

By Representative Kosmas

1 A bill to be entitled
2 An act relating to mergers of business entities
3 or corporations; amending s. 48.101, F.S.;
4 specifying service of process on certain
5 dissolved corporations; amending s. 607.0732,
6 F.S.; providing an additional criterion of
7 shareholder agreements; providing limitations;
8 creating ss. 607.1108, 607.1109, 607.11101,
9 F.S.; providing for mergers of domestic
10 corporations and other business entities under
11 certain circumstances; requiring a plan of
12 merger; providing criteria; providing for
13 articles of merger; providing for effect of
14 merger; creating ss. 608.438, 608.4381,
15 608.4382, 608.4383, 608.4384, F.S.; providing
16 for mergers of limited liability companies
17 under certain circumstances; requiring a plan
18 of merger; providing criteria; providing for
19 action on a plan of merger; providing
20 procedures; providing for articles of merger;
21 providing for effect of merger; providing for
22 rights of dissenting members; providing
23 procedures; creating ss. 620.201, 620.202,
24 620.203, 620.204, 620.205, F.S.; providing for
25 mergers of domestic limited partnerships under
26 certain circumstances; requiring a plan of
27 merger; providing criteria; providing for
28 action on a plan of merger; providing
29 procedures; providing for articles of merger;
30 providing for effect of merger; providing for
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1 rights of dissenting partners; providing
2 procedures; providing an effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Section 48.101, Florida Statutes, is
7 amended to read:

8 48.101 Service on dissolved corporations.--Process
9 against the directors of any corporation that was ~~which is~~
10 dissolved before July 1, 1990, as trustees of the dissolved
11 corporation shall be served on one or more of the directors of
12 the dissolved corporation as trustees thereof and binds all of
13 the directors of the dissolved corporation as trustees
14 thereof. Process against any other dissolved corporation shall
15 be served in accordance with s. 48.081.

16 Section 2. Subsection (1) of section 607.0732, Florida
17 Statutes, is amended to read:

18 607.0732 Shareholder agreements.--

19 (1) An agreement among the shareholders of a
20 corporation with 100 or fewer shareholders at the time of the
21 agreement, that complies with this section, is effective among
22 the shareholders and the corporation, even though it is
23 inconsistent with one or more other provisions of this
24 chapter, if it:

25 (a) Eliminates the board of directors or restricts the
26 discretion or powers of the board of directors;

27 (b) Governs the authorization or making of
28 distributions whether or not in proportion to ownership of
29 shares, subject to the limitations in s. 607.06401;

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1 (c) Establishes who shall be directors or officers of
2 the corporation, or their terms of office or manner of
3 selection or removal;

4 (d) Governs, in general or in regard to specific
5 matters, the exercise or division of voting power by the
6 shareholders and directors, including use of weighted voting
7 rights or director proxies;

8 (e) Establishes the terms and conditions of any
9 agreement for the transfer or use of property or the provision
10 of services between the corporation and any shareholder,
11 director, officer, or employee of the corporation;

12 (f) Transfers to any shareholder or other person any
13 authority to exercise the corporate powers or to manage the
14 business and affairs of the corporation, including the
15 resolution of any issue about which there exists a deadlock
16 among directors or shareholders; ~~or~~

17 (g) Requires dissolution of the corporation at the
18 request of one or more of the shareholders or upon the
19 occurrence of a specified event or contingency; ~~or-~~

20 (h) Otherwise governs the exercise of the powers, or
21 the management of the business and affairs, of the corporation
22 or the relationship among the shareholders, the directors, or
23 the corporation and is not contrary to public policy. Any
24 agreement which modifies the duties of care or loyalty to the
25 corporation, exculpates the directors from liability more
26 broadly than permitted by ss. 607.1108-607.11101, ss.
27 608.438-608.4383, or ss. 620.201-620.205, adversely affects
28 shareholders' rights to bring derivative actions, abrogates
29 dissenters' rights provided in s. 608.4384 or s. 620.205, or
30 abrogates provisions of s. 607.06401 relating to shareholder
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1 distributions are deemed contrary to public policy for
2 purposes of this paragraph.

3 Section 3. Sections 607.1108, 607.1109, and 607.11101,
4 Florida Statutes, are created to read:

5 607.1108 Merger of domestic corporation and other
6 business entity.--

7 (1) As used in this section and ss. 607.1109 and
8 607.11101, "other business entity" means a limited liability
9 company, a foreign corporation, a business trust or
10 association, a real estate investment trust, a common law
11 trust, an unincorporated business, a general partnership, a
12 limited partnership, or any other entity that is formed
13 pursuant to the requirements of applicable law.

14 (2) Pursuant to a plan of merger complying and
15 approved in accordance with this section, one or more domestic
16 corporations may merge with or into one or more other business
17 entities formed, organized, or incorporated under the laws of
18 this state or any other state, the United States, foreign
19 country, or other foreign jurisdiction, if:

20 (a) Each domestic corporation which is a party to the
21 merger complies with the applicable provisions of this
22 chapter.

23 (b) Each domestic partnership that is a party to the
24 merger complies with the applicable provisions of chapter 620.

25 (c) Each domestic limited liability company that is a
26 party to the merger complies with the applicable provisions of
27 chapter 608.

28 (d) The merger is permitted by the laws of the state,
29 country, or jurisdiction under which each other business
30 entity that is a party to the merger is formed, organized, or
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1 incorporated and each such other business entity complies with
2 such laws in effecting the merger.
3 (3) The plan of merger shall set forth:
4 (a) The name of each domestic corporation and the name
5 and jurisdiction of formation, organization, or incorporation
6 of each other business entity planning to merge, and the name
7 of the surviving or resulting domestic corporation or other
8 business entity into which each other domestic corporation or
9 other business entity plans to merge, which is hereinafter and
10 in ss. 607.1109 and 607.11101 designated as the surviving
11 entity.
12 (b) The terms and conditions of the merger.
13 (c) The manner and basis of converting the shares of
14 each domestic corporation that is a party to the merger and
15 the partnership interests, interests, shares, obligations or
16 other securities of each other business entity that is a party
17 to the merger into partnership interests, interests, shares,
18 obligations or other securities of the surviving entity or any
19 other domestic corporation or other business entity or, in
20 whole or in part, into cash or other property, and the manner
21 and basis of converting rights to acquire the shares of each
22 domestic corporation that is a party to the merger and rights
23 to acquire partnership interests, interests, shares,
24 obligations or other securities of each other business entity
25 that is a party to the merger into rights to acquire
26 partnership interests, interests, shares, obligations or other
27 securities of the surviving entity or any other domestic
28 corporation or other business entity or, in whole or in part,
29 into cash or other property.
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1 (d) If a partnership is to be the surviving entity,
2 the names and business addresses of the general partners of
3 the surviving entity.

4 (e) If a limited liability company is to be the
5 surviving entity and management thereof is vested in one or
6 more managers, the names and business addresses of such
7 managers.

8 (f) All statements required to be set forth in the
9 plan of merger by the laws under which each other business
10 entity that is a party to the merger is formed, organized, or
11 incorporated.

12 (4) The plan of merger may set forth:

13 (a) If a domestic corporation is to be the surviving
14 entity, any amendments to, or a restatement of, the articles
15 of incorporation of the surviving entity, and such amendments
16 or restatement shall be effective at the effective date of the
17 merger.

18 (b) The effective date of the merger, which may be on
19 or after the date of filing the certificate of merger.

20 (c) Any other provisions relating to the merger.

21 (5) The plan of merger required by subsection (3)
22 shall be adopted and approved by each domestic corporation
23 that is a party to the merger in the same manner as is
24 provided in s. 607.1103. Notwithstanding the foregoing, if the
25 surviving entity is a partnership, no shareholder of a
26 domestic corporation that is a party to the merger shall, as a
27 result of the merger, become a general partner of the
28 surviving entity, unless such shareholder specifically
29 consents in writing to becoming a general partner of the
30 surviving entity, and unless such written consent is obtained
31 from each such shareholder who, as a result of the merger,

1 would become a general partner of the surviving entity, such
2 merger shall not become effective under s. 607.11101. Any
3 shareholder providing such consent in writing shall be deemed
4 to have voted in favor of the plan of merger for purposes of
5 s. 607.1103.

