



## Ohio Revised Code

### Section 1782.434 Surviving or new entity.

Effective: October 4, 1996

Legislation: House Bill 495 - 121st General Assembly

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(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 general partners, officers, or other authorized representatives of the respective constituent entities shall execute, acknowledge, and deliver such instruments and do such acts. For these purposes, the existence of the constituent entities and the authority of their respective general partners, 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 and, if the new entity is a domestic limited partnership, the written partnership agreement contained in or provided for in the agreement of consolidation shall be its original partnership agreement. In the case of a merger in which the surviving entity is a limited partnership, the written partnership agreement of the surviving limited partnership in effect immediately prior to the time the merger becomes effective shall be its partnership agreement after the merger except as otherwise provided in the agreement of merger.

(3) The surviving or new entity possesses all assets and property of every description, and every interest in the assets and property, wherever located, and the rights, privileges, immunities, powers, franchises, and authority, of a public as well as of a private nature, except to the extent limited by the mandatory provisions of applicable law, of each constituent entity, and all obligations belonging to or due to each constituent entity, all of which are vested in the surviving or new entity without further act or deed. Title to any real estate or any interest in the real estate vested in any constituent entity shall not revert or in any way be impaired by reason of such merger or consolidation.

(4) 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.

(5) 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 such liens immediately before 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 general 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, then unless that general partner agrees otherwise in writing he shall be indemnified by the surviving or new entity against all present or future liabilities of the constituent partnership of which he was a general partner. Any amount payable pursuant to section 1782.436 of the Revised Code to a partner of the constituent partnership in which that general partner was a partner shall be a present liability of that constituent partnership.

(C) In the case of a merger of a constituent domestic limited partnership into a foreign surviving corporation, limited liability company, 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 partnership into a new foreign corporation, limited liability company, 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 1782.433 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, or limited 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 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) 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 state under the laws of which the entity exists or in which it has property.