

A Guide to Mergers And Consolidations of Not-for-profit Corporations Under Article 9 of The New York Not-for-profit Corporation Law



NEW YORK STATE OFFICE

of the

ATTORNEY
GENERAL

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A GUIDE TO MERGERS AND CONSOLIDATIONS OF NOT-FOR-PROFIT CORPORATIONS UNDER ARTICLE 9 OF THE NEW YORK NOT-FOR-PROFIT CORPORATION LAW

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Introduction

New York State Attorney General Eric T. Schneiderman is pleased to offer this guide to not-for-profit corporations seeking court approval for mergers and consolidations pursuant to Article 9 (§§ 901-910) of the Not-for-Profit Corporation Law (“N-PCL”).

The Attorney General hopes that this booklet will help organizations and their attorneys understand the statutory requirements and the procedures used by the Attorney General’s Charities Bureau to review mergers and consolidations of not-for-profit corporations.

This booklet contains general information and is not a substitute for legal advice from an attorney.

Each merger or consolidation is governed by its own facts and is reviewed by the Attorney General’s Charities Bureau on a case-by-case basis. You are encouraged to discuss any proposed merger or consolidation in advance with the Charities Bureau or the appropriate Regional Office. (A list of Regional Offices appears at the end of this booklet.)

Definitions

Merger and consolidation are statutory procedures by which two or more *constituent corporations* become a single corporation. In a *merger*, the resulting entity, called the *surviving corporation*, is one of the constituent corporations. In a *consolidation*, the resulting entity is a new corporation, called the *consolidated corporation*. N-PCL § 901.

For the sake of simplicity, this booklet uses the term “merger” for both mergers and consolidations, and the term “surviving corporation” for both surviving and consolidated corporations, unless the context requires that merger and consolidation be discussed separately.

Many of the procedures described below apply to all mergers of not-for-profit corporations. This guide focuses on mergers for which New York State Supreme Court approval

is required on notice to the Attorney General.

Mergers Requiring New York Supreme Court Approval

N-PCL Article 9 governs mergers of domestic (New York) not-for-profit corporations, N-PCL § 901, domestic and foreign (non-New York) not-for-profit corporations, N-PCL § 906, not-for-profit corporations with and into a domestic or foreign business (for-profit) corporation, N-PCL § 908, and mergers of religious corporations with not-for-profit corporations formed for religious purposes. N-PCL § 910.

Supreme Court approval, on notice to the Attorney General, is required for any merger or consolidation in which any constituent corporation or the consolidated corporation is a Type B* or Type C not-for-profit corporation under N-PCL § 201, or would be such a corporation if formed under the N-PCL. N-PCL § 907(a). Type D not-for-profit corporations are treated as Type B corporations for this purpose. N-PCL § 201(c). In addition to mergers of domestic Type B, Type C or Type D not-for-profit corporations, Supreme Court approval on notice to the Attorney General is required for mergers of:

- (i) one or more New York not-for-profit corporations with one or more foreign corporations, if any constituent corporation is a Type B or Type C not-for-profit corporation or would be such if formed under the N-PCL. N-PCL §§ 907(a), 906(d)(2)(D);
- (ii) one or more business corporations with one or more not-for-profit corporations where any constituent corporation is a Type C corporation or would be such if formed under the N-PCL. *Id.* § 908(f); and
- (iii) one or more religious corporations with one or more corporations formed for religious purposes to which the N-PCL applies by virtue of N-PCL § 103(a). *Id.* § 910(b).

Court approval is not required for mergers where all of the constituent corporations are

* New York not-for-profit corporations are designated as Type A, B, C or D, depending on the corporation's purposes. Type A includes corporations formed for civic, patriotic, political, social, fraternal, athletic, agricultural and similar purposes; it also includes professional, commercial, industrial or trade associations. Type B includes corporations formed for charitable, educational, religious, scientific, literary or cultural purposes and societies for the prevention of cruelty to children or animals. Type C includes corporations formed for any lawful business purpose to achieve a lawful public or quasi-public objective. Type D corporations may be formed pursuant to "any other law of this state for any business or non-business, or pecuniary or non-pecuniary, purpose or purposes specified by such other law, whether such purpose or purposes are also within types A, B, C above or otherwise." N-PCL § 201(b).