6 (6) Sections 607.1103 and 607.1301-607.1320 shall,
7 insofar as they are applicable, apply to mergers of one or
8 more domestic corporations with or into one or more other
9 business entities.

10 (7) Notwithstanding any provision of this section or
11 ss. 607.1109 and 607.11101, any merger consisting solely of
12 the merger of one or more domestic corporations with or into
13 one or more foreign corporations shall be consummated solely
14 in accordance with the requirements of s. 607.1107.

15 607.1109 Articles of merger.--

16 (1) After a plan of merger is approved by each
17 domestic corporation and other business entity that is a party
18 to the merger, the surviving entity shall deliver to the
19 Department of State for filing articles of merger, which shall
20 be executed by each domestic corporation as required by s.
21 607.0120 and by each other business entity as required by
22 applicable law, and which shall set forth:

23 (a) The plan of merger.

24 (b) A statement that the plan of merger was approved
25 by each domestic corporation that is a party to the merger in
26 accordance with the applicable provisions of this chapter,
27 and, if applicable, a statement that the written consent of
28 each shareholder of such domestic corporation who, as a result
29 of the merger, becomes a general partner of the surviving
30 entity has been obtained pursuant to s. 607.1108(5).

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1 (c) A statement that the plan of merger was approved
2 by each domestic partnership that is a party to the merger in
3 accordance with the applicable provisions of chapter 620.

4 (d) A statement that the plan of merger was approved
5 by each domestic limited liability company that is a party to
6 the merger in accordance with the applicable provisions of
7 chapter 608.

8 (e) A statement that the plan of merger was approved
9 by each other business entity that is a party to the merger,
10 other than corporations, limited liability companies, and
11 partnerships formed, organized, or incorporated under the laws
12 of this state, in accordance with the applicable laws of the
13 state, country, or jurisdiction under which such other
14 business entity is formed, organized, or incorporated.

15 (f) The effective date of the merger, which may be on
16 or after the date of filing the articles of merger, provided,
17 if the articles of merger do not provide for an effective date
18 of the merger, the effective date shall be the date on which
19 the articles of merger are filed.

20 (g) If the surviving entity is another business entity
21 formed, organized, or incorporated under the laws of any
22 state, country, or jurisdiction other than this state:

23 1. The address, including street and number, if any,
24 of its principal office under the laws of the state, country,
25 or jurisdiction in which it was formed, organized, or
26 incorporated.

27 2. A statement that the surviving entity is deemed to
28 have appointed the Secretary of State as its agent for service
29 of process in a proceeding to enforce any obligation or the
30 rights of dissenting shareholders of each domestic corporation
31 that is a party to the merger.

1 3. A statement that the surviving entity has agreed to
2 promptly pay to the dissenting shareholders of each domestic
3 corporation that is a party to the merger the amount, if any,
4 to which they are entitled under s. 607.1302.

5 (2) A copy of the articles of merger, certified by the
6 Department of State, may be filed in the office of the
7 official who is the recording officer of each county in this
8 state in which real property of a party to the merger other
9 than the surviving entity is situated.

10 607.11101 Effect of merger of domestic corporation and
11 other business entity.--

12 (1) When a merger becomes effective:

13 (a) Every domestic corporation and other business
14 entity that is a party to the merger merges into the surviving
15 entity and the separate existence of every domestic
16 corporation and other business entity that is a party to the
17 merger except the surviving entity ceases.

18 (b) The title to all real estate and other property,
19 or any interest therein, owned by each domestic corporation
20 and other business entity that is a party to the merger is
21 vested in the surviving entity without reversion or impairment
22 and without any requirement to record any deed or other
23 conveyance.

24 (c) The surviving entity shall thereafter be
25 responsible and liable for all the liabilities and obligations
26 of each domestic corporation and other business entity that is
27 a party to the merger, including liabilities arising out of
28 the rights of dissenters with respect to such merger under
29 applicable law.

30 (d) Any claim existing or action or proceeding pending
31 by or against any domestic corporation or other business

1 entity that is a party to the merger may be continued as if
2 the merger did not occur or the surviving entity may be
3 substituted in the proceeding for the domestic corporation or
4 other business entity which ceased existence.

5 (e) Neither the rights of creditors nor any liens upon
6 the property of any domestic corporation or other business
7 entity shall be impaired by such merger.

8 (f) If a domestic corporation is the surviving entity,
9 the articles of incorporation of such corporation in effect
10 immediately prior to the time the merger becomes effective
11 shall be the articles of incorporation of the surviving
12 entity, except as amended or restated to the extent provided
13 in the plan of merger.

14 (g) The shares, partnership interests, interests,
15 obligations, or other securities, and the rights to acquire
16 shares, partnership interests, interests, obligations, or
17 other securities, of each domestic corporation and other
18 business entity that is a party to the merger shall be
19 converted into shares, partnership interests, interests,
20 obligations, or other securities, or rights to such
21 securities, of the surviving entity or any other domestic
22 corporation or other business entity or, in whole or in part,
23 into cash or other property as provided in the plan of merger,
24 and the former holders of shares, partnership interests,
25 interests, obligations, or other securities, or rights to such
26 securities, shall be entitled only to the rights provided in
27 the plan of merger and to their rights as dissenters, if any,
28 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other
29 applicable law.

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1 Section 4. Sections 608.438, 608.4381, 608.4382,
2 608.4383, and 608.43884, Florida Statutes, are created to
3 read:

4 608.438 Merger of limited liability company.--

5 (1) As used in this section and ss. 608.4381-608.4384,
6 "other business entity" includes a corporation, a business
7 trust or association, a real estate investment trust, a common
8 law trust, an unincorporated business, a general partnership,
9 a limited partnership, a limited liability company other than
10 a limited liability company organized under the laws of this
11 chapter, or any other entity that is formed pursuant to the
12 requirements of applicable law.

13 (2) Unless otherwise provided in the articles of
14 organization or the regulations of a limited liability
15 company, pursuant to a plan of merger, a limited liability
16 company may merge with or into one or more limited liability
17 companies or other business entities formed, organized, or
18 incorporated under the laws of this state or any other state,
19 the United States, foreign country, or other foreign
20 jurisdiction, if:

21 (a) Each limited liability company that is a party to
22 the merger complies with the applicable provisions of this
23 chapter and complies with the terms of its articles of
24 organization and regulations.

25 (b) Each domestic partnership that is a party to the
26 merger complies with the applicable provisions of chapter 620.

27 (c) Each domestic corporation that is a party to the
28 merger complies with the applicable provisions of chapter 607.

29 (d) The merger is permitted by the laws of the state,
30 country, or jurisdiction under which each other business
31 entity that is a party to the merger is formed, organized, or

1 incorporated, and each such other business entity complies
2 with such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each limited liability company and the
5 name and jurisdiction of formation, organization, or
6 incorporation of each other business entity planning to merge,
7 and the name of the surviving or resulting limited liability
8 company or other business entity into which each other limited
9 liability company or other business entity plans to merge,
10 which is, in this section and in ss. 608.4381-608.4384,
11 designated as the surviving entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the interests
14 of the members of each limited liability company that is a
15 party to the merger and the interests, partnership interests,
16 shares, obligations, or other securities of each other
17 business entity that is a party to the merger into interests,
18 partnership interests, shares, obligations, or other
19 securities of the surviving entity or any other limited
20 liability company or other business entity or, in whole or in
21 part, into cash or other property, and the manner and basis of
22 converting rights to acquire interests of each limited
23 liability company that is a party to the merger and rights to
24 acquire interests, partnership interests, shares, obligations,
25 or other securities of each other business entity that is a
26 party to the merger into rights to acquire interests,
27 partnership interests, shares, obligations, or other
28 securities of the surviving entity or any other limited
29 liability company or other business entity or, in whole or in
30 part, into cash or other property.

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1 (d) If a partnership is to be the surviving entity,
2 the names and business addresses of the general partners of
3 the surviving entity.

4 (e) If a limited liability company is to be the
5 surviving entity, and management thereof is vested in one or
6 more managers, the names and business addresses of such
7 managers.

