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Sponsors:

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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;

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

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

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

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

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

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

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

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

28 **"§ 55-4-05. Real property records.**

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

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

41 (c) The certificate required by this section shall be recorded by the register of
42 deeds in the same manner as deeds, and for the same fees, but no formalities as to
43 acknowledgement, probate, or approval by any other officer shall be required. The

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

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

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

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

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

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

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

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

29 **"§ 55-11-10. Merger with unincorporated entity.**

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

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

- 1 (1) The merger is permitted by the laws of the state or country governing
2 the organization and internal affairs of each other merging business
3 entity; and
- 4 (2) Each merging domestic corporation and each other merging business
5 entity comply with the requirements of this section and, to the extent
6 applicable, the laws referred to in subdivision (1) of this subsection.
- 7 (c) Each merging domestic corporation and each other merging business entity
8 shall approve a written plan of merger containing:
- 9 (1) For each merging business entity, its name, type of business entity, and
10 the state or country whose laws govern its organization and internal
11 affairs;
- 12 (2) The name of the merging business entity that shall survive the merger;
- 13 (3) The terms and conditions of the merger;
- 14 (4) The manner and basis for converting the interests in each merging
15 business entity into interests, obligations, or securities of the surviving
16 business entity or into cash or other property in whole or in part; and
- 17 (5) If the surviving business entity is a domestic corporation, any
18 amendments to its articles of incorporation that are to be made in
19 connection with the merger.

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

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

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

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

- 37 (1) The plan of merger;
- 38 (2) For each merging business entity, its name, type of business entity, and
39 the state or country whose laws govern its organization and internal
40 affairs;
- 41 (3) The name and address of the surviving business entity;
- 42 (4) A statement that the plan of merger has been approved by each merging
43 business entity in the manner required by law; and

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

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

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

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

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

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

16 (3) The surviving business entity has all liabilities of each merging business
17 entity;

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

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

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

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

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

1 If the surviving business entity is not a domestic limited liability company, a domestic
2 corporation, a domestic nonprofit corporation, or a domestic limited partnership, when
3 the merger takes effect the surviving business entity is deemed:

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

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

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

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

29 **"§ 55-15-21. Withdrawal of foreign corporation by reason of a merger-merger,**
30 **consolidation, or conversion.**

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

- 1 (1) The name of ~~each merged~~ the foreign corporation authorized to transact
2 business in this State ~~and the State~~, the type of entity and name of the
3 surviving corporation or resulting entity, and a statement that the
4 surviving corporation or resulting entity is not authorized to transact
5 business in this State;
- 6 (2) ~~That~~ A statement that the surviving corporation or resulting entity
7 consents that service of process based upon any cause of action arising
8 in this State, or arising out of business transacted in this State, during
9 the time each merged the foreign corporation was authorized to transact
10 business in this State may thereafter be made on such corporation by
11 service thereof on the Secretary of State;
- 12 (3) A mailing address to which the Secretary of State may mail a copy of
13 any process served on him under subdivision (a)(2); and
- 14 (4) A commitment to notify the Secretary of State in the future of any
15 change in its mailing address.
- 16 (b) If the Secretary of State finds that the articles ~~of merger~~ or certificate and the
17 application for withdrawal, if required, ~~conforms~~ conform to law ~~he~~ the Secretary of State
18 shall:
- 19 (1) Endorse on the articles ~~of merger~~ or certificate and the application for
20 withdrawal, if required, the word 'filed' and the hour, day, month and
21 year of the filing thereof;
- 22 (2) File the articles ~~of merger~~ or certificate and the application, if required;
- 23 (3) Issue a certificate of withdrawal; and
- 24 (4) Send to the ~~foreign corporation~~ surviving or resulting entity or its
25 representative the certificate of withdrawal, together with the exact or
26 conformed copy of the application, if required, affixed thereto."

27 PART II. NONPROFIT CORPORATIONS.

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

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

- 31 (1) By the presiding officer of the board of directors ~~of a domestic or foreign~~
32 ~~corporation~~, by its president, or by another of its officers;
- 33 (2) If directors have not been selected or the corporation has not been
34 formed, by an incorporator; or
- 35 (3) If the corporation is in the hands of a receiver, trustee, or other court-
36 appointed fiduciary, by that fiduciary.

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

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

3 "(25a) 'Unincorporated entity' means a domestic or foreign limited liability
4 company as defined in G.S. 57C-1-03, a domestic or foreign limited
5 partnership as defined in G.S. 59-102, or any other partnership as
6 defined in G.S. 59-36, whether or not formed under the laws of this
7 State, including a registered limited liability partnership as defined in
8 G.S. 59-32 and any other limited liability partnership formed under a
9 law other than the laws of this State."