Type A not-for-profit corporations. Mergers of Type A not-for-profit corporations that are trade or business associations must be reviewed by the Attorney General's Antitrust Bureau. N-PCL §§ 909, 404(a).

Although court approval may be required for some mergers where the constituent entities are all corporations formed pursuant to the Religious Corporations Law, the Attorney General is not a party to such court proceedings and does not review such mergers. *See* "Mergers of Religious Corporations With Other Religious Corporations," below.

Role of the Attorney General

The Attorney General is a statutory necessary party to any proceeding seeking court approval of a merger or consolidation where any constituent corporation or the consolidated corporation is, or would be if formed under the N-PCL, a Type B or Type C not-for-profit corporation. N-PCL § 907(b) provides that upon the filing of the application, the court shall fix a time for a hearing and direct that notice be given to interested persons, including the Attorney General and any governmental body or officer whose consent or approval is required by N-PCL §§ 909 and 404.

The procedure preferred by the Charities Bureau and most courts, however, is for the petitioner to submit the draft petition and exhibits, including the proposed plan of merger and proposed certificate of merger, to the Charities Bureau or the appropriate regional office for review in advance of filing with the court. This enables the Attorney General to review the papers to ensure that all statutory requirements are met, all necessary documents are included as exhibits, and any questions of the Attorney General are answered before the application is submitted to the court.

Substantively, the Attorney General's review assists the court to determine whether all statutory requirements have been met and whether the interests of the constituent corporations and the public interest will not be adversely affected by the merger, as required by N-PCL § 907(e).

The Attorney General analyzes the financial condition of each constituent corporation, including its short-term and long-term indebtedness, to assess the likely effect of the merger on all constituent corporations and the surviving corporation. With respect to hospital mergers, for example, the constituent hospitals will be asked to provide information as to any reduction in services, facilities or hospital bed counts that would result from the merger. The Charities Bureau may consult with the Attorney General's Health Care and Antitrust Bureaus.

The Attorney General also reviews endowment and other restricted funds held by each of the constituent corporations to ensure that funds held for a particular purpose will continue to be used for the specified purpose after the merger. In instances where the continued use of funds for a specific purpose will become impossible or impracticable after the merger, the Attorney General seeks to ensure that an appropriate modification of the restriction is ordered by the court

in conjunction with its approval of the merger.

After the Attorney General's review is complete, if the Attorney General has no objection to the proposed transaction, the Attorney General will provide written confirmation, usually by means of a "No Objection" endorsement stamped on the proposed order, and will waive statutory notice. The petition can then usually be submitted to the court *ex parte*, without the need for a return date or hearing, depending on the court's local practice.

Information Required by the Attorney General In Connection with Review of Proposed Merger

The parties to a proposed merger that will require court approval on notice to the Attorney General can expedite the review process by submitting a draft petition and related documents to the Charities Bureau well in advance of formal submission to the court. The following documents should be submitted to the Charities Bureau as soon as they become available (some items may not apply to a particular merger):

- Proposed plan of merger (see "Plan of Merger" below for required contents)
- Proposed certificate of merger, including the proposed effective date of the merger if other than the date of filing of the certificate of merger by the Department of State (see "Certificate of Merger" below for required contents)
- Draft of verified petition and/or joint affidavit signed on behalf of all constituent corporations, with annexed exhibits (see "Procedure for Obtaining Supreme Court Approval" below for required contents of petition or affidavit)
- Proposed court order approving the merger (see "Procedure for Obtaining Supreme Court Approval" below for provisions that should be included in the proposed order)
- Certificates of incorporation, by-laws and any other governing instruments, including any amendments, for each constituent corporation and for the surviving corporation, and any proposed amendments or changes to the certificate of incorporation or by-laws of the surviving corporation as a result of the merger (these may be set forth in the plan of merger). *Note:* for foreign corporations, include a certificate of good standing from the jurisdiction of incorporation
- Board, board committee and membership minutes and resolutions, with secretary certificates, relating to the merger and any governance or organizational changes that have already taken place or are under consideration
- A list of names and addresses of the directors (sometimes called trustees) of each constituent corporation, and any anticipated changes in the membership or directors of the constituent corporations that would result from the merger; also, any changes in the membership or directors of any such corporation that have already occurred in connection with pre-merger