8 (f) All statements required to be set forth in the
9 plan of merger by the laws under which each other business
10 entity that is a party to merger is formed, organized, or
11 incorporated.

12 (4) The plan of merger may set forth:

13 (a) If a limited liability company is to be the
14 surviving entity, any amendments to, or a restatement of, the
15 articles of organization or the regulations of the surviving
16 entity, and such amendments or restatement shall be effective
17 at the effective date of the merger.

18 (b) The effective date of the merger, which may be on
19 or after the date of filing the certificate of merger.

20 (c) A provision authorizing one or more of the limited
21 liability companies that are parties to the merger to abandon
22 the proposed merger pursuant to s. 608.4381(7).

23 (d) A statement of, or a statement of the method of
24 determining, the "fair value," as defined in s.
25 608.4384(1)(b), of an interest in any limited liability
26 company that is a party to the merger.

27 (e) Other provisions relating to the merger.

28 608.4381 Action on plan of merger.--

29 (1) Unless the articles of organization or the
30 regulations of a limited liability company require a
31 greater-than-majority vote, the plan of merger shall be

1 approved in writing by a majority of the managers of a limited
2 liability company that is a party to the merger in which
3 management is not reserved to its members. Unless the articles
4 of organization or the regulations of a limited liability
5 company require a greater-than-majority vote or provide for
6 another method of determining the voting rights of each of its
7 members, and whether or not management is reserved to its
8 members, the plan of merger shall be approved in writing by a
9 majority of the members of a limited liability company that is
10 a party to the merger, and, if applicable, the vote of each
11 member shall be weighted in accordance with s. 608.4231(1)(b),
12 provided, unless the articles of organization or the
13 regulations of the limited liability company require a
14 greater-than-majority vote or provide for another method of
15 determining the voting rights of each of its members, if there
16 is more than one class or group of members, the merger shall
17 be approved by a majority of the members of each such class or
18 group, and, if applicable, the vote of each member shall be
19 weighted in accordance with s. 608.4231(1)(b).

20 (2) In addition to the approval required by subsection
21 (1), if the surviving entity is a partnership, no member of a
22 limited liability company that is a party to the merger shall,
23 as a result of the merger, become a general partner of the
24 surviving entity unless such member specifically consents in
25 writing to becoming a general partner of the surviving entity
26 and unless such written consent is obtained from each such
27 member who, as a result of the merger, would become a general
28 partner of the surviving entity, such merger shall not become
29 effective under s. 608.4383. Any member providing such
30 consent in writing shall be deemed to have voted in favor of
31 the plan of merger for purposes of s. 608.4384.

1 (3) All members of each limited liability company that
2 is a party to the merger shall be given written notice of any
3 meeting or other action with respect to the approval of a plan
4 of merger as provided in subsection (4), not fewer than 30 nor
5 more than 60 days before the date of the meeting at which the
6 plan of merger shall be submitted for approval by the members
7 of such limited liability company, provided, if the plan of
8 merger is submitted to the members of the limited liability
9 company for their written approval or other action without a
10 meeting, such notification shall be given to each member not
11 fewer than 30 nor more than 60 days before the effective date
12 of the merger. Pursuant to s. 608.455, the notification
13 required by this subsection may be waived in writing by the
14 person or persons entitled to such notification.

15 (4) The notification required by subsection (3) shall
16 be in writing and shall include:

17 (a) The date, time, and place of the meeting, if any,
18 at which the plan of merger is to be submitted for approval by
19 the members of the limited liability company, or, if the plan
20 of merger is to be submitted for written approval or by other
21 action without a meeting, a statement to that effect.

22 (b) A copy or summary of the plan of merger.

23 (c) A clear and concise statement that, if the plan of
24 merger is effected, members dissenting therefrom may be
25 entitled, if they comply with the provisions of s. 608.4384
26 regarding the rights of dissenting members, to be paid the
27 fair value of their interests, which shall be accompanied by a
28 copy of s. 608.4384.

29 (d) A statement of, or a statement of the method of
30 determining, the "fair value," as defined in s.
31 608.4384(1)(b), of an interest in the limited liability

1 company, in the case of a limited liability company in which
2 management is not reserved to its members, as determined by
3 the managers of such limited liability company, which
4 statement may consist of a reference to the applicable
5 provisions of such limited liability company's articles of
6 organization or regulations that determine the fair value of
7 an interest in the limited liability company for such
8 purposes, and which shall constitute an offer by the limited
9 liability company to purchase at such fair value any interests
10 of a "dissenter," as defined in s. 608.4384(1)(a), unless and
11 until such dissenter's right to receive the fair value of his
12 interests in the limited liability company is terminated
13 pursuant to s. 608.4384(8).

14 (e) The date on which such notification was mailed or
15 delivered to the members.

16 (f) Any other information concerning the plan of
17 merger.

18 (5) The notification required by subsection (3) shall
19 be deemed to be given at the earliest date of:

20 (a) The date such notification is received;

21 (b) Five days after the date such notification is
22 deposited in the United States mail addressed to the member at
23 his address as it appears in the books and records of the
24 limited liability company, with postage thereon prepaid;

25 (c) The date shown on the return receipt, if sent by
26 registered or certified mail, return receipt requested, and
27 the receipt is signed by or on behalf of the addressee; or

28 (d) The date such notification is given in accordance
29 with the provisions of the articles of organization or the
30 regulations of the limited liability company.

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1 (6) A plan of merger may provide for the manner, if
2 any, in which the plan of merger may be amended at any time
3 before the effective date of the merger, except after the
4 approval of the plan of merger by the members of a limited
5 liability company that is a party to the merger, the plan of
6 merger may not be amended to:

7 (a) Change the amount or kind of interests,
8 partnership interests, shares, obligations, other securities,
9 cash, rights, or any other property to be received by the
10 members of such limited liability company in exchange for or
11 on conversion of their interests;

12 (b) If the surviving entity is a limited liability
13 company, change any term of the articles of organization or
14 the regulations of the surviving entity, except for changes
15 that otherwise could be adopted without the approval of the
16 members of the surviving entity;

17 (c) If the surviving entity is not a limited liability
18 company, change any term of the articles of incorporation or
19 comparable governing document of the surviving entity, except
20 for changes that otherwise could be adopted by the board of
21 directors or comparable representatives of the surviving
22 entity; or

23 (d) Change any of the terms and conditions of the plan
24 of merger if any such change, alone or in the aggregate, would
25 materially and adversely affect the members, or any class or
26 group of members, of such limited liability company.

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28 If an amendment to a plan of merger is made in accordance the
29 plan and articles of merger have been filed with the
30 Department of State, amended articles of merger executed by
31 each limited liability company and other business entity that

1 is a party to the merger shall be filed with the Department of
2 State prior to the effective date of the merger.

3 (7) Unless the limited liability company's articles of
4 organization or regulations or the plan of merger provide
5 otherwise, notwithstanding the prior approval of the plan of
6 merger by any limited liability company that is a party to the
7 merger in which management is not reserved to its members, and
8 at any time prior to the filing of articles of merger with the
9 Department of State, the planned merger may be abandoned,
10 subject to any contractual rights, by any such limited
11 liability company by the affirmative vote of a majority of its
12 managers without further action by its members, in accordance
13 with the procedure set forth in the plan of merger or if none
14 is set forth, in the manner determined by the managers of such
15 limited liability company.

16 608.4382 Articles of merger.--

17 (1) After a plan of merger is approved by each limited
18 liability company and other business entity that is a party to
19 the merger, the surviving entity shall deliver to the
20 Department of State for filing articles of merger, which shall
21 be executed by each limited liability company and by each
22 other business entity as required by applicable law, and which
23 shall set forth:

24 (a) The plan of merger.

25 (b) A statement that the plan of merger was approved
26 by each limited liability company that is a party to the
27 merger in accordance with the applicable provisions of this
28 chapter, and, if applicable, a statement that the written
29 consent of each member of such limited liability company who,
30 as a result of the merger, becomes a general partner of the
31 surviving entity has been obtained pursuant to s. 608.4381(2).

1 (c) A statement that the plan of merger was approved
2 by each domestic partnership that is a party to the merger in
3 accordance with the applicable provisions of chapter 620.

