BUSINESS ORGANIZATIONS CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 10. MERGERS, INTEREST EXCHANGES, CONVERSIONS, AND SALES OF ASSETS

SUBCHAPTER A. MERGERS

Sec. 10.001. ADOPTION OF PLAN OF MERGER. (a) A domestic entity may effect a merger by complying with the applicable provisions of this code. A merger must be set forth in a plan of merger.

(b) To effect a merger, each domestic entity that is a party to the merger must act on and approve the plan of merger in the manner prescribed by this code for the approval of mergers by the domestic entity.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) If one or more non-code organizations is a party to the merger or is to be created by the plan of merger:

(1) to effect the merger each non-code organization must take all action required by this code and its governing documents;

(2) the merger must be permitted by:

(A) the law of the state or country under whose law each non-code organization is incorporated or organized; or

(B) the governing documents of each non-code organization if the documents are not inconsistent with the law under which the non-code organization is incorporated or organized; and

(3) in effecting the merger each non-code organization that is a party to the merger must comply with:

(A) the applicable laws under which it is incorporated or organized; and

(B) the governing documents of the non-code organization.

(e) A domestic entity may not merge under this subchapter if an owner or member of that entity that is a party to the merger will,

as a result of the merger, become subject to owner liability, without that owner's or member's consent, for a liability or other obligation of any other person.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 5, eff. September 1, 2015.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. 2411, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 10.002. PLAN OF MERGER: REQUIRED PROVISIONS. (a) A plan of merger must be in writing and must include:

(1) the name of each organization that is a party to the merger;

(2) the name of each organization that will survive the merger;

(3) the name of each new organization that is to be created by the plan of merger;

(4) a description of the organizational form of each organization that is a party to the merger or that is to be created by the plan of merger and its jurisdiction of formation;

(5) the manner and basis, including use of a formula, of converting or exchanging any of the ownership or membership interests of each organization that is a party to the merger into:

(A) ownership interests, membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations;

(B) cash;

(C) other property, including ownership interests, membership interests, obligations, rights to purchase securities, or other securities of any other person or entity; or

(D) any combination of the items described by Paragraphs (A)-(C);

(6) the identification of any of the ownership or membership interests of an organization that is a party to the

merger that are:

(A) to be canceled rather than converted or exchanged; or

(B) to remain outstanding rather than converted or exchanged if the organization survives the merger;

(7) the certificate of formation of each new domestic filing entity to be created by the plan of merger;

(8) the governing documents of each new domestic nonfiling entity to be created by the plan of merger; and

(9) the governing documents of each non-code organization that:

(A) is to survive the merger or to be created by the plan of merger; and

(B) is an entity that is not:

(i) organized under the laws of any state or the United States; or

(ii) required to file its certificate of formation or similar document under which the entity is organized with the appropriate governmental authority.

(b) An item required by Subsections (a)(7)-(9) may be included in the plan of merger by an attachment or exhibit to the plan.

(c) If the plan of merger provides for a manner and basis of converting or exchanging an ownership or membership interest that may be converted or exchanged in a manner or basis different than any other ownership or membership interest of the same class or series of the ownership or membership interest, the manner and basis of conversion or exchange must be included in the plan of merger in the same manner as provided by Subsection (a)(5). A plan of merger may provide for cancellation of an ownership or membership interest while providing for the conversion or exchange of other ownership or membership interests of the same class or series as the ownership or membership interest to be canceled.

(d) Any of the terms of the plan of merger may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the merger is clearly and expressly stated in the plan. In this subsection,

"facts" includes the occurrence of any event, including a determination or action by any person.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 6, eff. September 1, 2015.

Sec. 10.003. CONTENTS OF PLAN OF MERGER: MORE THAN ONE SUCCESSOR. If more than one organization is to survive or to be created by the plan of merger, the plan of merger must include:

(1) the manner and basis of allocating and vesting the property of each organization that is a party to the merger among one or more of the surviving or new organizations;

(2) the name of each surviving or new organization that is primarily obligated for the payment of the fair value of an ownership or membership interest of an owner or member of a domestic entity subject to dissenters' rights that is a party to the merger and who complies with the requirements for dissent and appraisal under this code applicable to the domestic entity; and

(3) the manner and basis of allocating each liability and obligation of each organization that is a party to the merger, or adequate provisions for the payment and discharge of each liability and obligation, among one or more of the surviving or new organizations.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. 2411, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 10.004. PLAN OF MERGER: PERMISSIVE PROVISIONS. A plan of merger may include:

(1) amendments to, restatements of, or amendments and restatements of the governing documents of any surviving organization, including a certificate of amendment, a restated

certificate of formation without amendment, or a restated certificate of formation containing amendments;

(2) provisions relating to an interest exchange, including a plan of exchange; and

(3) any other provisions relating to the merger that are not required by this chapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 7, eff. September 1, 2015.

Sec. 10.005. CREATION OF HOLDING COMPANY BY MERGER. (a) In this section:

(1) "Direct or indirect wholly owned subsidiary" means, with respect to a domestic entity, another domestic entity, all of the outstanding voting ownership or membership interests of which are owned by the domestic entity or by one or more other domestic entities or non-code organizations, all of the outstanding voting ownership or membership interests of which are owned by the domestic entity or one or more other wholly owned domestic entities or non-code organizations.

(2) "Holding company" means a domestic entity that, from its organization until a merger takes effect, was at all times a direct or indirect wholly owned subsidiary of the merging domestic entity and the ownership or membership interests of which are issued to the members or owners of the merging domestic entity in the merger.

(3) "Merging domestic entity" means the original domestic entity that is a party to a merger that is intended to create a holding company structure under a plan of merger that satisfies the requirements of this section and whose members or owners are not required to approve the plan of merger under Subsection (b).

(4) "Surviving entity subsidiary" means the surviving entity in a merger of a merging domestic entity and a direct or indirect wholly owned subsidiary of the merging domestic entity, which immediately following the merger is a direct or indirect

wholly owned subsidiary of the holding company.

(b) A domestic entity may, without owner or member approval and pursuant to a plan of merger, restructure the ownership or membership structure of that entity to create a holding company structure under this chapter and the provisions of this code under which the entity was formed. The approval of the owners or members of a merging domestic entity that is a party to a merger under a plan of merger that creates a holding company is not required if:

(1) the holding company is a domestic entity of the same organizational form as the merging domestic entity;

(2) approval is not otherwise required by the governing documents of the merging domestic entity;

(3) the merging domestic entity merges with a direct or indirect wholly owned subsidiary;

(4) after the merger the merging domestic entity or its successor is a direct or indirect wholly owned subsidiary of a holding company;

(5) the merging domestic entity and the direct or indirect wholly owned subsidiary are the only parties to the merger;

(6) each ownership or membership interest of the merging domestic entity that is outstanding preceding the merger is converted in the merger into an ownership or membership interest of the holding company having the same designations, preferences, limitations, and relative rights and corresponding obligations in respect of the ownership or membership interest as the ownership or membership interest held by the owner or member in the merging domestic entity;

(7) except as provided by Subsection (c), the governing documents of the holding company immediately following the merger contain provisions substantively identical to the governing documents of the merging domestic entity immediately preceding the merger;

(8) except as provided by Subsections (c) and (d), the governing documents of the surviving entity subsidiary immediately following the merger contain provisions substantively identical to the governing documents of the merging domestic entity immediately

preceding the merger;

(9) the governing persons of the merging domestic entity become or remain the governing persons of the holding company when the merger takes effect;

(10) the owners or members of the merging domestic entity will not recognize gain or loss for United States federal income tax purposes, the United States federal tax classification of the holding company will be the same as that of the merging domestic entity, and the merger will not result in the loss of any tax benefit or attribute of the merging domestic entity, each as determined by the governing authority of the merging domestic entity; and

(11) the governing authority of the merging domestic entity adopts a resolution approving the plan of merger.

(c) Subsections (b)(7) and (8) do not require identical provisions regarding the organizer or organizers, the entity name, the registered office and agent, the initial governing persons, and the initial subscribers of ownership or membership interests and provisions contained in any amendment to the governing documents as were necessary to effect a change, exchange, reclassification, or cancellation of ownership or membership interests, if the change, exchange, reclassification, or cancellation was in effect preceding the merger.

(d) Notwithstanding Subsection (b)(8):

(1) the governing documents of the surviving entity subsidiary must require that an act or transaction by or involving the surviving entity subsidiary, other than the election or removal of the governing persons of the surviving entity subsidiary, that requires for its approval under this code or the governing documents of the surviving entity subsidiary the approval of the owners or members of the surviving entity subsidiary must, by specific reference to this section, require the approval of the owners or members of the holding company, or any successor by merger, by the same vote as is required by this code and the governing documents of the surviving entity subsidiary;

(2) if the surviving entity subsidiary is not of the same organizational form as the merging domestic entity, the

governing documents of the surviving entity subsidiary may differ from the governing documents of the merging domestic entity to the minimum extent necessary to make a change that takes into account the differences between the types of entities, including a change in reference to the types of owners, members, ownership interests, membership interests, governing persons, or governing authority, each as determined by the governing authority of the merging domestic entity;

(3) if the surviving entity subsidiary is not of the same organizational form as the merging domestic entity, the governing documents of the surviving entity subsidiary must require that:

(A) the surviving entity subsidiary obtain the approval of the owners or members of the holding company for any act or transaction by or involving the surviving entity subsidiary, other than the election or removal of the governing persons of the surviving entity subsidiary, that would require the approval of the owners or members of the surviving entity subsidiary if the surviving entity subsidiary were of the same organizational form as the merging domestic entity;

(B) any amendment to the governing documents of the surviving entity subsidiary that would, if adopted by an entity of the same organizational form as the merging domestic entity, be required to be included in the certificate of formation of the entity also require, by specific reference to this section, the approval of the owners or members of the holding company, or any successor by merger, by the same vote as is required by this code or by the governing documents of the surviving entity subsidiary; and

(C) the business affairs of the surviving entity subsidiary be managed by or under the direction of governing persons who are:

(i) subject to the same fiduciary duties applicable to the governing persons of an entity of the same organizational form as the merging domestic entity subject to this code; and

(ii) liable for the breach of any duties to the same extent as governing persons of that form of entity;

(4) the governing documents of the surviving entity subsidiary may change the classes and series of ownership or membership interests and the number of ownership or membership interests that the surviving entity subsidiary is authorized to issue; and

(5) this subsection or a provision of a surviving entity subsidiary's governing documents required by this subsection may not be construed as requiring the approval of the owners or members of the holding company to elect or remove governing persons of the surviving entity subsidiary.