governance and organizational changes

- Any letter of intent and any other agreements entered into by any constituent corporation in connection with the proposed merger
- A description of all governance or organizational changes taken by the constituent corporations in advance of the merger, including changes to or restructuring of their boards of directors and executive management, with supporting documentation
- IRS Form 990 and audited financial statements for the past three years for each constituent corporation
- IRS 1023 applications and tax exemption determination letters for all constituent corporations, including the surviving or consolidated corporation and affiliates and supporting organizations of the constituent corporations which are or will be tax-exempt organizations
- Names, certificates of incorporation and other governing instruments of any subsidiaries or other affiliates and supporting organizations of the constituent corporations, with a statement as to whether they are holding any restricted funds
- A list of the endowments or other restricted funds of each constituent corporation; for each fund, specify the fund's purposes, the amount in the fund, the historic dollar value of any endowment funds, the name and address of the custodian, whether any portion of the fund has been pledged or otherwise used to secure loans or other indebtedness, and the provisions of any applicable reversionary clause; identify funds for which *cy pres* relief is sought, including any funds which have not been used for three years or more
- A list of all government agencies or entities whose approval or consent is required for the merger pursuant to N-PCL §§ 909 and 404, with copies of all written approvals and consents, including any related correspondence or reports
- All Hart-Scott-Rodino filings made with federal antitrust authorities relating to the proposed merger

With respect to mergers of hospitals or other health-care providers, the following additional information should be provided:

- Current and proposed organizational mission statements and all reports prepared or issued by the governing bodies of the constituent corporations pursuant to New York Public Health Law § 2803-*l* during the past three years
- A statement as to whether approval of the merger is required from or in consultation with any related or affiliated organizations, including but not limited to a medical or nursing school or other entity, and, if so, the name and relationship of the related organization, its certificate of incorporation and the basis of the power to approve or be consulted concerning a

merger

- Any agreements that the constituent corporations have with medical or nursing schools that relate to or will be affected by the merger or pre-merger governance or organizational changes

The Charities Bureau may request additional documents and information in the course of the review.

Attorney General Registration

If any constituent corporation is required to register with the Attorney General pursuant to Executive Law Article 7-A or Estates, Powers and Trusts Law § 8-1.4, it should be registered and its annual reports should be up to date.

If any such corporation is not registered, or if its reports are delinquent, the Charities Bureau will generally require the corporation to register and file all required annual financial reports before completing its review.

Certain corporations, such as certain religious corporations, may be exempt from registration.

For a detailed summary of the registration and reporting requirements for charitable organizations, please see Charities Bureau publication CHAR023 (Summary of Registration and Filing Requirements for Charitable Entities).

Plan of Merger

The board of each corporation proposing to merge must adopt a plan of merger which must set forth the following:

(1) The name of each constituent corporation and the name of the surviving corporation. If the name of any constituent corporation has been changed, the plan must also include the name under which it was formed. N-PCL § 902(a)(1);

(2) For each constituent corporation, a description of the membership and holders of any certificates evidencing capital contributions or subventions, including their number, classification and voting rights, if any. N-PCL § 902(a)(2);

(3) The terms and conditions of the proposed merger, including the manner and basis of converting membership or other interest in each constituent corporation into membership or other interest in the surviving corporation, or the cash or other consideration to be paid or delivered in exchange for membership or other interest in each constituent corporation. N-PCL § 902(a)(3);

(4) In the case of a *merger*, a statement of any amendments or changes that the merger

will effect in the certificate of incorporation of the surviving corporation; in the case of a *consolidation*, all statements required to be included in a certificate of incorporation for a corporation formed under the N-PCL, except statements as to facts not available at the time the plan of consolidation is adopted by the board. N-PCL § 902(a)(4);

(5) In the case of a merger of domestic and foreign corporations, a statement of any agreements required by N-PCL § 906(d)(2)(D) regarding service of process and amenability to suit in New York. N-PCL § 902(a)(5); *see* “Mergers of Domestic and Foreign Corporations,” below.

