



STATE OF NEW MEXICO

**MAGGIE TOULOUSE OLIVER**

SECRETARY OF STATE

## **Requirements and Instructions for Merging into a Limited Liability Company (53-19-62 to 53-19-62.3 NMSA 1978)**

**Filing Fees:** The filing fee is \$100. Please make the check or money order payable to New Mexico Secretary of State or NMSOS.

**Filing:** The authorized individuals for each party of the merger shall file with the Secretary of State:

1. A Plan of Merger drawn up based on the attached statute, 53-19-62 NMSA 1978
2. Articles of Merger drawn up based on the attached statute, 53-19-62.1 NMSA 1978, and signed by one authorized person from each entity involved in the merger.
3. A check or money order in the amount of \$100.00 made payable to NMSOS.

Please refer to the Limited Liability Company Act 53-19-62 to 53-19-62.3 NMSA 1978 for the complete statutes governing a merger into a limited liability company. 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

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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**

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**53-19-62. Conversions and merger of entities.**

- A. Pursuant to a plan of merger approved under Subsection C of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.
- B. A plan of merger shall set forth:
- (1) the name of each entity that is a party to the merger;
  - (2) the name of the surviving entity into which the other entities will merge;
  - (3) the type of organization of the surviving entity;
  - (4) the terms and conditions of the merger;
  - (5) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or in part; and
  - (6) the street address of the surviving entity's principal place of business
- C. A plan of merger shall be approved:
- (1) in the case of a limited liability company that is a party to the merger, by the members representing the percentage of voting power of all members specified in the operating agreement for approval of mergers, but not fewer than the members holding a majority of the voting power of all members or, if provision is not made in the operating agreement, by all the members;
  - (2) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
  - (3) in the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Subsection B of Section 53- 19-60 NMSA 1978; and
  - (4) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the other state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.
- D. 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.
- E. The merger is effective upon the filing of the articles of merger with the commission [secretary of state] or at such later date as the articles may provide.



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**53-19-62.1 Conversion and mergers; articles of merger.**

- A. After approval of the plan of merger under Subsection C of Section 53-19-62 NMSA 1978, unless the merger is abandoned under Subsection D of Section 53-19-62 NMSA 1978, articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the commission [secretary of state] for filing. The articles must set forth:
- (1) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;
  - (2) for each limited liability company that is to merge, the date its articles of organization were filed with the commission [secretary of state];
  - (3) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;
  - (4) the name and address of the surviving limited liability company or other surviving entity;
  - (5) the effective date of the merger;
  - (6) if a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;
  - (7) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed with the commission [secretary of state] or, if an application has not been filed, a statement to that effect; and
  - (8) if the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in this state in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge, and for the enforcement, as provided in the Limited Liability Company Act [Chapter 53, Article 19 NMSA 1978], of the right of members of any limited liability company to receive payment for their interest against the surviving entity.
- B. If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the commission [secretary of state].
- C. The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.
- D. Articles of merger operate as an amendment to the limited liability company's articles of organization.



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## Document Delivery Instruction Form

Please fill out in its entirety

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

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State

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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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