

Topic: Nonprofit Mergers

Question by: Deb Ulmanis

Jurisdiction: New Hampshire

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Jurisdiction	Question(s)		
	Does your state statutes permit nonprofits to merge?	Can nonprofits only merge with other nonprofits (domestic & foreign)?	Can they merge with other entity types (LLC, for-profit corporations etc.)?
Manitoba			
Corporations Canada	Legislation currently applying to not-for-profit organizations incorporated federally in Canada does not permit them to merge. However, new legislation will soon apply that will permit not-for-profit corporations to merge with other not-for-profit corporations, but only if the parties to the merger are incorporated under this legislation. Thus, to take your list of companies, a foreign NFP, a domestic NFP incorporated under a provincial or territorial statute in Canada or any other type of corporation will have to first incorporate under the new		

	<p>legislation before it will be allowed to merge with an NFP incorporated under the new legislation.</p> <p>This new legislation is already an Act of Parliament and has been given Royal Assent, the final stage in Canada's legislative process. However, the statute will enter into force only after all of the regulations have been passed.</p>		
Alabama			
Alaska			
Arizona			
Arkansas	Yes	Nonprofits may merge but only with other nonprofits.	Nonprofits may merge but only with other nonprofits.
California	California recognizes three main types of nonprofit corporations, public benefit corporations (Corp. Code section 5111), mutual benefit corporations (Corp. Code section 7111) and religious corporations (Corp. Code section 9111).	Each type of nonprofit corporation may merge with another nonprofit corporation, and may merge with for-profit entities. (See, Corp. Code section 6010 for public benefit corporations, Corp. Code section 8010 for mutual benefit corporations and Corp. Code section 9640 for religious corporations.)	<p>A California nonprofit corporation may merge with the following types of business entities (whether domestic or foreign):</p> <ul style="list-style-type: none"> Nonprofit or for-profit corporations; Limited liability companies; Limited partnerships (but not limited liability partnerships); General partnerships; Business trusts; Real estate investment trusts; Unincorporated associations, or Domestic reciprocal insurers organized after 1974. <p>(Corp. Code section 5063.5):</p> <p>IMPORTANT! Two qualifications apply:</p> <ol style="list-style-type: none"> 1) The laws of the state pursuant to which a foreign business entity is organized must permit merger of the entity with a California nonprofit corporation.

			<p>2) The California Attorney General must consent to a merger in writing <i>unless</i>:</p> <p>a. A public benefit corporation is merging with another California public benefit corporation, a religious corporation, or a foreign nonprofit corporation the articles of which provide that its assets are irrevocably dedicated to charitable, religious, or public purposes (Corp. Code section 6010, subdivision (a)); or</p> <p>A religious corporation is merging with another California religious corporation, a public benefit corporation, or a foreign nonprofit corporation the articles of which provide that its assets are irrevocably dedicated to charitable, religious, or public purposes (Corp. Code section 9640, subdivision (b)).</p>
<p>Colorado</p>	<p>Yes</p>	<p>No. Section 7-131-101 (1), C.R.S. states “One or more domestic nonprofit corporations may merge into another domestic entity if the board of directors of each nonprofit corporation that is a party to the merger and each other entity that is a party to the merger adopts a plan of merger complying with section 7-90-203.3 and the members entitled to vote thereon, if any, of each such nonprofit corporation, if required by section 7-131-102, approve of the plan of merger.”</p> <p>Also, 7-131-105, permits a domestic nonprofit corporation to merge with a</p>	<p>Yes. Section 7-131-101 (1), C.R.S. states “One or more domestic nonprofit corporations may merge into another domestic entity if the board of directors of each nonprofit corporation that is a party to the merger and each other entity that is a party to the merger adopts a plan of merger complying with section 7-90-203.3 and the members entitled to vote thereon, if any, of each such nonprofit corporation, if required by section 7-131-102, approve of the plan of merger.”</p>