4 (d) A statement that the plan of merger was approved
5 by each domestic corporation that is a party to the merger in
6 accordance with the applicable provisions of chapter 607.

7 (e) A statement that the plan of merger was approved
8 by each other business entity that is a party to the merger,
9 other than limited liability companies, partnerships, and
10 corporations formed, organized, or incorporated under the laws
11 of this state, in accordance with the applicable laws of the
12 state, country, or jurisdiction under which such other
13 business entity is formed, organized, or incorporated.

14 (f) The effective date of the merger, which may be on
15 or after the date of filing the articles of merger, provided,
16 if the articles of merger do not provide for an effective date
17 of the merger, the effective date shall be the date on which
18 the articles of merger are filed.

19 (g) If the surviving entity is another business entity
20 formed, organized, or incorporated under the laws of any
21 state, country, or jurisdiction other than this state:

22 1. The address, including street and number, if any,
23 of its principal office under the laws of the state, country,
24 or jurisdiction in which it was formed, organized, or
25 incorporated.

26 2. A statement that the surviving entity is deemed to
27 have appointed the Secretary of State as its agent for service
28 of process in a proceeding to enforce any obligation or the
29 rights of dissenting members of each limited liability company
30 that is a party to the merger.

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1 3. A statement that the surviving entity has agreed to
2 promptly pay to the dissenting members of each limited
3 liability company that is a party to the merger the amount, if
4 any, to which such dissenting members are entitled under s.
5 608.4384.

6 (2) A copy of the articles of merger, certified by the
7 Department of State, may be filed in the office of the
8 official who is the recording officer of each county in this
9 state in which real property of a party to the merger other
10 than the surviving entity is situated.

11 608.4383 Effect of merger.--When a merger becomes
12 effective:

13 (1) Every limited liability company and other business
14 entity that is a party to the merger merges into the surviving
15 entity and the separate existence of every limited liability
16 company and other business entity that is a party to the
17 merger, except the surviving entity, ceases.

18 (2) The title to all real estate and other property,
19 or any interest therein, owned by each limited liability
20 company and other business entity that is a party to the
21 merger is vested in the surviving entity without reversion or
22 impairment and without any requirement to record any deed or
23 other conveyance.

24 (3) The surviving entity shall thereafter be
25 responsible and liable for all the liabilities and obligations
26 of each limited liability company and other business entity
27 that is a party to the merger, including liabilities arising
28 out of the rights of dissenters with respect to such merger
29 under applicable law.

30 (4) Any claim existing or action or proceeding pending
31 by or against any limited liability company or other business

1 entity that is a party to the merger may be continued as if
2 the merger did not occur or the surviving entity may be
3 substituted in the proceeding for the limited liability
4 company or other business entity which ceased existence.

5 (5) Neither the rights of creditors nor any liens upon
6 the property of any limited liability company or other
7 business entity shall be impaired by such merger.

8 (6) If a limited liability company is the surviving
9 entity, the articles of organization and the regulations of
10 such limited liability company in effect immediately prior to
11 the time the merger becomes effective shall be the articles of
12 organization and the regulations of the surviving entity,
13 except as amended or restated to the extent provided in the
14 plan of merger.

15 (7) The interests, partnership interests, shares,
16 obligations, or other securities, and the rights to acquire
17 interests, partnership interests, shares, obligations, or
18 other securities, of each limited liability company and other
19 business entity that is a party to the merger shall be
20 converted into interests, partnership interests, shares,
21 obligations, or other securities, or rights to such
22 securities, of the surviving entity or any other limited
23 liability company or other business entity or, in whole or in
24 part, into cash or other property as provided in the plan of
25 merger, and the former holders of interests, partnership
26 interests, shares, obligations, or other securities, or rights
27 to such securities, shall be entitled only to the rights
28 provided in the plan of merger and to their rights as
29 dissenters, if any, under s. 608.4384, ss. 607.1301-607.1320,
30 s. 620.205, or other applicable law.

31 608.4384 Rights of dissenting members.--

1 (1) For purposes of this section:

2 (a) "Dissenter" means a member of a limited liability
3 company who is a recordholder of the interests to which he
4 seeks relief as of the date fixed for the determination of
5 members entitled to notice of a plan of merger, who does not
6 vote such interests in favor of the plan of merger, and who
7 exercises the right to dissent from the plan of merger when
8 and in the manner required by this section.

9 (b) "Fair value," with respect to a dissenter's
10 interests, means the value of the interests in the limited
11 liability company that is a party to a plan of merger as of
12 the close of business of the day prior to the effective date
13 of the merger to which the dissenter objects, excluding any
14 appreciation or depreciation in anticipation of the merger,
15 unless such exclusion would be inequitable.

16 (2) Each member of a limited liability company that is
17 a party to a merger shall have the right to be paid the fair
18 value of his interests as a dissenter only as provided in this
19 section.

20 (3) Not later than 20 days after the date on which the
21 notification required by s. 608.4381(3) is given to the
22 members, or if such notification is waived in writing by the
23 dissenter, not later than 20 days after the date of such
24 written waiver, the dissenter shall deliver to the limited
25 liability company a written demand for payment to him of the
26 fair value of the interests as to which he seeks relief that
27 states his address, the number and class, if any, of those
28 interests, and, at the election of the dissenter, the amount
29 claimed by him as the fair value of the interests. The
30 statement of fair market value by the dissenter, if any, shall
31 constitute an offer by the dissenter to sell the interests to

1 the limited liability company at such amount. A dissenter may
2 dissent as to less than all the interests registered in his
3 name. In such event, the dissenter's rights shall be
4 determined as if the interests as to which he has dissented
5 and his remaining interests were registered in the names of
6 different members. If the interests as to which a dissenter
7 seeks relief are represented by certificates, the dissenter
8 shall deposit such certificates with the limited liability
9 company simultaneously with the delivery of the written demand
10 for payment. Upon receiving a demand for payment from a
11 dissenter who is a recordholder of uncertificated interests,
12 the limited liability company shall make an appropriate
13 notation of the demand for payment in its records. The limited
14 liability company may restrict the transfer of uncertificated
15 interests from the date the dissenter's written demand for
16 payment is delivered. A written demand for payment served on
17 the limited liability company in which the dissenter is a
18 member shall constitute service on the surviving entity.

19 (4) The written demand for payment required by
20 subsection (3) shall be deemed to be delivered to the limited
21 liability company at the earliest of:

22 (a) The date such written demand is received;

23 (b) Five days after the date such written demand is
24 deposited in the United States mail addressed to the principal
25 business office of the limited liability company, with postage
26 thereon prepaid;

27 (c) The date shown on the return receipt, if such
28 written demand is sent by registered or certified mail, return
29 receipt requested, and the receipt is signed by or on behalf
30 of the addressee; or

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1 (d) The date such written demand is given in
2 accordance with the provisions of the limited liability
3 company's articles of organization or regulations.

4 (5) Unless the articles of organization or regulations
5 of the limited liability company in which the dissenter is a
6 member provides a basis or method for determining and paying
7 the fair value of the interests as to which the dissenter
8 seeks relief, or unless the limited liability company or the
9 surviving entity and the dissenter have agreed in writing as
10 to the fair value of the interests as to which the dissenter
11 seeks relief, the dissenter, the limited liability company, or
12 the surviving entity, within 90 days after the dissenter
13 delivers the written demand for payment to the limited
14 liability company, may file an action in any court of
15 competent jurisdiction in the county in this state where the
16 registered office of the limited liability company is located
17 or was located when the plan of merger was approved by its
18 members, or in the county in this state in which the principal
19 office of the limited liability company that issued the
20 interests is located or was located when the plan of merger
21 was approved by its partners, requesting that the fair value
22 of the dissenter's interests be determined. The court shall
23 also determine whether each dissenter that is a party to such
24 proceeding, as to whom the limited liability company or the
25 surviving entity requests the court to make such
26 determination, is entitled to receive payment of the fair
27 value for his interests. Other dissenters, within the 90-day
28 period after a dissenter delivers a written demand to the
29 limited liability company, may join such proceeding as
30 plaintiffs or may be joined in any such proceeding as
31 defendants, and any two or more such proceedings may be

