

## CHAPTER 45-21 CONVERSIONS AND MERGERS

### **45-21-01. (901) Definitions - Conversions and mergers.**

For the purposes of this chapter, unless the context otherwise requires:

1. "Certificate of creation" means:
  - a. A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;
  - b. A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
  - c. A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
  - d. The filed registration, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
  - e. A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.
2. "Constituent organization" means an organization that is party to a merger.
3. "Constituent partnership" means a constituent organization that is a partnership.
4. "Converted organization" means the organization into which a converting organization converts pursuant to sections 45-21-01 through 45-21-07.1.
5. "Converting organization" means an organization that converts into another organization pursuant to sections 45-21-01 through 45-21-07.1.
6. "Converting partnership" means a converting organization that is a partnership.
7. "Date of origin" means the date on which:
  - a. A corporation that is:
    - (1) The converting organization was incorporated; or
    - (2) The converted organization is deemed to be incorporated;
  - b. A limited liability company that is:
    - (1) The converting organization was organized; or
    - (2) The converted organization is deemed to be organized;
  - c. A general partnership that is the converting organization was formed;
  - d. A general partnership that is the converted organization was formed;
  - e. A limited partnership that is:
    - (1) The converting organization was formed; or
    - (2) The converted organization is deemed to be formed;
  - f. A limited liability partnership that is:
    - (1) The converting organization was established; or
    - (2) The converted organization is deemed to be established; and
  - g. A limited liability limited partnership that is:
    - (1) The converting organization was formed; or
    - (2) The converted organization was deemed to be formed.
8. "Filed registration" means the registration of a limited liability partnership that has been filed with the secretary of state.
9. "General partner" means a partner in a partnership and a general partner in a limited partnership.
10. "General partnership" means an organization formed by two or more persons under chapters 45-13 through 45-21.
11. "Governing statute" means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then chapter 10-19.1;
    - (2) If a limited liability company, then chapter 10-32;
    - (3) If a limited partnership, then chapter 45-10.2;
    - (4) If a general partnership, then chapters 45-13 through 45-21;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and

- b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
12. "Limited partner" means a limited partner in a limited partnership.
  13. "Limited partnership" means a partnership that is formed by two or more persons under chapter 45-10.2, predecessor law, or comparable law of another jurisdiction and which has one or more general partners and one or more limited partners.
  14. "Organizational records" means for an organization that is:
    - a. A corporation, its articles of incorporation and bylaws;
    - b. A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
    - c. A limited partnership, its partnership agreement;
    - d. A general partnership, its partnership agreement;
    - e. A limited liability partnership, its partnership agreement; or
    - f. A limited liability limited partnership, its partnership agreement.
  15. "Originating record" means for an organization that is:
    - a. A corporation, its articles of incorporation;
    - b. A limited liability company, its articles of organization;
    - c. A limited partnership, its certificate of limited partnership;
    - d. A limited liability partnership, its registration; or
    - e. A limited liability limited partnership, its certificate of limited liability limited partnership.
  16. "Ownership interest" means for an organization which is:
    - a. A corporation, its shares;
    - b. A limited liability company, its membership interests;
    - c. A limited partnership, its partnership interests;
    - d. A general partnership, its partnership interests;
    - e. A limited liability partnership, its partnership interests; or
    - f. A limited liability limited partnership, its partnership interests.
  17. "Partner" includes both a general partner and a limited partner.
  18. "Surviving organization" means an organization into which one or more other organizations are merged and which:
    - a. May preexist the merger; or
    - b. Be created by the merger.

**45-21-02. (902) Conversion.**

Other organizations may not convert to a partnership. However, a partnership may convert to another organization pursuant to sections 45-21-01 through 45-21-07.1 and a plan of conversion, if:

1. The governing statute of the other organization authorizes the conversion;
2. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
3. The other organization complies with its governing statute in effecting the conversion.

**45-21-02.1. Plan of conversion.**

A plan of conversion must be in a record and must include:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the conversion;
4. The manner and basis for converting each ownership interest in the converting organization into ownership interests in the converted organization, or in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed to be necessary or desirable.

**45-21-03. (903) Plan of conversion approval and amendment.**

1. If the converting organization is a partnership, then:
  - a. A plan of conversion must be consented to by all of the partners of a converting partnership.
  - b. Subject to any contractual rights, after a conversion is approved, and at any time before a filing is made under section 45-21-04, a converting partnership may amend the plan or abandon the planned conversion:
    - (1) As provided in the plan; and
    - (2) Except as prohibited by the plan, by the same consent as was required to approve the plan.
2. If the converting organization is not a partnership, then the approval and the amendment of the plan of conversion must comply with the governing statute in effecting the conversion.

