

Article 2A.

Conversion and Merger.

Part 1. General Provisions.

**§ 59-73.1. Definitions.**

As used in this Article:

- (1) "Business entity" means a domestic corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a domestic partnership, or any other partnership.
- (2) "Domestic partnership" means a partnership as defined in G.S. 59-36 that is formed under the laws of this State, including a registered limited liability partnership, but excluding a domestic limited partnership.
- (3) "Partnership" means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and a foreign limited liability partnership, but excluding a domestic limited partnership and a foreign limited partnership. (1999-369, s. 4.1; 2001-387, ss. 106, 107.)

**§ 59-73.2: Recodified as § 59-73.20 by Session Laws 2001-387, s. 105(b).**

**§ 59-73.3: Recodified as § 59-73.30 by Session Laws 2001-387, s. 105(b).**

**§ 59-73.4: Recodified as § 59-73.31 by Session Laws 2001-387, s. 105(b).**

**§ 59-73.5: Recodified as § 59-73.32 by Session Laws 2001-387, s. 105(b).**

**§ 59-73.6: Recodified as § 59-73.33 by Session Laws 2001-387, s. 105(b).**

**§ 59-73.7: Recodified as § 59-35.1 by Session Laws 2001-358, s. 9.**

**§ 59-73.8. Reserved for future codification purposes.**

**§ 59-73.9. Reserved for future codification purposes.**

Part 2. Conversion to Domestic Partnership.

**§ 59-73.10. Conversion.**

A business entity other than a domestic partnership may convert to a domestic partnership if:

- (1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and
- (2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (2001-387, s. 108.)

**§ 59-73.11. Plan of conversion.**

- (a) The converting business entity shall approve a written plan of conversion containing:
  - (1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
  - (2) The name of the resulting domestic partnership into which the converting business entity shall convert;
  - (3) The terms and conditions of the conversion; and
  - (4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.
- (a1) The plan of conversion may contain other provisions relating to the conversion.
- (a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:
  - (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
  - (2) A determination or action by the converting business entity or by any other person, group.
  - (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.
- (b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.
- (c) After a plan of conversion has been approved as provided in subsection (b) of this section but before the articles of conversion become effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity. (2001-387, s. 108; 2001-487, s. 62(r); 2005-268, s. 52.)

**§ 59-73.12. Filing of articles of conversion by converting business entity.**

- (a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-73.11, the converting business entity shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

- (1) That the domestic partnership is being formed pursuant to a conversion of another business entity;
- (2) The name of the resulting domestic partnership, a designation of its mailing address, and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;
- (3) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and
- (4) That a plan of conversion has been approved by the converting business entity as required by law.

If the resulting domestic partnership is to be a registered limited liability partnership when the conversion takes effect, then instead of the converting business entity delivering the articles of

conversion to the Secretary of State for filing, the articles of conversion shall be included as part of the application for registration filed pursuant to G.S. 59-84.2 in addition to the matters otherwise required or permitted by law.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, an amendment to the articles of conversion withdrawing the articles of conversion shall be delivered to the Secretary of State for filing prior to the time the articles of conversion become effective.

- (b) The conversion takes effect when the articles of conversion become effective.
- (c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1. (2001-387, s. 108; 2001-487, s. 62(s); 2002-159, s. 34(a).)

#### **§ 59-73.13. Effects of conversion.**

- (a) When the conversion takes effect:
  - (1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic partnership;
  - (2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic partnership without reversion or impairment;
  - (3) All liabilities of the converting business entity continue as liabilities of the resulting domestic partnership;
  - (4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and
  - (5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

- (b) When the conversion takes effect, the resulting domestic partnership is deemed:
  - (1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting business entity and (ii) any obligation of the resulting domestic partnership arising from the conversion; and
  - (2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-35.2. Upon receipt of service of process on behalf of a resulting domestic partnership in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the resulting domestic partnership. If the resulting domestic partnership is a registered limited liability partnership, the address for mailing shall be its

principal office or, if there is no principal office on file, its registered office. If the resulting domestic partnership is not a registered limited liability partnership, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.12(a)(2). (2001-387, s. 108; 2001-387, s. 170(c).)

**§§ 59-73.14 through 59-73.19. Reserved for future codification purposes.**

Part 3. Conversion of Domestic Partnership.

**§ 59-73.20. Conversion.**

A domestic partnership may convert to a different business entity if:

- (1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and
- (2) The converting domestic partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (1999-369, s. 4.1; 2001-387, ss. 105(b), 109, 110.)

**§ 59-73.21. Plan of conversion.**

(a) The converting domestic partnership shall approve a written plan of conversion containing:

- (1) The name of the converting domestic partnership;
- (2) The name of the resulting business entity into which the domestic partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the domestic partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting domestic partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting domestic partnership is a party, or any other agreement or document.

