

§ 57D-9-43. Effects of merger.

(a) When the merger takes effect, the following shall occur:

- (1) Each merging entity other than the surviving entity merges into the surviving entity, and the separate existence of each merging entity other than the surviving entity ceases.
- (2) The title to all real estate and other property owned by each merging entity is vested in the surviving entity without reversion or impairment.
- (3) The surviving entity has all liabilities of each merging entity.
- (4) A proceeding pending by or against any merging entity remains pending by or against such merging entity as if the merger did not occur, or the surviving entity may be substituted in the proceeding for a merging entity whose separate existence ceases in the merger.
- (5) If an LLC is the surviving entity, its articles of organization will be amended to the extent provided in the articles of merger.
- (6) The equity or beneficial ownership interests in, and the obligations and securities of, each merging entity that are to be converted into interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the equity and beneficial ownership 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, any rights they may have under Article 13 of Chapter 55 of the General Statutes.
- (7) If the surviving entity is not a domestic corporation, the surviving entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging entity that is a domestic corporation 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 of Chapter 55 of the General Statutes as if it were a domestic corporation.

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

(c) If the surviving entity is not a domestic eligible entity when the merger takes effect, the surviving entity is deemed to consent to each of the following:

- (1) That it may be served with process in this State in any proceeding to enforce (i) any obligation of a domestic merging entity if before the merger the domestic merging entity was subject to suit in this State on the obligation, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving entity arising from the merger.
- (2) That it has appointed the Secretary of State as its agent for service of process in any such proceeding. Service of process on the Secretary of State is made by delivering to the Secretary of State or to 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. 57D-1-22(b). Upon receipt of service of process on behalf of a surviving 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

entity. If the surviving entity is authorized to transact business in this State, the address for mailing will be its principal office designated in the latest document filed by 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 entity is not authorized to transact business in this State, the address for mailing will be the mailing address of the surviving entity provided under G.S. 57D-9-42(a). (2013-157, s. 2.)