

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 835  
Judiciary I Committee Substitute Adopted 4/26/99

Short Title: Revise Law Governing Mergers.

(Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS.

The General Assembly of North Carolina enacts:

**PART I. CORPORATIONS.**

Section 1.1. G.S. 55-1-20(f) reads as rewritten:

"(f) The A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

- (1) By the chairman of the board of ~~directors of a domestic or foreign corporation,~~ directors, by its president, or by another of its officers;
- (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

1 (3) If the corporation is in the hands of a receiver, trustee, or other court-  
2 appointed fiduciary, by that fiduciary.

3 A document submitted by an unincorporated entity must be executed by a person duly  
4 authorized to do so by the unincorporated entity."

5 Section 1.2. G.S. 55-1-40(9) reads as rewritten:

6 "(9) 'Entity' includes (without limiting the meaning of such term in Article 9)  
7 corporation and foreign corporation; nonprofit corporation; professional  
8 corporation; limited liability company; profit and nonprofit  
9 unincorporated association; business trust, estate, partnership, trust, and  
10 two or more persons having a joint or common economic interest; and  
11 state, United States, and foreign government."

12 Section 1.3. G.S. 55-1-40 is amended by adding the following new  
13 subdivisions, to be placed by the Codifier of Statutes in the appropriate order, to read:

14 "(24a) 'Surviving entity' means the corporation or unincorporated entity that is  
15 the surviving entity of a merger pursuant to G.S. 55-11-10.

16 (25a) 'Unincorporated entity' means a domestic or foreign limited liability  
17 company as defined in G.S. 57C-1-03, a domestic or foreign limited  
18 partnership as defined in G.S. 59-102, or any other partnership as  
19 defined in G.S. 59-36, whether or not formed under the laws of this  
20 State, including a registered limited liability partnership as defined in  
21 G.S. 59-32 and any other limited liability partnership formed under a  
22 law other than the laws of this State."

23 Section 1.4. G.S. 55-4-05 reads as rewritten:

24 **"§ 55-4-05. Real property records.**

25 (a) Whenever the name of any domestic or foreign corporation holding title to real  
26 property in this State is changed upon amendment to the articles of incorporation or  
27 whenever title to its real property in this State is ~~transferred~~ vested by operation of law  
28 upon ~~merger of two or more corporations, merger, consolidation, or conversion of that~~  
29 corporation, a certificate reciting such change or transfer the name change, merger,  
30 consolidation, or conversion shall be recorded in the office of the register of deeds of the  
31 county where the property lies, or if the property is located in more than one county, then  
32 in each county where any portion of the property lies.

33 (b) The Secretary of State shall adopt uniform certificates to be furnished for  
34 registration in accordance with this section. In the case of a foreign corporation, a similar  
35 certificate by any competent authority of the jurisdiction of incorporation may be  
36 registered in accordance with this section.

37 (c) The certificate required by this section shall be recorded by the register of  
38 deeds in the same manner as deeds, and for the same fees, but no formalities as to  
39 acknowledgement, probate, or approval by any other officer shall be required. The  
40 former name of the corporation holding title to the real property before the ~~amendment or~~  
41 merger name change, merger, consolidation, or conversion shall appear in the 'Grantor'  
42 index, and the ~~amended~~ new name of the corporation or the name of the other entity

1 holding title to the real property by virtue of the ~~amendment or merger~~ merger,  
2 consolidation, or conversion shall appear in the 'Grantee' index."

3 Section 1.5. G.S. 55-9-01(b)(1) reads as rewritten:

4 "(1) 'Business combination' includes any merger or consolidation of a  
5 corporation with or into any other ~~corporation,~~ corporation or any  
6 unincorporated entity, or the sale or lease of all or any substantial part of  
7 the corporation's assets to, or any payment, sale or lease to the  
8 corporation or any subsidiary thereof in exchange for securities of the  
9 corporation of any assets (except assets having an aggregate fair market  
10 value of less than five million dollars (\$5,000,000)) of any other entity."

11 Section 1.6. G.S. 55-9-04(d) reads as rewritten:

12 "(d) Nothing contained in this Article shall be construed to relieve any other entity  
13 from any fiduciary obligation imposed by law. This Article shall be broadly construed so  
14 as to be applicable to any transaction reasonably calculated to avoid the application of the  
15 provisions hereof including, without limitation, any merger or other recapitalization,  
16 initiated by or for the benefit of an other entity that owns more than twenty percent (20%)  
17 of the voting shares, which would reincorporate a corporation under the laws of another  
18 ~~state.~~ state or which would reorganize a corporation as an unincorporated entity."

19 Section 1.7. G.S. 55-11-06(a)(4) reads as rewritten:

20 "(4) A proceeding pending by or against any corporation party to the merger  
21 may be continued as if the merger did not occur or the surviving  
22 corporation may be substituted in the proceeding for the corporation  
23 whose existence ceased;"

24 Section 1.8. Article 11 of Chapter 55 of the General Statutes is amended by  
25 adding a new section to read:

26 "**§ 55-11-10. Merger with business entity.**

27 (a) As used in this section, 'business entity' means a domestic corporation as  
28 defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a  
29 foreign corporation as defined in G.S. 55-1-40 (including a foreign professional  
30 corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as  
31 defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in  
32 G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102 and  
33 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of  
34 this State (including a registered limited liability partnership as defined in G.S. 59-32 and  
35 any limited liability partnership formed under a law other than the laws of this State).

36 (b) One or more domestic corporations may merge with one or more  
37 unincorporated entities and, if desired, one or more foreign corporations, domestic  
38 nonprofit corporations, or foreign nonprofit corporations if:

39 (1) The merger is permitted by the laws of the state or country governing  
40 the organization and internal affairs of each other merging business  
41 entity; and

1           (2) Each merging domestic corporation and each other merging business  
2           entity comply with the requirements of this section and, to the extent  
3           applicable, the laws referred to in subdivision (1) of this subsection.

4           (c) Each merging domestic corporation and each other merging business entity  
5 shall approve a written plan of merger containing:

6           (1) For each merging business entity, its name, type of business, and the  
7           state or country whose laws govern its organization and internal affairs;

8           (2) The name of the merging business entity that shall survive the merger;

9           (3) The terms and conditions of the merger;

10          (4) The manner and basis for converting the interests in each merging  
11          business entity into interests, obligations, or securities of the surviving  
12          business entity or into cash or other property in whole or in part; and

13          (5) If the surviving business entity is a domestic corporation, any  
14          amendments to its articles of incorporation that are to be made in  
15          connection with the merger.

16          The plan of merger may contain other provisions relating to the merger.

17          In the case of a domestic corporation, approval of the plan of merger requires that the  
18 plan of merger be adopted as provided in G.S. 55-11-03, unless the shareholder approval  
19 is not required under subsection (g) of G.S. 55-11-03. In the case of each other  
20 merging business entity, the plan of merger must be approved in accordance with the  
21 laws of the state or country governing the organization and internal affairs of that  
22 merging business entity.

23          After a plan of merger has been approved by a domestic corporation but before the  
24 articles of merger become effective, the plan of merger (i) may be amended as  
25 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual  
26 rights) as provided in the plan of merger, or, if there is no such provision, as determined  
27 by the board of directors without further shareholder action.

28          (d) After a plan of merger has been approved by each merging domestic  
29 corporation and each other merging business entity as provided in subsection (c) of this  
30 section, the surviving business entity shall deliver articles of merger to the Secretary of  
31 State for filing. The articles of merger shall set forth:

32           (1) The plan of merger;

33           (2) For each merging business entity, its name, type of business, and the  
34           state or country whose laws govern its organization and internal affairs;

35           (3) The name and address of the surviving business entity;

36           (4) A statement that the plan of merger was approved by each merging  
37           business entity in the manner required by law;

38           (5) The effective date and time of merger if it is not to be effective at the  
39           time of filing of the articles of merger; and

40           (6) If the surviving business entity is not a domestic limited liability  
41           company, a domestic corporation, a domestic nonprofit corporation, or a  
42           domestic limited partnership, the agreement of the surviving business  
43           entity that it may be served with process in this State in any proceeding

1           for enforcement of (i) any obligation of any merging domestic limited  
2           liability company, domestic corporation, domestic nonprofit  
3           corporation, domestic limited partnership, or other partnership as  
4           defined in G.S. 59-36 that is formed under the laws of this State, (ii) the  
5           rights of dissenting shareholders of any merging domestic corporation  
6           under Article 13 of Chapter 55 of the General Statutes, and (iii) any  
7           obligation of the surviving business entity arising from the merger, and  
8           a statement irrevocably appointing the Secretary of State as its agent for  
9           service of process in any such proceeding and specifying the address to  
10           which a copy of the process may be mailed to it by the Secretary of  
11           State (subject to any subsequent change in address upon written  
12           notification by the surviving business entity by the Secretary of State).

13           If the plan of merger is amended or abandoned before the articles of merger become  
14           effective, the surviving business entity promptly shall deliver to the Secretary of State for  
15           filing an amendment to the articles of merger reflecting the amendment or abandonment  
16           of the plan of merger.

17           Certificates of merger shall also be registered as provided in G.S. 47-18.1.

18           (e) A merger takes effect upon the effectiveness of the articles of merger. Upon  
19           the effectiveness of the merger:

20           (1)   Each other merging business entity merges into the surviving business  
21           entity and the separate existence of each merging business entity except  
22           the surviving business entity ceases;

23           (2)   The title to all real estate and other property owned by each merging  
24           business entity is vested in the surviving entity without reversion or  
25           impairment;

26           (3)   The surviving business entity has all liabilities of each merging business  
27           entity;

28           (4)   A proceeding pending by or against any merging business entity may be  
29           continued as if the merger did not occur, or the surviving business entity  
30           may be substituted in the proceeding for a merging business entity  
31           whose existence ceases in the merger;

32           (5)   If a domestic corporation is the surviving business entity, its articles of  
33           incorporation and bylaws shall be amended to the extent provided in the  
34           plan of merger;

35           (6)   The interests in each merging business entity that are to be converted  
36           into interests, obligations, or securities of the surviving business entity  
37           or into the right to receive cash or other property are thereupon  
38           converted, and the former holders of the interests are entitled only to the  
39           rights provided to them in the articles of merger, or in the case of former  
40           holders of shares in a domestic corporation, any rights they may have  
41           under Article 13 of this Chapter; and

42           (7)   If the surviving business entity is not a domestic corporation, the  
43           surviving business entity is deemed to agree that it will promptly pay to

1           the dissenting shareholders of any merging domestic corporation the  
2           amount, if any, to which they are entitled under Article 13 of this  
3           Chapter and otherwise to comply with the requirements of Article 13 as  
4           if it were a surviving domestic corporation in the merger.

5           The merger shall not affect the liability or absence of liability of any holder of an  
6           interest in a merging business entity for any acts, omissions, or obligations of any  
7           merging business equity made or incurred prior to the effectiveness of the merger. The  
8           cessation of separate existence of a merging business entity in the merger shall not  
9           constitute a dissolution or termination of the merging business entity.

10          (f)   This section does not apply to a merger that does not include a merging  
11          unincorporated entity."

