

STATE OF ALABAMA



ALABAMA LAW INSTITUTE

AMENDMENTS TO TITLE 10A: MERGER AND CONVERSION PROVISIONS

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AMENDMENTS TO TITLE 10A: MERGER AND CONVERSION PROVISIONS

October 2013

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PREFACE

The Alabama Law Institute presents to the Bench and Bar of Alabama, for consideration and constructive criticism the following proposed act.

In 2011 the new Alabama and Nonprofit Entities Code became effective. Since that time the Institute created the Standing Committee on Business Entities to continuously address amendments to improve the operation of Alabama's business formation and governance laws, as needed over time.

These proposed revisions to the merger and conversion portions contained in Chapter 1 of the Alabama Business and Nonprofit Entities Code are the second project completed by the this committee. During the 2012 Legislative Session the Alabama Legislature passed a bill to amend aspects of the name reservation process as recommended by the committee. Similarly, this bill improves the operation of the laws related to the conversion and merger of business entities.

The committee is chaired by Jim Wilson of Birmingham.

Othni J. Lathram
Director

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 10A-1-4.02, 10A-1-8.01, 10A-1-8.02, and 10A-1-8.04, Code of Alabama 1975, are amended to read as follows:

§ 10A-1-4.02. Place of filing and filing duties of judge of probate and Secretary of State.

(a) The following filing instruments shall be delivered to the judge of probate for filing, except as the chapter applicable to an entity or other provision of this title provides for filing by the Secretary of State or another filing officer:

(1) certificates of formation or any amendments or restatements thereof;

(2) certificates of termination;

(3) certificates of revocation of termination;

(4) certificates of correction to any filing instrument required to be delivered to the office of the judge of probate for filing; and

(5) any other filing instrument required or permitted under this title to be delivered to the judge of probate for filing.

(b) Any of the following filing instruments delivered to the office of the judge of probate for filing shall be accompanied by an additional exact or conformed copy to permit the judge of probate to transmit to the Secretary of State a certified copy thereof as required by subsection (g):

(1) certificates of formation;

(2) amendments to certificates of formation that alter the name of any entity;

(3) restated certificates of formation;

(4) certificates of termination;

(5) certificates of revocation of termination; and

(6) certificates of correction correcting any of the foregoing filing instruments.

(c) The following filing instruments shall be delivered to the Secretary of State for filing:

(1) certificates or articles of merger, statements of conversion ~~articles of consolidation~~, and articles of share exchange;

(2) registration of a foreign entity for authority to transact business in this state;

(3) the annual report of a business corporation, which may be made as provided in Section 10A-2-16.22 by filing with the Department of Revenue the public record information required by Chapter 14A of Title 40, together with the prescribed fee for the annual report;

(4) for corporations created by an act of the Legislature prior to the adoption of the Constitution of Alabama of 1901, or for entities which have resulted from a merger, share exchange, or conversion, all filing instruments required by this title to be delivered to the judge of probate for filing shall be delivered to the Secretary of State for filing;

(5) any other filing instrument required or permitted under this title to be delivered to the Secretary of State for filing;

(6) articles of correction of any filing instrument required or permitted to be delivered to the Secretary of State for filing; and

(7) any other filing instrument required or permitted to be filed under this title and not expressly required or permitted to be delivered to the Secretary of State or judge of probate or other designated filing office for filing.

(d) The filing of partnership statements shall be as provided in Section 10A-8-1.06.

(e) Certificates of merger, aArticles of merger or share exchange, and statements of conversion delivered to the Secretary of State for filing shall be accompanied by the additional number of exact or conformed copies of articles as may be required for purposes of subsection (g) hereof.

