§ 10.001. Adoption of plan of merger.

(a) A domestic entity may effect a merger by complying with the applicable provisions of this code. A merger must be set forth in a plan of merger.

(b) To effect a merger, each domestic entity that is a party to the merger must act on and approve the plan of merger in the manner prescribed by this code for the approval of mergers by the domestic entity.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) If one or more non-code organizations is a party to the merger or is to be created by the plan of merger:

(1) to effect the merger each non-code organization must take all action required by this code and its governing documents;

(2) the merger must be permitted by:

(A) the law of the state or country under whose law each non-code organization is incorporated or organized; or

(B) the governing documents of each non-code organization if the documents are not inconsistent with the law under which the non-code organization is incorporated or organized; and

(3) in effecting the merger each non-code organization that is a party to the merger must comply with:

(A) the applicable laws under which it is incorporated or organized; and

(B) the governing documents of the non-code organization.
(e) A domestic entity may not merge under this subchapter if an owner or member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, without that owner’s or member’s consent, for a liability or other obligation of any other person.


(a) A plan of merger must be in writing and must include:

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

(2) the name of each organization that will survive the merger;

(3) the name of each new organization that is to be created by the plan of merger;

(4) a description of the organizational form of each organization that is a party to the merger or that is to be created by the plan of merger and its jurisdiction of formation;

(5) the manner and basis, including use of a formula, of converting or exchanging any of the ownership or membership interests of each organization that is a party to the merger into:

(A) ownership interests, membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations;

(B) cash;

(C) other property, including ownership interests, membership interests, obligations, rights to purchase securities, or other securities of any other person or entity; or

(D) any combination of the items described by Paragraphs (A)-(C);

(6) the identification of any of the ownership or membership interests of an organization that is a party to the merger that are:

(A) to be canceled rather than converted or exchanged; or
(B) to remain outstanding rather than converted or exchanged if the organization survives the merger;

(7) the certificate of formation of each new domestic filing entity to be created by the plan of merger;

(8) the governing documents of each new domestic nonfiling entity to be created by the plan of merger; and

(9) the governing documents of each non-code organization that:

(A) is to survive the merger or to be created by the plan of merger; and

(B) is an entity that is not:

(i) organized under the laws of any state or the United States; or

(ii) required to file its certificate of formation or similar document under which the entity is organized with the appropriate governmental authority.

(b) An item required by Subsections (a)(7)-(9) may be included in the plan of merger by an attachment or exhibit to the plan.

(c) If the plan of merger provides for a manner and basis of converting or exchanging an ownership or membership interest that may be converted or exchanged in a manner or basis different than any other ownership or membership interest of the same class or series of the ownership or membership interest, the manner and basis of conversion or exchange must be included in the plan of merger in the same manner as provided by Subsection (a)(5). A plan of merger may provide for cancellation of an ownership or membership interest while providing for the conversion or exchange of other ownership or membership interests of the same class or series as the ownership or membership interest to be canceled.

(d) Any of the terms of the plan of merger may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the merger is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.
§ 10.003. Contents of plan of merger: more than one successor.

If more than one organization is to survive or to be created by the plan of merger, the plan of merger must include:

(1) the manner and basis of allocating and vesting the property of each organization that is a party to the merger among one or more of the surviving or new organizations;

(2) the name of each surviving or new organization that is primarily obligated for the payment of the fair value of an ownership or membership interest of an owner or member of a domestic entity subject to dissenters' rights that is a party to the merger and who complies with the requirements for dissent and appraisal under this code applicable to the domestic entity; and

(3) the manner and basis of allocating each liability and obligation of each organization that is a party to the merger, or adequate provisions for the payment and discharge of each liability and obligation, among one or more of the surviving or new organizations.


A plan of merger may include:

(1) amendments to, restatements of, or amendments and restatements of the governing documents of any surviving organization, including a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments;

(2) provisions relating to an interest exchange, including a plan of exchange; and

(3) any other provisions relating to the merger that are not required by this chapter.

