



Ohio Revised Code

Section 1776.68 Merger or consolidation of partnerships into domestic partnership.

Effective: August 6, 2008

Legislation: House Bill 332 - 127th General Assembly

(A)(1) Pursuant to a written agreement of merger between the constituent entities as this section provides, a domestic partnership and one or more additional domestic partnerships or other domestic or foreign entities may be merged into a surviving domestic partnership. Pursuant to a written agreement of consolidation between the constituent entities, two or more domestic or foreign entities may be consolidated into a new domestic partnership formed by that consolidation.

(2) When a 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, no merger or consolidation may occur pursuant to this section unless permitted under the chapter of the Revised Code under which each domestic constituent entity exists and the laws under which each foreign constituent entity exists.

(B) Any written agreement of merger or consolidation of constituent entities into a surviving or new domestic partnership shall set forth all of the following:

(1) The name and the form of entity of each constituent entity, the state under the laws of which each constituent entity exists, and the name of the surviving or new domestic partnership;

(2) In the case of a merger, that one or more specified constituent entities is being merged into a specified surviving domestic partnership, and, in the case of a consolidation, that the constituent entities are being consolidated into a new domestic partnership;

(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 partnership agreement of the new domestic partnership or a provision that the written partnership agreement of a specified constituent partnership, a copy of



which partnership agreement shall be attached to the agreement of consolidation, with any amendments that are set forth in the agreement of consolidation, shall be the agreement of partnership of the new domestic partnership;

(5) In the case of a merger, any changes in the partners of the surviving domestic partnership and, in the case of a consolidation, the partners of the new domestic partnership or a provision specifying the partners of one or more specified constituent partnerships that constitute the initial partners of the new domestic partnership;

(6) The terms of the merger or consolidation, the mode of carrying the terms into effect, and the manner and basis of converting the interests or shares in the constituent entities into, or exchanging the interests or shares in the constituent entities for, any interests, evidences of indebtedness, other securities, cash, rights, any other property, or any combination of property of the surviving domestic partnership, the new domestic partnership, or any other entity. No such conversion or exchange shall be effected if there are reasonable grounds to believe that the conversion or exchange would render the surviving or new domestic partnership unable to pay its obligations as they become due in the usual course of its affairs.

(C) The written agreement of merger or consolidation of constituent entities into a surviving or new domestic partnership 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 filing the certificate of merger or consolidation pursuant to section 1776.70 of the Revised Code by action of the partners of a constituent partnership, the directors of a constituent corporation, or the comparable representatives of any other constituent entity;

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



(4) A statement of, or a statement of the method of determining, the fair value of the assets to be owned by the surviving domestic partnership;

(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 the merger or consolidation, the agreement of merger or consolidation shall be adopted by the partners of each constituent domestic partnership, including the surviving domestic partnership in the case of a merger, and 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.

(E) All partners, whether or not they are entitled to vote or act, shall be given written notice of any meeting of the partners of a constituent domestic partnership or of any proposed action by the partners of a constituent domestic partnership, which meeting or action is to adopt an agreement of merger or consolidation. The notice shall be given either by mail at the address on the records of the partnership or in person. Unless the partnership agreement provides a shorter or longer period, the notice shall be given not less than seven and not more than sixty days before the meeting or the effective date of the action. The notice shall be accompanied by a copy or a summary of the material provisions of the agreement of merger or consolidation.

(F)(1) The unanimous vote or action of the partners or such different number or proportion as provided in writing in the partnership agreement is required to adopt an agreement of merger or consolidation pursuant to this section. If the agreement of merger or consolidation would effect or authorize any action that under any applicable provision of law or the partnership agreement could be effected or authorized only pursuant to a specified vote or action of the partners, or of any class or group of partners, the same vote or action as required to effect that change or authorize that action is required to adopt or approve the agreement of merger or consolidation.

(2) An agreement of merger or consolidation is not effective against a person who would continue to be or who would become a general partner of a partnership that is the surviving or new entity in a



merger or consolidation unless that person specifically agrees in writing either to continue or to become, as the case may be, a general partner of the partnership that is the surviving or new entity.

(G)(1) At any time before the filing of the certificate of merger or consolidation pursuant to section 1776.70 of the Revised Code, if the agreement of merger or consolidation so authorizes, the partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity may abandon the merger or consolidation by the same vote or action as was required to adopt the agreement of merger or consolidation.

(2) The agreement of merger or consolidation may contain a provision authorizing less than all of the partners of any constituent partnership, 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 of the agreement of merger or consolidation by the partners of any constituent domestic partnership, only with the approval of all of the partners may an agreement of merger or consolidation be amended to do any of the following:

(a) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by partners of the constituent domestic partnership in conversion of, or in exchange for, their interests;

(b) Alter or change any term of the partnership agreement of the surviving or new domestic partnership, except for alterations or changes that could be adopted by those partners by the terms of the partnership agreement of the surviving or new domestic partnership as would be in effect after the merger or consolidation;

(c) 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 partners or any class or group of partners of the constituent domestic partnership.

(H) As used in this section and sections 1776.69 to 1776.79 of the Revised Code, "general partner" means either of the following:



- (1) A partner in a partnership that is not a limited liability partnership;
- (2) A general partner in a limited partnership.