

## Part 16 Conversion and Merger

### 16-16-1601 Definitions.

In this part:

- (1) "Constituent entity" means an entity that is a party to a merger.
- (2) "Constituent limited cooperative association" means a limited cooperative association that is a party to a merger.
- (3) "Converted entity" means the organization into which a converting entity converts pursuant to Sections 16-16-1602 through 16-16-1605.
- (4) "Converting entity" means an entity that converts into another entity pursuant to Sections 16-16-1602 through 16-16-1605.
- (5) "Converting limited cooperative association" means a converting entity that is a limited cooperative association.
- (6) "Organizational documents" means articles of incorporation, bylaws, articles of organization, operating agreements, partnership agreements, or other documents serving a similar function in the creation and governance of an entity.
- (7) "Personal liability" means personal liability for a debt, liability, or other obligation of an entity imposed, by operation of law or otherwise, on a person that co-owns or has an interest in the entity:
  - (a) by the entity's organic law solely because of the person co-owning or having an interest in the entity; or
  - (b) by the entity's organizational documents under a provision of the entity's organic law authorizing those documents to make one or more specified persons liable for all or specified parts of the entity's debts, liabilities, and other obligations solely because the person co-owns or has an interest in the entity.
- (8) "Surviving entity" means an entity into which one or more other entities are merged, whether the entity existed before the merger or is created by the merger.

Enacted by Chapter 363, 2008 General Session

### 16-16-1602 Conversion.

- (1) An entity that is not a limited cooperative association may convert to a limited cooperative association and a limited cooperative association may convert to an entity that is not a limited cooperative association pursuant to this section, Sections 16-16-1603 through 16-16-1605, and a plan of conversion, if:
  - (a) the other entity's organic law authorizes the conversion;
  - (b) the conversion is not prohibited by the law of the jurisdiction that enacted the other entity's organic law; and
  - (c) the other entity complies with its organic law in effecting the conversion.
- (2) A plan of conversion shall be in a record and shall include:
  - (a) the name and form of the entity before conversion;
  - (b) the name and form of the entity after conversion;
  - (c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in the converted entity, and other consideration; and
  - (d) the organizational documents of the proposed converted entity.

Amended by Chapter 378, 2010 General Session

**16-16-1603 Action on plan of conversion by converting limited cooperative association.**

- (1) For a limited cooperative association to convert to another entity, a plan of conversion shall be approved by a majority of the board of directors, or a greater percentage if required by the organic rules, and the board of directors shall call a members meeting to consider the plan of conversion, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:
  - (a) the plan, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;
  - (b) a recommendation that the members approve the plan of conversion, or if the board determines that because of a conflict of interest or other circumstances it should not make a favorable recommendation, the basis for that determination;
  - (c) a statement of any condition of the board's submission of the plan of conversion to the members; and
  - (d) notice of the meeting at which the plan of conversion will be considered, which shall be given in the same manner as notice of a special meeting of members.
- (2) Subject to Subsections (3) and (4), a plan of conversion shall be approved by:
  - (a) at least two-thirds of the voting power of members present at a members meeting called under Subsection (1); and
  - (b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.
- (3) The organic rules may require that the percentage of votes under Subsection (2)(a) is:
  - (a) a different percentage that is not less than a majority of members voting at the meeting;
  - (b) measured against the voting power of all members; or
  - (c) a combination of Subsections (3)(a) and (b).
- (4) The vote required to approve a plan of conversion may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.
- (5) Consent in a record to a plan of conversion by a member shall be delivered to the limited cooperative association before delivery of articles of conversion for filing if as a result of the conversion the member will have:
  - (a) personal liability for an obligation of the association; or
  - (b) an obligation or liability for an additional contribution.
- (6) Subject to Subsection (5) and any contractual rights, after a conversion is approved and at any time before the effective date of the conversion, a converting limited cooperative association may amend a plan of conversion or abandon the planned conversion:
  - (a) as provided in the plan; and
  - (b) except as prohibited by the plan, by the same affirmative vote of the board of directors and of the members as was required to approve the plan.
- (7) The voting requirements for districts, classes, or voting groups under Section 16-16-404 apply to approval of a conversion under this part.