§ 10.005. Creation of holding company by merger.

(a) In this section:

(1) "Direct or indirect wholly owned subsidiary" means, with respect to a domestic entity, another domestic entity, all of the outstanding voting ownership or membership interests of which are owned by the domestic entity or by one or more other domestic entities or non-code organizations, all of the outstanding voting ownership or membership interests of which are owned by the domestic entity or one or more other wholly owned domestic entities or non-code organizations.
(2) "Holding company" means a domestic entity that, from its organization until a merger takes effect, was at all times a direct or indirect wholly owned subsidiary of the merging domestic entity and the ownership or membership interests of which are issued to the members or owners of the merging domestic entity in the merger.

(3) "Merging domestic entity" means the original domestic entity that is a party to a merger that is intended to create a holding company structure under a plan of merger that satisfies the requirements of this section and whose members or owners are not required to approve the plan of merger under Subsection (b).

(4) "Surviving entity subsidiary" means the surviving entity in a merger of a merging domestic entity and a direct or indirect wholly owned subsidiary of the merging domestic entity, which immediately following the merger is a direct or indirect wholly owned subsidiary of the holding company.

(b) A domestic entity may, without owner or member approval and pursuant to a plan of merger, restructure the ownership or membership structure of that entity to create a holding company structure under this chapter and the provisions of this code under which the entity was formed. The approval of the owners or members of a merging domestic entity that is a party to a merger under a plan of merger that creates a holding company is not required if:

(1) the holding company is a domestic entity of the same organizational form as the merging domestic entity;

(2) approval is not otherwise required by the governing documents of the merging domestic entity;

(3) the merging domestic entity merges with a direct or indirect wholly owned subsidiary;

(4) after the merger the merging domestic entity or its successor is a direct or indirect wholly owned subsidiary of a holding company;

(5) the merging domestic entity and the direct or indirect wholly owned subsidiary are the only parties to the merger;

(6) each ownership or membership interest of the merging domestic entity that is outstanding preceding the merger is converted in the merger into an ownership or membership interest of the holding company having the same designations, preferences, limitations, and relative rights and corresponding obligations in respect of
the ownership or membership interest as the ownership or membership interest held by the owner or member in the merging domestic entity;

(7) except as provided by Subsection (c), the governing documents of the holding company immediately following the merger contain provisions substantively identical to the governing documents of the merging domestic entity immediately preceding the merger;

(8) except as provided by Subsections (c) and (d), the governing documents of the surviving entity subsidiary immediately following the merger contain provisions substantively identical to the governing documents of the merging domestic entity immediately preceding the merger;

(9) the governing persons of the merging domestic entity become or remain the governing persons of the holding company when the merger takes effect;

(10) the owners or members of the merging domestic entity will not recognize gain or loss for United States federal income tax purposes, the United States federal tax classification of the holding company will be the same as that of the merging domestic entity, and the merger will not result in the loss of any tax benefit or attribute of the merging domestic entity, each as determined by the governing authority of the merging domestic entity; and

(11) the governing authority of the merging domestic entity adopts a resolution approving the plan of merger.

(c) Subsections (b)(7) and (8) do not require identical provisions regarding the organizer or organizers, the entity name, the registered office and agent, the initial governing persons, and the initial subscribers of ownership or membership interests and provisions contained in any amendment to the governing documents as were necessary to effect a change, exchange, reclassification, or cancellation of ownership or membership interests, if the change, exchange, reclassification, or cancellation was in effect preceding the merger.

