

By the Committee on Financial Services and Representative
Kosmas

1 A bill to be entitled
2 An act relating to mergers of business entities
3 or corporations; amending s. 607.0730, F.S.;
4 removing a time limitation on voting trusts;
5 creating ss. 607.1108, 607.1109, 607.11101, and
6 607.11102, F.S.; providing for mergers of
7 domestic corporations and other business
8 entities under certain circumstances; requiring
9 a plan of merger; providing criteria; providing
10 for articles of merger; providing for effect of
11 merger; providing for holding company formation
12 by merger of certain corporations; amending s.
13 608.407, F.S.; reducing the minimum number of
14 members necessary to form a limited liability
15 company; creating ss. 608.438, 608.4381,
16 608.4382, 608.4383, and 608.4384, F.S.;
17 providing for mergers of limited liability
18 companies under certain circumstances;
19 requiring a plan of merger; providing criteria;
20 providing for action on a plan of merger;
21 providing procedures; providing for articles of
22 merger; providing for effect of merger;
23 providing for rights of dissenting members;
24 providing procedures; creating ss. 620.201,
25 620.202, 620.203, 620.204, and 620.205, F.S.;
26 providing for mergers of domestic limited
27 partnerships under certain circumstances;
28 requiring a plan of merger; providing criteria;
29 providing for action on a plan of merger;
30 providing procedures; providing for articles of
31 merger; providing for effect of merger;

1 providing for rights of dissenting partners;
2 providing procedures; providing an effective
3 date.

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

6
7 Section 1. Subsections (2) and (3) of section
8 607.0730, Florida Statutes, are amended to read:

9 607.0730 Voting trusts.--

10 (2) A voting trust becomes effective on the date the
11 first shares subject to the trust are registered in the
12 trustee's name. ~~A voting trust is valid for not more than 10~~
13 ~~years after its effective date unless extended under~~
14 ~~subsection (3). The validity of any voting trust otherwise~~
15 ~~lawful shall not be affected during a period of 10 years from~~
16 ~~the date when it was created or last extended by the fact that~~
17 ~~under its terms it will or may last beyond the 10-year period.~~

18 ~~(3) All or some of the parties to a voting trust may~~
19 ~~extend it for additional terms of not more than 10 years each~~
20 ~~by signing an extension agreement and obtaining the voting~~
21 ~~trustee's written consent to the extension. An extension is~~
22 ~~valid for the period set forth therein, up to 10 years, from~~
23 ~~the date the first shareholder signs the extension agreement.~~
24 ~~The voting trustee must deliver copies of the extension~~
25 ~~agreement and list of beneficial owners to the corporation's~~
26 ~~principal office. An extension agreement binds only those~~
27 ~~parties signing it.~~

28 Section 2. Sections 607.1108, 607.1109, 607.11101, and
29 607.11102, Florida Statutes, are created to read:

30 607.1108 Merger of domestic corporation and other
31 business entity.--

1 (1) As used in this section and ss. 607.1109 and
2 607.11101, the term "other business entity" means a limited
3 liability company, foreign corporation, not-for-profit
4 corporation, business trust, common law trust, unincorporated
5 business, general partnership, limited partnership, or any
6 other entity that is formed pursuant to the requirements of
7 applicable law. Notwithstanding the provisions of chapter 617,
8 a domestic not-for-profit corporation acting under a plan for
9 merger approved pursuant to s. 617.1103 shall be governed by
10 the provisions of this section and ss. 607.1109 and 607.11101.
11 If a not-for-profit corporation chooses to avail itself of the
12 merger provisions, such a merger cannot be accomplished unless
13 the assets of such corporation are disposed of in a way that
14 would not be prohibited if the corporation were to be
15 dissolved.

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

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

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 limited liability company that is a
28 party to the merger complies with the applicable provisions of
29 chapter 608.

30 (d) The merger is permitted by the laws of the state,
31 country, or jurisdiction under which each other business

1 entity that is a party to the merger is formed, organized, or
2 incorporated and each such other business entity complies with
3 such laws in effecting the merger.

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

5 (a) The name of each domestic corporation and the name
6 and jurisdiction of formation, organization, or incorporation
7 of each other business entity planning to merge, and the name
8 of the surviving or resulting domestic corporation or other
9 business entity into which each other domestic corporation or
10 other business entity plans to merge, which is hereinafter and
11 in ss. 607.1109 and 607.11101 designated as the surviving
12 entity.

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

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

31

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.

30 607.11102 Holding company formation by merger.--
31

1 (1) This section shall apply solely to a corporation
2 which has shares of any class or series which are either
3 registered on a national securities exchange or designated as
4 a national market system security on an interdealer quotation
5 system by the National Association of Securities Dealers,
6 Inc., or held of record by not fewer than 2,000 shareholders.

