§§ 53-19-59 through 53-19-62.3: Limited Liability Companies

53-19-59. Conversions and mergers; definitions.

As used in Sections 53-19-59 through 53-19-62.3 NMSA 1978:

A. "corporation" means an organization incorporated under the laws of New Mexico or a foreign corporation;

B. "general partner" means a partner in a partnership and a general partner in a limited partnership;

C. "limited partner" means a limited partner in a limited partnership;

D. "limited partnership" means a limited partnership created under the Uniform Limited Partnership Act [repealed], a predecessor law or comparable law of another jurisdiction;

E. "partner" includes a general partner and a limited partner;

F. "partnership" means a general partnership under the Uniform Partnership Act [54-1A-1202 NMSA 1978], a predecessor law or comparable law of another jurisdiction;

G. "partnership agreement" means an agreement among the partners concerning the partnership or limited partnership; and

H. "shareholder" means a shareholder in a corporation.

53-19-60. Conversions and mergers; conversion of corporation, partnership or limited partnership to limited liability company.

A. A corporation, partnership or limited partnership may be converted to a limited liability company pursuant to this section.

B. The terms and conditions of a conversion of a corporation, partnership or limited partnership to a limited liability company shall be approved in the manner specifically provided for by the document, instrument, agreement or other writing governing the internal affairs of the corporation, partnership or limited partnership concerning conversions or, in the absence of such a provision, by all of the shareholders or partners, as the case may be.

C. An agreement of conversion shall set forth the terms and conditions of the conversion of the owners' interests in the converting entity into interests in the converted entity or the cash or other consideration to be paid or delivered as a result of the conversion of the owners' interests or a combination of these.
D. After a conversion is approved pursuant to Subsection B of this section, the corporation, partnership or limited partnership being converted shall file articles of organization with the commission [secretary of state] that satisfy the requirements of Section 53-19-8 NMSA 1978 and a statement containing the items set forth below:

1. a statement that the corporation or partnership was converted to a limited liability company from a corporation, partnership or limited partnership;

2. its former name;

3. a statement of the number of votes cast by the shareholders or partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion pursuant to Subsection B of this section; and

4. in the case of a corporation or a limited partnership, a statement that the certificate of incorporation or certificate of limited partnership is to be canceled as of the date the conversion takes effect.

E. In the case of a corporation or a limited partnership, the filing of articles of organization pursuant to Subsection D of this section cancels its certificate of incorporation or certificate of limited partnership as of the date the conversion took effect.

F. A conversion takes effect when articles of organization are filed with the commission [secretary of state] or at any later date specified in the articles of organization.

G. A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

H. A general partner’s liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion took effect.

53-19-60.1. Conversions and mergers; conversion of limited liability company to corporation, partnership or limited partnership.

A. A limited liability company may be converted to a corporation, partnership or limited partnership pursuant to this section.

B. The terms and conditions of a conversion of a limited liability company to a corporation, partnership or limited partnership shall be approved by the number or percentage of the members or managers specifically required for conversion in the operating agreement or, in absence of such a provision in the operating agreement, by all the members.
An agreement of conversion shall set forth the terms and conditions of the conversion of the members' interests in the limited liability company into interests in the corporation, partnership or limited partnership or the cash or other consideration to be paid or delivered as a result of the conversion of the members' interests, or a combination of these.

After a conversion is approved under Subsection B of this section, the limited liability company shall file with the commission [secretary of state], if the converted entity is a partnership, a statement containing the items set forth below, if the converted entity is a corporation, articles of incorporation and a statement containing the items set forth below and, if the converted entity is a limited partnership, a certificate of limited partnership and a statement containing the items set forth below:

1. A statement that the corporation, partnership or limited partnership was converted from a limited liability company;
2. The former name of the limited liability company;
3. A statement of the number of votes cast by the members or managers entitled to vote for and against the conversion and, if the vote is other than a unanimous vote of the members, the number or percentage of members or managers required to approve the conversion under Subsection B of this section; and
4. A statement that the articles of organization of the limited liability company are to be canceled as of the date the conversion takes effect.

The filing of articles of incorporation for a corporation, a statement for a partnership or a certificate of limited partnership for a limited partnership resulting from a conversion pursuant to this section, cancels the articles of organization of the limited liability company as of the date the conversion takes effect.

A conversion takes effect when articles of incorporation, a certificate of limited partnership or statement required if the converted entity is a partnership, are filed with the commission [secretary of state] or at any later date specified in the filed document.

**53-19-61. Conversions and mergers; effect of conversion.**

A corporation, partnership, limited liability company or limited partnership that has been converted pursuant to Section 53-19-60 or 53-19-60.1 NMSA 1978 is for all purposes the same entity that existed before the conversion.

When a conversion takes effect:

1. All property owned by the converting entity is vested in the converted entity;
2. All debts, liabilities and other obligations of the converting entity continue as obligations of the converted entity;
(3) an action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting entity are vested in the converted entity; and

(5) except as otherwise provided in the agreement of conversion under Subsection C of Section 53-19-60 NMSA 1978, all of the owners of the converting entity continue as owners of the converted entity.


A. Pursuant to a plan of merger approved under Subsection C of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

B. A plan of merger shall set forth:

(1) the name of each entity that is a party to the merger;

(2) the name of the surviving entity into which the other entities will merge;

(3) the type of organization of the surviving entity;

(4) the terms and conditions of the merger;

(5) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or in part; and

(6) the street address of the surviving entity's principal place of business.

C. A plan of merger shall be approved:

(1) in the case of a limited liability company that is a party to the merger, by the members representing the percentage of voting power of all members specified in the operating agreement for approval of mergers, but not fewer than the members holding a majority of the voting power of all members or, if provision is not made in the operating agreement, by all the members;

(2) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
in the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Subsection B of Section 53-19-60 NMSA 1978; and

in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the other state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger is effective upon the filing of the articles of merger with the commission [secretary of state] or at such later date as the articles may provide.


A. After approval of the plan of merger under Subsection C of Section 53-19-62 NMSA 1978, unless the merger is abandoned under Subsection D of Section 53-19-62 NMSA 1978, articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the commission [secretary of state] for filing. The articles must set forth:

(1) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(2) for each limited liability company that is to merge, the date its articles of organization were filed with the commission [secretary of state];

(3) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(4) the name and address of the surviving limited liability company or other surviving entity;

(5) the effective date of the merger;

(6) if a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

(7) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed with the commission [secretary of state] or, if an application has not been filed, a statement to that effect; and

(8) if the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in this state in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge, and for the
enforcement, as provided in the Limited Liability Company Act, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

B. If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the commission [secretary of state].

C. The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

D. Articles of merger operate as an amendment to the limited liability company's articles of organization.

53-19-62.2. Conversions and mergers; effect of merger.

A. When a merger takes effect:

(1) the separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

(2) all property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;

(3) all debts, liabilities and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

(4) an action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be sustained as a party to the action or proceeding; and

(5) except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of every limited liability company and other entity that is a party to a merger become vested in the surviving entity.

B. The commission [secretary of state] is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the commission [secretary of state] shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(1) the date the company receives the process, notice or demand;

(2) the date shown on the return receipt, if signed on behalf of the company; or
(3) five days after its deposit in the mail, if mailed postpaid and correctly addressed.

C. A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

D. Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under the Limited Liability Company Act or to pay its liability and distribute its assets pursuant to the Limited Liability Company Act.

E. Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

53-19-62.3. Conversion and mergers; non-exclusivity.

Sections 53-19-59 through 53-19-62.2 NMSA 1978 do not preclude an entity from being converted or merged under other law.