



Ohio Revised Code

Section 1705.39 [Repealed Effective 2/11/2022 - See R.C. 1706.83] Conditions following merger or consolidation.

Effective: July 1, 1994

Legislation: Senate Bill 74

(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, ceases, 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 members, managers, officers, directors, or other authorized representatives of the respective constituent entities shall execute, acknowledge, and deliver the instruments and do the acts. For these purposes, the existence of the constituent entities and the authority of their respective members, managers, officers, directors, or other representatives is continued notwithstanding the merger or consolidation.

(2) In the case of a consolidation, the new entity exists when the consolidation becomes effective. If the new entity is a domestic limited liability company, the written operating agreement contained in or provided for in the agreement of consolidation shall be its original operating agreement.

(3) In the case of a merger in which the surviving entity is a limited liability company, except as otherwise provided in the agreement of merger, the written operating agreement of the surviving limited liability company that is in effect immediately prior to the time that the merger becomes effective shall be its operating agreement after the merger.

(4) The surviving or new entity possesses all of the following, and all of the following are vested in the surviving or new entity without further act or deed:

(a) Except to the extent limited by mandatory provisions of applicable law, the following:

(i) All assets and property of every description of each constituent entity and every interest in the assets and property of each constituent entity, wherever the assets, property, and interests are located. Title to any real estate or any interest in real estate that was vested in any constituent entity shall not



revert or in any way be impaired by reason of the merger or consolidation.

(ii) The rights, privileges, immunities, powers, franchises, and authority of each constituent entity, whether of a public or private nature.

(b) All obligations belonging to or due to each constituent entity.

(5) The surviving or new entity is liable for all of the obligations of each constituent entity, including liability to dissenting members, dissenting partners, dissenting shareholders, or other dissenting equity holders. 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 place of any constituent entity in an action or proceeding of that nature.

(6) All rights of creditors of each constituent entity are preserved unimpaired. All liens on the property of any constituent entity are preserved unimpaired but only on the property that was affected by the respective 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 entity surviving or the new entity resulting from the merger or consolidation, then the former general partner shall have 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 entity surviving or the new entity resulting from the merger or consolidation, the provisions of division (B) of section 1782.434 of the Revised Code shall apply.

(C) In the case of a merger of a constituent domestic limited liability company into a foreign surviving limited liability company, corporation, or limited partnership that is not licensed or registered to transact business in this state or in the case of a consolidation of a constituent domestic limited liability company into a new foreign limited liability company, corporation, or limited partnership, 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 (B)(4) of section 1705.38 of the Revised Code, then, on the effective date of the merger or consolidation, the surviving or new entity shall be considered to have complied with the requirements for procuring a license to transact business in this state as a foreign corporation or the requirements for registration to transact business in this state as a foreign limited liability company or limited partnership, whichever applies. A copy of the certificate of merger or consolidation certified by the secretary of state constitutes the application for registration prescribed for a foreign limited liability company or foreign limited partnership and the license certificate prescribed for a foreign corporation.

(D) Any action to set aside any merger or consolidation on the ground of noncompliance with any section of the Revised Code applicable to the merger or consolidation shall be brought within ninety days after the effective date of the merger or consolidation or forever be barred.

(E) In the case of an entity organized or existing under the laws of any state other than this state, this section is subject to the laws of the other state under which that entity exists or of the other state in which that entity has property.