7 (2) For purposes of this section:

8 (a) "Constituent corporation" means a corporation
9 which is a party to a merger governed by this section.

10 (b) "Holding company" means a corporation:

11 1. Which, from the date the corporation first issued
12 shares until consummation of a merger governed by this
13 section, was at all times a wholly owned subsidiary of a
14 constituent corporation.

15 2. Whose shares are issued in such merger.

16 (c) "Wholly owned subsidiary" means a corporation all
17 of the issued and outstanding shares of which are owned by
18 another corporation, directly or indirectly through one or
19 more subsidiaries.

20 (3) Notwithstanding the requirements of s. 607.1103,
21 unless expressly required by a corporation's articles of
22 incorporation, no vote of shareholders of the corporation
23 shall be necessary to authorize a merger of the corporation
24 with or into a wholly owned subsidiary of such corporation,
25 if:

26 (a) Such corporation and the wholly owned subsidiary
27 are the only constituent corporations to the merger.

28 (b) Each share or fraction of a share of the
29 constituent corporation whose shares are being converted
30 pursuant to the merger which are outstanding immediately prior
31 to the effective time of the merger is converted in the merger

1 into a share or equal fraction of share of a holding company
2 having the same designations, rights, powers, and preferences,
3 and qualifications, limitations, and restrictions thereof as
4 the share of the constituent corporation being converted in
5 the merger.

6 (c) The holding company and each of the constituent
7 corporations to the merger are domestic corporations.

8 (d) The articles of incorporation and bylaws of the
9 holding company immediately following the effective time of
10 the merger contain provisions identical to the articles of
11 incorporation and bylaws of the constituent corporation whose
12 shares are being converted pursuant to the merger immediately
13 prior to the effective time of the merger other than
14 provisions, if any, regarding the incorporator or
15 incorporators, the corporate name, the registered office and
16 agent, the initial board of directors, the initial subscribers
17 for shares, and matters solely of historical significance, and
18 such provisions contained in any amendment to the articles of
19 incorporation as were necessary to effect a change, exchange,
20 reclassification, or cancellation of shares, if such change,
21 exchange, reclassification, or cancellation has become
22 effective.

23 (e) As a result of the merger, the constituent
24 corporation whose shares are being converted pursuant to the
25 merger, or its successor corporation, becomes or remains a
26 direct or indirect wholly owned subsidiary of the holding
27 company.

28 (f) The directors of the constituent corporation
29 become or remain the directors of the holding company upon the
30 effective date of the merger.

31

1 (g) The articles of incorporation of the surviving
2 corporation immediately following the effective time of the
3 merger are identical to the articles of incorporation of the
4 constituent corporation whose shares are being converted
5 pursuant to the merger immediately prior to the effective time
6 of the merger other than provisions, if any, regarding the
7 incorporator or incorporators, the corporate name, the
8 registered office and agent, the initial board of directors,
9 the initial subscribers for shares, and matters solely of
10 historical significance, and such provisions contained in any
11 amendment to the articles of incorporation as were necessary
12 to effect a change, exchange, reclassification, or
13 cancellation of shares, if such change, exchange,
14 reclassification, or cancellation has become effective,
15 provided:

16 1. The articles of incorporation of the surviving
17 corporation shall be amended in the merger to contain a
18 provision requiring that any act or transaction by or
19 involving the surviving corporation, that requires for its
20 adoption under this act or its articles of incorporation the
21 approval of the shareholders of the surviving corporation,
22 shall require, in addition and by specific reference to this
23 section, the approval of the shareholders of the holding
24 company, or any successor by merger, by the same vote as is
25 required by this act or by the articles of incorporation of
26 the surviving corporation.

27 2. The articles of incorporation of the surviving
28 corporation may be amended in the merger to reduce the number
29 of classes and shares that the surviving corporation is
30 authorized to issue.

31

1 (h) The board of directors of the constituent
2 corporation determines that the shareholders of the
3 constituent corporation will not recognize gain or loss for
4 United States federal income tax purposes.

5 (i) The board of directors of such corporation shall
6 adopt a plan of merger that sets forth:

7 1. The names of the constituent corporations.

8 2. The manner and basis of converting the shares of
9 such corporation into shares of the holding company, and the
10 manner and basis of converting rights to acquire shares of
11 such corporation into rights to acquire shares of the holding
12 company.

13 3. A provision for the pro rata issuance of shares of
14 the holding company to the holders of shares of such
15 corporation upon surrender of any certificates therefor.