12                Section 1.9. G.S. 55-15-21 reads as rewritten:

13          "**§ 55-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger,**  
14                **consolidation, or conversion.**

15          (a)   ~~Whenever the separate existence of a foreign corporation authorized to transact~~  
16          ~~business in this State ceases its separate existence as a result of a statutory merger or~~  
17          ~~consolidation permitted by the laws of the state or country under which it was~~  
18          ~~incorporated, or converts into another entity as permitted by the law, the surviving~~  
19          ~~corporation or resulting entity shall apply for a certificate of withdrawal for the merged~~  
20          ~~foreign corporation by delivering to the Secretary of State for filing a copy of the articles of~~  
21          ~~merger or a certificate reciting the facts of the merger, merger, consolidation, or~~  
22          ~~conversion, duly authenticated by the Secretary of State or other official having custody~~  
23          ~~of corporate records in the state or country under the laws of which such statutory merger~~  
24          ~~was effected. foreign corporation was incorporated. If the surviving corporation or~~  
25          ~~resulting entity is not authorized to transact business in this State the articles of merger or~~  
26          ~~certificate must be accompanied by an application which must set forth:~~

27                (1)   ~~The name of each merged the foreign corporation authorized to transact~~  
28                ~~business in this State and the State, the type of entity and name of the~~  
29                ~~surviving corporation or resulting entity, and a statement that the~~  
30                ~~surviving corporation or resulting entity is not authorized to transact~~  
31                ~~business in this State;~~

32                (2)   ~~That~~ A statement the surviving corporation or resulting entity consents  
33                ~~that service of process based upon any cause of action arising in this~~  
34                ~~State, or arising out of business transacted in this State, during the time~~  
35                ~~each merged the foreign corporation was authorized to transact business~~  
36                ~~in this State may thereafter be made on such corporation by service~~  
37                ~~thereof on the Secretary of State;~~

38                (3)   A mailing address to which the Secretary of State may mail a copy of  
39                any process served on him under subdivision (a)(2); and

40                (4)   A commitment to notify the Secretary of State in the future of any  
41                change in its mailing address.

42          (b)   If the Secretary of State finds that the ~~articles of merger or certificate and the~~  
43          ~~application for withdrawal, if required, conforms conform to law he the Secretary shall:~~

- 1 (1) Endorse on the ~~articles of merger or~~ certificate and the application for  
2 withdrawal, if required, the word 'filed' and the hour, day, month and  
3 year of the filing thereof;
- 4 (2) File the ~~articles of merger or~~ certificate and the application, if required;
- 5 (3) Issue a certificate of withdrawal; and
- 6 (4) Send to the ~~foreign corporation~~ surviving or resulting entity or its  
7 representative the certificate of withdrawal, together with the exact or  
8 conformed copy of the application, if required, affixed thereto."

## 9 PART II. NONPROFIT CORPORATIONS.

10 Section 2.1. G.S. 55A-1-20(f) reads as rewritten:

11 "(f) The A document submitted by a domestic or foreign corporation or business  
12 corporation shall be executed:

- 13 (1) By the presiding officer of the board of directors ~~of a domestic or foreign~~  
14 ~~corporation~~, by its president, or by another of its officers;
- 15 (2) If directors have not been selected or the corporation has not been  
16 formed, by an incorporator; or
- 17 (3) If the corporation is in the hands of a receiver, trustee, or other court-  
18 appointed fiduciary, by that fiduciary.

19 A document submitted by an unincorporated entity shall be executed by a person duly  
20 authorized to do so by the unincorporated entity."

21 Section 2.2. G.S. 55A-1-40 is amended by adding the following new  
22 subdivision to read:

23 "(25a) 'Unincorporated entity' means a domestic or foreign limited liability  
24 company as defined in G.S. 57C-1-03, a domestic or foreign limited  
25 partnership as defined in G.S. 59-102, or any other partnership as  
26 defined in G.S. 59-36, whether or not formed under the laws of this  
27 State, including a registered limited liability partnership as defined in  
28 G.S. 59-32 and any other limited liability partnership formed under a  
29 law other than the laws of this State."

30 Section 2.3. G.S. 55A-4-05 reads as rewritten:

### 31 "§ 55A-4-05. Real property records.

32 (a) Whenever the name of any domestic or foreign corporation holding title to real  
33 property in this State is changed upon amendment to the articles of incorporation or  
34 whenever title to real property in this State is ~~transferred vested~~ by operation of law upon  
35 ~~merger of two or more corporations, merger, consolidation, or conversion of the~~  
36 corporation, a certificate reciting the ~~change or transfer~~ name change, merger,  
37 consolidation, or conversion shall be recorded by the corporation or its successor in the  
38 office of the register of deeds of the county where the property lies, or if the property is  
39 located in more than one county, then in each county where any portion of the property  
40 lies.

41 (b) The Secretary of State shall adopt uniform certificates to be furnished for  
42 recording in accordance with this section. In the case of a foreign corporation, a similar

1 certificate by any competent authority of the jurisdiction of incorporation may be  
2 recorded in accordance with this section.

3 (c) The certificate required by this section shall be recorded by the register of  
4 deeds in the same manner as deeds, and for the same fees, but no formalities as to  
5 acknowledgement, probate, or approval by any other officer shall be required. The  
6 former name of the corporation holding title to the real property before the ~~amendment or~~  
7 ~~merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor'  
8 index, and the amended new name of the corporation or the name of the other entity  
9 holding title to the real property by virtue of the ~~amendment or merger~~ merger,  
10 consolidation, or conversion shall appear in the 'Grantee' index."

11 Section 2.4. G.S. 55A-11-02 reads as rewritten:

12 **"§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

13 (a) Without the prior approval of the superior court in a proceeding in which the  
14 Attorney General has been given written notice, a charitable or religious corporation may  
15 merge only with:

- 16 (1) A charitable or religious corporation;
- 17 (2) A foreign corporation that would qualify under this Chapter as a  
18 charitable or religious corporation;
- 19 (3) A wholly owned foreign or domestic corporation (business or nonprofit)  
20 or unincorporated entity which is not a charitable or religious  
21 ~~corporation, corporation or charitable or religious organization,~~ provided  
22 the charitable or religious corporation or charitable or religious  
23 organization is the ~~surviving corporation~~ survivor in the merger and  
24 continues to be a charitable or religious corporation or charitable or  
25 religious organization after the merger; or
- 26 (4) A business or nonprofit corporation (foreign or domestic) or  
27 unincorporated entity other than a charitable or religious corporation,  
28 provided that: (i) on or prior to the effective date of the merger, assets  
29 with a value equal to the greater of the fair market value of the net  
30 tangible and intangible assets (including goodwill) of the charitable or  
31 religious corporation or the fair market value of the charitable or  
32 religious corporation if it were to be operated as a business concern are  
33 transferred or conveyed to one or more persons who would have  
34 received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved;  
35 (ii) it shall return, transfer or convey any assets held by it upon  
36 condition requiring return, transfer or conveyance, which condition  
37 occurs by reason of the merger, in accordance with such condition; and  
38 (iii) the merger is approved by a majority of directors of the charitable  
39 or religious corporation who are not and will not become ~~members~~  
40 members, as 'members' is defined in G.S. 55A-1-40 or G.S. 57C-1-03,  
41 partners, limited partners, or shareholders in or directors, managers,  
42 officers, employees, agents, or consultants of the ~~surviving corporation.~~  
43 survivor in the merger.

1 (b) At least 20 days before consummation of any merger of a charitable or  
2 religious corporation pursuant to subdivision (a)(4) of this section, notice, including a  
3 copy of the proposed plan of merger, shall be delivered to the Attorney General.

4 (c) Without the prior written consent of the Attorney General, or approval of the  
5 superior court in a proceeding in which the Attorney General has been given notice, no  
6 member of a charitable or religious corporation may receive or retain any property as a  
7 result of a merger other than ~~a membership~~ an interest as a member, as defined in G.S.  
8 55A-1-40(16), in the surviving corporation-survivor of the merger. The Attorney General  
9 may consent to the transaction, or the court shall approve the transaction, if it is fair and  
10 not contrary to the public interest."

11 Section 2.5. G.S. 55A-11-05(a)(4) reads as rewritten:

12 "(4) A proceeding pending by or against any corporation party to the merger  
13 may be continued as if the merger did not occur or the surviving  
14 corporation may be substituted in the proceeding for the corporation  
15 whose existence ceased; and".

16 Section 2.6. G.S. 55A-11-07 reads as rewritten:

17 "**§ 55A-11-07. Bequests, devises, and gifts.**

18 Any bequest, devise, gift, grant, or promise contained in a will or other instrument of  
19 donation, subscription, or conveyance, that is made to a constituent corporation and that  
20 takes effect or remains payable after the merger, inures to the ~~surviving corporation~~  
21 survivor in the merger unless the will or other instrument otherwise specifically  
22 provides."

23 Section 2.7. Article 11 of Chapter 55A of the General Statutes is amended by  
24 adding a new section to read:

25 "**§ 55A-11-09. Merger with unincorporated entity.**

26 (a) As used in this section, 'business entity' means a domestic corporation as  
27 defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a  
28 foreign corporation as defined in G.S. 55-1-40 (including a foreign professional  
29 corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as  
30 defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in  
31 G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and  
32 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of  
33 this State (including a registered limited liability partnership as defined in G.S. 59-32  
34 and any limited liability partnership formed under a law other than the laws of this State).

35 (b) One or more domestic nonprofit corporations may merge with one or more  
36 unincorporated entities and, if desired, one or more foreign nonprofit corporations,  
37 domestic business corporations, or foreign business corporations if:

38 (1) The merger is permitted by the laws of the state or country governing  
39 the organization and internal affairs of each merging business entity;

40 (2) Each merging domestic nonprofit corporation and each other merging  
41 business entity comply with the requirements of this section and, to the  
42 extent applicable, the laws referred to in subdivision (1) of this  
43 subsection; and

1           (3)    The merger complies with G.S. 55A-11-02, if applicable.

2       (c)    Each merging domestic nonprofit corporation and each other merging business  
3 entity shall approve a written plan of merger containing:

4           (1)    For each merging business entity, its name, type of business, and the  
5 state or country whose laws govern its organization and internal affairs;

6           (2)    The name of the merging business entity that shall survive the merger;

7           (3)    The terms and conditions of the merger;

8           (4)    The manner and basis for converting the interests in each merging  
9 business entity into interests, obligations, or securities of the surviving  
10 business entity or into cash or other property in whole or in part; and

11          (5)    If the surviving business entity is a domestic nonprofit corporation, any  
12 amendments to its articles of incorporation or bylaws that are to be  
13 made in connection with the merger.

14       The plan of merger may contain other provisions relating to the merger.

15       In the case of a domestic nonprofit corporation, approval of the plan of merger  
16 requires that the plan of merger be adopted as provided in G.S. 55A-11-03. In the case of  
17 each other merging business entity, the plan of merger must be approved in accordance  
18 with the laws of the state or country governing the organization and internal affairs of  
19 such merging business entity.

20       After a plan of merger has been approved by a domestic nonprofit corporation, but  
21 before the articles of merger become effective, the plan of merger (i) may be amended as  
22 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual  
23 rights) as provided in the plan of merger, or, if there is no such provision, as determined  
24 by the board of directors.

