

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 835

Judiciary I Committee Substitute Adopted 4/26/99

House Committee Substitute Favorable 6/30/99

Short Title: Revise Law Governing Mergers.

(Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS.

The General Assembly of North Carolina enacts:

PART I. CORPORATIONS.

Section 1.1. G.S. 55-1-20(f) reads as rewritten:

"(f) The A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

- (1) By the chairman of the board of ~~directors of a domestic or foreign corporation, directors,~~ by its president, or by another of its officers;
- (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

1 (3) If the corporation is in the hands of a receiver, trustee, or other court-  
2 appointed fiduciary, by that fiduciary.

3 A document submitted by an unincorporated entity must be executed by a person  
4 authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the  
5 unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to  
6 G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or  
7 (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as  
8 defined in G.S. 59-36 whether or not formed under the laws of this State."

9 Section 1.2. G.S. 55-1-40(9) reads as rewritten:

10 "(9) 'Entity' includes (without limiting the meaning of such term in Article 9)  
11 corporation and foreign corporation; nonprofit corporation; professional  
12 corporation; limited liability company; profit and nonprofit  
13 unincorporated association; business trust, estate, partnership, trust, and  
14 two or more persons having a joint or common economic interest; and  
15 state, United States, and foreign government."

16 Section 1.3. G.S. 55-1-40 is amended by adding the following new  
17 subdivision, to be placed by the Codifier of Statutes in the appropriate order, to read:

18 "(25a) 'Unincorporated entity' means a domestic or foreign limited liability  
19 company as defined in G.S. 57C-1-03, a domestic or foreign limited  
20 partnership as defined in G.S. 59-102, or any other partnership as  
21 defined in G.S. 59-36, whether or not formed under the laws of this  
22 State, including a registered limited liability partnership as defined in  
23 G.S. 59-32 and any other limited liability partnership formed under a  
24 law other than the laws of this State."

25 Section 1.4. G.S. 55-4-05 reads as rewritten:

26 "**§ 55-4-05. Real property records.**

27 (a) Whenever the name of any domestic or foreign corporation holding title to real  
28 property in this State is changed upon amendment to the articles of incorporation or  
29 whenever title to its real property in this State is ~~transferred-vested~~ by operation of law in  
30 another entity upon ~~merger of two or more corporations, merger, consolidation, or~~  
31 conversion of the corporation, a certificate reciting ~~such change or transfer~~ the name  
32 change, merger, consolidation, or conversion shall be recorded in the office of the register  
33 of deeds of the county where the property lies, or if the property is located in more than  
34 one county, then in each county where any portion of the property lies.

35 (b) The Secretary of State shall adopt uniform certificates to be furnished for  
36 registration in accordance with this section. In the case of a foreign corporation, a similar  
37 certificate by any competent authority of the jurisdiction of incorporation may be  
38 registered in accordance with this section.

39 (c) The certificate required by this section shall be recorded by the register of  
40 deeds in the same manner as deeds, and for the same fees, but no formalities as to  
41 acknowledgement, probate, or approval by any other officer shall be required. The  
42 former name of the corporation holding title to the real property before the ~~amendment or~~  
43 ~~merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor'

1 index, and the ~~amended~~ new name of the corporation or the name of the other entity  
2 holding title to the real property by virtue of the ~~amendment or merger~~ merger,  
3 consolidation, or conversion shall appear in the 'Grantee' index."

4 Section 1.5. G.S. 55-9-01(b)(1) reads as rewritten:

5 "(1) 'Business combination' includes any merger or consolidation of a  
6 corporation with or into any other ~~corporation,~~ corporation or any  
7 unincorporated entity, or the sale or lease of all or any substantial part of  
8 the corporation's assets to, or any payment, sale or lease to the  
9 corporation or any subsidiary thereof in exchange for securities of the  
10 corporation of any assets (except assets having an aggregate fair market  
11 value of less than five million dollars (\$5,000,000)) of any other entity."

12 Section 1.6. G.S. 55-9-04(d) reads as rewritten:

13 "(d) Nothing contained in this Article shall be construed to relieve any other entity  
14 from any fiduciary obligation imposed by law. This Article shall be broadly construed so  
15 as to be applicable to any transaction reasonably calculated to avoid the application of the  
16 provisions hereof including, without limitation, any merger or other recapitalization,  
17 initiated by or for the benefit of an other entity that owns more than twenty percent (20%)  
18 of the voting shares, which would reincorporate a corporation under the laws of another  
19 ~~state.~~ state or which would reorganize a corporation as an unincorporated entity."

20 Section 1.7. G.S. 55-11-06(a)(4) reads as rewritten:

21 "(4) A proceeding pending by or against any corporation party to the merger  
22 may be continued as if the merger did not occur or the surviving  
23 corporation may be substituted in the proceeding for the corporation  
24 whose existence ceased;"

25 Section 1.8. Article 11 of Chapter 55 of the General Statutes is amended by  
26 adding a new section to read:

27 "**§ 55-11-10. Merger with unincorporated entity.**

28 (a) As used in this section, 'business entity' means a domestic corporation as  
29 defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a  
30 foreign corporation as defined in G.S. 55-1-40 (including a foreign professional  
31 corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as  
32 defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in  
33 G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and  
34 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of  
35 this State (including a registered limited liability partnership as defined in G.S. 59-32 and  
36 any limited liability partnership formed under a law other than the laws of this State).

37 (b) One or more domestic corporations may merge with one or more  
38 unincorporated entities and, if desired, one or more foreign corporations, domestic  
39 nonprofit corporations, or foreign nonprofit corporations if:

40 (1) The merger is permitted by the laws of the state or country governing  
41 the organization and internal affairs of each other merging business  
42 entity; and

1           (2) Each merging domestic corporation and each other merging business  
2           entity comply with the requirements of this section and, to the extent  
3           applicable, the laws referred to in subdivision (1) of this subsection.

4           (c) Each merging domestic corporation and each other merging business entity  
5 shall approve a written plan of merger containing:

6           (1) For each merging business entity, its name, type of business entity, and  
7           the state or country whose laws govern its organization and internal  
8           affairs;

9           (2) The name of the merging business entity that shall survive the merger;

10          (3) The terms and conditions of the merger;

11          (4) The manner and basis for converting the interests in each merging  
12          business entity into interests, obligations, or securities of the surviving  
13          business entity or into cash or other property in whole or in part; and

14          (5) If the surviving business entity is a domestic corporation, any  
15          amendments to its articles of incorporation that are to be made in  
16          connection with the merger.

17          The plan of merger may contain other provisions relating to the merger.

18          In the case of a domestic corporation, approval of the plan of merger requires that the  
19          plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and,  
20          unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be  
21          approved by its shareholders as provided in G.S. 55-11-03. In the case of each other  
22          merging business entity, the plan of merger must be approved in accordance with the  
23          laws of the state or country governing the organization and internal affairs of that  
24          merging business entity.

25          After a plan of merger has been approved by a domestic corporation but before the  
26          articles of merger become effective, the plan of merger (i) may be amended as  
27          provided in the plan of merger, or (ii) may be abandoned (subject to any contractual  
28          rights) as provided in the plan of merger or, if there is no such provision, as determined  
29          by the board of directors without further shareholder action.

30          (d) After a plan of merger has been approved by each merging domestic  
31          corporation and each other merging business entity as provided in subsection (c) of this  
32          section, the surviving business entity shall deliver articles of merger to the Secretary of  
33          State for filing. The articles of merger shall set forth:

34               (1) The plan of merger;

35               (2) For each merging business entity, its name, type of business entity, and  
36               the state or country whose laws govern its organization and internal  
37               affairs;

38               (3) The name and address of the surviving business entity;

39               (4) A statement that the plan of merger has been approved by each merging  
40               business entity in the manner required by law; and

41               (5) The effective date and time of merger if it is not to be effective at the  
42               time of filing of the articles of merger.

1 If the plan of merger is amended or abandoned before the articles of merger become  
2 effective, the surviving business entity promptly shall deliver to the Secretary of State for  
3 filing an amendment to the articles of merger reflecting the amendment or abandonment  
4 of the plan of merger.

5 Certificates of merger shall also be registered as provided in G.S. 47-18.1.

6 (e) A merger takes effect when the articles of merger become effective. When a  
7 merger takes effect:

8 (1) Each other merging business entity merges into the surviving business  
9 entity and the separate existence of each merging business entity except  
10 the surviving business entity ceases;

11 (2) The title to all real estate and other property owned by each merging  
12 business entity is vested in the surviving business entity without  
13 reversion or impairment;

14 (3) The surviving business entity has all liabilities of each merging business  
15 entity;

16 (4) A proceeding pending by or against any merging business entity may be  
17 continued as if the merger did not occur, or the surviving business entity  
18 may be substituted in the proceeding for a merging business entity  
19 whose separate existence ceases in the merger;

20 (5) If a domestic corporation is the surviving business entity, its articles of  
21 incorporation shall be amended to the extent provided in the plan of  
22 merger;

23 (6) The interests in each merging business entity that are to be converted  
24 into interests, obligations, or securities of the surviving business entity  
25 or into the right to receive cash or other property are thereupon so  
26 converted, and the former holders of the interests are entitled only to the  
27 rights provided to them in the articles of merger or, in the case of former  
28 holders of shares in a domestic corporation, any rights they may have  
29 under Article 13 of this Chapter; and

30 (7) If the surviving business entity is not a domestic corporation, the  
31 surviving business entity is deemed to agree that it will promptly pay to  
32 the dissenting shareholders of any merging domestic corporation the  
33 amount, if any, to which they are entitled under Article 13 of this  
34 Chapter and otherwise to comply with the requirements of Article 13 as  
35 if it were a surviving domestic corporation in the merger.

36 The merger shall not affect the liability or absence of liability of any holder of an  
37 interest in a merging business entity for any acts, omissions, or obligations of any  
38 merging business entity made or incurred prior to the effectiveness of the merger. The  
39 cessation of separate existence of a merging business entity in the merger shall not  
40 constitute a dissolution or termination of the merging business entity.

41 If the surviving business entity is not a domestic limited liability company, a domestic  
42 corporation, a domestic nonprofit corporation, or a domestic limited partnership, when  
43 the merger takes effect the surviving business entity is deemed:

1           (1) To agree that it may be served with process in this State in any  
2 proceeding for enforcement of (i) any obligation of any merging  
3 domestic limited liability company, domestic corporation, domestic  
4 nonprofit corporation, domestic limited partnership, or other partnership  
5 as defined in G.S. 59-36 that is formed under the laws of this State, (ii)  
6 the rights of dissenting shareholders of any merging domestic  
7 corporation under Article 13 of this Chapter, and (iii) any obligation of  
8 the surviving business entity arising from the merger; and

9           (2) If the surviving business entity does not have a registered agent in this  
10 State, to have appointed the Secretary of State as its registered agent for  
11 service of process in any such proceeding until such time as the  
12 surviving business entity appoints a registered agent in this State.  
13 Service on the Secretary of State of any such process shall be made by  
14 delivering to and leaving with the Secretary of State or with any clerk  
15 authorized by the Secretary of State to accept service of process,  
16 duplicate copies of such process. Upon receipt of service of process on  
17 behalf of a surviving business entity, the Secretary of State shall  
18 immediately mail a copy of the process by registered or certified mail,  
19 return receipt requested, to the surviving business entity at its address  
20 shown in the articles of merger or, if an application for a certificate of  
21 withdrawal by reason of merger has been filed, at the address for service  
22 of process contained in that application.

23           (f) This section does not apply to a merger that does not include a merging  
24 unincorporated entity."

