



STATE OF NEW MEXICO

**MAGGIE TOULOUSE OLIVER**

SECRETARY OF STATE

## **Requirements and Instructions for Merging into a Foreign Nonprofit Corporation (53-8-42 to 53-8-43 NMSA 1978)**

**Filing Fees:** The filing fee is \$20. Please make the check or money order payable to New Mexico Secretary of State or NMSOS.

**Filing:** An authorized individual shall file with the Secretary of State:

1. A certified copy of the merger that took place in the domestic state.
2. A Certificate of Good Standing, for the surviving entity, issued by their domestic state dated within 30 days of being received by our office. Some states refer to it as a Certificate of Existence or Certificate of Fact.
3. A check or money order in the amount of \$20.00 made payable to NMSOS.

Please refer to 53-8-40 to 53-8-45 NMSA 1978 for the complete statutes governing a merger into a nonprofit corporation. The Business Services Division can only act in an administrative capacity. We cannot offer you legal advice or opinion on your particular filing. We recommend that you consult with your own attorney and accountant during the process of merging.

Please mail the entire packet to:

New Mexico Secretary of State

Business Services Division

325 Don Gaspar, Suite 300

Santa Fe, NM 87501

### **53-8-42. Adoption of merger or consolidation**

- A. A plan of merger or consolidation shall be adopted in the following manner:
- 1) if the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of the corporation shall adopt a resolution approving the pro-proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at the meeting within the time and in the manner provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] for the giving of notice of meetings of members. The pro-proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast; or
  - 2) if any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of the corporation upon receiving the vote of a majority of the directors in office.
- B. After adoption, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

### **53-8-43. Articles of merger or consolidation.**

- A. Upon approval, articles of merger or articles of consolidation shall be executed by each corporation by two authorized officers of the corporation, and shall set forth:
- 1) the plan of merger or the plan of consolidation;
  - 2) if the members of any merging or consolidating corporation are entitled to vote thereon, then as to each corporation:
    - a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting and that the plan received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or
    - b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and
    - c) if any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each corporation a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that the plan received the vote of a majority of the directors in office.
- B. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of merger or articles of consolidation shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:
- 1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;
  - 2) file the original in the office of the commission [secretary of state]; and
  - 3) issue a certificate of merger or a certificate of consolidation to which shall be affixed the copy.
- C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the commission [secretary of state], shall be returned to the surviving or new corporation or its representative.

**53-8-45. Merger or consolidation of domestic and foreign corporations.**

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each foreign corporation is organized:

- 1) each domestic corporation shall comply with the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] with respect to the merger or consolidation, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and
- 2) if the surviving or new corporation is to be governed by the laws of any state other than New Mexico it shall comply with the provisions of the Nonprofit Corporation Act with respect to foreign corporations if it is to conduct affairs in New Mexico, and in every case it shall file with the corporation commission [secretary of state] of New Mexico:
  - a) an agreement that it may be served with process in New Mexico in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and
  - b) an irrevocable appointment of the secretary of state of New Mexico as its agent to accept service of process in any such proceeding.

B. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of New Mexico. If the surviving or new corporation is to be governed by laws of any state other than New Mexico, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of the other state provide otherwise.

C. After approval by the members or, if there are no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.



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**Merger Agreement and Irrevocable Appointment of the  
Secretary of State of New Mexico as Agent For Service of Process**

(Please note this form is only required if the surviving corporation is not qualified to do business in the State of New Mexico)

Name of the Surviving Corporation:

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Names DBA names and Business ID numbers of Affected Corporations Merged Out in New Mexico:

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Pursuant to section 53-8-45 NMSA 1978 of the New Mexico Nonprofit Corporation Act, the commission has the power and authority reasonably necessary to enable it to administer the Nonprofit Corporation Act efficiently and to perform the duties therein imposed upon it. Therefore, this commission hereby requires that concurrent with the filing of this merger agreement by the surviving corporation that it hereby irrevocably appoints the Secretary of State of New Mexico as its registered agent to accept service of process in any proceeding on behalf of the merged out corporation affected in New Mexico.

The name and address of surviving corporation for forward of service of process is:

Name: 

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Address: 

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City

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State

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Zip Code

Executed Date:

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Authorized Officer Printed Name and Title

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Signature

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**325 DON GASPAR, SUITE 300 | SANTA FE, NEW MEXICO 87501**

**PHONE: (505) 827-3600 or (800) 477-3632 | FAX: (505) 827-8081**

**WWW.SOS.STATE.NM.US**



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SECRETARY OF STATE

## Document Delivery Instruction Form

Please fill out in its entirety

Contact Name: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

Attention: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
City State Zip code

Email Address: \_\_\_\_\_

**All documents will be emailed to the email address listed. If an email address is not provided the documents will be mailed to the address listed.**

check if you choose to pick up your documents

Documents listed for pick up must be picked up within five business days or documents will be emailed.

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