(f) If the judge of probate or Secretary of State, as the case may be, finds that a filing instrument delivered under this section and Section 10A-1-4.01 substantially conforms to the provisions of this title that apply to the entity and that all required fees have been paid, and if, in the case of a certificate of formation or an amendment to a certificate of formation that would change the name of the entity, the judge of probate finds that the name of the entity has been reserved under Section 10A-1-5.11, the judge of probate or Secretary of State, as the case may be, shall file it immediately upon delivery by:

(1) endorsing "filed," together with his or her name and official title and the date and time of receipt on the instrument and all copies required hereunder and on the receipt for the filing fee;

(2) accepting it into the filing system adopted by the judge of probate or Secretary of State and assigning the instrument a date of filing; and

(3) delivering a copy thereof, endorsed as provided in subdivision (1), with the filing fee receipt, or acknowledgment of receipt of the instrument if no filing fee is required, to the entity or its representative.

(g) In the case of any of the filing instruments described in subsection (b), the judge of probate shall within 10 days transmit a certified copy of the filing instrument to the Secretary of State. In the case of certificates or articles of merger, statements of conversion, or articles of share exchange, the Secretary of State shall promptly transmit a certified copy thereof ~~of the articles of merger, conversion, or share exchange~~ to the office of the judge of probate of the county in which each domestic entity's ~~of the entities'~~ certificates of formation, if any, is ~~are~~ filed.

(h) If the judge of probate or Secretary of State, as the case may be, refuses to file a filing instrument, he or she shall return it to the domestic or foreign entity or its representative within

seven days after the filing instrument was delivered, together with a brief, written explanation of the reason for his or her refusal.

(i) The judge of probate's or Secretary of State's duty to file filing instruments under this title is ministerial. His or her filing or refusing to file a filing instrument does not:

(1) affect the validity or invalidity of the filing instrument in whole or in part;

(2) relate to the correctness or incorrectness of information contained in the filing instrument; or

(3) create a presumption that the filing instrument is valid or invalid or that information contained in the filing instrument is correct or incorrect.

(j) The Secretary of State shall keep an alphabetical list of domestic and foreign entities, the certificates of formation, or registrations for authority to transact business in this state, for which are filed in his or her office, together with the data contained in the filing instruments.

§ 10A-1-8.01. Conversion of business and nonprofit entities.

(a) A conversion of an entity ~~to any other form of entity~~ may be accomplished as provided in this section:

(1) CORPORATIONS.

a. ~~A corporation may be converted to any other form of entity pursuant to this subsection.~~

~~b.~~ The terms and conditions of a conversion of a corporation other than a nonprofit corporation ~~to another entity~~ must be approved by all of the corporation's shareholders except as otherwise provided in the corporation's governing documents ~~articles of incorporation~~; but in no case may the vote required for shareholder approval be set at less than a majority of the votes entitled to be cast by each voting group entitled by law to vote separately on the conversion. If the governing documents ~~articles of incorporation~~ provide for approval of a conversion by less than all of a corporation's shareholders, approval of the conversion shall constitute corporate action subject to dissenter's rights pursuant to Article 13 of Chapter 2 of the Alabama Business Corporation Law. No conversion of a corporation to a general or limited partnership may be effected without the consent in writing of each shareholder who ~~is to be a general partner in~~ will have personal liability with respect to the converted entity, notwithstanding any provision in the governing documents ~~articles of incorporation~~ of the converting corporation providing for less than unanimous shareholder approval for the conversion.

e ~~b.~~ The terms and conditions of a conversion of a nonprofit corporation ~~to another form of entity~~ must be approved by all the corporation's members entitled to vote thereon, if it is a nonprofit corporation with members with voting rights, except as otherwise provided in the corporation's governing documents ~~certificate of formation~~; but in no case may the governing documents ~~certificate of formation~~ provide for approval by less than a majority of the members entitled to vote thereon. If the converting nonprofit corporation has no members, or no members entitled to vote thereon, the terms and conditions of the conversion must be approved by a unanimous vote of the board of directors of the converting nonprofit corporation, except as

otherwise provided in the governing documents certificate of formation; but in no case may the governing documents certificate of formation provide for approval by less than a majority of the board of directors.

(2) LIMITED PARTNERSHIPS.

