317A.641 EFFECTIVE DATE OF MERGER OR CONSOLIDATION; EFFECT.

Subdivision 1. **Effective date.** A merger or consolidation is effective when the articles of merger or consolidation are filed with the secretary of state or on a later date named in the articles.

Subd. 2. **Effect on corporation; general.** When a merger or consolidation becomes effective:

(1) the constituent corporations become a single corporation, which in case of merger is a surviving corporation, or in case of consolidation is a new corporation;

(2) subject to clause (3) and section 317A.643, the separate existence of the constituent corporations except the surviving corporation ends;

(3) when the agreement of merger or consolidation expressly provides for the continuance of the corporate existence of a constituent corporation and expressly declares the purpose for the continuance, the corporate existence of the constituent corporation continues in the single corporation for the purpose declared in the agreement;

(4) the single corporation has the rights, privileges, immunities, and powers, and is subject to the duties and liabilities, of a corporation formed under this chapter;

(5) the single corporation has the rights, privileges, immunities, powers, and franchises, public and private, of each constituent corporation;

(6) all real or personal property, debts, including debts arising from a subscription for membership, and interests belonging to each constituent corporation are transferred to the single corporation without further act or deed;

(7) interest in real estate possessed by a constituent corporation does not revert to the grantor, or otherwise, nor is it in any way impaired by reason of the merger or consolidation; and the personal property of a constituent corporation does not revert by reason of the merger or consolidation;

(8) except where the will or other instrument provides otherwise, and subject to section 317A.671, a devise, bequest, gift, or grant contained in a will or other instrument, in trust or otherwise, made before or after the merger or consolidation has become effective, to or for any of the constituent corporations, inures to the single corporation;

(9) debts, liabilities, and obligations of each constituent corporation become the debts, liabilities, and obligations of the single corporation, just as if the debts, liabilities, and obligations had been incurred or contracted by the single corporation;

(10) existing claims or a pending action or proceeding by or against a constituent corporation may be prosecuted to judgment as though the merger or consolidation had not been effected, or the single corporation may be substituted for the constituent corporation;

(11) the liabilities of the members, officers, directors, or similar groups or persons, however denominated, of a constituent corporation are not affected by the merger or consolidation of a constituent corporation;

(12) the rights of creditors or liens upon the property of a constituent corporation are not impaired by the merger or consolidation, but the liens are limited to the property upon which they were liens immediately before the merger or consolidation;

(13) the articles of the surviving corporation are considered to be amended to the extent that changes in its articles are contained in a plan of merger; and

(14) in the case of a consolidation, the plan of consolidation constitutes the articles of incorporation of the new corporation.

Subd. 3. **Effect on fiduciary capacity.** (a) For purposes of this subdivision, "fiduciary capacity" means the capacities of trustee, executor, administrator, personal representative, guardian, conservator, receiver, escrow agent, agent for the investment of money, attorney-in-fact, or a similar capacity.

(b) Except where the will, declaration of trust, or other instrument provides otherwise, the single corporation is, without further act or deed, the successor of the constituent corporations in fiduciary capacities in which a constituent corporation was acting at the time of the merger or consolidation and is liable to the beneficiaries as fully as if the constituent corporation had continued its separate corporate existence.

(c) If a constituent corporation is nominated and appointed, or has been nominated and appointed, in a fiduciary capacity in a will, declaration of trust, or other instrument, order, or judgment before or after the merger or consolidation, then even if the will or other instrument, order, or judgment does not become operative or effective until after the merger or consolidation becomes effective, every fiduciary capacity and the rights, powers, privileges, duties, discretions, and responsibilities provided for in the nomination or appointment fully vest in and are to be exercised by the single corporation, whether there are one or more successive mergers or consolidations.

History: *1989 c 304 s 89*