(e) To the extent the provisions contained in Section 21.606 apply to a merging domestic entity and its owners or members when a merger takes effect under this section, those provisions continue to apply to the holding company and its owners or members immediately after the merger takes effect as though the holding company were the merging domestic entity. All ownership or membership interests of the holding company acquired in the merger, for purposes of Section 21.606, are considered to have been acquired at the time the ownership or membership interest of the merging domestic entity converted in the merger was acquired. Any owner or member who, preceding the merger, was not an affiliated owner or member as described by Section 21.606 does not solely by reason of the merger become an affiliated owner or member of the holding company.

(f) If the name of a holding company immediately following the effectiveness of a merger under this section is the same as the name of the merging domestic entity preceding the merger, the ownership or membership interests of the holding company into which the ownership or membership interests of the merging domestic entity are converted pursuant to the merger will be represented by the certificates, if any, that previously represented the ownership or membership interests in the merging domestic entity.

(g) This section shall not apply to a merger of a partnership with or into a domestic entity without the approval of the owners or members of the partnership and domestic entity as provided by this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 33, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 49, eff. September 1, 2007.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. 2411, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 10.006. SHORT FORM MERGER. (a) A parent organization that owns at least 90 percent of the outstanding ownership or membership interests of each class and series of each of one or more subsidiary organizations may merge with one or more of the subsidiary organizations as provided by this section if:

(1) at least one of the parties to the merger is a domestic entity and each other party is a domestic entity or another non-code organization organized under the laws of a jurisdiction that permits a merger of the type authorized by this chapter; and

(2) the resulting organization or organizations are the parent organization, one or more existing subsidiary organizations, or one or more new organizations.

(b) No action by any subsidiary organization that is a domestic entity is required to approve the merger.

(c) If the parent organization will not survive the merger, a plan of merger must be adopted by action of the parent organization in the same manner as a plan of merger not governed by this section or Section 10.005.

(d) If the parent organization will survive the merger, the merger is required to be approved only by a resolution adopted by the governing authority of the parent organization.

(e) Sections 10.001(c)-(e), 10.002(c), 10.003, and 10.007-10.010 apply to a merger approved under Subsection (d), except that the resolution approving the merger should be considered the plan of merger for purposes of those sections.

(f) The resolution approving the merger under Subsection (d) must describe:

(1) the basic terms of the merger;

(2) the organizations that are party to the merger; and

(3) the organizations that survive the merger.

(g) If the parent organization does not own all of the outstanding ownership or membership interests of each class or series of ownership or membership interests of each subsidiary organization that is a party to the merger, the resolution of the parent organization required by Subsection (d) must describe the terms of the merger, including the cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any person or organization or any combination of the ownership or membership interests, obligations, rights, or other securities, to be used, paid, or delivered by the parent organization on surrender of each ownership or membership interest of the subsidiary organizations not owned by the parent organization.

(h) An entity is not disqualified from effecting a merger under any other provision of this chapter because it qualifies for a merger under this section.

(i) This section shall not apply if a subsidiary organization that is a party to the merger is:

(1) a partnership; or

(2) a domestic entity that has in its governing documents the provision required by Section 10.005(d)(1) and of which there are outstanding ownership or membership interests that would be entitled to vote on the merger absent this section.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 34, eff. January 1, 2006.

Sec. 10.007. EFFECTIVENESS OF MERGER. Except as otherwise provided by Subchapter B, Chapter 4, a merger takes effect at the time provided by the plan of merger, except that a merger that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of merger by the secretary of state

or county clerk, as appropriate.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.008. EFFECT OF MERGER. (a) When a merger takes effect:

(1) the separate existence of each domestic entity that is a party to the merger, other than a surviving or new domestic entity, ceases;

(2) all rights, title, and interests to all real estate and other property owned by each organization that is a party to the merger is allocated to and vested, subject to any existing liens or other encumbrances on the property, in one or more of the surviving or new organizations as provided in the plan of merger without:

(A) reversion or impairment;

(B) any further act or deed; or

(C) any transfer or assignment having occurred;

(3) all liabilities and obligations of each organization that is a party to the merger are allocated to one or more of the surviving or new organizations in the manner provided by the plan of merger;

(4) each surviving or new domestic organization to which a liability or obligation is allocated under the plan of merger is the primary obligor for the liability or obligation, and, except as otherwise provided by the plan of merger or by law or contract, no other party to the merger, other than a surviving domestic entity or non-code organization liable or otherwise obligated at the time of the merger, and no other new domestic entity or non-code organization created under the plan of merger is liable for the debt or other obligation;

(5) any proceeding pending by or against any domestic entity or by or against any non-code organization that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic entity or entities or the surviving or new non-code organization or non-code organizations to which the liability, obligation, asset, or right associated with that proceeding is allocated to and vested in under the plan of merger

may be substituted in the proceeding;

(6) the governing documents of each surviving domestic entity are amended, restated, or amended and restated to the extent provided by the plan of merger, and a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments of a surviving filing entity shall have the effect stated in Section 3.063;

(7) each new filing entity whose certificate of formation is included in the plan of merger under this chapter, on meeting any additional requirements, if any, of this code for its formation, is formed as a domestic entity under this code as provided by the plan of merger;

(8) the ownership or membership interests of each organization that is a party to the merger and that are to be converted or exchanged, in whole or part, into ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations, into cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any organization, or into any combination of these, or that are to be canceled or remain outstanding, are converted, exchanged, canceled, or remain outstanding as provided in the plan of merger, and the former owners or members who held ownership or membership interests of each domestic entity that is a party to the merger are entitled only to the rights provided by the plan of merger or, if applicable, any rights to receive the fair value for the ownership interests provided under Subchapter H; and

(9) notwithstanding Subdivision (4), the surviving or new organization named in the plan of merger as primarily obligated to pay the fair value of an ownership or membership interest under Section 10.003(2) is the primary obligor for that payment and all other surviving or new organizations are secondarily liable for that payment.

(b) If the plan of merger does not provide for the allocation and vesting of the right, title, and interest in any particular real estate or other property or for the allocation of any liability or obligation of any party to the merger, the

unallocated property is owned in undivided interest by, or the liability or obligation is the joint and several liability and obligation of, each of the surviving and new organizations, pro rata to the total number of surviving and new organizations resulting from the merger.

(c) If a surviving organization in a merger is not a domestic entity, the surviving organization is considered to have:

(1) appointed the secretary of state in this state as the organization's agent for service of process in a proceeding to enforce any obligation of a domestic entity that is a party to the merger; and

(2) agreed to promptly pay to the dissenting owners or members of each domestic entity that is a party to the merger who have the right of dissent and appraisal under this code the amount, if any, to which they are entitled under this code.

(d) If the surviving organization in a merger is not a domestic entity, the organization shall register to transact business in this state if the entity is required to register for that purpose by another provision of this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 35, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 50, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 8, eff. September 1, 2015.

Sec. 10.009. SPECIAL PROVISIONS APPLYING TO PARTNERSHIP MERGERS. (a) A partner of a domestic partnership that is a party to a merger does not become liable as a result of the merger for the liability or obligation of another person that is a party to the merger unless the partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the partner.

(b) A partner of a domestic partnership that is a party to a merger who remains in or enters a partnership is treated as an incoming partner in the partnership when the merger takes effect for purposes of determining the partner's liability for a debt or obligation of the partnership or partnerships that are parties to the merger or to be created in the merger and in which the partner was not a partner.

(c) If a partnership merges with an organization and, because of the merger, no longer exists, a former partner who becomes an owner or member of the surviving organization may, until the first anniversary of the effective date of the merger, bind the surviving organization to a transaction for which the owner or member no longer has authority to bind the organization if the transaction is one in which the actions by the owner or member as a partner would have bound the partnership before the effective date of the merger, and the other party to the transaction:

(1) does not have actual or constructive notice of the merger;

(2) had done business with the terminated partnership within one year preceding the effective date of the merger; and

(3) reasonably believes that the partner who was previously an owner or member of the partnership that was merged into the surviving organization and is now an owner or member of the surviving organization has the authority to bind the surviving organization to the transaction at the time of the transaction.

(d) If a partnership is formed under a plan of merger, the existence of the partnership as a partnership begins when the merger takes effect, and the persons to be partners become partners at that time.