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

11 **"§ 55A-4-05. Real property records.**

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

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

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

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

34 **"§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

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

- 38 (1) A charitable or religious corporation;
- 39 (2) A foreign corporation that would qualify under this Chapter as a
40 charitable or religious corporation;
- 41 (3) A wholly owned foreign or domestic corporation (business or nonprofit)
42 which is not a charitable or religious corporation, or an unincorporated
43 entity, provided the charitable or religious corporation is the surviving

1 ~~corporation~~ survivor in the merger and continues to be a charitable or
2 religious corporation after the merger; or

- 3 (4) A business or nonprofit corporation (foreign or domestic) other than a
4 charitable or religious corporation, or an unincorporated entity, provided
5 that: (i) on or prior to the effective date of the merger, assets with a
6 value equal to the greater of the fair market value of the net tangible and
7 intangible assets (including goodwill) of the charitable or religious
8 corporation or the fair market value of the charitable or religious
9 corporation if it were to be operated as a business concern are
10 transferred or conveyed to one or more persons who would have
11 received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved;
12 (ii) it shall return, transfer or convey any assets held by it upon
13 condition requiring return, transfer or conveyance, which condition
14 occurs by reason of the merger, in accordance with such condition; and
15 (iii) the merger is approved by a majority of directors of the charitable
16 or religious corporation who are not and will not become ~~members~~
17 members, as 'member' is defined in G.S. 55A-1-40(16) or G.S. 57C-1-
18 03, partners, limited partners, or shareholders in or directors, managers,
19 officers, employees, agents, or consultants of the surviving corporation.
20 survivor in the merger.

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

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

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

- 32 "(4) A proceeding pending by or against any corporation party to the merger
33 may be continued as if the merger did not occur or the surviving
34 corporation may be substituted in the proceeding for the corporation
35 whose existence ceased; and".

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

37 "**§ 55A-11-07. Bequests, devises, and gifts.**

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

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

3 **"§ 55A-11-09. Merger with unincorporated entity.**

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

13 (b) One or more domestic nonprofit corporations may merge with one or more
14 unincorporated entities and, if desired, one or more foreign nonprofit corporations,
15 domestic business corporations, or foreign business corporations if:

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

19 (2) Each merging domestic nonprofit corporation and each other merging
20 business entity comply with the requirements of this section and, to the
21 extent applicable, the laws referred to in subdivision (1) of this
22 subsection; and

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

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

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

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

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

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

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

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

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

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

6 (d) After a plan of merger has been approved by each merging domestic nonprofit
7 corporation and each other merging business entity as provided in subsection (c) of this
8 section, the surviving business entity shall deliver articles of merger to the Secretary of
9 State for 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 merger if it is not to be effective at the
18 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 Certificates of merger shall also be registered as provided in G.S. 47-18.1.

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

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

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

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

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

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

41 (6) The interests in each merging business entity that are to be converted
42 into interests, obligations, or securities of the surviving business entity
43 or into the right to receive cash or other property are thereupon so

1 converted, and the former holders of the interests are entitled only to the
2 rights provided to them in the articles of merger or, in the case of former
3 holders of shares in a domestic business corporation, any rights they
4 may have under Article 13 of Chapter 55 of the General Statutes; and

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

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

17 If the surviving business entity is not a domestic limited liability company, a domestic
18 business corporation, a domestic nonprofit corporation, or a domestic limited partnership,
19 when the merger takes effect the surviving business entity is deemed:

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

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

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

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

4 "**§ 55A-15-21. Withdrawal of foreign corporation by reason of a ~~merger~~, merger,**
5 **consolidation, or conversion.**

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

18 (1) ~~The name of ~~each merged~~ the foreign corporation authorized to conduct~~
19 ~~affairs in this State ~~and State,~~ the type of entity and the name of the~~
20 ~~surviving ~~corporation~~ or resulting entity, and a statement that the~~
21 ~~surviving ~~corporation~~ or resulting entity is not authorized to conduct~~
22 ~~affairs in this State;~~

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

29 (3) A mailing address to which the Secretary of State may mail a copy of
30 any process served on him under subdivision (a)(2) of this 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 of ~~merger~~ or certificate and the
34 application for withdrawal, if required, ~~conforms~~ conform to law the Secretary of State
35 shall:

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

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

40 (3) Issue a certificate of withdrawal; and

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

PART III. LIMITED LIABILITY COMPANIES.

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

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

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

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

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

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

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

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

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

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

Section 3.5.(a) G.S. 57C-2-34 reads as rewritten:

"§ 57C-2-34. Real property records.