1 consolidated. If the limited liability company or surviving
2 entity commences such a proceeding, all dissenters, whether or
3 not residents of this state, other than dissenters who have
4 agreed in writing with the limited liability company or the
5 surviving entity as to the fair value of the interests as to
6 which such dissenters seek relief, shall be made parties to
7 such action as an action against their interests. The limited
8 liability company or the surviving entity shall serve a copy
9 of the initial pleading in such proceeding upon each dissenter
10 who is a party to such proceeding and who is a resident of
11 this state in the manner provided by law for the service of a
12 summons and complaint and upon each such dissenter who is not
13 a resident of this state either by registered or certified
14 mail and publication or in such matter as is permitted by law.
15 The jurisdiction of the court in such a proceeding shall be
16 plenary and exclusive. All dissenters who are proper parties
17 to the proceeding are entitled to judgment against the limited
18 liability company or the surviving entity for the amount of
19 the fair value of their interests as to which payment is
20 sought hereunder. The court may, if it so elects, appoint one
21 or more persons as appraisers to receive evidence and
22 recommend a decision on the question of fair value. The
23 appraisers shall have such power and authority as is specified
24 in the order of their appointment or an amendment thereof.
25 The limited liability company shall pay each dissenter the
26 amount found to be due him within 10 days after final
27 determination of the proceedings. Upon payment of the
28 judgment, the dissenter shall cease to have any interest in
29 the interests as to which payment is sought hereunder.
30
31

1 (6) The judgment may, at the discretion of the court,
2 include a fair rate of interest, to be determined by the
3 court.

4 (7) The costs and expenses of any such proceeding
5 shall be determined by the court and shall be assessed against
6 the limited liability company or the surviving entity, but all
7 or any part of such costs and expenses may be apportioned and
8 assessed as the court deems equitable against any or all of
9 the dissenters who are parties to the proceeding, to whom the
10 limited liability company or the surviving entity has made an
11 offer to pay for the interests, if the court finds that the
12 action of such dissenters in failing to accept such offer was
13 arbitrary, vexatious or not in good faith. Such expenses shall
14 include reasonable compensation for, and reasonable expenses
15 of, the appraisers, but shall exclude the fees and expenses of
16 counsel for, and experts employed by, any party. If the fair
17 value of the interests, as determined, materially exceeds the
18 amount which the limited liability company or the surviving
19 entity offered to pay therefor, the court in its discretion
20 may award to any dissenter who is a party to the proceeding
21 such amount as the court determines to be reasonable
22 compensation to any attorney or expert employed by the
23 dissenter in the proceeding.

24 (8) The right of a dissenter to receive fair value for
25 and the obligation to sell such interests as to which he seeks
26 relief, and the right of the limited liability company or the
27 surviving entity to purchase such interests and the obligation
28 to pay the fair value of such interests, shall terminate if:

29 (a) The dissenter has not complied with this section,
30 unless the limited liability company or the surviving entity
31 waives, in writing, such noncompliance;

1 (b) The limited liability company abandons the merger
2 or is finally enjoined or prevented from carrying it out, or
3 the members rescind their adoption or approval of the merger;

4 (c) The dissenter withdraws his demand, with the
5 consent of the limited liability company or the surviving
6 entity; or

7 (d)1. The articles of organization or the regulations
8 of the limited liability company in which the dissenter was a
9 member does not provide a basis or method for determining and
10 paying the dissenter the fair value of his interests.

11 2. The limited liability company or the surviving
12 entity and the dissenter have not agreed upon the fair value
13 of the dissenter's interests.

14 3. Neither the dissenter, the limited liability
15 company, nor the surviving entity has filed or is joined in a
16 complaint under subsection (5) within the 90-day period
17 provided in subsection (5).

18 (9) Unless otherwise provided in the articles of
19 organization or the regulations of the limited liability
20 company in which the dissenter was a member, after the date
21 the dissenter delivers the written demand for payment in
22 accordance with subsection (3) until either the termination of
23 the rights and obligations arising under subsection (3) or the
24 purchase of the dissenter's interests by the limited liability
25 company or the surviving entity, the dissenter shall be
26 entitled only to payment as provided in this section and shall
27 not be entitled to any other rights accruing from such
28 interests, including voting or distribution rights. If the
29 right to receive fair value is terminated other than by the
30 purchase of the dissenter's interests by the limited liability
31 company or the surviving entity, all rights of the dissenter

1 as a member of the limited liability company shall be
2 reinstated effective as of the date the dissenter delivered
3 the written demand for payment, including the right to receive
4 any intervening payment or other distribution with respect to
5 the dissenter's interests in the limited liability company,
6 or, if any such rights have expired or any such distribution
7 other than a cash payment has been completed, in lieu thereof
8 at the election of the surviving entity, the fair value
9 thereof in cash as determined by the surviving entity as of
10 the time of such expiration or completion, but without
11 prejudice otherwise to any action or proceeding of the limited
12 liability company that may have been taken by the limited
13 liability company on or after the date the dissenter delivered
14 the written demand for payment.

15 (10) A member who is entitled under this section to
16 demand payment for his interests shall not have any right at
17 law or in equity to challenge the validity of any merger that
18 creates his entitlement to demand payment hereunder, or to
19 have the merger set aside or rescinded, except with respect to
20 compliance with the provisions of the limited liability
21 company's articles of organization or regulations or if the
22 merger is unlawful or fraudulent with respect to such member.

23 (11) Unless otherwise provided in the articles of
24 organization or the regulations of the limited liability
25 company in which the dissenter was a member, this section does
26 not apply with respect to a plan of merger if, as of the date
27 fixed for the determination of members entitled to notice of a
28 plan of merger:

29 (a) The interests of the limited liability company
30 were held of record by not fewer than 500 members; or
31

1 (b) The interests were registered on a national
2 securities exchange or quoted on the National Association of
3 Securities Dealers Automated Quotation System.

4 Section 5. Sections 620.201, 620.202, 620.203,
5 620.204, and 620.205, Florida Statutes, are created to read:
6 620.201 Merger of domestic limited partnership.

7 (1) As used in this section and ss. 620.202-620.205,
8 "other business entity" includes a corporation, a limited
9 liability company, a business trust or association, a real
10 estate investment trust, a common law trust, an unincorporated
11 business, a general partnership or a limited partnership but
12 excluding a domestic limited partnership, or any other entity
13 that is formed pursuant to the requirements of applicable law.

14 (2) Unless otherwise provided in the partnership
15 agreement of a domestic limited partnership, pursuant to a
16 plan of merger, a domestic limited partnership may merge with
17 or into one or more domestic limited partnerships or other
18 business entities formed, organized, or incorporated under the
19 laws of this state or any other state, the United States,
20 foreign country, or other foreign jurisdiction, if:

21 (a) Each domestic partnership that is a party to the
22 merger complies with the applicable provisions of this chapter
23 and complies with the terms of its partnership agreement.

24 (b) Each domestic limited liability company that is a
25 party to the merger complies with the applicable provisions of
26 chapter 608.

27 (c) Each domestic corporation that is a party to the
28 merger complies with the applicable provisions of chapter 607.

29 (d) The merger is permitted by the laws of the state,
30 country, or jurisdiction under which each other business
31 entity that is a party to the merger is formed, organized, or

1 incorporated, and each such other business entity complies
2 with such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each domestic limited partnership and
5 the name and jurisdiction of formation, organization, or
6 incorporation of each other business entity planning to merge,
7 and the name of the surviving or resulting domestic limited
8 partnership or other business entity into which each other
9 domestic limited partnership or other business entity plans to
10 merge, which is hereinafter and in ss. 620.202-620.205
11 designated as the surviving entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the partnership
14 interests of each domestic limited partnership that is a party
15 to the merger and the partnership interests, interests,
16 shares, obligations, or other securities of each other
17 business entity that is a party to the merger into partnership
18 interests, interests, shares, obligations, or other securities
19 of the surviving entity or any other domestic limited
20 partnership or other business entity or, in whole or in part,
21 into cash or other property, and the manner and basis of
22 converting rights to acquire the partnership interests of each
23 domestic limited partnership that is a party to the merger and
24 rights to acquire partnership interests, interests, shares,
25 obligations, or other securities of each other business entity
26 that is a party to the merger into rights to acquire
27 partnership interests, interests, shares, obligations, or
28 other securities of the surviving entity or any other domestic
29 limited partnership or other business entity or, in whole or
30 in part, into cash or other property.

