

NONPROFIT CORPORATION ACT (EXCERPT)
Act 162 of 1982

450.2703a Plan of merger; approval.

Sec. 703a.

(1) Except as provided in subsection (2)(e) and (f), a plan of merger adopted by the board of each constituent corporation that is organized on a stock or membership basis shall, except as provided in subsection (2)(e) and (f), be submitted for approval at a meeting of the shareholders or members.

(2) For approval of a plan of merger under subsection (1), all of the following apply:

(a) The board must recommend the plan of merger to the shareholders or members, unless section 529 applies or the board determines that because of conflict of interest, events that occur after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation. If 1 or more of the exceptions described in this subdivision apply, the board must communicate the basis for not making a recommendation to the shareholders or members.

(b) The board may condition its submission of the proposed merger on any basis.

(c) Except as provided in subdivision (h), the corporation shall give notice of the shareholder or membership meeting to each shareholder or member of record, whether or not entitled to vote at the meeting, within the time and in the manner provided in this act for giving notice of meetings of shareholders or members. The notice shall include or be accompanied by a copy or summary of the plan of merger. If a summary of the plan is given, the notice shall state that a copy of the plan is available on request.

(d) At the meeting of the shareholders or members, the shareholders or members shall vote on the proposed plan of merger. Subject to subdivision (e), the plan is approved if all of the following are met:

(i) A majority of the votes held by shareholders or members of the corporation that are entitled to vote on the plan are cast in favor of the plan.

(ii) If a class of members or shareholders is entitled to vote on the plan as a class, a majority of the votes held by shareholders or members of the class are cast in favor of the plan. A class of shares or of members is entitled to vote as a class in the case of a merger if the plan of merger contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class of shares or members to vote as a class.

(e) Notwithstanding subdivision (d), unless a greater vote is required in the articles of incorporation or in a bylaw adopted by the shareholders or members, if there are more than 20 shareholders or members that are entitled to vote at the meeting, the plan of merger is adopted if a majority of the votes held by shareholders or the members present in person or by proxy at the meeting are cast in favor of the plan and, if a class of shareholders or members is entitled to vote on the proposed merger as a class, a majority of the votes held by shareholders or members of that class present in person or by proxy at the meeting are cast in favor of the plan.

(f) Except as provided in section 754 or unless required in the articles of incorporation or bylaws, action on a plan of merger by the shareholders or members of a surviving corporation that is organized on a stock or membership basis is not required if all of the following apply:

(i) The articles of incorporation of the surviving corporation will not differ from its articles of incorporation before the merger.

(ii) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, voting rights, preferences, limitations, and relative rights, immediately after the merger or each member of the surviving corporation whose membership was outstanding immediately before the effective date of the merger will be a member with identical designations, voting rights, preferences, limitations, and relative rights, immediately after the merger.

(g) A plan of merger may provide for differing forms of consideration for holders of shares or memberships within the same class based on the election of the holders or members, the amount of shares or memberships held, or another reasonable basis.

(h) A corporation that has more than 20 shareholders or members is not required to give notice under subdivision (c) to any shareholder or member, and is not required to allow the shareholder or member to vote on a proposed plan of merger or conversion, if both of the following apply:

(i) The shareholder or member is not entitled to vote on the proposed plan of merger or conversion under the articles of incorporation or bylaws of the corporation.

(ii) The shareholder or member is not entitled to receive any distributions from the corporation on dissolution under the articles of incorporation or bylaws of the corporation, under this act, or under other applicable law.

(3) If any merging corporation is organized on a directorship basis, the board shall approve a plan of merger by an affirmative vote of a majority of the directors who are then in office or a higher number of directors if specified in the articles of incorporation or bylaws. The corporation shall give notice of the meeting to authorize the merger

to each director who is then in office at least 20 days before the meeting. The notice shall include or be accompanied by a copy or a summary of the plan of merger.

(4) If a person solicits proxies in connection with the approval of a plan of merger under this section from more than 25 shareholders or members, the person soliciting the proxies must provide a form of proxy to each voting shareholder or member solicited that contains all of the following:

- (a) A blank space for the date and the signature of a shareholder or member that is voting by proxy.
- (b) Clear identification of each matter or group of related matters on which the shareholders or members are voting.
- (c) The phrase "revocable proxy".
- (d) An acknowledgment that the shareholder or member received the notice of meeting and the plan or a summary of the plan of merger.
- (e) The date, time, and place of the meeting of the shareholders or members.
- (f) A place for the shareholder or member to indicate on the proxy whether the shareholder or member votes for, votes against, or abstains from voting on the merger.
- (g) A statement that the person designated as the proxy holder will vote the proxy in accordance with the instructions of the shareholder or member.
- (h) A statement indicating how the proxy holder will vote the proxy if the shareholder or member does not specify a choice for a matter.
- (i) A statement that if the proxy is not returned by the shareholder or member, the proxy holder may vote any valid proxy previously executed by the shareholder or member.

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