(e) A partner in a domestic partnership that is a party to the merger but does not survive shall be treated as a partner who withdrew from the nonsurviving domestic partnership as of the effective date of the merger.

(f) The partnership agreement of each domestic partnership that is a party to the merger must contain provisions that authorize the merger provided for in the plan of merger adopted by the partnership.

(g) Each domestic partnership that is a party to the merger must approve the plan of merger in the manner prescribed in its partnership agreement.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.010. SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION AND NONPROFIT ASSOCIATION MERGERS. (a) A domestic nonprofit corporation or nonprofit association may not merge into another entity if the domestic nonprofit corporation or nonprofit association would, because of the merger, lose or impair its charitable status.

(b) One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations or nonprofit associations that continue as the surviving entity or entities.

(c) A domestic nonprofit corporation or nonprofit association may not merge with a foreign for-profit entity if the domestic nonprofit corporation or nonprofit association does not continue as the surviving entity.

(d) One or more domestic nonprofit corporations or nonprofit associations and non-code organizations may merge into one or more foreign nonprofit entities that continue as the surviving entity or entities.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 4, eff. September 1, 2017.

SUBCHAPTER B. EXCHANGES OF INTERESTS

Sec. 10.051. INTEREST EXCHANGES. (a) For the purpose of acquiring all of the outstanding ownership or membership interests of one or more classes or series of one or more domestic entities, one or more domestic entities or non-code organizations may adopt a plan of exchange.

(b) To make an interest exchange under this section:

(1) the governing authority of each domestic entity

the ownership or membership interests of which are to be acquired in the interest exchange must act on a plan of exchange and, if otherwise required by this code, the owners or members of the domestic entity must approve the plan of exchange in the manner provided by this code; and

(2) each acquiring domestic entity must take all action that may otherwise be required by this code and its governing documents to effect the exchange.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) If a non-code organization is to acquire ownership or membership interests in the exchange, each non-code organization must take all action that is required under the laws of the organization's jurisdiction of formation and the organization's governing documents to effect the exchange.

(e) If one or more non-code organizations as part of the plan of exchange are to issue ownership or membership interests, the issuance of the ownership or membership interests must be permitted by the laws under which the non-code organizations are incorporated or organized or not inconsistent with those laws.

(f) A plan of exchange may not be effected if any owner or member of a domestic entity that is a party to the interest exchange will, as a result of the interest exchange, become subject to owner liability, without the consent of the owner or member, for the liabilities or obligations of any other person or organization.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 9, eff. September 1, 2015.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. 2411, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 10.052. PLAN OF EXCHANGE: REQUIRED PROVISIONS. (a) A plan of exchange must be in writing and must include:

(1) the name of each domestic entity the ownership or

membership interests of which are to be acquired;

(2) the name of each acquiring organization;

(3) if there is more than one acquiring organization, the ownership or membership interests to be acquired by each organization;

(4) the terms and conditions of the exchange; and

(5) the manner and basis, including use of a formula, of exchanging the ownership or membership interests to be acquired for:

(A) ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the acquiring organizations that is a party to the plan of exchange;

(B) cash;

(C) other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any other person or entity; or

(D) any combination of those items.

(b) The manner and basis of exchanging an ownership or membership interest of an owner or member that is exchanged in a manner or basis different from any other owner or member having ownership or membership interests of the same class or series must be included in the plan of exchange in the same manner as provided by Subsection (a)(5).

(c) Any of the terms of the plan of exchange may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the interest exchange is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 12, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 10, eff. September 1, 2015.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. 2411, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 10.053. PLAN OF EXCHANGE: PERMISSIVE PROVISIONS. A plan of exchange may include any other provisions not required by Section 10.052 relating to the interest exchange.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.054. EFFECTIVENESS OF EXCHANGE. Except as otherwise provided by Subchapter B, Chapter 4, an interest exchange takes effect at the time provided in the plan of exchange or otherwise agreed to by the parties, except that an interest exchange that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of exchange by the secretary of state or county clerk, as appropriate.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.055. GENERAL EFFECT OF INTEREST EXCHANGE. When an interest exchange takes effect:

(1) the ownership or membership interest of each acquired organization is exchanged as provided in the plan of exchange, and the former owners or members whose interests are exchanged under the plan of exchange are entitled only to the rights provided in the plan of exchange or, if applicable, a right to receive the fair value for the ownership interests provided under Subchapter H; and

(2) the acquiring organization has all rights, title, and interests with respect to the ownership or membership interest to be acquired by it subject to the provisions of the plan of exchange.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 51, eff. September 1, 2007.

Sec. 10.056. SPECIAL PROVISIONS APPLYING TO PARTNERSHIPS.

To effect an interest exchange:

(1) the partnership agreement of each domestic partnership whose partnership interests are to be acquired pursuant to the plan of exchange must authorize the partnership interest exchange adopted by the partnership;

(2) each domestic partnership whose partnership interests are to be acquired under the plan of exchange must approve the plan of exchange in the manner prescribed by its partnership agreement; and

(3) each acquiring domestic partnership must take all actions that may be required by its partnership agreement in order to effect the exchange.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

SUBCHAPTER C. CONVERSIONS

Sec. 10.101. CONVERSION OF DOMESTIC ENTITIES. (a) A domestic entity may convert into a different type of domestic entity or a non-code organization by adopting a plan of conversion.

(b) To effect a conversion, the converting entity must act on and the owners or members of the domestic entity must approve a plan of conversion in the manner prescribed by this code for the approval of conversions by the domestic entity or, if not prescribed by this code, in the same manner as prescribed by this code for the adoption and approval of a plan of merger by the domestic entity when the domestic entity does not survive the merger.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) A conversion may not take effect if the conversion is prohibited by or inconsistent with the laws of the converted entity's jurisdiction of formation, and the formation, incorporation, or organization of the converted entity under the plan of conversion must be effected in compliance with those laws pursuant to the plan of conversion.

(e) At the time a conversion takes effect, each owner or member of the converting entity, other than those who receive

payment of their ownership or membership interest under any applicable provisions of this code relating to dissent and appraisal, has, unless otherwise agreed to by that owner or member, an ownership or membership interest in, and is the owner or member of, the converted entity.

(f) A domestic entity may not convert under this section if an owner or member of the domestic entity, as a result of the conversion, becomes subject to owner liability, without the consent of the owner or member, for a liability or other obligation of the converted entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 52, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 11, eff. September 1, 2015.

Sec. 10.102. CONVERSION OF NON-CODE ORGANIZATIONS. (a) A non-code organization may convert into a domestic entity by adopting a plan of conversion as provided by this section.

(b) To effect a conversion, the non-code organization must take any action that may be required for a conversion under the laws of the organization's jurisdiction of formation and the organization's governing documents.

(c) The conversion must be permitted by the laws under which the non-code organization is incorporated or organized or by its governing documents, which may not be inconsistent with the laws of the jurisdiction in which the non-code organization is incorporated or organized.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.1025. CONVERSION AND CONTINUANCE. (a) A converting entity may elect to continue its existence in its current organizational form and jurisdiction of formation in connection with the entity's:

(1) conversion under Section 10.101 as a domestic entity of one organizational form into a non-United States entity

of the same organizational form; or

(2) conversion under Section 10.102 as a non-United States entity of one organizational form into a domestic entity of the same organizational form.

(b) The election permitted by Subsection (a) for the converting entity to continue its existence in its current organizational form and jurisdiction of formation must be:

(1) adopted and approved as part of the plan of conversion for the converting entity as required by Section 10.101(b) or 10.102(b), as applicable; and

(2) permitted by, or not prohibited by and inconsistent with, the laws of the applicable non-United States jurisdiction.

(c) Section 10.156(2) does not apply in connection with the filing of the certificate of conversion if the converting entity is a domestic filing entity that elects to continue its existence in accordance with this section.

(d) Chapter 9 does not apply to a non-United States entity that also exists as a domestic filing entity because of a conversion and election to continue its existence in accordance with this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 15, eff. September 1, 2009.

Sec. 10.103. PLAN OF CONVERSION: REQUIRED PROVISIONS. (a) A plan of conversion must be in writing and must include:

(1) the name of the converting entity;

(2) the name of the converted entity;

(3) a statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(4) a statement of the type of entity that the converted entity is to be and the converted entity's jurisdiction of formation;

(5) if Sections 10.1025 and 10.109 do not apply, the manner and basis, including use of a formula, of converting the ownership or membership interests of the converting entity into

ownership or membership interests of the converted entity;

(6) any certificate of formation required to be filed under this code if the converted entity is a filing entity;

(7) the certificate of formation or similar organizational document of the converted entity if the converted entity is not a filing entity; and

(8) if Sections 10.1025 and 10.109 apply, a statement that the converting entity is electing to continue its existence in its current organizational form and jurisdiction of formation after the conversion takes effect.

(b) An item required by Subsection (a)(6) or (7) may be included in the plan of conversion by an attachment or exhibit to the plan.

