

Article 9.

Conversion and Merger.

Part 1. Definitions.

§ 57D-9-01. Definitions.

Unless otherwise specifically provided, the following definitions apply in this Article:

- (1) Articles of organization and conversion. – The document filed by the Secretary of State under G.S. 57D-9-22 for the purpose of converting an eligible entity into an LLC.
- (2) Converting entity. – An eligible entity that converts into another eligible entity pursuant to Part 2 or Part 3 of this Article 9.
- (3) Converting LLC. – A converting entity that is an LLC.
- (4) Eligible entity. – A corporation, including a professional corporation as defined in G.S. 55B-2 and a foreign professional corporation defined in G.S. 55B-16, a domestic or foreign nonprofit corporation, a limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State.
- (5) Merging entity. – An eligible entity that is a party to a merger.
- (6) Merging LLC. – A merging entity that is an LLC.
- (7) Surviving entity. – The eligible entity into which a converting entity converts or into which an eligible entity is merged. (2013-157, s. 2.)

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§ 57D-9-03: Reserved for future codification purposes.

§ 57D-9-04: Reserved for future codification purposes.

§ 57D-9-05: Reserved for future codification purposes.

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§ 57D-9-07: Reserved for future codification purposes.

§ 57D-9-08: Reserved for future codification purposes.

§ 57D-9-09: Reserved for future codification purposes.

§ 57D-9-10: Reserved for future codification purposes.

§ 57D-9-11: Reserved for future codification purposes.

§ 57D-9-12: Reserved for future codification purposes.

§ 57D-9-13: Reserved for future codification purposes.

§ 57D-9-14: Reserved for future codification purposes.

§ 57D-9-15: Reserved for future codification purposes.

§ 57D-9-16: Reserved for future codification purposes.

§ 57D-9-17: Reserved for future codification purposes.

§ 57D-9-18: Reserved for future codification purposes.

§ 57D-9-19: Reserved for future codification purposes.

Part 2. Conversion to an LLC.

§ 57D-9-20. Conversion.

(a) An eligible entity other than an LLC may convert to an LLC if both of the following requirements are met:

- (1) The conversion is permitted by the law governing the organization and internal affairs of the converting entity.
- (2) The converting entity complies with the requirements of this Part and, to the extent applicable, the law governing its organization and internal affairs immediately before the conversion.

(b) The conversion of a charitable or religious corporation to an LLC is permitted by law if the sole member of the surviving entity immediately after the conversion is a charitable or religious corporation. This subsection shall not limit the ability of an eligible entity to convert to an LLC if otherwise permitted by law.

(c) For purposes of this section, charitable or religious corporation shall be as defined in G.S. 55A-1-40(4). (2013-157, s. 2; 2016-114, s. 3.)

§ 57D-9-21. Plan of conversion.

(a) The converting entity must approve a written plan of conversion containing the following:

- (1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of the converting entity immediately before the conversion.
- (2) A statement that the converting entity will deliver to the Secretary of State for filing articles of organization and conversion for the purpose of converting the eligible entity into an LLC.
- (3) The name the entity will have when the conversion becomes effective.
- (4) The terms and conditions of the conversion.
- (5) The manner and basis for converting the interests in the converting entity into ownership interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.

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

(c) 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 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 converting entity or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting entity is a party or any other agreement or document.

(d) The plan of conversion must be approved in accordance with the law governing the organization and internal affairs of the converting entity immediately before the conversion.

(e) After a plan of conversion has been approved as provided in subsection (d) of this section, but before articles of conversion become effective, the plan of conversion may be amended or abandoned to the extent permitted by the law that governs the organization and internal affairs of the converting entity. (2013-157, s. 2.)

§ 57D-9-22. Filing of articles of organization and conversion by the converting entity.

(a) After a plan of conversion has been approved by the converting entity as provided in G.S. 57D-9-21, the converting entity shall deliver articles of organization and conversion to the Secretary of State for filing. The articles of organization and conversion must contain (i) the information required by G.S. 57D-2-21 and (ii) the following information:

- (1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of the converting entity immediately before the conversion.
- (2) A statement that the articles of organization and conversion are being submitted for the purpose of converting the eligible entity into an LLC.
- (3) The name the entity will have when the conversion becomes effective.
- (4) The mailing address of the converting entity immediately before the conversion and, if different, the mailing address it will have when the conversion becomes effective.
- (5) A statement that a plan of conversion has been approved by the converting entity as required by law.

