Ga. Code Ann., § 33-14-123, GA ST § 33-14-123

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Ga. Code Ann., § 33-14-124

§ 33-14-124. Certificate of division

Effective: July 1, 2019

[Currentness](#)

(a) After a plan of division has been adopted and approved under [Code Sections 33-14-122](#) and [33-14-123](#), an officer or duly authorized representative of the dividing insurer shall sign a certificate of division.

(b) The certificate of division shall set forth:

(1) The name of the dividing insurer;

(2) A statement disclosing whether the dividing insurer will survive the division;

(3) The name of each resulting insurer;

(4) The date on which the division is to be effective, which shall not be more than 90 days after the dividing insurer has filed the certificate of division with the Secretary of State;

(5) A statement that the division was approved by the dividing insurer in accordance with [Code Section 33-14-122](#);

(6) A statement that the division was approved by the Commissioner in accordance with [Code Section 33-14-123](#);

(7) A statement that the dividing insurer provided, not later than ten business days after the dividing insurer filed the plan of division with the Commissioner, reasonable notice to each insurer or reinsurer that is party to a reinsurance contract

allocated in the plan of division;

(8) If the dividing insurer will survive the division, any amendment to its articles of incorporation approved as part of the plan of division;

(9) For each new insurer created by the division, its articles of incorporation, which need not state the name or address of an incorporator of a corporation; and

(10) A reasonable description of the capital, surplus, other property, and policies and other liabilities of the dividing insurer that are to be allocated to each resulting insurer.

(c) The articles of incorporation, if any, of each new insurer must satisfy the requirements of the laws of this state, but such articles need not be signed or include any provision that need not be included in a restatement of such articles.

(d) A certificate of division shall be effective when filed with the Secretary of State or on such other date specified in the plan of division, whichever is later; provided, however, that a certificate of division shall become effective not more than 90 days after it is filed with the Secretary of State. A division shall be effective when the relevant certificate of division becomes effective.

### Credits

[Laws 2019, Act 147, § 1, eff. July 1, 2019.](#)

Ga. Code Ann., § 33-14-124, GA ST § 33-14-124

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Ga. Code Ann., § 33-14-125

§ 33-14-125. Effect of division

Effective: July 1, 2019

[Currentness](#)

(a) When a division becomes effective pursuant to subsection (d) of [Code Section 33-14-124](#):

(1) If the dividing insurer has survived the division:

(A) It continues to exist;

(B) Its articles of incorporation, if any, shall be amended as provided in the plan of division; and

(C) Its bylaws, if any, shall be amended as provided in the plan of division;

(2) If the dividing insurer has not survived the division, its separate existence ceases to exist;

(3) Each new insurer:

(A) Comes into existence;

(B) Shall hold any capital, surplus, and other property allocated to it as a successor to the dividing insurer, and not by transfer, whether directly or indirectly; and

(C) Its articles of incorporation and bylaws shall be effective;

(4) Capital, surplus, and other property of the dividing insurer:

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

(i) Vests in the new insurers as provided in the plan of division; or

(ii) Remains vested in the dividing insurer;

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

(i) Remains vested in the dividing insurer, if the dividing insurer survives the division; or

(ii) Is allocated to and vests equally in the resulting insurers as tenants in common, if the dividing insurer does not survive the division; or

(C) Vests as provided in this subsection without transfer, reversion, or impairment;

(5) A resulting insurer to which a cause of action is allocated as provided in paragraph (4) of this subsection may be substituted or added in any pending action or proceeding to which the dividing insurer is a party when the division becomes effective;

(6) The policies and other liabilities of the dividing insurer are allocated among the resulting insurers as provided in [Code Section 33-14-126](#) and the resulting insurers to which policies or other liabilities are allocated are liable for those policies and other liabilities as successors to the dividing insurer, and not by transfer, whether directly or indirectly;

(7) Any division that becomes effective pursuant to subsection (d) of [Code Section 33-14-124](#) shall not be deemed to constitute an assignment of any insurance policy, annuity, reinsurance agreement, or any other type of contract under the laws of this state; and

(8) The shares in the dividing insurer that are to be converted or canceled in the division are converted or canceled, and the

shareholders of those shares are entitled only to the rights provided to them under the plan of division and any appraisal rights they may have pursuant to [Code Section 33-14-127](#).