16 (4) From and after the effective time of a merger
17 adopted by a constituent corporation by action of its board of
18 directors and without any vote of shareholders pursuant to
19 this section:

20 (a) To the extent the restrictions of ss. 607.0901 and
21 607.0902 applied to the constituent corporation and its
22 shareholders at the effective time of the merger, such
23 restrictions shall apply to the holding company and its
24 shareholders immediately after the effective time of the
25 merger as though the holding company were the constituent
26 corporation, and all shares of the holding company acquired in
27 the merger, for purposes of ss. 607.0901 and 607.0902, shall
28 be deemed to have been acquired at the time the shares of the
29 constituent corporation converted in the merger were acquired,
30 and, in addition, any shareholder who, immediately prior to
31 the effective time of the merger, was not an interested

1 shareholder within the meaning of s. 607.0901 shall not become
2 an interested shareholder of the holding company solely by
3 reason of the merger.

4 (b) If the corporate name of the holding company
5 immediately following the effective time of the merger is the
6 same as the corporate name of the constituent corporation
7 immediately prior to the effective time of the merger, the
8 shares of the holding company into which the shares of the
9 constituent corporation are converted in the merger shall be
10 represented by the share certificates that previously
11 represented shares of the constituent corporation.

12 (5) If a plan of merger is adopted by a constituent
13 corporation by action of its board of directors and without
14 any vote of shareholders pursuant to this section, the
15 secretary or assistant secretary of the constituent
16 corporation shall certify in the articles of merger that the
17 plan of merger has been adopted pursuant to this section. The
18 articles of merger so certified shall then be filed and become
19 effective in accordance with s. 607.1106.

20 Section 3. Subsection (2) of section 608.407, Florida
21 Statutes, is amended to read:

22 608.407 Articles of organization.--

23 (2) An affidavit declaring that the limited liability
24 company has at least one member ~~two members~~ and setting forth
25 the amount of the cash and a description and agreed value of
26 property other than cash contributed by the members and the
27 amount anticipated to be contributed by the members shall
28 accompany the articles of organization of a limited liability
29 company.

30 Section 4. Sections 608.438, 608.4381, 608.4382,
31 608.4383, and 608.4384, Florida Statutes, are created to read:

- 1 608.438 Merger of limited liability company.--
2 (1) As used in this section and ss. 608.4381-608.4384,
3 "other business entity" includes a corporation, a business
4 trust or association, a real estate investment trust, a common
5 law trust, an unincorporated business, a general partnership,
6 a limited partnership, a limited liability company other than
7 a limited liability company organized under the laws of this
8 chapter, or any other entity that is formed pursuant to the
9 requirements of applicable law.
- 10 (2) Unless otherwise provided in the articles of
11 organization or the regulations of a limited liability
12 company, pursuant to a plan of merger, a limited liability
13 company may merge with or into one or more limited liability
14 companies or other business entities formed, organized, or
15 incorporated under the laws of this state or any other state,
16 the United States, foreign country, or other foreign
17 jurisdiction, if:
- 18 (a) Each limited liability company that is a party to
19 the merger complies with the applicable provisions of this
20 chapter and complies with the terms of its articles of
21 organization and regulations.
- 22 (b) Each domestic partnership that is a party to the
23 merger complies with the applicable provisions of chapter 620.
- 24 (c) Each domestic corporation that is a party to the
25 merger complies with the applicable provisions of chapter 607.
- 26 (d) The merger is permitted by the laws of the state,
27 country, or jurisdiction under which each other business
28 entity that is a party to the merger is formed, organized, or
29 incorporated, and each such other business entity complies
30 with such laws in effecting the merger.
- 31 (3) The plan of merger shall set forth:

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

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

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

28 (d) If a partnership is to be the surviving entity,
29 the names and business addresses of the general partners of
30 the surviving entity.

31

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

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

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

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

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

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

20 (d) A statement of, or a statement of the method of
21 determining, the "fair value," as defined in s.
22 608.4384(1)(b), of an interest in any limited liability
23 company that is a party to the merger.

24 (e) Other provisions relating to the merger.

25 608.4381 Action on plan of merger.--

26 (1) Unless the articles of organization or the
27 regulations of a limited liability company require a
28 greater-than-majority vote, the plan of merger shall be
29 approved in writing by a majority of the managers of a limited
30 liability company that is a party to the merger in which
31 management is not reserved to its members. Unless the articles

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

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

29 (3) All members of each limited liability company that
30 is a party to the merger shall be given written notice of any
31 meeting or other action with respect to the approval of a plan

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

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

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

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

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

26 (d) A statement of, or a statement of the method of
27 determining, the "fair value," as defined in s.
28 608.4384(1)(b), of an interest in the limited liability
29 company, in the case of a limited liability company in which
30 management is not reserved to its members, as determined by
31 the managers of such limited liability company, which

1 statement may consist of a reference to the applicable
2 provisions of such limited liability company's articles of
3 organization or regulations that determine the fair value of
4 an interest in the limited liability company for such
5 purposes, and which shall constitute an offer by the limited
6 liability company to purchase at such fair value any interests
7 of a "dissenter," as defined in s. 608.4384(1)(a), unless and
8 until such dissenter's right to receive the fair value of the
9 dissenter's interests in the limited liability company is
10 terminated pursuant to s. 608.4384(8).

