

Part 11 Merger

16-6a-1101 Merger.

- (1) One or more domestic corporations, foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations may merge into a nonprofit corporation:
 - (a) if the board of directors of each domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger adopts a plan of merger;
 - (b) if the members of each domestic nonprofit corporation entitled to vote on the plan of merger, approve the plan of merger if required by Section 16-6a-1102;
 - (c) if the shareholders of each domestic corporation entitled to vote on the plan of merger, approve the plan of merger, if required by Section 16-10a-1103;
 - (d) if the merger is permitted by and consistent with the laws of the state or country under whose law each foreign corporation or foreign nonprofit corporation party to the merger is incorporated;
 - (e) if the shareholders of each such foreign corporation approve the plan of merger and as required by applicable law of the states or countries under whose law each foreign corporation party to the merger is incorporated; and
 - (f) if the members of each such foreign nonprofit corporation approve the plan of merger and as required by applicable law of the states or countries under whose law each foreign nonprofit corporation party to the merger is incorporated.
- (2) The plan of merger required by Subsection (1) shall set forth:
 - (a) the name of each party to the merger planning to merge;
 - (b) the name of the surviving domestic nonprofit corporation into which each party to the merger plans to merge;
 - (c) the terms and conditions of the merger;
 - (d) the manner and basis of converting in whole or part the shares or memberships if any, of each party to the merger into shares, memberships, obligations, or other interests of:
 - (i) the surviving domestic nonprofit corporation;
 - (ii) any other entity; or
 - (iii) into money or other property; and
 - (e) any amendments to the articles of incorporation of the surviving domestic nonprofit corporation to be effected by the merger.
- (3) In addition to the provisions required by Subsection (2), the plan of merger may set forth other provisions relating to the merger.
- (4) One or more domestic corporations may merge into a domestic nonprofit corporation if:
 - (a) the board of directors of each participating domestic corporation adopts the plan of merger;
 - (b) the shareholders of each participating domestic corporation adopt the plan of merger in accordance with Section 16-10a-1103; and
 - (c) the merger is effected in compliance with Chapter 6a, Part 11, Merger.

Amended by Chapter 228, 2006 General Session

16-6a-1102 Action on plan of merger.

- (1) After adopting the plan of merger, the board of directors of each domestic nonprofit corporation that is a party to the merger shall submit the plan of merger to its members, if any are entitled to vote on the plan of merger, for approval.

- (2) If the domestic nonprofit corporation has members entitled to vote with respect to the approval of a plan of merger, a plan of merger is approved by the members if:
 - (a)
 - (i) the board of directors recommends the plan of merger to the members entitled to vote on the plan of merger; or
 - (ii)
 - (A) the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation; and
 - (B) communicates the basis for its determination to the members with the plan; and
 - (b) the members entitled to vote on the plan of merger approve the plan as provided in Subsection (7).
- (3) After adopting the plan of merger, the board of directors of each domestic nonprofit corporation party to the merger shall submit the plan of merger for written approval by any person or persons:
 - (a) whose approval is required by the articles of incorporation of the domestic nonprofit corporation; and
 - (b) as required by Section 16-6a-1013 for an amendment to the articles of incorporation or bylaws.
- (4)
 - (a) If the domestic nonprofit corporation does not have members entitled to vote on a merger, the merger shall be approved and adopted by a majority of the directors elected and in office at the time the plan of merger is considered by the board of directors.
 - (b) The domestic nonprofit corporation shall provide notice of any meeting of the board of directors at which the approval described in Subsection (4)(a) is to be obtained in accordance with Section 16-6a-814.
 - (c) The notice required by Subsection (4)(b) shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.
- (5) The board of directors may condition the effectiveness of the plan of merger on any basis.
- (6)
 - (a) The domestic nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the plan of merger of the members' meeting at which the plan will be voted on.
 - (b) The notice required by Subsection (6)(a) shall:
 - (i) state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger; and
 - (ii) contain or be accompanied by a copy of the plan of merger or a summary of the plan of merger.
- (7) The plan of merger shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the plan of merger unless a greater vote is required by:
 - (a) this chapter;
 - (b) the articles of incorporation;
 - (c) bylaws adopted by the members; or
 - (d) the board of directors acting pursuant to Subsection (5).
- (8) Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment.