(d) Notwithstanding Subsection (b)(8):

(1) the governing documents of the surviving entity subsidiary must require that an act or transaction by or involving the surviving entity subsidiary, other than the election or removal of the governing persons of the surviving entity subsidiary, that requires for its approval under this code or the governing documents of the surviving entity subsidiary the approval of the owners or members of the surviving entity subsidiary must, by specific reference to this section, require the approval of the owners or members of the holding company, or any successor by merger, by the same vote as is required by this code and the governing documents of the surviving entity subsidiary;
(2) if the surviving entity subsidiary is not of the same organizational form as the merging domestic entity, the 
governing documents of the surviving entity subsidiary may differ from the governing documents of the 
merging domestic entity to the minimum extent necessary to make a change that takes into account the 
differences between the types of entities, including a change in reference to the types of owners, members, 
ownership interests, membership interests, governing persons, or governing authority, each as determined by 
the governing authority of the merging domestic entity;

(3) if the surviving entity subsidiary is not of the same organizational form as the merging domestic entity, the 
governing documents of the surviving entity subsidiary must require that:

(A) the surviving entity subsidiary obtain the approval of the owners or members of the holding company for 
any act or transaction by or involving the surviving entity subsidiary, other than the election or removal of the 
governing persons of the surviving entity subsidiary, that would require the approval of the owners or 
members of the surviving entity subsidiary if the surviving entity subsidiary were of the same organizational 
form as the merging domestic entity;

(B) any amendment to the governing documents of the surviving entity subsidiary that would, if adopted by 
an entity of the same organizational form as the merging domestic entity, be required to be included in the 
certificate of formation of the entity also require, by specific reference to this section, the approval of the 
owners or members of the holding company, or any successor by merger, by the same vote as is required by 
this code or by the governing documents of the surviving entity subsidiary; and

(C) the business affairs of the surviving entity subsidiary be managed by or under the direction of governing 
persons who are:

(i) subject to the same fiduciary duties applicable to the governing persons of an entity of the same 
organizational form as the merging domestic entity subject to this code; and

(ii) liable for the breach of any duties to the same extent as governing persons of that form of entity;

(4) the governing documents of the surviving entity subsidiary may change the classes and series of 
ownership or membership interests and the number of ownership or membership interests that the surviving 
extity subsidiary is authorized to issue; and
(5) this subsection or a provision of a surviving entity subsidiary's governing documents required by this subsection may not be construed as requiring the approval of the owners or members of the holding company to elect or remove governing persons of the surviving entity subsidiary.

(e) To the extent the provisions contained in Section 21.606 apply to a merging domestic entity and its owners or members when a merger takes effect under this section, those provisions continue to apply to the holding company and its owners or members immediately after the merger takes effect as though the holding company were the merging domestic entity. All ownership or membership interests of the holding company acquired in the merger, for purposes of Section 21.606, are considered to have been acquired at the time the ownership or membership interest of the merging domestic entity converted in the merger was acquired. Any owner or member who, preceding the merger, was not an affiliated owner or member as described by Section 21.606 does not solely by reason of the merger become an affiliated owner or member of the holding company.

(f) If the name of a holding company immediately following the effectiveness of a merger under this section is the same as the name of the merging domestic entity preceding the merger, the ownership or membership interests of the holding company into which the ownership or membership interests of the merging domestic entity are converted pursuant to the merger will be represented by the certificates, if any, that previously represented the ownership or membership interests in the merging domestic entity.

(g) This section shall not apply to a merger of a partnership with or into a domestic entity without the approval of the owners or members of the partnership and domestic entity as provided by this code.

§ 10.006. Short form merger.

(a) A parent organization that owns at least 90 percent of the outstanding ownership or membership interests of each class and series of each of one or more subsidiary organizations may merge with one or more of the subsidiary organizations as provided by this section if:

(1) at least one of the parties to the merger is a domestic entity and each other party is a domestic entity or another non-code organization organized under the laws of a jurisdiction that permits a merger of the type authorized by this chapter; and

(2) the resulting organization or organizations are the parent organization, one or more existing subsidiary organizations, or one or more new organizations.

