

**504.1103 Action on plan by board, members, and third persons.**

1. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 3 require a greater vote or voting by class, or the articles or bylaws impose other requirements, a plan of merger for a corporation must be approved by all of the following to be adopted:

a. The board.

b. The members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

2. If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

3. The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

5. If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

6. Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 504.1004 or 504.1023. The plan must be approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

7. After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned subject to any contractual rights without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

2004 Acts, ch 1049, §127, 192

Referred to in §504.1101, 504.1104, 504.1106