



Ohio Revised Code

Section 1702.44 Effect of merger or consolidation.

Effective: May 22, 2012

Legislation: House Bill 267 - 129th General Assembly

(A) When a merger or consolidation becomes effective, all of the following apply:

(1) The separate existence of each constituent entity other than the surviving entity in a merger shall cease, except that whenever a conveyance, assignment, transfer, deed, or other instrument or act is necessary to vest property or rights in the surviving or new entity, the officers, general partners, or other authorized representatives of the respective constituent entities shall execute, acknowledge, and deliver those instruments and do those acts. For these purposes, the existence of the constituent entities and the authority of their respective officers, directors, general partners, or other authorized representatives is continued notwithstanding the merger or consolidation.

(2) In the case of a merger in which the surviving entity is a domestic corporation, the articles of the domestic surviving corporation in effect immediately prior to the time the merger becomes effective shall continue as its articles after the merger except as otherwise provided in the agreement of merger. In the case of a consolidation, the new entity exists when the consolidation becomes effective, and, if it is a domestic corporation, the articles contained in or provided for in the agreement of consolidation shall be its original articles.

(3) The surviving or new entity possesses all assets and property of every description and every interest in the assets and property, wherever located, the rights, privileges, immunities, powers, franchises, and authority, of a public as well as of a private nature, of each constituent entity, and all obligations belonging to or due to each constituent entity, all of which are vested in the surviving or new entity without further act or deed. Any right or interest in respect to any past or future devise, bequest, conditional gift, or trust, property, or fund restricted to particular uses, when vested in or claimed by the surviving or new entity as a result of the merger or consolidation, shall belong to it as a continuation without interruption of the existence and identity of the constituent entity originally named as taker or beneficiary. The surviving or new entity possesses title to any real estate or any interest in the real estate vested in any of the constituent entities. Title to any real estate or any interest in the real estate vested in any constituent entity shall not revert or in any way be



impaired by reason of the merger or consolidation.

(4) The surviving or new entity is liable for all of the obligations of each constituent entity. Any claim existing or any action or proceeding pending by or against any constituent entity may be prosecuted to judgment, with right of appeal, as if the merger or consolidation had not taken place, or the surviving or new entity may be substituted in its place.

(5) All of the rights of creditors of each constituent entity are preserved unimpaired, and all liens upon the property of any constituent entity are preserved unimpaired on only the property affected by those liens immediately prior to the effective date of the merger or consolidation. If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from the merger or consolidation, the former general partner has no liability for any obligation incurred after the merger or consolidation except to the extent that a former creditor of the constituent partnership in which the former general partner was a partner extends credit to the surviving or new entity reasonably believing that the former general partner continued as a general partner of the surviving or new entity.

(B) If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from the merger or consolidation, division (B) of section 1782.434 of the Revised Code applies.

(C) In the case of a merger of a domestic constituent corporation into a foreign surviving corporation, limited liability company, limited partnership, or unincorporated association that is not licensed or registered to transact business in this state or in the case of a consolidation of a domestic constituent corporation into a new foreign corporation, limited liability company, limited partnership, or unincorporated association, if the surviving or new entity intends to transact business in this state and the certificate of merger or consolidation is accompanied by the information described in division (A)(4) of section 1702.43 of the Revised Code, the surviving or new entity shall be considered on the effective date of the merger or consolidation to have complied with the requirements for procuring a license or for registering to transact business in this state as a foreign corporation, limited liability company, limited partnership, or unincorporated association, as the case may be. In that case, a copy of the certificate of merger or consolidation certified by the secretary of state constitutes the license certificate prescribed by the laws of this state for a foreign



corporation transacting business in this state or the application for registration prescribed for a foreign limited partnership, limited liability company, or unincorporated association.

(D) Any action to set aside any merger or consolidation on the ground that any section of the Revised Code applicable to the merger or consolidation has not been complied with shall be brought within ninety days after the effective date of that merger or consolidation or be forever barred.

(E) As used in this section, "corporation" or "entity" applies to both domestic and foreign corporations or entities if the context so permits. In the case of a foreign constituent entity or a foreign new entity, this section is subject to the laws of the state under the laws of which the entity exists or in which it has property.