(c) Any of the terms of the plan of conversion may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the conversion is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 12, eff. September 1, 2015.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. 2411, 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 10.104. PLAN OF CONVERSION: PERMISSIVE PROVISIONS. A plan of conversion may include other provisions relating to the conversion that are not inconsistent with law.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.105. EFFECTIVENESS OF CONVERSION. Except as otherwise provided by Subchapter B, Chapter 4, a conversion takes effect at the time provided by the plan of conversion, except that a conversion that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of conversion by the filing officer.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.106. GENERAL EFFECT OF CONVERSION. When a conversion takes effect:

(1) the converting entity continues to exist without interruption in the organizational form of the converted entity rather than in the organizational form of the converting entity;

(2) all rights, title, and interests to all property owned by the converting entity continues to be owned, subject to any existing liens or other encumbrances on the property, by the converted entity in the new organizational form without:

(A) reversion or impairment;

(B) further act or deed; or

(C) any transfer or assignment having occurred;

(3) all liabilities and obligations of the converting entity continue to be liabilities and obligations of the converted entity in the new organizational form without impairment or diminution because of the conversion;

(4) the rights of creditors or other parties with respect to or against the previous owners or members of the converting entity in their capacities as owners or members in existence when the conversion takes effect continue to exist as to those liabilities and obligations and may be enforced by the creditors and obligees as if a conversion had not occurred;

(5) a proceeding pending by or against the converting entity or by or against any of the converting entity's owners or members in their capacities as owners or members may be continued by or against the converted entity in the new organizational form and by or against the previous owners or members without a need for substituting a party;

(6) the ownership or membership interests of the

converting entity that are to be converted into ownership or membership interests of the converted entity as provided in the plan of conversion are converted as provided by the plan, and if the converting entity is a domestic entity, the former owners or members of the domestic entity are entitled only to the rights provided in the plan of conversion or a right of dissent and appraisal under this code;

(7) if, after the conversion takes effect, an owner or member of the converted entity as an owner or member is liable for the liabilities or obligations of the converted entity, the owner or member is liable for the liabilities and obligations of the converting entity that existed before the conversion took effect only to the extent that the owner or member:

(A) agrees in writing to be liable for the liabilities or obligations;

(B) was liable, before the conversion took effect, for the liabilities or obligations; or

(C) by becoming an owner or member of the converted entity, becomes liable under other applicable law for the existing liabilities and obligations of the converted entity; and

(8) if the converted entity is a non-code organization, the converted entity is considered to have:

(A) appointed the secretary of state in this state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting owners or members of the converting domestic entity; and

(B) agreed that the converted entity will promptly pay the dissenting owners or members of the converting domestic entity the amount, if any, to which they are entitled under this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.107. SPECIAL PROVISIONS APPLYING TO PARTNERSHIP CONVERSIONS. (a) If a partnership is formed under a plan of conversion under this code, the existence of the partnership as a partnership begins when the conversion takes effect, and the owners or members designated to become the partners under the plan of

conversion become the partners at that time.

(b) The partnership agreement of a domestic partnership that is converting must contain provisions that authorize the conversion provided for in the plan of conversion adopted by the partnership.

(c) A domestic partnership that is converting must approve the plan of conversion in the manner provided in its partnership agreement.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 36, eff. January 1, 2006.

Sec. 10.108. SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION AND NONPROFIT ASSOCIATION CONVERSIONS. A domestic nonprofit corporation or nonprofit association may not convert into a for-profit entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 5, eff. September 1, 2017.

Sec. 10.109. SPECIAL PROVISIONS APPLYING TO CONVERSION AND CONTINUANCE. (a) This section applies only to a converting entity that elects to continue its existence in accordance with Section 10.1025.

(b) When the conversion of a converting entity to which this section applies takes effect:

(1) notwithstanding Section 10.106(1), the converting entity continues to exist both in its current organizational form and jurisdiction of formation and, as the converted entity, in the same organizational form in the new jurisdiction of formation;

(2) the converting entity and the converted entity, for purposes of the laws of this state, constitute a single entity formed, incorporated, created, or otherwise having come into being, as applicable, and existing under the laws of this state and the laws of the applicable non-United States jurisdiction, so long as

the entity continues to exist as a domestic entity under the laws of this state following the conversion;

(3) if the converting entity is a domestic entity, this code and the other laws of this state apply to the converted entity to the same extent as the laws applied to the entity before the conversion;

(4) if the converting entity is a non-United States entity, the laws of the applicable non-United States jurisdiction apply to the converted entity to the same extent as the laws applied to the entity before the conversion;

(5) notwithstanding Section 10.106(2), all rights, title, and interests in all property owned by the converting entity continue to be owned by the converted entity, subject to any existing liens or other encumbrances on the property, in both the organizational form of the converting entity and the organizational form of the converted entity without:

(A) reversion or impairment;

(B) further act or deed; or

(C) the occurrence of a transfer or assignment; and

(6) notwithstanding Section 10.106(3), all liabilities and obligations of the converting entity remain the liabilities and obligations of the converted entity in both the organizational form of the converting entity and the organizational form of the converted entity without impairment or diminution because of the conversion.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 17, eff. September 1, 2009.

SUBCHAPTER D. CERTIFICATE OF MERGER, EXCHANGE, OR CONVERSION

Sec. 10.151. CERTIFICATE OF MERGER AND EXCHANGE. (a) A certificate of merger, which may also include an exchange, or a certificate of exchange, as applicable, must be filed for a merger or interest exchange to become effective if:

(1) for a merger:

(A) any domestic entity that is a party to the

merger is a filing entity; or

(B) any domestic entity to be created under the plan of merger is a filing entity; or

(2) for an exchange, an ownership or membership interest in any filing entity is to be acquired in the interest exchange.

(b) If a certificate of merger or exchange is required to be filed in connection with an interest exchange or a merger, other than a merger under Section 10.006, the certificate must be signed on behalf of each domestic entity and non-code organization that is a party to the merger or exchange by an officer or other authorized representative and must include:

(1) the plan of merger or exchange or a statement certifying:

(A) the name and organizational form of each domestic entity or non-code organization that is a party to the merger or exchange;

(B) for a merger, the name and organizational form of each domestic entity or non-code organization that is to be created by the plan of merger;

(C) the name of the jurisdiction in which each domestic entity or non-code organization named under Paragraph (A) or (B) is incorporated or organized;

(D) for a merger, the amendments or changes to the certificate of formation of any filing entity that is a party to the merger, or a statement that amendments or changes are being made to the certificate of formation of any filing entity that is a party to the merger as set forth in a restated certificate of formation containing amendments or a certificate of amendment attached to the certificate of merger under Subsection (d);

(E) for a merger, if no amendments or changes to the certificate of formation of a filing entity are made under Paragraph (D), a statement to that effect, which may also refer to a restated certificate of formation attached to the certificate of merger under Subsection (d);

(F) for a merger, that the certificate of formation of each new filing entity to be created under the plan of

merger is being filed with the certificate of merger;

(G) that a plan of merger or exchange is on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization, and the address of each principal place of business; and

(H) that a copy of the plan of merger or exchange will be on written request furnished without cost by each surviving, acquiring, or new domestic entity or non-code organization to any owner or member of any domestic entity that is a party to or created by the plan of merger or exchange and, for a merger with multiple surviving domestic entities or non-code organizations, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding;

(2) if approval of the owners or members of any domestic entity that was a party to the plan of merger or exchange is not required by this code, a statement to that effect; and

(3) a statement that the plan of merger or exchange has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger or exchange and by the governing documents of those organizations.

(c) A certificate of merger may also constitute a certificate of exchange if it contains the information required for a certificate of exchange.

(d) As provided by Subsections (b)(1)(D) and (E), a certificate of merger filed under this section may include as an attachment a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments for any filing entity that is a party to the merger.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 53, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 13, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 27 (S.B. 1514), Sec. 10, eff.

September 1, 2023.

Sec. 10.152. CERTIFICATE OF MERGER: SHORT FORM MERGER. (a) The certificate of merger for a merger under Section 10.006 is required to be signed only by an officer or other authorized representative of the parent organization described by that section.

(b) Except as provided by Subsection (c), the certificate of merger must include:

(1) the name of the parent organization, the name of each subsidiary organization that is a party to the merger, and the jurisdiction of formation of each named organization;

(2) the number of outstanding ownership interests of each class or series of each subsidiary organization and the number and percentage of ownership interests of each class or series owned by the parent organization;

(3) a copy of the resolution of merger adopted by the governing authority of the parent organization authorizing the merger and the date of the adoption of the resolution;

(4) a statement that the resolution has been approved as required by the laws of the jurisdiction of formation of the parent organization and by its governing documents; and

(5) if any surviving organization is not a domestic entity, the address, including street number, if any, of its registered or principal office in the organization's jurisdiction of formation.

(c) If a plan of merger is required to be adopted by action of the parent organization under Section 10.006(c), the certificate of merger must include the information required by Section 10.151(b).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.153. FILING OF CERTIFICATE OF MERGER OR EXCHANGE. (a) If a certificate of merger or exchange is required to be filed, the certificate of merger or exchange must be filed in accordance with Chapter 4. The certificate of formation of each filing entity that is to be formed under a plan of merger must also be filed with

the certificate of merger in accordance with Chapter 4. Except as provided by this section, the certificate must be filed with the secretary of state.

(b) If a domestic real estate investment trust is a party to the merger or if an ownership interest in a domestic real estate investment trust is to be acquired in the interest exchange, the certificate of merger or exchange must be filed in accordance with Chapter 4 with the county clerk of the county in which the domestic real estate investment trust's principal place of business in this state is located.

(c) If a domestic real estate investment trust is to be created under the plan of merger, the certificate of formation of the domestic real estate investment trust must also be filed with the certificate of merger in accordance with Chapter 4 with the county clerk of the county in which the domestic real estate investment trust's principal place of business in this state is located.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.154. CERTIFICATE OF CONVERSION. (a) A certificate of conversion must be filed for the conversion to become effective if:

(1) any domestic entity that is a party to the conversion is a filing entity; or

(2) any domestic entity to be created under the plan of conversion is a filing entity.