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

13 (f) Any other information concerning the plan of
14 merger.

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

17 (a) The date such notification is received;

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

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

25 (d) The date such notification is given in accordance
26 with the provisions of the articles of organization or the
27 regulations of the limited liability company.

28 (6) A plan of merger may provide for the manner, if
29 any, in which the plan of merger may be amended at any time
30 before the effective date of the merger, except after the
31 approval of the plan of merger by the members of a limited

1 liability company that is a party to the merger, the plan of
2 merger may not be amended to:
3 (a) Change the amount or kind of interests,
4 partnership interests, shares, obligations, other securities,
5 cash, rights, or any other property to be received by the
6 members of such limited liability company in exchange for or
7 on conversion of their interests;
8 (b) If the surviving entity is a limited liability
9 company, change any term of the articles of organization or
10 the regulations of the surviving entity, except for changes
11 that otherwise could be adopted without the approval of the
12 members of the surviving entity;
13 (c) If the surviving entity is not a limited liability
14 company, change any term of the articles of incorporation or
15 comparable governing document of the surviving entity, except
16 for changes that otherwise could be adopted by the board of
17 directors or comparable representatives of the surviving
18 entity; or
19 (d) Change any of the terms and conditions of the plan
20 of merger if any such change, alone or in the aggregate, would
21 materially and adversely affect the members, or any class or
22 group of members, of such limited liability company.
23
24 If an amendment to a plan of merger is made in accordance the
25 plan and articles of merger have been filed with the
26 Department of State, amended articles of merger executed by
27 each limited liability company and other business entity that
28 is a party to the merger shall be filed with the Department of
29 State prior to the effective date of the merger.
30 (7) Unless the limited liability company's articles of
31 organization or regulations or the plan of merger provide

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

12 608.4382 Articles of merger.--

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

20 (a) The plan of merger.

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

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

31

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

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

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

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

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

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

28 3. A statement that the surviving entity has agreed to
29 promptly pay to the dissenting members of each limited
30 liability company that is a party to the merger the amount, if
31

1 any, to which such dissenting members are entitled under s.
2 608.4384.

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

8 608.4383 Effect of merger.--When a merger becomes
9 effective:

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

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

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

27 (4) Any claim existing or action or proceeding pending
28 by or against any limited liability company or other business
29 entity that is a party to the merger may be continued as if
30 the merger did not occur or the surviving entity may be
31

1 substituted in the proceeding for the limited liability
2 company or other business entity which ceased existence.
3 (5) Neither the rights of creditors nor any liens upon
4 the property of any limited liability company or other
5 business entity shall be impaired by such merger.
6 (6) If a limited liability company is the surviving
7 entity, the articles of organization and the regulations of
8 such limited liability company in effect immediately prior to
9 the time the merger becomes effective shall be the articles of
10 organization and the regulations of the surviving entity,
11 except as amended or restated to the extent provided in the
12 plan of merger.
13 (7) The interests, partnership interests, shares,
14 obligations, or other securities, and the rights to acquire
15 interests, partnership interests, shares, obligations, or
16 other securities, of each limited liability company and other
17 business entity that is a party to the merger shall be
18 converted into interests, partnership interests, shares,
19 obligations, or other securities, or rights to such
20 securities, of the surviving entity or any other limited
21 liability company or other business entity or, in whole or in
22 part, into cash or other property as provided in the plan of
23 merger, and the former holders of interests, partnership
24 interests, shares, obligations, or other securities, or rights
25 to such securities, shall be entitled only to the rights
26 provided in the plan of merger and to their rights as
27 dissenters, if any, under s. 608.4384, ss. 607.1301-607.1320,
28 s. 620.205, or other applicable law.
29 608.4384 Rights of dissenting members.--
30 (1) For purposes of this section:
31

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

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

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

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

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

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

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

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

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

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 such dissenter's interests. Other dissenters,
28 within the 90-day period after a dissenter delivers a written
29 demand to the limited liability company, may join such
30 proceeding as plaintiffs or may be joined in any such
31 proceeding as defendants, and any two or more such proceedings