25           Section 1.9. G.S. 55-15-21 reads as rewritten:

26 **"§ 55-15-21. Withdrawal of foreign corporation by reason of a merger, merger,**  
27 **consolidation, or conversion.**

28           (a) Whenever the separate existence of a foreign corporation authorized to transact  
29 business in this State ceases its separate existence as a result of a statutory merger or  
30 consolidation permitted by the laws of the state or country under which it was  
31 incorporated, or converts into another entity as permitted by those laws, the surviving  
32 corporation or resulting entity shall apply for a certificate of withdrawal for the merged  
33 foreign corporation by delivering to the Secretary of State for filing a copy of the articles  
34 of merger, consolidation, or conversion or a certificate reciting the facts of the merger,  
35 consolidation, or conversion, duly authenticated by the Secretary of State or other official  
36 having custody of corporate records in the state or country under the laws of which such  
37 statutory merger was effected. foreign corporation was incorporated. If the surviving  
38 corporation or resulting entity is not authorized to transact business in this State the  
39 articles of merger or certificate must be accompanied by an application which must set  
40 forth:

41           (1) The name of each merged the foreign corporation authorized to transact  
42 business in this State and the State, the type of entity and name of the  
43 surviving corporation or resulting entity, and a statement that the

1 surviving ~~corporation~~ or resulting entity is not authorized to transact  
2 business in this State;

3 (2) ~~That~~ A statement that the surviving ~~corporation~~ or resulting entity  
4 consents that service of process based upon any cause of action arising  
5 in this State, or arising out of business transacted in this State, during  
6 the time ~~each merged~~ the foreign corporation was authorized to transact  
7 business in this State may thereafter be made ~~on such corporation~~ by  
8 service thereof on the Secretary of State;

9 (3) A mailing address to which the Secretary of State may mail a copy of  
10 any process served on him under subdivision (a)(2); and

11 (4) A commitment to notify the Secretary of State in the future of any  
12 change in its mailing address.

13 (b) If the Secretary of State finds that the articles ~~of merger~~ or certificate and the  
14 application for withdrawal, if required, ~~conforms~~ conform to law ~~he~~ the Secretary of State  
15 shall:

16 (1) Endorse on the articles ~~of merger~~ or certificate and the application for  
17 withdrawal, if required, the word 'filed' and the hour, day, month and  
18 year of the filing thereof;

19 (2) File the articles ~~of merger~~ or certificate and the application, if required;

20 (3) Issue a certificate of withdrawal; and

21 (4) Send to the ~~foreign corporation~~ surviving or resulting entity or its  
22 representative the certificate of withdrawal, together with the exact or  
23 conformed copy of the application, if required, affixed thereto."

## 24 PART II. NONPROFIT CORPORATIONS.

25 Section 2.1. G.S. 55A-1-20(f) reads as rewritten:

26 "(f) ~~The~~ A document submitted by a domestic or foreign corporation or business  
27 corporation shall be executed:

28 (1) By the presiding officer of the board of directors ~~of a domestic or foreign~~  
29 ~~corporation~~, by its president, or by another of its officers;

30 (2) If directors have not been selected or the corporation has not been  
31 formed, by an incorporator; or

32 (3) If the corporation is in the hands of a receiver, trustee, or other court-  
33 appointed fiduciary, by that fiduciary.

34 A document submitted by an unincorporated entity must be executed by a person  
35 authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the  
36 unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to  
37 G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or  
38 (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as  
39 defined in G.S. 59-36 whether or not formed under the laws of this State."

40 Section 2.2. G.S. 55A-1-40 is amended by adding the following new  
41 subdivision to read:

42 "(25a) 'Unincorporated entity' means a domestic or foreign limited liability  
43 company as defined in G.S. 57C-1-03, a domestic or foreign limited

1 partnership as defined in G.S. 59-102, or any other partnership as  
2 defined in G.S. 59-36, whether or not formed under the laws of this  
3 State, including a registered limited liability partnership as defined in  
4 G.S. 59-32 and any other limited liability partnership formed under a  
5 law other than the laws of this State."

6 Section 2.3. G.S. 55A-4-05 reads as rewritten:

7 **"§ 55A-4-05. Real property records.**

8 (a) Whenever the name of any domestic or foreign corporation holding title to real  
9 property in this State is changed upon amendment to the articles of incorporation or  
10 whenever title to its real property in this State is ~~transferred-vested~~ by operation of law in  
11 another entity upon ~~merger of two or more corporations,~~ merger, consolidation, or  
12 conversion of the corporation, a certificate reciting the ~~change or transfer name change,~~  
13 merger, consolidation, or conversion shall be recorded by the corporation or its successor  
14 in the office of the register of deeds of the county where the property lies, or if the  
15 property is located in more than one county, then in each county where any portion of the  
16 property lies.

17 (b) The Secretary of State shall adopt uniform certificates to be furnished for  
18 recording in accordance with this section. In the case of a foreign corporation, a similar  
19 certificate by any competent authority of the jurisdiction of incorporation may be  
20 recorded in accordance with this section.

21 (c) The certificate required by this section shall be recorded by the register of  
22 deeds in the same manner as deeds, and for the same fees, but no formalities as to  
23 acknowledgement, probate, or approval by any other officer shall be required. The  
24 former name of the corporation holding title to the real property before the ~~amendment or~~  
25 ~~merger name change,~~ merger, consolidation, or conversion shall appear in the 'Grantor'  
26 index, and the ~~amended new name~~ of the corporation or the name of the other entity  
27 holding title to the real property by virtue of the ~~amendment or merger merger,~~  
28 consolidation, or conversion shall appear in the 'Grantee' index."

29 Section 2.4. G.S. 55A-11-02 reads as rewritten:

30 **"§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

31 (a) Without the prior approval of the superior court in a proceeding in which the  
32 Attorney General has been given written notice, a charitable or religious corporation may  
33 merge only with:

- 34 (1) A charitable or religious corporation;
- 35 (2) A foreign corporation that would qualify under this Chapter as a  
36 charitable or religious corporation;
- 37 (3) A wholly owned foreign or domestic corporation (business or nonprofit)  
38 which is not a charitable or religious corporation, or an unincorporated  
39 entity, provided the charitable or religious corporation is the ~~surviving~~  
40 ~~corporation survivor in the merger~~ and continues to be a charitable or  
41 religious corporation after the merger; or
- 42 (4) A business or nonprofit corporation (foreign or domestic) other than a  
43 charitable or religious corporation, or an unincorporated entity, provided



1 that: (i) on or prior to the effective date of the merger, assets with a  
2 value equal to the greater of the fair market value of the net tangible and  
3 intangible assets (including goodwill) of the charitable or religious  
4 corporation or the fair market value of the charitable or religious  
5 corporation if it were to be operated as a business concern are  
6 transferred or conveyed to one or more persons who would have  
7 received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved;  
8 (ii) it shall return, transfer or convey any assets held by it upon  
9 condition requiring return, transfer or conveyance, which condition  
10 occurs by reason of the merger, in accordance with such condition; and  
11 (iii) the merger is approved by a majority of directors of the charitable  
12 or religious corporation who are not and will not become ~~members~~  
13 members, as 'member' is defined in G.S. 55A-1-40(16) or G.S. 57C-1-  
14 03, partners, limited partners, or shareholders in or directors, managers,  
15 officers, employees, agents, or consultants of the surviving corporation.  
16 survivor in the merger.

17 (b) At least 20 days before consummation of any merger of a charitable or  
18 religious corporation pursuant to subdivision (a)(4) of this section, notice, including a  
19 copy of the proposed plan of merger, shall be delivered to the Attorney General.

20 (c) Without the prior written consent of the Attorney General, or approval of the  
21 superior court in a proceeding in which the Attorney General has been given notice, no  
22 member of a charitable or religious corporation may receive or retain any property as a  
23 result of a merger other than ~~a membership an interest as a member, as 'member' is defined~~  
24 in G.S. 55A-1-40(16), in the surviving corporation-survivor of the merger. The Attorney  
25 General may consent to the transaction, or the court shall approve the transaction, if it is  
26 fair and not contrary to the public interest."

27 Section 2.5. G.S. 55A-11-05(a)(4) reads as rewritten:

28 "(4) A proceeding pending by or against any corporation party to the merger  
29 may be continued as if the merger did not occur or the surviving  
30 corporation may be substituted in the proceeding for the corporation  
31 whose existence ceased; and".

32 Section 2.6. G.S. 55A-11-07 reads as rewritten:

33 **"§ 55A-11-07. Bequests, devises, and gifts.**

34 Any bequest, devise, gift, grant, or promise contained in a will or other instrument of  
35 donation, subscription, or conveyance, that is made to a constituent corporation and that  
36 takes effect or remains payable after the merger, inures to the ~~surviving corporation~~  
37 survivor in the merger unless the will or other instrument otherwise specifically  
38 provides."

39 Section 2.7. Article 11 of Chapter 55A of the General Statutes is amended by  
40 adding a new section to read:

41 **"§ 55A-11-09. Merger with unincorporated entity.**

42 (a) As used in this section, 'business entity' means a domestic corporation as  
43 defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a

1 foreign corporation as defined in G.S. 55-1-40 (including a foreign professional  
2 corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as  
3 defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in  
4 G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and  
5 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of  
6 this State (including a registered limited liability partnership as defined in G.S. 59-32  
7 and any limited liability partnership formed under a law other than the laws of this State).

8 (b) One or more domestic nonprofit corporations may merge with one or more  
9 unincorporated entities and, if desired, one or more foreign nonprofit corporations,  
10 domestic business corporations, or foreign business corporations if:

11 (1) The merger is permitted by the laws of the state or country governing  
12 the organization and internal affairs of each of the other merging  
13 business entities;

14 (2) Each merging domestic nonprofit corporation and each other merging  
15 business entity comply with the requirements of this section and, to the  
16 extent applicable, the laws referred to in subdivision (1) of this  
17 subsection; and

18 (3) The merger complies with G.S. 55A-11-02, if applicable.

19 (c) Each merging domestic nonprofit corporation and each other merging business  
20 entity shall approve a written plan of merger containing:

21 (1) For each merging business entity, its name, type of business entity, and  
22 the state or country whose laws govern its organization and internal  
23 affairs;

24 (2) The name of the merging business entity that shall survive the merger;

25 (3) The terms and conditions of the merger;

26 (4) The manner and basis for converting the interests in each merging  
27 business entity into interests, obligations, or securities of the surviving  
28 business entity or into cash or other property in whole or in part; and

29 (5) If the surviving business entity is a domestic nonprofit corporation, any  
30 amendments to its articles of incorporation that are to be made in  
31 connection with the merger.

32 The plan of merger may contain other provisions relating to the merger.

33 In the case of a domestic nonprofit corporation, approval of the plan of merger  
34 requires that the plan of merger be adopted as provided in G.S. 55A-11-03. In the case of  
35 each other merging business entity, the plan of merger must be approved in accordance  
36 with the laws of the state or country governing the organization and internal affairs of  
37 such merging business entity.

38 After a plan of merger has been approved by a domestic nonprofit corporation but  
39 before the articles of merger become effective, the plan of merger (i) may be amended as  
40 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual  
41 rights) as provided in the plan of merger or, if there is no such provision, as determined  
42 by the board of directors.

1       (d) After a plan of merger has been approved by each merging domestic nonprofit  
2 corporation and each other merging business entity as provided in subsection (c) of this  
3 section, the surviving business entity shall deliver articles of merger to the Secretary of  
4 State for filing. The articles of merger shall set forth:

5           (1) The plan of merger;

6           (2) For each merging business entity, its name, type of business entity, and  
7 the state or country whose laws govern its organization and internal  
8 affairs;

9           (3) The name and address of the surviving business entity;

10          (4) A statement that the plan of merger has been approved by each merging  
11 business entity in the manner required by law; and

12          (5) The effective date and time of merger if it is not to be effective at the  
13 time of filing of the articles of merger.

14       If the plan of merger is amended or abandoned before the articles of merger become  
15 effective, the surviving business entity promptly shall deliver to the Secretary of State for  
16 filing an amendment to the articles of merger reflecting the amendment or abandonment  
17 of the plan of merger.