(b) If a certificate of conversion is required to be filed in connection with a conversion, the certificate must be signed on behalf of the converting entity and must include:

(1) the plan of conversion or a statement certifying the following:

(A) the name, organizational form, and jurisdiction of formation of the converting entity;

(B) the name, organizational form, and jurisdiction of formation of the converted entity;

(C) that a plan of conversion is on file at the principal place of business of the converting entity, and the

address of the principal place of business;

(D) that a plan of conversion will be on file after the conversion at the principal place of business of the converted entity, and the address of the principal place of business; and

(E) that a copy of the plan of conversion will be on written request furnished without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting entity or the converted entity; and

(2) a statement that the plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

(c) In addition to complying with the requirements of Subsections (a) and (b), if Sections 10.1025 and 10.109 apply to the conversion, the certificate of conversion required by this section must:

(1) be titled "Certificate of Conversion and Continuance"; and

(2) include a statement certifying that the converting entity is electing to continue its existence in its current organizational form and jurisdiction of formation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 54, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 18, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 14, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 27 (S.B. 1514), Sec. 11, eff. September 1, 2023.

Sec. 10.155. FILING OF CERTIFICATE OF CONVERSION. (a) If a certificate of conversion is required to be filed, the certificate of conversion must be filed in accordance with Chapter 4. If the converted entity is a filing entity, the certificate of formation

of the filing entity must also be filed with the certificate of conversion in accordance with Chapter 4. Except as provided by this section, the certificate must be filed with the secretary of state.

(b) If the converting entity is a domestic real estate investment trust, the certificate of conversion must be filed in accordance with Chapter 4 with the county clerk of the county in which the converting entity's principal place of business in this state is located.

(c) If the converted entity is a domestic real estate investment trust, the certificate of formation of the converted entity must also be filed with the certificate of conversion in accordance with Chapter 4 with the county clerk of the county in which the converted entity's principal place of business in this state is located.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.156. ACCEPTANCE OF CERTIFICATE FOR FILING. The filing officer may not accept a certificate of merger, exchange, or conversion for filing if:

(1) the filing officer finds that the certificate of merger, exchange, or conversion does not conform to law; or

(2) the required franchise taxes have not been paid or the certificate of merger, exchange, or conversion does not provide that one or more of the surviving, new, or acquiring organizations or the converted entity is liable for the payment of the required franchise taxes.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

SUBCHAPTER E. ABANDONMENT OF MERGER, EXCHANGE, OR CONVERSION

Sec. 10.201. ABANDONMENT OF PLAN OF MERGER, EXCHANGE, OR CONVERSION. After a merger, interest exchange, or conversion is approved as provided by this code, and at any time before the merger, interest exchange, or conversion takes effect, the plan of merger, interest exchange, or conversion may be abandoned, subject to any contractual rights, by any of the domestic entities that are a party to the merger, interest exchange, or conversion, without

action by the owners or members, under the procedures provided by the plan of merger, exchange, or conversion or, if no abandonment procedures are provided, in the manner determined by the governing authority.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.202. ABANDONMENT AFTER FILING. If a certificate of merger, exchange, or conversion has been filed, the merger, interest exchange, or conversion may be abandoned before its effectiveness in accordance with Sections 4.057 and 10.201.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 37, eff. January 1, 2006.

Sec. 10.203. ABANDONMENT IF NO FILING REQUIRED. (a) If no filing is required by this chapter for the abandonment of a merger, interest exchange, or conversion, the merger, interest exchange, or conversion is abandoned:

(1) as provided by the procedures in the plan of merger, exchange, or conversion; or

(2) if no abandonment procedures are provided by the plan, in the manner determined by the governing authority of the abandoning entity.

(b) A filing of a certificate of abandonment under Section 4.057 is not required for the abandonment of a merger, interest exchange, or conversion if no filing is required under Subchapter D to make the merger, interest exchange, or conversion effective.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 38, eff. January 1, 2006.

SUBCHAPTER F. PROPERTY TRANSFERS AND DISPOSITIONS

Sec. 10.251. GENERAL POWER OF DOMESTIC ENTITY TO SELL, LEASE, OR CONVEY PROPERTY. (a) Subject to any approval required by this code or the governing documents of the domestic entity, a domestic entity may transfer and convey by sale, lease, assignment,

or another method an interest in property of the entity, including real property. The transfer and conveyance may:

(1) be made with or without the goodwill of the entity;

(2) be made on any terms and conditions and for any consideration, which may consist wholly or partly of money or other property, including an ownership interest in a domestic entity or non-code organization; and

(3) be evidenced by a deed, assignment, or other instrument of transfer or conveyance, with or without the seal of the entity.

(b) Subject to any approval required by this code or the governing documents of the domestic entity, a domestic entity may grant a pledge, mortgage, deed of trust, or trust indenture with respect to an interest in property of the entity, including real property, with or without the seal of the entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.252. NO APPROVAL REQUIRED FOR CERTAIN DISPOSITIONS OF PROPERTY. Except as otherwise provided by this code, the governing documents of the domestic entity, or specific limitations established by the governing authority, a sale, lease, assignment, conveyance, pledge, mortgage, deed of trust, trust indenture, or other transfer of an interest in real property or other property made by a domestic entity does not require the approval of the members or owners of the entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.253. RECORDING INSTRUMENT CONVEYING REAL PROPERTY OF DOMESTIC ENTITY. (a) A deed or other instrument executed by a domestic entity that conveys an interest in real property may be recorded in the same manner and with the same effect as other similar instruments if the instrument is signed and acknowledged by:

(1) an officer, authorized attorney-in-fact, or other authorized person of the entity; or

(2) in the case of a partnership or limited liability company, a governing person of the entity.

(b) A deed or other instrument executed by a domestic entity that conveys an interest in real property and that is recorded and signed by an officer, authorized attorney-in-fact, or other authorized person of the entity constitutes prima facie evidence that the sale or conveyance that is the subject of the instrument was authorized under this code and the governing documents of the entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.254. DISPOSITION OF PROPERTY NOT A MERGER OR CONVERSION; LIABILITY. (a) A disposition of all or part of the property of a domestic entity, regardless of whether the disposition requires the approval of the entity's owners or members, is not a merger or conversion for any purpose.

(b) Except as otherwise expressly provided by another statute, a person acquiring property described by this section may not be held responsible or liable for a liability or obligation of the transferring domestic entity that is not expressly assumed by the person.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 55, eff. September 1, 2007.

SUBCHAPTER G. BANKRUPTCY REORGANIZATION

Sec. 10.301. REORGANIZATION UNDER BANKRUPTCY AND SIMILAR LAWS. (a) A trustee appointed for a domestic entity that is being reorganized under a federal statute, the designated officers of a domestic entity being reorganized under a federal statute, or any other individual designated by a court having jurisdiction of a domestic entity being reorganized under a federal statute to act on behalf of the domestic entity may, without action by or notice to the domestic entity's governing authority, owners, or members, in order to carry out a plan of reorganization ordered by a court under the federal statute:

(1) amend or restate the domestic entity's certificate

of formation if the certificate of formation after amendment or restatement contains only provisions required or permitted to be contained in the certificate of formation;

(2) merge or exchange an interest with one or more domestic entities or non-code organizations under a plan of merger or exchange having any provision required or permitted by Sections 10.002, 10.003, 10.004, 10.005, 10.052, and 10.053;

(3) change the location of the domestic entity's registered office, change its registered agent, and remove or appoint any agent to receive service of process;

(4) alter, amend, or repeal the domestic entity's governing documents other than filing instruments;

(5) constitute or reconstitute and classify or reclassify the domestic entity's governing authority and name, constitute, or appoint managerial officials in place of or in addition to all or some of the managerial officials;

(6) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the domestic entity's property and assets;

(7) authorize and fix the terms, manner, and conditions of the issuance of bonds, debentures, or other obligations, regardless of whether the obligation is convertible into ownership interests of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for any ownership interests of any class;

(8) wind up and terminate the entity's existence; or

(9) effect a conversion.

