

[Kan. Stat. Ann. § 17-7681.]

§ 17-7681. Merger or consolidation: Limited Liability Companies

(a) Pursuant to an agreement of merger or consolidation, one or more domestic limited liability companies may merge or consolidate with or into one or more limited liability companies formed under the laws of the state of Kansas or any other state or any foreign country or other foreign jurisdiction, or any combination thereof, with such limited liability company as the agreement shall provide being the surviving or resulting limited liability company.

(1) (A) Unless otherwise provided in the operating agreement, an agreement of merger or consolidation shall be consented to or approved by each domestic limited liability company which is to merge or consolidate by members who own more than 50% of the then-current percentage or other interest in the profits of the domestic limited liability company owned by all of the members;

(B) unless otherwise provided in the operating agreement, a limited liability company whose original articles of organization were filed with the secretary of state and effective on or prior to June 30, 2019, shall not be governed by subsection (a)(1)(A), but shall be governed by this subparagraph. Unless otherwise provided in the operating agreement, an agreement of merger or consolidation shall be consented to or approved by each domestic limited liability company which is to merge or consolidate by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50% of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate.

(2) In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, an entity as defined in K.S.A. 2019 Supp. 17-78-102, and amendments thereto, that is not the surviving or resulting limited liability company in the merger or consolidation, may remain outstanding, or may be canceled.

(3) Notwithstanding prior consent or approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(b) The limited liability company surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by one or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity with the secretary of state. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies which is to merge or consolidate;

- (2) that an agreement of merger or consolidation has been consented to or approved and executed by each of the limited liability companies which is to merge or consolidate;
 - (3) the name of the surviving or resulting limited liability company;
 - (4) in the case of a merger in which a domestic limited liability company is the surviving entity, such amendments, if any, to the articles of organization of the surviving domestic limited liability company to change its name, registered office or resident agent as are desired to be effected by the merger;
 - (5) the future effective date or time, which shall be a date certain, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;
 - (6) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting limited liability company, and shall state the address thereof;
 - (7) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting limited liability company, on request and without cost, to any member of any limited liability company which is to merge or consolidate; and
 - (8) if the surviving or resulting limited liability company is not a domestic limited liability company, a statement that such surviving or resulting limited liability company agrees that it may be served with process in the state of Kansas in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state.
- (c) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting limited liability company in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with subsection (b)(4) shall be deemed to be an amendment to the articles of organization of the limited liability company, and the limited liability company shall not be required to take any further action to amend its articles of organization under K.S.A. 17-7674, and amendments thereto, with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.
- (d) An agreement of merger or consolidation consented to or approved in accordance with subsection (a) may:
- (1) Effect any amendment to the operating agreement; or
 - (2) effect the adoption of a new operating agreement, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be

effective notwithstanding any provision of the operating agreement relating to amendment or adoption of a new operating agreement, other than a provision that by its terms applies to an amendment to the operating agreement or the adoption of a new operating agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement of any constituent limited liability company to the merger or consolidation, including a limited liability company formed for the purpose of consummating a merger or consolidation, shall be the operating agreement of the surviving or resulting limited liability company.

(e) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state of Kansas, all of the rights, privileges and powers of each of the limited liability companies that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of the limited liability companies, as well as all other things and causes of action belonging to each of such limited liability companies, shall be vested in the surviving or resulting limited liability company, and shall thereafter be the property of the surviving or resulting limited liability company as they were of each of the limited liability companies that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state of Kansas, in any of such limited liability companies, shall not revert or be in any way impaired by reason of this act, but all rights of creditors and all liens upon any property of any of the limited liability companies shall be preserved unimpaired, and all debts, liabilities and duties of each of the limited liability companies that have merged or consolidated shall thenceforth attach to the surviving or resulting limited liability company, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs under K.S.A. 17-76,118, and amendments thereto, or pay its liabilities and distribute its assets under K.S.A. 17-76,119, and amendments thereto, and the merger or consolidation shall not constitute a dissolution of such limited liability company.

(f) A limited liability company may merge or consolidate with or into any other entity in accordance with the business entity transactions act, K.S.A. 2019 Supp. 17-78-101 et seq., and amendments thereto.

(g) An operating agreement may provide that a domestic limited liability company shall not have the power to merge or consolidate as set forth in this section.