

5211.12 Resulting insurers liability for allocated assets, debts, and liabilities.

1. Except as expressly provided in [this section](#), when a division becomes effective, by operation of law all of the following apply:

a. A resulting insurer is individually liable for the liabilities, including policy liabilities, that the resulting insurer issues, undertakes, or incurs in its own name after the division.

b. A resulting insurer is individually liable for the liabilities, including policy 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.

c. The dividing insurer remains responsible for the liabilities, including policy liabilities, of the dividing insurer that are not allocated by the plan of division if the dividing insurer survives the division.

d. A resulting insurer is liable pro rata individually for the liabilities, including policy liabilities, of the dividing insurer that are not allocated by the plan of division if the dividing insurer does not survive the division.

2. Except as otherwise expressly provided in [this section](#), when a division becomes effective a resulting insurer is not responsible for and shall not have liability for any of the following:

a. Any liabilities, including policy liabilities, that another resulting insurer issues, undertakes, or incurs in such resulting insurer's own name after the division.

b. Any liabilities, including policy liabilities, of the dividing insurer that are allocated to or remain the liability of another resulting insurer under the plan of division.

3. If a provision of any evidence of indebtedness, whether secured or unsecured, or a provision of any contract other than an insurance policy, annuity, or reinsurance agreement that was issued, incurred, or executed by the dividing insurer before July 1, 2019, requires the consent of the obligee to a merger of the dividing insurer, or treats such a merger as a default, such provision shall apply to a division of the dividing insurer as if such division were a merger.

4. If a division breaches a contractual obligation of the dividing insurer, all resulting insurers are jointly and severally liable for the breach. The validity and effectiveness of the division shall not be affected by the breach.

5. A direct or indirect allocation of capital, surplus, assets, or liabilities, including policy liabilities, shall occur automatically, by operation of law, and shall not be treated as a distribution or transfer for any purpose with respect to either the dividing insurer or any resulting insurer.

6. Liens, security interests, and other charges on the capital, surplus, or other assets of the dividing insurer shall not be impaired by the division, notwithstanding any otherwise enforceable allocation of liabilities, including policy liabilities, of the dividing insurer.

7. If the dividing insurer is bound by a security agreement governed by [chapter 554](#) 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, a resulting insurer shall be bound by the security agreement.

8. Unless provided in the plan of division and specifically approved by the commissioner, an allocation of a policy or other liability is prohibited from doing any of the following:

a. Affecting the rights that a policyholder or creditor has under any other law with respect to such policy or other liability, except that such rights shall be available only against a resulting insurer responsible for the policy or liability under [this section](#).

b. Releasing or reducing the obligation of a reinsurer, surety, or guarantor of the policy or liability.

9. A resulting insurer shall only be liable for the liabilities allocated to the resulting insurer in accordance with the plan of division and [this section](#) and shall not be liable for any other liabilities under the common law doctrine of successor liability or any other theory of liability applicable to transferees or assignees of assets.

[2019 Acts, ch 20, §12](#)