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

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
14 shall include reasonable compensation for, and reasonable
15 expenses of, the appraisers, but shall exclude the fees and
16 expenses of counsel for, and experts employed by, any party.
17 If the fair value of the interests, as determined, materially
18 exceeds the amount which the limited liability company or the
19 surviving entity offered to pay therefor, the court in its
20 discretion may award to any dissenter who is a party to the
21 proceeding such amount as the court determines to be
22 reasonable compensation to any attorney or expert employed by
23 the 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 the
26 dissenter seeks relief, and the right of the limited liability
27 company or the surviving entity to purchase such interests and
28 the obligation to pay the fair value of such interests, shall
29 terminate if:

30
31

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

4 (b) The limited liability company abandons the merger
5 or is finally enjoined or prevented from carrying out the
6 merger, or the members rescind their adoption or approval of
7 the merger;

8 (c) The dissenter withdraws the demand, with the
9 consent of the limited liability company or the surviving
10 entity; or

11 (d)1. The articles of organization or the regulations
12 of the limited liability company in which the dissenter was a
13 member does not provide a basis or method for determining and
14 paying the dissenter the fair value of the dissenter's
15 interests.

16 2. The limited liability company or the surviving
17 entity and the dissenter have not agreed upon the fair value
18 of the dissenter's interests.

19 3. Neither the dissenter, the limited liability
20 company, nor the surviving entity has filed or is joined in a
21 complaint under subsection (5) within the 90-day period
22 provided in subsection (5).

23 (9) 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, after the date
26 the dissenter delivers the written demand for payment in
27 accordance with subsection (3) until either the termination of
28 the rights and obligations arising under subsection (3) or the
29 purchase of the dissenter's interests by the limited liability
30 company or the surviving entity, the dissenter shall be
31 entitled only to payment as provided in this section and shall

1 not be entitled to any other rights accruing from such
2 interests, including voting or distribution rights. If the
3 right to receive fair value is terminated other than by the
4 purchase of the dissenter's interests by the limited liability
5 company or the surviving entity, all rights of the dissenter
6 as a member of the limited liability company shall be
7 reinstated effective as of the date the dissenter delivered
8 the written demand for payment, including the right to receive
9 any intervening payment or other distribution with respect to
10 the dissenter's interests in the limited liability company,
11 or, if any such rights have expired or any such distribution
12 other than a cash payment has been completed, in lieu thereof
13 at the election of the surviving entity, the fair value
14 thereof in cash as determined by the surviving entity as of
15 the time of such expiration or completion, but without
16 prejudice otherwise to any action or proceeding of the limited
17 liability company that may have been taken by the limited
18 liability company on or after the date the dissenter delivered
19 the written demand for payment.

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

29 (11) Unless otherwise provided in the articles of
30 organization or the regulations of the limited liability
31 company in which the dissenter was a member, this section does

1 not apply with respect to a plan of merger if, as of the date
2 fixed for the determination of members entitled to notice of a
3 plan of merger:

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

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

9 Section 5. Sections 620.201, 620.202, 620.203,
10 620.204, and 620.205, Florida Statutes, are created to read:

11 620.201 Merger of domestic limited partnership.

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

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

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

29 (b) Each domestic limited liability company that is a
30 party to the merger complies with the applicable provisions of
31 chapter 608.

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

3 (d) The merger is permitted by the laws of the state,
4 country, or jurisdiction under which each other business
5 entity that is a party to the merger is formed, organized, or
6 incorporated, and each such other business entity complies
7 with such laws in effecting the merger.

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

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

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

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

1 partnership interests, interests, shares, obligations, or
2 other securities of the surviving entity or any other domestic
3 limited partnership or other business entity or, in whole or
4 in part, into cash or other property.

5 (d) If a partnership is to be the surviving entity,
6 the names and business addresses of the general partners of
7 the surviving entity.

8 (e) If a limited liability company is to be the
9 surviving entity, and management thereof is vested in one or
10 more managers, the names and business addresses of such
11 managers.

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

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

17 (a) If a domestic limited partnership is to be the
18 surviving entity, any amendments to, or a restatement of, the
19 certificate of limited partnership or partnership agreement of
20 the surviving entity, and such amendments or restatement shall
21 be effective on the effective date of the merger.

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

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

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

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

1 620.202 Action on plan of merger.--
2 (1) Unless otherwise provided in the partnership
3 agreement of a domestic limited partnership, the plan of
4 merger shall be approved in writing by all of the general
5 partners of a domestic limited partnership that is a party to
6 the merger. Unless the partnership agreement of a domestic
7 limited partnership requires a greater vote, the plan of
8 merger shall also be approved in writing by those limited
9 partners who own more than a majority of the then current
10 percentage or other interests in the profits of the domestic
11 limited partnership owned by all of the limited partners,
12 provided, unless the partnership agreement of the domestic
13 limited partnership requires a greater vote, if there is more
14 than one class or group of limited partners, the plan of
15 merger shall be approved by those limited partners who own
16 more than a majority of the then current percentage or other
17 interests in the profits of the domestic limited partnership
18 owned by the limited partners in each class or group.
19 (2) In addition to the approval required by subsection
20 (1):
21 (a) If a domestic limited partnership is to be the
22 surviving entity, no person shall, as a result of the merger,
23 continue to be or become a general partner of the surviving
24 entity, unless such person specifically consents in writing to
25 continuing to be or to becoming, as the case may be, a general
26 partner of the surviving entity, and unless such written
27 consent is obtained from each such person who, as a result of
28 the merger, would become a general partner of the surviving
29 entity, such merger shall not become effective under s.
30 620.204.
31