31

1 (d) If a partnership is to be the surviving entity,
2 the names and business addresses of the general partners of
3 the surviving entity.

4 (e) If a limited liability company is to be the
5 surviving entity, and management thereof is vested in one or
6 more managers, the names and business addresses of such
7 managers.

8 (f) All statements required to be set forth in the
9 plan of merger by the laws under which each other business
10 entity that is a party to merger is formed, organized, or
11 incorporated.

12 (4) The plan of merger may set forth:

13 (a) If a domestic limited partnership is to be the
14 surviving entity, any amendments to, or a restatement of, the
15 certificate of limited partnership or partnership agreement of
16 the surviving entity, and such amendments or restatement shall
17 be effective on the effective date of the merger.

18 (b) The effective date of the merger, which may be on
19 or after the date of filing the certificate of merger.

20 (c) A provision authorizing one or more of the
21 domestic limited partnerships that are parties to the merger
22 to abandon the proposed merger pursuant to s. 620.202(7).

23 (d) A statement of, or a statement of the method of
24 determining, the "fair value," as defined in s. 620.205(1)(b),
25 of a partnership interest in any domestic limited partnership
26 that is a party to the merger.

27 (e) Any other provisions relating to the merger.--

28 620.202 Action on plan of merger.--

29 (1) Unless otherwise provided in the partnership
30 agreement of a domestic limited partnership, the plan of
31 merger shall be approved in writing by all of the general

1 partners of a domestic limited partnership that is a party to
2 the merger. Unless the partnership agreement of a domestic
3 limited partnership requires a greater vote, the plan of
4 merger shall also be approved in writing by those limited
5 partners who own more than a majority of the then current
6 percentage or other interests in the profits of the domestic
7 limited partnership owned by all of the limited partners,
8 provided, unless the partnership agreement of the domestic
9 limited partnership requires a greater vote, if there is more
10 than one class or group of limited partners, the plan of
11 merger shall be approved by those limited partners who own
12 more than a majority of the then current percentage or other
13 interests in the profits of the domestic limited partnership
14 owned by the limited partners in each class or group.

15 (2) In addition to the approval required by subsection
16 (1):

17 (a) If a domestic limited partnership is to be the
18 surviving entity, no person shall, as a result of the merger,
19 continue to be or become a general partner of the surviving
20 entity, unless such person specifically consents in writing to
21 continuing to be or to becoming, as the case may be, a general
22 partner of the surviving entity, and unless such written
23 consent is obtained from each such person who, as a result of
24 the merger, would become a general partner of the surviving
25 entity, such merger shall not become effective under s.
26 620.204.

27 (b) If a partnership other than a domestic limited
28 partnership is to be the surviving entity, no partner of a
29 domestic limited partnership that is a party to the merger
30 shall, as a result of the merger, become a general partner of
31 the surviving entity unless such partner specifically consents

1 in writing to becoming a general partner of the surviving
2 entity, and unless such written consent is obtained from each
3 person who, as a result of the merger, would become a general
4 partner of the surviving entity, such merger shall not become
5 effective under s. 620.204. Any person providing such consent
6 in writing shall be deemed to have voted in favor of the plan
7 of merger for purposes of s. 620.205.

8 (3) All partners of each domestic limited partnership
9 that is a party to the merger shall be given written notice of
10 any meeting or other action with respect to the approval of a
11 plan of merger as provided in subsection (4), not fewer than
12 30 nor more than 60 days before the date of the meeting at
13 which the plan of merger shall be submitted for approval by
14 the partners of such limited partnership. However, if the
15 plan of merger is submitted to the partners of the limited
16 partnership for their written approval or other action without
17 a meeting, such notification shall be given to each partner
18 not fewer than 30 nor more than 60 days before the effective
19 date of the merger. Notwithstanding the foregoing, the
20 notification required by this subsection may be waived in
21 writing by the person or persons entitled to such
22 notification.

23 (4) The notification required by subsection (3) shall
24 be in writing and shall include:

25 (a) The date, time, and place of the meeting, if any,
26 at which the plan of merger shall be submitted for approval by
27 the partners of the domestic limited partnership, or, if the
28 plan of merger will be submitted for written approval or by
29 other action without a meeting, a statement to that effect.

30 (b) A copy or summary of the plan of merger.

31

1 (c) A clear and concise statement that, if the plan of
2 merger is effected, partners dissenting therefrom may be
3 entitled, if they comply with the provisions of s. 620.205
4 regarding the rights of dissenting partners, to be paid the
5 fair value of their partnership interests, which shall be
6 accompanied by a copy of s. 620.205.

7 (d) A statement of, or a statement of the method of
8 determining, the "fair value," as defined in s. 620.205(1)(b),
9 of an interest in the limited partnership as determined by the
10 general partners of the limited partnership, which statement
11 may consist of a reference to the applicable provisions of
12 such limited partnership's partnership agreement that
13 determine the fair value of an interest in the limited
14 partnership for these purposes, and which shall constitute an
15 offer by the limited partnership to purchase at such fair
16 value any partnership interests of a "dissenter," as defined
17 in s. 620.205(1)(a), unless and until such a dissenter's right
18 to receive the fair value of his interests in the limited
19 partnership are is terminated pursuant to s. 620.205(8).

20 (e) The date on which such notification was mailed or
21 delivered to the partners.

22 (f) Any other information concerning the plan of
23 merger.

24 (5) The notification required by subsection (3) shall
25 be deemed to be given at the earliest of:

26 (a) The date such notification is received;

27 (b) Five days after the date such notification is
28 deposited in the United States mail addressed to the partner
29 at his address as it appears in the books and records of the
30 limited partnership, with postage thereon prepaid;

31

1 (c) The date shown on the return receipt, if sent by
2 registered or certified mail, return receipt requested, and
3 the receipt is signed by or on behalf of the addressee; or

4 (d) The date such notification is given in accordance
5 with the provisions of the limited partnership's partnership
6 agreement.

7 (6) A plan of merger may provide for the manner, if
8 any, in which the plan of merger may be amended at any time
9 before the effective date of the merger, except, after the
10 approval of the plan of merger by the limited partners of a
11 domestic limited partnership that is a party to the merger,
12 the general partners of such domestic limited partnership
13 shall not be authorized to amend the plan of merger to:

14 (a) Change the amount or kind of partnership
15 interests, interests, shares, obligations, other securities,
16 cash, rights, or any other property to be received by the
17 limited partners of such domestic limited partnership in
18 exchange for or on conversion of their partnership interests;

19 (b) If the surviving entity is a partnership, change
20 any term of the partnership agreement of the surviving entity,
21 except for changes that otherwise could be adopted by the
22 general partners of the surviving entity;

23 (c) If the surviving entity is not a partnership,
24 change any term of the articles of incorporation or comparable
25 governing document of the surviving entity, except for changes
26 that otherwise could be adopted by the board of directors or
27 comparable representatives of the surviving entity; or

28 (d) Change any of the terms and conditions of the plan
29 of merger if any such change, alone or in the aggregate, would
30 materially and adversely affect the limited partners, or any
31

1 class or group of limited partners, of such domestic limited
2 partnership.

3
4 If an amendment to a plan of merger is made in accordance with
5 such plan and articles of merger have been filed with the
6 Department of State, amended articles of merger executed by
7 the general partners of each domestic limited partnership and
8 other business entity that is a party to the merger shall be
9 filed with the Department of State prior to the effective date
10 of the merger.

11 (7) Unless the domestic limited partnership's
12 partnership agreement or the plan of merger provides
13 otherwise, notwithstanding the prior approval of the plan of
14 merger by any domestic limited partnership that is a party to
15 the merger and at any time prior to the filing of articles of
16 merger with the Department of State, the planned merger may be
17 abandoned, subject to any contractual rights, by any such
18 domestic limited partnership by the affirmative vote of all of
19 its general partners, without further action by its limited
20 partners, in accordance with the procedure set forth in the
21 plan of merger or if none is set forth, in the manner
22 determined by the general partners of such domestic limited
23 partnership.