		foreign entity.	
Connecticut			
Delaware			
District of Columbia	Yes	Nonprofits can merge with any other corporation, domestic or foreign.	Law specifies merger between corporations only (for-profit or nonprofit).
Florida	Yes	A non-profit corp can merge with another entity as long as it is the survivor.	The survivor must be the non-profit. We occasionally have issues with “non-profit” LLCs being a party to a merger. We do not recognize an LLC as profit or non-profit but I know the IRS does. If a non-profit corp and a “non-profit” LLC merge, the non-profit corp. must be the survivor. DC Code Title 29 Chapter 3 Sections 39-45. http://government.westlaw.com/linkedslice/default.asp?RS=GVT1.0&VR=2.0&SP=DC-1000&Action=Welcome
Georgia			
Hawaii	Yes	No	Yes
Idaho			
Illinois			
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana			
Maine	Yes. http://www.mainelegislature.org/legis/statutes/13-B/title13-Bsec901.html	A Domestic Business Corporation can merge with a nonprofit pursuant to http://www.mainelegislature.org/legis/statutes/13-C/title13-Csec1102.html	Yes, see above a Domestic Business Corporation.
Maryland			
Massachusetts			
Michigan	Yes	Chapter 7 of the Nonprofit Corporation Act permits nonprofit corporations to merge with domestic nonprofit corporations, domestic profit corporations and foreign nonprofit or	The act does not permit cross entity mergers with unincorporated entities.

		<p>profit corporations. http://legislature.mi.gov/doc.aspx?mcl-162-1982-7</p> <p>If a charitable nonprofit corporation dissolves or is the nonsurvivor of a merger with a profit corporation approval from the Attorney General is required. Attorney General approval may also be required if a charitable nonprofit corporation is the nonsurvivor of a merger with a nonprofit corporation with different charitable purposes or if the survivor is not a charitable corporation.</p> <p>For more information regarding Attorney General's role and required approvals see: http://legislature.mi.gov/doc.aspx?mcl-450-251 http://legislature.mi.gov/doc.aspx?mcl-14-254 http://legislature.mi.gov/doc.aspx?mcl-14-261 http://www.michigan.gov/aq/0,1607,7-164-17334_18095-45037--,00.html#dissolutions</p>	
Minnesota			
Mississippi			
Missouri	Yes	Missouri is much the same as OR; nonprofits may merge in Missouri with other nonprofits and general business corporations. Public benefit corporations may only merge with other nonprofits of the same type, unless they get a circuit court's permission.	Missouri is much the same as OR; nonprofits may merge in Missouri with other nonprofits and general business corporations. Public benefit corporations may only merge with other nonprofits of the same type, unless they get a circuit court's permission.
Montana	Yes	According to the nonprofit statutes "one or more nonprofit corporations may merge into a business or nonprofit	However, limited liability company statute states a domestic limited liability company may merge with or into one or more

		corporation.” However, limited liability company statute states a domestic limited liability company may merge with or into one or more limited liability companies, foreign limited liability companies, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities. Therefore, Montana would allow the merger of a nonprofit corporation into a limited liability company or a for profit corporation or another nonprofit corporation.	limited liability companies, foreign limited liability companies, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities. Therefore, Montana would allow the merger of a nonprofit corporation into a limited liability company or a for profit corporation or another nonprofit corporation.
Nebraska			
Nevada	Yes	NRS 92.160 allows for the merger of a domestic nonprofit into another domestic nonprofit with specific board approval but does not provide for the domestic nonprofit to merge into a foreign nonprofit or any other type of entity.	Yes.
New Hampshire			
New Jersey			
New Mexico			
New York	Yes	NY law permits mergers with other not-for-profits domestic or foreign. Not-for-profits can also merge with Religious corporations (we have a separate statute for religious corporations). Certain not-for-profits can merge with business corporations. The business corporation must be the surviving corporation. http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLNPC0A9+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=44500964+&TARGET=VIEW	NY law permits mergers with other not-for-profits domestic or foreign. Not-for-profits can also merge with Religious corporations (we have a separate statute for religious corporations). Certain not-for-profits can merge with business corporations. The business corporation must be the surviving corporation. http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLNPC0A9+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=44500964+&TARGET=VIEW
North Carolina	Yes	§ 55A-11-02. Limitations on mergers by charitable or religious corporations.	

