

§ 58-65-155. Merger or consolidation, proceedings for.

(a) Mergers and Consolidations Allowed. – Any two or more hospital service corporations organized under or subject to the provisions of this Article and Article 66 of this Chapter, as determined by the Commissioner of Insurance may be (i) merged into one of the constituent corporations, designated as the surviving corporation, or (ii) consolidated into a new corporation to be formed by the means of such consolidation of the constituent corporations, designated as the resulting or consolidated corporation, and the directors, the trustees, or a majority of directors or trustees, of the merging or consolidating corporations may enter into an agreement signed by them and under the corporate seals of the respective corporations.

(b) Written Agreement Required. – The terms of any merger or consolidation allowed under this section shall be contained in a written agreement. All written agreements shall contain the following:

- (1) The terms and conditions of the consolidation or merger.
- (2) The mode of carrying the consolidation or merger into effect.
- (3) Any facts as can be stated in the case of a consolidation or merger, and other details as to conversion of certificates of the subscribers as are deemed necessary or proper.

(c) Notice of Agreement. – Agreements for any merger or consolidation allowed under this section shall be submitted to the certificate holders of each constituent corporation, at a separate meeting thereof, called for the purpose of taking the consolidation or merger into consideration. Notice of place and subject of the meeting shall be required and shall meet all of the following requirements:

- (1) The notice shall be given by publication once a week for two consecutive weeks in some newspaper published in Raleigh, North Carolina, and in the counties in which the principal offices of the constituent corporations are located. If there is no paper published in the county of the principal office of the constituent corporations, then the required notice shall be posted at the courthouse door of the applicable county or counties for a period of two weeks.
- (2) The required printed or posted notices shall be in a form and of a size as the Commissioner of Insurance may approve.
- (3) A true copy of the required notices shall be filed with the Commissioner of Insurance.
- (4) The publication and filing of notices shall be completed at least 15 days prior to the date set for the meeting, and due proof thereof shall be filed with the Commissioner of Insurance at least 10 days prior to the date of the meeting.

(d) Meeting to Adopt Agreement. – At the meeting required for an agreement for any merger or consolidation allowed under this section, those present in person or represented by proxy shall constitute a quorum and the agreement for consolidation or merger shall be considered and voted upon by ballot in person or by proxy or both taken for the adoption or rejection of the same. If the votes of two thirds of those at the meeting voting shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the president and secretary of each corporation, under the seal of each corporation.

The adopted and certified agreement shall be signed by the president or vice-president and secretary or assistant secretary of each of corporation under the corporate seals and acknowledged by the president or vice-president of each corporation before any officer authorized by the laws of this State to take acknowledgement of deeds to be the respective act, deed, and agreement of each of the corporations.

(e) Commissioner Approval of Merger or Consolidation Agreements. – In advance of any merger or consolidation allowed under this section, the agreement shall be submitted to and

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approved by the Commissioner of Insurance for approval. The Commissioner's approval shall be indicated by his or her signature being affixed to the agreement under the seal of the office.

The Commissioner shall not approve any consolidation or merger agreement or plans, unless, after a hearing, the Commissioner finds that it is fair, equitable to certificate holders and members, consistent with law, and will not conflict with the public interest.

(f) Filing of Agreement With Secretary of State. – Certified and acknowledged agreements for mergers or consolidations allowed under this section with the approval of the Commissioner of Insurance noted thereon, shall be filed in the office of the Secretary of State. The agreement on file shall be deemed to be the agreement and act of consolidation or merger of the corporations. A copy of the agreement and act of consolidation or merger duly certified by the Secretary of State under the seal of the office shall also be recorded in the office of the register of deeds of the county of this State in which the principal office of the surviving or consolidated corporation is, or is to be established, and in the office of the registers of deeds of the counties of this State in which the respective corporations so merging or consolidating shall have their original certificates of incorporation recorded, and also in the office of the register of deeds in each county in which either or any of the corporations entering into merger or consolidation owns any real estate. This record, or a certified copy of the record, shall be evidence of the agreement and act of consolidation or merger of the applicable corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to the consolidation or merger.

For the filing of the agreement as provided for by this subsection, the Secretary of State is entitled to receive such fees only in the amount that would have been received had a new corporation been formed.

(g) Effect of Filing and Recording. – When an agreement shall have been signed, authorized, adopted, acknowledged, approved, and filed and recorded as required by this section, for all purposes of the laws of this State, the separate existence of all constituent corporations, parties to the agreement, or of all of the constituent corporations, except the one into which the other or others of the constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of the corporations, as the case may be, in accordance with the provisions of the filed and recorded agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, of each of the constituent corporations, and all and singular, the rights, privileges, powers and franchises of each of the corporations, and all property, real, personal and mixed, and all debts due to any of the constituent corporations on whatever account, shall be vested in the corporation resulting from or surviving such consolidation or merger, and all property, rights, privileges, powers, and franchises and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether vested by deed or otherwise, under the laws of this State, vested in any constituent corporations shall not revert or be in any way impaired by reason of consolidation or merger; provided, however, that all rights of creditors and all liens upon the property of either of or any of the constituent corporations shall be preserved, unimpaired, limited in lien to the property affected by any lien at the time of the merger or consolidation, and all debts, liabilities, and duties of the respective constituent corporations shall thenceforth attach to the resulting or surviving corporation, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it; and further provided that notice of any liens, debts, liabilities, and duties is given in writing to the resulting or surviving corporation within six months after the date of the filing of the agreement of merger in the office of the Secretary of State. All applicable liens, debts, liabilities, and duties of which notice is not given as required by this subsection are forever barred. The certificate of incorporation of the surviving corporation shall be deemed to be

amended to the extent, if any, that the changes in its certificates of incorporation are stated in the agreement of merger. All certificates theretofore issued and outstanding by each constituent corporation in good standing upon the date of the filing of the agreement with the Secretary of State without reissuance thereof by the resulting or surviving corporation shall be the contract and agreement of the resulting or surviving corporation with each of the certificate holders thereof and subject to all terms and conditions thereof and of the agreement of merger filed in the office of the Secretary of State.

Any action or proceeding pending by or against any of the corporations consolidated or merged may be prosecuted to judgment as if such consolidation or merger had not taken place, or the corporations resulting from or surviving the consolidation or merger may be substituted in its place.

(h) **Liability.** – The liability of the constituent corporations to the certificate holders thereof, and the rights or remedies of the creditors thereof, or persons doing or transacting business with the corporations, shall not, in any way, be lessened or impaired by the consolidation or merger of two or more corporations under the provisions of this section, except as provided in this section.

(i) **Power and Authority of New or Surviving Corporation.** – When two or more corporations are consolidated or merged, the corporation resulting from or surviving the consolidation or merger shall have the power and authority to continue any contracts which any of the constituent corporations might have elected to continue. All contracts entered into between any constituent corporations and any other persons shall be and become the contract of the resulting corporations according to the terms and conditions of said contract and the agreement of consolidation or merger.

(j) **Objection to Merger or Consolidation.** – Any agreement for merger or consolidation as shall conform to the provisions of this section, shall be binding and valid upon all the subscribers, certificate holders and members of the constituent corporations, provided only that any subscriber, certificate holder or member who shall so indicate a disapproval of the consolidation or merger to the resulting, consolidated, or surviving corporation within 90 days after the filing of required agreement with the Secretary of State shall be entitled to receive all unearned portions of premiums paid on his or her certificate from and after the date of the receipt of the application by the resulting, surviving, or consolidated corporation. Each subscriber, certificate holder, or member who shall not so indicate his or her disapproval of the required agreement and the merger or consolidation within the required period of 90 days is deemed and presumed to have approved the agreement and the merger or consolidation and shall have waived his or her right to question the legality of the merger or consolidation.

(k) **Prohibition on Compensation.** – No director, officer, subscriber, certificate holder, or member of any corporation entering into an agreement under this section, except as is expressly provided by the plan of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatever, for in any manner aiding, promoting or assisting in the merger or consolidation. (1947, c. 820, s. 8; 1961, c. 1149; 1967, c. 823, s. 25; 2021-169, s. 1.)