(b) Except as provided in the articles of incorporation or bylaws of the dividing insurer, the division shall not give rise to any rights that a director, shareholder, or third party would have upon a dissolution, liquidation, or winding up of the dividing insurer.

(c) The allocation to a new insurer of capital, surplus, or other property that is collateral covered by an effective financing statement shall not be effective until a new financing statement naming the new insurer as a debtor is effective under Articles 1 through 9 of Title 11.

(d) Unless otherwise provided in the plan of division, the interests in and any shares of each new insurer shall be distributed to:

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

(2) The shareholders of the shares of the dividing insurer that do not assert appraisal rights, pro rata, if the dividing insurer does not survive the division.

### Credits

[Laws 2019, Act 147, § 1, eff. July 1, 2019](#).

Ga. Code Ann., § 33-14-125, GA ST § 33-14-125

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Ga. Code Ann., § 33-14-126

§ 33-14-126. Responsibilities of a resulting insurer

Effective: July 1, 2019

[Currentness](#)

(a) Except as provided in this Code section, when a division becomes effective, a resulting insurer shall be responsible:

(1) Individually for the policies and other liabilities the resulting insurer issues, undertakes, or incurs in its own name after the division;

(2) Individually for the policies and other liabilities of the dividing insurer that are allocated to or remain the liability of the resulting insurer to the extent specified in the plan of division; and

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

(b) If a division breaches an obligation of the dividing insurer, all of the resulting insurers shall be liable, jointly and severally, for the breach, but the validity and effectiveness of the division shall not be affected by the breach.

(c) A direct or indirect allocation of capital, surplus, property, or policies or other liabilities in a division shall not be considered a distribution for purposes of the articles of incorporation or bylaws of the dividing insurer or any of the resulting insurers.

(d) Liens, security interests, and other charges on the capital, surplus, or other property of the dividing insurer shall not be impaired by the division, notwithstanding any otherwise enforceable allocation of policies or other liabilities of the dividing insurer.

(e) If the dividing insurer is bound by a security agreement governed by Article 9 of Title 11, or Article 9 of the Uniform Commercial Code as enacted in any other jurisdiction, and the security agreement provides that the security interest attaches to after-acquired collateral, each resulting insurer shall be bound by the security agreement.

(f) Except as provided in the plan of division and specifically approved by the Commissioner, an allocation of a policy or other liability shall not affect the rights under any other law of a policyholder or creditor owed payment on the policy, or payment of any other type of liability or performance of the obligation that creates the liability, except that those rights shall be available only against a resulting insurer responsible for the policy, liability, or obligation under this Code section.

### Credits

[Laws 2019, Act 147, § 1, eff. July 1, 2019.](#)

Ga. Code Ann., § 33-14-126, GA ST § 33-14-126

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Ga. Code Ann., § 33-14-127

## § 33-14-127. Shareholder appraisal rights

Effective: July 1, 2019

[Currentness](#)

A shareholder of a dividing insurer shall be entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares pursuant to [Code Section 14-2-1302](#).

### Credits

[Laws 2019, Act 147, § 1, eff. July 1, 2019.](#)

Ga. Code Ann., § 33-14-127, GA ST § 33-14-127

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Ga. Code Ann., § 33-14-128

## § 33-14-128. Rules and regulations

Effective: July 1, 2019

[Currentness](#)

The Commissioner may, in accordance with the procedures set forth in [Code Section 33-2-9](#), promulgate rules and regulations necessary to implement and enforce the provisions of this article. If the Commissioner should find that extraordinary circumstances exist and that it would be in the best interests of the citizens of this state, the Commissioner may suspend temporarily the applicability of any rule or regulation promulgated pursuant to this article.

### Credits

[Laws 2019, Act 147, § 1, eff. July 1, 2019.](#)

Ga. Code Ann., § 33-14-128, GA ST § 33-14-128

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