(b) An action taken under Subsection (a)(4) or (5) takes effect on entry of the order approving the plan of reorganization or on another effective date as may be specified, without further action of the domestic entity, as and to the extent provided by the plan of reorganization or the order approving the plan of reorganization.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.302. SIGNING OF DOCUMENTS. A trustee appointed for a domestic entity being reorganized under a federal statute, the

designated officers of a domestic entity being reorganized under a federal statute, or any other individual designated by a court having jurisdiction of a domestic entity being reorganized under a federal statute may sign on behalf of a domestic entity that is being reorganized:

(1) a certificate of amendment or restated certificate of formation containing:

(A) the name of the domestic entity;

(B) each amendment or the restatement approved by the court;

(C) the date of the court's order approving the certificate of amendment or the restatement;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute;

(2) a certificate of merger or exchange containing:

(A) the name of the domestic entity;

(B) the part of the plan of reorganization that contains the plan of merger or exchange approved by the court, which must include the information required by Section 10.151(b) or 10.152, as applicable, but which is not required to include the resolution of the governing authority referred to in Section 10.152;

(C) the date of the court's order approving the plan of merger or consolidation;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute;

(3) a certificate of termination containing:

(A) the name of the domestic entity;

(B) the information required by Sections 11.101(c)(1)-(4);

(C) the date of the court's order approving the

certificate of termination;

(D) a statement that the obligations of the domestic entity, including debts and liabilities, have been paid or discharged as provided by the plan of reorganization and the remaining property and assets of the domestic entity have been distributed as provided by the plan of reorganization;

(E) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order or decree was entered; and

(F) a statement that the court had jurisdiction of the case under a federal statute;

(4) a statement of change of registered office or registered agent, or both, containing:

(A) the name of the domestic entity;

(B) the information required by Section 5.202(b), as applicable, but not the information included in the statement referred to in Section 5.202(b)(6);

(C) the date of the court's order approving the statement of change of registered office or registered agent, or both;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute; or

(5) a certificate of conversion containing:

(A) the name of the domestic entity;

(B) the part of the plan of reorganization that contains the plan of conversion approved by the court, which must include the information required by Section 10.103;

(C) the date of the court's order or decree approving the plan of conversion;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.303. REORGANIZATION WITH OTHER ENTITIES. If a domestic entity or non-code organization that is not being reorganized under a federal statute merges or exchanges an interest with a domestic entity that is being reorganized under a plan of reorganization under a federal statute:

(1) Subchapters A, B, D, E, and H apply to the domestic entity or non-code organization that is not being reorganized to the same extent those subchapters would apply if the domestic entity or non-code organization were merging or engaging in an interest exchange with a domestic entity that is not being reorganized, except as otherwise provided by the plan of reorganization ordered by a court under the federal statute;

(2) Subchapter H applies to a subsidiary organization that is not being reorganized to the same extent that subchapter would apply if the subsidiary organization were merging with a parent organization that is not being reorganized;

(3) on the receipt of all required authorization for all action required by this code for each domestic entity that is a party to the plan of merger or exchange that is not being reorganized and all action by each domestic entity or non-code organization that is a party to the plan of merger or exchange required by the laws of the entity's or organization's jurisdiction of formation and governing documents, a certificate of merger or exchange shall be signed by each domestic entity or non-code organization that is a party to the merger or exchange other than the domestic entity that is being reorganized as provided by Section 10.151 and on behalf of the domestic entity that is being reorganized by the persons specified in Section 10.302;

(4) the certificate of merger or exchange must contain the information required by Section 10.302(2);

(5) the certificate of merger or exchange must be filed in the manner provided by Section 10.153; and

(6) on the acceptance for filing of the certificate of merger or exchange in accordance with Subchapter D, the merger or interest exchange, when effective, has the same effect as if it had

been adopted by unanimous action of the governing authority and owners or members of the domestic entity being reorganized, and the effectiveness of the merger or interest exchange is determined as provided by Section 10.007 or 10.054.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.304. RIGHT OF DISSENT AND APPRAISAL EXCLUDED. An owner or member of a domestic entity subject to dissenters' rights being reorganized under a federal statute does not have a right to dissent and appraisal under this code except as provided by the plan of reorganization.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.305. AFTER FINAL DECREE. This subchapter does not apply after the entry of a final decree in a reorganization case under a federal statute even though the court that renders the decree may retain jurisdiction of the case for limited purposes unrelated to consummation of the plan of reorganization.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.306. CHAPTER CUMULATIVE OF OTHER CHANGES. This chapter does not preclude other changes in a domestic entity or its ownership or membership interests or securities by a plan of reorganization ordered by a court under a federal statute.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

SUBCHAPTER H. RIGHTS OF DISSENTING OWNERS

Sec. 10.351. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to a fundamental business transaction of a domestic entity if, immediately before the effective date of the fundamental business transaction, all of the ownership interests of the entity otherwise entitled to rights to dissent and appraisal under this code are held by one owner or only by the owners who approved the fundamental business transaction.

(b) This subchapter applies only to a "domestic entity subject to dissenters' rights," as defined in Section 1.002. That

term includes a domestic for-profit corporation, professional corporation, professional association, and real estate investment trust. Except as provided in Subsection (c), that term does not include a partnership or limited liability company.

(c) The governing documents of a partnership or a limited liability company may provide that its owners are entitled to the rights of dissent and appraisal provided by this subchapter, subject to any modification to those rights as provided by the entity's governing documents.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 56, eff. September 1, 2007.

Sec. 10.352. DEFINITIONS. In this subchapter:

(1) "Dissenting owner" means an owner of an ownership interest in a domestic entity subject to dissenters' rights who:

(A) provides notice under Section 10.356; and

(B) complies with the requirements for perfecting that owner's right to dissent under this subchapter.

(2) "Responsible organization" means:

(A) the organization responsible for:

(i) the provision of notices under this subchapter; and

(ii) the primary obligation of paying the fair value for an ownership interest held by a dissenting owner;

(B) with respect to a merger or conversion:

(i) for matters occurring before the merger or conversion, the organization that is merging or converting; and

(ii) for matters occurring after the merger or conversion, the surviving or new organization that is primarily obligated for the payment of the fair value of the dissenting owner's ownership interest in the merger or conversion;

(C) with respect to an interest exchange, the organization the ownership interests of which are being acquired in the interest exchange;

(D) with respect to the sale of all or

substantially all of the assets of an organization, the organization the assets of which are to be transferred by sale or in another manner; and

(E) with respect to an amendment to a domestic for-profit corporation's certificate of formation described by Section 10.354(a)(1)(G), the corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 2, eff. September 1, 2017.

Sec. 10.353. FORM AND VALIDITY OF NOTICE. (a) Notice required under this subchapter:

(1) must be in writing; and

(2) may be mailed, hand-delivered, or delivered by courier or electronic transmission.

(b) Failure to provide notice as required by this subchapter does not invalidate any action taken.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.354. RIGHTS OF DISSENT AND APPRAISAL. (a) Subject to Subsection (b), an owner of an ownership interest in a domestic entity subject to dissenters' rights is entitled to:

(1) dissent from:

(A) a plan of merger to which the domestic entity is a party if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of merger;

(B) a sale of all or substantially all of the assets of the domestic entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the sale;

(C) a plan of exchange in which the ownership interest of the owner is to be acquired;

(D) a plan of conversion in which the domestic entity is the converting entity if owner approval is required by this code and the owner owns in the domestic entity an ownership

interest that was entitled to vote on the plan of conversion;

(E) a merger effected under Section 10.006 in which:

(i) the owner is entitled to vote on the merger; or

(ii) the ownership interest of the owner is converted or exchanged;

(F) a merger effected under Section 21.459(c) in which the shares of the shareholders are converted or exchanged; or

(G) if the owner owns shares that were entitled to vote on the amendment, an amendment to a domestic for-profit corporation's certificate of formation to:

(i) add the provisions required by Section 3.007(e) to elect to be a public benefit corporation; or

(ii) delete the provisions required by Section 3.007(e), which in effect cancels the corporation's election to be a public benefit corporation; and

(2) subject to compliance with the procedures set forth in this subchapter, obtain the fair value of that ownership interest through an appraisal.

(b) Notwithstanding Subsection (a), subject to Subsection (c), an owner may not dissent from a plan of merger or conversion in which there is a single surviving or new domestic entity or non-code organization, or from a plan of exchange, if:

(1) the ownership interest, or a depository receipt in respect of the ownership interest, held by the owner:

(A) in the case of a plan of merger, conversion, or exchange, other than a plan of merger pursuant to Section 21.459(c), is part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that, on the record date set for purposes of determining which owners are entitled to vote on the plan of merger, conversion, or exchange, as appropriate, are either:

(i) listed on a national securities exchange; or

(ii) held of record by at least 2,000 owners; or

(B) in the case of a plan of merger pursuant to Section 21.459(c), is part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that, immediately before the date the board of directors of the corporation that issued the ownership interest held, directly or indirectly, by the owner approves the plan of merger, are either:

(i) listed on a national securities exchange; or

(ii) held of record by at least 2,000 owners;

(2) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration that is different from the consideration to be provided to any other holder of an ownership interest of the same class or series as the ownership interest held by the owner, other than cash instead of fractional shares or interests the owner would otherwise be entitled to receive; and

(3) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration other than:

(A) ownership interests, or depository receipts in respect of ownership interests, of a domestic entity or non-code organization of the same general organizational type that, immediately after the effective date of the merger, conversion, or exchange, as appropriate, will be part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that are:

(i) listed on a national securities exchange or authorized for listing on the exchange on official notice of issuance; or

(ii) held of record by at least 2,000 owners;

(B) cash instead of fractional ownership interests, or fractional depository receipts in respect of ownership interests, the owner would otherwise be entitled to

receive; or

(C) any combination of the ownership interests, or fractional depository receipts in respect of ownership interests, and cash described by Paragraphs (A) and (B).

(c) Subsection (b) shall not apply to a domestic entity that is a subsidiary with respect to a merger under Section 10.006.

(d) Notwithstanding Subsection (a), an owner of an ownership interest in a domestic for-profit corporation subject to dissenters' rights may not dissent from an amendment to the corporation's certificate of formation described by Subsection (a)(1)(G) if the shares held by the owner are part of a class or series of shares, on the record date set for purposes of determining which owners are entitled to vote on the amendment:

(1) listed on a national securities exchange; or

(2) held of record by at least 2,000 owners.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 39, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 15, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 2, eff. September 1, 2019.