18       Certificates of merger shall also be registered as provided in G.S. 47-18.1.

19       (e) A merger takes effect when the articles of merger become effective. When a  
20 merger takes effect:

21           (1) Each other merging business entity merges into the surviving business  
22 entity and the separate existence of each merging business entity except  
23 the surviving business entity ceases;

24           (2) The title to all real estate and other property owned by each merging  
25 business entity is vested in the surviving business entity without  
26 reversion or impairment;

27           (3) The surviving business entity has all liabilities of each merging business  
28 entity;

29           (4) A proceeding pending by or against any merging business entity may be  
30 continued as if the merger did not occur, or the surviving business entity  
31 may be substituted in the proceeding for a merging business entity  
32 whose separate existence ceases in the merger;

33           (5) If a domestic nonprofit corporation is the surviving business entity, its  
34 articles of incorporation shall be amended to the extent provided in the  
35 plan of merger;

36           (6) The interests in each merging business entity that are to be converted  
37 into interests, obligations, or securities of the surviving business entity  
38 or into the right to receive cash or other property are thereupon so  
39 converted, and the former holders of the interests are entitled only to the  
40 rights provided to them in the articles of merger or, in the case of former  
41 holders of shares in a domestic business corporation, any rights they  
42 may have under Article 13 of Chapter 55 of the General Statutes; and

1           (7) If the surviving business entity is not a domestic business corporation,  
2 the surviving business entity is deemed to agree that it will promptly  
3 pay to the dissenting shareholders of any merging domestic business  
4 corporation the amount, if any, to which they are entitled under Article  
5 13 of Chapter 55 of the General Statutes and otherwise to comply with  
6 the requirements of Article 13 as if it were a surviving domestic  
7 business corporation in the merger.

8           The merger shall not affect the liability or absence of liability of any holder of an  
9 interest in a merging business entity for any acts, omissions, or obligations of any  
10 merging business entity made or incurred prior to the effectiveness of the merger. The  
11 cessation of separate existence of a merging business entity in the merger shall not  
12 constitute a dissolution or termination of the merging business entity.

13           If the surviving business entity is not a domestic limited liability company, a domestic  
14 business corporation, a domestic nonprofit corporation, or a domestic limited partnership,  
15 when the merger takes effect the surviving business entity is deemed:

16           (1) To agree that it may be served with process in this State in any  
17 proceeding for enforcement of (i) any obligation of any merging  
18 domestic limited liability company, domestic business corporation,  
19 domestic nonprofit corporation, domestic limited partnership, or other  
20 partnership as defined in G.S. 59-36 that is formed under the laws of  
21 this State, (ii) the rights of dissenting shareholders of any merging  
22 domestic business corporation under Article 13 of Chapter 55 of the  
23 General Statutes, and (iii) any obligation of the surviving business entity  
24 arising from the merger; and

25           (2) If the surviving business entity does not have a registered agent in this  
26 State, to have appointed the Secretary of State as its registered agent for  
27 service of process in any such proceeding until such time as the  
28 surviving business entity appoints a registered agent in this State.  
29 Service on the Secretary of State of any such process shall be made by  
30 delivering to and leaving with the Secretary of State or with any clerk  
31 authorized by the Secretary of State to accept service of process,  
32 duplicate copies of such process. Upon receipt of service of process on  
33 behalf of a surviving business entity, the Secretary of State shall  
34 immediately mail a copy of the process by registered or certified mail,  
35 return receipt requested, to the surviving business entity at its address  
36 shown in the articles of merger or, if an application for a certificate of  
37 withdrawal by reason of merger has been filed, at the address for service  
38 of process contained in that application.

39           (f) This section does not apply to a merger that does not include a merging  
40 unincorporated entity."

41           Section 2.8. G.S. 55A-15-21 reads as rewritten:

42           "**§ 55A-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger,**  
43 **consolidation, or conversion.**

1 (a) Whenever ~~the separate existence of~~ a foreign corporation authorized to conduct  
2 affairs in this State ceases its separate existence as a result of a statutory merger or  
3 consolidation permitted by the laws of the state or country under which it was  
4 incorporated, or converts into another entity as permitted by those laws, the surviving  
5 ~~corporation or resulting entity~~ shall apply for a certificate of withdrawal for ~~the merged the~~  
6 foreign corporation by delivering to the Secretary of State for filing a copy of the articles  
7 of merger, consolidation, or conversion or a certificate reciting the facts of the merger,  
8 consolidation, or conversion duly authenticated by the secretary of state or other official  
9 having custody of corporate records in the state or country under the laws of which ~~such~~  
10 ~~statutory merger was effected. the foreign corporation was incorporated.~~ If the surviving or  
11 resulting entity ~~corporation~~ is not authorized to conduct affairs in this State, the articles of  
12 ~~merger or certificate~~ shall be accompanied by an application which must set forth:

13 (1) The name of ~~each merged the foreign~~ corporation authorized to conduct  
14 affairs in this State ~~and State, the type of entity and~~ the name of the  
15 surviving ~~corporation or resulting entity~~, and a statement that the  
16 surviving ~~corporation or resulting entity~~ is not authorized to conduct  
17 affairs in this State;

18 (2) ~~That~~ A statement that the surviving ~~corporation or resulting entity~~  
19 consents that service of process based upon any cause of action arising  
20 in this State, or arising out of affairs conducted in this State, during the  
21 time ~~each merged the foreign~~ corporation was authorized to conduct  
22 affairs in this State may thereafter be made ~~on such corporation by~~  
23 service thereof on the Secretary of State;

24 (3) A mailing address to which the Secretary of State may mail a copy of  
25 any process served on him under subdivision (a)(2) of this section; and

26 (4) A commitment to notify the Secretary of State in the future of any  
27 change in its mailing address.

28 (b) If the Secretary of State finds that the articles of ~~merger or certificate~~ and the  
29 application for withdrawal, if required, ~~conforms conform~~ to law the Secretary of State  
30 shall:

31 (1) Endorse on the articles of ~~merger or certificate~~ and the application for  
32 withdrawal, if required, the word 'filed', and the hour, day, month, and  
33 year of filing thereof;

34 (2) File the articles of ~~merger or certificate~~ and the application, if required;

35 (3) Issue a certificate of withdrawal; and

36 (4) Send to the ~~foreign corporation surviving or resulting entity~~ or its  
37 representative the certificate of withdrawal, together with the exact or  
38 conformed copy of the application, if required, affixed thereto."

### 39 PART III. LIMITED LIABILITY COMPANIES.

40 Section 3.1. G.S. 57C-1-20(f) reads as rewritten:

41 "(f) ~~The~~ A document submitted by a domestic or foreign limited liability company  
42 must be executed:

43 (1) By a manager of ~~a domestic or foreign the~~ limited liability company;

- 1 (2) If managers have not been selected, or if the limited liability company  
2 does not have a manager other than a member, by any member;  
3 (3) If the limited liability company has not been formed, by an organizer; or  
4 (4) If the limited liability company is in the hands of a receiver, trustee, or  
5 other court-appointed fiduciary, by that fiduciary.

6 A document submitted by a business entity other than a domestic or foreign limited  
7 liability company must be executed by a person authorized to execute documents (i)  
8 pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign  
9 corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or  
10 foreign nonprofit corporation, (iii) pursuant to G.S. 59-204 if the business entity is a  
11 domestic or foreign limited partnership, or (iv) pursuant to G.S. 59-73.7(a)(4) if the  
12 business entity is any other partnership as defined in G.S. 59-36 whether or not formed  
13 under the laws of this State."

14 Section 3.2. G.S. 57C-1-03 is amended by adding a new subdivision to read:

15 "(3a) Business entity. – A corporation (including a professional corporation as  
16 defined in G.S. 55B-2), a foreign corporation (including a foreign  
17 professional corporation as defined in G.S. 55B-16), a domestic or  
18 foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic  
19 or foreign limited liability company, a domestic or foreign limited  
20 partnership as defined in G.S. 59-102, or any other partnership as  
21 defined in G.S. 59-36 whether or not formed under the laws of this State  
22 (including a registered limited liability partnership as defined in G.S.  
23 59-32 and any other limited liability partnership formed under a law  
24 other than the laws of this State."

25 Section 3.3. G.S. 57C-1-03(15) reads as rewritten:

26 "(15) Membership interest or interest. —~~All~~In the context of a member of a  
27 limited liability company, the terms mean all of a member's rights in the  
28 limited liability company, including without limitation the member's  
29 share of the profits and losses of the limited liability company, the right  
30 to receive distributions of the limited liability company assets, any right  
31 to vote, and any right to participate in management."

32 Section 3.4. G.S. 57C-2-20(a) reads as rewritten:

33 "(a) One or more persons may organize a limited liability company by delivering  
34 executed articles of organization to the Secretary of State for filing. A limited liability  
35 company may also be formed through the conversion of another business entity pursuant  
36 to Part 1 of Article 9A of this Chapter."

37 Section 3.5. G.S. 57C-2-34 reads as rewritten:

38 "**§ 57C-2-34. Real property records.**

39 (a) Whenever the name of any domestic or foreign limited liability company  
40 holding title to real property in this State is changed upon amendment to its articles of  
41 organization or whenever title to its real property in this State is ~~transferred~~ vested by  
42 operation of law in another entity upon merger-merger, consolidation, or conversion of  
43 ~~two or more the~~ limited liability companies, company, a certificate reciting the ~~change or~~

1 ~~transfer name change, merger, consolidation, or conversion~~ shall be recorded in the office  
2 of the register of deeds of the county where the property lies, or if the property is located  
3 in more than one county, then in each county where any portion of the property lies.

4 (b) The Secretary of State shall adopt uniform certificates to be furnished for  
5 registration in accordance with this section. In the case of a foreign limited liability  
6 company, a similar certificate by any competent authority of the jurisdiction of  
7 organization may be registered in accordance with this section.

8 (c) The certificate required by this section shall be recorded by the register of  
9 deeds in the same manner as deeds, and for the same fees, but no formalities as to  
10 acknowledgement, probate, or approval by any other officer shall be required. The  
11 former name of the limited liability company holding title to the real property before the  
12 ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in  
13 the 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the  
14 name of the other entity holding title to the real property by virtue of the ~~amendment or~~  
15 ~~merger~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee'  
16 index."

17 Section 3.6. G.S. 57C-7-12 reads as rewritten:

18 "**§ 57C-7-12. Withdrawal of limited liability company by reason of a ~~merger~~.**  
19 **merger, consolidation, or conversion.**

20 (a) Whenever ~~the separate existence of~~ a foreign limited liability company  
21 authorized to transact business in this State ceases its separate existence as a result of a  
22 statutory ~~merger~~ merger, consolidation, or conversion permitted by the laws of the state or  
23 country under which it was organized, or converts into another type of entity as permitted  
24 by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal  
25 for the ~~merged~~ foreign limited liability company by delivering to the Secretary of State for  
26 filing a copy of the articles of ~~merger~~ merger, consolidation, or conversion or a certificate  
27 reciting the facts of the merger, consolidation, or conversion, duly authenticated by the  
28 Secretary of State or other official having custody of limited liability company records in  
29 the state or country under the laws of which ~~such statutory merger~~ the foreign limited  
30 liability company was ~~effected~~ organized. If the surviving or resulting entity is not  
31 authorized to transact business in this State, the articles ~~of merger~~ or certificate must be  
32 accompanied by an application which must set forth:

33 (1) The name of ~~each merged~~ the foreign limited liability company  
34 authorized to transact business in this ~~State and State,~~ the type of entity  
35 and name of the surviving or resulting entity ~~entity,~~ and a statement that  
36 the surviving or resulting entity is not authorized to transact business in  
37 this State;

38 (2) ~~That~~ A statement that the surviving or resulting entity consents that  
39 service of process based upon any cause of action arising in this State,  
40 or arising out of business transacted in this State, during the time ~~each~~  
41 ~~merged~~ the foreign limited liability company was authorized to transact  
42 business in this State, may thereafter be made ~~on such foreign limited~~  
43 ~~liability company~~ by service thereof on the Secretary of State;

- 1 (3) A mailing address to which the Secretary of State may mail a copy of  
2 any process served on him under subdivision (a)(2) of this section; and  
3 (4) A commitment to notify the Secretary of State in the future of any  
4 change in its mailing address.
- 5 (b) If the Secretary of State finds that the articles ~~of merger~~ or certificate and the  
6 application for withdrawal, if required, ~~conforms~~ conform to law, the Secretary of State  
7 shall:
- 8 (1) Endorse on the articles ~~of merger~~ or certificate and the application for  
9 withdrawal, if required, the word 'filed' and the hour, day, month, and  
10 year of filing thereof;
- 11 (2) File the articles ~~of merger~~ or certificate and the application, if required;
- 12 (3) Issue a certificate of withdrawal; and
- 13 (4) Send to the ~~foreign limited liability company~~ surviving or resulting entity  
14 or its representative the certificate of withdrawal, together with the exact  
15 or conformed copy of the application, if required, affixed thereto."