Amended by Chapter 378, 2010 General Session

**16-16-1604 Filings required for conversion -- Effective date.**

- (1) After a plan of conversion is approved:

- (a) a converting limited cooperative association shall deliver to the division for filing articles of conversion, which shall include:
    - (i) a statement that the limited cooperative association has been converted into another entity;
    - (ii) the name and form of the converted entity and the jurisdiction of its governing statute;
    - (iii) the date the conversion is effective under the governing statute of the converted entity;
    - (iv) a statement that the conversion was approved as required by this chapter;
    - (v) a statement that the conversion was approved as required by the governing statute of the converted entity; and
    - (vi) if the converted entity is an entity organized in a jurisdiction other than this state and is not authorized to transact business in this state, the street address and, if different, mailing address of an office which the division may use for purposes of Section 16-16-120; and
  - (b) if the converting entity is not a converting limited cooperative association, the converting entity shall deliver to the division for filing articles of organization, which shall include, in addition to the information required by Section 16-16-302:
    - (i) a statement that the association was converted from another entity;
    - (ii) the name and form of the converting entity and the jurisdiction of its governing statute; and
    - (iii) a statement that the conversion was approved in a manner that complied with the converting entity's governing statute.
- (2) A conversion becomes effective:
- (a) if the converted entity is a limited cooperative association, when the articles of conversion take effect pursuant to Subsection 16-16-203(3); or
  - (b) if the converted entity is not a limited cooperative association, as provided by the governing statute of the converted entity.

Amended by Chapter 378, 2010 General Session

**16-16-1605 Effect of conversion.**

- (1) An entity that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion and is not a new entity but, after conversion, is organized under the organic law of the converted entity and is subject to that law and other law as it applies to the converted entity.
- (2) When a conversion takes effect under this part:
  - (a) all property owned by the converting entity remains vested in the converted entity;
  - (b) all debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity;
  - (c) an action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;
  - (d) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity;
  - (e) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
  - (f) except as otherwise provided in the plan of conversion, the conversion does not dissolve a converting limited cooperative association for purposes of Part 12, Dissolution.
- (3) A converted entity that is an entity organized under the laws of a jurisdiction other than this state consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited cooperative association if, before the conversion, the converting limited cooperative association was subject to suit in this state on the obligation. A converted entity that is an entity organized under the laws of a jurisdiction other than this state and

not authorized to transact business in this state appoints the division as its agent for service of process for purposes of enforcing an obligation under this Subsection (3). Service on the division under this Subsection (3) is made in the same manner and with the same consequences as under Subsections 16-16-120(3) and (4).

Enacted by Chapter 363, 2008 General Session

**16-16-1606 Merger.**

- (1) One or more limited cooperative associations may merge with one or more other entities pursuant to this part and a plan of merger if:
  - (a) the governing statute of each of the other entities authorizes the merger;
  - (b) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and
  - (c) each of the other entities complies with its governing statute in effecting the merger.
- (2) A plan of merger shall be in a record and shall include:
  - (a) the name and form of each constituent entity;
  - (b) the name and form of the surviving entity and, if the surviving entity is to be created by the merger, a statement to that effect;
  - (c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent entity into any combination of money, interests in the surviving entity, and other consideration;
  - (d) if the surviving entity is to be created by the merger, the surviving entity's organizational documents;
  - (e) if the surviving entity is not to be created by the merger, any amendments to be made by the merger to the surviving entity's organizational documents; and
  - (f) if a member of a constituent limited cooperative association will have personal liability with respect to a surviving entity, the identity of the member by descriptive class or other reasonable manner.

Amended by Chapter 378, 2010 General Session

**16-16-1607 Notice and action on plan of merger by constituent limited cooperative association.**

- (1) For a limited cooperative association to merge with another entity, a plan of merger shall be approved by a majority vote of the board of directors or a greater percentage if required by the association's organic rules.
- (2) The board of directors shall call a members meeting to consider a plan of merger approved by the board, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:
  - (a) the plan of merger, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;
  - (b) a recommendation that the members approve the plan of merger, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;
  - (c) a statement of any condition of the board's submission of the plan of merger to the members; and
  - (d) notice of the meeting at which the plan of merger will be considered, which shall be given in the same manner as notice of a special meeting of members.

Amended by Chapter 378, 2010 General Session

**16-16-1608 Approval or abandonment of merger by members.**

- (1) Subject to Subsections (2) and (3), a plan of merger shall be approved by:
  - (a) at least two-thirds of the voting power of members present at a members meeting called under Subsection 16-16-1607(2); and
  - (b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.
- (2) The organic rules may provide that the percentage of votes under Subsection (1)(a) is:
  - (a) a different percentage that is not less than a majority of members voting at the meeting;
  - (b) measured against the voting power of all members; or
  - (c) a combination of Subsections (2)(a) and (b).
- (3) The vote required to approve a plan of merger may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.
- (4) Consent in a record to a plan of merger by a member shall be delivered to the limited cooperative association before delivery of articles of merger for filing pursuant to Section 16-16-1609 if as a result of the merger the member will have:
  - (a) personal liability for an obligation of the association; or
  - (b) an obligation or liability for an additional contribution.
- (5) Subject to Subsection (4) and any contractual rights, after a merger is approved, and at any time before the effective date of the merger, a limited cooperative association that is a party to the merger may approve an amendment to the plan of merger or approve abandonment of the planned merger:
  - (a) as provided in the plan; and
  - (b) except as prohibited by the plan, with the same affirmative vote of the board of directors and of the members as was required to approve the plan.
- (6) The voting requirements for districts, classes, or voting groups under Section 16-16-404 apply to approval of a merger under this part.

