

**17-78-204. Amendment or termination of agreement of merger.** (a) An agreement of merger of a domestic merging entity may be amended:

(1) In the same manner as the agreement was approved, if the agreement does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the agreement, but an interest holder that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the agreement that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by the interest holders of any party to the agreement;

(B) the public organic document or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the agreement, if the change would adversely affect the interest holder in any material respect.

(b) After an agreement of merger has been approved by a domestic merging entity and before a certificate of merger becomes effective, the agreement may be terminated:

(1) As provided in the agreement; or

(2) unless prohibited by the agreement, in the same manner as the agreement was approved.

(c) If an agreement of merger is terminated after a certificate of merger has been filed with the secretary of state and before the filing becomes effective, a certificate of termination, signed on behalf of a merging entity, shall be filed with the secretary of state before the time the certificate of merger becomes effective. The certificate of termination takes effect upon filing, and the merger is terminated and does not become effective. The certificate of termination shall contain:

(1) The name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;

(2) the date on which the certificate of merger was filed; and

(3) a statement that the merger has been terminated in accordance with this section.

**History:** L. 2009, ch. 47, § 14; July 1, 2010.