16 Section 3.7. Article 9 of Chapter 57C of the General Statutes is repealed.  
17 Chapter 57C of the General Statutes is amended by adding a new Article to read:

18 **"ARTICLE 9A.**  
19 **"CONVERSION AND MERGER.**

20  
21 **"PART 1. CONVERSIONS.**

22 **"§ 57C-9A-01. Conversion.**

23 (a) A domestic limited liability company may convert to a domestic limited  
24 partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.

25 (b) A foreign limited liability company, a domestic or foreign limited partnership  
26 as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or  
27 not formed under the laws of this State (including a registered limited liability partnership  
28 as defined in G.S. 59-32 and any other limited liability partnership formed under a law  
29 other than the laws of this State) may convert to a domestic limited liability company if:

- 30 (1) The converting business entity complies with the requirements of this  
31 Part; and
- 32 (2) If the converting business entity is a foreign limited liability company, a  
33 foreign limited partnership, or other partnership as defined in G.S. 59-36  
34 whose organization and internal affairs are governed by a law other than  
35 the laws of this State, the conversion is permitted by the laws of the  
36 state or country governing the organization and internal affairs of the  
37 converting business entity and the converting business entity complies  
38 with those laws.

39 **"§ 57C-9A-02. Plan of conversion.**

40 (a) The holders of the interests in the converting business entity shall approve a  
41 written plan of conversion containing:

- 42 (1) The name of the resulting domestic limited liability company into which  
43 the converting business entity shall convert;



- 1           (2) The terms and conditions of the conversion; and  
2           (3) The manner and basis for converting the interests in the converting  
3           business entity into interests, obligations, or securities of the resulting  
4           domestic limited liability company or into cash or other property in  
5           whole or in part.

6       The plan of conversion may also contain other provisions relating to the conversion.

7       (b) In the case of a domestic limited partnership or other partnership as defined in  
8 G.S. 59-36 whose organization and internal affairs are governed by the laws of this State,  
9 the plan of conversion must be approved in the manner provided for the approval of such  
10 a conversion in a written partnership agreement that is binding on all the partners or, if  
11 there is no such provision, by the unanimous consent of all the partners. In the case of a  
12 foreign limited liability company, a foreign limited partnership, or other partnership as  
13 defined in G.S. 59-36 whose organization and internal affairs are governed by a law other  
14 than the laws of this State, the plan of conversion must be approved in accordance with  
15 the laws of the state or country governing the organization and internal affairs of the  
16 converting business entity.

17       (c) After a plan of conversion has been approved as provided in subsection (b) of  
18 this section, but before articles of organization for the resulting domestic limited liability  
19 company become effective, the plan of conversion may be amended or abandoned to the  
20 extent provided in the plan of conversion.

21 **"§ 57C-9A-03. Filing of articles of organization by converting business entity.**

22       (a) After a plan of conversion has been approved by the converting business entity  
23 as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of  
24 organization to the Secretary of State for filing. In addition to the matters required or  
25 permitted by G.S. 57C-2-21, the articles of organization shall state:

- 26           (1) That the domestic limited liability company is being formed pursuant to  
27 a conversion of another business entity;  
28           (2) The name of the converting business entity, its type of business entity,  
29 and the state or country whose laws govern its organization and internal  
30 affairs; and  
31           (3) That a plan of conversion has been approved by the converting business  
32 entity as required by law.

33       If the plan of conversion is abandoned before the articles of organization become  
34 effective, the converting business entity promptly shall deliver to the Secretary of State  
35 for filing an amendment to the articles of organization reflecting the abandonment of the  
36 plan of conversion.

37       (b) The conversion takes effect when the articles of organization become effective.

38       (c) The converting business entity shall furnish a copy of the plan of conversion,  
39 on request and without cost, to any member or partner (whether general or limited) of the  
40 converting business entity.

41       (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

42 **"§ 57C-9A-04. Effects of conversion.**

43       When the conversion takes effect:

- 1           (1) The converting business entity ceases its prior form of organization and  
2           continues in existence as the resulting domestic limited liability  
3           company;
- 4           (2) The title to all real estate and other property owned by the converting  
5           business entity continues vested in the resulting domestic limited  
6           liability company without reversion or impairment;
- 7           (3) All liabilities of the converting business entity continue as liabilities of  
8           the resulting domestic limited liability company;
- 9           (4) A proceeding pending by or against the converting business entity may  
10          be continued as if the conversion did not occur; and
- 11          (5) The interests in the converting business entity that are to be converted  
12          into interests, obligations, or securities of the resulting domestic limited  
13          liability company or into the right to receive cash or other property are  
14          thereupon so converted, and the former holders of interests in the  
15          converting business entity are entitled only to the rights provided in the  
16          plan of conversion.

17          The conversion shall not affect the liability or absence of liability of any holder of an  
18          interest in the converting business entity for any acts, omissions, or obligations of the  
19          converting business entity made or incurred prior to the effectiveness of the conversion.  
20          The cessation of the existence of the converting business entity in its prior form of  
21          organization in the conversion shall not constitute a dissolution or termination of the  
22          converting business entity.

## "PART 2. MERGER.

### "§ 57C-9A-05. Merger.

25          A domestic limited liability company may merge with one or more other domestic  
26          limited liability companies or other business entities if:

- 27           (1) The merger is permitted by the laws of the state or country governing  
28           the organization and internal affairs of each other merging business  
29           entity; and
- 30           (2) Each merging domestic limited liability company and each other  
31           merging business entity comply with the requirements of this Part and,  
32           to the extent applicable, the laws referred to in subdivision (1) of this  
33           section.

### "§ 57C-9A-06. Plan of merger.

35          (a) Each merging domestic limited liability company and each other merging  
36          business entity shall approve a written plan of merger containing:

- 37           (1) For each merging business entity, its name, type of business entity, and  
38           the state or country whose laws govern its organization and internal  
39           affairs;
- 40           (2) The name of the merging business entity that shall survive the merger;
- 41           (3) The terms and conditions of the merger;

1           (4) The manner and basis for converting the interests in each merging  
2 business entity into interests, obligations, or securities of the surviving  
3 business entity or into cash or other property in whole or in part; and

4           (5) If the surviving business entity is a domestic limited liability company,  
5 any amendments to its articles of organization that are to be made in  
6 connection with the merger.

7           The plan of merger may contain other provisions relating to the merger.

8           (b) In the case of a merging domestic limited liability company, the plan of merger  
9 must be approved in the manner provided in its articles of organization or a written  
10 operating agreement for approval of a merger with the type of business entity  
11 contemplated in the plan of merger, or, if there is no provision, by the unanimous consent  
12 of its members. In the case of each other merging business entity, the plan of merger  
13 must be approved in accordance with the laws of the state or country governing the  
14 organization and internal affairs of the merging business entity.

15           (c) After a plan of merger has been approved by a domestic limited liability  
16 company but before the articles of merger become effective, the plan of merger (i) may  
17 be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any  
18 contractual rights) as provided in the plan of merger, articles of organization, or written  
19 operating agreement or, if not so provided, as determined by the managers of the  
20 domestic limited liability company in accordance with G.S. 57C-3-20(b).

21 **"§ 57C-9A-07. Articles of merger.**

22           (a) After a plan of merger has been approved by each merging domestic limited  
23 liability company and each other merging business entity as provided in G.S. 57C-9A-06,  
24 the surviving business entity shall deliver articles of merger to the Secretary of State for  
25 filing. The articles of merger shall set forth:

26           (1) The plan of merger;

27           (2) For each merging business entity, its name, type of business entity, and  
28 the state or country whose laws govern its organization and internal  
29 affairs;

30           (3) The name and address of the surviving business entity;

31           (4) A statement that the plan of merger has been approved by each merging  
32 business entity in the manner required by law; and

33           (5) The effective date and time of the merger if it is not to be effective at  
34 the time of filing of the articles of merger.

35           If the plan of merger is amended or abandoned before the articles of merger become  
36 effective, the surviving business entity promptly shall deliver to the Secretary of State for  
37 filing an amendment to the articles of merger reflecting the amendment or abandonment  
38 of the plan of merger.

39           (b) A merger takes effect when the articles of merger become effective.

40           (c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

41 **"§ 57C-9A-08. Effects of merger.**

42           (a) When the merger takes effect:

- 1           (1) Each other merging business entity merges into the surviving business  
2 entity, and the separate existence of each merging business entity,  
3 except the surviving business entity ceases;
- 4           (2) The title to all real estate and other property owned by each merging  
5 business entity is vested in the surviving business entity without  
6 reversion or impairment;
- 7           (3) The surviving business entity has all liabilities of each merging business  
8 entity;
- 9           (4) A proceeding pending by or against any merging business entity may be  
10 continued as if the merger did not occur, or the surviving business entity  
11 may be substituted in the proceeding for a merging business entity  
12 whose separate existence ceases in the merger;
- 13           (5) If a domestic limited liability company is the surviving business entity,  
14 its articles of organization shall be amended to the extent provided in  
15 the plan of merger;
- 16           (6) The interests in each merging business entity that are to be converted  
17 into interests, obligations, or securities of the surviving business entity  
18 or into the right to receive cash or other property are thereupon so  
19 converted, and the former holders of the interests are entitled only to the  
20 rights provided to them in the articles of merger or, in the case of former  
21 holders of shares in a domestic corporation, any rights they may have  
22 under Article 13 of Chapter 55 of the General Statutes; and
- 23           (7) If the surviving business entity is not a domestic corporation, the  
24 surviving business entity is deemed to agree that it will promptly pay to  
25 the dissenting shareholders of any merging domestic corporation the  
26 amount, if any, to which they are entitled under Article 13 of Chapter 55  
27 of the General Statutes and otherwise to comply with the requirements  
28 of Article 13 as if it were a surviving domestic corporation in the  
29 merger.

30           The merger shall not affect the liability or absence of liability of any holder of an  
31 interest in a merging business entity for any acts, omissions, or obligations of any  
32 merging business entity made or incurred prior to the effectiveness of the merger. The  
33 cessation of separate existence of a merging business entity in the merger shall not  
34 constitute a dissolution or termination of that merging business entity.

35           If the surviving business entity is not a domestic limited liability company, a domestic  
36 corporation, a domestic nonprofit corporation, or a domestic limited partnership when the  
37 merger takes effect, the surviving business entity is deemed:

- 38           (1) To agree that it may be served with process in this State in any  
39 proceeding for enforcement of (i) any obligation of any merging  
40 domestic limited liability company, domestic corporation, domestic  
41 nonprofit corporation, domestic limited partnership, or other partnership  
42 as defined in G.S. 59-36 that is formed under the laws of this State, (ii)  
43 the rights of dissenting shareholders of any merging domestic

1 corporation under Article 13 of Chapter 55 of the General Statutes, and  
2 (iii) any obligation of the surviving business entity arising from the  
3 merger; and

- 4 (2) If the surviving business entity does not have a registered agent in this  
5 State, to have appointed the Secretary of State as its registered agent for  
6 service of process in any such proceeding until such time as the  
7 surviving business entity appoints a registered agent in this State.  
8 Service on the Secretary of State of any such process shall be made by  
9 delivering to and leaving with the Secretary of State or with any clerk  
10 authorized by the Secretary of State to accept service of process,  
11 duplicate copies of such process. Upon receipt of service of process on  
12 behalf of a surviving business entity, the Secretary of State shall  
13 immediately mail a copy of the process by registered or certified mail,  
14 return receipt requested, to the surviving business entity at its address  
15 shown in the articles of merger or, if an application for a certificate of  
16 withdrawal by reason of merger has been filed, at the address for service  
17 of process contained in that application."