1 (a) Whenever the name of any domestic or foreign limited liability company
2 holding title to real property in this State is changed upon amendment to its articles of
3 organization or whenever title to its real property in this State is ~~transferred-vested~~ by
4 operation of law in another entity upon merger-merger, consolidation, or conversion of
5 ~~two or more the~~ limited liability companies, company, a certificate reciting the ~~change or~~
6 ~~transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office
7 of the register of deeds of the county where the property lies, or if the property is located
8 in more than one county, then in each county where any portion of the property lies.

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

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

22 Section 3.5.(b) Section 3 of S.L. 1999-189 is repealed.

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

24 "**§ 57C-7-12. Withdrawal of limited liability company by reason of a ~~merger-~~**
25 **merger, consolidation, or conversion.**

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

39 (1) The name of ~~each merged~~ the foreign limited liability company
40 authorized to transact business in this ~~State and State,~~ the type of entity
41 and name of the surviving or resulting entity-entity, and a statement that
42 the surviving or resulting entity is not authorized to transact business in
43 this State;

- 1 (2) ~~That~~ A statement that the surviving or resulting entity consents that
2 service of process based upon any cause of action arising in this State,
3 or arising out of business transacted in this State, during the time ~~each~~
4 ~~merged~~ the foreign limited liability company was authorized to transact
5 business in this State, may thereafter be made ~~on such foreign limited~~
6 ~~liability company~~ by service thereof on the Secretary of State;
- 7 (3) A mailing address to which the Secretary of State may mail a copy of
8 any process served on him under subdivision (a)(2) of this section; and
9 (4) A commitment to notify the Secretary of State in the future of any
10 change in its mailing address.
- 11 (b) If the Secretary of State finds that the articles ~~of merger~~ or certificate and the
12 application for withdrawal, if required, ~~conforms~~ conform to law, the Secretary of State
13 shall:
- 14 (1) Endorse on the articles ~~of merger~~ or certificate and the application for
15 withdrawal, if required, the word 'filed' and the hour, day, month, and
16 year of filing thereof;
- 17 (2) File the articles ~~of merger~~ or certificate and the application, if required;
- 18 (3) Issue a certificate of withdrawal; and
19 (4) Send to the ~~foreign limited liability company~~ surviving or resulting entity
20 or its representative the certificate of withdrawal, together with the exact
21 or conformed copy of the application, if required, affixed thereto."

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

24 "**ARTICLE 9A.**

25 "**CONVERSION AND MERGER.**

26
27 "**PART 1. CONVERSIONS.**

28 "**§ 57C-9A-01. Conversion.**

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

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

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

1 converting business entity and the converting business entity complies
2 with those laws.

3 **"§ 57C-9A-02. Plan of conversion.**

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

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

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

9 (3) The manner and basis for converting the interests in the converting
10 business entity into interests, obligations, or securities of the resulting
11 domestic limited liability company or into cash or other property in
12 whole or in part.

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

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

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

28 **"§ 57C-9A-03. Filing of articles of organization by converting business entity.**

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

33 (1) That the domestic limited liability company is being formed pursuant to
34 a conversion of another business entity;

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

38 (3) That a plan of conversion has been approved by the converting business
39 entity as required by law.

40 If the plan of conversion is abandoned before the articles of organization become
41 effective, the converting business entity promptly shall deliver to the Secretary of State
42 for filing an amendment to the articles of organization reflecting the abandonment of the
43 plan of conversion.

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

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

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

6 **"§ 57C-9A-04. Effects of conversion.**

7 When the conversion takes effect:

8 (1) The converting business entity ceases its prior form of organization and
9 continues in existence as the resulting domestic limited liability
10 company;

11 (2) The title to all real estate and other property owned by the converting
12 business entity continues vested in the resulting domestic limited
13 liability company without reversion or impairment;

14 (3) All liabilities of the converting business entity continue as liabilities of
15 the resulting domestic limited liability company;

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

18 (5) The interests in the converting business entity that are to be converted
19 into interests, obligations, or securities of the resulting domestic limited
20 liability company or into the right to receive cash or other property are
21 thereupon so converted, and the former holders of interests in the
22 converting business entity are entitled only to the rights provided in the
23 plan of conversion.

24 The conversion shall not affect the liability or absence of liability of any holder of an
25 interest in the converting business entity for any acts, omissions, or obligations of the
26 converting business entity made or incurred prior to the effectiveness of the conversion.
27 The cessation of the existence of the converting business entity in its prior form of
28 organization in the conversion shall not constitute a dissolution or termination of the
29 converting business entity.