**45-21-04. (904) Statement of conversion.**

1. Upon receiving the approval required by section 45-21-03, a statement of conversion must be prepared in a record that must contain:
  - a. A statement that the converting organization is being converted into another organization, including:
    - (1) The name of the converting organization immediately before the filing of the statement of conversion;
    - (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
    - (3) The form of organization that the converted organization will be; and
    - (4) The jurisdiction of the governing statute of the converted organization;
  - b. A statement that the plan of conversion has been approved by the converting organization as provided in section 45-21-03;
  - c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
  - d. The plan of conversion without organizational records;
  - e. A copy of the originating record of the converted organization; and
  - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 3 of section 45-21-03.
2. The statement of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
  - a. If the converted organization is a domestic organization, then:
    - (1) The filing of the statement of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
    - (2) Upon both the statement of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
  - b. If the converted organization is a foreign organization:
    - (1) That is transacting business or conducting activities in this state, then:
      - (a) The filing of the statement of conversion must include the filing with the secretary of state of an application for certificate of authority by the converted organization.
      - (b) Upon both the statement of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.

- (2) That is not transacting business or conducting activities in this state, then upon the statement of conversion being filed with the secretary of state, the secretary of state shall issue the appropriate certificate of conversion to the converted organization or its legal representative.
3. A converting organization that is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the statement of conversion.

#### **45-21-04.1. Abandonment of conversion.**

1. If the statement of conversion has not been filed with the secretary of state, and:
  - a. If the converting organization is a partnership, then subject to any contractual rights, after a conversion is approved, and at any time before the effective date of the plan, a converting partnership may abandon the planned conversion:
    - (1) As provided in the plan; and
    - (2) Except as provided otherwise by the plan, by the same consent as was required to approve the plan.
  - b. If the converting organization is not a partnership, then the abandonment of the plan of conversion must comply with its governing statute.
2. If the statement of conversion has been filed with the secretary of state, but has not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
  - a. The name of the converting organization;
  - b. The provision of this section under which the plan is abandoned; and
  - c. If the plan is abandoned:
    - (1) By the consent of all of the partners, then the text of the resolution abandoning the plan; or
    - (2) As provided in the plan, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

#### **45-21-04.2. Effective date of conversion - Effect.**

1. A conversion is effective when the filing requirements of subsection 2 of section 45-21-04 have been fulfilled or on a later date specified in the statement of conversion.
2. With respect to the effect of conversion on the converting organization and on the converted organization:
  - a. An organization that has been converted as provided in sections 45-21-01 through 45-21-07.1 is for all purposes the same entity that existed before the conversion.
  - b. Upon a conversion becoming effective:
    - (1) If the converted organization is not a partnership, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
    - (2) All property owned by the converting organization remains vested in the converted organization;
    - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
    - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
    - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization;
    - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

- (7) Except as otherwise agreed, the conversion does not dissolve a converting partnership for the purposes of sections 45-20-01 through 45-20-07.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligations owed by the converting partnership, if before the conversion the converting partnership was subject to suit in this state on the obligation.
5. A converted organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

**45-21-04.3. Foreign partnership - Conversion of foreign partnership authorized to transact business in this state.**

If a foreign partnership transacting business in this state converts to another organization permitted by its governing statute, and the converted organization will continue to transact business in this state, within thirty days after the conversion becomes effective, the newly created organization resulting from the conversion shall:

1. File with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected; and
2. Shall obtain a certificate of authority or applicable registration in accordance with the North Dakota governing statute applicable to the converted organization.

**45-21-05. (905) Merger of partnerships.**

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more other organizations.
2. The plan of merger must set forth:
  - a. The name of:
    - (1) The partnership;
    - (2) Each other constituent organization proposing to merge; and
    - (3) The surviving organization into which the other organizations will merge;
  - b. The status of each partner;
  - c. The terms and conditions of the merger;
  - d. The manner and basis of converting the ownership interests of each constituent organization into ownership interests or obligations of the surviving organization, or into money or other property in whole or part; and
  - e. The street address of the principal executive office of the surviving organization.
3. The plan of merger must be approved:
  - a. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
  - b. In the case of a constituent organization other than a partnership that is a party to the merger, by the vote required for approval of a merger by the governing statute of the constituent organization in the jurisdiction in which the constituent organization is organized.
4. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
5. The merger takes effect on the later of:
  - a. The approval of the plan of merger by all constituent organizations, as provided in subsection 3;
  - b. The filing of all records required by law to be filed as a condition to the effectiveness of the merger; or
  - c. Any effective date specified in the plan of merger.