25       (d)    After a plan of merger has been approved by each merging domestic nonprofit  
26 corporation and each other merging business entity as provided in subsection (c) of this  
27 section, the surviving business entity shall deliver articles of merger to the Secretary of  
28 State for filing. The articles of merger shall set forth:

29           (1)    The plan of merger;

30           (2)    For each merging business entity, its name, type of business, and the  
31 state or country whose laws govern its organization and internal affairs;

32           (3)    The name and address of the surviving business entity;

33           (4)    A statement that the plan of merger was approved by each merging  
34 business entity in the manner required by law;

35           (5)    The effective date and time of merger if it is not to be effective at the  
36 time of filing of the articles of merger; and

37           (6)    If the surviving business entity is not a domestic limited liability  
38 company, a domestic business corporation, a domestic nonprofit  
39 corporation, or a domestic limited partnership, the agreement of the  
40 surviving business entity that it may be served with process in this State  
41 in any proceeding for enforcement of (i) any obligation of any merging  
42 domestic limited liability company, domestic business corporation,  
43 domestic nonprofit corporation, domestic limited partnership, or other

1 partnership as defined in G.S. 59-36 that is formed under the laws of  
2 this State, (ii) the rights of dissenting shareholders of any merging  
3 domestic business corporation under Article 13 of Chapter 55 of the  
4 General Statutes, and (iii) any obligation of the surviving business entity  
5 arising from the merger, and a statement irrevocably appointing the  
6 Secretary of State as its agent for service of process in any such  
7 proceeding and specifying the address to which a copy of the process  
8 may be mailed to it by the Secretary of State (subject to any subsequent  
9 change in address upon written notification by the surviving business  
10 entity by the Secretary of State).

11 If the plan of merger is amended or abandoned before the articles of merger become  
12 effective, the surviving business entity promptly shall deliver to the Secretary of State for  
13 filing an amendment to the articles of merger reflecting the amendment or abandonment  
14 of the plan of merger.

15 Certificates of merger shall also be registered as provided in G.S. 47-18.1.

16 (e) A merger takes effect upon the effectiveness of the articles of merger. Upon  
17 the effectiveness of the merger:

- 18 (1) Each other merging business entity merges into the surviving business  
19 entity and the separate existence of each merging business entity except  
20 the surviving business entity ceases;
- 21 (2) The title to all real estate and other property owned by each merging  
22 business entity is vested in the surviving entity without reversion or  
23 impairment;
- 24 (3) The surviving business entity has all liabilities of each merging business  
25 entity;
- 26 (4) A proceeding pending by or against any merging business entity may be  
27 continued as if the merger did not occur, or the surviving business entity  
28 may be substituted in the proceeding for a merging business entity  
29 whose existence ceases in the merger;
- 30 (5) If a domestic nonprofit corporation is the surviving business entity, its  
31 articles of incorporation and bylaws shall be amended to the extent  
32 provided in the plan of merger;
- 33 (6) The interests in each merging business entity that are to be converted  
34 into interests, obligations, or securities of the surviving business entity  
35 or into the right to receive cash or other property are thereupon  
36 converted, and the former holders of the interests are entitled only to the  
37 rights provided to them in the articles of merger, or in the case of former  
38 holders of shares in a domestic corporation, any rights they may have  
39 under Article 13 of Chapter 55 of the General Statutes; and
- 40 (7) If the surviving business entity is not a domestic business corporation,  
41 the surviving business entity is deemed to agree that it will promptly  
42 pay to the dissenting shareholders of any merging domestic business  
43 corporation the amount, if any, to which they are entitled under Article

1           13 of Chapter 55 of the General Statutes and otherwise to comply with  
2           the requirements of Article 13 as if it were a surviving domestic  
3           business corporation in the merger.

4           The merger shall not affect the liability or absence of liability of any holder of an  
5           interest in a merging business entity for any acts, omissions, or obligations of any  
6           merging business equity made or incurred prior to the effectiveness of the merger. The  
7           cessation of separate existence of a merging business entity in the merger shall not  
8           constitute a dissolution or termination of the merging business entity.

9           (f) This section does not apply to a merger that does not include a merging  
10           unincorporated entity."

11           Section 2.8. G.S. 55A-15-21 reads as rewritten:

12           "**§ 55A-15-21. Withdrawal of foreign corporation by reason of a ~~merger.~~ merger,**  
13           **consolidation, or conversion.**

14           (a) ~~Whenever the separate existence of a foreign corporation authorized to conduct~~  
15           affairs in this State ceases its separate existence as a result of a statutory merger or  
16           consolidation permitted by the laws of the state or country under which it was  
17           incorporated, or converts into another entity as permitted by those laws, the surviving  
18           ~~corporation or resulting entity~~ shall apply for a certificate of withdrawal for ~~the merged the~~  
19           foreign corporation by delivering to the Secretary of State for filing a copy of the articles of  
20           ~~merger or a~~ certificate reciting the facts of the ~~merger,~~ merger, consolidation, or  
21           conversion duly authenticated by the secretary of state or other official having custody of  
22           corporate records in the state or country under the laws of which ~~such statutory merger was~~  
23           ~~effected.~~ the foreign corporation was incorporated. If the surviving or resulting entity  
24           ~~corporation~~ is not authorized to conduct affairs in this State, the ~~articles of merger or~~  
25           certificate shall be accompanied by an application which must set forth:

26           (1) ~~The name of each merged the foreign corporation authorized to conduct~~  
27           affairs in this State ~~and State,~~ the type of entity and the name of the  
28           surviving ~~corporation or resulting entity,~~ and a statement that the  
29           surviving ~~corporation or resulting entity~~ is not authorized to conduct  
30           affairs in this State;

31           (2) ~~That~~ A statement that the surviving ~~corporation or resulting entity~~  
32           consents that service of process based upon any cause of action arising  
33           in this State, or arising out of affairs conducted in this State, during the  
34           time ~~each merged the foreign~~ corporation was authorized to conduct  
35           affairs in this State may thereafter be made ~~on such corporation by~~  
36           service thereof on the Secretary of State;

37           (3) A mailing address to which the Secretary of State may mail a copy of  
38           any process served on him under subdivision (a)(2) of this section; and

39           (4) A commitment to notify the Secretary of State in the future of any  
40           change in its mailing address.

41           (b) If the Secretary of State finds that the ~~articles of merger or certificate~~ and the  
42           application for withdrawal, if required, conforms to law the Secretary of State shall:

- 1 (1) Endorse on the ~~articles of merger or certificate~~ and the application for  
2 withdrawal, if required, the word 'filed', and the hour, day, month, and  
3 year of filing thereof;
- 4 (2) File the ~~articles of merger or certificate~~ and the application, if required;
- 5 (3) Issue a certificate of withdrawal; and
- 6 (4) Send to the ~~foreign corporation~~ surviving or resulting entity or its  
7 representative the certificate of withdrawal, together with the exact or  
8 conformed copy of the application, if required, affixed thereto."

### 9 PART III. LIMITED LIABILITY COMPANIES.

10 Section 3.1. G.S. 57C-1-20(f) reads as rewritten:

11 "(f) ~~The~~ A document submitted by a domestic or foreign limited liability company  
12 must be executed:

- 13 (1) By a manager of ~~a domestic or foreign~~ the limited liability company;
- 14 (2) If managers have not been selected, or if the limited liability company  
15 does not have a manager other than a member, by any member;
- 16 (3) If the limited liability company has not been formed, by an organizer; or
- 17 (4) If the limited liability company is in the hands of a receiver, trustee, or  
18 other court-appointed fiduciary, by that fiduciary.

19 A document submitted by a business entity other than a domestic or foreign limited  
20 liability company must be executed by a person duly authorized to do so by the business  
21 entity."

22 Section 3.2. G.S. 57C-1-03 is amended by adding a new subdivision to read:

23 "(3a) Business entity. – A corporation (including a professional corporation as  
24 defined in G.S. 55B-2), a foreign corporation (including a foreign  
25 professional corporation as defined in G.S. 55B-16), a domestic or  
26 foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic  
27 or foreign limited liability company, a domestic or foreign limited  
28 partnership as defined in G.S. 59-102, or any other partnership as  
29 defined in G.S. 59-36 whether or not formed under the laws of this State  
30 (including a registered limited liability partnership as defined in G.S.  
31 59-32 and any limited liability partnership formed under a law other  
32 than the laws of this State."

33 Section 3.3. G.S. 57C-1-03(15) reads as rewritten:

34 "(15) Membership interest or interest. —~~All~~ In the context of a member of a  
35 limited liability company, the terms mean all of a member's rights in the  
36 limited liability company, including without limitation the member's  
37 share of the profits and losses of the limited liability company, the right  
38 to receive distributions of the limited liability company assets, any right  
39 to vote, and any right to participate in management."

40 Section 3.4. G.S. 57C-2-20(a) reads as rewritten:

41 "(a) One or more persons may organize a limited liability company by delivering  
42 executed articles of organization to the Secretary of State for filing. A limited liability

1 company may also be formed through the conversion of another business entity pursuant  
2 to Part 1 of Article 9A of this Chapter."

3 Section 3.5. G.S. 57C-2-34 reads as rewritten:

4 "**§ 57C-2-34. Real property records.**

5 (a) Whenever the name of any domestic or foreign limited liability company  
6 holding title to real property in this State is changed upon amendment to its articles of  
7 organization or whenever title to its real property in this State is ~~transferred-vested~~ by  
8 operation of law in another entity upon merger-merger, consolidation, or conversion of  
9 ~~two or more the limited liability companies, company,~~ a certificate reciting the ~~change or~~  
10 ~~transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office  
11 of the register of deeds of the county where the property lies, or if the property is located  
12 in more than one county, then in each county where any portion of the property lies.

13 (b) The Secretary of State shall adopt uniform certificates to be furnished for  
14 registration in accordance with this section. In the case of a foreign limited liability  
15 company, a similar certificate by any competent authority of the jurisdiction of  
16 organization may be registered in accordance with this section.

17 (c) The certificate required by this section shall be recorded by the register of  
18 deeds in the same manner as deeds, and for the same fees, but no formalities as to  
19 acknowledgement, probate, or approval by any other officer shall be required. The  
20 former name of the limited liability company holding title to the real property before the  
21 ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in  
22 the 'Grantor' index, and the ~~amended-new~~ name of the limited liability company or the  
23 name of the other entity holding title to the real property by virtue of the amendment or  
24 merger-merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee'  
25 index."

26 Section 3.6. G.S. 57C-7-12 reads as rewritten:

27 "**§ 57C-7-12. Withdrawal of limited liability company by reason of a ~~merger-~~**  
28 **merger, consolidation, or conversion.**

29 (a) Whenever ~~the separate existence of~~ a foreign limited liability company  
30 authorized to transact business in this State ceases its separate existence as a result of a  
31 statutory ~~merger-merger, consolidation, or conversion~~ permitted by the laws of the state or  
32 country under which it was organized, or converts into another type of entity permitted  
33 by the laws, the surviving or resulting entity shall apply for a certificate of withdrawal for  
34 the ~~merged~~ foreign limited liability company by delivering to the Secretary of State for  
35 filing a ~~copy of the articles of merger or a~~ certificate reciting the facts of the merger,  
36 consolidation, or conversion, duly authenticated by the Secretary of State or other official  
37 having custody of limited liability company records in the state or country under the laws  
38 of which ~~such statutory merger~~ the foreign limited liability company was effected-  
39 organized. If the surviving or resulting entity is not authorized to transact business in this  
40 State, the ~~articles of merger or~~ certificate must be accompanied by an application which  
41 must set forth:

42 (1) The name of ~~each merged~~ the foreign limited liability company  
43 authorized to transact business in this ~~State and~~ State, the type of entity

1 and name of the surviving or resulting ~~entity~~ entity, and a statement that  
2 the surviving or resulting entity is not authorized to transact business in  
3 this State;

4 (2) ~~That~~ A statement that the surviving or resulting entity consents that  
5 service of process based upon any cause of action arising in this State,  
6 or arising out of business transacted in this State, during the time each  
7 the merged foreign limited liability company was authorized to transact  
8 business in this State, may thereafter be made ~~on such foreign limited~~  
9 ~~liability company~~ by service thereof on the Secretary of State;

10 (3) A mailing address to which the Secretary of State may mail a copy of  
11 any process served on him under subdivision (a)(2) of this section; and

12 (4) A commitment to notify the Secretary of State in the future of any  
13 change in its mailing address.

