

NONPROFIT CORPORATION ACT (EXCERPT)
Act 162 of 1982

450.2736a Merger of domestic corporations with business organizations; requirements; merger of domestic corporation with domestic or foreign entity; consent; executing and filing certificate of merger; contents; effect of merger; surviving entity; liability for enforcement of obligation; distributions; applicability of MCL 450.2735; definitions.

Sec. 736a. (1) Except as provided in subsection (2) and subject to subsection (8), 1 or more domestic corporations may merge with 1 or more business organizations if all of the following requirements are met:

(a) The merger is permitted under the law of the jurisdiction in which each constituent business organization is organized and each constituent business organization complies with that law in effecting the merger, and each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(b) The board of each domestic corporation that is participating in the merger adopts a plan of merger that sets forth all of the following:

(i) The name of each constituent entity, the name of the constituent entity that will be the surviving entity, the street address of the surviving entity's principal place of business, and the type of organization of the surviving entity.

(ii) If a domestic corporation that is a party to the merger is a stock corporation, the designation and number of outstanding shares of each class, specifying the classes entitled to vote, each class entitled to vote as a class, and, if the number of shares is subject to change before the effective date of the merger, the manner in which the change may occur.

(iii) If a domestic corporation that is a party to the merger is a membership corporation, a description of the members, including the number, classification, and voting rights of members.

(iv) If a domestic corporation that is a party to a merger is a directorship corporation, a description of the organization of the board, including the number, classification, and voting rights of directors.

(v) The terms and conditions of the proposed merger, including the manner and basis of converting the shares, partnership interests, membership interests, or other ownership interests of each constituent entity into ownership interests, obligations, or other securities of or membership or other interests in the surviving entity, or into cash or other consideration, if any, that may include ownership interests, obligations, or other securities of or membership or other interests in an entity that is not a party to the merger, or into a combination of those securities, interests, or property.

(vi) If the surviving entity is to be a domestic corporation, a statement of any amendment to the articles of incorporation of the surviving corporation that will result from the merger or any restatement of the articles under section 641(1), in the form for restated articles required under section 642.

(vii) Any other provisions with respect to the proposed merger that the board considers necessary or desirable.

(c) A plan of merger adopted by the board of each constituent domestic corporation shall be submitted for approval at a meeting of the shareholders or members under section 703a(1) or, if the corporation is organized on a directorship basis, for approval by the board of directors under section 703a(3).

(2) If a domestic corporation has not commenced business, has not issued any shares, and has not elected a board, the corporation may merge with any domestic or foreign entity by unanimous consent of its incorporators. If the incorporators unanimously consent to a merger under this subsection, a majority of the incorporators must execute and file a certificate of merger under subsection (3).

(3) After a plan of merger is approved under subsection (1) or the merger is approved under subsection (2), each domestic corporation that is a party to the merger shall execute and file a certificate of merger. The certificate shall set forth all of the following:

(a) A statement of the applicable requirements set forth in subsection (1)(b)(i), (ii), (iii), (iv), (v), (vi), and (vii), and the manner and basis of converting the ownership, membership, or other interests of each constituent entity included in the plan of merger.

(b) A statement that the plan of merger has been adopted by the board under subsection (1)(b).

(c) A statement that the surviving entity will furnish the plan of merger, on request and without cost, to any shareholder or member of the domestic corporation.

(d) If approval of the shareholders or members of the domestic corporation is required, a statement that the plan was approved by the shareholders or members under subsection (1)(c) or, if the corporation is organized on a directorship basis, a statement that the plan was approved by the board of directors under subsection (1)(c).

(e) If subsection (2) applies to the merger, a statement that the corporation has not commenced business,

has not issued any shares or memberships, and has not elected a board, and that the merger was approved by the unanimous consent of the incorporators.

(f) A statement of any assumed names of merging entities that are transferred to the surviving entity under section 217(3), specifying each transferred assumed name and the name of the entity from which it is transferred. If the surviving entity is a domestic corporation or a foreign corporation authorized to conduct affairs in this state, the certificate may include a statement of the names or assumed names of merging entities that are to be treated as newly filed assumed names of the surviving corporation under section 217(4).

(4) Section 131 applies in determining when a certificate of merger under subsection (3) becomes effective.

(5) When a merger under this section takes effect, all of the following apply:

(a) Every other entity that is a party to the merger merges into the surviving entity and the separate existence of every entity that is a party to the merger except the surviving entity ceases.

(b) The title to all real estate and other property and rights owned by each entity that is a party to the merger is vested in the surviving entity without reversion or impairment.

(c) The surviving entity may use the name and the assumed names of any entity that is a party to the merger, if the filings required under section 217(3) or (4) or any other applicable statute are made.

(d) The surviving entity has all of the liabilities of each entity that is a party to the merger. This subdivision does not affect the liability, if any, of a person that was an obligated person with respect to an entity that is a party to the merger for acts or omissions that occurred before the merger.

(e) A person may continue any proceeding that is pending against any entity that was a party to the merger as if the merger did not occur, or the surviving entity may be substituted in the proceeding for the entity whose existence ceased.

(f) The articles of incorporation of a surviving domestic corporation are amended to the extent provided in the plan of merger.

(g) The ownership interests, shares, or memberships of each entity that is a party to the merger that are to be converted into ownership interests or obligations of or membership or other interests in the surviving entity or into cash or other property are converted.

(6) If the surviving entity in a merger under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state if it transacts business in this state. The surviving entity is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of a domestic corporation that is a party to the merger.

(7) Notwithstanding this section or any other provisions of this act, a corporation shall make distributions to its shareholders or members or to any other person in connection with a merger with a business organization under this section only in conformity with section 301 and with any limitations on distributions in its articles of incorporation.

(8) Section 735, and not this section, applies to a merger if all of the business organizations merging with 1 or more domestic corporations are foreign corporations, domestic business corporations, or foreign business corporations.

(9) As used in this section:

(a) "Business organization" means a domestic or foreign limited liability company, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic business corporation, foreign corporation, or foreign business corporation.

(b) "Entity" means a business organization, domestic corporation, foreign corporation, or foreign business corporation.

(c) "Obligated person" means a general partner of a limited partnership, a partner of a general partnership, or a participant in or an owner of an interest in any other type of business enterprise that, under applicable law, is generally liable for the obligations of the business enterprise.

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