

§ 57D-9-41. Plan of merger.

(a) Each merging entity must approve a written plan of merger containing all of the following:

- (1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of each merging entity immediately before the merger.
- (2) The name of the surviving entity.
- (3) The terms and conditions of the merger.
- (4) The manner and basis of converting the interests in each merging entity into interests, obligations, or securities of the surviving entity, or into cash or other property or any combination thereof, or of cancelling the interests.
- (5) If the surviving entity is an LLC, any amendments to its articles of organization that are to be made in connection with the merger.

(b) The plan of merger may contain other provisions pertaining to the merger.

(c) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, 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 merging LLC or by any other person, group, or body.
- (3) The terms of or actions taken under an agreement to which the merging LLC is a party, or any other agreement or document.

(d) A merging LLC shall provide a copy of the plan of merger to each member of the merging LLC prior to its approval. Under G.S. 57D-3-03(6), all of the members of the merging LLC must approve the plan of merger. In addition, any economic interest owner of the merging LLC who because of the merger will become personally liable upon the merger for liabilities of the merging LLC, any other merging entity, or the surviving entity, whether arising before or after the merger, must approve the plan of merger.

(e) The plan of merger must be approved in accordance with the law governing the organization and internal affairs of each merging entity.

(f) After a plan of merger has been approved, but before the articles of merger become effective, the plan of merger may be amended or abandoned as follows:

- (1) The plan of merger may be amended as provided in the plan of merger or if not so provided in the manner provided in subsections (d) and (e) of this section.
- (2) The plan of merger may be abandoned, subject to any contractual rights, as provided in the plan of merger or if not so provided in the manner provided in subsections (d) and (e) of this section. (2013-157, s. 2; 2018-45, s. 30.)