14 (b) If the Secretary of State finds that the ~~articles of merger or~~ certificate and the  
15 application for withdrawal, if required, conforms to law, the Secretary of State shall:

16 (1) Endorse on the ~~articles of merger or~~ certificate and the application for  
17 withdrawal, if required, the word 'filed' and the hour, day, month, and  
18 year of filing thereof;

19 (2) File the ~~articles of merger or~~ certificate and the application, if required;

20 (3) Issue a certificate of withdrawal; and

21 (4) Send to the ~~foreign limited liability company~~ surviving or resulting entity  
22 or its representative the certificate of withdrawal, together with the exact  
23 or conformed copy of the application, if required, affixed thereto."

24 Section 3.7. Article 9 of Chapter 57C of the General Statutes is repealed.  
25 Chapter 57C of the General Statutes is amended by adding a new Article to read:

26 **"ARTICLE 9A.**

27 **"CONVERSION AND MERGER.**

28 **"PART 1. CONVERSION TO DOMESTIC LIMITED LIABILITY COMPANY.**

29 **"§ 57C-9A-01. Conversion.**

30 (a) A domestic limited liability company may convert to a domestic limited  
31 partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes, the  
32 Revised Uniform Limited Partnership Act.

33 (b) A foreign limited liability company, a domestic or foreign limited partnership  
34 as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or  
35 not formed under the laws of this State (including a registered limited liability partnership  
36 as defined in G.S. 59-32 and any other limited liability partnership formed under a law  
37 other than the laws of this State) may convert to a domestic limited liability company if:

38 (1) The converting business entity complies with the requirements of this  
39 Part; and

40 (2) The conversion is permitted by the laws of the state or country  
41 governing the organization and internal affairs of the converting  
42 business entity and the converting business entity complies with those

1           laws, if the organization and internal affairs of the converting business  
2           entity are not governed by the laws of this State.

3 **"§ 57C-9A-02. Plan of conversion.**

4       (a) The holders of the interests in the converting business entity shall approve a  
5 written plan of conversion containing:

6           (1) The name of the resulting domestic limited liability company into which  
7 the converting business entity shall convert;

8           (2) The terms and conditions of the conversion; and

9           (3) The manner and basis for converting the interests in the converting  
10 business entity into interests, obligations, or securities of the resulting  
11 domestic limited liability company or into cash or other property in  
12 whole or in part.

13       The plan of conversion may also contain other provisions relating to the conversion.

14       (b) In the case of a domestic limited partnership or other partnership as defined in  
15 G.S. 59-36 whose organization and internal affairs are governed by the laws of this State,  
16 the plan of conversion must be approved in the manner provided for the approval of such  
17 a conversion in a written partnership agreement that is binding on all the partners or, if  
18 there is no such provision, by the unanimous consent of all the partners. In the case of a  
19 foreign limited liability company, a foreign limited partnership, or other partnership as  
20 defined in G.S. 59-36 whose organization and internal affairs are governed by a law other  
21 than the laws of this State, the plan of conversion must be approved in accordance with  
22 the laws of the state or country governing the organization and internal affairs of the  
23 converting business entity.

24       (c) After a plan of conversion has been approved as provided in subsection (b) of  
25 this section, but before articles of organization for the resulting domestic limited liability  
26 company become effective, the plan of conversion may be amended or terminated to the  
27 extent provided in the plan of conversion.

28 **"§ 57C-9A-03. Filing of articles of organization by converting business entity.**

29       (a) After a plan of conversion has been approved by the converting business entity  
30 as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of  
31 organization to the Secretary of State for filing. In addition to the matters required or  
32 permitted by G.S. 57C-2-21, the articles of organization shall state:

33           (1) That the domestic limited liability company is being formed pursuant to  
34 a conversion of another business entity;

35           (2) The name of the converting business entity and the state or country  
36 whose laws govern its organization and internal affairs; and

37           (3) That a plan of conversion has been approved by the converting business  
38 entity as required by law.

39       If the plan of conversion is abandoned before the articles of organization become  
40 effective, the converting business entity promptly shall deliver to the Secretary of State  
41 for filing an amendment to the articles of organization reflecting the abandonment of the  
42 plan of conversion.

1       (b) The conversion takes effect upon the effectiveness of the articles of  
2 organization as provided in G.S. 57C-1-23.

3       (c) The converting business entity shall furnish a copy of the plan of conversion,  
4 on request and without cost, to any member or partner (whether general or limited) of the  
5 converting business entity.

6       (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

7 **"§ 57C-9A-04. Effects of conversion.**

8 Upon the conversion becoming effective:

9       (1) The converting business entity ceases its prior form of organization and  
10 continues in existence as the resulting domestic limited liability  
11 company;

12       (2) The title to all real estate and other property owned by the converting  
13 business entity continues vested in the resulting domestic limited  
14 liability company without reversion or impairment;

15       (3) All liabilities of the converting business entity continue as liabilities of  
16 the resulting domestic limited liability company;

17       (4) A proceeding pending by or against the converting business entity may  
18 be continued as if the conversion did not occur; and

19       (5) The interests in the converting business entity that are to be converted  
20 into interests, obligations, or securities of the resulting domestic limited  
21 liability company or into the right to receive cash or other property, are  
22 thereupon so converted, and the former holders of interests in the  
23 converting business entity are entitled only to the rights provided in the  
24 plan of conversion.

25       The conversion shall not affect the liability or absence of liability of any holder of an  
26 interest in the converting business entity for any acts, omissions, or obligations of the  
27 converting business entity, made or incurred prior to the effectiveness of the conversion.  
28 The cessation of the existence of the converting business entity in its prior form of  
29 organization in the conversion shall not constitute a dissolution or termination of the  
30 converting business entity.

31 **"PART 2. MERGER.**

32 **"§ 57C-9A-05. Merger.**

33       A domestic limited liability company may merge with one or more other domestic  
34 limited liability companies or other business entities if:

35       (1) The merger is permitted by the laws of the state or country governing  
36 the organization and internal affairs of each of the other merging  
37 business entities; and

38       (2) Each merging domestic limited liability company and each other  
39 merging business entity comply with the requirements of this Part and,  
40 to the extent applicable, the laws referred to in subdivision (1) of this  
41 section.

42 **"§ 57C-9A-06. Plan of merger.**

1       (a) Each merging domestic limited liability company and each other merging  
2 business entity shall approve a written plan of merger containing:

- 3           (1) For each merging business entity, its name, type of business, and the  
4 state or country whose laws govern its organization and internal affairs;  
5           (2) The name of the merging business entity that shall survive the merger;  
6           (3) The terms and conditions of the merger;  
7           (4) The manner and basis for converting the interests in each merging  
8 business entity into interests, obligations, or securities of the surviving  
9 business entity or into cash or other property in whole or in part; and  
10          (5) If the surviving business entity is a domestic limited liability company,  
11 any amendments to its articles of organization that are to be made in  
12 connection with the merger.

13       The plan of merger may contain other provisions relating to the merger.

14       (b) In the case of a merging domestic limited liability company, the plan of merger  
15 must be approved in the manner provided in its articles of organization or a written  
16 operating agreement for approval of a merger with the type of business entity  
17 contemplated in the plan of merger, or, if there is no such provision, by the unanimous  
18 consent of its members. In the case of each other merging business entity, the plan of  
19 merger must be approved in accordance with the laws of the state or country governing  
20 the organization and internal affairs of the merging business entity.

21       (c) After a plan of merger has been approved by a domestic limited liability  
22 company, but before the articles of merger become effective, the plan of merger (i) may  
23 be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any  
24 contractual rights) as provided in the plan of merger, articles of organization, or written  
25 operating agreement or, if not so provided, as determined by the managers of the  
26 domestic limited liability company in accordance with G.S. 57C-3-20(b).

27 **"§ 57C-9A-07. Articles of merger.**

28       (a) After a plan of merger has been approved by each merging domestic limited  
29 liability company and each other merging business entity as provided in G.S. 57C-9A-06,  
30 the surviving business entity shall deliver articles of merger to the Secretary of State for  
31 filing. The articles of merger shall set forth:

- 32           (1) The plan of merger;  
33           (2) For each merging business entity, its name, type of business, and the  
34 state or country whose laws govern its organization and internal affairs;  
35           (3) The name and address of the surviving business entity;  
36           (4) A statement that the plan of merger has been approved by each merging  
37 business entity in the manner required by law;  
38           (5) The effective date and time of the merger if it is not to be effective at  
39 the time of filing of the articles of merger; and  
40           (6) If the surviving business entity is not a domestic limited liability  
41 company, a domestic corporation, a domestic nonprofit corporation, or a  
42 domestic limited partnership, the agreement of the surviving business  
43 entity that it may be served with process in this State in any proceeding

1           for enforcement of (i) any obligation of any merging domestic limited  
2           liability company, domestic corporation, domestic nonprofit  
3           corporation, domestic limited partnership, or other partnership as  
4           defined in G.S. 59-36 that is formed under the laws of this State, (ii) the  
5           rights of dissenting shareholders of any merging domestic corporation  
6           under Article 13 of Chapter 55 of the General Statutes, and (iii) any  
7           obligation of the surviving business entity arising from the merger, and  
8           a statement irrevocably appointing the Secretary of State as its agent for  
9           service of process in any such proceeding and specifying the address to  
10           which a copy of the process may be mailed to it by the Secretary of  
11           State (subject to any subsequent change in address upon written  
12           notification by the surviving business entity by the Secretary of State).

13           If the plan of merger is amended or abandoned before the articles of merger become  
14           effective, the surviving business entity promptly shall deliver to the Secretary of State for  
15           filing an amendment to the articles of merger reflecting the amendment or abandonment  
16           of the plan of merger.

17           (b) A merger takes effect upon the effectiveness of the articles of merger as  
18           provided in G.S. 57C-1-23.

19           (c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

20           **"§ 57C-9A-08. Effects of merger.**

21           Upon the merger becoming effective:

- 22           (1) Each other merging business entity merges into the surviving business  
23           entity. The separate existence of each merging business entity, except  
24           the surviving business entity, ceases;
- 25           (2) The title to all real estate and other property owned by each merging  
26           business entity is vested in the surviving business entity without  
27           reversion or impairment;
- 28           (3) The surviving business entity has all liabilities of each merging business  
29           entity;
- 30           (4) A proceeding pending by or against any merging business entity may be  
31           continued as if the merger did not occur, or the surviving business entity  
32           may be substituted in the proceeding for a merging business entity  
33           whose existence ceases in the merger;
- 34           (5) If a domestic limited liability company is the surviving business entity,  
35           its articles of organization shall be amended to the extent provided in  
36           the plan of merger;
- 37           (6) The interests in each merging business entity that are to be converted  
38           into interests, obligations, or securities of the surviving business entity  
39           or into the right to receive cash or other property are thereupon so  
40           converted, and the former holders of the interests are entitled only to the  
41           rights provided to them in the plan of merger, or in the case of former  
42           holders of shares in a domestic corporation, any rights they may have

1 under Article 13 of Chapter 55 of the General Statutes, the North  
2 Carolina Business Corporation Act; and

- 3 (7) If the surviving business entity is not a domestic corporation, the  
4 surviving business entity is deemed to agree that it will promptly pay to  
5 the dissenting shareholders of any merging domestic corporation the  
6 amount, if any, to which they are entitled under Article 13 of Chapter 55  
7 of the General Statutes and otherwise to comply with the requirements  
8 of Article 13 as if it were a surviving domestic corporation in the  
9 merger.