Sec. 10.355. NOTICE OF RIGHT OF DISSENT AND APPRAISAL. (a) A domestic entity subject to dissenters' rights that takes or proposes to take an action regarding which an owner has a right to dissent and obtain an appraisal under Section 10.354 shall notify each affected owner of the owner's rights under that section if:

(1) the action or proposed action is submitted to a vote of the owners at a meeting; or

(2) approval of the action or proposed action is obtained by written consent of the owners instead of being

submitted to a vote of the owners.

(b) If a parent organization effects a merger under Section 10.006 and a subsidiary organization that is a party to the merger is a domestic entity subject to dissenters' rights, the responsible organization shall notify the owners of that subsidiary organization who have a right to dissent to the merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. The notice must also include a copy of the certificate of merger and a statement that the merger has become effective.

(b-1) If a corporation effects a merger under Section 21.459(c), the responsible organization shall notify the shareholders of that corporation who have a right to dissent to the plan of merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. Notice required under this subsection that is given to shareholders before the effective date of the merger may, but is not required to, contain a statement of the merger's effective date. If the notice is not given to the shareholders until on or after the effective date of the merger, the notice must contain a statement of the merger's effective date.

(c) A notice required to be provided under Subsection (a), (b), or (b-1) must:

(1) be accompanied by:

(A) a copy of this subchapter; or

(B) information directing the owner to a publicly available electronic resource at which this subchapter may be accessed without subscription or cost; and

(2) advise the owner of the location of the responsible organization's principal executive offices to which a notice required under Section 10.356(b)(1) or a demand under Section 10.356(b)(3), or both, may be provided.

(d) In addition to the requirements prescribed by Subsection (c), a notice required to be provided:

(1) under Subsection (a)(1) must accompany the notice of the meeting to consider the action;

(2) under Subsection (a)(2) must be provided to:

(A) each owner who consents in writing to the action before the owner delivers the written consent; and

(B) each owner who is entitled to vote on the action and does not consent in writing to the action before the 11th day after the date the action takes effect; and

(3) under Subsection (b-1) must be provided:

(A) if given before the consummation of the offer described by Section 21.459(c)(2), to each shareholder to whom that offer is made; or

(B) if given after the consummation of the offer described by Section 21.459(c)(2), to each shareholder who did not tender the shareholder's shares in that offer.

(e) Not later than the 10th day after the date an action described by Subsection (a)(1) takes effect, the responsible organization shall give notice that the action has been effected to each owner who voted against the action and sent notice under Section 10.356(b)(1).

(f) If the notice given under Subsection (b-1) did not include a statement of the effective date of the merger, the responsible organization shall, not later than the 10th day after the effective date, give a second notice to the shareholders notifying them of the merger's effective date. If the second notice is given after the later of the date on which the offer described by Section 21.459(c)(2) is consummated or the 20th day after the date notice under Subsection (b-1) is given, then the second notice is required to be given to only those shareholders who have made a demand under Section 10.356(b)(3).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 15, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 16, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 3, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 27 (S.B. 1514), Sec. 12, eff. September 1, 2023.

Sec. 10.356. PROCEDURE FOR DISSENT BY OWNERS AS TO ACTIONS; PERFECTION OF RIGHT OF DISSENT AND APPRAISAL. (a) An owner of an ownership interest of a domestic entity subject to dissenters' rights who has the right to dissent and appraisal from any of the actions referred to in Section 10.354 may exercise that right to dissent and appraisal only by complying with the procedures specified in this subchapter. An owner's right of dissent and appraisal under Section 10.354 may be exercised by an owner only with respect to an ownership interest that is not voted in favor of the action.

(b) To perfect the owner's rights of dissent and appraisal under Section 10.354, an owner:

(1) if the proposed action is to be submitted to a vote of the owners at a meeting, must give to the domestic entity a written notice of objection to the action that:

(A) is addressed to the entity's president and secretary;

(B) states that the owner's right to dissent will be exercised if the action takes effect;

(C) provides an address to which notice of effectiveness of the action should be delivered or mailed; and

(D) is delivered to the entity's principal executive offices before the meeting;

(2) with respect to the ownership interest for which the rights of dissent and appraisal are sought:

(A) must vote against the action if the owner is entitled to vote on the action and the action is approved at a meeting of the owners; and

(B) may not consent to the action if the action is approved by written consent; and

(3) must give to the responsible organization a demand in writing that:

(A) is addressed to the president and secretary of the responsible organization;

(B) demands payment of the fair value of the ownership interests for which the rights of dissent and appraisal

are sought;

(C) provides to the responsible organization an address to which a notice relating to the dissent and appraisal procedures under this subchapter may be sent;

(D) states the number and class of the ownership interests of the domestic entity owned by the owner and the fair value of the ownership interests as estimated by the owner; and

(E) is delivered to the responsible organization at its principal executive offices at the following time:

(i) not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(e) that the action has taken effect, if the action was approved by a vote of the owners at a meeting;

(ii) not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(d)(2) that the action has taken effect, if the action was approved by the written consent of the owners;

(iii) not later than the 20th day after the date the responsible organization sends to the owner a notice that the merger was effected, if the action is a merger effected under Section 10.006; or

(iv) not later than the 20th day after the date the responsible organization gives to the shareholder the notice required by Section 10.355(b-1) or the date of the consummation of the offer described by Section 21.459(c)(2), whichever is later, if the action is a merger effected under Section 21.459(c).

(c) An owner who does not make a demand within the period required by Subsection (b)(3)(E) or, if Subsection (b)(1) is applicable, does not give the notice of objection before the meeting of the owners is bound by the action and is not entitled to exercise the rights of dissent and appraisal under Section 10.354.

(d) Not later than the 20th day after the date an owner makes a demand under Subsection (b)(3), the owner must submit to the responsible organization any certificates representing the ownership interest to which the demand relates for purposes of making a notation on the certificates that a demand for the payment

of the fair value of an ownership interest has been made under this section. An owner's failure to submit the certificates within the required period has the effect of terminating, at the option of the responsible organization, the owner's rights to dissent and appraisal under Section 10.354 unless a court, for good cause shown, directs otherwise.

(e) If a domestic entity and responsible organization satisfy the requirements of this subchapter relating to the rights of owners of ownership interests in the entity to dissent to an action and seek appraisal of those ownership interests, an owner of an ownership interest who fails to perfect that owner's right of dissent in accordance with this subchapter may not bring suit to recover the value of the ownership interest or money damages relating to the action.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 17, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 4, eff. September 1, 2019.

Sec. 10.357. WITHDRAWAL OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST. (a) An owner may withdraw a demand for the payment of the fair value of an ownership interest made under Section 10.356 before:

(1) payment for the ownership interest has been made under Sections 10.358 and 10.361; or

(2) a petition has been filed under Section 10.361.

(b) Unless the responsible organization consents to the withdrawal of the demand, an owner may not withdraw a demand for payment under Subsection (a) after either of the events specified in Subsections (a)(1) and (2).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.358. RESPONSE BY ORGANIZATION TO NOTICE OF DISSENT

AND DEMAND FOR FAIR VALUE BY DISSENTING OWNER. (a) Not later than the 20th day after the date a responsible organization receives a demand for payment made by a dissenting owner in accordance with Section 10.356(b)(3), the responsible organization shall respond to the dissenting owner in writing by:

(1) accepting the amount claimed in the demand as the fair value of the ownership interests specified in the notice; or

(2) rejecting the demand and including in the response the requirements prescribed by Subsection (c).

(b) If the responsible organization accepts the amount claimed in the demand, the responsible organization shall pay the amount not later than the 90th day after the date the action that is the subject of the demand was effected if the owner delivers to the responsible organization:

(1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or

(2) signed assignments of the ownership interests if the ownership interests are uncertificated.

(c) If the responsible organization rejects the amount claimed in the demand, the responsible organization shall provide to the owner:

(1) an estimate by the responsible organization of the fair value of the ownership interests; and

(2) an offer to pay the amount of the estimate provided under Subdivision (1).

(d) If the dissenting owner decides to accept the offer made by the responsible organization under Subsection (c)(2), the owner must provide to the responsible organization notice of the acceptance of the offer not later than the 90th day after the date the action that is the subject of the demand took effect.

(e) If, not later than the 90th day after the date the action that is the subject of the demand took effect, a dissenting owner accepts an offer made by a responsible organization under Subsection (c)(2) or a dissenting owner and a responsible organization reach an agreement on the fair value of the ownership interests, the responsible organization shall pay the agreed amount not later than the 120th day after the date the action that is the

subject of the demand took effect, if the dissenting owner delivers to the responsible organization:

(1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or

(2) signed assignments of the ownership interests if the ownership interests are uncertificated.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 17, eff. September 1, 2011.

Sec. 10.359. RECORD OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST. (a) A responsible organization shall note in the organization's ownership interest records maintained under Section 3.151 the receipt of a demand for payment from any dissenting owner made under Section 10.356.