1 (b) If a partnership other than a domestic limited
2 partnership is to be the surviving entity, no partner of a
3 domestic limited partnership that is a party to the merger
4 shall, as a result of the merger, become a general partner of
5 the surviving entity unless such partner specifically consents
6 in writing to becoming a general partner of the surviving
7 entity, and unless such written consent is obtained from each
8 person who, as a result of the merger, would become a general
9 partner of the surviving entity, such merger shall not become
10 effective under s. 620.204. Any person providing such consent
11 in writing shall be deemed to have voted in favor of the plan
12 of merger for purposes of s. 620.205.

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

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

30 (a) The date, time, and place of the meeting, if any,
31 at which the plan of merger shall be submitted for approval by

1 the partners of the domestic limited partnership, or, if the
2 plan of merger will be submitted for written approval or by
3 other action without a meeting, a statement to that effect.
4 (b) A copy or summary of the plan of merger.
5 (c) A clear and concise statement that, if the plan of
6 merger is effected, partners dissenting therefrom may be
7 entitled, if they comply with the provisions of s. 620.205
8 regarding the rights of dissenting partners, to be paid the
9 fair value of their partnership interests, which shall be
10 accompanied by a copy of s. 620.205.
11 (d) A statement of, or a statement of the method of
12 determining, the "fair value," as defined in s. 620.205(1)(b),
13 of an interest in the limited partnership as determined by the
14 general partners of the limited partnership, which statement
15 may consist of a reference to the applicable provisions of
16 such limited partnership's partnership agreement that
17 determine the fair value of an interest in the limited
18 partnership for these purposes, and which shall constitute an
19 offer by the limited partnership to purchase at such fair
20 value any partnership interests of a "dissenter," as defined
21 in s. 620.205(1)(a), unless and until such a dissenter's right
22 to receive the fair value of the dissenter's interests in the
23 limited partnership are is terminated pursuant to s.
24 620.205(8).
25 (e) The date on which such notification was mailed or
26 delivered to the partners.
27 (f) Any other information concerning the plan of
28 merger.
29 (5) The notification required by subsection (3) shall
30 be deemed to be given at the earliest of:
31 (a) The date such notification is received;

1 (b) Five days after the date such notification is
2 deposited in the United States mail addressed to the partner
3 at the partner's address as it appears in the books and
4 records of the limited partnership, with postage thereon
5 prepaid;

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

9 (d) The date such notification is given in accordance
10 with the provisions of the limited partnership's partnership
11 agreement.

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

19 (a) Change the amount or kind of partnership
20 interests, interests, shares, obligations, other securities,
21 cash, rights, or any other property to be received by the
22 limited partners of such domestic limited partnership in
23 exchange for or on conversion of their partnership interests;

24 (b) If the surviving entity is a partnership, change
25 any term of the partnership agreement of the surviving entity,
26 except for changes that otherwise could be adopted by the
27 general partners of the surviving entity;

28 (c) If the surviving entity is not a partnership,
29 change any term of the articles of incorporation or comparable
30 governing document of the surviving entity, except for changes

31

1 that otherwise could be adopted by the board of directors or
2 comparable representatives of the surviving entity; or

3 (d) Change any of the terms and conditions of the plan
4 of merger if any such change, alone or in the aggregate, would
5 materially and adversely affect the limited partners, or any
6 class or group of limited partners, of such domestic limited
7 partnership.

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

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

29 620.203 Articles of merger.--

30 (1) After a plan of merger is approved by each
31 domestic limited partnership and other business entity that is

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

1 of the merger, the effective date shall be the date on which
2 the articles of merger are filed.

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

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

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

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

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

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

30 620.204 Effect of merger.--

31 (1) When a merger becomes effective:

1 (a) Every domestic limited partnership and other
2 business entity that is a party to the merger merges into the
3 surviving entity and the separate existence of every domestic
4 limited partnership and other business entity that is a party
5 to the merger except the surviving entity ceases.