Membership Approval

After the board of each constituent corporation has approved the plan of merger, it must submit the plan to a vote of the members, if any. N-PCL § 903(a). Notice of the meeting, including a copy of the plan or an outline of its material features, must be given to each member whether or not entitled to vote. N-PCL §§ 903(a)(1), 605. The plan of merger must be approved by two-thirds of the votes cast at the meeting of the members in accordance with N-PCL §§ 903(a)(2) and 613(c).

The Certificate of Merger

Contents of Certificate of Merger. After the plan of merger is approved, a certificate of merger must be signed on behalf of each constituent corporation. N-PCL § 904(a). The certificate of merger must set forth the following:

(1) The statements required by N-PCL § 902 for the plan of merger. N-PCL § 904(a)(1); *see* “Plan of Merger,” above;

(2) The effective date of the merger if other than the date of filing of the certificate of merger by the Department of State. N-PCL § 904(a)(2);

(3) In the case of a *consolidation*, any statement required to be included in the certificate of incorporation of a corporation that was not available for inclusion in the plan of consolidation. N-PCL § 904(a)(3);

(4) The date when the certificate of incorporation of each constituent corporation was filed by the Department of State or, in the case of constituent corporations created by special law, the chapter number and year of passage of such law. N-PCL § 904(a)(4); and

(5) The manner in which the merger was authorized with respect to each constituent corporation. N-PCL § 904(a)(5).

Approvals by Government Agencies. If the purposes of any constituent or consolidated corporation would require the approval or consent of any governmental agency to the filing of its certificate of incorporation under N-PCL § 404, the approval or consent of such governmental

agency must be attached to the certificate of merger before filing with the Department of State. N-PCL § 909. For a summary of the N-PCL § 404 requirements, please see the Charities Bureau publication *Procedures for Forming and Changing Not-For-Profit Corporations in New York State*.

Procedure for Obtaining Supreme Court Approval

Venue. The application to obtain Supreme Court approval of the proposed merger may be made in the judicial district in which the principal office of the surviving or consolidated corporation is located, or the judicial district in which the office of one of the New York constituent corporations is located. N-PCL § 907(a).

Required Papers. The application is made by all of the constituent corporations jointly. N-PCL § 907(a). It must be supported by an affidavit by a person with knowledge of the transaction. Some courts may require a verified petition in addition to, or instead of, an affidavit. Consult the practice of the court in which the application will be made.

The affidavit or petition must set forth, in the text or as exhibits:

- The plan of merger. N-PCL § 907(a)(1)
- Resolutions of the board and membership of each constituent corporation approving the merger, as required by N-PCL § 903 or § 906(b). N-PCL § 907(a)(2)
- Certificates of incorporation, by-laws and any other governing instruments, including any amendments, for each constituent corporation and for the surviving corporation, and any proposed amendments or changes to the certificate of incorporation or by-laws of the surviving corporation as a result of the merger (usually set forth in the plan of merger, *see* N-PCL § 902(a)(4)). *Note*: for foreign corporations, include a certificate of good standing from the jurisdiction of incorporation
- A statement of the objects and purposes of each constituent corporation to be promoted by the merger. N-PCL § 907(a)(3)
- A statement of all property of each constituent corporation, and the manner in which it is held, and a statement of all liabilities and of the amount and sources of the annual income of each constituent corporation, usually provided in the form of financial statements and Form 990s for each corporation. N-PCL § 907(a)(4)
- A statement whether any votes against adoption of the resolution approving the plan of merger were cast at the meeting of members or directors at which the resolution was adopted by each constituent corporation. N-PCL § 907(a)(5)
- A statement of facts showing that the merger is authorized by the laws of the jurisdictions under which each of the constituent corporations is incorporated. N-PCL