~~a. A limited partnership may be converted to any other form of entity pursuant to this subsection.~~

~~—b.—~~The terms and conditions of a conversion of a limited partnership ~~to another entity~~ must be approved by all of the partners or as otherwise provided in the partnership agreement. No conversion of a limited partnership to a general partnership may be effected without the consent in writing of each limited partner who ~~is to be a general partner in~~ will have personal liability with respect to the converted entity, notwithstanding any provision in the limited partnership agreement of the converting limited partnership providing for approval of the conversion by less than all partners.

(3) LIMITED LIABILITY COMPANIES.

~~a. A limited liability company may be converted to any other form of entity pursuant to this subsection.~~

~~—b.—~~The terms and conditions of a conversion of a limited liability company ~~to another entity~~ must be approved by all of the limited liability company's members or as otherwise provided in the limited liability company's governing documents. No conversion of a limited liability company to a general or limited partnership may be effected without the consent in writing of each member who ~~is to be a general partner in~~ will have personal liability with respect to the converted entity, notwithstanding any provision in the governing documents of the converting limited liability company providing for less than unanimous member approval for the conversion.

(4) GENERAL PARTNERSHIPS, INCLUDING REGISTERED LIMITED LIABILITY PARTNERSHIPS.

~~a. A general partnership, including a registered limited liability partnership, may be converted to any other form of entity pursuant to this subsection.~~

~~—b.—~~The terms and conditions of a conversion of a general partnership ~~to another entity~~ must be approved by all of the partners or as otherwise provided in the partnership agreement. No conversion of a registered limited liability partnership to a general or limited partnership may be effected without the consent in writing of each partner who ~~is to be a general partner without limited~~ will have personal liability in with respect to the converted entity, notwithstanding any provision in the partnership agreement of the converting registered limited liability partnership providing for less than unanimous partner approval for the conversion.

(5) REAL ESTATE INVESTMENT TRUST.

~~a. A real estate investment trust may be converted to any other form of entity pursuant to this subsection.~~

~~—b.—~~ The terms and conditions of a conversion of a real estate investment trust to ~~another entity~~ must be approved by all of the trust's shareholders except as otherwise provided in the trust's declaration of trust; but in no case may the vote required for shareholder approval be set at less than ~~two-thirds~~ a majority of all the votes entitled to be cast. No conversion of a real estate investment trust to a general or limited partnership may be effected without the consent in writing of each shareholder who ~~is to be a general partner in~~ will have personal liability with respect to the converted entity, notwithstanding any provision in the declaration of trust of the converting real estate investment trust providing for less than unanimous shareholder approval for the conversion.

(6) OTHER ENTITY.

~~a. Any entity not otherwise specified above may be converted to any other form of entity pursuant to this subsection.~~

~~—b.—~~ The terms and conditions of a conversion of ~~the any entity into any other form of entity not specified above~~ must be approved by all owners of the converting entity. No conversion of any entity shall be effected without the consent in writing of any owner of the converting entity who has limited liability and who shall become an owner without limited liability protection of the converted entity.

(7) ENTITY WITHOUT OWNERS.

e. If the converting entity does not have owners, the terms and conditions of the conversion must be unanimously approved by the governing authority of the converting entity.

(b) After the conversion is approved ~~by the shareholders, partners, members, owners, directors, or other governing authority of the converting entity~~ pursuant to subsection (a), the following documentation and filing requirements apply:

(1) If the conversion is to a corporation, limited liability company, limited partnership, real estate investment trust, or other entity required to file a certificate of formation, the ~~appropriate certificate of formation for the converted entity shall be~~ statement of conversion, when filed in ~~the office in which filing is required for the formation of the converted entity in~~ accordance with Article Section 10A-1-4. 02(c)(1), In addition shall be deemed to: ~~any information~~ (1) constitute a certificate of formation or statements otherwise required by law to be included in the amended and restated certificate of formation, any certificate of formation as the case may be, for the converted entity; and (2) shall include the following: satisfy the requirements of Section 10A-1-4.02(a).

