



Ohio Revised Code

Section 1782.431 Merger or consolidation - domestic limited partnership.

Effective: July 1, 1994

Legislation: Senate Bill 74 - 120th General Assembly

(A) Pursuant to an agreement of merger between the constituent entities as provided in this section, a domestic limited partnership and one or more additional domestic limited partnerships or other domestic or foreign entities may be merged into a surviving domestic limited partnership. Pursuant to an agreement of consolidation between the constituent entities as provided in this section, two or more domestic or foreign entities may be consolidated into a new domestic limited partnership formed by such consolidation. If any constituent entity is formed or organized under the laws of any state other than this state or under any chapter of the Revised Code other than this chapter, the merger or consolidation also must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(B) The agreement of merger or consolidation shall set forth all of the following:

- (1) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;
- (2) In the case of a merger, that one or more specified constituent entities will be merged into a specified surviving domestic limited partnership, and, in the case of a consolidation, that the constituent entities will be consolidated into a new domestic limited partnership;
- (3) All statements and matters required to be set forth in such an agreement of merger or consolidation by the laws under which each constituent entity exists;
- (4) In the case of a consolidation, the partnership agreement of the new domestic limited partnership or a provision that the written partnership agreement of a specified constituent limited partnership, a copy of which shall be attached to the agreement of consolidation, with any amendments that are set forth in the agreement of consolidation shall be the agreement of limited partnership of the new domestic limited partnership;



(5) In the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new domestic limited partnership may be served;

(6) In the case of a merger, any changes in the general partners of the surviving domestic limited partnership and, in the case of a consolidation, the general partners of the new domestic limited partnership or a provision specifying the general partners of one or more specified constituent partnerships that shall constitute the initial general partners of the new domestic limited partnership;

(7) The terms of the merger or consolidation; the mode of carrying them into effect; and the manner and basis of converting the interests or shares in the constituent entities into, or substituting the interests or shares in the constituent entities for, interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of interests, shares, evidences of indebtedness, securities, cash, rights, or any other property of the surviving domestic limited partnership, of the new domestic limited partnership, or of any other entity. No such conversion or substitution shall be effected if there are reasonable grounds to believe that the conversion or substitution would render the surviving or new domestic limited partnership unable to pay its obligations as they become due in the usual course of its affairs.

(C) The agreement of merger or consolidation also may set forth any of the following:

(1) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate of merger or consolidation;

(2) A provision authorizing one or more of the constituent entities to abandon the proposed merger or consolidation prior to filing the certificate of merger or consolidation pursuant to section 1782.433 of the Revised Code by action of the general partners of a constituent partnership, the directors of a constituent corporation, or the comparable representatives of any other constituent entity;

(3) In the case of a merger, any amendments to the agreement of limited partnership of the surviving domestic limited partnership, or a provision that the written partnership agreement of a specified constituent limited partnership other than the surviving domestic limited partnership, with any amendments that are set forth in the agreement of merger, shall be the partnership agreement of the



surviving domestic limited partnership;

(4) A statement of, or a statement of the method of determining, the fair value of the assets to be owned by the surviving or new domestic limited partnership;

(5) The parties to the agreement of merger or consolidation in addition to the constituent entities;

(6) Any additional provision necessary or desirable with respect to the proposed merger or consolidation.

(D) To effect the merger or consolidation, the agreement of merger or consolidation shall be adopted by the general partners of each constituent domestic limited partnership and by the limited partners of each constituent domestic limited partnership, other than the surviving domestic limited partnership in the case of a merger, and shall be adopted by or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists. In the case of a merger, the agreement of merger also shall be adopted by the limited partners of the surviving domestic limited partnership if either of the following conditions exist:

(1) The partnership agreement requires such approval or adoption;

(2) The agreement of merger makes any change to the partnership agreement then in effect or authorizes any action that, if it were made or authorized apart from the merger, would require such approval or adoption.

(E) All partners, whether or not they are entitled to vote or act, shall be given written notice of any meeting of limited partners of a constituent domestic limited partnership or of any proposed action by limited partners of a constituent domestic limited partnership, which meeting or action is to adopt an agreement of merger or consolidation. The notice shall be given to the partners either by mail at their addresses as they appear on the records of the partnership or in person and, unless the partnership agreement provides a shorter or longer period, shall be given not less than seven and not more than sixty days before the meeting or the effective date of the action. The notice shall be accompanied by a copy or a summary of the material provisions of the agreement of merger or consolidation.



(F) The vote or action of the general partners of a constituent domestic limited partnership that is required to adopt an agreement of merger or consolidation is the unanimous vote or action of the general partners or such different number or proportion as the partnership agreement may provide. The vote or action of the limited partners of a constituent domestic limited partnership that is required to approve or adopt an agreement of merger or consolidation is the unanimous vote or action of the limited partners or such different number or proportion as the partnership agreement may provide. If the agreement of merger or consolidation would have an effect or authorize any action that under any applicable provision of law or the partnership agreement could be effected or authorized only by or pursuant to a specified vote or action of partners, or of any class or group of partners, the agreement of merger or consolidation also must be adopted or approved by the same vote or action as would be required to effect that change or authorize that action. Each person who will continue to be or who will become a general partner of a partnership that is the surviving or new entity in a merger or consolidation shall specifically agree to continue or to become, as the case may be, a general partner of the partnership that is the surviving or new entity.

(G) At any time before the filing of the certificate of merger or consolidation pursuant to section 1782.433 of the Revised Code, the merger or consolidation may be abandoned by the general partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity if the general partners, directors, or other representatives are authorized to do so by the agreement of merger or consolidation or by the same vote or action as was required to adopt the agreement of merger or consolidation. The agreement of merger or consolidation may contain a provision authorizing the general partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity to amend the agreement of merger or consolidation at any time before the filing of the certificate of merger or consolidation, except that, after the adoption of the agreement of merger or consolidation by the limited partners of any constituent domestic limited partnership, the general partners shall not be authorized to amend the agreement of merger or consolidation to do any of the following:

(1) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by limited partners of the constituent domestic limited partnership in conversion of, or in substitution for, their interests;



(2) Alter or change any term of the partnership agreement of the surviving or new domestic limited partnership, except for alterations or changes that could otherwise be adopted by the general partners of the surviving or new domestic limited partnership;

(3) Alter or change any other terms and conditions of the agreement of merger or consolidation if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the limited partners or any class or group of limited partners of the constituent domestic limited partnership.