10 The merger shall not affect the liability or absence of liability of any holder of an  
11 interest in a merging business entity for any acts, omissions, or obligations of any  
12 merging business entity made or incurred prior to the effectiveness of the merger. The  
13 cessation of separate existence of a merging business entity in the merger shall not  
14 constitute a dissolution or termination of that merging business entity."

#### 15 **PART IV. PARTNERSHIPS.**

16 Section 4.1. Article 2 of Chapter 59 of the General Statutes is amended by  
17 adding a new Part to read:

#### 18 **"PART 7. CONVERSION AND MERGER.**

##### 19 **"§ 59-73.1. Definitions.**

20 As used in this Part:

- 21 (1) 'Domestic partnership' means a partnership as defined in G.S. 59-36 that  
22 is formed under the laws of this State, including a registered limited  
23 liability partnership as defined in G.S. 59-32, but excluding a domestic  
24 limited partnership as defined in G.S. 59-102.
- 25 (2) 'Business entity' means a domestic corporation as defined in G.S. 55-1-  
26 40 (including a professional corporation as defined in G.S. 55B-2), a  
27 foreign corporation as defined in G.S. 55-1-40 (including a foreign  
28 professional corporation as defined in G.S. 55B-16), a domestic or  
29 foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic  
30 or foreign limited liability company as defined in G.S. 57C-1-03, a  
31 domestic or foreign limited partnership as defined in G.S. 59-102, a  
32 domestic partnership, or any other partnership as defined in G.S. 59-36  
33 formed under a law other than the laws of this State (including a limited  
34 liability partnership).
- 35 (3) 'Partnership' means a partnership as defined in G.S. 59-36 whether or  
36 not formed under the laws of this State including a registered limited  
37 liability partnership and any other limited liability partnership formed  
38 under a law other than the laws of this State but excluding a domestic  
39 limited partnership as defined in G.S. 59-102 and a foreign limited  
40 partnership as defined in G.S. 59-102.

##### 41 **"§ 59-73.2. Conversion of domestic partnership.**

42 A domestic partnership may convert to a domestic limited liability company pursuant  
43 to Part 1 of Article 9 of Chapter 57C of the General Statutes, the North Carolina Limited

1 Liability Company Act, or to a domestic limited partnership pursuant to Part 10A of  
2 Article 5 of Chapter 59 of the General Statutes, the Revised Uniform Limited Partnership  
3 Act.

4 **"§ 59-73.3. Merger.**

5 A domestic partnership may merge with one or more other domestic partnerships or  
6 other business entities if:

7 (1) The merger is permitted by laws of the state or country governing the  
8 organization and internal affairs of each other merging business entity;  
9 and

10 (2) Each merging domestic partnership and each other merging business  
11 entity comply with the requirements of this Part and, to the extent  
12 applicable, the laws referred to in subdivision (1) of this section.

13 **"§ 59-73.4. Plan of merger.**

14 (a) Each merging domestic partnership and each other merging business entity  
15 shall approve a written plan of merger containing:

16 (1) For each merging business entity, its name, type of business, and the  
17 state or country whose laws govern its organization and internal affairs;

18 (2) The name of the merging business entity that shall survive the merger;

19 (3) The terms and conditions of the merger; and

20 (4) The manner and basis for converting the interests in each merging  
21 business entity into interests, obligations, or securities of the surviving  
22 business entity or into cash or other property in whole or in part.

23 The plan of merger may contain other provisions relating to the merger.

24 (b) In the case of a merging domestic partnership, the plan of merger must be  
25 approved in the manner provided in a written partnership agreement that is binding on all  
26 the partners for approval of a merger with the type of business entity contemplated in the  
27 plan of merger or, if there is no such provision by the unanimous consent of its partners.  
28 In the case of each other merging business entity, the plan of merger must be approved in  
29 accordance with the laws of the state or country governing the organization and internal  
30 affairs of such merging business entity.

31 (c) After a plan of merger has been approved by the domestic partnership, but  
32 before the articles of merger become effective, the plan of merger (i) may be amended as  
33 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual  
34 rights) as provided in the plan of merger or a written partnership agreement that is  
35 binding on all the partners or, if not so provided, as determined by the partners.

36 **"§ 59-73.5. Articles of merger.**

37 (a) After a plan of merger has been approved by each merging domestic  
38 partnership and each other merging business entity as provided in G.S. 59-73.4, the  
39 surviving business entity shall deliver articles of merger to the Secretary of State for  
40 filing. The articles of merger shall set forth:

41 (1) The plan of merger;

42 (2) For each merging business entity, its name, type of business, and the  
43 state or country whose laws govern its organization and internal affairs;

- 1           (3) The name and address of the surviving business entity;  
2           (4) A statement that the plan of merger was approved by each merging  
3           business entity in the manner required by law;  
4           (5) The effective date and time of the merger if it is not to be effective at  
5           the time of filing of the articles of merger; and  
6           (6) If the surviving business entity is not a domestic limited liability  
7           company, a domestic corporation, a domestic nonprofit corporation, or a  
8           domestic limited partnership, the agreement of the surviving business  
9           entity that it may be served with process in this State in any proceeding  
10           for enforcement of (i) any obligation of any merging domestic limited  
11           liability company, domestic corporation, domestic nonprofit  
12           corporation, domestic limited partnership, or other partnership as  
13           defined in G.S. 59-36 that is formed under the laws of this State, (ii) the  
14           rights of dissenting shareholders of any merging domestic corporation  
15           under Article 13 of Chapter 55 of the General Statutes, and (iii) any  
16           obligation of the surviving business entity arising from the merger, and  
17           a statement irrevocably appointing the Secretary of State as its agent for  
18           service of process in any such proceeding and specifying the address to  
19           which a copy of the process may be mailed to it by the Secretary of  
20           State (subject to any subsequent change in address upon written  
21           notification by the surviving business entity by the Secretary of State).

22           If the plan of merger is amended or abandoned before the articles of merger become  
23           effective, the surviving business entity promptly shall deliver to the Secretary of State for  
24           filing an amendment to the articles of merger reflecting the amendment or abandonment  
25           of the plan of merger.

26           (b) A merger takes effect upon the effectiveness of the articles of merger.

27           (c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

28           "**§ 59-73.6. Effects of merger.**

29           (a) Upon the effectiveness of the merger:

- 30           (1) Each other merging business entity merges into the surviving business  
31           entity and the separate existence of each merging business entity except  
32           the surviving business entity ceases;  
33           (2) The title to all real estate and other property owned by each merging  
34           business entity is vested in the surviving business entity without  
35           reversion or impairment subject, in the case of real estate or other  
36           property owned by a merging domestic or foreign nonprofit corporation,  
37           to any and all conditions to which the property was subject prior to the  
38           merger;  
39           (3) The surviving business entity has all liabilities of each merging business  
40           entity;  
41           (4) A proceeding pending by or against any merging business entity may be  
42           continued as if the merger did not occur, or the surviving business entity

1           may be substituted in the proceeding for the merging business entity  
2           whose existence ceases in the merger;

3           (5) The interests in each merging business entity that are to be converted  
4           into interests, obligations, or securities of the surviving business entity  
5           or into the right to receive cash or other property are thereupon so  
6           converted, and the former holders of the interests in each merging  
7           business entity are entitled only to the rights provided to them in the  
8           plan of merger or, in the case of former holders of shares in a domestic  
9           corporation (as defined in G.S. 55-1-40), any rights they may have  
10           under Article 13 of Chapter 55 of the General Statutes, the North  
11           Carolina Business Corporation Act; and

12           (6) If the surviving business entity is not a domestic corporation, the  
13           surviving business entity is deemed to agree that it will promptly pay to  
14           the dissenting shareholders of any merging domestic corporation the  
15           amount, if any, to which they are entitled under Article 13 of Chapter 55  
16           of the General Statutes and otherwise to comply with the requirements  
17           of Article 13 as if it were a surviving domestic corporation in the  
18           merger.

19           The merger shall not affect the liability or absence of liability of any holder of an  
20           interest in a merging business entity for any acts, omissions, or obligations of any  
21           merging business entity made or incurred prior to the effectiveness of the merger. The  
22           cessation of separate existence of a merging business entity shall not constitute a  
23           dissolution or termination of the merging business entity.

24           **"§ 59-73.7. Filing of documents.**

25           (a) To be entitled to filing by the Secretary of State, a document submitted  
26           pursuant to this Part must meet all of the following requirements:

27           (1) The document must contain the information required by this Part. It  
28           may contain other information as well.

29           (2) The document must be typewritten or printed.

30           (3) The document must be in the English language.

31           (4) A document submitted by a partnership must be executed by a general  
32           partner of the partnership. A document submitted by a business entity  
33           other than a partnership must be executed by a person duly authorized to  
34           do so by the business entity.

35           (5) The person executing the document must sign it and state beneath or  
36           opposite the person's signature, the person's name and the capacity in  
37           which the person signs. Any signature on the document may be a  
38           facsimile. The document may, but need not, contain an  
39           acknowledgment, verification, or proof.

40           (6) The document must be delivered to the Office of the Secretary of State  
41           for filing and must be accompanied by one exact or conformed copy and  
42           by the required filing fee.

1       (b) A partnership may correct a document filed by the Secretary of State pursuant  
2 to this Part if the document (i) contains a statement that is incorrect and was incorrect  
3 when the document was filed or (ii) was defectively executed, attested, sealed, verified,  
4 or acknowledged.

5       A document is corrected by:

- 6           (1) Preparing articles of correction that (i) describe the document (including  
7 its filing date) or have attached to them a copy of the document, (ii)  
8 specify the incorrect statement and the reason it is incorrect or the  
9 manner in which the execution was defective, and (iii) correct the  
10 incorrect statement or defective execution; and  
11           (2) Delivering the articles of correction to the Secretary of State for filing,  
12 accompanied by one exact or conformed copy and the required filing  
13 fee.

14       Articles of correction are effective on the effective date of the document that is  
15 corrected except as to persons relying on the uncorrected document and adversely  
16 affected by the correction. As to those persons, articles of correction are effective when  
17 filed.

18       (c) The Secretary of State shall collect the following fees when the documents  
19 described in this subsection are submitted by a partnership to the Secretary of State for  
20 filing:

<u>Document</u>	<u>Fee</u>
<u>Articles of Merger</u>	<u>\$50.00</u>
<u>Articles of Correction</u>	<u>\$10.00</u>

24       The Secretary of State shall collect the following fees for copying, comparing, and  
25 certifying a copy of a document filed by a partnership pursuant to this Part:

- 26           (1) One dollar (\$1.00) a page for copying or comparing a copy to the  
27 original; and  
28           (2) Five dollars (\$5.00) for the certificate.

29       (d) The Secretary of State shall guarantee the expedited filing of a document upon  
30 receipt of the document in proper form and the payment of the required filing fee. The  
31 Secretary of State may collect the following additional fees for the expedited filing of a  
32 document received in good form:

- 33           (1) Two hundred dollars (\$200.00) for the filing by the end of the same  
34 business day of a document received by 12:00 p.m. Eastern Standard  
35 Time; and  
36           (2) One hundred dollars (\$100.00) for the filing of a document within 24  
37 hours after receipt, excluding weekends and holidays.

