



Ohio Revised Code

Section 1705.36 [Repealed Effective 2/11/2022 - See R.C. 1706.83] Merger or consolidation into domestic limited liability company.

Effective: July 1, 1994

Legislation: Senate Bill 74

(A) Pursuant to an agreement of merger, a domestic limited liability company and one or more additional domestic or foreign entities may be merged into a surviving domestic limited liability company. Pursuant to an agreement of consolidation, one or more domestic or foreign entities may be consolidated into a new domestic limited liability company. 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, both of the following:

(a) That one or more specified constituent domestic limited liability companies or other specified constituent domestic or foreign entities will be merged into a specified surviving domestic limited liability company. The name of the surviving limited liability company may be the same as or similar to that of any constituent corporation or constituent limited liability company.

(b) If management of the surviving domestic limited liability company is not reserved to its members, any changes in the managers of the surviving domestic limited liability company.

(3) In the case of a consolidation, all of the following:

(a) That the constituent domestic or foreign entities will be consolidated into a new domestic limited



liability company. The name of the new limited liability company may be the same as or similar to that of any constituent corporation or constituent limited liability company.

(b) The operating agreement of the new domestic limited liability company or a provision that the written operating agreement of a specified constituent domestic or foreign limited liability company, a copy of which is attached to the consolidation agreement, with any amendments set forth in the agreement of consolidation, will be the operating agreement of the new domestic limited liability company;

(c) The name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new domestic limited liability company may be served;

(d) If management of the new domestic limited liability company is not reserved to its members, the names of the managers of the new domestic limited liability company or a provision that all of the managers of one or more specified constituent domestic or foreign limited liability companies will constitute the initial managers of the new domestic limited liability company.

(4) 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;

(5) The terms of the merger or consolidation, the mode of carrying the terms into effect, and the manner and basis of converting the interests in the constituent entities into, or substituting the interests in the constituent entities for, interests, shares, evidences of indebtedness, other securities, cash, rights, any other property, or any combination of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property of the surviving domestic limited liability company, of the new domestic limited liability company, or of any other entity. No 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 liability company 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 the filing of the certificate of merger or consolidation by action of the members of a constituent limited liability company or, if the management of a constituent limited liability company is not reserved to its members, of the managers of the constituent limited liability company, by action of the directors of a constituent corporation, or by action of the comparable representatives of any other constituent entity;

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

(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 liability company;

(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 a merger or consolidation, the agreement of merger or consolidation shall be adopted by the managers of each constituent domestic limited liability company in which management is not reserved to its members and by the members of each constituent domestic limited liability company, other than the surviving domestic limited liability company in the case of a merger. The agreement of merger or consolidation also 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 or approved by the members of the surviving domestic limited liability company if either of the following conditions exists:

(1) The operating agreement of that company requires that the agreement of merger be adopted or



approved by the members.

(2) The agreement of merger agreement makes any change to the operating agreement of that company or authorizes any action that, if the change were made or the action were authorized apart from the merger, the change or action would require adoption or approval by the members.

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

(F) For domestic limited liability companies in which management is not reserved to the members, the vote or action of the managers of a constituent domestic limited liability company that is required to adopt an agreement of merger or consolidation is the unanimous vote or action of the managers or any different number or proportion that the operating agreement provides. The vote or action of the members of a constituent domestic limited liability company that is required to adopt or approve an agreement of merger or consolidation is the unanimous vote or action of the members or any different number or proportion that the operating agreement provides. If the agreement of merger or consolidation would have an effect or authorize any action that under any applicable provision of law or the operating agreement could be effected or authorized only by or pursuant to a specified vote or action of members or of any class or group of members, the agreement of merger or consolidation also shall be adopted or approved by the same vote or action as would be required to effect that change or authorize that action.

(G) At any time before the filing of the certificate of merger or consolidation, the merger or consolidation may be abandoned by the managers of any constituent limited liability company, the directors of any constituent corporation, or the comparable representatives of any other constituent entity if the managers, 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 that agreement. The agreement of merger or consolidation may contain a provision authorizing the managers of any constituent limited liability company in which the management is not reserved to its members, the members of any constituent limited liability company, 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 or approval of the agreement of merger or consolidation by the members of any constituent domestic limited liability company, the managers of a constituent domestic limited liability company in which the management is not reserved to its members are not 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 other property to be received by the members of the constituent domestic limited liability company in conversion of or in substitution for their interests;
- (2) Alter or change any term of the operating agreement of the surviving or new domestic limited liability company, except for any alterations or changes that otherwise could be adopted by the managers of the surviving or new domestic limited liability company if its management is not reserved to its members;
- (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 members of any class or group of members of the constituent domestic limited liability company.