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

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

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

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

27 (f) If a general partner of a partnership formed or
28 organized under the laws of this state or any other state,
29 country, or jurisdiction that is a party to the merger is not
30 a general partner of the surviving entity, the former general
31 partner shall have no liability for obligations arising out of

1 the rights of dissenters with respect to such merger under
2 applicable law or for any obligation incurred after the
3 effective date of the merger, except to the extent that a
4 former creditor of the partnership in which the former general
5 partner was a general partner extends credit to the surviving
6 entity reasonably believing that the former general partner
7 continued as a general partner of the surviving entity.
8 (g) If a domestic limited partnership is the surviving
9 entity, the certificate of limited partnership and partnership
10 agreement of such partnership in effect immediately prior to
11 the time the merger becomes effective shall be the certificate
12 of limited partnership and partnership agreement of the
13 surviving entity, except as amended or restated to the extent
14 provided in the plan of merger.
15 (h) The partnership interests, interests, shares,
16 obligations, or other securities, and the rights to acquire
17 partnership interests, membership interests, shares,
18 obligations, or other securities, of each domestic limited
19 partnership and other business entity that is a party to the
20 merger shall be converted into partnership interests,
21 interests, shares, obligations, or other securities, or rights
22 to such securities, of the surviving entity or any other
23 domestic limited partnership or other business entity or, in
24 whole or in part, into cash or other property as provided in
25 the plan of merger, and the former holders of partnership
26 interests, interests, shares, obligations, or other
27 securities, or rights to such securities, shall be entitled
28 only to the rights provided in the plan of merger and to their
29 rights as dissenters, if any, under s. 620.205, ss.
30 607.1301-607.1320, s. 608.4384, or other applicable law.
31

1 (2) Unless otherwise provided in the plan of merger, a
2 merger of a domestic limited partnership, including a domestic
3 limited partnership that is not the surviving entity, shall
4 not require such domestic limited partnership to wind up its
5 affairs under s. 620.159 or pay its liabilities and distribute
6 its assets under s. 620.162.

7 620.205 Rights of dissenting partners.--

8 (1) For purposes of this section:

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

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

25 (2) Each partner of a domestic limited partnership
26 that is a party to a merger shall have the right to be paid
27 the fair value of such partner's partnership interests as a
28 dissenter as provided in this section.

29 (3) Not later than 20 days after the date on which the
30 notification required by s. 620.202(3) is given to the
31 partners, or if such notification was waived in writing by the

1 dissenter, not later than 20 days after the date of such
2 written waiver, the dissenter shall deliver to the limited
3 partnership a written demand for payment to the dissenter of
4 the fair value of the interests as to which the dissenter
5 seeks relief that states the dissenter's address, the number
6 and class, if any, of those interests, and, at the election of
7 the dissenter, the amount claimed by the dissenter as the fair
8 value of the interests. The statement of fair market value by
9 the dissenter, if any, shall constitute an offer by the
10 dissenter to sell the partnership interests to the limited
11 partnership for such amount. A dissenter may dissent as to
12 less than all the partnership interests registered in the
13 dissenter's name. In such event, the dissenter's rights shall
14 be determined as if the partnership interests as to which the
15 dissenter has dissented and the dissenter's remaining
16 partnership interests were registered in the names of
17 different partners. If the interests as to which a dissenter
18 seeks relief are represented by certificates, the dissenter
19 shall deposit such certificates with the limited partnership
20 simultaneously with the delivery of the written demand for
21 payment. Upon receiving a demand for payment from a dissenter
22 who is a record holder of uncertificated interests, the
23 limited partnership shall make an appropriate notation of the
24 demand for payment in its records. The limited partnership
25 may restrict the transfer of uncertificated interests from the
26 date the dissenter's written demand for payment is delivered.
27 A written demand for payment served on the domestic limited
28 partnership in which the dissenter is a partner shall
29 constitute service on the surviving entity.
30
31

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

1 of merger was approved by its partners, requesting a
2 determination of the fair value of the dissenter's partnership
3 interests. The court shall also determine whether each
4 dissenter that is a party to such proceeding, as to whom the
5 limited partnership or the surviving entity requests the court
6 to make such determination, is entitled to receive payment of
7 the fair value for the dissenter's partnership interests.
8 Other dissenters, within the 90-day period after a dissenter
9 delivers a written demand to the partnership, may join such
10 proceeding as plaintiffs or may be joined in any such
11 proceeding as defendants, and any two or more such proceedings
12 may be consolidated. If the limited partnership or surviving
13 entity commences such a proceeding, all dissenters, whether or
14 not residents of this state, other than dissenters who have
15 agreed in writing with the limited partnership or the
16 surviving entity as to the fair value of the partnership
17 interests as to which such dissenters seek relief, shall be
18 made parties to such action as an action against their
19 partnership interests. The limited partnership or the
20 surviving entity shall serve a copy of the initial pleading in
21 such proceeding upon each dissenter who is a party to such
22 proceeding and who is a resident of this state in the manner
23 provided by law for the service of a summons and complaint and
24 upon each such dissenter who is not a resident of this state
25 either by registered or certified mail and publication or in
26 such manner as is permitted by law. The jurisdiction of the
27 court in such a proceeding shall be plenary and exclusive.
28 All dissenters who are proper parties to the proceeding are
29 entitled to judgment against the limited partnership or the
30 surviving entity for the amount of the fair value of their
31 partnership interests as to which payment is sought hereunder.

