WEST VIRGINIA CODE: §36-13-27

§36-13-27. Mergers.

(a) As used in this section:

(1) "Constituent organization" means an organization that is merged with one or more other organizations and includes the surviving organization;

(2) "Charitable purpose" means any purpose of an organization that has attained exemption under section 501(c)(3) of the Internal Revenue Code or any successor section, or that upon dissolution shall distribute its assets to a public benefit corporation, the United States, a state or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code or any successor section;

(3) "Disappearing organization" means a constituent organization that is not the surviving organization;

(4) "Governing statute" means the statute that governs an organization's internal affairs;

(5) "Organization" means a decentralized unincorporated nonprofit association, an unincorporated nonprofit association, a general partnership, including a limited liability partnership, a limited partnership, including a limited liability limited partnership, a limited liability company, a business or statutory trust, a corporation or any other legal or commercial person having a governing statute. The term includes a domestic or foreign organization regardless of whether the organization is organized for profit;

(6) "Organizational document" means the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it or are members of it;

(7) "Surviving organization" means an organization into which one or more other organizations are merged.

(b) A decentralized unincorporated nonprofit association may merge with any organization that is not expressly prohibited by the law.

(c) A merger involving a decentralized unincorporated nonprofit association is subject to the following requirements:

(1) Each of the constituent merging organizations shall comply with its governing law;

(2) Each party to the merger shall approve a plan of merger in accordance with its governing principles. The plan shall be in a record and shall include the following provisions:

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(A) The name and form of each organization that is party to the merger;

(B) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(C) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization or other considerations;

(D) If the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(E) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

(3) The plan of merger shall be approved by the members of each decentralized unincorporated nonprofit association that is a constituent organization in the merger, subject to §36-13-20 of this code. If a member of a nonprofit association that is party to a merger will have personal liability with respect to an obligation of a constituent or surviving organization, the consent in a record of that member to the plan of merger shall also be obtained;

(4) Subject to the contractual rights of third parties, after a plan of merger is approved and at any time before the merger is effective, a constituent organization may amend the plan or abandon the merger as provided in the plan, or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan;

(5) Following approval of the plan, a merger under this section shall be effective if:

(A) A constituent organization is required to give notice to or obtain the approval of a governmental agency or officer in order to be a party to a merger, the notice has been given and the approval has been obtained; and

(B) The surviving organization is a decentralized unincorporated nonprofit association, as specified in the plan of merger and upon compliance by any constituent organization that is not a nonprofit association with any requirements, including any required filings in the office of the Secretary of State, of the organization's governing statute; or

(C) The surviving organization is not a decentralized unincorporated nonprofit association under the state law governing the surviving organization.

(d) When a merger becomes effective:

(1) The surviving organization continues or comes into existence;

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(2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, obligations or other liabilities of each constituent organization that ceases to exist continue as debts, obligations or other liabilities of the surviving organization;

(5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) The merger shall not affect the personal liability, if any, of a member, administrator or manager of a constituent association for a debt, liability or obligation of the nonprofit association incurred before the merger is effective; and

(9) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the Secretary of State as agent for service of process for the purpose of enforcing a debt, obligation or other liability under this subsection.

(e) Property held for a charitable purpose under the law of this state by a domestic or foreign organization immediately before a merger under this section becomes effective shall not, as a result of the merger, be diverted from the objects for which it was donated, granted or devised, unless, to the extent required by or pursuant to the law of this state concerning nondiversion of charitable assets, the organization obtains an appropriate order of the attorney general or of the district court in a proceeding for which the attorney general has been given notice specifying the disposition of the property.

(f) A bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to a disappearing organization and that takes effect or remains payable after the merger inures to the benefit of the surviving organization. A trust obligation that would govern property if transferred to the disappearing entity applies to property that is instead transferred to the surviving organization under this section.

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