

**271B.11-080 Merger of domestic or foreign limited liability companies or limited partnerships with domestic corporations -- Shareholder's liability following merger.**

- (1) One (1) or more domestic or foreign limited liability companies or limited partnerships may merge with one (1) or more domestic corporations if:
  - (a) The merger is permitted by the laws of the state or country under whose law each foreign limited liability company or limited partnership is incorporated, organized, or formed, and each foreign limited liability company or limited partnership complies with those laws in effecting the merger;
  - (b) Each domestic limited liability company party to the merger complies with the applicable provisions of the Kentucky Revised Statutes;
  - (c) Each domestic limited partnership party to the merger complies with the applicable provisions of KRS Chapter 362;
  - (d) Each domestic corporation complies with the applicable provisions of KRS 271B.11-010 to 271B.11-040.
- (2) The plan of merger shall set forth:
  - (a) The name of each constituent business entity that is a party to the merger and the name of the surviving business entity into which each constituent business entity proposes to merge;
  - (b) The terms and conditions of the proposed merger, including but not limited to, a statement which sets forth whether limited liability is retained by the surviving business entity;
  - (c) The manner and basis of converting the shares in each corporation and the interests in each business entity that is a party to the merger into interests, shares, or other securities or obligations, as the case may be, of the surviving entity, or of any other business entity, or, in whole or in part, into cash or other property;
  - (d) The amendments to the articles of organization of a limited liability company, or articles of incorporation of a corporation or certificate of limited partnership, as the case may be, of the surviving business entity as are desired to be effected by the merger, or that no changes are desired;
  - (e) Other provisions relating to the proposed merger that are deemed necessary or desirable.
- (3) The business entity surviving from the merger shall deliver to the Secretary of State for filing articles of merger duly executed by each constituent business entity setting forth:
  - (a) The name and jurisdiction of formation or organization of each constituent business entity which is to merge;
  - (b) The plan of merger;
  - (c) The name of the surviving business entity;

- (d) A statement that the plan of merger was duly authorized and approved by each constituent business entity in accordance with the laws applicable to such business entity; and
- (e) If the surviving entity is not a business entity organized under the laws of this Commonwealth, a statement that the surviving business entity:
  - 1. Agrees that it may be served with process in this Commonwealth in any proceeding for enforcement of any obligation of any constituent business entity party to the merger that was organized under the laws of this Commonwealth, as well as for enforcement of any obligation of the surviving business entity arising from the merger; and
  - 2. Appoints the Secretary of State as its agent for service of process in any such proceeding. The surviving entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.
- (4) The articles of merger filed by the surviving entity in accordance with this section shall also be deemed to have been filed for any domestic limited liability company party to the merger in accordance with the applicable sections of the Kentucky Revised Statutes and for any domestic limited partnership party to the merger in accordance with KRS Chapter 362.
- (5) Upon merger taking effect, if the surviving entity in the merger is a foreign limited partnership, limited liability company, or corporation, the surviving entity shall be deemed:
  - (a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger;
  - (b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger the amount, if any, to which they are entitled under Subtitle 13 of KRS Chapter 271B; and
  - (c) To agree, to the extent required by Section 200 of the Constitution, that the courts of this Commonwealth shall retain jurisdiction over that part of the corporate property within the limits of this Commonwealth in all matters which may arise, as if the transaction has not taken place.
- (6) If a domestic or foreign limited liability company or limited partnership is the surviving entity of a merger, the surviving domestic or foreign limited liability company or limited partnership shall be considered a surviving corporation for purposes of KRS 271B.11-060(1).
- (7) A partner or, in the case of a limited partnership, a general partner who becomes a shareholder of a corporation as a result of a merger shall remain liable as a partner or general partner, as the case may be, for an obligation incurred by the partnership or limited partnership before the merger takes effect. The partner's or general partner's liability for all obligations of the corporation incurred before the merger takes effect shall be that of a shareholder as provided in this chapter. A limited partner who becomes a shareholder as a result of a merger shall remain liable only

as a limited partner for an obligation incurred by the limited partnership before the merger takes effect.

**Effective:** July 15, 1998

**History:** Amended 1998 Ky. Acts ch. 341, sec. 8, effective July 15, 1998. -- Created 1994 Ky. Acts ch. 389, sec. 111, effective July 15, 1994.

**Legislative Research Commission Note** (3/24/95). Under KRS 7.136(1)(h), the word "or" has been added to subsection (1) of this statute before the phrase "more domestic corporations." The use of the plural in this phrase and the use of the adjective "each" in paragraph (d) of subsection (1) make it clear from context that the omission of the word "or" constitutes a manifest clerical or typographical error.