#### 18 **PART IV. PARTNERSHIPS.**

19 Section 4.1. Article 2 of Chapter 59 of the General Statutes is amended by  
20 adding a new Part to read:

#### 21 **"PART 7. CONVERSION AND MERGER.**

#### 22 **"§ 59-73.1. Definitions.**

23 As used in this Part:

- 24 (1) 'Domestic partnership' means a partnership as defined in G.S. 59-36 that  
25 is formed under the laws of this State, including a registered limited  
26 liability partnership as defined in G.S. 59-32, but excluding a domestic  
27 limited partnership as defined in G.S. 59-102.
- 28 (2) 'Business entity' means a domestic corporation as defined in G.S. 55-1-  
29 40 (including a professional corporation as defined in G.S. 55B-2), a  
30 foreign corporation as defined in G.S. 55-1-40 (including a foreign  
31 professional corporation as defined in G.S. 55B-16), a domestic or  
32 foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic  
33 or foreign limited liability company as defined in G.S. 57C-1-03, a  
34 domestic or foreign limited partnership as defined in G.S. 59-102, a  
35 domestic partnership, or any other partnership as defined in G.S. 59-36  
36 formed under a law other than the laws of this State (including a limited  
37 liability partnership).
- 38 (3) 'Partnership' means a partnership as defined in G.S. 59-36 whether or  
39 not formed under the laws of this State including a registered limited  
40 liability partnership and any other limited liability partnership formed  
41 under a law other than the laws of this State but excluding a domestic  
42 limited partnership as defined in G.S. 59-102 and a foreign limited  
43 partnership as defined in G.S. 59-102.

1 **"§ 59-73.2. Conversion of domestic partnership.**

2 A domestic partnership may convert to a domestic limited liability company pursuant  
3 to Part 1 of Article 9A of Chapter 57C of the General Statutes, or to a domestic limited  
4 partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.

5 **"§ 59-73.3. Merger.**

6 A domestic partnership may merge with one or more other domestic partnerships or  
7 other business entities if:

8 (1) The merger is permitted by laws of the state or country governing the  
9 organization and internal affairs of each other merging business entity;  
10 and

11 (2) Each merging domestic partnership and each other merging business  
12 entity comply with the requirements of this Part and, to the extent  
13 applicable, the laws referred to in subdivision (1) of this section.

14 **"§ 59-73.4. Plan of merger.**

15 (a) Each merging domestic partnership and each other merging business entity  
16 shall approve a written plan of merger containing:

17 (1) For each merging business entity, its name, type of business entity, and  
18 the state or country whose laws govern its organization and internal  
19 affairs;

20 (2) The name of the merging business entity that shall survive the merger;

21 (3) The terms and conditions of the merger; and

22 (4) The manner and basis for converting the interests in each merging  
23 business entity into interests, obligations, or securities of the surviving  
24 business entity or into cash or other property in whole or in part.

25 The plan of merger may contain other provisions relating to the merger.

26 (b) In the case of a merging domestic partnership, the plan of merger must be  
27 approved in the manner provided in a written partnership agreement that is binding on all  
28 the partners for approval of a merger with the type of business entity contemplated in the  
29 plan of merger or, if there is no provision, by the unanimous consent of its partners. In  
30 the case of each other merging business entity, the plan of merger must be approved in  
31 accordance with the laws of the state or country governing the organization and internal  
32 affairs of such merging business entity.

33 (c) After a plan of merger has been approved by the domestic partnership but  
34 before the articles of merger become effective, the plan of merger (i) may be amended as  
35 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual  
36 rights) as provided in the plan of merger or a written partnership agreement that is  
37 binding on all the partners or, if not so provided, as determined by the unanimous consent  
38 of the partners.

39 **"§ 59-73.5. Articles of merger.**

40 (a) After a plan of merger has been approved by each merging domestic  
41 partnership and each other merging business entity as provided in G.S. 59-73.4, the  
42 surviving business entity shall deliver articles of merger to the Secretary of State for  
43 filing. The articles of merger shall set forth:

- 1           (1)    The plan of merger;
- 2           (2)    For each merging business entity, its name, type of business entity, and  
3           the state or country whose laws govern its organization and internal  
4           affairs;
- 5           (3)    The name and address of the surviving business entity;
- 6           (4)    A statement that the plan of merger has been approved by each merging  
7           business entity in the manner required by law; and
- 8           (5)    The effective date and time of the merger if it is not to be effective at  
9           the time of filing of the articles of merger.

10        If the plan of merger is amended or abandoned before the articles of merger become  
11        effective, the surviving business entity promptly shall deliver to the Secretary of State for  
12        filing an amendment to the articles of merger reflecting the amendment or abandonment  
13        of the plan of merger.

14        (b)    A merger takes effect when the articles of merger become effective.

15        (c)    Certificates of merger shall also be registered as provided in G.S. 47-18.1.

16        **"§ 59-73.6. Effects of merger.**

17        (a)    When a merger takes effect:

- 18           (1)    Each other merging business entity merges into the surviving business  
19           entity, and the separate existence of each merging business entity except  
20           the surviving business entity ceases;
- 21           (2)    The title to all real estate and other property owned by each merging  
22           business entity is vested in the surviving business entity without  
23           reversion or impairment;
- 24           (3)    The surviving business entity has all liabilities of each merging business  
25           entity;
- 26           (4)    A proceeding pending by or against any merging business entity may be  
27           continued as if the merger did not occur, or the surviving business entity  
28           may be substituted in the proceeding for a merging business entity  
29           whose separate existence ceases in the merger;
- 30           (5)    The interests in each merging business entity that are to be converted  
31           into interests, obligations, or securities of the surviving business entity  
32           or into the right to receive cash or other property are thereupon so  
33           converted, and the former holders of the interests in each merging  
34           business entity are entitled only to the rights provided to them in the  
35           articles of merger or, in the case of former holders of shares in a  
36           domestic corporation (as defined in G.S. 55-1-40), any rights they may  
37           have under Article 13 of Chapter 55 of the General Statutes; and
- 38           (6)    If the surviving business entity is not a domestic corporation, the  
39           surviving business entity is deemed to agree that it will promptly pay to  
40           the dissenting shareholders of any merging domestic corporation the  
41           amount, if any, to which they are entitled under Article 13 of Chapter 55  
42           of the General Statutes and otherwise to comply with the requirements

1           of Article 13 as if it were a surviving domestic corporation in the  
2           merger.

3           The merger shall not affect the liability or absence of liability of any holder of an  
4 interest in a merging business entity for any acts, omissions, or obligations of any  
5 merging business entity made or incurred prior to the effectiveness of the merger. The  
6 cessation of separate existence of a merging business entity shall not constitute a  
7 dissolution or termination of the merging business entity.

8           If the surviving business entity is not a domestic limited liability company, a domestic  
9 corporation, a domestic nonprofit corporation, or a domestic limited partnership when the  
10 merger takes effect, the surviving business entity is deemed:

11           (1) To agree that it may be served with process in this State in any  
12 proceeding for enforcement of (i) any obligation of any merging  
13 domestic limited liability company, domestic corporation, domestic  
14 nonprofit corporation, domestic limited partnership, or other partnership  
15 as defined in G.S. 59-36 that is formed under the laws of this State, (ii)  
16 the rights of dissenting shareholders of any merging domestic  
17 corporation under Article 13 of Chapter 55 of the General Statutes, and  
18 (iii) any obligation of the surviving business entity arising from the  
19 merger; and

20           (2) If the surviving business entity does not have a registered agent in this  
21 State, to have appointed the Secretary of State as its registered agent for  
22 service of process in any such proceeding until such time as the  
23 surviving business entity appoints a registered agent in this State.  
24 Service on the Secretary of State of any such process shall be made by  
25 delivering to and leaving with the Secretary of State or with any clerk  
26 authorized by the Secretary of State to accept service of process,  
27 duplicate copies of such process. Upon receipt of service of process on  
28 behalf of a surviving business entity, the Secretary of State shall  
29 immediately mail a copy of the process by registered or certified mail,  
30 return receipt requested, to the surviving business entity at its address  
31 shown in the articles of merger or, if an application for a certificate of  
32 withdrawal by reason of merger has been filed, at the address for service  
33 of process contained in that application.

34 **"§ 59-73.7. Filing of documents.**

35           (a) To be entitled to filing by the Secretary of State, a document submitted  
36 pursuant to this Part must meet all of the following requirements:

37           (1) The document must contain the information required by this Part. It  
38 may contain other information as well.

39           (2) The document must be typewritten or printed.

40           (3) The document must be in the English language.

41           (4) A document submitted by a partnership must be executed by a general  
42 partner of the partnership. A document submitted by a business entity  
43 other than a partnership must be executed by a person authorized to



1 execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity  
2 is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if  
3 the business entity is a domestic or foreign nonprofit corporation, (iii)  
4 pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or  
5 foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the  
6 business entity is a domestic or foreign limited partnership.

7 (5) The person executing the document must sign it and state beneath or  
8 opposite the person's signature, the person's name and the capacity in  
9 which the person signs. Any signature on the document may be a  
10 facsimile. The document may, but need not, contain an  
11 acknowledgment, verification, or proof.

12 (6) The document must be delivered to the Office of the Secretary of State  
13 for filing and must be accompanied by one exact or conformed copy and  
14 by the required filing fee.

15 (b) A partnership may correct a document filed by the Secretary of State pursuant  
16 to this Part if the document (i) contains a statement that is incorrect and was incorrect  
17 when the document was filed or (ii) was defectively executed, attested, sealed, verified,  
18 or acknowledged.

19 A document is corrected by:

20 (1) Preparing articles of correction that (i) describe the document (including  
21 its filing date) or have attached to them a copy of the document, (ii)  
22 specify the incorrect statement and the reason it is incorrect or the  
23 manner in which the execution was defective, and (iii) correct the  
24 incorrect statement or defective execution; and

25 (2) Delivering the articles of correction to the Secretary of State for filing,  
26 accompanied by one exact or conformed copy and the required filing  
27 fee.

28 Articles of correction are effective on the effective date of the document that is  
29 corrected except as to persons relying on the uncorrected document and adversely  
30 affected by the correction. As to those persons, articles of correction are effective when  
31 filed.

32 (c) The Secretary of State shall collect the following fees when the documents  
33 described in this subsection are submitted by a partnership to the Secretary of State for  
34 filing:

<u>Document</u>	<u>Fee</u>
<u>Articles of Merger</u>	<u>\$50.00</u>
<u>Articles of Correction</u>	<u>\$10.00</u>

38 The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is  
39 served on the Secretary of State under this Part. The party to the proceeding causing  
40 service of process is entitled to recover this fee as costs if the party prevails in the  
41 proceeding.

42 The Secretary of State shall collect the following fees for copying, comparing, and  
43 certifying a copy of a document filed by a partnership pursuant to this Part:

1           (1) One dollar (\$1.00) a page for copying or comparing a copy to the  
2           original; and

3           (2) Five dollars (\$5.00) for the certificate.

4           (d) The Secretary of State shall guarantee the expedited filing of a document upon  
5 receipt of the document in proper form and the payment of the required filing fee. The  
6 Secretary of State may collect the following additional fees for the expedited filing of a  
7 document received in good form:

8           (1) Two hundred dollars (\$200.00) for the filing by the end of the same  
9 business day of a document received by 12:00 noon Eastern Standard  
10 Time; and

11           (2) One hundred dollars (\$100.00) for the filing of a document within 24  
12 hours after receipt, excluding weekends and holidays.

13           The Secretary of State shall not collect the fees allowed in this subsection unless the  
14 person submitting the document for filing requests an expedited filing and is informed by  
15 the Secretary of State of the fees prior to the filing of the document.

16           (e) Upon request, the Secretary of State shall provide for the review of a document  
17 prior to its submission for filing to determine whether it satisfies the requirements of this  
18 Part. Submission of a document for review shall be accompanied by the proper fee and  
19 shall be in accordance with procedures adopted by rule by the Secretary of State. The  
20 advisory review shall be completed within 24 hours after submission, excluding  
21 weekends and holidays, unless the person submitting the document is otherwise notified  
22 in accordance with procedures adopted by rule by the Secretary of State fixing priority  
23 between submissions under this subsection and filings under subsection (d) of this  
24 section. Upon completion of the advisory review, the Secretary of State shall notify the  
25 person submitting the document of any deficiencies in the document that would prevent  
26 its filing.

27           (f) Except as provided in this subsection and in subsection (b) of this section, a  
28 document accepted for filing is effective:

29           (1) At the time of filing on the date it is filed, as evidenced by the Secretary  
30 of State's date and time endorsement on the original document; or

31           (2) At the time specified in the document as its effective time on the date it  
32 is filed.

33           A document may specify a delayed effective time and date, and if it does so the  
34 document becomes effective at the time and date specified. If a delayed effective date  
35 but no time is specified, the document is effective at 11:59:59 p.m. on that date. A  
36 delayed effective date for a document may not be later than the 90th day after the date it  
37 is filed.