30 **"PART 2. MERGER.**

31 **"§ 57C-9A-05. Merger.**

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

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

37 (2) Each merging domestic limited liability company and each other
38 merging business entity comply with the requirements of this Part and,
39 to the extent applicable, the laws referred to in subdivision (1) of this
40 section.

41 **"§ 57C-9A-06. Plan of merger.**

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

- 1 (1) For each merging business entity, its name, type of business entity, and
2 the state or country whose laws govern its organization and internal
3 affairs;
4 (2) The name of the merging business entity that shall survive the merger;
5 (3) The terms and conditions of the merger;
6 (4) The manner and basis for converting the interests in each merging
7 business entity into interests, obligations, or securities of the surviving
8 business entity or into cash or other property in whole or in part; and
9 (5) If the surviving business entity is a domestic limited liability company,
10 any amendments to its articles of organization that are to be made in
11 connection with the merger.

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

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

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

26 **"§ 57C-9A-07. Articles of merger.**

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

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

40 If the plan of merger is amended or abandoned before the articles of merger become
41 effective, the surviving business entity promptly shall deliver to the Secretary of State for
42 filing an amendment to the articles of merger reflecting the amendment or abandonment
43 of the plan of merger.

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

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

3 **"§ 57C-9A-08. Effects of merger.**

4 (a) When the merger takes effect:

5 (1) Each other merging business entity merges into the surviving business
6 entity, and the separate existence of each merging business entity,
7 except the surviving business entity ceases;

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

11 (3) The surviving business entity has all liabilities of each merging business
12 entity;

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

17 (5) If a domestic limited liability company is the surviving business entity,
18 its articles of organization shall be amended to the extent provided in
19 the plan of merger;

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

27 (7) If the surviving business entity is not a domestic corporation, the
28 surviving business entity is deemed to agree that it will promptly pay to
29 the dissenting shareholders of any merging domestic corporation the
30 amount, if any, to which they are entitled under Article 13 of Chapter 55
31 of the General Statutes and otherwise to comply with the requirements
32 of Article 13 as if it were a surviving domestic corporation in the
33 merger.

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

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

42 (1) To agree that it may be served with process in this State in any
43 proceeding for enforcement of (i) any obligation of any merging

1 domestic limited liability company, domestic corporation, domestic
2 nonprofit corporation, domestic limited partnership, or other partnership
3 as defined in G.S. 59-36 that is formed under the laws of this State, (ii)
4 the rights of dissenting shareholders of any merging domestic
5 corporation under Article 13 of Chapter 55 of the General Statutes, and
6 (iii) any obligation of the surviving business entity arising from the
7 merger; and

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

22 **PART IV. PARTNERSHIPS.**

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

25 **"PART 7. CONVERSION AND MERGER.**

26 **"§ 59-73.1. Definitions.**

27 As used in this Part:

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

1 liability partnership and any other limited liability partnership formed
2 under a law other than the laws of this State but excluding a domestic
3 limited partnership as defined in G.S. 59-102 and a foreign limited
4 partnership as defined in G.S. 59-102.

5 **"§ 59-73.2. Conversion of domestic partnership.**

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

9 **"§ 59-73.3. Merger.**

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

- 12 (1) The merger is permitted by laws of the state or country governing the
13 organization and internal affairs of each other merging business entity;
14 and
15 (2) Each merging domestic partnership and each other merging business
16 entity comply with the requirements of this Part and, to the extent
17 applicable, the laws referred to in subdivision (1) of this section.

18 **"§ 59-73.4. Plan of merger.**

19 (a) Each merging domestic partnership and each other merging business entity
20 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; and
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.

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

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

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

43 **"§ 59-73.5. Articles of merger.**

1 (a) After a plan of merger has been approved by each merging domestic
2 partnership and each other merging business entity as provided in G.S. 59-73.4, the
3 surviving business entity shall deliver articles of merger to the Secretary of State for
4 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 the merger if it is not to be effective at
13 the 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 (b) A merger takes effect when the articles of merger become effective.

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

20 **"§ 59-73.6. Effects of merger.**

21 (a) When a merger takes effect:

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

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

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

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

34 (5) The interests in each merging business entity that are to be converted
35 into interests, obligations, or securities of the surviving business entity
36 or into the right to receive cash or other property are thereupon so
37 converted, and the former holders of the interests in each merging
38 business entity are entitled only to the rights provided to them in the
39 articles of merger or, in the case of former holders of shares in a
40 domestic corporation (as defined in G.S. 55-1-40), any rights they may
41 have under Article 13 of Chapter 55 of the General Statutes; and

42 (6) If the surviving business entity is not a domestic corporation, the
43 surviving business entity is deemed to agree that it will promptly pay to

1 the dissenting shareholders of any merging domestic corporation the
2 amount, if any, to which they are entitled under Article 13 of Chapter 55
3 of the General Statutes and otherwise to comply with the requirements
4 of Article 13 as if it were a surviving domestic corporation in the
5 merger.