§ 907(a)(6)

- Written approvals from all federal, state and local governmental agencies whose approval is required pursuant to N-PCL § 909 or is otherwise required by law

In addition, the affidavit or petition should include:

- A statement that the surviving corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations. *See* N-PCL § 905(b)(3).
- A statement whether or not any of the constituent corporations has restricted funds. If there are restricted funds, an exhibit should be annexed which identifies for each such restricted fund (a) the amount of the fund, (b) the historic dollar value of any endowment fund, (c) the nature of the restriction and whether the restriction is temporary or permanent, (d) the gift instrument or other document(s) containing the restriction and (e) the provisions of any applicable reversionary or remainder provision. The affidavit or petition should state that no restricted fund will be required to be returned, transferred or conveyed to any third party by reason of the merger except as specifically identified therein. The affidavit or petition may and should seek *cy pres* relief pursuant to N-PCL § 907(c) with respect to restrictions which have become obsolete or which would become impossible or impracticable after the merger. The facts and circumstances supporting *cy pres* relief, and the precise nature of the relief requested, should be set forth in detail (*see also* “*Cy Pres Relief in Connection with Merger,*” below).

Proposed Order. The application should be accompanied by a proposed order which should contain the following provisions:

- A finding that the interests of the constituent corporations and the public interest will not be adversely affected by the merger. N-PCL § 907(e)
- Any proposed terms and conditions for the merger that the court has discretion to impose. N-PCL § 907(e)
- One or more paragraphs granting *cy pres* relief with respect to assets that require such relief (*see* “*Cy Pres Relief in Connection with Merger,*” below).
- A direction that copies of (a) the order as signed and (b) the certificate of merger as filed by the Department of State shall be served on the Attorney General.

Interested Persons. After the petition is filed, the court shall direct that notice of the application be given to interested persons, including any governmental body or officer and any other person or body whose consent or approval is required by N-PCL § 909. N-PCL § 907(b). If the Attorney General believes that any individual or body should receive such notice, he will so inform the petitioners in connection with his review of the proposed merger. (*See*

“Information Required by the Attorney General in Connection with Review of Proposed Merger,” above, for the information and documents required for Attorney General review in advance of submission to the court.)

If no votes against adoption of the resolution were cast, the court may dispense with notice to other interested parties. N-PCL § 907(b).

Cy Pres Relief in Connection with Merger. If any assets of any of the constituent corporations are held for a purpose specified as Type B (charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals), or if any such assets are required to be used for a particular purpose, but not upon a condition requiring return, transfer or conveyance by reason of the merger, the court may, in its discretion, direct that such assets be transferred or conveyed to the surviving corporation or to one or more other New York or foreign corporations or organizations engaged in substantially similar activities, “upon an express trust the terms of which shall be approved by the court.” N-PCL § 907(c); *see also* N-PCL § 513, which generally provides that a Type B corporation holds “full ownership rights” in any assets that vest in the corporation “in trust for, or with a direction to apply the same to, any purpose specified in its certificate of incorporation, and shall not be deemed a trustee of an express trust of such assets.”

Court May Disapprove Plan or Direct a Modification. If the court finds that the interests of non-consenting members are or may be substantially prejudiced by the proposed merger, the court may disapprove the plan or may direct a modification of it.

In the event of a modification, if the court shall find that the interests of any members may be substantially prejudiced by the proposed merger as modified, the court must direct that the modified plan be submitted to a vote of the members of the constituent corporations, or if the court finds that there is no substantial prejudice, it shall approve the agreement as so modified without further approval by the members. Any further vote of members must be obtained in the same manner as the original vote of the members, as specified in N-PCL § 903 or § 906(b).

Standard of Review Governing Court Approval. If the court finds that the provisions of N-PCL § 907 have been complied with and that the merger will not adversely affect either the interests of the constituent corporations or the public interest, it will approve the merger on such terms and conditions as the court may prescribe.