~~a. A statement that the corporation, limited liability company, limited partnership, real estate investment trust or other converted entity required to file a certificate of formation was converted from another entity,~~

(2) In addition to any information or statements otherwise required by law to be included in a certificate of formation for a filing entity, a statement of conversion shall include the following:

a. The name and type of entity of the converted entity and the jurisdiction of its governing statute and its unique identifying number or other designation as assigned by the Secretary of State, if any.

b. The former name of the converting entity.

c. A statement that the converting entity has been converted into the converted entity.

ed. The public office where the certificate of formation ~~and certificate of termination~~, if any, of the converting entity is filed and the date of the filing thereof.

de. If the converted entity is one in which one or more owners lack limited liability protection, a statement that each owner of the converting entity who is to become an owner without limited liability protection of the resulting entity has consented in writing to the conversion as required by this section.

ef. A statement that the conversion was approved pursuant to this section and, if either the converting entity or the converted entity is a foreign entity, that the conversion was approved as required by the governing statute of such foreign entity.

~~(23) If After the conversion is to a general partnership or other entity formed without filing a certificate of formation, no instrument is required to be filed under subdivision (1), but the converting entity must comply with the filing requirements of subdivision (3).~~

~~(3) Any converting entity required to file a certificate of termination with respect to the end of its existence shall file the certificate of termination has become effective in accordance with Article 4 subsection (c), then, as provided in the office in which the certificate is Section 10A-1-4.02(c)(4), all filing instruments with respect to the converted entity that would otherwise be required by law this title to be filed. In addition to any information otherwise required by law to delivered to the judge of probate for filing shall instead be included in the certificate of termination, the certificate of termination shall include the following:~~

~~a. A statement that the converting entity was converted to another entity.~~

~~b. The name of the entity to which the converting entity is converted, and the public office where the converted entity's certificate of formation, if any, is being filed.~~

~~(4) A general partnership, or other business entity not required to file a certificate of termination, converting to another entity is not required to file any instrument under subdivision (3) but the entity to which the general partnership or other entity not required to file a certificate of termination is converted is required to comply with the delivered to the Secretary of State for filing requirements, if any, of subdivision (1).~~

(c) A conversion takes effect as follows:

(1) ~~If both a certificate of formation and a certificate of termination are required to be filed, upon the filing of the later to be filed of the certificate of formation of the converted entity and the certificate of termination of the converting entity. If any certificate of formation is required to be filed pursuant to subdivision (1) of subsection (b), any certificate of termination required to be filed pursuant to subdivision (3) of subsection (b) shall not be deemed effective~~

~~until the filing of the certificate of formation.~~ Upon the filing of the statement of conversion in accordance with Section 10A-1-4.02(c)(1), except as otherwise provided in subdivision (2).

~~(2) If only a certificate of formation of the converted entity or a certificate of termination of the converting entity is required to be filed, upon the filing of the certificate of formation or certificate of termination.~~

(32) Upon any delayed effective date if, but only if, each of the following requirements is satisfied:

a. A delayed effective date is specified in ~~both the certificate~~ statement of formation conversion, and ~~certificate of termination, if both are required to be filed, but only if the identical date is specified in both certificates, or if only a certificate of formation or certificate of termination is required to be filed, a delayed effective date and time is specified in that certificate, and~~

b. ~~The certificate of formation or certificate of termination, if only one is required, is filed, or the certificate of formation and certificate of termination, if both are required, are filed before the effective date specified.~~ if either the converted entity or the converting entity is a foreign entity, then any filing required under the governing statute of such foreign entity to effectuate the conversion is filed before the effective date specified in the statement of conversion.

(43) If a delayed effective date is specified, and the conditions of subdivision (3) are met, the conversion is effective at the close of business, unless a different hour is specified, on that date.