24 620.203 Articles of merger.--

25 (1) After a plan of merger is approved by each
26 domestic limited partnership and other business entity that is
27 a party to the merger, the surviving entity shall deliver
28 articles of merger to the Department of State for filing,
29 which articles shall be executed by the general partners of
30 each domestic limited partnership and by each other business
31

1 entity as required by applicable law, and which shall set
2 forth:
3 (a) The plan of merger.
4 (b) A statement that the plan of merger was approved
5 by each domestic partnership that is a party to the merger in
6 accordance with the applicable provisions of this chapter,
7 and, if applicable, a statement that the written consent of
8 each person who, as a result of the merger, becomes a general
9 partner of the surviving entity has been obtained pursuant to
10 s. 620.202(2).
11 (c) A statement that the plan of merger was approved
12 by each domestic corporation that is a party to the merger in
13 accordance with the applicable provisions of chapter 607.
14 (d) A statement that the plan of merger was approved
15 by each domestic limited liability company that is a party to
16 the merger in accordance with the applicable provisions of
17 chapter 608.
18 (e) A statement that the plan of merger was approved
19 by each other business entity that is a party to the merger,
20 other than partnerships, limited liability companies, and
21 corporations formed, organized, or incorporated under the laws
22 of this state, in accordance with the applicable laws of the
23 state, country, or jurisdiction under which such other
24 business entity is formed, organized, or incorporated.
25 (f) The effective date of the merger, which may be on
26 or after the date of filing the articles of merger, provided,
27 if the articles of merger do not provide for an effective date
28 of the merger, the effective date shall be the date on which
29 the articles of merger are filed.
30
31

1 (g) If the surviving entity is another business entity
2 formed, organized, or incorporated under the laws of any
3 state, country, or jurisdiction other than this state:

4 1. The address, including street and number, if any,
5 of its principal office under the laws of the state, country,
6 or jurisdiction in which it was formed, organized or
7 incorporated.

8 2. A statement that the surviving entity is deemed to
9 have appointed the Secretary of State as its agent for service
10 of process in a proceeding to enforce any obligation or the
11 rights of dissenting partners of each domestic limited
12 partnership that is a party to the merger.

13 3. A statement that the surviving entity has agreed to
14 promptly pay to the dissenting partners of each domestic
15 limited partnership that is a party to the merger the amount,
16 if any, to which they are entitled under s. 620.205.

17 (2) A copy of the articles of merger, certified by the
18 Department of State, may be filed in the office of the
19 official who is the recording officer of each county in this
20 state in which real property of a party to the merger other
21 than the surviving entity is situated.

22 (3) Articles of merger shall act as a certificate of
23 cancellation for purposes of s. 620.113 for a domestic limited
24 partnership that is a party to the merger that is not the
25 surviving entity and such partnership's certificate of limited
26 partnership shall be canceled upon the effective date of the
27 merger.

28 620.204 Effect of merger.--

29 (1) When a merger becomes effective:

30 (a) Every domestic limited partnership and other
31 business entity that is a party to the merger merges into the

1 surviving entity and the separate existence of every domestic
2 limited partnership and other business entity that is a party
3 to the merger except the surviving entity ceases.

4 (b) The title to all real estate and other property,
5 or any interest therein, owned by each domestic limited
6 partnership and other business entity that is a party to the
7 merger is vested in the surviving entity without reversion or
8 impairment and without any requirement to record any deed or
9 other conveyance.

10 (c) The surviving entity shall thereafter be
11 responsible and liable for all the liabilities and obligations
12 of each domestic limited partnership and other business entity
13 that is a party to the merger, including liabilities arising
14 out of the rights of dissenters with respect to such merger
15 under applicable law.

16 (d) Any claim existing or action or proceeding pending
17 by or against any domestic limited partnership or other
18 business entity that is a party to the merger may be continued
19 as if the merger did not occur or the surviving entity may be
20 substituted in the proceeding for the domestic limited
21 partnership or other business entity which ceased existence.

22 (e) Neither the rights of creditors nor any liens upon
23 the property of any domestic limited partnership or other
24 business entity shall be impaired by such merger.

25 (f) If a general partner of a partnership formed or
26 organized under the laws of this state or any other state,
27 country, or jurisdiction that is a party to the merger is not
28 a general partner of the surviving entity, the former general
29 partner shall have no liability for obligations arising out of
30 the rights of dissenters with respect to such merger under
31 applicable law or for any obligation incurred after the

1 effective date of the merger, except to the extent that a
2 former creditor of the partnership in which the former general
3 partner was a general partner extends credit to the surviving
4 entity reasonably believing that the former general partner
5 continued as a general partner of the surviving entity.

6 (g) If a domestic limited partnership is the surviving
7 entity, the certificate of limited partnership and partnership
8 agreement of such partnership in effect immediately prior to
9 the time the merger becomes effective shall be the certificate
10 of limited partnership and partnership agreement of the
11 surviving entity, except as amended or restated to the extent
12 provided in the plan of merger.

13 (h) The partnership interests, interests, shares,
14 obligations, or other securities, and the rights to acquire
15 partnership interests, membership interests, shares,
16 obligations, or other securities, of each domestic limited
17 partnership and other business entity that is a party to the
18 merger shall be converted into partnership interests,
19 interests, shares, obligations, or other securities, or rights
20 to such securities, of the surviving entity or any other
21 domestic limited partnership or other business entity or, in
22 whole or in part, into cash or other property as provided in
23 the plan of merger, and the former holders of partnership
24 interests, interests, shares, obligations, or other
25 securities, or rights to such securities, shall be entitled
26 only to the rights provided in the plan of merger and to their
27 rights as dissenters, if any, under s. 620.205, ss.
28 607.1301-607.1320, s. 608.4384, or other applicable law.

29 (2) Unless otherwise provided in the plan of merger, a
30 merger of a domestic limited partnership, including a domestic
31 limited partnership that is not the surviving entity, shall

1 not require such domestic limited partnership to wind up its
2 affairs under s. 620.159 or pay its liabilities and distribute
3 its assets under s. 620.162.

4 620.205 Rights of dissenting partners.--

5 (1) For purposes of this section:

6 (a) "Dissenter" means a partner of a domestic limited
7 partnership who is a recordholder of the partnership interests
8 to which he seeks relief as of the date fixed for the
9 determination of partners entitled to notice of a plan of
10 merger, who does not vote such interests in favor of the plan
11 of merger, and who exercises the right to dissent from the
12 plan of merger when and in the manner required by this
13 section.

14 (b) "Fair value," with respect to a dissenter's
15 partnership interests, means the value of the partnership
16 interests in the domestic limited partnership that is a party
17 to a plan of merger as of the close of business of the day
18 prior to the effective date of the merger to which the
19 dissenter objects, excluding any appreciation or depreciation
20 in anticipation of the merger, unless such exclusion would be
21 inequitable.

22 (2) Each partner of a domestic limited partnership
23 that is a party to a merger shall have the right to be paid
24 the fair value of his partnership interests as a dissenter as
25 provided in this section.

26 (3) Not later than 20 days after the date on which the
27 notification required by s. 620.202(3) is given to the
28 partners, or if such notification was waived in writing by the
29 dissenter, not later than 20 days after the date of such
30 written waiver, the dissenter shall deliver to the limited
31 partnership a written demand for payment to him of the fair

1 value of the interests as to which he seeks relief that states
2 his address, the number and class, if any, of those interests,
3 and, at the election of the dissenter, the amount claimed by
4 him as the fair value of the interests. The statement of fair
5 market value by the dissenter, if any, shall constitute an
6 offer by the dissenter to sell the partnership interests to
7 the limited partnership for such amount. A dissenter may
8 dissent as to less than all the partnership interests
9 registered in his name. In such event, the dissenter's rights
10 shall be determined as if the partnership interests as to
11 which he has dissented and his remaining partnership interests
12 were registered in the names of different partners. If the
13 interests as to which a dissenter seeks relief are represented
14 by certificates, the dissenter shall deposit such certificates
15 with the limited partnership simultaneously with the delivery
16 of the written demand for payment. Upon receiving a demand
17 for payment from a dissenter who is a record holder of
18 uncertificated interests, the limited partnership shall make
19 an appropriate notation of the demand for payment in its
20 records. The limited partnership may restrict the transfer of
21 uncertificated interests from the date the dissenter's written
22 demand for payment is delivered. A written demand for payment
23 served on the domestic limited partnership in which the
24 dissenter is a partner shall constitute service on the
25 surviving entity.