Filing the Certificate of Merger

After Supreme Court approval is granted, the certificate of merger must be filed with the Department of State. A certified copy of the court order approving the merger must be annexed to the certificate of merger when filed. N-PCL § 907(a).

After the certificate of merger is filed by the Department of State, the surviving corporation must file a certified copy thereof with the county clerk of each county in which the

office of a constituent corporation, other than the surviving corporation, is located, and with the office of the recording officer in each county in which real property of a constituent corporation, other than the surviving corporation, is situated. N-PCL § 904(b).

Legal Effects of Merger

Effective Date. A merger becomes effective upon the filing of the certificate of merger by the Department of State, or on a later date, as stated in the certificate of merger, which may not be more than 30 days after such filing. N-PCL § 905(a).

Legal Effects of Merger or Consolidation. The legal effects of merger and consolidation are set forth in N-PCL § 905(b). In brief, the surviving corporation, in a manner consistent with its certificate of incorporation as altered by the merger, acquires all of the assets, rights and privileges, and assumes all of the obligations, liabilities and penalties, of each of the constituent corporations, including but not limited to all debts owed to creditors.

In the case of a *merger*, the certificate of incorporation of the surviving corporation is automatically amended to the extent, if any, that changes in its certificate of incorporation are set forth in the plan of merger. N-PCL § 905(b)(4). In the case of a *consolidation*, the statements set forth in the certificate of consolidation and which are required or permitted to be set forth in a certificate of incorporation of a not-for-profit corporation formed under the N-PCL constitute the certificate of incorporation of the consolidated corporation. *Id.*

Mergers of Domestic and Foreign Corporations

The N-PCL also covers mergers and consolidations in which one or more of the constituent corporations or the surviving corporation is a foreign corporation. N-PCL § 906(a). With respect to procedure, including the requirement of approval by members, each New York corporation must comply with the provisions of the N-PCL relating to merger or consolidation of domestic corporations, and each foreign corporation must comply with the laws of the jurisdiction under which it is incorporated. N-PCL § 906(b).

If the surviving corporation is a New York corporation, the certificate of merger must be delivered to the New York Department of State as provided in N-PCL § 904 (*see* “Certificate of Merger,” above). In addition to meeting the requirements of N-PCL § 904, the certificate must set forth the jurisdiction and date of incorporation of each constituent foreign corporation and the date when its application for authority to conduct activities in New York was filed by the Department of State, and its fictitious name used in this state, if applicable, or, if no such application has been filed, a statement to that effect. N-PCL § 906(c).

If the surviving corporation is a foreign corporation, it must comply with the provisions of the N-PCL relating to foreign corporations, *see, e.g.*, N-PCL Article 13, if it is to conduct activities in New York. N-PCL § 906(d)(1). It must also deliver to the Department of State a certificate of merger which sets forth the information required by N-PCL § 906(d)(2). Such

information includes:

(A) The statements required by N-PCL § 902(a)(1) and (2) to be included in a plan of merger (*see* “Plan of Merger,” above);

(B) The jurisdiction and date of incorporation of the surviving foreign corporation, the date when its application for authority to conduct activities in New York was filed by the Department of State and its fictitious name used in this state, or, if no such application has been filed, a statement to that effect and that it is not to conduct activities in this state until an application for such authority has been filed by the Department of State;

(C) The date when the certificate of incorporation of each constituent New York corporation was filed by the Department of State and the jurisdiction and date of incorporation of each constituent foreign corporation, other than the surviving foreign corporation, and, in the case of each such corporation authorized to conduct activities in this state, the date when its application for authority was filed by the Department of State;

(D) An agreement that the surviving corporation may be served with process in this state in any action or proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation, previously amenable to suit in this state, which is a constituent corporation in the merger, and an agreement that the surviving foreign corporation may be sued in this state in respect of any property transferred or conveyed to it as provided in N-PCL § 907(c), or the use made of such property, or any transaction in connection therewith;

(E) A designation of the New York Secretary of State as its agent upon whom process against it may be served; and

(F) The manner in which the plan of merger was approved with respect to each constituent domestic corporation and that the merger is permitted by, and is in compliance with, the laws of the jurisdiction of each constituent foreign corporation.

If the surviving corporation is a domestic corporation, the effect of the merger of one or more foreign and domestic corporations is the same as in the case of a merger of domestic corporations. If the surviving corporation is a foreign corporation, the effect is the same as in the case of a merger of domestic corporations, except insofar as the law of the foreign jurisdiction provides otherwise. N-PCL § 906(g).

Mergers with For-Profit Corporations

The N-PCL permits the merger of a Type A or Type C not-for-profit corporation (or a foreign corporation that would be a Type A or Type C corporation had it been formed under the N-PCL) into a domestic or foreign business (for-profit) corporation provided that the merger is not contrary to the law of the state of incorporation of any constituent corporation. N-PCL § 908(a). With respect to procedure including authorization by shareholders or approval by

members, each domestic corporation must comply with the Business Corporation Law (“BCL”), if it is a for-profit corporation, or the N-PCL, and each foreign corporation must comply with the laws of the jurisdiction under which it is incorporated. N-PCL § 908(b).

The plan of merger must include all of the information required by BCL § 902 or N-PCL § 902, and must set forth the terms and conditions of the proposed merger, including the manner and basis of converting shares, membership or other interest in each constituent corporation into shares, bonds or other securities of the surviving corporation, or the cash or other consideration to be paid or delivered in exchange for shares, membership or other interest in each constituent corporation, or a combination thereof. N-PCL § 908(c).

After adoption of a plan of merger by the board and members or shareholders of each constituent corporation, a certificate of merger must be filed with the Department of State. The contents of the certificate are governed by N-PCL § 908(d). If the surviving corporation is a foreign business corporation, the consent of the New York State Tax Commissioner to the merger must be attached to the certificate of merger. N-PCL § 908(e).

If any constituent corporation is a Type C not-for-profit (or would be such a corporation if formed under New York law), the merger must be approved by the Supreme Court pursuant to N-PCL § 907 and the court order approving the merger must be attached to the certificate of merger before filing with the Department of State. N-PCL § 908(f). *See* “Procedure for Obtaining Supreme Court Approval,” above.

When the merger becomes effective, the surviving corporation is subject to the BCL, if it is a domestic corporation. If the surviving corporation is a foreign corporation, it is subject to the BCL except insofar as the law of the foreign jurisdiction provides otherwise. N-PCL § 908(I). BCL §§ 1317-1320 may qualify the effect of N-PCL § 908(I).

Mergers of Religious Corporations with Not-for-Profit Corporations

A corporation formed under the Religious Corporations Law (“RCL”) may merge with a not-for-profit corporation with religious purposes. N-PCL § 910. Each constituent corporation must comply with N-PCL §§ 902, 903 and 904 and, if applicable, §§ 906 and 909, and the merger must be approved by the Supreme Court pursuant to N-PCL § 907. *See* “Procedure for Obtaining Supreme Court Approval,” above.

The certificate of merger must be filed with the Department of State or, if the surviving corporation is a religious corporation, with the county clerk of the county where the corporation maintains its principal office. N-PCL § 910(c),(d); RCL § 3.

Mergers of Religious Corporations with Other Religious Corporations

The Attorney General does *not* review mergers or consolidations of incorporated churches and other corporations formed under the Religious Corporations Law. *See* RCL §§ 2, 2-a. Mergers and consolidations of such corporations are governed by the applicable provisions of the RCL. *See, e.g.*, RCL §§ 13 (Consolidation of incorporated churches), 15-a (Consolidation of incorporated presbyteries), 15-b (Consolidation or merger of incorporated Presbyterian and Lutheran synods), 202 (Trusts for Shakers and Friends), 208-209 (Consolidation of Jewish congregations) and 412 (Merger and consolidation of Unitarian and Universalist Societies).

Although Supreme Court approval is required for certain mergers and consolidations of religious corporations, *see* RCL §§ 13, 15-a[4], 15-b[6]-[8], 208, 412[B], notice to the Attorney General is not required and the Attorney General does not play a role in such proceedings (unless requested to do so by the court).