38       The Secretary of State shall not collect the fees allowed in this subsection unless the  
39 person submitting the document for filing requests an expedited filing and is informed by  
40 the Secretary of State of the fees prior to the filing of the document.

41       (e) Upon request, the Secretary of State shall provide for the review of a document  
42 prior to its submission for filing to determine whether it satisfies the requirements of this  
43 Part. Submission of a document for review shall be accompanied by the proper fee and

1 shall be in accordance with procedures adopted by rule by the Secretary of State. The  
2 advisory review shall be completed within 24 hours after submission, excluding  
3 weekends and holidays, unless the person submitting the document is otherwise notified  
4 in accordance with procedures adopted by rule by the Secretary of State fixing priority  
5 between submissions under this subsection and filings under subsection (d) of this  
6 section. Upon completion of the advisory review, the Secretary of State shall notify the  
7 person submitting the document of any deficiencies in the document that would prevent  
8 its filing.

9 (f) Except as provided in this subsection and in subsection (b) of this section, a  
10 document accepted for filing is effective:

11 (1) At the time of filing on the date it is filed, as evidenced by the Secretary  
12 of State's date and time endorsement on the original document; or

13 (2) At the time specified in the document as its effective time on the date it  
14 is filed.

15 A document may specify a delayed effective time and date, and if it does so the  
16 document becomes effective at the time and date specified. If a delayed effective date  
17 but no time is specified, the document is effective at 11:59 p.m. Eastern Standard Time,  
18 on that date. A delayed effective date for a document may not be later than the 90th day  
19 after the date it is filed.

20 The fact that a document has become effective under this subsection does not  
21 determine its validity or invalidity or the correctness or incorrectness of the information  
22 contained in the document.

23 (g) If a document delivered to the Office of the Secretary of State for filing  
24 satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed  
25 with the Secretary of State pursuant to this Part may be maintained by the Secretary  
26 either in their original form or in photographic, microfilm, optical disk media, or other  
27 reproduced form. The Secretary may make reproductions of documents filed under this  
28 Part, or under any predecessor act, by photographic, microfilm, optical disk media, or  
29 other means of reproduction, and may destroy the originals of those documents  
30 reproduced.

31 The Secretary of State files a document by stamping or otherwise endorsing 'Filed',  
32 together with the Secretary of State's name and official title and the date and time of  
33 filing, on both the original and the document copy. After filing a document, the Secretary  
34 of State shall deliver the document copy to the partnership or its representative.

35 If the Secretary of State refuses to file a document, the Secretary of State shall return  
36 it to the partnership or its representative within five days after the document was  
37 received, together with a brief, written explanation of the reason for refusal. The  
38 Secretary of State may correct apparent errors and omissions on a document submitted  
39 for filing if authorized to make the corrections by the person submitting the document for  
40 filing. Prior to making the correction, the Secretary shall confirm the authorization to  
41 make the corrections according to procedures adopted by rule.

1        The Secretary of State's duty is to review and file documents that satisfy the  
2 requirements of this Part. The Secretary of State's filing or refusing to file a document  
3 does not:

- 4            (1) Affect the validity or invalidity of the document in whole or part;
- 5            (2) Relate to the correctness or incorrectness of information contained in  
6 the document; or
- 7            (3) Create a presumption that the document is valid or invalid or that  
8 information contained in the document is correct or incorrect.

9        (h) If the Secretary of State refuses to file a document delivered to the Secretary of  
10 State's office for filing, the person tendering the document for filing may, within 30 days  
11 after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is  
12 commenced by filing a petition with the court and with the Secretary of State requesting  
13 the court to compel the Secretary of State to file the document. The petition shall have  
14 attached to it the document to be filed and the Secretary of State's explanation for the  
15 refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the  
16 General Statutes, the Administrative Procedure Act, and the court shall determine, based  
17 upon what is appropriate under the circumstances, any further notice and opportunity to  
18 be heard.

19        Upon consideration of the petition and any response made by the Secretary of State,  
20 the court may, prior to entering final judgment, order the Secretary of State to file the  
21 document or take other action the court considers appropriate.

22        The court's final decision may be appealed as in other civil proceedings.

23        (i) A certificate attached to a copy of a document filed by the Secretary of State,  
24 bearing the Secretary of State's signature (which may be in facsimile) and the seal of  
25 office and certifying that the copy is a true copy of the document, is conclusive evidence  
26 that the original document is on file with the Secretary of State. A photographic,  
27 microfilm, optical disk media, or other reproduced copy of a document filed pursuant to  
28 this Part or any predecessor act, when certified by the Secretary, shall be considered an  
29 original for all purposes and is admissible in evidence in like manner as an original.

30        (j) A person commits an offense if the person signs a document the person knows  
31 is false in any material respect with intent that the document be delivered to the Secretary  
32 of State for filing. An offense under this subsection is a Class 1 misdemeanor.

33        (k) Whenever title to real property in this State held by a partnership is vested by  
34 operation of law in another entity upon merger or conversion of the partnership, a  
35 certificate reciting the merger or conversion shall be recorded in the office of the register  
36 of deeds of the county where the property is located, or if the property is located in more  
37 than one county, then in each county where any portion of the property is located.

38        The Secretary of State shall adopt uniform certificates to be furnished for registration  
39 in accordance with this subsection. In the case of a partnership formed under a law other  
40 than the laws of this State, a similar certificate by any competent authority of the  
41 jurisdiction of organization may be registered in accordance with this subsection.

42        The certificate required by this subsection shall be recorded by the register of deeds in  
43 the same manner as deeds, and for the same fees, but no formalities as to

1 acknowledgment, probate, or approval by any other officer shall be required. The former  
2 name of the partnership holding title to the real property before the merger or conversion  
3 shall appear in the 'Grantor' index and the name of the other entity holding title to the real  
4 property by virtue of the merger or conversion shall appear in the 'Grantee' index."

5 Section 4.2. G.S. 59-102 is amended by adding a new subdivision to read:

6 "(1a) 'Business entity' means a domestic corporation as defined in G.S. 55-1-  
7 40 (including without limitation, a professional corporation as defined  
8 in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40  
9 (including, without limitation, a foreign professional corporation as  
10 defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as  
11 defined in G.S. 55A-1-40, a domestic limited liability company as  
12 defined in G.S. 57C-1-03, a foreign limited liability company as defined  
13 in G.S. 57C-1-03, a domestic limited partnership, a foreign limited  
14 partnership, or any other partnership as defined in G.S. 59-36, whether  
15 or not formed under the laws of this State (including a registered limited  
16 liability partnership as defined in G.S. 59-32 and any other limited  
17 liability partnership formed under a law other than the laws of this  
18 State)."

19 Section 4.3. G.S. 59-201 is amended by adding a new subsection to read:

20 "(d) A limited partnership may also be formed through the conversion of another  
21 business entity in accordance with Part 10A of this Article."

22 Section 4.4. G.S. 59-204 reads as rewritten:

23 **"§ 59-204. Execution of certificates- documents.**

24 (a) Each certificate required by this Article to be filed in the office of the Secretary  
25 of State shall be executed in the following manner:

- 26 (1) An original certificate of limited partnership must be signed by all  
27 general partners;
- 28 (2) A certificate of amendment must be signed by at least one general  
29 partner and by each other partner designated in the certificate as a new  
30 general partner; and
- 31 (3) A certificate of cancellation must be signed by all general partners.

32 Any other document submitted by a domestic or foreign limited partnership for filing  
33 pursuant to this Article must be signed by at least one general partner. Any document  
34 submitted by a business entity other than a domestic or foreign limited partnership must  
35 be executed by a person duly authorized to do so by the business entity.

36 (b) Any person may sign a certificate by an attorney-in-fact.

37 (b1) Any signature on any document authorized to be filed with the Secretary of  
38 State under any provision of this Article may be a facsimile.

39 (c) The execution of a certificate or amendment by a general partner constitutes an  
40 affirmation under the penalties of perjury that the facts stated therein are true."

41 Section 4.5. G.S. 59-206(a)(3a) reads as rewritten:

42 "(3a) Whenever the name of any domestic or foreign limited partnership  
43 holding title to real property in this State is changed upon amendment to

1 the certificate of limited partnership, or whenever title to its real  
2 property is vested by operation of law in another entity upon merger,  
3 consolidation, or conversion of the domestic or foreign limited  
4 partnership, a certificate reciting the ~~change or transfer~~ name change,  
5 merger, consolidation, or conversion shall be recorded in the office of  
6 the register of deeds of the county where the property lies, or if the  
7 property is located in more than one county, then in each county where  
8 any portion of the property lies."

9 Section 4.6. G.S. 59-206(a)(5) reads as rewritten:

10 "(5) The certificate required by this section shall be recorded by the register  
11 of deeds in the same manner as deeds, and for the same fees, but no  
12 formalities as to acknowledgement, probate, or approval by any other  
13 officer shall be required. The former name of the domestic or foreign  
14 limited partnership holding title to the real property before the  
15 amendment name change, merger, consolidation, or conversion shall  
16 appear in the 'Grantor' index, and the ~~amended~~ new name of the  
17 domestic or foreign limited partnership or the name of the other entity  
18 holding title to the real property by virtue of the ~~amendment~~ merger,  
19 consolidation, or conversion, as applicable, shall appear in the 'Grantee'  
20 index."

21 Section 4.7. Article 5 of Chapter 59 of the General Statutes is amended by  
22 adding a new Part to read:

23 **"PART 10A. CONVERSION AND MERGER.**

24 **"§ 59-1007. Conversions.**

25 (a) A domestic limited partnership may convert to a domestic limited liability  
26 company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, the  
27 North Carolina Limited Liability Company Act.

28 (b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign  
29 limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or  
30 any other partnership as defined in G.S. 59-36 whether or not formed under the laws of  
31 this State, including a registered limited liability partnership as defined in G.S. 59-32 and  
32 any limited liability partnership formed under a law other than the laws of this State, but  
33 excluding a domestic limited partnership, may convert to a domestic limited partnership  
34 if:

35 (1) Such converting business entity complies with the requirements of G.S.  
36 59-1008 and G.S. 59-1009; and

37 (2) If the organization and internal affairs of the converting business entity  
38 are not governed by the laws of this State, the conversion is permitted  
39 by laws of the state or country governing the organization and internal  
40 affairs of the converting business entity, and the converting business  
41 entity complies with the laws.

42 **"§ 59-1008. Plan of conversion.**

1       (a) The holders of the interests in the converting business entity shall approve a  
2 written plan of conversion containing:

3           (1) The name of the resulting domestic limited partnership into which the  
4 converting business entity shall convert;

5           (2) The terms and conditions of the conversion; and

6           (3) The manner and basis for converting the interests in the converting  
7 business entity into interests, obligations, or securities of the resulting  
8 domestic partnership or into cash or other property in whole or in part.

9       The plan of conversion may contain other provisions relating to the conversion.

10       (b) In the case of a domestic limited liability company, the plan of conversion  
11 must be approved in the manner provided for approval of such a conversion in its articles  
12 of organization or a written operating agreement or, if there is no such provision, by the  
13 unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36  
14 whose organization and internal affairs are governed by the laws of this State, the plan of  
15 conversion must be approved in the manner provided for the approval of such a  
16 conversion in a written partnership agreement that is binding on all the partners or, if  
17 there is no such provision, by the unanimous consent of all the partners. In the case of a  
18 foreign limited liability company, a foreign limited partnership, or other partnership as  
19 defined in G.S. 59-36, whose organization and internal affairs are governed by a law  
20 other than the laws of this State, the plan of conversion must be approved in accordance  
21 with the laws of the state or country governing the organization and internal affairs of the  
22 converting business entity.

