



## Ohio Revised Code

### Section 1745.46 Merger or consolidation into domestic unincorporated nonprofit association.

Effective: May 22, 2012

Legislation: House Bill 267 - 129th General Assembly

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(A)(1) Pursuant to an agreement of merger, an unincorporated nonprofit association and one or more additional domestic or foreign entities may be merged into a surviving unincorporated nonprofit association. Pursuant to an agreement of consolidation, one or more domestic or foreign entities may be consolidated into a new unincorporated nonprofit association. 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.

(2) To effect a merger or consolidation under this section, the manager or managers of each constituent unincorporated nonprofit association shall approve an agreement of merger or consolidation to be signed by the manager, the chairperson, the president, or a vice-president and by the secretary or an assistant secretary or, if there are no officers, by one or more authorized managers. The agreement of merger or consolidation shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

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

(a) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(b) That the named constituent entities have agreed to merge into a specified constituent unincorporated nonprofit association, designated in this section as the surviving unincorporated nonprofit association, or that the named constituent entities have agreed to consolidate into a new unincorporated nonprofit association to be formed by the consolidation, designated in this section as the new unincorporated nonprofit association;



(c) 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;

(d) The name of the surviving or new unincorporated nonprofit association, which may be the same as or similar to that of any constituent unincorporated nonprofit association;

(e) The place in this state where the principal office of the surviving or new unincorporated nonprofit association is to be located;

(f) The names and addresses of the first managers and officers, if any, of the surviving or new unincorporated nonprofit association and, if desired, their term or terms of office;

(g) The name and address of the statutory agent, if any, upon whom any process, notice, or demand against any constituent entity or the surviving or new unincorporated nonprofit association may be served;

(h) The terms of the merger or consolidation and the mode of carrying those terms into effect;

(i) The governing principles of the surviving or new unincorporated nonprofit association or a provision to the effect that the governing principles of a specified constituent unincorporated nonprofit association shall be the governing principles of the surviving or new unincorporated nonprofit association or to the effect that the voting members or the managers of the surviving or new unincorporated nonprofit association may adopt governing principles, or any combination of them.

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

(a) The specification of a date, which may be the date of the filing of the agreement or a date subsequent to that date of filing, upon which the merger or consolidation shall become effective;

(b) A provision conferring upon the managers of one or more of the constituent unincorporated nonprofit associations or the comparable representatives of any other constituent entity the power to abandon the merger or consolidation prior to the filing of the agreement;



(c) Any additional provision permitted to be included in the governing principles of a newly formed unincorporated nonprofit association;

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

(B)(1) A merger or consolidation in which a public benefit association is one of the constituent entities shall be approved by the court of common pleas of the county in this state in which the principal office of the public benefit association is located in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding and in which the attorney general may intervene as of right. No approval by the court under division (B)(1) of this section is required if either of the following applies:

(a) A public benefit association is the surviving entity in the case of a merger and continues to be a public benefit association or is the new unincorporated nonprofit association in the case of a consolidation and continues to be a public benefit association.

(b) A public benefit association is not the surviving entity in the case of a merger or is not the new unincorporated nonprofit association in the case of a consolidation, and all of the following apply:

(i) On or prior to the effective date of the merger or consolidation, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit association or the fair market value of the public benefit association if it is to be operated as a business concern, are transferred or conveyed to one or more persons that would have received its assets under division (D)(2) of section 1745.52 of the Revised Code had it voluntarily dissolved.

(ii) The public benefit association returns, transfers, or conveys any assets held by it upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger or consolidation, in accordance with that condition.



(iii) The merger or consolidation is approved by a majority of managers of the public benefit association who will not receive any financial or other benefit, directly or indirectly, as a result of the merger or consolidation or by agreement, and who are not and will not as a result of the merger or consolidation become members, partners, or other owners, however denominated, of, shareholders in, managers, officers, employees, agents, or other representatives of, or consultants to, the surviving or new entity.

(2) At least twenty days before consummation of any merger or consolidation of a public benefit association pursuant to division (B)(1)(b) of this section, written notice shall be delivered to the attorney general's charitable law section. The notice shall include a copy of the proposed plan of merger or consolidation. The attorney general's charitable law section may review a proposed merger or consolidation of a public benefit association under division (B)(1)(b) of this section. The attorney general may require pursuant to section 109.24 of the Revised Code the production of the documents necessary for review of a proposed merger or consolidation under division (B)(1)(b) of this section. The attorney general may retain, at the expense of the public benefit association, one or more experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, that the attorney general considers reasonably necessary to provide assistance in reviewing a proposed merger or consolidation under division (B)(1)(b) of this section. The attorney general may extend the date of any merger or consolidation of a public benefit association under division (B)(1)(b) of this section for a period not to exceed sixty days and shall provide notice of that extension to the public benefit association. The notice shall set forth the reasons necessitating the extension.

(3) No member, other than a member that is a public benefit entity, or manager of a public benefit association in that person's capacity as a member or manager may receive or keep anything as a result of a merger or consolidation other than as a member or manager in the surviving or new public benefit association without the prior written consent of the attorney general or of the court of common pleas of the county in this state in which the principal office of the public benefit association is located in a proceeding in which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding and in which the attorney general may intervene as of right. The court shall approve the transaction if it is in the public interest.



(4) The attorney general may institute a civil action to enforce the requirements of divisions (B)(1), (2), and (3) of this section in the court of common pleas of the county in this state in which the principal office of the public benefit association is located or in the Franklin county court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies.