

§ 55A-11-02. Limitations on mergers by charitable or religious corporations.

(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only with any of the following:

- (1) A charitable or religious corporation.
- (2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation.
- (3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the survivor in the merger and continues to be a charitable or religious corporation after the merger.
- (4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members, as "member" is defined in G.S. 55A-1-40(16) or G.S. 57D-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the survivor in the merger.

(b) At least 30 days before consummation of any merger of a charitable or religious corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed plan of merger, shall be delivered to the Attorney General. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized.

(c) Without the prior written consent of the Attorney General, or approval of the superior court in a proceeding in which the Attorney General has been given notice, no member of a charitable or religious corporation may receive or retain any property as a result of a merger other than an interest as a member, as "member" is defined in G.S. 55A-1-40(16), in the survivor of the merger. The Attorney General may consent to the transaction, or the court shall approve the transaction, if it is fair and not contrary to the public interest. (1993, c. 398, s. 1; c. 553, s. 83(a); 1995, c. 400, s. 6; 1999-204, s. 1; 1999-369, s. 2.4; 2013-157, s. 5.)