~~(5) If no certificate of formation or certificate of termination is required to be filed, the conversion takes effect as designated by the converting entity.~~

(d) Conversion has the following effects:

(1) ~~a. —A limited partnership, general partnership, corporation, limited liability company, real estate investment trust, or~~ Any other entity that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion; and the conversion shall constitute a continuation of the existence of the converting entity in the form of the converted entity. The conversion shall not be deemed to constitute a dissolution or termination of the converting entity.

b. If the Secretary of State has assigned a unique identifying number or other designation to the converting entity, that number or designation shall continue to be assigned to the converted entity.

(2) ~~a. All property, real, personal, and mixed owned by the converting entity; all rights, immunities, and franchises of the converting entity, of a public as well as a private nature; and all debts or obligations due the converting entity, are taken~~ shall remain owned and deemed to be transferred and held by, vested in, and due to, the converted entity ~~without the necessity of any deed or other instrument of conveyance, shall not be deemed to have been transferred to the converted entity as a consequence of the conversion, and without payment and without collection~~

~~by any filing officer of any deed or other transfer tax or fee. shall not revert or be in any way impaired by reason of the conversion.~~

~~b. A certified copy of any certificate of termination of the converting entity, or in the case of a converting entity that is not required to file a certificate of termination, a statement containing the information specified in subdivision (3) of subsection (b), may of conversion may~~ be filed in the office of the judge of probate in any county in which the converting entity owned real property, to be recorded without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate shall, however, be entitled to collect the filing fees prescribed ~~in this title~~ by Section 12-19-90. Any filing shall evidence chain of title, but lack of filing shall not affect the converted entity's title to the real property.

~~(3) The converted entity shall~~ All debts, obligations, and other liabilities of the converting entity shall continue as the debts, obligations, and liabilities of the converted entity and the converted entity shall continue to be responsible and liable for all the liabilities and obligations of the converting entity. Neither the rights of creditors, nor any liens upon the property of the converting entity, shall be impaired by the conversion, and an owner of the converted entity shall continue to be liable for all obligations of the converting entity for which the owner was personally liable before the conversion.

(4) Any claim existing or any action or proceeding of any kind pending by or against the converting entity ~~may shall~~ be prosecuted or continued as if the conversion had not occurred, ~~or the converted entity may be substituted in the action or proceeding for the converting entity.~~

~~(5) a. No owner of an entity with limited liability protection shall, as a result of a conversion, become an owner of an entity without limited liability protection unless the owner with limited liability protection has given approval in writing for the conversion.~~

~~b.~~ An owner with limited liability protection remains liable, if at all, for an obligation incurred by the converting entity before the conversion takes effect only to the extent, if any, the owner would have been liable if the conversion had not occurred.

~~eb.~~ An owner with limited liability protection who becomes an owner without limited liability protection is liable for an obligation of the converted entity incurred after conversion to the extent provided for by the laws applicable to the converted entity.

(6) An owner without limited liability protection who as a result of a conversion becomes an owner of a converted entity with limited liability protection remains liable for an obligation incurred by the converting entity before the conversion takes effect only to the extent, if any, the owner would have been liable if the conversion had not occurred.

§ 10A-1-8.02. Mergers of entities.

(a) Pursuant to an approved plan of merger, a corporation, limited partnership, limited liability company, general partnership, real estate investment trust, or any other entity may merge with any other entity or entities, whether the other entity or entities are the same or another form of entity, as provided in this section.

(b) A plan of merger shall include the following:

- (1) The name of each entity that is a party to the merger.
- (2) The name of the surviving entity into which the other entity or entities will merge.
- (3) The form of the surviving entity and the status in the surviving entity of each owner of an entity that is a party to the merger.
- (4) The terms and conditions of the merger.
- (5) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part.
- ~~(6) The street address of the surviving entity's principal place of business.~~

(c) ~~Owners shall approve and consent to a~~ A plan of merger as follows may set forth:

- (1) Amendments to the certificate of formation of the surviving entity; and
- (2) Other provisions relating to the merger.

