

CHAPTER 249

CORPORATION MERGER OR CONSOLIDATION

H. F. 153

AN ACT to amend chapter four hundred ninety-one (491), Code 1946, to authorize merger or consolidation of corporations.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Chapter four hundred ninety-one (491), Code 1946 is
2 amended by adding thereto the following new sections:

3 **Consolidation and merger.** (1) "Merger" means the uniting of
4 two or more corporations into one corporation in such manner that
5 the corporation resulting from the merger retains its corporate
6 existence and absorbs the other constituent corporation or corporations
7 which thereby lose their or its corporate existence.

8 (2) "Consolidation" means the uniting of two or more corporations
9 into a single new corporation, all of the constituent corporations
10 thereby ceasing to exist as separate entities.

1 SEC. 2. **Procedure for merger.** Any two or more corporations
2 whether heretofore or hereafter organized may merge into one of
3 such corporations in the following manner:

4 The board of directors of each corporation shall, by resolution
5 adopted by a majority vote of the members of each such board,
6 approve a plan of merger setting forth:

7 (a) The names of the corporations proposing to merge, and the
8 name of the corporation into which they propose to merge, which is
9 hereinafter designated as the surviving corporation.

10 (b) The terms and conditions of the proposed merger.

11 (c) The manner and basis of converting the shares of each merging
12 corporation into shares or other securities or obligations of the surviv-
13 ing corporation.

14 (d) A statement of any changes in the articles of incorporation
15 of the surviving corporation to be effected by such merger.

16 (e) Such other provisions with respect to the proposed merger
17 as are deemed necessary or desirable.

1 SEC. 3. **Procedure for consolidation.** Any two or more corporations
2 whether heretofore or hereafter organized may consolidate into a new
3 corporation in the following manner:

4 The board of directors of each corporation, shall by a resolution
5 adopted by a majority vote of the members of each such board, approve
6 a plan of consolidation setting forth:

7 (a) The names of the corporations proposing to consolidate, and
8 the name of the new corporation into which they propose to consolidate,
9 which is hereinafter designated as the new corporation.

10 (b) The terms and conditions of the proposed consolidation.

11 (c) The manner and basis of converting the shares of each corpora-
12 tion into shares, or other securities, or obligations of the new corpora-
13 tion.

14 (d) With respect to the new corporation, all of the statements
15 required to be set forth in articles of incorporation for corporations
16 organized under this chapter.

17 (e) Such other provisions with respect to the proposed consolida-
18 tion as are deemed necessary or desirable.

1 **SEC. 4. Meetings of shareholders.** The board of directors of each
2 corporation, upon approving such plan of merger or plan of consolida-
3 tion, shall, by resolution, direct that the plan be submitted to a vote
4 at a meeting of shareholders, which may be either an annual or a
5 special meeting. Written or printed notice shall be delivered not less
6 than twenty days before such meeting, either personally or by mail,
7 to each shareholder of record entitled to vote at such meeting. Such
8 notice shall state the place, day, hour and purpose of the meeting, and
9 a copy or a summary of the plan of merger or plan of consolidation,
10 as the case may be, shall be included in or enclosed with such notice.

1 **SEC. 5. Approval by shareholders.** At each such meeting, a vote
2 of the shareholders entitled to vote thereat shall be taken on the
3 proposed plan of merger or consolidation. The plan of merger or
4 consolidation shall be approved upon receiving the affirmative vote
5 of the holders of at least two-thirds of the outstanding shares entitled
6 to vote at such meeting, of each of such corporations, unless any class
7 of shares of any such corporations is entitled to vote as a class in
8 respect thereof in which event, as to such corporation, the plan of
9 merger or consolidation shall be approved upon receiving the affirma-
10 tive vote of the holders of at least a majority of the outstanding shares
11 of each such class of shares entitled to vote as a class in respect thereof
12 and two-thirds of the total outstanding shares entitled to vote at such
13 meeting. Any class of shares of any such corporation shall be entitled
14 to vote as a class if the plan of merger or consolidation, as the case may
15 be, contains any provision which, if contained in a proposed amend-
16 ment to articles of incorporation, would entitle such class of shares
17 to vote as a class.