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

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

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

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

37 **"§ 59-73.7. Filing of documents.**

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

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

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

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

1 (4) A document submitted by a partnership must be executed by a general
2 partner of the partnership. A document submitted by a business entity
3 other than a partnership must be executed by a person authorized to
4 execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity
5 is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if
6 the business entity is a domestic or foreign nonprofit corporation, (iii)
7 pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or
8 foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the
9 business entity is a domestic or foreign limited partnership.

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

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

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

22 A document is corrected by:

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

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

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

35 (c) The Secretary of State shall collect the following fees when the documents
36 described in this subsection are submitted by a partnership to the Secretary of State for
37 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
41
42

1 service of process is entitled to recover this fee as costs if the party prevails in the
2 proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (g) If a document delivered to the Office of the Secretary of State for filing
5 satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed
6 with the Secretary of State pursuant to this Part may be maintained by the Secretary
7 either in their original form or in photographic, microfilm, optical disk media, or other
8 reproduced form. The Secretary may make reproductions of documents filed under this
9 Part, or under any predecessor act, by photographic, microfilm, optical disk media, or
10 other means of reproduction, and may destroy the originals of those documents
11 reproduced.

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

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

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

- 26 (1) Affect the validity or invalidity of the document in whole or part;
- 27 (2) Relate to the correctness or incorrectness of information contained in
28 the document; or
- 29 (3) Create a presumption that the document is valid or invalid or that
30 information contained in the document is correct or incorrect.

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

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

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

2 (i) A certificate attached to a copy of a document filed by the Secretary of State,
3 bearing the Secretary of State's signature (which may be in facsimile) and the seal of
4 office and certifying that the copy is a true copy of the document, is conclusive evidence
5 that the original document is on file with the Secretary of State. A photographic,
6 microfilm, optical disk media, or other reproduced copy of a document filed pursuant to
7 this Part or any predecessor act, when certified by the Secretary, shall be considered an
8 original for all purposes and is admissible in evidence in like manner as an original.

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

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

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

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

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

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

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

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

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

4 **"§ 59-204. Execution of ~~certificates-~~documents.**

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

7 (1) An original certificate of limited partnership must be signed by all
8 general partners;

9 (2) A certificate of amendment must be signed by at least one general
10 partner and by each other partner designated in the certificate as a new
11 general partner; and

12 (3) A certificate of cancellation must be signed by all general partners.

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

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

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

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

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

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

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

40 "(5) The certificate required by this section shall be recorded by the register
41 of deeds in the same manner as deeds, and for the same fees, but no
42 formalities as to acknowledgement, probate, or approval by any other
43 officer shall be required. The former name of the domestic or foreign

1 limited partnership holding title to the real property before the
2 ~~amendment—name change, merger, consolidation, or conversion~~ shall
3 appear in the 'Grantor' index, and the ~~amended—new~~ name of the
4 domestic or foreign limited partnership or the name of the other entity
5 holding title to the real property by virtue of the ~~amendment—merger,~~
6 consolidation, or conversion, as applicable, shall appear in the 'Grantee'
7 index."

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

10 **"§ 59-909. Withdrawal of foreign limited partnership by reason of a merger,**
11 **consolidation, or conversion.**

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

- 24 (1) The name of the foreign limited partnership authorized to transact
25 business in this State, the type of entity and name of the surviving or
26 resulting entity, and a statement that the surviving or resulting entity is
27 not authorized to transact business in this State;
28 (2) A statement that the surviving or resulting entity consents that service of
29 process based on any cause of action arising in this State, or arising out
30 of business transacted in this State, during the time the foreign limited
31 partnership was authorized to transact business in this State, may
32 thereafter be made by service thereof on the Secretary of State;
33 (3) A mailing address to which the Secretary of State may mail a copy of
34 any process served upon the Secretary under subdivision (a)(2) of this
35 section; and
36 (4) A commitment to notify the Secretary of State in the future of any
37 change in its mailing address.

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

- 40 (1) Endorse on the articles or certificate and the application for withdrawal,
41 if required, the word 'filed' and the hour, day, month, and year of filing
42 thereof;
43 (2) File the articles or certificate and the application, if required;

- 1 (3) Issue a certificate of withdrawal; and
2 (4) Send to the surviving or resulting entity or its representative the
3 certificate of withdrawal, together with the exact or conformed copy of
4 the application, if required, affixed thereto."

