

Form 624—General Information
(Certificate of Merger for Nonprofit Corporations)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This certificate of merger is to be used to effect a merger, as defined by section 1.002(55)(B) of the Texas Business Organizations Code (BOC), of nonprofit corporations.

The certificate of merger is required to be filed with the secretary of state if any domestic entity that is a party to the merger is a filing entity, or if any domestic entity to be created under the plan of merger is a filing entity. A domestic filing entity may effect a merger by complying with the applicable provisions of chapter 10 of the BOC, as well as the title and chapter applicable to the domestic entity. To effect the merger, the domestic entity must set forth a plan of merger that is approved in the manner prescribed by the BOC. A domestic entity may not merge if a member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, without that member's consent, for liability or other obligation of any other person.

Limitations on Mergers Involving Nonprofit Corporations: Section 10.010 limits the authority of a nonprofit corporation to merge. The limitations are as follows:

- A domestic nonprofit corporation may not merge into another entity if the domestic nonprofit corporation would, because of the merger, lose or impair its charitable status.
- One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations that continue as the surviving entity or entities.
- A domestic nonprofit corporation may not merge with a foreign for-profit entity if the domestic nonprofit corporation does not continue as the surviving entity.
- One or more domestic nonprofit corporations and non-code organizations may merge into one or more foreign nonprofit entities that continue as the surviving entity or entities.

This form should be used when all of the entities that are parties to the merger or are to be created by the merger are nonprofit corporations. Please consult an attorney for assistance with a merger involving for-profit entities and non-code organizations other than foreign nonprofit corporations.

Formation Documents of New Domestic Nonprofit Corporation: If a Texas nonprofit corporation is being created pursuant to the plan of merger, the certificate of formation of the nonprofit corporation must be filed with the certificate of merger. *Pursuant to section 3.005 of the BOC, the certificate of formation of a domestic nonprofit corporation that is to be created by the plan of merger must contain the statement that the domestic nonprofit corporation is being formed under a plan of merger.* The formation and existence of a domestic nonprofit corporation created pursuant to a plan of merger takes effect and commences on the effectiveness of the merger (BOC § 3.006).

Instructions for Form

- **Parties to the Merger:** The certificate of merger must state the name, organizational form, and jurisdiction of formation for each party to the merger. If the name of a merging nonprofit corporation is to be changed pursuant to the plan of merger, state the current name, indicate that the name is to be changed, and state the name as amended. It is recommended that the file number

assigned by the secretary of state to each domestic or foreign nonprofit corporation that is a party to the merger be provided to facilitate processing of the document. ***It is required that you indicate whether a party to the merger is to survive the merger.***

- **Plan of Merger:** Unless the parties to the merger opt to complete the Alternative Statements section of this form, a plan of merger conforming to the requirements of section 10.002 of the BOC must be attached to the certificate of merger. If more than one organization is to survive the merger, the plan of merger also must include the information required under section 10.003 of the BOC.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of merger, the parties to the merger may opt to certify and complete the statements contained in the Alternative Statements section of the form (items 1-4).

Items 3A-3D—Amendments: A plan of merger may include amendments to, restatements of, or amended and restatements of the certificate of formation of any surviving organization. If a filing entity is to survive the merger, the alternative statements **must** include a statement that: (A) no amendments or changes to the certificate of formation of any filing entity are to be effected by the merger; (B) no amendments or changes to the certificate of formation of a filing entity are being effected by the merger or by the restated certificate of formation attached to the certificate of merger; (C) the plan of merger amended and restated the certificate of formation of a surviving filing entity as set forth in the attached restated certificate of formation containing amendments; or (D) identifies the amendments to be effected to the certificate of formation of a surviving filing entity.

Option 3A is the default selection unless the plan of merger amends, restates, or amends and restates the certificate of formation of a surviving filing entity. If option B is selected, attach the restated certificate of formation without further amendments of the filing entity as an exhibit to the certificate of merger. If C is selected, attach the restated certificate of formation containing further amendments to the certificate of merger. If D is selected, state the amendments or changes in the text area provided on the form. If the space provided is insufficient, the amendments may be provided as an exhibit to the certificate of merger.

- *Item 4: Nonprofit Corporations Created by Merger:* Section 10.151(b) of the BOC requires the identification of each domestic or foreign nonprofit corporation that is to be created by the plan of merger. The identification must include: the legal name of the nonprofit corporation, which must include an appropriate organizational designation (if applicable); the name of the jurisdiction in which each new nonprofit corporation is to be incorporated; a description of the organizational form of each new organization; and the principal place of business of each new corporation. In addition, the certificate of merger must state that the certificate of formation of each new domestic nonprofit corporation is being filed with the certificate of merger.

This form provides space for identifying up to three new nonprofit corporations. Should the space provided be insufficient, provide the additional information in the format specified as an attachment or exhibit.

- **Approval of the Plan of Merger:** The certificate of merger must include a statement that the plan of merger has been approved by each organization that is a party to the merger as required by the laws of its jurisdiction of formation and its governing documents.

Sections 22.251 and 22.253 of the BOC set forth the procedures and requirements for approval of the plan of merger by a Texas nonprofit corporation. Unless otherwise provided by its certificate of formation, the vote required for approval of a plan of merger is as follows:

- If the nonprofit corporation that is a party to the merger has no members or no members with voting rights, the plan of merger must be approved by the affirmative vote of the majority of directors in office (BOC § 22.164(b)(3)).
- If management of the affairs of the nonprofit corporation is vested in its members, the members must approve the plan of merger by at least two-thirds of the votes of members present at the meeting at which the action is submitted for a vote (BOC § 22.164(b)(2)).
- If the corporation that is a party to the merger has members with voting rights, the board of directors must adopt a resolution approving the merger and directing that the plan be submitted to a vote of the members having voting rights. The members must approve the plan of merger by the vote of at least two-thirds of the votes that members present in person or by proxy are entitled to cast at the meeting at which the action is submitted for vote (BOC § 22.164(b)(1)).

- **Tax Certificate:** The secretary of state may not accept a certificate of merger for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of merger must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the non-surviving party to the merger may legally end its existence in Texas. Please note that the Comptroller issues many different types of certificates of account status. You need to attach form #05-305, which is issued by the Comptroller of Public Accounts, for each non-surviving party to the merger. *Do not attach a print-out of the entity's franchise tax account status obtained from the Comptroller's web site as this does not meet statutory requirements.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

Alternative: In lieu of the tax certificate, the certificate of merger may provide that one or more of the surviving, new, or acquiring organizations is liable for the payment of the required franchise taxes.

- **Effectiveness of Filing:** A certificate of merger becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a non-surviving domestic filing entity will be shown as "merged" and the status of any new domestic filing entity created by the merger will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Each domestic and foreign nonprofit corporation that is a party to the merger must sign the certificate of merger. Pursuant to section 4.001 of the BOC, the certificate of merger must be signed by a person authorized by the BOC to act on behalf of the *merging* entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

In the case of a domestic nonprofit corporation, an authorized officer should sign the certificate of merger (BOC § 20.001).

The certificate of merger need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of merger of nonprofit corporations is **\$50, plus the fee imposed for filing a certificate of formation for each newly created domestic nonprofit corporation.**

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

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