(b) No action by any subsidiary organization that is a domestic entity is required to approve the merger.
(c) If the parent organization will not survive the merger, a plan of merger must be adopted by action of the
parent organization in the same manner as a plan of merger not governed by this section or Section 10.005.

(d) If the parent organization will survive the merger, the merger is required to be approved only by a
resolution adopted by the governing authority of the parent organization.

(e) Sections 10.001(c)-(e), 10.002(c), 10.003, and 10.007-10.010 apply to a merger approved under Subsection
(d), except that the resolution approving the merger should be considered the plan of merger for purposes of
those sections.

(f) The resolution approving the merger under Subsection (d) must describe:

(1) the basic terms of the merger;

(2) the organizations that are party to the merger; and

(3) the organizations that survive the merger.

(g) If the parent organization does not own all of the outstanding ownership or membership interests of each
class or series of ownership or membership interests of each subsidiary organization that is a party to the
merger, the resolution of the parent organization required by Subsection (d) must describe the terms of the
merger, including the cash or other property, including ownership or membership interests, obligations, rights
to purchase securities, or other securities of any person or organization or any combination of the ownership
or membership interests, obligations, rights, or other securities, to be used, paid, or delivered by the parent
organization on surrender of each ownership or membership interest of the subsidiary organizations not
owned by the parent organization.

(h) An entity is not disqualified from effecting a merger under any other provision of this chapter because it
qualifies for a merger under this section.

(i) This section shall not apply if a subsidiary organization that is a party to the merger is:

(1) a partnership; or
(2) a domestic entity that has in its governing documents the provision required by Section 10.005(d)(1) and of which there are outstanding ownership or membership interests that would be entitled to vote on the merger absent this section.

§ 10.007. Effectiveness of merger.
Except as otherwise provided by Subchapter B, Chapter 4, a merger takes effect at the time provided by the plan of merger, except that a merger that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of merger by the secretary of state or county clerk, as appropriate.

§ 10.008. Effect of merger.
(a) When a merger takes effect:

(1) the separate existence of each domestic entity that is a party to the merger, other than a surviving or new domestic entity, ceases;

(2) all rights, title, and interests to all real estate and other property owned by each organization that is a party to the merger is allocated to and vested, subject to any existing liens or other encumbrances on the property, in one or more of the surviving or new organizations as provided in the plan of merger without:

(A) reversion or impairment;

(B) any further act or deed; or

(C) any transfer or assignment having occurred;

(3) all liabilities and obligations of each organization that is a party to the merger are allocated to one or more of the surviving or new organizations in the manner provided by the plan of merger;

(4) each surviving or new domestic organization to which a liability or obligation is allocated under the plan of merger is the primary obligor for the liability or obligation, and, except as otherwise provided by the plan of merger or by law or contract, no other party to the merger, other than a surviving domestic entity or non-code organization liable or otherwise obligated at the time of the merger, and no other new domestic entity or non-code organization created under the plan of merger is liable for the debt or other obligation;
(5) any proceeding pending by or against any domestic entity or by or against any non-code organization that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic entity or entities or the surviving or new non-code organization or non-code organizations to which the liability, obligation, asset, or right associated with that proceeding is allocated to and vested in under the plan of merger may be substituted in the proceeding;

(6) the governing documents of each surviving domestic entity are amended, restated, or amended and restated to the extent provided by the plan of merger, and a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments of a surviving filing entity shall have the effect stated in Section 3.063;

(7) each new filing entity whose certificate of formation is included in the plan of merger under this chapter, on meeting any additional requirements, if any, of this code for its formation, is formed as a domestic entity under this code as provided by the plan of merger;

(8) the ownership or membership interests of each organization that is a party to the merger and that are to be converted or exchanged, in whole or part, into ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations, into cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any organization, or into any combination of these, or that are to be canceled or remain outstanding, are converted, exchanged, canceled, or remain outstanding as provided in the plan of merger, and the former owners or members who held ownership or membership interests of each domestic entity that is a party to the merger are entitled only to the rights provided by the plan of merger or, if applicable, any rights to receive the fair value for the ownership interests provided under Subchapter H; and

(9) notwithstanding Subdivision (4), the surviving or new organization named in the plan of merger as primarily obligated to pay the fair value of an ownership or membership interest under Section 10.003(2) is the primary obligor for that payment and all other surviving or new organizations are secondarily liable for that payment.

