



Ohio Revised Code

Section 1776.71 Effect of merger or consolidation.

Effective: August 6, 2008

Legislation: House Bill 332 - 127th 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 partners, officers, 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 partners, officers, directors, or other representatives continue notwithstanding the merger or consolidation.

(2) In a consolidation, the new entity exists when the consolidation becomes effective. If the new entity is a domestic partnership, its original partnership agreement is the written partnership agreement that is contained in or provided for in the agreement of consolidation.

(3) In a merger in which the surviving entity is a partnership, the written partnership agreement of the surviving partnership that is in effect immediately prior to the time the merger becomes effective is its partnership agreement after the merger except as otherwise provided in the agreement of 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 any further act or deed:

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

(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 does not revert and is not in any way impaired by reason of the merger or consolidation.



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

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

(5) The surviving or new entity is liable for all the obligations of each constituent entity, including liability to 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.

(6) All 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 before the effective date of the merger or consolidation. When a 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 former partner is deemed to have dissociated as of that effective date of the merger or consolidation and the former partner's liability to third parties is determined in accordance with section 1776.56 of the Revised Code. The filing of a certificate of merger or consolidation from which it is clear that the former partner is not a general partner of the surviving or new entity has the effect provided by the filing of a statement of dissociation as provided in section 1776.57 of the Revised Code.

(B) When a partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, unless that partner agrees otherwise in writing, the surviving or new entity shall indemnify the partner against all present or future liabilities of the constituent partnership of which the partner was a partner. Any amount payable pursuant to section 1776.77 of the Revised Code to a partner of the constituent partnership in which that partner was a partner is a present liability of that constituent partnership.

(C) In the case of a merger of a constituent domestic partnership into a foreign surviving corporation, limited liability company, limited partnership, or limited liability partnership that is not licensed or registered to transact business in this state, or a consolidation of a constituent domestic



partnership into a new foreign corporation, limited liability company, limited partnership, or limited liability partnership when 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 1776.70 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 or for registration to transact business in this state as a foreign corporation, limited liability company, limited partnership, or limited liability partnership, as the case may be. In such a case, a copy of the certificate of merger or consolidation certified by the secretary of state constitutes the license certificate prescribed for a foreign corporation or the application for registration prescribed for a foreign limited liability company or foreign limited partnership.

(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 the merger or consolidation or forever be barred.

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