



## Ohio Revised Code

### Section 1701.781 Merger or consolidation into domestic corporation - noncorporate entities.

Effective: July 1, 1994

Legislation: Senate Bill 74 - 120th General Assembly

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(A) If the constituent entities in a merger or consolidation include entities that are not corporations, section 1701.78 of the Revised Code does not apply. If the constituent entities in a merger or consolidation include entities that are not corporations, the constituent entities may be merged into a domestic surviving corporation or may be consolidated into a new domestic corporation pursuant to an agreement of merger or consolidation as provided in this section. 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 domestic surviving corporation or, in the case of a consolidation, that the constituent entities will be consolidated into a new domestic corporation. The name of the surviving or new corporation may be the same as or similar to that of any constituent corporation or constituent limited liability company.

(3) All statements and matters required to be set forth in an agreement of merger or consolidation by the laws under which each constituent entity exists;

(4) In the case of a consolidation, the articles of the new corporation, or a provision that the articles of a specified domestic constituent corporation, with any amendments that are set forth in the agreement, shall be the articles of the new corporation;



(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 corporation may be served;

(6) The terms of the merger or consolidation, the mode of carrying them into effect, and the manner and basis of converting the shares or interests of the constituent entities into, or substituting the shares or interests of the constituent entities for, shares, interests, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of shares, interests, evidences of indebtedness, securities, cash, rights, or any other property of the surviving corporation, of the new corporation, or of any other entity, including the parent of any constituent entity, or any other person. No conversion or substitution shall be effected if there are reasonable grounds to believe that the surviving or new corporation would be rendered insolvent by the conversion or substitution.

(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;

(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 1701.81 of the Revised Code by action of the directors of a constituent corporation, action of the general partners of a constituent partnership, or action of the comparable representatives of any other constituent entity;

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

(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 corporation;



- (5) The regulations of the surviving or new corporation, or a provision that the regulations of a specified domestic constituent corporation with any amendments that are set forth in the agreement shall be the regulations of the surviving or new corporation;
- (6) In the case of a consolidation, either the identity of the initial directors of the new corporation, or a provision stating that all of the directors of one or more specified constituent corporations shall constitute the initial directors of the new corporation, and, in the case of a merger, any changes in the directors of the surviving corporation;
- (7) The parties to the agreement in addition to the constituent entities;
- (8) The stated capital, if any, of each class of shares of the surviving or new corporation to be outstanding at the time the merger or consolidation becomes effective;
- (9) 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 approved by the directors of each domestic constituent corporation, adopted by the shareholders of each domestic constituent corporation, other than the surviving corporation in the case of a merger, at a meeting of the shareholders of each corporation held for the purpose, and approved 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 also shall be adopted by the shareholders of the surviving corporation at a meeting held for the purpose, if one or more of the following conditions exist:
- (1) The articles or regulations of the surviving corporation then in effect require that the agreement be adopted by the shareholders or by the holders of a particular class of shares of that corporation;
- (2) The agreement conflicts with the articles or regulations of the surviving corporation then in effect, or changes the articles or regulations, or authorizes any action that, if it were being made or authorized apart from the merger, would otherwise require adoption by the shareholders or by the holders of a particular class of shares of that corporation;



(3) The merger involves the issuance or transfer by the surviving corporation to the shareholders of the other constituent corporation or corporations of the numbers of shares of the surviving corporation that will entitle the holders of the shares immediately after the consummation of the merger to exercise one-sixth or more of the voting power of that corporation in the election of directors;

(4) The agreement of merger makes a change in the directors of the surviving corporation that would otherwise require action by the shareholders or by the holders of a particular class of shares of that corporation.

(E) Notice of each meeting of shareholders of a domestic constituent corporation at which an agreement of merger or consolidation is to be submitted shall be given to all shareholders of that corporation, whether or not they are entitled to vote, and shall be accompanied by a copy or a summary of the material provisions of the agreement.

(F) The vote required to adopt an agreement of merger or consolidation under this section at a meeting of the shareholders of a domestic constituent corporation is the affirmative vote of the holders of shares of that corporation entitling them to exercise at least two-thirds of the voting power of the corporation on the proposal or the different proportion that the articles may provide, but not less than a majority, and such affirmative vote of the holders of shares of any particular class as is required by the articles of that corporation. If the agreement would have an effect that, if accomplished through an amendment to the articles, would entitle the holders of shares of any particular class of a domestic constituent corporation to vote as a class on the adoption of the amendment as provided in division (B) of section 1701.71 of the Revised Code, the agreement also must be adopted by the affirmative vote of the holders of at least two-thirds of the shares of that class, or the different proportion that the articles may provide, but not less than a majority. However, if the agreement would have an effect that, if accomplished through an amendment to the articles, would entitle the holders of shares of any particular class of a domestic corporation to vote as a class on the adoption of the amendment pursuant to division (B)(2) or (4) of section 1701.71 of the Revised Code solely because those shares are to be converted into or substituted for the same number of shares of a class of a different corporation that have express terms identical in all material respects to those of the class of shares so converted or substituted, the agreement is not required to be



adopted by the affirmative vote of the holders of shares of that particular class voting as a class. If the agreement would authorize any particular corporate action that under any applicable provision of law or the articles could be authorized only by or pursuant to a specified vote of shareholders, the agreement also must be adopted by the same affirmative vote as would be required for that action.

(G) At any time before the filing of the certificate of merger or consolidation under section 1701.81 of the Revised Code, the merger or consolidation may be abandoned by the directors of any constituent corporation, the general partners of any constituent partnership, or the comparable representatives of any other constituent entity if the directors, general partners, or other representatives are authorized to do so by the agreement of merger or consolidation or by the same vote of shareholders, partners, or others as is required under division (F) of this section to adopt the agreement. The agreement of merger or consolidation may contain a provision authorizing the directors of any constituent corporation, the general partners of any constituent partnership, or the comparable representatives of any other constituent entity to amend the agreement at any time before the filing of the certificate of merger or consolidation, except that, after the adoption of the agreement by the shareholders of any domestic constituent corporation, the directors shall not be authorized to amend the agreement to do any of the following:

- (1) Alter or change the amount or kind of shares, interests, evidences of indebtedness, other securities, cash, rights, or any other property to be received by the shareholders of the domestic constituent corporation in conversion of, or in substitution for, their shares;
- (2) Alter or change any term of the articles of the surviving or new domestic corporation, except for alterations or changes that could otherwise be adopted by the directors of the surviving or new domestic corporation;
- (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 holders of any class or series of shares of the domestic constituent corporation.

(H) If division (D) of this section does not require adoption of the agreement of merger by the shareholders of the surviving corporation, the approval of the agreement by the directors of that corporation constitutes adoption by that corporation.