1 The court may, if the court so elects, appoint one or more
2 persons as appraisers to receive evidence and recommend a
3 decision on the question of fair value. The appraisers shall
4 have such power and authority as is specified in the order of
5 their appointment or an amendment thereof. The limited
6 partnership shall pay each dissenter the amount found to be
7 due such dissenter within 10 days after final determination of
8 the proceedings. Upon payment of the judgment, the dissenter
9 shall cease to have any interest in the partnership interests
10 as to which payment is sought hereunder.

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

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

1 reasonable compensation to any attorney or expert employed by
2 the dissenter in the proceeding.

3 (8) The right of a dissenter to receive fair value for
4 and the obligation to sell such partnership interests as to
5 which the dissenter seeks relief and the right of the domestic
6 limited partnership or the surviving entity to purchase such
7 interests and the obligation to pay the fair value of such
8 interests shall terminate if:

9 (a) The dissenter has not complied with this section,
10 unless the limited partnership or the surviving entity waives
11 in writing such noncompliance;

12 (b) The limited partnership abandons the merger or is
13 finally enjoined or prevented from carrying out the merger, or
14 the partners rescind their adoption or approval of the merger;

15 (c) The dissenter withdraws the demand, with the
16 consent of the limited partnership or the surviving entity; or

17 (d)1. The partnership agreement of the domestic
18 limited partnership in which the dissenter was a partner does
19 not provide a basis or method for determining and paying the
20 dissenter the fair value of the dissenter's partnership
21 interests.

22 2. The limited partnership or the surviving entity and
23 the dissenter have not agreed upon the fair value of the
24 dissenter's partnership interests.

25 3. Neither the dissenter, the limited partnership nor
26 the surviving entity has filed or is joined in a complaint
27 under subsection (5) within the 90-day period provided in that
28 subsection.

29 (9) Unless otherwise provided in the partnership
30 agreement of the domestic limited partnership in which the
31 dissenter was a partner, after the date the dissenter delivers

1 the written demand for payment in accordance with subsection
2 (3) until either the termination of the rights and obligations
3 arising from it or the purchase of the dissenter's partnership
4 interests by the limited partnership or the surviving entity,
5 the dissenter shall be entitled only to payment as provided in
6 this section and shall not be entitled to any other rights
7 accruing from such interests, including voting or distribution
8 rights. If the right to receive fair value is terminated
9 other than by the purchase of the dissenter's partnership
10 interests by the limited partnership or the surviving entity,
11 all rights of the dissenter as a partner of the limited
12 partnership shall be reinstated effective as of the date the
13 dissenter delivered the written demand for payment, including
14 the right to receive any intervening payment or other
15 distribution with respect to the dissenter's interests in the
16 limited partnership, or, if any such rights have expired or
17 any such distribution other than a cash payment has been
18 completed, in lieu thereof at the election of the surviving
19 entity, the fair value thereof in cash as determined by the
20 surviving entity as of the time of such expiration or
21 completion, but without prejudice otherwise to any action or
22 proceeding of the limited partnership that may have been taken
23 by the limited partnership on or after the date the dissenter
24 delivered the written demand for payment.

25 (10) A partner who is entitled under this section to
26 demand payment for the partner's partnership interests shall
27 not have any right at law or in equity to challenge the
28 validity of any merger that creates the partner's entitlement
29 to demand payment hereunder, or to have the merger set aside
30 or rescinded, except with respect to compliance with the
31 provisions of the limited partnership's partnership agreement

1 or if the merger is unlawful or fraudulent with respect to
2 such partner.
3 (11) Unless otherwise provided in the partnership
4 agreement of the domestic limited partnership in which the
5 dissenter was a partner, this section does not apply with
6 respect to a plan of merger if, as of the date fixed for the
7 determination of partners entitled to notice of a plan of
8 merger:
9 (a) The partnership interests of the limited
10 partnership were held of record by not fewer than 500
11 partners; or
12 (b) The partnership interests were registered on a
13 national securities exchange or quoted on the National
14 Association of Securities Dealers Automated Quotation System.
15 Section 6. This act shall take effect upon becoming a
16 law.
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