Amended by Chapter 378, 2010 General Session

**16-16-1609 Filings required for merger -- Effective date.**

- (1) After each constituent entity has approved a merger, articles of merger shall be signed on behalf of each constituent entity by an authorized representative.
- (2) The articles of merger shall include:
  - (a) the name and form of each constituent entity and the jurisdiction of its governing statute;
  - (b) the name and form of the surviving entity, the jurisdiction of its governing statute, and, if the surviving entity is created by the merger, a statement to that effect;
  - (c) the date the merger is effective under the governing statute of the surviving entity;
  - (d) if the surviving entity is to be created by the merger and:
    - (i) will be a limited cooperative association, the limited cooperative association's articles of organization; or
    - (ii) will be an entity other than a limited cooperative association, the organizational document that creates the entity;
  - (e) if the surviving entity is not created by the merger, any amendments provided for in the plan of merger to the organizational document that created the entity;

- (f) a statement as to each constituent entity that the merger was approved as required by the entity's governing statute;
  - (g) if the surviving entity is a foreign organization not authorized to transact business in this state, the street address and, if different, mailing address of an office which the division may use for the purposes of Section 16-16-120; and
  - (h) any additional information required by the governing statute of any constituent entity.
- (3) Each limited cooperative association that is a party to a merger shall deliver the articles of merger to the division for filing.
- (4) A merger becomes effective under this part:
- (a) if the surviving entity is a limited cooperative association, upon the later of:
    - (i) compliance with Subsection (3); or
    - (ii) subject to Subsection 16-16-203(3), as specified in the articles of merger; or
  - (b) if the surviving entity is not a limited cooperative association, as provided by the governing statute of the surviving entity.

Amended by Chapter 378, 2010 General Session

**16-16-1610 Effect of merger.**

- (1) When a merger becomes effective:
- (a) the surviving entity continues or comes into existence;
  - (b) each constituent entity that merges into the surviving entity ceases to exist as a separate entity;
  - (c) all property owned by each constituent entity that ceases to exist vests in the surviving entity;
  - (d) all debts, liabilities, and other obligations of each constituent entity that ceases to exist continue as obligations of the surviving entity;
  - (e) an action or proceeding pending by or against any constituent entity that ceases to exist may be continued as if the merger had not occurred;
  - (f) except as prohibited by law other than this chapter, all rights, privileges, immunities, powers, and purposes of each constituent entity that ceases to exist vest in the surviving entity;
  - (g) except as otherwise provided in the plan of merger, the terms and conditions of the plan take effect;
  - (h) except as otherwise provided in the plan of merger, if a merging limited cooperative association ceases to exist, the merger does not dissolve the association for purposes of Part 12, Dissolution;
  - (i) if the surviving entity is created by the merger and:
    - (i) is a limited cooperative association, the articles of organization become effective; or
    - (ii) is an entity other than a limited cooperative association, the organizational document that creates the entity becomes effective; and
  - (j) if the surviving entity is not created by the merger, any amendments made by the articles of merger for the organizational documents of the surviving entity become effective.
- (2) A surviving entity that is an entity organized under the laws of a jurisdiction other than this state consents to the jurisdiction of the courts of this state to enforce any obligation owed by the constituent entity if, before the merger, the constituent entity was subject to suit in this state on the obligation. A surviving entity that is an entity organized under the laws of a jurisdiction other than this state and not authorized to transact business in this state appoints the division as its agent for service of process for purposes of enforcing an obligation under this Subsection (2). Service on the division under this Subsection (2) is made in the same manner and with the same consequences as in Subsections 16-16-120(3) and (4).

Enacted by Chapter 363, 2008 General Session

**16-16-1611 Consolidation.**

- (1) Constituent entities that are limited cooperative associations or foreign cooperatives may agree to call a merger a consolidation under this part.
- (2) All provisions governing mergers or using the term merger in this chapter apply equally to mergers that the constituent entities choose to call consolidations under Subsection (1).

Enacted by Chapter 363, 2008 General Session

**16-16-1612 Part not exclusive.**

This part does not prohibit a limited cooperative association from being converted or merged under law other than this chapter.

Enacted by Chapter 363, 2008 General Session