23       (c) After a plan of conversion has been approved as provided in subsection (b) of  
24 this section, but before a certificate of limited partnership for the resulting domestic  
25 limited liability company becomes effective, the plan of conversion may be amended or  
26 abandoned to the extent provided in the plan of conversion.

27 **"§ 59-1009. Filing of certificate of limited partnership by converting business entity.**

28       (a) After a plan of conversion has been approved by the converting business entity  
29 as provided in G.S. 59-1008, the converting business entity shall deliver a certificate of  
30 limited partnership to the Secretary of State for filing. In addition to the matters required  
31 or permitted by G.S. 59-201, the certificate of limited partnership shall state:

32           (1) That the domestic limited partnership is being formed pursuant to a  
33 conversion of another business entity;

34           (2) The name of the converting business entity, its type of business, and the  
35 state or country whose laws govern its organization and internal affairs;  
36 and

37           (3) That a plan of conversion was approved by the converting business  
38 entity in the manner required by law.

39       If the plan of conversion is abandoned before the certificate of limited partnership  
40 becomes effective, the converting business entity promptly shall deliver to the Secretary  
41 of State for filing an amendment to the certificate of limited partnership reflecting the  
42 abandonment of the plan of conversion.

1       (b) The conversion takes effect upon the effectiveness of the certificate of limited  
2 partnership as provided in G.S. 59-206.

3       (c) The converting business entity shall furnish a copy of the plan of conversion,  
4 on request and without cost, to any member or partner (whether general or limited) of the  
5 converting business entity.

6       (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

7 **"§ 59-1010. Effects of conversion.**

8       (a) Upon the effectiveness of the conversion:

9           (1) The converting business entity ceases its prior form of organization and  
10 continues in existence as the resulting domestic limited partnership;

11           (2) The title to all real estate and other property owned by the converting  
12 business entity continues vested in the resulting domestic limited  
13 partnership without reversion or impairment;

14           (3) All liabilities of the converting business entity continue as liabilities of  
15 the resulting domestic limited partnership;

16           (4) A proceeding pending by or against the converting business entity may  
17 be continued as if the conversion did not occur; and

18           (5) The interests in the converting business entity that are to be converted  
19 into interests, obligations, or securities of the resulting domestic  
20 partnership or into the right to receive cash or other property are  
21 thereupon so converted, and the former holders of interests in the  
22 converting business entity are entitled only to the rights provided in the  
23 plan of conversion.

24       The conversion shall not affect the liability or absence of liability of any holder of an  
25 interest in the converting business entity for any acts, omissions, or obligations of the  
26 converting business entity made or incurred prior to the effectiveness of the conversion.  
27 The cessation of existence of the converting business entity in its prior form of  
28 organization in the conversion shall not constitute a dissolution or termination of the  
29 converting business entity.

30 **"§ 59-1011. Merger.**

31       A domestic limited partnership may merge with one or more other domestic limited  
32 partnerships or other business entities if:

33           (1) The merger is permitted by the laws of the state or country governing  
34 the organization and internal affairs of each other merging business  
35 entity; and

36           (2) Each merging domestic limited partnership and each other merging  
37 business entity comply with the requirements of G.S. 59-1012 and G.S.  
38 59-1013, and, to the extent applicable, the laws referred to in  
39 subdivision (1) of this section.

40 **"§ 59-1012. Plan of merger.**

41       (a) Each merging domestic limited partnership and each other merging business  
42 entity shall approve a written plan of merger containing:

- 1           (1) For each merging business entity, its name, type of business, and the  
2           state or country whose laws govern its organization and internal affairs;
- 3           (2) The name of the merging business entity that shall survive the merger;
- 4           (3) The terms and conditions of the merger;
- 5           (4) The manner and basis for converting the interests in each merging  
6           business entity into interests, obligations, or securities of the surviving  
7           business entity or into cash or other property in whole or in part; and
- 8           (5) If the surviving business entity is a domestic limited partnership, any  
9           amendments to its certificate of limited partnership that are to be made  
10           in connection with the merger.

11           The plan of merger may contain other provisions relating to the merger.

12           (b) In the case of a merging domestic limited partnership, the plan of merger must  
13 be approved in the manner provided in a written partnership agreement that is binding on  
14 all the partners for approval for a merger with the type(s) of business entities  
15 contemplated in the plan of merger or, if there is no provision, by the unanimous consent  
16 of its partners. In the case of each other merging business entity, the plan of merger must  
17 be approved in accordance with the laws of the state or country governing the  
18 organization and internal affairs of the merging business entity.

19           (c) After a plan of merger has been approved by a domestic limited partnership,  
20 but before the articles of merger become effective, the plan of merger (i) may be  
21 amended as provided in the plan of merger, or (ii) may be abandoned (subject to any  
22 contractual rights) as provided in the plan of merger or a written partnership agreement  
23 that is binding on all the partners or, if there is no such provision, as determined by all  
24 partners.

25 **"§ 59-1013. Articles of merger.**

26           (a) After a plan of merger has been approved by each merging domestic limited  
27 partnership and each other merging business entity as provided in G.S. 59-1012, the  
28 surviving business entity shall deliver articles of merger to the Secretary of State for  
29 filing. The articles of merger shall set forth:

- 30           (1) The plan of merger;
- 31           (2) For each merging business entity, its name, type of business, and the  
32           state or country whose laws govern its organization and internal affairs;
- 33           (3) The name and address of the surviving business entity;
- 34           (4) A statement that the plan of merger was approved by each merging  
35           business entity in the manner required by law;
- 36           (5) The effective date and time of the merger if it is not to be effective at  
37           the time of filing of articles of merger; and
- 38           (6) If the surviving business entity is not a domestic limited liability  
39           company, a domestic corporation, a domestic nonprofit corporation, or a  
40           domestic limited partnership, the agreement of the surviving business  
41           entity that it may be served with process in this State in any proceeding  
42           for enforcement of (i) any obligation of any merging domestic limited  
43           liability company, domestic corporation, domestic nonprofit

1            corporation, domestic limited partnership, or other partnership as  
2            defined in G.S. 59-36 that is formed under the laws of this State, (ii) the  
3            rights of dissenting shareholders of any merging domestic corporation  
4            under Article 13 of Chapter 55 of the General Statutes, and (iii) any  
5            obligation of the surviving business entity arising from the merger, and  
6            a statement irrevocably appointing the Secretary of State as its agent for  
7            service of process in any such proceeding and specifying the address to  
8            which a copy of the process may be mailed to it by the Secretary of  
9            State (subject to any subsequent change in address upon written  
10           notification by the surviving business entity by the Secretary of State).

11           If the plan of merger is amended or abandoned before the articles of merger become  
12           effective, the surviving business entity promptly shall deliver to the Secretary of State for  
13           filing an amendment to the articles of merger reflecting the amendment or abandonment  
14           of the plan of merger.

15           (b)    A merger takes effect upon the effectiveness of the articles of merger.

16           (c)    Certificates of merger shall also be registered as provided in G.S. 47-18.1.

17           **§ 59-1014. Effects of merger.**

18           (a)    Upon the effectiveness of the merger:

19           (1)    Each other merging business entity merges into the surviving business  
20           entity, and the separate existence of each merging business entity except  
21           the surviving business entity ceases;

22           (2)    The title of all real estate and other property owned by each merging  
23           business entity is vested in the surviving business entity without  
24           reversion or impairment;

25           (3)    The surviving business entity has all liabilities of each merging business  
26           entity;

27           (4)    A proceeding pending by or against any merging business entity may be  
28           continued as if the merger did not occur, or the surviving business entity  
29           may be substituted in the proceeding for a merging business entity  
30           whose existence ceases in the merger;

31           (5)    If a domestic limited partnership is the surviving business entity, its  
32           certificate of limited partnership shall be amended to the extent  
33           provided in the plan of merger;

34           (6)    The interests in each merging business entity that are to be converted  
35           into interests, obligations, or securities of the surviving business entity  
36           or into the right to receive cash or other property are thereupon so  
37           converted, and the former holders of the interests are entitled only to the  
38           rights provided to them in the plan of merger or, in the case of former  
39           holders of shares in a domestic corporation as defined in G.S. 55-1-40,  
40           any rights they have under Article 13 of Chapter 55 of the General  
41           Statutes, the North Carolina Business Corporation Act; and

42           (7)    If the surviving business entity is not a domestic corporation, the  
43           surviving business entity is deemed to agree that it will promptly pay to

1           the dissenting shareholders of any merging domestic corporation the  
2           amount, if any, to which they are entitled under Article 13 of Chapter 55  
3           of the General Statutes and otherwise to comply with the requirements  
4           of Article 13 as if it were a surviving domestic corporation in the  
5           merger.

6           The merger shall not affect the liability or absence of liability of any holder of an  
7           interest in a merging business entity for any acts, omissions, or obligations of any  
8           merging business equity made or incurred prior to the effectiveness of the merger. The  
9           cessation of separate existence of a merging business entity in the merger shall not  
10           constitute a dissolution or termination of such merging business entity."

#### 11 **PART V. CONFORMING CHANGES.**

12           Section 5.1. G.S. 47-18.1 reads as rewritten:

13           "**§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation.~~ merger,**  
14           **consolidation, or conversion.**

15           (a) If title to real property in this State is ~~transferred~~ vested by operation of law in  
16           another entity upon the ~~merger or consolidation of two or more corporations,~~ merger,  
17           consolidation, or conversion of an entity, such ~~transfer~~ vesting is effective against lien  
18           creditors or purchasers for a valuable consideration from the ~~corporation~~ entity formerly  
19           owning the property, only from the time of registration of a certificate thereof as provided  
20           in this section, in the county where the land lies, or if the land is located in more than one  
21           county, then in each county where any portion of the land lies to be effective as to the  
22           land in that county.

23           (b) The Secretary of State shall adopt uniform certificates of ~~merger or~~  
24           ~~consolidation,~~ merger, consolidation, or conversion, to be furnished for registration, and  
25           shall adopt such fees as are necessary for the expense of such certification. If the  
26           ~~corporation~~ entity involved is not a domestic ~~corporation,~~ entity, a similar certificate by any  
27           competent authority in the jurisdiction of incorporation or organization may be registered  
28           in accordance with this section.

29           (c) A certificate of the Secretary of State prepared in accordance with this section  
30           shall be registered by the register of deeds in the same manner as deeds, and for the same  
31           fees, but no formalities as to acknowledgment, probate, or approval by any other officer  
32           shall be required. The name of the ~~corporation~~ entity formerly owning the property shall  
33           appear in the 'Grantor' index, and the name of the ~~corporation~~ entity owning the property  
34           by virtue of the ~~merger or consolidation~~ merger, consolidation, or conversion shall appear  
35           in the 'Grantee' index."

36           Section 5.2. G.S. 105-129.4(e) reads as rewritten:

37           "(e) Change in Ownership of Business. – The sale, merger, consolidation,  
38           conversion, acquisition, or bankruptcy of a business, or any transaction by which an  
39           existing business reformulates itself as another business, does not create new eligibility in  
40           a succeeding business with respect to credits for which the predecessor was not eligible  
41           under this Article. A successor business may, however, take any installment of or carried-  
42           over portion of a credit that its predecessor could have taken if it had a tax liability. The

1 acquisition of a business is a new investment that creates new eligibility in the acquiring  
2 taxpayer under this Article if any of the following conditions are met:

- 3 (1) The business closed before it was acquired.
- 4 (2) The business was required to file a notice of plant closing or mass layoff  
5 under the federal Worker Adjustment and Retraining Notification Act,  
6 29 U.S.C. § 2102, before it was acquired.
- 7 (3) The business was acquired by its employees through an employee stock  
8 option transaction or another similar mechanism."