38           The fact that a document has become effective under this subsection does not  
39 determine its validity or invalidity or the correctness or incorrectness of the information  
40 contained in the document.

41           (g) If a document delivered to the Office of the Secretary of State for filing  
42 satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed  
43 with the Secretary of State pursuant to this Part may be maintained by the Secretary

1 either in their original form or in photographic, microfilm, optical disk media, or other  
2 reproduced form. The Secretary may make reproductions of documents filed under this  
3 Part, or under any predecessor act, by photographic, microfilm, optical disk media, or  
4 other means of reproduction, and may destroy the originals of those documents  
5 reproduced.

6 The Secretary of State files a document by stamping or otherwise endorsing 'Filed',  
7 together with the Secretary of State's name and official title and the date and time of  
8 filing, on both the original and the document copy. After filing a document, the Secretary  
9 of State shall deliver the document copy to the partnership or its representative.

10 If the Secretary of State refuses to file a document, the Secretary of State shall return  
11 it to the partnership or its representative within five days after the document was  
12 received, together with a brief, written explanation of the reason for refusal. The  
13 Secretary of State may correct apparent errors and omissions on a document submitted  
14 for filing if authorized to make the corrections by the person submitting the document for  
15 filing. Prior to making the correction, the Secretary shall confirm the authorization to  
16 make the corrections according to procedures adopted by rule.

17 The Secretary of State's duty is to review and file documents that satisfy the  
18 requirements of this Part. The Secretary of State's filing or refusing to file a document  
19 does not:

- 20 (1) Affect the validity or invalidity of the document in whole or part;
- 21 (2) Relate to the correctness or incorrectness of information contained in  
22 the document; or
- 23 (3) Create a presumption that the document is valid or invalid or that  
24 information contained in the document is correct or incorrect.

25 (h) If the Secretary of State refuses to file a document delivered to the Secretary of  
26 State's office for filing, the person tendering the document for filing may, within 30 days  
27 after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is  
28 commenced by filing a petition with the court and with the Secretary of State requesting  
29 the court to compel the Secretary of State to file the document. The petition shall have  
30 attached to it the document to be filed and the Secretary of State's explanation for the  
31 refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the  
32 General Statutes, the Administrative Procedure Act, and the court shall determine, based  
33 upon what is appropriate under the circumstances, any further notice and opportunity to  
34 be heard.

35 Upon consideration of the petition and any response made by the Secretary of State,  
36 the court may, prior to entering final judgment, order the Secretary of State to file the  
37 document or take other action the court considers appropriate.

38 The court's final decision may be appealed as in other civil proceedings.

39 (i) A certificate attached to a copy of a document filed by the Secretary of State,  
40 bearing the Secretary of State's signature (which may be in facsimile) and the seal of  
41 office and certifying that the copy is a true copy of the document, is conclusive evidence  
42 that the original document is on file with the Secretary of State. A photographic,  
43 microfilm, optical disk media, or other reproduced copy of a document filed pursuant to

1 this Part or any predecessor act, when certified by the Secretary, shall be considered an  
2 original for all purposes and is admissible in evidence in like manner as an original.

3 (j) A person commits an offense if the person signs a document the person knows  
4 is false in any material respect with intent that the document be delivered to the Secretary  
5 of State for filing. An offense under this subsection is a Class 1 misdemeanor.

6 (k) Whenever title to real property in this State held by a partnership is vested by  
7 operation of law in another entity upon merger, consolidation, or conversion of the  
8 partnership, a certificate reciting the merger, consolidation, or conversion shall be  
9 recorded in the office of the register of deeds of the county where the property is located,  
10 or if the property is located in more than one county, then in each county where any  
11 portion of the property is located.

12 The Secretary of State shall adopt uniform certificates to be furnished for registration  
13 in accordance with this subsection. In the case of a partnership formed under a law other  
14 than the laws of this State, a similar certificate by any competent authority of the  
15 jurisdiction of organization may be registered in accordance with this subsection.

16 The certificate required by this subsection shall be recorded by the register of deeds in  
17 the same manner as deeds, and for the same fees, but no formalities as to  
18 acknowledgment, probate, or approval by any other officer shall be required. The former  
19 name of the partnership holding title to the real property before the merger, consolidation,  
20 or conversion shall appear in the 'Grantor' index and the name of the other entity holding  
21 title to the real property by virtue of the merger, consolidation, or conversion shall appear  
22 in the 'Grantee' index."

23 Section 4.2. G.S. 59-102 is amended by adding a new subdivision to read:

24 "(1a) 'Business entity' means a domestic corporation as defined in G.S. 55-1-  
25 40 (including, without limitation, a professional corporation as defined  
26 in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40  
27 (including, without limitation, a foreign professional corporation as  
28 defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as  
29 defined in G.S. 55A-1-40, a domestic limited liability company as  
30 defined in G.S. 57C-1-03, a foreign limited liability company as defined  
31 in G.S. 57C-1-03, a domestic limited partnership, a foreign limited  
32 partnership, or any other partnership as defined in G.S. 59-36 whether  
33 or not formed under the laws of this State (including a registered limited  
34 liability partnership as defined in G.S. 59-32 and any other limited  
35 liability partnership formed under a law other than the laws of this  
36 State)."

37 Section 4.3. G.S. 59-201 is amended by adding a new subsection to read:

38 "(d) A limited partnership may also be formed through the conversion of another  
39 business entity in accordance with Part 10A of this Article."

40 Section 4.4. G.S. 59-204 reads as rewritten:

41 **"§ 59-204. Execution of certificates- documents.**

42 (a) Each certificate required by this Article to be filed in the office of the Secretary  
43 of State shall be executed in the following manner:

- 1 (1) An original certificate of limited partnership must be signed by all  
2 general partners;
- 3 (2) A certificate of amendment must be signed by at least one general  
4 partner and by each other partner designated in the certificate as a new  
5 general partner; and
- 6 (3) A certificate of cancellation must be signed by all general partners.

7 Any other document submitted by a domestic or foreign limited partnership for filing  
8 pursuant to this or any other Chapter must be signed by at least one general partner. Any  
9 document submitted by a business entity other than a domestic or foreign limited  
10 partnership must be executed by a person authorized to execute documents (i)  
11 pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign  
12 corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or  
13 foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a  
14 domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-73.7(a)(4) if the  
15 business entity is a partnership as defined in G.S. 59-36, whether or not formed under the  
16 laws of this State, other than a domestic or foreign limited partnership.

17 (b) Any person may sign a certificate by an attorney-in-fact.

18 (b1) Any signature on any document authorized to be filed with the Secretary of  
19 State under any provision of this Article may be a facsimile.

20 (c) The execution of a certificate or amendment by a general partner constitutes an  
21 affirmation under the penalties of perjury that the facts stated therein are true."

22 Section 4.5. G.S. 59-206(a)(3a) reads as rewritten:

23 "(3a) Whenever the name of any domestic or foreign limited partnership  
24 holding title to real property in this State is changed upon amendment to  
25 the certificate of limited partnership, or whenever title to its real  
26 property is vested by operation of law in another entity upon merger,  
27 consolidation, or conversion of the domestic or foreign limited  
28 partnership, a certificate reciting the ~~change or transfer name change,~~  
29 merger, consolidation, or conversion shall be recorded in the office of  
30 the register of deeds of the county where the property lies, or if the  
31 property is located in more than one county, then in each county where  
32 any portion of the property lies."

33 Section 4.6. G.S. 59-206(a)(5) reads as rewritten:

34 "(5) The certificate required by this section shall be recorded by the register  
35 of deeds in the same manner as deeds, and for the same fees, but no  
36 formalities as to acknowledgement, probate, or approval by any other  
37 officer shall be required. The former name of the domestic or foreign  
38 limited partnership holding title to the real property before the  
39 ~~amendment name change, merger, consolidation, or conversion~~ shall  
40 appear in the 'Grantor' index, and the ~~amended new name~~ of the  
41 ~~domestic or foreign~~ limited partnership or the name of the other entity  
42 holding title to the real property by virtue of the ~~amendment merger,~~

1 consolidation, or conversion, as applicable, shall appear in the 'Grantee'  
2 index."

3 Section 4.7. Article 5 of Chapter 59 of the General Statutes is amended by  
4 adding a new section to read:

5 "**§ 59-909. Withdrawal of foreign limited partnership by reason of a merger,**  
6 **consolidation, or conversion.**

7 (a) Whenever a foreign limited partnership authorized to transact business in this  
8 State ceases its separate existence as a result of a statutory merger or consolidation  
9 permitted by the laws of the state or country under which it was organized, or converts  
10 into another type of entity as permitted by those laws, the surviving or resulting entity  
11 shall apply for a certificate of withdrawal for the foreign limited partnership by delivering  
12 to the Secretary of State for filing a copy of the articles of merger, consolidation, or  
13 conversion or a certificate reciting the facts of the merger, consolidation, or conversion,  
14 duly authenticated by the Secretary of State or other official having custody of limited  
15 partnership records in the state or country under the laws of which the foreign limited  
16 partnership was organized. If the surviving or resulting entity is not authorized to  
17 transact business in this State, the articles or certificate must be accompanied by an  
18 application which must set forth:

19 (1) The name of the foreign limited partnership authorized to transact  
20 business in this State, the type of entity and name of the surviving or  
21 resulting entity, and a statement that the surviving or resulting entity is  
22 not authorized to transact business in this State;

23 (2) A statement that the surviving or resulting entity consents that service of  
24 process based on any cause of action arising in this State, or arising out  
25 of business transacted in this State, during the time the foreign limited  
26 partnership was authorized to transact business in this State, may  
27 thereafter be made by service thereof on the Secretary of State;

28 (3) A mailing address to which the Secretary of State may mail a copy of  
29 any process served upon the Secretary under subdivision (a)(2) of this  
30 section; and

31 (4) A commitment to notify the Secretary of State in the future of any  
32 change in its mailing address.

33 (b) If the Secretary of State finds that the articles or certificate and the application  
34 for withdrawal, if required, conform to law, the Secretary of State shall:

35 (1) Endorse on the articles or certificate and the application for withdrawal,  
36 if required, the word 'filed' and the hour, day, month, and year of filing  
37 thereof;

38 (2) File the articles or certificate and the application, if required;

39 (3) Issue a certificate of withdrawal; and

40 (4) Send to the surviving or resulting entity or its representative the  
41 certificate of withdrawal, together with the exact or conformed copy of  
42 the application, if required, affixed thereto."

1 Section 4.8. Article 5 of Chapter 59 of the General Statutes is amended by  
2 adding a new Part to read:

3 **"PART 10A. CONVERSION AND MERGER.**

4 **"§ 59-1007. Conversions.**

5 (a) A domestic limited partnership may convert to a domestic limited liability  
6 company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes.

7 (b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign  
8 limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or  
9 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of  
10 this State, including a registered limited liability partnership as defined in G.S. 59-32, and  
11 any other limited liability partnership formed under a law other than the laws of this  
12 State, but excluding a domestic limited partnership, may convert to a domestic limited  
13 partnership if:

14 (1) Such converting business entity complies with the requirements of G.S.  
15 59-1008 and G.S. 59-1009; and

16 (2) If the converting business entity is a foreign limited liability company, a  
17 foreign limited partnership, or other partnership as defined in G.S. 59-36  
18 whose organization and internal affairs are governed by a law other than  
19 the laws of this State, the conversion is permitted by laws of the state or  
20 country governing the organization and internal affairs of the converting  
21 business entity, and the converting business entity complies with the  
22 laws.

23 **"§ 59-1008. Plan of conversion.**

24 (a) The holders of the interests in the converting business entity shall approve a  
25 written plan of conversion containing:

26 (1) The name of the resulting domestic limited partnership into which the  
27 converting business entity shall convert;

28 (2) The terms and conditions of the conversion; and

29 (3) The manner and basis for converting the interests in the converting  
30 business entity into interests, obligations, or securities of the resulting  
31 domestic limited partnership or into cash or other property in whole or  
32 in part.