1 **SEC. 6. Articles of merger or consolidation.** Upon such approval,
2 articles of merger or articles of consolidation shall be executed in
3 duplicate by each corporation by its president or a vice president, and
4 verified by him, attested by its secretary or an assistant secretary, and
5 shall be acknowledged and shall set forth:

6 (a) The plan of merger or the plan of consolidation.
7 (b) As to each corporation, the number of shares outstanding,
8 and the number of shares entitled to vote, and, if the shares of any
9 class are entitled to vote as a class, the designation of each such class
10 and the number of outstanding shares thereof entitled to vote.

11 (c) As to each corporation, the number of shares voted for and
12 against such plan respectively, and, if the shares of any class are
13 entitled to vote as a class, the number of shares of each such class voted
14 for and against such plan, respectively.

1 **SEC. 7. Filing articles of merger or consolidation.** A duly executed
2 and acknowledged copy of the articles of merger or consolidation shall
3 be forwarded to the Secretary of State for filing and recording as
4 provided in section four hundred ninety-one point five (491.5) of this
5 chapter, and if a new corporation is created under the provisions of
6 this chapter as the result of consolidation or if an existing Iowa
7 corporation becomes the survivor corporation as the result of a merger
8 the Secretary of State shall then forward said articles to the County

9 Recorder of deeds of the county where the principal place of business
10 of the new corporation or the existing Iowa corporation is located as
11 provided in section four hundred ninety-one point five (491.5) of this
12 chapter.

13 The procedure set forth in sections four hundred ninety-one point
14 six (491.6) to four hundred ninety-one point nine (491.9) inclusive
15 of this chapter shall be applicable to the filing of articles of consolida-
16 tion or merger.

17 If as the result of a consolidation a new Iowa corporation is formed
18 then the fees provided for in section four hundred ninety-one point
19 eleven (491.11) of this chapter shall be applicable. If as the result of
20 a merger an existing Iowa corporation becomes the survivor the
21 articles of merger shall be deemed an amendment to its articles of
22 incorporation and section four hundred ninety-one point twenty
23 (491.20) of this chapter shall be applicable.

1 **SEC. 8. Effective date of merger or consolidation.** Upon the pay-
2 ment of all fees and charges and upon the filing of the articles of
3 consolidation or merger with the Secretary of State the Secretary of
4 State shall issue to the corporation or its representative a certificate
5 of consolidation or a certificate of merger and upon the issuance of
6 said certificate the merger or consolidation shall be effected.

1 **SEC. 9.** Notice of the articles of consolidation or merger shall be
2 given as provided in section four hundred ninety-one point seven
3 (491.7).

1 **SEC. 10. Effect of merger or consolidation.** When such merger or
2 consolidation has been effected:

3 (a) The several corporations parties to the plan of merger or
4 consolidation shall be a single corporation, which, in the case of a
5 merger, shall be that corporation designated in the plan of merger as
6 the surviving corporation, and, in the case of a consolidation, shall
7 be the new corporation provided for in the plan of consolidation.

8 (b) The separate existence of all corporations parties to the plan
9 of merger or consolidation, except the surviving or new corporation,
10 shall cease.

11 (c) Such surviving or new corporation shall have all the rights,
12 privileges, immunities and powers and shall be subject to all the duties
13 and liabilities of a corporation organized under this chapter.

14 (d) Such surviving or new corporation shall thereupon and there-
15 after possess all the rights, privileges, immunities and franchises, as
16 well of a public as of a private nature, of each of the merging or con-
17 solidating corporations; and all property, real, personal and mixed, and
18 all debts due on whatever account, including subscriptions to shares,
19 and all other choses in action, and all and every other interest, of
20 or belonging to or due to each of the corporations so merged or con-
21 solidated, shall be taken and deemed to be transferred to and vested
22 in such single corporation without further act or deed; and the title
23 to any real estate, or any interest therein, vested in any of such cor-
24 porations shall not revert or be in any way impaired by reason of such
25 merger or consolidation.

