

- 17-78-206. Effect of merger.** (a) When a merger becomes effective:
- (1) The surviving entity continues or comes into existence;
  - (2) each merging entity that is not the surviving entity ceases to exist;
  - (3) all property of each merging entity vests in the surviving entity without assignment, reversion or impairment;
  - (4) all liabilities of each merging entity are liabilities of the surviving entity;
  - (5) except as otherwise provided by law other than this act or the agreement of merger, all of the rights, privileges, immunities, powers and purposes of each merging entity vest in the surviving entity;
  - (6) if the surviving entity exists before the merger:
    - (A) All of its property continues to be vested in it without reversion or impairment;
    - (B) it remains subject to all of its liabilities; and
    - (C) all of its rights, privileges, immunities, powers and purposes continue to be vested in it;
  - (7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
  - (8) if the surviving entity exists before the merger:
    - (A) its public organic document, if any, is amended as provided in the certificate of merger and is binding on its interest holders; and
    - (B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the agreement of merger and are binding on and enforceable by:
      - (i) Its interest holders; and
      - (ii) in the case of a surviving entity that is not a corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;
  - (9) if the surviving entity is created by the merger:
    - (A) Its public organic document, if any, is effective and is binding on its interest holders; and
    - (B) its private organic rules are effective and are binding on and enforceable by:
      - (i) Its interest holders; and
      - (ii) in the case of a surviving entity that is not a corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and
  - (10) the interests in each merging entity that are to be converted in the merger are converted and the interest holders of those interests are entitled only to the rights provided to them under the agreement of merger and to any appraisal rights they have under K.S.A. 2016 Supp. 17-78-109, and amendments thereto, and the merging entity's organic law.
- (b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor or third party would otherwise have upon a dissolution, liquidation or winding-up of the merging entity.
- (c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.
- (d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:
- (1) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;
  - (2) the person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;
  - (3) the organic law of the domestic merging entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred and the surviving entity were the domestic merging entity; and
  - (4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic merging entity with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.
- (e) When a merger becomes effective, a foreign entity that is the surviving entity:
- (1) May be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and
  - (2) irrevocably appoints the secretary of state as its agent to accept service of process in any such suit or other proceeding. Service of process shall be made on the foreign entity pursuant to K.S.A. 60-304, and amendments thereto.
- (f) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

**History:** L. 2009, ch. 47, § 16; July 1, 2010.