33 The plan of conversion may contain other provisions relating to the conversion.

34 (b) In the case of a domestic limited liability company, the plan of conversion  
35 must be approved in the manner provided for approval of such a conversion in its articles  
36 of organization or a written operating agreement or, if there is no such provision, by the  
37 unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36  
38 whose organization and internal affairs are governed by the laws of this State, the plan of  
39 conversion must be approved in the manner provided for the approval of such a  
40 conversion in a written partnership agreement that is binding on all the partners or, if  
41 there is no such provision, by the unanimous consent of all the partners. In the case of a  
42 foreign limited liability company, a foreign limited partnership, or other partnership as  
43 defined in G.S. 59-36 whose organization and internal affairs are governed by a law other

1 than the laws of this State, the plan of conversion must be approved in accordance with  
2 the laws of the state or country governing the organization and internal affairs of the  
3 converting business entity.

4 (c) After a plan of conversion has been approved as provided in subsection (b) of  
5 this section, but before a certificate of limited partnership for the resulting domestic  
6 limited liability company becomes effective, the plan of conversion may be amended or  
7 abandoned to the extent provided in the plan of conversion.

8 **"§ 59-1009. Filing of certificate of limited partnership by converting business entity.**

9 (a) After a plan of conversion has been approved by the converting business entity  
10 as provided in G.S. 59-1008, the converting business entity shall deliver a certificate of  
11 limited partnership to the Secretary of State for filing. In addition to the matters required  
12 or permitted by G.S. 59-201, the certificate of limited partnership shall state:

13 (1) That the domestic limited partnership is being formed pursuant to a  
14 conversion of another business entity;

15 (2) The name of the converting business entity, its type of business entity,  
16 and the state or country whose laws govern its organization and internal  
17 affairs; and

18 (3) That a plan of conversion has been approved by the converting business  
19 entity in the manner required by law.

20 If the plan of conversion is abandoned before the certificate of limited partnership  
21 becomes effective, the converting business entity promptly shall deliver to the Secretary  
22 of State for filing an amendment to the certificate of limited partnership reflecting the  
23 abandonment of the plan of conversion.

24 (b) The conversion takes effect when the certificate of limited partnership becomes  
25 effective.

26 (c) The converting business entity shall furnish a copy of the plan of conversion,  
27 on request and without cost, to any member or partner (whether general or limited) of the  
28 converting business entity.

29 (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

30 **"§ 59-1010. Effects of conversion.**

31 (a) When the conversion takes effect:

32 (1) The converting business entity ceases its prior form of organization and  
33 continues in existence as the resulting domestic limited partnership;

34 (2) The title to all real estate and other property owned by the converting  
35 business entity continues vested in the resulting domestic limited  
36 partnership without reversion or impairment;

37 (3) All liabilities of the converting business entity continue as liabilities of  
38 the resulting domestic limited partnership;

39 (4) A proceeding pending by or against the converting business entity may  
40 be continued as if the conversion did not occur; and

41 (5) The interests in the converting business entity that are to be converted  
42 into interests, obligations, or securities of the resulting domestic  
43 partnership or into the right to receive cash or other property are



1           thereupon so converted, and the former holders of interests in the  
2           converting business entity are entitled only to the rights provided in the  
3           plan of conversion.

4           The conversion shall not affect the liability or absence of liability of any holder of an  
5           interest in the converting business entity for any acts, omissions, or obligations of the  
6           converting business entity made or incurred prior to the effectiveness of the conversion.  
7           The cessation of the existence of the converting business entity in its prior form of  
8           organization in the conversion shall not constitute a dissolution or termination of the  
9           converting business entity.

10       **"§ 59-1011. Merger.**

11           A domestic limited partnership may merge with one or more other domestic limited  
12           partnerships or other business entities if:

13           (1)   The merger is permitted by the laws of the state or country governing  
14           the organization and internal affairs of each other merging business  
15           entity; and

16           (2)   Each merging domestic limited partnership and each other merging  
17           business entity comply with the requirements of G.S. 59-1012 and G.S.  
18           59-1013, and, to the extent applicable, the laws referred to in  
19           subdivision (1) of this section.

20       **"§ 59-1012. Plan of merger.**

21           (a)   Each merging domestic limited partnership and each other merging business  
22           entity shall approve a written plan of merger containing:

23           (1)   For each merging business entity, its name, type of business entity, and  
24           the state or country whose laws govern its organization and internal  
25           affairs;

26           (2)   The name of the merging business entity that shall survive the merger;

27           (3)   The terms and conditions of the merger;

28           (4)   The manner and basis for converting the interests in each merging  
29           business entity into interests, obligations, or securities of the surviving  
30           business entity or into cash or other property in whole or in part; and

31           (5)   If the surviving business entity is a domestic limited partnership, any  
32           amendments to its certificate of limited partnership that are to be made  
33           in connection with the merger.

34           The plan of merger may contain other provisions relating to the merger.

35           (b)   In the case of a merging domestic limited partnership, the plan of merger must  
36           be approved in the manner provided in a written partnership agreement that is binding on  
37           all the partners for approval of a merger with the type of business entity contemplated in  
38           the plan of merger or, if there is no provision, by the unanimous consent of its partners.  
39           In the case of each other merging business entity, the plan of merger must be approved in  
40           accordance with the laws of the state or country governing the organization and internal  
41           affairs of the merging business entity.

42           (c)   After a plan of merger has been approved by a domestic limited partnership,  
43           but before the articles of merger become effective, the plan of merger (i) may be

1 amended as provided in the plan of merger, or (ii) may be abandoned (subject to any  
2 contractual rights) as provided in the plan of merger or a written partnership agreement  
3 that is binding on all the partners or, if there is no such provision, as determined by the  
4 unanimous consent of the partners.

5 **"§ 59-1013. Articles of merger.**

6 (a) After a plan of merger has been approved by each merging domestic limited  
7 partnership and each other merging business entity as provided in G.S. 59-1012, the  
8 surviving business entity shall deliver articles of merger to the Secretary of State for  
9 filing. The articles of merger shall set forth:

10 (1) The plan of merger;

11 (2) For each merging business entity, its name, type of business entity, and  
12 the state or country whose laws govern its organization and internal  
13 affairs;

14 (3) The name and address of the surviving business entity;

15 (4) A statement that the plan of merger has been approved by each merging  
16 business entity in the manner required by law; and

17 (5) The effective date and time of the merger if it is not to be effective at  
18 the time of filing of the articles of merger.

19 If the plan of merger is amended or abandoned before the articles of merger become  
20 effective, the surviving business entity promptly shall deliver to the Secretary of State for  
21 filing an amendment to the articles of merger reflecting the amendment or abandonment  
22 of the plan of merger.

23 (b) A merger takes effect when the articles of merger become effective.

24 (c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

25 **"§ 59-1014. Effects of merger.**

26 (a) When the merger takes effect:

27 (1) Each other merging business entity merges into the surviving business  
28 entity, and the separate existence of each merging business entity except  
29 the surviving business entity ceases;

30 (2) The title to all real estate and other property owned by each merging  
31 business entity is vested in the surviving business entity without  
32 reversion or impairment;

33 (3) The surviving business entity has all liabilities of each merging business  
34 entity;

35 (4) A proceeding pending by or against any merging business entity may be  
36 continued as if the merger did not occur, or the surviving business entity  
37 may be substituted in the proceeding for a merging business entity  
38 whose separate existence ceases in the merger;

39 (5) If a domestic limited partnership is the surviving business entity, its  
40 certificate of limited partnership shall be amended to the extent  
41 provided in the plan of merger;

42 (6) The interests in each merging business entity that are to be converted  
43 into interests, obligations, or securities of the surviving business entity

1           or into the right to receive cash or other property are thereupon so  
2           converted, and the former holders of the interests are entitled only to the  
3           rights provided to them in the articles of merger or, in the case of former  
4           holders of shares in a domestic corporation as defined in G.S. 55-1-40,  
5           any rights they have under Article 13 of Chapter 55 of the General  
6           Statutes; and

- 7           (7) If the surviving business entity is not a domestic corporation, the  
8           surviving business entity is deemed to agree that it will promptly pay to  
9           the dissenting shareholders of any merging domestic corporation the  
10           amount, if any, to which they are entitled under Article 13 of Chapter 55  
11           of the General Statutes and otherwise to comply with the requirements  
12           of Article 13 as if it were a surviving domestic corporation in the  
13           merger.

14           The merger shall not affect the liability or absence of liability of any holder of an  
15           interest in a merging business entity for any acts, omissions, or obligations of any  
16           merging business equity made or incurred prior to the effectiveness of the merger. The  
17           cessation of separate existence of a merging business entity in the merger shall not  
18           constitute a dissolution or termination of such merging business entity.

19           (b) If the surviving business entity is not a domestic limited liability company, a  
20           domestic corporation, a domestic nonprofit corporation, or a domestic limited  
21           partnership, when the merger takes effect the surviving business entity is deemed:

- 22           (1) To agree that it may be served with process in this State in any  
23           proceeding for enforcement of (i) any obligation of any merging  
24           domestic limited liability company, domestic corporation, domestic  
25           nonprofit corporation, domestic limited partnership or other partnership  
26           as defined in G.S. 59-36 that is formed under the laws of this State, (ii)  
27           the rights of dissenting shareholders of any merging domestic  
28           corporation under Article 13 of Chapter 55 of the General Statutes, and  
29           (iii) any obligation of the surviving business entity arising from the  
30           merger; and

- 31           (2) If the surviving business entity does not have a registered agent in this  
32           State, to have appointed the Secretary of State as its registered agent for  
33           service of process in any such proceeding until such time as the  
34           surviving business entity appoints a registered agent in this State.  
35           Service on the Secretary of State of any such process shall be made by  
36           delivering to and leaving with the Secretary of State or with any clerk  
37           authorized by the Secretary of State to accept service of process,  
38           duplicate copies of such process. Upon receipt of service of process on  
39           behalf of a surviving business entity, the Secretary of State shall  
40           immediately mail a copy of the process by registered or certified mail,  
41           return receipt requested, to the surviving business entity at its address  
42           shown in the articles of merger or, if an application for a certificate of

1                    withdrawal by reason of merger has been filed, at the address for service  
2                    of process contained in that application."

3 **PART V. CONFORMING CHANGES.**

4                    Section 5.1. G.S. 47-18.1 reads as rewritten:

5 "**§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation.~~ merger,**  
6                    **consolidation, or conversion.**

7                    (a) If title to real property in this State is ~~transferred~~ vested by operation of law in  
8 another entity upon the ~~merger or consolidation of two or more corporations,~~ merger,  
9 consolidation, or conversion of an entity, such ~~transfer~~ vesting is effective against lien  
10 creditors or purchasers for a valuable consideration from the ~~corporation~~ entity formerly  
11 owning the property, only from the time of registration of a certificate thereof as provided  
12 in this section, in the county where the land lies, or if the land is located in more than one  
13 county, then in each county where any portion of the land lies to be effective as to the  
14 land in that county.

15                    (b) The Secretary of State shall adopt uniform certificates of ~~merger or~~  
16 ~~consolidation,~~ merger, consolidation, or conversion, to be furnished for registration, and  
17 shall adopt such fees as are necessary for the expense of such certification. If the  
18 ~~corporation~~ entity involved is not a domestic ~~corporation,~~ entity, a similar certificate by any  
19 competent authority in the jurisdiction of incorporation or organization may be registered  
20 in accordance with this section.

21                    (c) A certificate of the Secretary of State prepared in accordance with this section  
22 shall be registered by the register of deeds in the same manner as deeds, and for the same  
23 fees, but no formalities as to acknowledgment, probate, or approval by any other officer  
24 shall be required. The name of the ~~corporation~~ entity formerly owning the property shall  
25 appear in the 'Grantor' index, and the name of the ~~corporation~~ entity owning the property  
26 by virtue of the ~~merger or consolidation~~ merger, consolidation, or conversion shall appear  
27 in the 'Grantee' index."

28                    Section 5.2. G.S. 105-129.4(e) reads as rewritten:

29                    "(e) Change in Ownership of Business. – The sale, merger, consolidation,  
30 conversion, acquisition, or bankruptcy of a business, or any transaction by which an  
31 existing business reformulates itself as another business, does not create new eligibility in  
32 a succeeding business with respect to credits for which the predecessor was not eligible  
33 under this Article. A successor business may, however, take any installment of or carried-  
34 over portion of a credit that its predecessor could have taken if it had a tax liability. The  
35 acquisition of a business is a new investment that creates new eligibility in the acquiring  
36 taxpayer under this Article if any of the following conditions are met:

37                    (1) The business closed before it was acquired.