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

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

8 **"§ 59-1007. Conversions.**

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

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

18 (1) Such converting business entity complies with the requirements of G.S.
19 59-1008 and G.S. 59-1009; and

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

27 **"§ 59-1008. Plan of conversion.**

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

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

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

33 (3) The manner and basis for converting the interests in the converting
34 business entity into interests, obligations, or securities of the resulting
35 domestic limited partnership or into cash or other property in whole or
36 in part.

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

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

1 conversion in a written partnership agreement that is binding on all the partners or, if
2 there is no such provision, by the unanimous consent of all the partners. In the case of a
3 foreign limited liability company, a foreign limited partnership, or other partnership as
4 defined in G.S. 59-36 whose organization and internal affairs are governed by a law other
5 than the laws of this State, the plan of conversion must be approved in accordance with
6 the laws of the state or country governing the organization and internal affairs of the
7 converting business entity.

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

12 **"§ 59-1009. Filing of certificate of limited partnership by converting business entity.**

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

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

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

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

24 If the plan of conversion is abandoned before the certificate of limited partnership
25 becomes effective, the converting business entity promptly shall deliver to the Secretary
26 of State for filing an amendment to the certificate of limited partnership reflecting the
27 abandonment of the plan of conversion.

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

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

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

34 **"§ 59-1010. Effects of conversion.**

35 (a) When the conversion takes effect:

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

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

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

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

3 (5) The interests in the converting business entity that are to be converted
4 into interests, obligations, or securities of the resulting domestic
5 partnership or into the right to receive cash or other property are
6 thereupon so converted, and the former holders of interests in the
7 converting business entity are entitled only to the rights provided in the
8 plan of conversion.

9 The conversion shall not affect the liability or absence of liability of any holder of an
10 interest in the converting business entity for any acts, omissions, or obligations of the
11 converting business entity made or incurred prior to the effectiveness of the conversion.
12 The cessation of the existence of the converting business entity in its prior form of
13 organization in the conversion shall not constitute a dissolution or termination of the
14 converting business entity.

15 **"§ 59-1011. Merger.**

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

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

21 (2) Each merging domestic limited partnership and each other merging
22 business entity comply with the requirements of G.S. 59-1012 and G.S.
23 59-1013, and, to the extent applicable, the laws referred to in
24 subdivision (1) of this section.

25 **"§ 59-1012. Plan of merger.**

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

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

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

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

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

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

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

40 (b) In the case of a merging domestic limited partnership, the plan of merger must
41 be approved in the manner provided in a written partnership agreement that is binding on
42 all the partners for approval of a merger with the type of business entity contemplated in
43 the plan of merger or, if there is no provision, by the unanimous consent of its partners.

1 In the case of each other merging business entity, the plan of merger must be approved in
2 accordance with the laws of the state or country governing the organization and internal
3 affairs of the merging business entity.

4 (c) After a plan of merger has been approved by a domestic limited partnership,
5 but before the articles of merger become effective, the plan of merger (i) may be
6 amended as provided in the plan of merger, or (ii) may be abandoned (subject to any
7 contractual rights) as provided in the plan of merger or a written partnership agreement
8 that is binding on all the partners or, if there is no such provision, as determined by the
9 unanimous consent of the partners.

10 **"§ 59-1013. Articles of merger.**

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

15 (1) The plan of merger;

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

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

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

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

24 If the plan of merger is amended or abandoned before the articles of merger become
25 effective, the surviving business entity promptly shall deliver to the Secretary of State for
26 filing an amendment to the articles of merger reflecting the amendment or abandonment
27 of the plan of merger.

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

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

30 **"§ 59-1014. Effects of merger.**

31 (a) When the merger takes effect:

32 (1) Each other merging business entity merges into the surviving business
33 entity, and the separate existence of each merging business entity except
34 the surviving business entity ceases;

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

38 (3) The surviving business entity has all liabilities of each merging business
39 entity;

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

- 1 (5) If a domestic limited partnership is the surviving business entity, its
2 certificate of limited partnership shall be amended to the extent
3 provided in the plan of merger;
- 4 (6) The interests in each merging business entity that are to be converted
5 into interests, obligations, or securities of the surviving business entity
6 or into the right to receive cash or other property are thereupon so
7 converted, and the former holders of the interests are entitled only to the
8 rights provided to them in the articles of merger or, in the case of former
9 holders of shares in a domestic corporation as defined in G.S. 55-1-40,
10 any rights they have under Article 13 of Chapter 55 of the General
11 Statutes; and
- 12 (7) If the surviving business entity is not a domestic corporation, the
13 surviving business entity is deemed to agree that it will promptly pay to
14 the dissenting shareholders of any merging domestic corporation the
15 amount, if any, to which they are entitled under Article 13 of Chapter 55
16 of the General Statutes and otherwise to comply with the requirements
17 of Article 13 as if it were a surviving domestic corporation in the
18 merger.