(d) A plan of merger shall be approved as follows:

(1) CORPORATIONS.

a. In the case of a corporation other than nonprofit corporation that is a party to a merger, the plan of merger shall must be approved in accordance with the procedures and by the shareholder vote required by Section 10A-2-11.03 or Section 10A-2-11.04. If the governing documents articles of incorporation of such a corporation provide for approval of a merger by less than all of a the corporation's shareholders, approval of the merger shall constitute corporate action subject to dissenter's rights pursuant to Article 13 of Chapter 2. No merger of a corporation into a general or limited partnership may be effected without the consent in writing of each shareholder who will have personal liability with respect to the is to be a general partner in the resulting or surviving entity, notwithstanding any provision in the governing documents articles of incorporation of the corporation that is a party to the merger providing for less than unanimous shareholder approval for the conversion.

b. In the case of a nonprofit corporation, the plan of merger must be approved by all the corporation's members entitled to vote thereon, if it is a nonprofit corporation with members with voting rights, except as otherwise provided in the corporation's governing documents; but in no case may the governing documents provide for approval by less than a majority of the members entitled to vote thereon. If the nonprofit corporation has no members, or no members entitled to vote thereon, the plan of merger must be approved by a unanimous vote of the board of directors of the nonprofit corporation, except as otherwise provided in the governing documents; but in no case may the governing documents provide for approval by less than a majority of the board of directors.

(2) LIMITED PARTNERSHIPS. In the case of a limited partnership that is a party to the merger, the plan of merger shall must be approved in writing by all of the partners or as otherwise provided in the partnership agreement. No merger of a limited partnership with a

general partnership in which the general partnership is the surviving or resulting entity may be effected without the consent in writing of each limited partner who will have personal liability with respect to the ~~is to be a general partner in the~~ surviving or resulting entity, notwithstanding any provision in the limited partnership agreement of the merging limited partnership providing for approval of the merger by less than all partners.

(3) LIMITED LIABILITY COMPANIES. In the case of a limited liability company that is a party to the merger, the plan of merger ~~shall~~ must be approved in writing by all of the limited liability company's members or as otherwise provided in the limited liability company's governing documents. No merger of a limited liability company with a general or limited partnership that is the surviving or resulting entity may be effected without the consent in writing of each member who will have personal liability with respect to the ~~is to be a general partner in the~~ surviving or resulting entity, notwithstanding any provision in the governing documents of the merging limited liability company providing for less than unanimous shareholder approval for a merger.

4) GENERAL PARTNERSHIPS, INCLUDING REGISTERED LIABILITY PARTNERSHIPS. In the case of a general partnership that is a party to the merger, the plan of merger ~~shall~~ must be approved in writing by all of the partners or as otherwise provided in the partnership agreement. No merger of a registered limited liability partnership into a general or limited partnership may be effected without the consent in writing of each partner who will have personal liability with respect to the ~~is to be a general partner without limited liability in the~~ surviving or resulting entity, notwithstanding any provision in the partnership agreement of the registered limited liability partnership providing for less than unanimous partner approval for a merger.

(5) REAL ESTATE INVESTMENT TRUST. In the case of a real estate investment trust that is a party to the merger, the plan of merger ~~shall~~ must be approved in writing by all of the trust's shareholders except as otherwise provided in the trust's declaration of trust, but in no case may the vote required for shareholder approval be set at less than ~~two-thirds~~ a majority of all the votes entitled to be cast. No merger of a real estate investment trust with a general or limited partnership that is to be the surviving or resulting entity may be effected without the consent in writing of each shareholder who will have personal liability with respect to the ~~is to be a general partner in the~~ surviving or resulting business entity.

(6) OTHER ENTITY. In the case of an entity other than a corporation, limited partnership, limited liability company, general partnership, or real estate investment trust that is a party to the merger, by approval in writing of all owners of the entity. No merger of any entity shall be effected without the consent in writing of any owner who has limited liability as an owner of an entity party to the merger, and who ~~shall become an owner without limited liability~~ of will have personal liability with respect to the surviving or resulting entity.