26 (4) The written demand for payment required by
27 subsection (3) shall be deemed to be delivered to the limited
28 partnership at the earliest of:

29 (a) The date such written demand is received;

30 (b) Five days after the date such written demand is
31 deposited in the United States mail addressed to the principal

1 business office of the limited partnership, with postage
2 thereon prepaid;
3 (c) The date shown on the return receipt, if such
4 written demand is sent by registered or certified mail, return
5 receipt requested, and the receipt is signed by or on behalf
6 of the addressee; or
7 (d) The date such written demand is given in
8 accordance with the provisions of the limited partnership's
9 partnership agreement.
10 (5) Unless the partnership agreement of the limited
11 partnership in which the dissenter is a partner provides a
12 basis or method for determining and paying the fair value of
13 the interests as to which the dissenter seeks relief, or
14 unless the limited partnership or the surviving entity and the
15 dissenter have agreed in writing as to the fair value of the
16 interests as to which the dissenter seeks relief, the
17 dissenter, the limited partnership, or the surviving entity,
18 within 90 days after the dissenter delivers the written demand
19 for payment to the limited partnership, may file an action in
20 any court of competent jurisdiction in the county in this
21 state where the registered office of the limited partnership
22 is located or was located when the plan of merger was approved
23 by its partners, or in the county in this state in which the
24 principal office of the limited partnership that issued the
25 partnership interests is located or was located when the plan
26 of merger was approved by its partners, requesting a
27 determination of the fair value of the dissenter's partnership
28 interests. The court shall also determine whether each
29 dissenter that is a party to such proceeding, as to whom the
30 limited partnership or the surviving entity requests the court
31 to make such determination, is entitled to receive payment of

1 the fair value for his partnership interests. Other
2 dissenters, within the 90-day period after a dissenter
3 delivers a written demand to the partnership, may join such
4 proceeding as plaintiffs or may be joined in any such
5 proceeding as defendants, and any two or more such proceedings
6 may be consolidated. If the limited partnership or surviving
7 entity commences such a proceeding, all dissenters, whether or
8 not residents of this state, other than dissenters who have
9 agreed in writing with the limited partnership or the
10 surviving entity as to the fair value of the partnership
11 interests as to which such dissenters seek relief, shall be
12 made parties to such action as an action against their
13 partnership interests. The limited partnership or the
14 surviving entity shall serve a copy of the initial pleading in
15 such proceeding upon each dissenter who is a party to such
16 proceeding and who is a resident of this state in the manner
17 provided by law for the service of a summons and complaint and
18 upon each such dissenter who is not a resident of this state
19 either by registered or certified mail and publication or in
20 such manner as is permitted by law. The jurisdiction of the
21 court in such a proceeding shall be plenary and exclusive.
22 All dissenters who are proper parties to the proceeding are
23 entitled to judgment against the limited partnership or the
24 surviving entity for the amount of the fair value of their
25 partnership interests as to which payment is sought hereunder.
26 The court may, if it so elects, appoint one or more persons as
27 appraisers to receive evidence and recommend a decision on the
28 question of fair value. The appraisers shall have such power
29 and authority as is specified in the order of their
30 appointment or an amendment thereof. The limited partnership
31 shall pay each dissenter the amount found to be due him within

1 10 days after final determination of the proceedings. Upon
2 payment of the judgment, the dissenter shall cease to have any
3 interest in the partnership interests as to which payment is
4 sought hereunder.

5 (6) The judgment may, at the discretion of the court,
6 include a fair rate of interest, to be determined by the
7 court.

8 (7) The costs and expenses of any such proceeding
9 shall be determined by the court and shall be assessed against
10 the limited partnership or the surviving entity. However, all
11 or any part of such costs and expenses may be apportioned and
12 assessed as the court deems equitable against any or all of
13 the dissenters who are parties to the proceeding, to whom the
14 limited partnership or the surviving entity has made an offer
15 to pay for the partnership interests, if the court finds that
16 the action of such dissenters in failing to accept such offer
17 was arbitrary, vexatious, or not in good faith. Such expenses
18 shall include reasonable compensation for, and reasonable
19 expenses of, the appraisers, but shall exclude the fees and
20 expenses of counsel for, and experts employed by, any party.
21 If the fair value of the partnership interests, as determined,
22 materially exceeds the amount which the limited partnership or
23 the surviving entity offered to pay therefor, the court in its
24 discretion may award to any dissenter who is a party to the
25 proceeding such amount as the court determines to be
26 reasonable compensation to any attorney or expert employed by
27 the dissenter in the proceeding.

28 (8) The right of a dissenter to receive fair value for
29 and the obligation to sell such partnership interests as to
30 which he seeks relief and the right of the domestic limited
31 partnership or the surviving entity to purchase such interests

1 and the obligation to pay the fair value of such interests
2 shall terminate if:
3 (a) The dissenter has not complied with this section,
4 unless the limited partnership or the surviving entity waives
5 in writing such noncompliance;
6 (b) The limited partnership abandons the merger or is
7 finally enjoined or prevented from carrying out the merger, or
8 the partners rescind their adoption or approval of the merger;
9 (c) The dissenter withdraws his demand, with the
10 consent of the limited partnership or the surviving entity; or
11 (d)1. The partnership agreement of the domestic
12 limited partnership in which the dissenter was a partner does
13 not provide a basis or method for determining and paying the
14 dissenter the fair value of his partnership interests.
15 2. The limited partnership or the surviving entity and
16 the dissenter have not agreed upon the fair value of the
17 dissenter's partnership interests.
18 3. Neither the dissenter, the limited partnership nor
19 the surviving entity has filed or is joined in a complaint
20 under subsection (5) within the 90-day period provided in that
21 subsection.
22 (9) Unless otherwise provided in the partnership
23 agreement of the domestic limited partnership in which the
24 dissenter was a partner, after the date the dissenter delivers
25 the written demand for payment in accordance with subsection
26 (3) until either the termination of the rights and obligations
27 arising from it or the purchase of the dissenter's partnership
28 interests by the limited partnership or the surviving entity,
29 the dissenter shall be entitled only to payment as provided in
30 this section and shall not be entitled to any other rights
31 accruing from such interests, including voting or distribution

1 rights. If the right to receive fair value is terminated
2 other than by the purchase of the dissenter's partnership
3 interests by the limited partnership or the surviving entity,
4 all rights of the dissenter as a partner of the limited
5 partnership shall be reinstated effective as of the date the
6 dissenter delivered the written demand for payment, including
7 the right to receive any intervening payment or other
8 distribution with respect to the dissenter's interests in the
9 limited partnership, or, if any such rights have expired or
10 any such distribution other than a cash payment has been
11 completed, in lieu thereof at the election of the surviving
12 entity, the fair value thereof in cash as determined by the
13 surviving entity as of the time of such expiration or
14 completion, but without prejudice otherwise to any action or
15 proceeding of the limited partnership that may have been taken
16 by the limited partnership on or after the date the dissenter
17 delivered the written demand for payment.

18 (10) A partner who is entitled under this section to
19 demand payment for his partnership interests shall not have
20 any right at law or in equity to challenge the validity of any
21 merger that creates his entitlement to demand payment
22 hereunder, or to have the merger set aside or rescinded,
23 except with respect to compliance with the provisions of the
24 limited partnership's partnership agreement or if the merger
25 is unlawful or fraudulent with respect to such partner.

26 (11) Unless otherwise provided in the partnership
27 agreement of the domestic limited partnership in which the
28 dissenter was a partner, this section does not apply with
29 respect to a plan of merger if, as of the date fixed for the
30 determination of partners entitled to notice of a plan of
31 merger:

