

**490.1107 Effect of merger or share exchange.**

1. When a merger becomes effective, all of the following apply:
  - a. The domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be.
  - b. The separate existence of every domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, ceases.
  - c. All property owned by, and every contract right possessed by, each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are the property and contract rights of the survivor without transfer, reversion, or impairment.
  - d. All debts, obligations, and other liabilities of each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are debts, obligations, or liabilities of the survivor.
  - e. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger.
  - f. If the survivor is a domestic entity, the articles of incorporation and bylaws or the organic rules of the survivor are amended to the extent provided in the plan of merger.
  - g. The articles of incorporation and bylaws or the organic rules of a survivor that is a domestic entity and is created by the merger become effective.
  - h. The shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted in accordance with the terms of the merger into shares, or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them by those terms or to any rights they may have under [subchapter XIII](#) or the organic law governing the eligible entity or foreign corporation.
  - i. Except as provided by law or the terms of the merger, all the rights, privileges, franchises, and immunities of each entity that is a party to the merger, other than the survivor, are the rights, privileges, franchises, and immunities of the survivor.
  - j. If the survivor exists before the merger, all of the following apply:
    - (1) All the property and contract rights of the survivor remain its property and contract rights without transfer, reversion, or impairment.
    - (2) The survivor remains subject to all its debts, obligations, and other liabilities.
    - (3) Except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.
2. When a share exchange becomes effective, the shares or eligible interests in the acquired entity that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under [subchapter XIII](#) or under the organic law governing the acquired entity.
3. Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:
  - a. A person who becomes subject to new interest holder liability in respect of an entity as a result of a merger or share exchange shall have that new interest holder liability only in respect of interest holder liabilities that arise after the merger or share exchange becomes effective.
  - b. If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of such party or acquired entity which were exchanged in the merger or share exchange, were canceled in the merger, or the terms and conditions of which relating to interest holder liability were amended pursuant to the merger, then all of the following apply:
    - (1) The merger or share exchange does not discharge that prior interest holder liability

with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

(2) The provisions of the organic law governing any entity for which the person had that prior interest holder liability shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subparagraph (1), as if the merger or share exchange had not occurred.

(3) The person shall have such rights of contribution from other persons as are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subparagraph (1), as if the merger or share exchange had not occurred.

(4) The person shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

c. If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on such interest holder liability.

d. A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

4. Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to have done all of the following:

a. Appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights.

b. Agreed that it will promptly pay the amount, if any, to which such shareholders are entitled under [subchapter XIII](#).

5. Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

6. Property held for a charitable purpose under the law of this state by a domestic or foreign corporation or eligible entity immediately before a merger becomes effective shall not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy pres or dealing with nondiversion of charitable assets.

7. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which is made to an entity that is a party to a merger that is not the survivor and which takes effect or remains payable after the merger inures to the survivor.

8. A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.

[89 Acts, ch 288, §127](#); [2002 Acts, ch 1154, §71, 125](#); [2019 Acts, ch 24, §104](#); [2021 Acts, ch 165, §154, 230](#)

Referred to in [§490.858](#)

2021 amendment effective January 1, 2022; [2021 Acts, ch 165, §230](#)

Section stricken and rewritten