

**RCW 24.03A.735 Adoption of plan of merger.** In the case of a nonprofit corporation that is a party to a merger:

(1) The plan of merger must be adopted by the board.

(2) Except as provided in subsection (9) of this section, RCW 24.03A.730, or the articles or bylaws, after adopting the plan of merger, the board shall submit the plan to those members entitled to vote on the plan for their approval. The board shall also deliver to the members a recommendation that the members approve the plan, unless the board makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board shall deliver to the members the basis for that determination.

(3) The board may condition its submission of the plan of merger to the members on any basis.

(4) If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, then the nonprofit corporation shall give notice to each member, whether or not entitled to vote on the merger, of the meeting of members at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, then the notice shall also include a copy or summary of the articles and bylaws or organic records of that corporation or eligible entity. If the corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, then the notice shall include a copy or a summary of the articles and bylaws or organic records of the new corporation or eligible entity. If a summary is provided in lieu of a copy of the plan or of the articles and bylaws, then a copy of the plan and articles and bylaws, as applicable, must be available to members upon request and this fact must be stated in the notice. Such copy of the plan and articles and bylaws, as applicable, may be made available in electronic format.

(5) Unless the articles or bylaws, or the board acting pursuant to subsection (3) of this section, requires a greater vote or a greater number of votes to be present, the approval of the plan of merger by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan of merger, the approval of a majority of the members of each voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(6) Separate voting on a plan of merger is required:

(a) By each class of members:

(i) Whose memberships are to be converted into eligible interests, securities, or obligations; rights to acquire eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

(ii) Which is to experience a change in the rights, powers, preferences, or limitations of the class as a result of the merger; or

(iii) That would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to [the] articles of incorporation, would require action by separate voting groups under the articles or bylaws.

(b) By a voting group, if the voting group is entitled under the articles or bylaws to vote as a voting group to approve a plan of merger.

(7) If a plan of merger would affect in the same or a substantially similar way two or more classes of members entitled to vote separately on the plan of merger under subsection (6)(a) of this section, then, instead of voting separately, all similarly affected classes of members shall vote together as a single voting group on the plan of merger, unless otherwise provided in the articles or as a condition imposed by the board under subsection (3) of this section.

(8) If as a result of a merger one or more members of a domestic nonprofit corporation would become subject to owner liability for the debts, obligations[,] or liabilities of any other person or entity, then approval of the plan of merger requires the execution, by each member who would become subject to owner liability, of a separate record consenting to become subject to owner liability.

(9) If a domestic nonprofit corporation that is a party to a merger does not have any members entitled to vote on the merger, then a plan of merger is deemed adopted by the corporation when it has been adopted by the board pursuant to subsection (1) of this section. If a membership corporation has no members entitled to vote on the merger, then the corporation shall deliver notice of the proposed merger to all members of the corporation at least five days before the meeting at which the board is to adopt the plan of merger.

(10) In addition to the adoption and approval of the plan of merger by the board and members as required by this section, the plan of merger must also be approved in the form of a record by any person or group of persons whose approval is required under RCW 24.03A.705 to amend the articles or bylaws.

(11) Adoption and approval of a plan of merger by all required persons under the procedures set forth in this section constitutes adoption and approval of all changes to the approving party's articles, bylaws, or other organic documents contained within the plan of merger. [2021 c 176 s 3206.]

**Effective date—2021 c 176:** See note following RCW 24.03A.005.