(de) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan, or if the plan does not provide for amendment or abandonment, in the same manner as required for the approval of the plan of merger originally.

(ef) The merger takes effect ~~on the later of the following dates and times~~ as follows:

~~(1) The filing of the certificate of merger with the Secretary of State. Upon the filing of the statement of merger in accordance with Section 10A-1-4.02(c)(1), except as otherwise provided in subdivision (2).~~

~~(2) Any delayed effective date and time specified in the certificate of merger. If a delayed effective date is specified but no time is specified, the merger is effective at the close of business on that day. Upon any delayed effective date if, but only if, each of the following requirements is satisfied:~~

- ~~a. A delayed effective date is specified in the statement of merger, and~~
- ~~b. If either the converted entity or the merging entity is a foreign entity, then any filing required under the governing statute of such foreign entity to effectuate the merger is filed before the effective date specified in the statement of merger.~~

~~(3) If a delayed effective date is specified and the conditions of subdivision (2) are met, the merger is effective at the close of business, unless a different hour is specified, on that date in accordance with and subject to Section 10A-1-4.12.~~

~~(fg) The certificate of merger shall include the following:~~

~~(1) The names of each of the entities which are to merge and their respective unique identifying numbers or other designations as assigned by the Secretary of State, if any.~~

~~(2) The public office where the certificate of formation, if any, of each of the parties to the merger is filed.~~

~~(3) A statement that a plan of merger has been approved and executed by each of the entities which are to merge in the manner set forth in this article.~~

~~(4) If the surviving or resulting entity is one in which one or more owners lack limited liability protection, a statement that each owner of an entity party to the merger who is to be an owner of the surviving or resulting entity without limited liability protection has consented in writing to the merger as required by this article.~~

~~(5) The name of the surviving or resulting entity.~~

~~(6) The date, or date and time, on which the merger becomes effective if it is not to be effective upon the filing of the certificate of merger.~~

~~(7) That the plan of merger is on file at a place of business of the surviving or resulting entity, and shall state the address thereof.~~

~~(8) That a copy of the plan of merger will be furnished by the surviving or resulting entity, on request and without cost, to any owner of any entity which is a party to the merger.~~

~~(9) If the plan of merger includes any amendments to the certificate of formation of the surviving or resulting entity, a statement of all such amendments.~~

~~(g) A certificate of merger shall act as a certificate of termination for any entity which is not the surviving or resulting entity in the merger.~~

(h) The certificate of merger shall be filed with the Secretary of State in accordance with Section 10A-1-4.02 and shall also be recorded in the office of the judge of probate in the county in which the certificate of formation, if any, of each domestic entity that is a party to the merger is filed. ~~When the certificate of merger is filed with the Secretary of State, the matters covered by the certificate shall be effective as stated therein, and a copy of the certificate certified by the Secretary of State shall be conclusive evidence of the matters covered therein.~~

(i) The merger of entities shall have the following effects:

(1) Every other entity party to the merger merges into the surviving entity which shall be deemed to be the resulting entity of the merger and ~~The separate existence of every such entity that is a party to the merger,~~ other than the surviving or resulting entity, ceases.

(2) All property, real, personal, and mixed owned by each of the merged entities; all rights, immunities, and franchises of the merged entities, of a public as well as a private nature; and all debts and obligations due the merged entities, are taken and deemed to be transferred and vested in the surviving or resulting entity without the necessity of any deed or other instrument of conveyance to the surviving or resulting entity and without payment and without collection by any filing officer of any deed or other transfer tax or fee. A certified copy of the certificate of merger may be filed in the real estate records in the office of the judge of probate in any county in which any entity a party to the merger owned real property, to be recorded without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate shall, however, be entitled to collect the filing fees prescribed by Section 12-19-90. Any filing shall evidence chain of title, but lack of filing does not affect the resulting entity's title to any real property.