9 Section 5.3. G.S. 105-129.27(d) reads as rewritten:

10 "(d) Change in Ownership of Facility. – The sale, merger, consolidation,  
11 conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which  
12 the facility is reformulated as another business, does not create new eligibility in a  
13 succeeding owner with respect to a credit for which the predecessor was not eligible  
14 under this section. A successor business may, however, take any carried-over portion of  
15 a credit that its predecessor could have taken if it had a tax liability."

16 Section 5.4. G.S. 105-130.4(j)(3) reads as rewritten:

17 "(3) The average value of property shall be determined by averaging the  
18 values at the beginning and end of the income year, but in all cases the  
19 Secretary of Revenue may require the averaging of monthly or other  
20 periodic values during the income year if reasonably required to reflect  
21 properly the average value of the corporation's property. A corporation  
22 ~~which that~~ ceases its operations in this State before the end of its income  
23 year because of its intention to dissolve or to relinquish its certificate of  
24 authority, or because of a ~~merger-merger,~~ conversion, or consolidation,  
25 or for any other reason whatsoever shall use the real estate and tangible  
26 personal property values as of the first day of the income year and the  
27 last day of its operations in this State in determining the average value  
28 of property, but the Secretary may require averaging of monthly or other  
29 periodic values during the income year if reasonably required to reflect  
30 properly the average value of the corporation's property."

31 Section 5.5. G.S. 105-130.17(e) reads as rewritten:

32 "(e) Any corporation ~~which that~~ ceases its operations in this State before the end of  
33 its income year because of its intention to dissolve or to withdraw from this State, or  
34 because of a ~~merger-merger,~~ conversion, or consolidation or for any other reason  
35 whatsoever shall file its return for the then current income year within 75 days after the  
36 date it terminates its business in this State."

37 Section 5.6. G.S. 105-163.010(2) reads as rewritten:

38 "(2) Business. – A corporation, partnership, limited liability company,  
39 association, or sole proprietorship operated for profit."

40 Section 5.7. G.S. 105-163.013(f) reads as rewritten:

41 "(f) Transfer of Registration. – A registration as a qualified business venture or  
42 qualified grantee business may not be sold or otherwise transferred, except that if a  
43 qualified business venture or qualified grantee business enters into a merger, conversion,

1 consolidation, or other similar transaction with another business and the surviving  
2 ~~corporation-company~~ would otherwise meet the criteria for being a qualified business  
3 venture or qualified grantee business, the surviving company retains the registration  
4 without further application to the Secretary of State. In such a case, the qualified business  
5 venture or qualified grantee business shall provide the Secretary of State with written  
6 notice of the merger, conversion, consolidation, or similar transaction and the name,  
7 address, and jurisdiction of incorporation of the surviving company."

8 Section 5.8. G.S. 105-163.014(d)(1) reads as rewritten:

9 "(1) Within one year after the investment was made, the taxpayer transfers  
10 any of the securities received in the investment that qualified for the tax  
11 credit to another person or entity, other than in a transfer resulting from  
12 one of the following:

- 13 a. The death of the taxpayer.
- 14 b. A final distribution in liquidation to the owners of a taxpayer that  
15 is a corporation or other entity.
- 16 c. A merger, conversion, consolidation, or similar transaction  
17 requiring approval by the ~~shareholders-owners~~ of the qualified  
18 business venture or qualified grantee business under applicable  
19 State law, to the extent the taxpayer does not receive cash or  
20 tangible property in the merger, conversion, consolidation, or  
21 other similar transaction."

22 Section 5.9. G.S. 105-187.6(b)(2) reads as rewritten:

23 "(2) To a ~~partnership-partnership, limited liability company~~, or corporation as  
24 an incident to the formation of the ~~partnership or corporation and~~  
25 partnership, limited liability company, or corporation, no gain or loss  
26 arises on the transfer of the motor vehicle under section 351 or section  
27 721 of the Internal Revenue ~~Code~~, Code as defined in G.S. 105-228.90,  
28 or to a partnership, limited liability company, or corporation by ~~merger~~  
29 ~~or merger, conversion, or consolidation~~ in accordance with ~~G.S. 55-11-~~  
30 ~~06~~. applicable law."

31 Section 5.10. G.S. 105-228.29 reads as rewritten:

32 **"§ 105-228.29. Conveyances excluded.**

33 The provisions of this Article shall not apply to transfers of an interest in real estate  
34 by operation of law, by lease for a term of years, by or pursuant to the provisions of a  
35 will, by intestacy, by gift, by ~~merger-merger, conversion~~, or consolidation, or by  
36 instruments securing indebtedness, or any other transfer where no consideration in  
37 property or money is due or paid by the transferee to transferor."

38 **PART VI. MUTUAL TO STOCK INSURANCE CONVERSION.**

39 Section 6. Article 10 of Chapter 58 of the General Statutes is amended by  
40 adding a new section to read:

41 **"§ 58-10-10. Mutual conversion to stock insurer.**

42 (a) A domestic mutual insurer may convert to a domestic stock insurer under a  
43 plan that is approved in advance by the Commissioner.

- 1 (b) The Commissioner shall not approve the plan unless:
- 2 (1) It is fair and equitable to the insurer's policyholders.
- 3 (2) It is adopted by the insurer's board of directors in accordance with the
- 4 insurer's bylaws and approved by a vote of not less than two-thirds of
- 5 the insurer's members voting on it in person, by proxy, or by mail at a
- 6 meeting called for the purpose of voting on the plan, pursuant to
- 7 reasonable notice and procedure as approved by the Commissioner. If
- 8 the company is a life insurer, the right to vote may be limited, as its
- 9 bylaws provide, to members whose policies are other than term or group
- 10 policies and have been in effect for more than one year.
- 11 (3) Each policyholder's equity in the insurer is determinable under a fair
- 12 and reasonable formula approved by the Commissioner. The equity
- 13 shall be based upon the insurer's entire statutory surplus after deducting
- 14 certificates of contribution, guaranty capital certificates, and similar
- 15 evidences of indebtedness included in an insurer's statutory surplus.
- 16 (4) The policyholders entitled to vote on the plan and participate in the
- 17 purchase of stock and distribution of assets include all policyholders on
- 18 the date the plan was adopted by the insurer's board of directors.
- 19 (5) The plan provides that each policyholder specified in subdivision (4) of
- 20 this subsection receives a preemptive right to acquire a proportionate
- 21 part of all of the proposed capital stock of the insurer or of all of the
- 22 stock of a corporation affiliated with the insurer within a designated
- 23 reasonable period as the part is determinable under the plan of
- 24 conversion; and to apply toward the purchase of the stock the amount of
- 25 the policyholder's equity in the insurer under subdivision (3) of this
- 26 subsection. The plan must provide for an equitable distribution of
- 27 fractional interests.
- 28 (6) The plan provides for payment to each policyholder of the
- 29 policyholder's entire equity in the insurer; with that payment to be
- 30 applied toward the purchase of stock to which the policyholder is
- 31 entitled preemptively or to be made in cash, or both. The cash payment
- 32 may not exceed fifty percent (50%) of each policyholder's equity. The
- 33 stock purchased, together with the cash payment, if any, shall constitute
- 34 full payment and discharge of the policyholder's equity as an owner of
- 35 the mutual insurer.
- 36 (7) Shares are to be offered to policyholders at a price not greater than that
- 37 of shares to be subsequently offered to others.
- 38 (8) The Commissioner finds that the insurer's management has not, through
- 39 reduction of volume of new business written, through policy
- 40 cancellations, or through any other means, sought to (i) reduce, limit, or
- 41 affect the number or identity of the insurer's members entitled to
- 42 participate in the plan or (ii) secure for the individuals constituting
- 43 management any unfair advantage through the plan.

1           (9) The plan, when completed, provides that the insurer's capital and  
2           surplus are not less than the minimum required of a domestic stock  
3           insurer transacting the same kinds of insurance, are reasonable in  
4           relation to the insurer's outstanding liabilities, and are adequate to meet  
5           its financial needs.

6           (c) With respect to an insurer with a guaranty capital, the conversion plan shall be  
7           approved by a vote of not less than two-thirds of the insurer's guaranty capital  
8           shareholders and policyholders as provided for in subdivision (b)(2) of this section. The  
9           plan may provide for the issuance of stock in exchange for outstanding guaranty capital  
10           shares at their redemption value subject to the conditions in subsection (b) of this section.

11           (d) The Commissioner may schedule a public hearing on the proposed conversion  
12           plan.

13           (e) The Commissioner may retain, at the mutual insurer's expense, any attorneys,  
14           actuaries, economists, accountants, or other experts not otherwise a part of the  
15           Commissioner's staff as may be reasonably necessary to assist the Commissioner in  
16           reviewing the proposed conversion plan.

17           (f) The corporate existence of the mutual company continues in the stock  
18           company created under this section. All assets, rights, franchises, and interests of the  
19           former mutual insurer, in and to real or personal property, are deemed to be transferred to  
20           and vested in the stock insurer, without any other deed or transfer; and the stock insurer  
21           simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

22           (g) No director, officer, or employee of the insurer shall receive:

23           (1) Any fee, commission, compensation, or other valuable consideration for  
24           aiding, promoting, or assisting in the conversion of the mutual insurer to  
25           a domestic stock insurer, other than compensation paid to any director,  
26           officer, employee of the insurer in the ordinary course of business; or

27           (2) Any distribution of the assets, surplus, or capital of the insurer as part of  
28           a conversion.

29           (h) The Commissioner may adopt rules to carry out the provisions of this section."

## 30 **PART VII. HOMEOWNER ASSOCIATION REFUNDS.**

31           Section 7. G.S. 55A-13-02(b) reads as rewritten:

32           "(b) Subject to the provisions of subsection (d) of this section, ~~(i) a section:~~

33           (1) A corporation may make distributions to any entity that is exempt under  
34           section 501(c)(3) of the Internal Revenue Code of 1986 or any successor  
35           section, or that is organized exclusively for one or more of the purposes  
36           specified in section 501(c)(3) of the Internal Revenue Code of 1986 or  
37           any successor section and that upon dissolution shall distribute its assets  
38           to a charitable or religious corporation, the United States, a state or an  
39           entity that is exempt under section 501(c)(3) of the Internal Revenue  
40           Code of 1986 or any successor section, and ~~(ii) any section.~~

41           (2) Any corporation other than a charitable or religious corporation may  
42           make distributions to any domestic or foreign corporation.

1           (3) Except as otherwise prohibited by statute, a corporation not operated for  
2 profit, the membership of which is limited to the owners or occupants of  
3 real property in a condominium, cooperative housing corporation or  
4 other real property development, having as its primary purposes the  
5 management, operation, preservation, maintenance and repair of  
6 common areas and improvements upon the real property owned by the  
7 members and the corporation or organization, may make distribution to  
8 its members of excess or surplus membership dues, fees or assessments  
9 remaining after the payment of or provisions for common expenses and  
10 any prepayment of reserves; provided that these distributions are in  
11 proportion to the dues, fees or assessments collected from the  
12 members."

13 **PART VIII. EFFECTIVE DATE.**

14           Section 8. This act becomes effective October 1, 1999, and applies to contracts  
15 entered into and mergers, consolidations, or conversions effective on or after that date.