

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