26 (e) Such surviving or new corporation shall thenceforth be
27 responsible and liable for all the liabilities and obligations of each of

28 the corporations so merged or consolidated; and any claim existing or
29 action or proceeding pending by or against any of such corporations
30 may be prosecuted to judgment as if such merger or consolidation had
31 not taken place, or such surviving or new corporation may be substitut-
32 ed in its place. Neither the rights of creditors nor any liens upon the
33 property of any such corporation shall be impaired by such merger
34 or consolidation.

35 (f) In the case of a merger, the articles of incorporation of the
36 surviving corporation shall be deemed to be amended to the extent, if
37 any, that changes in its articles of incorporation are stated in the
38 articles of merger; and, in the case of a consolidation, the statements
39 set forth in the articles of consolidation and which are required or
40 permitted to be set forth in the articles of incorporation of corpora-
41 tions organized under this chapter shall be deemed to be the articles
42 of incorporation of the new corporation.

43 (g) The aggregate amount of the net assets of the merging or
44 consolidating corporations which was available for the payment of
45 dividends immediately prior to such merger or consolidation, to the
46 extent that the amount thereof is not transferred to stated capital by
47 the issuance of shares or otherwise, shall continue to be available for
48 the payment of dividends by such surviving or new corporation.

1 **SEC. 11. Merger or consolidation of domestic and foreign corpora-**
2 **tions.** One or more foreign corporations and one or more domestic
3 corporations whether heretofore or hereafter organized may be
4 merged or consolidated in the following manner, provided such merger
5 or consolidation is permitted by the laws of the state under which
6 each such foreign corporation is organized:

7 (a) Each domestic corporation shall comply with the provisions
8 of this chapter with respect to the merger or consolidation, as the
9 case may be, of domestic corporations and each foreign corporation
10 shall comply with the applicable provisions of the laws of the state
11 under which it is organized.

12 (b) If the surviving or new corporation, as the case may be,
13 is to be governed by the laws of any state other than this state, it
14 shall comply with the provisions of the statutes of the state of Iowa
15 with respect to foreign corporations if it is to do business in this state,
16 and in every case it shall file with the secretary of state of this state.

17 (1) An agreement that it may be served with process in this state
18 in any proceeding for the enforcement of any obligation of any
19 domestic corporation which is a party to such merger or consolidation
20 and in any proceeding for the enforcement of the rights of a dissenting
21 shareholder of any such domestic corporation against the surviving
22 or new corporation.

23 (2) The appointment of a resident agent as provided for in sub-
24 section six (6) of section four hundred ninety-four point two (494.2)
25 of the Code 1946.

26 (3) An agreement that it will promptly pay to the dissenting share-
27 holders of any such domestic corporation the amount, if any, to
28 which they shall be entitled under the provisions of this act with
29 respect to the rights of dissenting shareholders.

30 Insofar as the state of Iowa is concerned, the effect of such merger

31 or consolidation shall be the same as in the case of the merger or
32 consolidation of domestic corporations, if the surviving or new
33 corporation is to be governed by the laws of this state. If the surviving
34 or new corporation is to be governed by the laws of any state other
35 than this state, the effect of such merger or consolidation shall be the
36 same as in the case of the merger or consolidation of domestic corpora-
37 tions except insofar as the laws of such other state provide otherwise.

1 **SEC. 12. Rights of dissenting shareholders.** If a shareholder of a
2 corporation which is a party to a merger or consolidation shall file
3 with such corporation, prior to or at the meeting of shareholders at
4 which the plan of merger or consolidation is submitted to a vote, a
5 written objection to such plan of merger or consolidation, and shall
6 not vote in favor thereof, and such shareholder, within twenty days
7 after the merger or consolidation is effected, shall make written
8 demand on the surviving or new corporation for payment of the fair
9 value of his shares as of the day prior to the date on which the vote
10 was taken approving the merger or consolidation, the surviving or
11 new corporation shall pay to such shareholder, upon surrender of
12 his certificate or certificates representing said shares, such fair value
13 thereof. Such demand shall state the number and class of the shares
14 owned by such dissenting shareholder. Any shareholder failing to
15 make demand within the twenty day period shall be conclusively
16 presumed to have consented to the merger or consolidation and shall
17 be bound by the terms thereof.

