

2012 Kansas Statutes

17-7681. Merger or consolidation. (a) Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more limited liability companies formed under the laws of this state or any other state, with such limited liability company as the agreement shall provide being the surviving or resulting limited liability company. Unless otherwise provided in the limited liability company operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by the affirmative vote or consent of not less than a majority in interest of the remaining members. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited liability company which is not the surviving or resulting limited liability company in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(b) The limited liability company surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation with the secretary of state. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies which is to merge or consolidate;

(2) that an agreement of merger or consolidation has been approved and executed by each of the limited liability companies which is to merge or consolidate;

(3) the name of the surviving or resulting limited liability company;

(4) the future effective date or time of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation, which date shall, in no event, exceed 90 days after the date the certificate is filed in the secretary of state's office;

(5) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting limited liability company, and shall state the address thereof;

(6) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting limited liability company, on request and without cost, to any member of any limited liability company which is to merge or consolidate; and

(7) if the surviving or resulting entity is not a domestic limited liability company, a statement that such surviving entity agrees that it may be served with process in the state of Kansas in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state.

(c) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the secretary of state of a certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is amended to change the future effective date or time, or to change any other matter described in the certificate of merger or consolidation so as to make the certificate of merger or consolidation false in any material respect, as permitted by subsection (b) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be amended by the filing of a certificate of amendment of a certificate of merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been amended and shall state that the agreement of merger or consolidation has been amended and shall set forth the amendment to the certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is terminated as permitted by subsection (a) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be terminated by the filing of a certificate of termination of a merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been terminated and shall state that the agreement of merger or consolidation has been terminated.

(d) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

(e) An agreement of merger or consolidation approved in accordance with subsection (a) of this section may:

(1) Effect any amendment to the operating agreement; or

(2) effect the adoption of a new operating agreement.

Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the foregoing provision shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the operating agreement of the surviving or resulting limited liability company.

(f) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state of Kansas, all of the rights, privileges and powers of each of the limited liability companies that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of the limited liability companies, as well as all other things and causes of action belonging to each of such limited liability companies, shall be vested in the surviving or resulting limited liability company, and shall thereafter be the property of the surviving or resulting limited liability company as they were of each of the limited liability companies that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state of Kansas, in any of such limited liability companies, shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of any of the limited

liability companies shall be preserved unimpaired, and all debts, liabilities and duties of each of the limited liability companies that have merged or consolidated shall thenceforth attach to the surviving or resulting limited liability company and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a limited liability company, including a limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such limited liability company to wind up its affairs under K.S.A. 17-76,118, and amendments thereto, or pay its liabilities and distribute its assets under K.S.A. 17-76,119, and amendments thereto.

(g) A limited liability company may merge or consolidate with or into any other entity in accordance with the business entity transactions act, K.S.A. 2012 Supp. 17-78-101 et seq., and amendments thereto.

History: L. 1999, ch. 119, § 20; L. 2009, ch. 47, § 44; July 1, 2010.