(b) If the plan of merger does not provide for the allocation and vesting of the right, title, and interest in any particular real estate or other property or for the allocation of any liability or obligation of any party to the merger, the unallocated property is owned in undivided interest by, or the liability or obligation is the joint and several liability and obligation of, each of the surviving and new organizations, pro rata to the total number of surviving and new organizations resulting from the merger.

(c) If a surviving organization in a merger is not a domestic entity, the surviving organization is considered to have:
(1) appointed the secretary of state in this state as the organization's agent for service of process in a proceeding to enforce any obligation of a domestic entity that is a party to the merger; and

(2) agreed to promptly pay to the dissenting owners or members of each domestic entity that is a party to the merger who have the right of dissent and appraisal under this code the amount, if any, to which they are entitled under this code.

(d) If the surviving organization in a merger is not a domestic entity, the organization shall register to transact business in this state if the entity is required to register for that purpose by another provision of this code.

§ 10.009. Special provisions applying to partnership mergers.

(a) A partner of a domestic partnership that is a party to a merger does not become liable as a result of the merger for the liability or obligation of another person that is a party to the merger unless the partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the partner.

(b) A partner of a domestic partnership that is a party to a merger who remains in or enters a partnership is treated as an incoming partner in the partnership when the merger takes effect for purposes of determining the partner's liability for a debt or obligation of the partnership or partnerships that are parties to the merger or to be created in the merger and in which the partner was not a partner.

(c) If a partnership merges with an organization and, because of the merger, no longer exists, a former partner who becomes an owner or member of the surviving organization may, until the first anniversary of the effective date of the merger, bind the surviving organization to a transaction for which the owner or member no longer has authority to bind the organization if the transaction is one in which the actions by the owner or member as a partner would have bound the partnership before the effective date of the merger, and the other party to the transaction:

(1) does not have actual or constructive notice of the merger;

(2) had done business with the terminated partnership within one year preceding the effective date of the merger; and

(3) reasonably believes that the partner who was previously an owner or member of the partnership that was merged into the surviving organization and is now an owner or member of the surviving organization has the authority to bind the surviving organization to the transaction at the time of the transaction.
(d) If a partnership is formed under a plan of merger, the existence of the partnership as a partnership begins when the merger takes effect, and the persons to be partners become partners at that time.

(e) A partner in a domestic partnership that is a party to the merger but does not survive shall be treated as a partner who withdrew from the nonsurviving domestic partnership as of the effective date of the merger.

(f) The partnership agreement of each domestic partnership that is a party to the merger must contain provisions that authorize the merger provided for in the plan of merger adopted by the partnership.

(g) Each domestic partnership that is a party to the merger must approve the plan of merger in the manner prescribed in its partnership agreement.

§ 10.010. Special provisions applying to nonprofit corporation and nonprofit association mergers.

(a) A domestic nonprofit corporation or nonprofit association may not merge into another entity if the domestic nonprofit corporation or nonprofit association would, because of the merger, lose or impair its charitable status.

(b) One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations or nonprofit associations that continue as the surviving entity or entities.

(c) A domestic nonprofit corporation or nonprofit association may not merge with a foreign for-profit entity if the domestic nonprofit corporation or nonprofit association does not continue as the surviving entity.

(d) One or more domestic nonprofit corporations or nonprofit associations and non-code organizations may merge into one or more foreign nonprofit entities that continue as the surviving entity or entities.