18 If within thirty days after the date on which such merger or
19 consolidation was effected the value of such shares is agreed upon
20 between the dissenting shareholder and the surviving or new corpora-
21 tion payment therefor shall be made within ninety days after the date
22 on which such merger or consolidation was effected, upon the surren-
23 der of his certificate or certificates representing said shares. Upon
24 payment of the agreed value the dissenting shareholder shall cease
25 to have any interest in such shares or in the corporation.

26 If within such period of thirty days the shareholder and the
27 surviving or new corporation do not so agree, then the dissenting
28 shareholder may, within sixty days after the expiration of the thirty
29 day period, file a petition in any court of competent jurisdiction within
30 the state and judicial subdivision thereof in which the registered
31 office or the principal place of business of the surviving or new corpora-
32 tion is situated, asking for a finding and determination of the fair
33 value of such shares, and shall be entitled to judgment against the
34 surviving or new corporation for the amount of such fair value as
35 of the day prior to the date on which such vote was taken approving
36 such merger or consolidation, together with interest thereon at the
37 rate of five percentum per annum to the date of such judgment. The
38 action shall be prosecuted as an equitable action and the practice and
39 procedure shall conform to the practice and procedure in equity cases.
40 The judgment shall be payable only upon and simultaneously with the
41 surrender to the surviving or new corporation of the certificate or
42 certificates representing said shares. Upon payment of the judgment,
43 the dissenting shareholder shall cease to have any interest in such
44 shares, or in the surviving or new corporation. Such shares may be
45 held and disposed of by the surviving or new corporation as it may

46 see fit. Unless the dissenting shareholder shall file such petition
 47 within the time herein limited, such shareholder and all persons
 48 claiming under him shall be conclusively presumed to have approved
 49 and ratified the merger or consolidation and shall be bound by the
 50 terms thereof.

51 The right of a dissenting shareholder to be paid the fair value of
 52 his shares as herein provided shall cease if and when the corporation
 53 shall abandon the merger or consolidation.

54 Shares acquired by the corporation pursuant to the payment of
 55 the agreed value thereof or to the payment of judgment entered
 56 therefor as in this section provided may be held and disposed of by
 57 the corporation as it shall see fit.

1 SEC. 13. **Issuance of stock.** All stock issued in connection with
 2 such merger or consolidation shall be issued pursuant to the provisions
 3 of chapter four hundred ninety-two (492) of the Iowa code and
 4 nothing in this amendment shall be construed as eliminating the
 5 requirements of said chapter.

1 SEC. 14. If any paragraph, sentence or word, or other part of this
 2 act is held to be unconstitutional, it shall not affect the validity of
 3 the remainder thereof, it being the intention of the legislature that the
 4 remaining portion thereof should become the law.

1 SEC. 15. This act being deemed of immediate importance shall
 2 be in full force and effect from and after its passage and publication
 3 in Hudson Herald, a newspaper published at Hudson, Iowa and the
 4 Cedar Rapids Gazette, a newspaper published at Cedar Rapids, Iowa.

Approved March 14, 1947.

I hereby certify that the foregoing act was published in the Hudson Herald, March
 20, 1947, and the Cedar Rapids Gazette, March 18, 1947.

ROLLO H. BERGESON, *Secretary of State.*

CHAPTER 250

MULTIPLE HOUSING ACT

S. F. 213

AN ACT to provide for the formation of associations to purchase or build and own
 residential, business properties upon a co-operative basis. To provide for articles
 of co-operation of such associations and to establish the powers, duties and
 liabilities of the association and the members thereof.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. **Articles.** Any two or more persons of full age, a
 2 majority of whom shall be citizens of the state, may organize them-
 3 selves for the following or similar purposes: Ownership of residential,
 4 business property on a co-operative basis. A corporation is a person
 5 within the meaning of this act. The organizers shall adopt, and sign
 6 and acknowledge the articles of co-operation, stating the name by
 7 which the co-operation shall be known, the location of its principal
 8 place of business, its business or objects, the number of trustees,
 9 directors, managers or other officers to conduct the same, the names