		<p>(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only with:</p> <p>(1) A charitable or religious corporation;</p> <p>(2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation;</p> <p>(3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the survivor in the merger and continues to be a charitable or religious corporation after the merger; or</p> <p>(4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its</p>	
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		<p>assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members, as "member" is defined in G.S. 55A-1-40(16) or G.S. 57C-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the survivor in the merger.</p> <p>(b) At least 30 days before consummation of any merger of a charitable or religious corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed plan of merger, shall be delivered to the Attorney General. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized.</p> <p>(c) Without the prior written consent of the Attorney General, or approval of the superior court in a proceeding in which the Attorney</p>	
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		<p>General has been given notice, no member of a charitable or religious corporation may receive or retain any property as a result of a merger other than an interest as a member, as "member" is defined in G.S. 55A-1-40(16), in the survivor of the merger. The Attorney General may consent to the transaction, or the court shall approve the transaction, if it is fair and not contrary to the public interest. (1993, c. 398, s. 1; c. 553, s. 83(a); 1995, c. 400, s. 6; 1999-204, s. 1; 1999-369, s. 2.4.)</p> <p>http://www.ncleg.net/gascripts/Statutes/StatutesTOC.pl?Chapter=0055A Link to Nonprofit Corporation Act</p>	
North Dakota	Yes	Nonprofits may merge but only with other nonprofits.	Nonprofits may merge but only with other nonprofits.
Ohio	Yes	<p>Typically, a nonprofit corporation may only merge with another nonprofit corporation, however, there is an exception in the law which allows nonprofit corporations to merge with a for-profit corporation. A nonprofit corporation may not merge with another entity type, such as a limited liability company. The process is difficult to merge into a for-profit corporation and the language in the code is below with a link to the statute.</p> <p>A nonprofit corporation may merge into a for profit corporation with prior approval from an Ohio court of common pleas or with prior notice sent by certified mail to the charitable law section of the Ohio Attorney General's office, sent 3 days</p>	<p>Typically, a nonprofit corporation may only merge with another nonprofit corporation, however, there is an exception in the law which allows nonprofit corporations to merge with a for-profit corporation. A nonprofit corporation may not merge with another entity type, such as a limited liability company. The process is difficult to merge into a for-profit corporation and the language in the code is below with a link to the statute.</p>

		<p>prior to filing with our office. The for profit corporation must, on or before the effective date of the merger, convey or transfer assets with value equal to the greater of fair market value of the net tangible and intangible assets or fair market value of the nonprofit corporation if it is to be operated as a business concern, to one or more persons that would have received such assets had the nonprofit corporation voluntarily dissolved. Additionally, the for profit corporation must return, transfer or convey any assets held by it upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with that condition. And, finally, the merger must be approved by a majority of the directors of the nonprofit corporation who will not receive any direct or indirect benefit, financial or otherwise, as a result of the merger or agreeing to the merger, and who are not and will not as a result of the merger become a party to the new business as members, shareholders, officers, employees, agents or consultants. (See Ohio Revised Code Section 1702.41(B)(1): http://codes.ohio.gov/orc/1702.41)</p>	
Oklahoma			
Oregon	Yes	<p>Nonprofits may only merge in Oregon with other nonprofits, business corporations and business trusts. However, public benefit and religious corporations may only merge with other nonprofits of the same type, unless they get the AG or a circuit court's permission. See ORS 65.481 & 65.484 http://www.leg.state.or.us/ors/065.html</p>	<p>Nonprofits may only merge in Oregon with other nonprofits, business corporations and business trusts. However, public benefit and religious corporations may only merge with other nonprofits of the same type, unless they get the AG or a circuit court's permission. See ORS 65.481 & 65.484 http://www.leg.state.or.us/ors/065.html</p>