19 The merger shall not affect the liability or absence of liability of any holder of an
20 interest in a merging business entity for any acts, omissions, or obligations of any
21 merging business equity made or incurred prior to the effectiveness of the merger. The
22 cessation of separate existence of a merging business entity in the merger shall not
23 constitute a dissolution or termination of such merging business entity.

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

- 27 (1) To agree that it may be served with process in this State in any
28 proceeding for enforcement of (i) any obligation of any merging
29 domestic limited liability company, domestic corporation, domestic
30 nonprofit corporation, domestic limited partnership or other partnership
31 as defined in G.S. 59-36 that is formed under the laws of this State, (ii)
32 the rights of dissenting shareholders of any merging domestic
33 corporation under Article 13 of Chapter 55 of the General Statutes, and
34 (iii) any obligation of the surviving business entity arising from the
35 merger; and
- 36 (2) If the surviving business entity does not have a registered agent in this
37 State, to have appointed the Secretary of State as its registered agent for
38 service of process in any such proceeding until such time as the
39 surviving business entity appoints a registered agent in this State.
40 Service on the Secretary of State of any such process shall be made by
41 delivering to and leaving with the Secretary of State or with any clerk
42 authorized by the Secretary of State to accept service of process,
43 duplicate copies of such process. Upon receipt of service of process on

1 behalf of a surviving business entity, the Secretary of State shall
2 immediately mail a copy of the process by registered or certified mail,
3 return receipt requested, to the surviving business entity at its address
4 shown in the articles of merger or, if an application for a certificate of
5 withdrawal by reason of merger has been filed, at the address for service
6 of process contained in that application."

7 **PART V. CONFORMING CHANGES.**

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

9 **"§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation.~~ merger,** 10 **consolidation, or conversion.**

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

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

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

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

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

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

1 (2) The business was required to file a notice of plant closing or mass layoff
2 under the federal Worker Adjustment and Retraining Notification Act,
3 29 U.S.C. § 2102, before it was acquired.

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

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

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

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

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

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

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

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

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

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

38 "(f) Transfer of Registration. – A registration as a qualified business venture or
39 qualified grantee business may not be sold or otherwise transferred, except that if a
40 qualified business venture or qualified grantee business enters into a merger, conversion,
41 consolidation, or other similar transaction with another business and the surviving
42 ~~corporation-company~~ would otherwise meet the criteria for being a qualified business
43 venture or qualified grantee business, the surviving company retains the registration

1 without further application to the Secretary of State. In such a case, the qualified business
2 venture or qualified grantee business shall provide the Secretary of State with written
3 notice of the merger, conversion, consolidation, or similar transaction and the name,
4 address, and jurisdiction of incorporation or organization of the surviving company."

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

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

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

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

20 "(2) To a ~~partnership~~partnership, limited liability company, or corporation as
21 an incident to the formation of the ~~partnership or corporation and~~
22 partnership, limited liability company, or corporation, and no gain or
23 loss arises on the transfer of the motor vehicle under section 351 or
24 section 721 of the Internal Revenue Code, ~~Code as defined in G.S. 105-~~
25 228.90, or to a partnership, limited liability company, or corporation by
26 ~~merger or merger, conversion, or consolidation~~ in accordance with ~~G.S.~~
27 55-11-06.applicable law."

28 Section 5.10.(a) G.S. 105-228.29 reads as rewritten:

29 **"§ 105-228.29. Conveyances excluded.**

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

35 Section 5.10.(b) Subsection (a) of this section expires July 1, 2000.

36 Section 5.10.(c) Effective July 1, 2000, G.S. 105-228.29(7) as enacted by
37 Section 1 of S.L. 1999-28 reads as rewritten:

38 "(7) By ~~merger~~merger, conversion, or consolidation."

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

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

42 **"§ 58-10-10. Mutual conversion to stock insurer.**

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

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

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

5 (2) It is adopted by the insurer's board of directors in accordance with the
6 insurer's bylaws and approved by a vote of not less than two-thirds of
7 the insurer's members voting on it in person, by proxy, or by mail at a
8 meeting called for the purpose of voting on the plan, pursuant to
9 reasonable notice and procedure as approved by the Commissioner. If
10 the company is a life insurer, the right to vote may be limited, as its
11 bylaws provide, to members whose policies are other than term or group
12 policies and have been in effect for more than one year.