(3) The surviving or resulting entity shall be responsible and liable for all the liabilities and obligations of the entities that are parties to the merger; however, neither the rights of creditors nor any liens upon the property of the entities that are parties to the merger shall be impaired by the merger.

(4) Any claim existing or action or proceeding, of any kind, pending by or against an entity that is a party to the merger may be prosecuted or continued as if the merger had not occurred, or the surviving or resulting entity may be substituted as a party to the action or proceeding.

(5) Service of process in an action or proceeding against a surviving or resulting foreign entity to enforce an obligation of a domestic entity that is a party to a merger may be made by registered mail addressed to the ~~principal office of the~~ surviving entity as at the address set forth in the ~~plan~~ certificate of merger or by any method provided by the Alabama Rules of Civil Procedure. Any notice or demand required or permitted by law to be served on a domestic entity may be served on the surviving or resulting foreign entity by registered mail addressed to the ~~principal office of the~~ surviving entity as at the address set forth in the ~~plan~~ certificate of merger or in any other manner similar to the procedure provided by the Alabama Rules of Civil Procedure for the service of process.

(6) a. ~~No owner of an entity with limited liability protection shall as a result of a merger become an owner of an entity without limited liability protection unless the owner with limited liability protection has given approval in writing for a merger.~~

~~—b.—~~ An owner of an entity with limited liability protection remains liable, if at all, for an obligation incurred prior to the merger by an entity that ceases to exist as a result of the merger only to the extent, if any, that the owner would have been liable, ~~if at all~~, under the laws applicable to owners of the form of entity that ceased to exist if the merger had not occurred.

~~eb.~~ An owner with limited liability protection ~~of an entity that is a party to the merger~~ who, as a result of the merger, becomes an owner without limited liability protection of the surviving or resulting entity is liable for an obligation of the surviving or resulting entity incurred after merger to the extent provided for by the laws applicable to the surviving or resulting entity.

(7) An owner without limited liability protection of an entity that ceases to exist as a result of a merger and who as a result of the merger becomes an owner of a surviving or resulting entity with limited liability protection remains liable for an obligation of the entity that ceases to exist incurred before the merger takes effect only to the extent, if any, that the owner would have been liable if the merger had not occurred.

§ 10A-1-8.04. Merger with or conversion from a foreign entity.

(a) One or more foreign entities may merge with one or more domestic entities, and a foreign entity may convert to a domestic entity or a domestic entity may convert to a foreign entity if:

(1) The merger or conversion is permitted by the law of the state or country under whose law each foreign entity is formed and each foreign entity complies with that law in effecting the merger or conversion.

(2) In the case of a conversion, the foreign entity complies with ~~subdivision (1) of subsection (b) of Section 10A-1-8.01 if it is the converted entity resulting from a conversion, and with subdivision (2) of subsection (b) of Section 10A-1-8.01 if it is the converting entity.~~

(3) In the case of a merger, the foreign entity complies with subsection ~~(f)~~ of Section 10A-1-8.02 if it is the surviving entity of the merger.

(b) Upon the merger or conversion taking effect, the surviving foreign entity of a merger and the foreign entity resulting from a conversion is deemed:

(1) To consent that service of process in a proceeding to enforce any obligation or any dissenter's rights of owners of each domestic entity a party to the merger or conversion may be made by registered mail addressed to the ~~principal office of the~~ surviving or converted entity at the address as set forth in the ~~plan~~ certificate of merger or statement of conversion, as the case may be, or by any method provided by the Alabama Rules of Civil Procedure. Any notice or demand required or permitted by law to be served on the domestic entity may be served on the surviving or ~~resulting~~ converted foreign entity by registered mail addressed to the ~~principal office of the~~ surviving or converted entity as at the address set forth in the plan of merger or statement of conversion, as the case may be, or in any other manner similar to the procedure provided by the Alabama Rules of Civil Procedure for the service of process; and

(2) To agree that it will promptly pay to dissenting owners of each domestic entity that is a party to the merger or conversion the amount, if any, to which they are entitled under Alabama law.

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.