(b) If the plan of conversion is abandoned after the articles of organization and conversion have been delivered to the Secretary of State but before the articles of organization and conversion become effective, the converting entity must deliver to the Secretary of State for filing prior to the time the articles of organization and conversion become effective an amendment withdrawing such articles.

(c) Certificates of conversion must be registered as provided in G.S. 47-18.1. (2013-157, s. 2.)

§ 57D-9-23. Effective date; effects of conversion.

(a) The conversion takes effect when the articles of organization and conversion of the converting entity filed by the Secretary of State become effective, at which time the following shall occur:

- (1) The converting entity ceases its prior form of organization and continues in existence as the surviving entity.

- (2) The title to all real estate and other property owned by the converting entity continues to be vested in the surviving entity without reversion or impairment.
- (3) All liabilities of the converting entity continue as liabilities of the surviving entity.
- (4) A proceeding pending by or against the converting entity remains pending by or against the surviving entity as if the conversion did not occur.
- (5) The equity or beneficial ownership interests in the converting entity that are to be converted into ownership 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 equity or beneficial ownership interests in the converting entity are entitled only to the rights provided, including by reference, in the plan of conversion and the surviving entity's operating agreement.

(b) The conversion does not affect the liability or absence of liability of an equity or beneficial owner of the converting entity for any acts, omissions, or obligations of the converting entity made or incurred prior to the effectiveness of the conversion. A conversion under this Part does not constitute a dissolution or termination of the converting entity. (2013-157, s. 2.)

§ 57D-9-24: Reserved for future codification purposes.

§ 57D-9-25: Reserved for future codification purposes.

§ 57D-9-26: Reserved for future codification purposes.

§ 57D-9-27: Reserved for future codification purposes.

§ 57D-9-28: Reserved for future codification purposes.

§ 57D-9-29: Reserved for future codification purposes.

Part 3. Conversion of an LLC.

§ 57D-9-30. Conversion.

An LLC may convert to a different eligible entity if both of the following requirements are met:

- (1) The conversion is permitted by the law that will govern the organization and internal affairs of the surviving entity.
- (2) The converting LLC complies with the requirements of this Part and to the extent applicable the law that will govern the organization and internal affairs of the surviving entity. (2013-157, s. 2.)

§ 57D-9-31. Plan of conversion.

(a) The converting LLC must approve a written plan of conversion containing the following:

- (1) The name of the converting LLC immediately before the conversion.
- (2) The name the surviving entity will have, the type of entity it will be, and the jurisdiction whose law will govern its organization and internal affairs when the conversion becomes effective.

- (3) The terms and conditions of the conversion.
 - (4) The manner and basis for converting the ownership interests in the converting LLC into interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.
- (b) The plan of conversion may contain other provisions pertaining to the conversion.
- (c) 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 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 converting LLC or by any other person, group, or body.
 - (3) The terms of, or actions taken under, an agreement to which the converting LLC is a party or any other agreement or document.
- (d) The converting LLC shall provide a copy of the plan of conversion to each member of the converting LLC prior to its approval. Under G.S. 57D-3-03(5), all of the members of the converting LLC must approve the plan of conversion. In addition, any economic interest owner of the converting LLC who because of the conversion will become personally liable upon the conversion for liabilities of the surviving entity, whether arising before or after the conversion, must approve the plan of conversion.
- (e) After a plan of conversion has been approved by the converting LLC as provided in subsection (d) of this section, but before the articles of conversion become effective, the plan of conversion may be amended or abandoned as follows:
- (1) The plan of conversion may be amended as provided in the plan of conversion or, if not so provided, as approved by the converting LLC in the manner provided in subsection (d) of this section.
 - (2) The plan of conversion may be abandoned, subject to any contractual rights, as provided in the plan of conversion or if not so provided as approved by the converting LLC in the manner provided in subsection (d) of this section. (2013-157, s. 2.)

§ 57D-9-32. Articles of conversion.

- (a) After a plan of conversion has been approved by the converting LLC as provided in G.S. 57D-9-31, the converting LLC shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion must contain the following information:
- (1) The name of the converting LLC immediately before the conversion.
 - (2) The name the surviving entity will have, the type of entity it will be, and the jurisdiction whose law will govern its organization and internal affairs upon the conversion becoming effective.
 - (3) The mailing address of the converting LLC immediately before the conversion and, if different, the mailing address the surviving entity will have when the conversion becomes effective.