Mergers of Corporations Chartered by the Regents under the Education Law

Consolidation of corporations chartered by the Regents of The University of the State of New York are governed by Education Law § 223 and Article 9 of the N-PCL (except § 907). *See* Education Law § 216-a[4]. The Attorney General does not review such consolidations.

Conclusion

If you have any questions about the information in this booklet or about the procedures for obtaining Attorney General review and court approval of a proposed merger or consolidation, you can contact the Attorney General's Charities Bureau (e-mail: charities.bureau@oag.state.ny.us) or any of the Attorney General's Regional Offices for assistance. A list of Regional Office addresses and telephone numbers appears at the end of this booklet.

All Charities Bureau booklets, forms and instructions are available on the Attorney General's website at <http://www.oag.state.ny.us>.

Following is a list of the offices of the Attorney General and the counties covered by each:

ALBANY

New York State Attorney General
Charities Bureau
The Capitol
Albany, NY 12224-0341
518-473-5049
Counties: Albany, Columbia, Fulton, Green, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington [note: Sullivan and Ulster for trusts and estates matters only]

BINGHAMTON

New York State Attorney General
Binghamton Regional Office
44 Hawley Street, 17th Floor
Binghamton, NY 13901-4433
607-721-8771
Counties: Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Tioga and Tompkins

BUFFALO

New York State Attorney General
Buffalo Regional Office
Main Place Tower - Suite 300A
Buffalo, NY 14202
716-853-8400
Counties: Allegheny, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming

NASSAU [not for trusts & estates matters]

New York State Attorney General
Nassau Regional Office
200 Old Country Road, Suite 240
Mineola, NY 11501-4241
516-248-3302
Counties: Nassau [note: trusts and estates matters are handled by NYC]

NEW YORK CITY

New York State Attorney General
Charities Bureau
Trusts & Estates Section
120 Broadway, 3rd Floor
New York, NY 10271-0332
212-416-8401
Counties: Bronx, Kings, New York, Queens and Richmond [note: NYC also handles Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester – trusts and estates matters only]

PLATTSBURGH

New York State Attorney General
Plattsburgh Regional Office
43 Durkee Street, Suite 700
Plattsburgh, NY 12901-2958
518-562-3288
Counties: Clinton, Essex and Franklin

POUGHKEEPSIE [not for trusts & estates matters]

New York State Attorney General
Poughkeepsie Regional Office
One Civic Center Plaza - Suite 401
Poughkeepsie, NY 12601-3157
914-485-3900
Counties: Dutchess, Orange, Sullivan and Ulster [note: Dutchess and Orange County trusts and estates matters are handled by NYC; Sullivan and Ulster County trusts and estates matters are handled by Albany]

ROCHESTER

New York State Attorney General
Rochester Regional Office
144 Exchange Boulevard
Rochester, NY 14614-2176
716-546-7430
Counties: Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates

SUFFOLK [not for trusts & estates matters]

New York State Attorney General
Suffolk Regional Office
300 Motor Parkway
Hauppauge, NY 11788-5127
631-231-2424
Counties: Suffolk [note: trusts and estates matters are handled by NYC]

SYRACUSE

New York State Attorney General
Syracuse Regional Office
615 Erie Blvd. West, Suite 102
Syracuse, NY 13204
315-448-4800
Counties: Cayuga, Cortland, Madison, Onondaga and Oswego

UTICA

New York State Attorney General
Utica Regional Office
207 Genesee Street, Room 508
Utica, NY 13501-2812
315-793-2225
Counties: Herkimer and Oneida

WATERTOWN

New York State Attorney General
Watertown Regional Office
Dulles State Office Building
317 Washington Street
Watertown, NY 13601-3744
315-785-2444
Counties: Jefferson, Lewis and St. Lawrence

WESTCHESTER [not for trusts & estates matters]

New York State Attorney General
Westchester Regional Office
101 East Post Road
White Plains, NY 10601-5008
914-422-8755
Counties: Putnam, Rockland and Westchester [note: trusts and estates matters are handled by NYC]

