

## ***THE NEW GEOMETRY-CONVERSION AND MERGER OF ENTITIES IN OREGON***

***By Jeff Wolfstone***

Legislation enacted in Oregon now permits an entity organized in one form to convert into another form and allows for mergers between different forms of entity. Cross-entity conversions and mergers can provide a convenient means to continue the existence of an entity-typically to preserve or obtain limited liability for its owners-and at the same time modify an entity's attributes to fit evolving needs. The new legislation aims to simplify choice of entity decisions and to balance the interests of creditors and owners.

All "business entities" are covered by this legislation, meaning that conversions and mergers may be carried out by business corporations, professional corporations, cooperatives, partnerships, limited partnerships, and limited liability companies. A special transitional rule applies to partnerships, limiting the benefit of the new legislation to partnerships governed by the most recent partnership act until January 1, 2003. REITs are not included in the definition of "business entity." Domestic and foreign entities may use these provisions, provided that the governing law for each affected entity allows for the conversion or merger.

The process for approving a cross-entity conversion or merger are as follows. First, a plan of conversion or plan of merger must be prepared, setting forth the elements and consequences of the transaction. Second, the plan must be approved as required by the law and the organizational documents applicable to each constituent entity. And third, articles of conversion or articles of merger must be filed with the Corporation Division of the Secretary of State, accompanied by a copy of the plan.

The converted or surviving entity in a cross-entity conversion or merger continues to be bound by all of the debts and other obligations of the constituent entities. Owners of a constituent entity who were personally liable for the entity's obligations incurred prior to the transaction remain liable for such pre-transaction obligations, whether or not they are owners after the transaction.

The law applicable to the converted or surviving entity generally determines the liability of the owners of such entity with respect to obligations incurred after the transaction. However, when an entity without limited liability converts or merges into a form of entity affording limited liability to its owners, the owner continues to be personally liable on obligations incurred during the one year period following the conversion or merger if the obligee reasonably believes that the owner would be personally liable and had not received notice of the conversion or merger. In these special cases, the owner of the converting or merging entity is well advised to give express written notice to the obligee.

The owners of the constituent entities are protected from compulsory change of investment by provisions of the plan of conversion or merger, by the organic statutes applicable to the entities, and by any agreements in place prior to the transaction. Thus, shareholders of privately held business corporations have dissenters' and appraisal rights. Shareholders of cooperatives are entitled only to the rights set forth in the articles of conversion or merger. Absent written notice electing to the contrary, partners who disapprove of the transaction are deemed to have

dissociated effective immediately before the conversion or merger, requiring that their interests be purchased. Limited partners who do not vote for the transaction similarly are deemed to have withdrawn immediately upon the conversion; general partners in a limited partnership have only the rights provided in the partnership agreement and the plan of conversion or merger. Members of an LLC have limited withdrawal rights but not dissenters' rights.

The converted or surviving entity succeeds by operation of law to all of the property of the converted or disappearing entity. Taxes on transfer generally should not apply, in that the conversion or merger is not deemed to be a transfer. Nevertheless, it will often be advisable to prepare and record (with applicable real property recording offices) a memorandum of the conversion or merger. Care must be taken, however, to review contracts and leases to determine whether the conversion or merger may trigger a consent right, due on sale clause or other condition or obligation.

Generally speaking, the income tax effects of a cross-entity conversion or merger will depend on whether the entities before and after the transaction are classified as corporations or partnerships for income tax purposes. The principal concern arises in the context of conversion or merger of a corporation into or with a partnership, which is generally a taxable event. The owners should obtain tax advice in connection with any proposed conversion or merger.

If you are interested in additional information regarding these conversion and merger laws, or if you would like to discuss whether such a transaction might be appropriate for your entity, please contact Jeffrey C. Wolfstone or Benjamin G. Lenhart.

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