13 (3) Each policyholder's equity in the insurer is determinable under a fair
14 and reasonable formula approved by the Commissioner. The equity
15 shall be based upon the insurer's entire statutory surplus after deducting
16 certificates of contribution, guaranty capital certificates, and similar
17 evidences of indebtedness included in an insurer's statutory surplus.

18 (4) The policyholders entitled to vote on the plan and participate in the
19 purchase of stock and distribution of assets include all policyholders on
20 the date the plan was adopted by the insurer's board of directors.

21 (5) The plan provides that each policyholder specified in subdivision (4) of
22 this subsection receives a preemptive right to acquire a proportionate
23 part of all of the proposed capital stock of the insurer or of all of the
24 stock of a corporation affiliated with the insurer within a designated
25 reasonable period as the part is determinable under the plan of
26 conversion; and to apply toward the purchase of the stock the amount of
27 the policyholder's equity in the insurer under subdivision (3) of this
28 subsection. The plan must provide for an equitable distribution of
29 fractional interests.

30 (6) The plan provides for payment to each policyholder of the
31 policyholder's entire equity in the insurer; with that payment to be
32 applied toward the purchase of stock to which the policyholder is
33 entitled preemptively or to be made in cash, or both. The cash payment
34 may not exceed fifty percent (50%) of each policyholder's equity. The
35 stock purchased, together with the cash payment, if any, shall constitute
36 full payment and discharge of the policyholder's equity as an owner of
37 the mutual insurer.

38 (7) Shares are to be offered to policyholders at a price not greater than that
39 of shares to be subsequently offered to others.

40 (8) The Commissioner finds that the insurer's management has not, through
41 reduction of volume of new business written, through policy
42 cancellations, or through any other means, sought to (i) reduce, limit, or
43 affect the number or identity of the insurer's members entitled to

1 participate in the plan or (ii) secure for the individuals constituting
2 management any unfair advantage through the plan.

3 (9) The plan, when completed, provides that the insurer's capital and
4 surplus are not less than the minimum required of a domestic stock
5 insurer transacting the same kinds of insurance, are reasonable in
6 relation to the insurer's outstanding liabilities, and are adequate to meet
7 its financial needs.

8 (c) With respect to an insurer with a guaranty capital, the conversion plan shall be
9 approved by a vote of not less than two-thirds of the insurer's guaranty capital
10 shareholders and policyholders as provided for in subdivision (b)(2) of this section. The
11 plan may provide for the issuance of stock in exchange for outstanding guaranty capital
12 shares at their redemption value subject to the conditions in subsection (b) of this section.

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

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

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

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

25 (1) Any fee, commission, compensation, or other valuable consideration for
26 aiding, promoting, or assisting in the conversion of the mutual insurer to
27 a domestic stock insurer, other than compensation paid to any director,
28 officer, or employee of the insurer in the ordinary course of business; or

29 (2) Any distribution of the assets, surplus, or capital of the insurer as part of
30 a conversion.

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

32 **PART VII. HOMEOWNER ASSOCIATION REFUNDS.**

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

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

35 (1) A corporation may make distributions to any entity that is exempt under
36 section 501(c)(3) of the Internal Revenue Code of 1986 or any successor
37 section, or that is organized exclusively for one or more of the purposes
38 specified in section 501(c)(3) of the Internal Revenue Code of 1986 or
39 any successor section and that upon dissolution shall distribute its assets
40 to a charitable or religious corporation, the United States, a state or an
41 entity that is exempt under section 501(c)(3) of the Internal Revenue
42 Code of 1986 or any successor ~~section, and (ii) any section.~~

- 1 (2) Any corporation other than a charitable or religious corporation may
2 make distributions to any domestic or foreign corporation.
- 3 (3) Except as otherwise prohibited by statute, a corporation not operated for
4 profit, the membership of which is limited to the owners or occupants of
5 real property in a condominium, cooperative housing corporation, or
6 other real property development, having as its primary purposes the
7 management, operation, preservation, maintenance, and repair of
8 common areas and improvements upon the real property owned by the
9 members and the corporation or organization, may make distribution to
10 its members of excess or surplus membership dues, fees, or assessments
11 remaining after the payment of or provisions for common expenses and
12 any prepayment of reserves; provided that these distributions are in
13 proportion to the dues, fees, or assessments collected from the
14 members."

15 **PART VIII. EFFECTIVE DATE.**

16 Section 8. Section 6 of this act becomes effective October 1, 1999. The
17 remainder of this act becomes effective December 15, 1999, and applies to mergers,
18 consolidations, or conversions effective on or after that date.