(b) If an ownership interest that is the subject of a demand for payment made under Section 10.356 is transferred, a new certificate representing that ownership interest must contain:

(1) a reference to the demand; and

(2) the name of the original dissenting owner of the ownership interest.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.360. RIGHTS OF TRANSFEREE OF CERTAIN OWNERSHIP INTEREST. A transferee of an ownership interest that is the subject of a demand for payment made under Section 10.356 does not acquire additional rights with respect to the responsible organization following the transfer. The transferee has only the rights the original dissenting owner had with respect to the responsible organization after making the demand.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.361. PROCEEDING TO DETERMINE FAIR VALUE OF OWNERSHIP INTEREST AND OWNERS ENTITLED TO PAYMENT; APPOINTMENT OF APPRAISERS. (a) If a responsible organization rejects the amount demanded by a dissenting owner under Section 10.358 and the

dissenting owner and responsible organization are unable to reach an agreement relating to the fair value of the ownership interests within the period prescribed by Section 10.358(d), the dissenting owner or responsible organization may file a petition requesting a finding and determination of the fair value of the owner's ownership interests in a court in:

(1) the county in which the organization's principal office is located in this state; or

(2) the county in which the organization's registered office is located in this state, if the organization does not have a business office in this state.

(b) A petition described by Subsection (a) must be filed not later than the 60th day after the expiration of the period required by Section 10.358(d).

(c) On the filing of a petition by an owner under Subsection (a), service of a copy of the petition shall be made to the responsible organization. Not later than the 10th day after the date a responsible organization receives service under this subsection, the responsible organization shall file with the clerk of the court in which the petition was filed a list containing the names and addresses of each owner of the organization who has demanded payment for ownership interests under Section 10.356 and with whom agreement as to the value of the ownership interests has not been reached with the responsible organization. If the responsible organization files a petition under Subsection (a), the petition must be accompanied by this list.

(d) The clerk of the court in which a petition is filed under this section shall provide by registered mail notice of the time and place set for the hearing to:

(1) the responsible organization; and

(2) each owner named on the list described by Subsection (c) at the address shown for the owner on the list.

(e) The court shall:

(1) determine which owners have:

(A) perfected their rights by complying with this subchapter; and

(B) become subsequently entitled to receive

payment for the fair value of their ownership interests; and

(2) appoint one or more qualified appraisers to determine the fair value of the ownership interests of the owners described by Subdivision (1).

(f) The court shall approve the form of a notice required to be provided under this section. The judgment of the court is final and binding on the responsible organization, any other organization obligated to make payment under this subchapter for an ownership interest, and each owner who is notified as required by this section.

(g) The beneficial owner of an ownership interest subject to dissenters' rights held in a voting trust or by a nominee on the beneficial owner's behalf may file a petition described by Subsection (a) if no agreement between the dissenting owner of the ownership interest and the responsible organization has been reached within the period prescribed by Section 10.358(d). When the beneficial owner files a petition described by Subsection (a):

(1) the beneficial owner shall at that time be considered, for purposes of this subchapter, the owner, the dissenting owner, and the holder of the ownership interest subject to the petition; and

(2) the dissenting owner who demanded payment under Section 10.356 has no further rights regarding the ownership interest subject to the petition.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 19, eff. September 1, 2009.

Sec. 10.362. COMPUTATION AND DETERMINATION OF FAIR VALUE OF OWNERSHIP INTEREST. (a) For purposes of this subchapter, the fair value of an ownership interest of a domestic entity subject to dissenters' rights is the value of the ownership interest on the date preceding the date of the action that is the subject of the appraisal. Any appreciation or depreciation in the value of the ownership interest occurring in anticipation of the proposed action or as a result of the action must be specifically excluded from the

computation of the fair value of the ownership interest.

(b) In computing the fair value of an ownership interest under this subchapter, consideration must be given to the value of the domestic entity as a going concern without including in the computation of value any control premium, any minority ownership discount, or any discount for lack of marketability. If the domestic entity has different classes or series of ownership interests, the relative rights and preferences of and limitations placed on the class or series of ownership interests, other than relative voting rights, held by the dissenting owner must be taken into account in the computation of value.

(c) The determination of the fair value of an ownership interest made for purposes of this subchapter may not be used for purposes of making a determination of the fair value of that ownership interest for another purpose or of the fair value of another ownership interest, including for purposes of determining any minority or liquidity discount that might apply to a sale of an ownership interest.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 57, eff. September 1, 2007.

Sec. 10.363. POWERS AND DUTIES OF APPRAISER; APPRAISAL PROCEDURES. (a) An appraiser appointed under Section 10.361 has the power and authority that:

(1) is granted by the court in the order appointing the appraiser; and

(2) may be conferred by a court to a master in chancery as provided by Rule 171, Texas Rules of Civil Procedure.

(b) The appraiser shall:

(1) determine the fair value of an ownership interest of an owner adjudged by the court to be entitled to payment for the ownership interest; and

(2) file with the court a report of that determination.

(c) The appraiser is entitled to examine the books and

records of a responsible organization and may conduct investigations as the appraiser considers appropriate. A dissenting owner or responsible organization may submit to an appraiser evidence or other information relevant to the determination of the fair value of the ownership interest required by Subsection (b)(1).

(d) The clerk of the court appointing the appraiser shall provide notice of the filing of the report under Subsection (b) to each dissenting owner named in the list filed under Section 10.361 and the responsible organization.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.364. OBJECTION TO APPRAISAL; HEARING. (a) A dissenting owner or responsible organization may object, based on the law or the facts, to all or part of an appraisal report containing the fair value of an ownership interest determined under Section 10.363(b).

(b) If an objection to a report is raised under Subsection (a), the court shall hold a hearing to determine the fair value of the ownership interest that is the subject of the report. After the hearing, the court shall require the responsible organization to pay to the holders of the ownership interest the amount of the determined value with interest, accruing from the 91st day after the date the applicable action for which the owner elected to dissent was effected until the date of the judgment.

(c) Interest under Subsection (b) accrues at the same rate as is provided for the accrual of prejudgment interest in civil cases.

(d) The responsible organization shall pay the amount of the judgment to the holder of the ownership interest on the terms and conditions ordered by the court.

(e) On payment of the judgment, the dissenting owner does not have an interest in the:

(1) ownership interest for which the payment is made; or

(2) responsible organization with respect to that ownership interest.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 27 (S.B. 1514), Sec. 13, eff. September 1, 2023.

Sec. 10.365. COURT COSTS; COMPENSATION FOR APPRAISER. (a) An appraiser appointed under Section 10.361 is entitled to a reasonable fee payable from court costs.

(b) All court costs shall be allocated between the responsible organization and the dissenting owners in the manner that the court determines to be fair and equitable.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.366. STATUS OF OWNERSHIP INTEREST HELD OR FORMERLY HELD BY DISSENTING OWNER. (a) An ownership interest of an organization acquired by a responsible organization under this subchapter:

(1) in the case of a merger, conversion, or interest exchange, shall be held or disposed of as provided in the plan of merger, conversion, or interest exchange; and

(2) in any other case, may be held or disposed of by the responsible organization in the same manner as other ownership interests acquired by the organization or held in its treasury.

(b) An owner who has demanded payment for the owner's ownership interest under Section 10.356 is not entitled to vote or exercise any other rights of an owner with respect to the ownership interest except the right to:

(1) receive payment for the ownership interest under this subchapter; and

(2) bring an appropriate action to obtain relief on the ground that the action to which the demand relates would be or was fraudulent.

(c) An ownership interest for which payment has been demanded under Section 10.356 may not be considered outstanding for purposes of any subsequent vote or action.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 20, eff. September 1, 2009.

Sec. 10.367. RIGHTS OF OWNERS FOLLOWING TERMINATION OF RIGHT OF DISSENT. (a) The rights of a dissenting owner terminate if:

(1) the owner withdraws the demand under Section 10.356;

(2) the owner's right of dissent is terminated under Section 10.356;

(3) a petition is not filed within the period required by Section 10.361; or

(4) after a hearing held under Section 10.361, the court adjudges that the owner is not entitled to elect to dissent from an action under this subchapter.

(b) On termination of the right of dissent under this section:

(1) the dissenting owner and all persons claiming a right under the owner are conclusively presumed to have approved and ratified the action to which the owner dissented and are bound by that action;

(2) the owner's right to be paid the fair value of the owner's ownership interests ceases;

(3) the owner's status as an owner of those ownership interests is restored, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were not canceled, converted, or exchanged as a result of the action or a subsequent action;

(4) the dissenting owner is entitled to receive the same cash, property, rights, and other consideration received by owners of the same class and series of ownership interests held by the owner, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were canceled, converted, or exchanged as a result of the action or a subsequent action;

(5) any action of the domestic entity taken after the

date of the demand for payment by the owner under Section 10.356 will not be considered ineffective or invalid because of the restoration of the owner's ownership interests or the other rights or entitlements of the owner under this subsection; and

(6) the dissenting owner is entitled to receive dividends or other distributions made after the date of the owner's payment demand under Section 10.356, to owners of the same class and series of ownership interests held by the owner as if the demand had not been made, subject to any change in or adjustment to the ownership interests because of an action taken by the domestic entity after the date of the demand.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 58, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 21, eff. September 1, 2009.

Sec. 10.368. EXCLUSIVITY OF REMEDY OF DISSENT AND APPRAISAL. In the absence of fraud in the transaction, any right of an owner of an ownership interest to dissent from an action and obtain the fair value of the ownership interest under this subchapter is the exclusive remedy for recovery of:

(1) the value of the ownership interest; or

(2) money damages to the owner with respect to the action.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 59, eff. September 1, 2007.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 10.901. CREDITORS; ANTITRUST. This code does not affect, nullify, or repeal the antitrust laws or abridge any right or rights of any creditor under existing laws.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 10.902. NONEXCLUSIVITY. This chapter does not limit the power of a domestic entity or non-code organization to acquire all or part of the ownership or membership interests of one or more classes or series of a domestic entity through a voluntary exchange or otherwise.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.