38                    (2) The business was required to file a notice of plant closing or mass layoff  
39                    under the federal Worker Adjustment and Retraining Notification Act,  
40                    29 U.S.C. § 2102, before it was acquired.

41                    (3) The business was acquired by its employees through an employee stock  
42                    option transaction or another similar mechanism."

43                    Section 5.3. G.S. 105-129.27(d) reads as rewritten:

1       "(d) Change in Ownership of Facility. – The sale, merger, consolidation,  
2 conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which  
3 the facility is reformulated as another business, does not create new eligibility in a  
4 succeeding owner with respect to a credit for which the predecessor was not eligible  
5 under this section. A successor business may, however, take any carried-over portion of  
6 a credit that its predecessor could have taken if it had a tax liability."

7           Section 5.4. G.S. 105-130.4(j)(3) reads as rewritten:

8           "(3) The average value of property shall be determined by averaging the  
9 values at the beginning and end of the income year, but in all cases the  
10 Secretary of Revenue may require the averaging of monthly or other  
11 periodic values during the income year if reasonably required to reflect  
12 properly the average value of the corporation's property. A corporation  
13 ~~which that~~ ceases its operations in this State before the end of its income  
14 year because of its intention to dissolve or to relinquish its certificate of  
15 authority, or because of a ~~merger~~ merger, conversion, or consolidation,  
16 or for any other reason whatsoever shall use the real estate and tangible  
17 personal property values as of the first day of the income year and the  
18 last day of its operations in this State in determining the average value  
19 of property, but the Secretary may require averaging of monthly or other  
20 periodic values during the income year if reasonably required to reflect  
21 properly the average value of the corporation's property."

22           Section 5.5. G.S. 105-130.17(e) reads as rewritten:

23           "(e) Any corporation ~~which that~~ ceases its operations in this State before the end of  
24 its income year because of its intention to dissolve or to withdraw from this State, or  
25 because of a ~~merger~~ merger, conversion, or consolidation or for any other reason  
26 whatsoever shall file its return for the then current income year within 75 days after the  
27 date it terminates its business in this State."

28           Section 5.6. G.S. 105-163.010(2) reads as rewritten:

29           "(2) Business. – A corporation, partnership, limited liability company,  
30 association, or sole proprietorship operated for profit."

31           Section 5.7. G.S. 105-163.013(f) reads as rewritten:

32           "(f) Transfer of Registration. – A registration as a qualified business venture or  
33 qualified grantee business may not be sold or otherwise transferred, except that if a  
34 qualified business venture or qualified grantee business enters into a merger, conversion,  
35 consolidation, or other similar transaction with another business and the surviving  
36 ~~corporation~~ company would otherwise meet the criteria for being a qualified business  
37 venture or qualified grantee business, the surviving company retains the registration  
38 without further application to the Secretary of State. In such a case, the qualified business  
39 venture or qualified grantee business shall provide the Secretary of State with written  
40 notice of the merger, conversion, consolidation, or similar transaction and the name,  
41 address, and jurisdiction of incorporation or organization of the surviving company."

42           Section 5.8. G.S. 105-163.014(d)(1) reads as rewritten:

1           "(1) Within one year after the investment was made, the taxpayer transfers  
2 any of the securities received in the investment that qualified for the tax  
3 credit to another person or entity, other than in a transfer resulting from  
4 one of the following:

- 5           a. The death of the taxpayer.  
6           b. A final distribution in liquidation to the owners of a taxpayer that  
7 is a corporation or other entity.  
8           c. A merger, conversion, consolidation, or similar transaction  
9 requiring approval by the ~~shareholders~~ owners of the qualified  
10 business venture or qualified grantee business under applicable  
11 State law, to the extent the taxpayer does not receive cash or  
12 tangible property in the merger, conversion, consolidation, or  
13 other similar transaction."

14 Section 5.9. G.S. 105-187.6(b)(2) reads as rewritten:

15           "(2) To a ~~partnership~~ partnership, limited liability company, or corporation as  
16 an incident to the formation of the ~~partnership or corporation and~~  
17 partnership, limited liability company, or corporation, and no gain or  
18 loss arises on the transfer of the motor vehicle under section 351 or  
19 section 721 of the Internal Revenue ~~Code~~, Code as defined in G.S. 105-  
20 228.90, or to a partnership, limited liability company, or corporation by  
21 ~~merger or merger~~, conversion, or consolidation in accordance with ~~G.S.~~  
22 ~~55-11-06~~ applicable law."

23 Section 5.10. G.S. 105-228.29 reads as rewritten:

24 "**§ 105-228.29. Conveyances excluded.**

25 The provisions of this Article shall not apply to transfers of an interest in real estate  
26 by operation of law, by lease for a term of years, by or pursuant to the provisions of a  
27 will, by intestacy, by gift, by ~~merger~~ merger, conversion, or consolidation, or by  
28 instruments securing indebtedness, or any other transfer where no consideration in  
29 property or money is due or paid by the transferee to transferor."

30 **PART VI. MUTUAL TO STOCK INSURANCE CONVERSION.**

31 Section 6. Article 10 of Chapter 58 of the General Statutes is amended by  
32 adding a new section to read:

33 "**§ 58-10-10. Mutual conversion to stock insurer.**

34           (a) A domestic mutual insurer may convert to a domestic stock insurer under a  
35 plan that is approved in advance by the Commissioner.

36           (b) The Commissioner shall not approve the plan unless:

37           (1) It is fair and equitable to the insurer's policyholders.

38           (2) It is adopted by the insurer's board of directors in accordance with the  
39 insurer's bylaws and approved by a vote of not less than two-thirds of  
40 the insurer's members voting on it in person, by proxy, or by mail at a  
41 meeting called for the purpose of voting on the plan, pursuant to  
42 reasonable notice and procedure as approved by the Commissioner. If  
43 the company is a life insurer, the right to vote may be limited, as its

- 1            bylaws provide, to members whose policies are other than term or group  
2            policies and have been in effect for more than one year.
- 3            (3) Each policyholder's equity in the insurer is determinable under a fair  
4            and reasonable formula approved by the Commissioner. The equity  
5            shall be based upon the insurer's entire statutory surplus after deducting  
6            certificates of contribution, guaranty capital certificates, and similar  
7            evidences of indebtedness included in an insurer's statutory surplus.
- 8            (4) The policyholders entitled to vote on the plan and participate in the  
9            purchase of stock and distribution of assets include all policyholders on  
10           the date the plan was adopted by the insurer's board of directors.
- 11           (5) The plan provides that each policyholder specified in subdivision (4) of  
12           this subsection receives a preemptive right to acquire a proportionate  
13           part of all of the proposed capital stock of the insurer or of all of the  
14           stock of a corporation affiliated with the insurer within a designated  
15           reasonable period as the part is determinable under the plan of  
16           conversion; and to apply toward the purchase of the stock the amount of  
17           the policyholder's equity in the insurer under subdivision (3) of this  
18           subsection. The plan must provide for an equitable distribution of  
19           fractional interests.
- 20           (6) The plan provides for payment to each policyholder of the  
21           policyholder's entire equity in the insurer; with that payment to be  
22           applied toward the purchase of stock to which the policyholder is  
23           entitled preemptively or to be made in cash, or both. The cash payment  
24           may not exceed fifty percent (50%) of each policyholder's equity. The  
25           stock purchased, together with the cash payment, if any, shall constitute  
26           full payment and discharge of the policyholder's equity as an owner of  
27           the mutual insurer.
- 28           (7) Shares are to be offered to policyholders at a price not greater than that  
29           of shares to be subsequently offered to others.
- 30           (8) The Commissioner finds that the insurer's management has not, through  
31           reduction of volume of new business written, through policy  
32           cancellations, or through any other means, sought to (i) reduce, limit, or  
33           affect the number or identity of the insurer's members entitled to  
34           participate in the plan or (ii) secure for the individuals constituting  
35           management any unfair advantage through the plan.
- 36           (9) The plan, when completed, provides that the insurer's capital and  
37           surplus are not less than the minimum required of a domestic stock  
38           insurer transacting the same kinds of insurance, are reasonable in  
39           relation to the insurer's outstanding liabilities, and are adequate to meet  
40           its financial needs.
- 41           (c) With respect to an insurer with a guaranty capital, the conversion plan shall be  
42           approved by a vote of not less than two-thirds of the insurer's guaranty capital  
43           shareholders and policyholders as provided for in subdivision (b)(2) of this section. The

1 plan may provide for the issuance of stock in exchange for outstanding guaranty capital  
2 shares at their redemption value subject to the conditions in subsection (b) of this section.

3 (d) The Commissioner may schedule a public hearing on the proposed conversion  
4 plan.

5 (e) The Commissioner may retain, at the mutual insurer's expense, any attorneys,  
6 actuaries, economists, accountants, or other experts not otherwise a part of the  
7 Commissioner's staff as may be reasonably necessary to assist the Commissioner in  
8 reviewing the proposed conversion plan.

9 (f) The corporate existence of the mutual company continues in the stock  
10 company created under this section. All assets, rights, franchises, and interests of the  
11 former mutual insurer, in and to real or personal property, are deemed to be transferred to  
12 and vested in the stock insurer, without any other deed or transfer; and the stock insurer  
13 simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

14 (g) No director, officer, or employee of the insurer shall receive:

- 15 (1) Any fee, commission, compensation, or other valuable consideration for  
16 aiding, promoting, or assisting in the conversion of the mutual insurer to  
17 a domestic stock insurer, other than compensation paid to any director,  
18 officer, or employee of the insurer in the ordinary course of business; or  
19 (2) Any distribution of the assets, surplus, or capital of the insurer as part of  
20 a conversion.

21 (h) The Commissioner may adopt rules to carry out the provisions of this section."

## 22 **PART VII. HOMEOWNER ASSOCIATION REFUNDS.**

23 Section 7. G.S. 55A-13-02(b) reads as rewritten:

24 "(b) Subject to the provisions of subsection (d) of this section, ~~(i) a section:~~

25 (1) A corporation may make distributions to any entity that is exempt under  
26 section 501(c)(3) of the Internal Revenue Code of 1986 or any successor  
27 section, or that is organized exclusively for one or more of the purposes  
28 specified in section 501(c)(3) of the Internal Revenue Code of 1986 or  
29 any successor section and that upon dissolution shall distribute its assets  
30 to a charitable or religious corporation, the United States, a state or an  
31 entity that is exempt under section 501(c)(3) of the Internal Revenue  
32 Code of 1986 or any successor section, and ~~(ii) any section.~~

33 (2) Any corporation other than a charitable or religious corporation may  
34 make distributions to any domestic or foreign corporation.

35 (3) Except as otherwise prohibited by statute, a corporation not operated for  
36 profit, the membership of which is limited to the owners or occupants of  
37 real property in a condominium, cooperative housing corporation, or  
38 other real property development, having as its primary purposes the  
39 management, operation, preservation, maintenance, and repair of  
40 common areas and improvements upon the real property owned by the  
41 members and the corporation or organization, may make distribution to  
42 its members of excess or surplus membership dues, fees, or assessments  
43 remaining after the payment of or provisions for common expenses and



1                    any prepayment of reserves; provided that these distributions are in  
2                    proportion to the dues, fees, or assessments collected from the  
3                    members."

4    **PART VIII. RETENTION OF FEES.**

5                    Section 8. All fees received by the Department of the Secretary of State  
6 pursuant to the provisions of and for the administration of this act shall be retained by the  
7 Department of the Secretary of State for fiscal years 1999-2000, 2000-2001, and 2001-  
8 2002. No such fees received shall revert to the General Fund during those fiscal years.  
9 Fees retained pursuant to this section shall be used by the Department of the Secretary of  
10 State for administration of Chapters 55, 55A, 55B, 57C and 59 of the General Statutes.

11                    Any fees received on or after July 1, 2002, but not used by the Department in  
12 the administration of those Chapters by the close of the fiscal year in which such fees are  
13 received shall revert to the General Fund. Monies retained pursuant to this section shall  
14 be subject to audit pursuant to the Executive Budget Act.

15    **PART IX. EFFECTIVE DATE.**

16                    Section 9. This act becomes effective January 1, 2000, and applies to mergers,  
17 consolidations, or conversions effective on or after that date.