**45-21-06. (906) Effect of merger.**

1. When a merger takes effect:
  - a. The separate existence of each constituent partnership that is a party to the merger, other than the surviving organization, ceases;
  - b. All property owned by each of the constituent partnerships vests in the surviving organization;
  - c. All obligations of each constituent partnership become the obligations of the surviving organization; and
  - d. An action or proceeding pending against a constituent partnership may be continued as if the merger had not occurred, or the surviving organization may be substituted as a party to the action or proceeding.
2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership to enforce an obligation of a partnership that is a constituent organization. The surviving organization shall promptly notify the secretary of state of the mailing address of its principal executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership as provided in section 10-01.1-13.
3. A general partner of the surviving partnership is liable for:
  - a. All obligations of a party to the merger for which the general partner was personally liable before the merger;
  - b. All other obligations of the surviving organization incurred before the merger by a constituent organization, but those obligations may be satisfied only out of property of the surviving organization; and
  - c. All obligations of the surviving organization incurred after the merger takes effect.
4. If the obligations incurred before the merger by a constituent partnership are not satisfied out of the property of the surviving organization, then the general partners of the constituent partnership immediately before the effective date of the merger shall contribute the amount necessary to satisfy the obligations of the constituent partnership to the surviving organization, in the manner provided in section 45-20-07.
5. A partner of a constituent partnership who does not receive an ownership interest of the surviving organization is dissociated from the partnership, of which that partner was a partner, as of the date the merger takes effect. The surviving organization shall cause the ownership interest of the partner in the constituent partnership to be purchased under section 45-19-01 or another statute specifically applicable to that ownership interest of that partner with respect to a merger. The surviving organization is bound under section 45-19-02 by an act of a general partner dissociated under this subsection, and the partner is liable under section 45-19-03 for transactions entered into by the surviving organization after the merger takes effect.

**45-21-07. (907) Statement of merger.**

1. After a merger, the surviving organization may file a statement that one or more partnerships or other constituent organizations have merged into the surviving organization.
2. A statement of merger must be accompanied by the plan of merger without organizational records and must contain:
  - a. The name of:
    - (1) The partnership;
    - (2) Each other constituent organization that is a party to the merger; and
    - (3) The surviving organization into which the other constituent organizations were merged;
  - b. The form of organization that the surviving organization will be;
  - c. The jurisdiction of the governing statute of the surviving organization; and
  - d. The street address of the principal executive office of the surviving organization and of an office in this state, if any.

3. Except as otherwise provided in subsection 4, for the purposes of section 45-15-02, property of the surviving organization which before the merger was held in the name of another party to the merger is property held in the name of the surviving organization upon filing a statement of merger.
4. For the purposes of section 45-15-02, real property of the surviving organization which before the merger was held in the name of another constituent organization is property held in the name of the surviving organization upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.
5. A filed and, if appropriate, recorded statement of merger, signed and declared to be accurate pursuant to subsection 3 of section 45-13-05, stating the name of a constituent partnership that is a constituent organization in whose name property was held before the merger and the name of the surviving organization, but not containing all of the other information required by subsection 2, operates with respect to the constituent partnership and the surviving organization to the extent provided in subsections 3 and 4.

**45-21-07.1. Liability of general partner after conversion or merger.**

1. A conversion or merger under this chapter does not discharge any liability under sections 45-15-06, 45-15-07, and 45-15-08 of a person that was a general partner in or dissociated as a general partner from a converting or constituent partnership, but:
  - a. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
  - b. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent partnership; and
  - c. If a person is required to pay any amount under this subsection, then:
    - (1) The person has a right of contribution from each other person that was liable as a general partner under section 45-15-06 when the obligation was incurred and has not been released from the obligation under section 45-20-06; and
    - (2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligations were incurred as provided in section 45-20-07.
2. In addition to any other liability provided by law:
  - a. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:
    - (1) Does not have notice of the conversion or merger; and
    - (2) Reasonably believes that:
      - (a) The converted or surviving organization or business is the converting or constituent partnership; and
      - (b) The person is a general partner in the converting or constituent partnership; and
  - b. A person that was dissociated as a general partner from a converting or constituent partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:
    - (1) Does not have notice of the dissociation;
    - (2) Does not have notice of the conversion or merger; and
    - (3) Reasonably believes that:

- (a) The converted or surviving organization or business is the converting or constituent partnership; and
- (b) The person is a general partner in the converting or constituent partnership.

**45-21-08. (908) Nonexclusive.**

This chapter is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.