Pennsylvania			
Rhode Island			
South Carolina			
South Dakota			
Tennessee			
Texas	Yes	<p>Texas nonprofit corporations may merge with other nonprofit corporations and with other entities, profit or nonprofit. However, there are restrictions on the merger of nonprofits. The restrictions are set forth in the following statutory provision:</p> <p>Sec. 10.010. SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION MERGERS. (a) A domestic nonprofit corporation may not merge into another entity if the domestic nonprofit corporation would, because of the merger, lose or impair its charitable status.</p> <p>(b) One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations that continue as the surviving entity or entities.</p> <p>(c) A domestic nonprofit corporation may not merge with a foreign for-profit entity if the domestic nonprofit corporation does not continue as the surviving entity.</p> <p>(d) One or more domestic nonprofit corporations and non-code organizations may merge into one or more foreign</p>	<p>Texas nonprofit corporations may merge with other nonprofit corporations and with other entities, profit or nonprofit. However, there are restrictions on the merger of nonprofits. The restrictions are set forth in the following statutory provision:</p> <p>Sec. 10.010. SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION MERGERS. (a) A domestic nonprofit corporation may not merge into another entity if the domestic nonprofit corporation would, because of the merger, lose or impair its charitable status.</p> <p>(b) One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations that continue as the surviving entity or entities.</p> <p>(c) A domestic nonprofit corporation may not merge with a foreign for-profit entity if the domestic nonprofit corporation does not continue as the surviving entity.</p> <p>(d) One or more domestic nonprofit corporations and non-code organizations may merge into one or more foreign nonprofit entities that continue as the</p>

		<p>nonprofit entities that continue as the surviving entity or entities.</p> <p>If you would like to review the entire statute regarding mergers of entities under the TBOC, you may find those provisions in the Texas Business Organizations Code online at: http://www.statutes.legis.state.tx.us/. Expand the provisions of the TBOC and go to chapter 10 in Title 1.</p>	<p>surviving entity or entities.</p> <p>If you would like to review the entire statute regarding mergers of entities under the TBOC, you may find those provisions in the Texas Business Organizations Code online at: http://www.statutes.legis.state.tx.us/. Expand the provisions of the TBOC and go to chapter 10 in Title 1.</p>
Utah	Yes	<p>http://le.utah.gov/~code/TITLE16/htm/16_06a110100.htm</p> <p>http://le.utah.gov/~code/TITLE16/htm/16_06a110300.htm</p>	<p>http://le.utah.gov/~code/TITLE48/htm/48_02c140700.htm</p>
Vermont			
Virginia	Yes	<p>The Virginia statute was revised in 2007 to allow what we classify as a nonstock corporation to merge with any other entity type. Before that, a Virginia nonstock corporation could only merge with another Virginia or foreign stock or nonstock corporation.</p> <p>See http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+13.1-894</p> <p>For the definition of "eligible entity" and "unincorporated entity," see http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+13.1-803</p>	<p>The Virginia statute was revised in 2007 to allow what we classify as a nonstock corporation to merge with any other entity type. Before that, a Virginia nonstock corporation could only merge with another Virginia or foreign stock or nonstock corporation.</p> <p>See http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+13.1-894</p> <p>For the definition of "eligible entity" and "unincorporated entity," see http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+13.1-803</p>
Washington	Yes	<p>They may merge with any domestic or foreign nonprofit corporation. The law does not address other entities.</p> <p>However, if a nonprofit corporation is a professional service corporation (under different laws in our state) it may merge with any other professional service entity (profit corporation, LLC, or nonprofit</p>	<p>They may merge with any domestic or foreign nonprofit corporation. The law does not address other entities.</p>

		corp) http://apps.leg.wa.gov/rcw/default.aspx?Cite=24 is a link to RCW 24, which is the nonprofit statutes. http://apps.leg.wa.gov/rcw/default.aspx?cite=18.100 is a link to the RCW 18.100, the professional service corporations.	
West Virginia			
Wisconsin			
Wyoming			

Additional comments:

Full text of email:

A question has come up recently here in New Hampshire and I would love to hear from other states concerning the statutes for nonprofit mergers.

1. Does your state statutes permit nonprofits to merge?
If yes -
2. Can nonprofits only merge with other nonprofits (domestic & foreign) or
3. Can they merge with other entity types (LLC, for-profit corporations etc.)?

Thank you for any information you can provide.

P.S. - a link to your statutes regarding this would be awesome!

Have a great day & upcoming weekend!

Deb