- (4) A statement that a plan of conversion has been approved by the converting LLC as required by law.
- (5) If the surviving entity is not authorized to transact business in this State, a statement that the surviving entity (i) consents to service of process in any proceeding based on any cause of action arising in respect of the converting LLC being made on the surviving entity by service on the Secretary of State and (ii) commits to deliver to the Secretary of State for filing a statement of any change in the surviving entity's mailing address to which the Secretary of State may mail a copy of process served on the Secretary of State.

(b) If the converting LLC is converting to an eligible entity whose formation, or whose status as a registered limited liability partnership as defined in G.S. 59-32, requires the filing of a document by the Secretary of State, then notwithstanding subsection (a) of this section, that document must be delivered to and filed by the Secretary of State with the articles of conversion.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed by the Secretary of State, but before the articles of conversion become effective, the converting LLC must 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 in accordance with the law that will govern the organization and internal affairs of the surviving entity.

(e) Certificates of conversion must be registered as provided in G.S. 47-18.1. (2013-157, s. 2.)

§ 57D-9-33. Effects of conversion.

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

- (1) The converting LLC ceases its prior form of organization and continues in existence as the surviving entity.
- (2) The title to all real estate and other property owned by the converting LLC continues to be vested in the surviving entity without reversion or impairment.
- (3) All liabilities of the converting LLC continue as liabilities of the surviving entity.
- (4) A proceeding pending by or against the converting LLC remains pending by or against the surviving entity as if the conversion did not occur.
- (5) The ownership interests in the converting LLC that are to be converted into equity or beneficial ownership 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 ownership interests in the converting LLC are entitled only to the rights provided, including by reference, in the plan of conversion.

(b) The conversion does not affect the liability or absence of liability of any interest owner of the converting LLC for any acts, omissions, or obligations of the converting LLC made or incurred prior to the effectiveness of the conversion. A conversion under this Part does not constitute a dissolution or termination of the converting LLC.

(c) If the surviving entity is not a domestic corporation or a domestic limited partnership at the time the conversion 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 any obligation of (i) the converting LLC, if before the conversion the converting LLC was subject to suit in this State on the obligation or (ii) the surviving entity arising from the conversion.
- (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 must be 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 the 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-9-32(a)(3). (2013-157, s. 2.)

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§ 57D-9-35: Reserved for future codification purposes.

§ 57D-9-36: Reserved for future codification purposes.

§ 57D-9-37: Reserved for future codification purposes.

§ 57D-9-38: Reserved for future codification purposes.

§ 57D-9-39: Reserved for future codification purposes.

Part 4. Merger.

§ 57D-9-40. Merger.

An LLC may merge with one or more other eligible entities if both of the following requirements are met:

- (1) The merger is permitted by the law governing the organization and internal affairs of each other merging entity.
- (2) Each merging entity complies with the requirements of this Part and to the extent applicable the law other than this Part governing the organization and internal affairs of each merging entity. (2013-157, s. 2.)

§ 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.)

§ 57D-9-42. Articles of merger.

- (a) After a plan of merger has been approved by each merging entity as provided in G.S. 57D-9-41, the surviving entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall state 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 mailing address of each merging entity immediately before the merger and the mailing address the surviving entity will have when the merger becomes effective.
- (4) If the surviving entity is an LLC, any amendment to its articles of organization as provided in the plan of merger.
- (5) A statement that the plan of merger has been approved by each merging entity in the manner required by law.
- (6) If the surviving entity is not authorized to transact business in this State, a statement that the surviving entity (i) consents to service of process in any proceeding based on any cause of action arising in respect of a merging LLC being made on the surviving entity by service on the Secretary of State and (ii) commits to deliver to the Secretary of State for filing a statement of any change in the surviving entity's mailing address to which the Secretary of State may mail a copy of process served on the Secretary of State.

(b) 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 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 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 stating that they have been abandoned.

(c) A merger takes effect when the articles of merger become effective, which in the case of a merging LLC is when the articles of merger filed by the Secretary of State become effective.

(d) Certificates of merger must be registered as provided in G.S. 47-18.1. (2013-157, s. 2.)

§ 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.)

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§ 57D-9-45: Reserved for future codification purposes.

§ 57D-9-46: Reserved for future codification purposes.

§ 57D-9-47: Reserved for future codification purposes.

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