(b) The plan of conversion shall be approved by the domestic partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no such provision, by the unanimous consent of its partners. If any partner of the converting domestic partnership has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the

domestic partnership shall require the consent of that partner. The converting domestic partnership shall provide a copy of the plan of conversion to each partner of the converting domestic partnership at the time provided in a written partnership agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined in the manner necessary for approval of the plan of conversion. (2001-387, s. 111; 2001-487, s. 62(t); 2005-268, s. 53.)

#### **§ 59-73.22. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic partnership as provided in G.S. 59-73.21, the converting domestic partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

- (1) The name of the converting domestic partnership;
- (2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and
- (3) That a plan of conversion has been approved by the domestic partnership as required by law.

(b) If the domestic partnership is converting to a business entity whose formation requires the filing of a document with the Secretary of State, then notwithstanding subsection (a) of this section the articles of conversion shall be included as part of that document and shall contain the information required by the laws governing the organization and internal affairs of the resulting business entity.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic partnership shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(d) The conversion takes effect when the articles of conversion become effective.

(e) Certificates of conversion shall also be registered as provided in G.S. 47-18.1. (2001-387, s. 111; 2001-487, s. 62(u).)

#### **§ 59-73.23. Effects of conversion.**

(a) When the conversion takes effect:

- (1) The converting domestic partnership ceases its prior form of organization and continues in existence as the resulting business entity;
- (2) The title to all real estate and other property owned by the converting domestic partnership continues vested in the resulting business entity without reversion or impairment;

- (3) All liabilities of the converting domestic partnership continue as liabilities of the resulting business entity;
- (4) A proceeding pending by or against the converting domestic partnership may be continued as if the conversion did not occur; and
- (5) The interests in the converting domestic partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic partnership are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic partnership for any acts, omissions, or obligations of the converting domestic partnership made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic partnership in its form of organization as a domestic partnership in the conversion shall not constitute a dissolution or termination of the converting domestic partnership.

(b) If the resulting business entity is not a domestic corporation, a domestic limited partnership, or a domestic limited liability company, when the conversion takes effect the resulting business entity is deemed:

- (1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic partnership and (ii) any obligation of the resulting business entity arising from the conversion; and
- (2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-35.2. Upon receipt of service of process on behalf of a resulting business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.22(a)(2). (2001-387, ss. 111, 170(c); 2001-487, s. 62(v).)

#### **§§ 59-73.24 through 59-73.29. Reserved for future codification purposes.**

#### **Part 4. Merger.**

##### **§ 59-73.30. Merger.**

A domestic partnership may merge with one or more other domestic partnerships or other business entities if:

- (1) The merger is permitted by laws of the state or country governing the organization and internal affairs of each other merging business entity; and

- (2) Each merging domestic partnership and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (1999-369, s. 4.1; 2001-387, ss. 105(b), 112.)

**§ 59-73.31. Plan of merger.**

(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing all of the following:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.
- (2) The name of the merging business entity that shall survive the merger.
- (3) The terms and conditions of the merger.
- (4) The manner and basis of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity, or into cash or other property in whole or in part, or of cancelling the interests.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the domestic partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the domestic partnership is a party, or any other agreement or document.

(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c) After a plan of merger has been approved by the domestic partnership but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if not so provided, as determined by the unanimous consent of the partners. (1999-369, s. 4.1; 2001-387, ss. 105(b), 112, 113; 2005-268, s. 54; 2018-45, s. 31.)

**§ 59-73.32. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.31, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) Repealed by Session Laws 2005-268, s. 55, effective October 1, 2005.
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.
- (3) The name of the merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law.
- (5) Repealed by Session Laws 2005-268, s. 55, effective October 1, 2005.

If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting the abandonment of the plan of merger.

- (b) A merger takes effect when the articles of merger become effective.
- (c) Certificates of merger shall also be registered as provided in G.S. 47-18.1. (1999-369, s. 4.1; 2001-387, ss. 105(b), 112, 114; 2005-268, s. 55.)

### **§ 59-73.33. Effects of merger.**

(a) When a merger takes effect:

- (1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;
- (2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;
- (3) The surviving business entity has all liabilities of each merging business entity;
- (4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;
- (5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, as defined in G.S. 55-1-40, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

- (6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity shall not constitute a dissolution or termination of the merging business entity.

(b) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

- (1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and
- (2) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 59-35.2. Upon receipt of service of process on behalf of a surviving business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.32(a)(3). (1999-369, s. 4.1; 2000-140, s. 52; 2001-358, s. 10(a); 2001-387, ss. 105(b), 112, 115, 170(c), 173, 175(a); 2002-159, s. 17; 2007-385, s. 5; 2011-347, ss. 17, 18.)