Amended by Chapter 228, 2006 General Session

16-6a-1103 Articles of merger.

- (1) After a plan of merger is approved, pursuant to Section 16-6a-1102, the surviving domestic nonprofit corporation shall deliver to the division for filing articles of merger setting forth:
 - (a) the plan of merger;
 - (b) if shareholder or member approval was not required of any party to the merger:
 - (i) a statement to the effect that approval was not required; and
 - (ii) a statement that the plan of merger was approved by a sufficient vote of the board of directors of each party to the merger;
 - (c) if approval of the shareholders or members of one or more domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger was required, a statement that the number of votes cast for the plan by each voting group entitled to vote separately on the merger was sufficient for approval by that voting group; and
 - (d) if approval of the plan by some person or persons other than the shareholders, members, or the board of directors is required pursuant to Subsection 16-6a-1102(3), or other applicable law, a statement that the approval was obtained.
- (2) A merger takes effect upon the effective date stated in the articles of merger, which may not be prior to the date the articles of merger are filed.
- (3) Articles of merger shall be executed by each party to the merger.

Amended by Chapter 228, 2006 General Session

16-6a-1104 Effect of merger.

- (1) When a merger takes effect:
 - (a) every domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger merges into the surviving domestic nonprofit corporation;
 - (b) the separate existence of every domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger except the surviving domestic nonprofit corporation ceases;
 - (c) the title to all real estate and other property owned by every domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger is transferred to and vested in the surviving domestic nonprofit corporation without reversion or impairment;
 - (d) the surviving domestic nonprofit corporation has all liabilities of each domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger;
 - (e)
 - (i) a proceeding pending by or against any party to the merger may be continued as if the merger did not occur; or
 - (ii) the surviving domestic nonprofit corporation may be substituted in the proceeding for the party to the merger whose existence ceased;
 - (f) the articles of incorporation of the surviving domestic nonprofit corporation are amended to the extent provided in the plan of merger; and
 - (g) the shares or memberships of each domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger that are to be

converted into shares, memberships, obligations, or other interests of the surviving domestic nonprofit corporation or into money or other property are converted, and the former holders of the shares and memberships are entitled only to the rights provided in the articles of merger.

- (2)
- (a) A transfer to and vesting in the surviving domestic nonprofit corporation described in Subsection (1)(c) occurs by operation of law.
 - (b) Consent or approval of any other person may not be required in connection with any transfer or vesting unless the consent or approval is specifically required in the event of merger by:
 - (i) law; or
 - (ii) express provision in any contract, agreement, decree, order, or other instrument to which any of the domestic corporations, foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations so merged is a party or by which it is bound.

Amended by Chapter 228, 2006 General Session

16-6a-1105 Merger with foreign nonprofit corporation.

- (1) One or more domestic nonprofit corporations may merge with one or more foreign nonprofit corporations if:
- (a) the merger is permitted by the law of the state or country under whose law each foreign nonprofit corporation is incorporated;
 - (b) each foreign nonprofit corporation complies with the provisions of the law described in Subsection (1)(a) in effecting the merger;
 - (c) if the foreign nonprofit corporation is the surviving nonprofit corporation of the merger, the foreign nonprofit corporation:
 - (i) complies with Section 16-6a-1103; and
 - (ii) in addition to the information required by Section 16-6a-1103, provides the address of its principal office; and
 - (d) each domestic nonprofit corporation complies with:
 - (i) the applicable provisions of Sections 16-6a-1101 and 16-6a-1102; and
 - (ii) if it is the surviving nonprofit corporation of the merger, with Section 16-6a-1103.
- (2) Upon the merger taking effect, a surviving foreign nonprofit corporation of a merger may be served with process in any proceeding brought against it as provided in Section 16-17-301.
- (3) Service effected pursuant to Subsection (2) is perfected at the earliest of:
- (a) the date the foreign nonprofit corporation receives the process, notice, or demand;
 - (b) the date shown on the return receipt, if signed on behalf of the foreign nonprofit corporation; or
 - (c) five days after mailing.
- (4) Subsection (2) does not prescribe the only means, or necessarily the required means, of serving a surviving foreign nonprofit corporation of a merger.

Amended by Chapter 364, 2008 General Session