



## CERTIFICATE OF MERGER

### General Information

The attached Certificate of Merger (Form OBE MERGER-1) may be used for the following mergers:

- **LIMITED LIABILITY COMPANY MERGERS:** Mergers involving only limited liability companies in which one or more California limited liability companies is a party to the merger;
- **LIMITED PARTNERSHIP MERGERS:** Mergers involving only limited partnerships in which one or more California limited partnerships is a party to the merger; and
- **INTERSPECIES MERGERS:** Mergers involving “other business entities” in which one or more California corporations, limited liability companies, limited partnerships, or partnerships is a party to the merger. [The term “other business entity” is defined in California Corporations Code sections [174.5](#), [5063.5](#), [12242.5](#), [15611\(v\)](#), [15911.01\(k\)](#), [16901\(12\)](#) and [17001\(ac\)](#).]

Upon the filing of the Certificate of Merger by the Secretary of State, the separate existence of the disappearing domestic or qualified/registered business entity shall cease in California.

Statutory filing provisions are found in California Corporations Code sections [1113\(g\)](#) (stock corporations); [6019.1](#) (nonprofit public benefit corporations); [8019.1](#) (nonprofit mutual benefit corporations); [9640](#) (nonprofit religious corporations); [12540.1](#) (consumer cooperative corporations); [15678.4](#) and [15911.14](#) (limited partnerships); [16915\(b\)](#) (general partnerships and limited liability partnerships); and [17552](#) (limited liability companies). One or more business entities can merge only if each entity is authorized by the laws under which it is organized to effect the merger and at least one California domestic entity is involved.

There are a variety of filing requirements based not only on the types of entities involved in the merger, but also the domicile of the entities merging and whether or not any foreign (out of state) entities are qualified to transact business in the State of California. It is not feasible to provide information and sample documents for each set of circumstances. Documents must be drafted in accordance with applicable law, dependent upon the particular circumstances of the entities involved. Due to the complexity of merger transactions, it is recommended that the advice of private legal counsel, specializing in business entity matters, be sought regarding the specific needs of the merging entities.

When preparing merger documents, regardless of the type of merger, be sure the entity name included in the documents is exactly as it appears on the records of the California Secretary of State, including entity endings, punctuation and abbreviations. For mergers in which a California corporation or a qualified foreign corporation is a party to the merger, prior to filing please verify the status of the corporation(s) being merged as merger documents **cannot** be filed on behalf of suspended/forfeited corporations. (California Revenue and Taxation Code sections [23301](#) and [23775](#).)

## ADDITIONAL INFORMATION

If the surviving entity is a foreign limited liability company or foreign other business entity and a California (domestic) limited liability company is one of the disappearing entities: The surviving entity shall file with the Secretary of State (1) an agreement that it may be served in this state in a proceeding for the enforcement of an obligation of any constituent entity and in a proceeding to enforce the rights of any holder of a dissenting interest or dissenting shares in a constituent domestic limited liability company or domestic other business entity; (2) an irrevocable appointment of the Secretary of State as its agent for service of process, and an address to which process may be forwarded; and (3) an agreement that it will promptly pay the holder of any dissenting interest or dissenting share in a constituent domestic limited liability company or domestic other business entity the amount to which that person is entitled under California law. (California Corporations Code section 17555(g)(1), (2) and (3).)

If a disappearing entity is a registered (domestic or foreign) limited liability partnership: The filing of a Certificate of Merger shall have no effect on the registered status of the entity on the records of the Secretary of State's office. To withdraw the registration, a [Notice of Status Change \(Form LLP-4\)](#) must be filed with the Secretary of State. (California Corporations Code sections 16954 and 16960.) Form LLP-4, along with filing information and instructions, is available on the Secretary of State's website at <http://www.sos.ca.gov/business/>.

If no California entity is a party to the merger (all parties are foreign entities whether qualified or not): The Certificate of Merger may not be filed in California. If a disappearing entity in the merger is qualified or registered in California, to surrender or cancel the entity, it will be necessary to file a:

- 1) [Certificate of Surrender](#) – for foreign corporations;
- 2) [Certificate of Cancellation \(Form LLC-4/7\)](#) – for foreign limited liability companies;
- 3) [Certificate of Cancellation \(Form LP-4/7\)](#) – for foreign limited partnerships; or
- 4) [Notice of Status Change \(Form LLP-4\)](#) – for foreign limited liability partnerships.

The forms, along with pertinent filing information and instructions, are available on the Secretary of State's website at <http://www.sos.ca.gov/business/>.

**FEES:** The fee for filing a Certificate of Merger (Form OBE MERGER-1) is \$150.00 for interspecies mergers, \$70.00 for mergers involving only limited liability companies and \$70.00 for mergers involving only limited partnerships. A \$15.00 special handling fee is applicable for processing documents delivered in person to the Sacramento office. The special handling fee must be remitted separately for each submittal and will be retained whether the document is filed or rejected. The preclearance and/or expedited filing of a document *within a guaranteed time frame* can be requested for an additional fee (in lieu of the special handling fee). Please refer to the Secretary of State's website at <http://www.sos.ca.gov/business/precexp.htm> for detailed information regarding preclearance and expedited filing services. The special handling fee or preclearance and expedited filing services are not applicable to documents submitted by mail. Check(s) should be made payable to the Secretary of State.

**COPIES:** The Secretary of State will certify two copies of the filed merger documents without charge, provided that the copies are submitted to the Secretary of State with the documents to be filed. Any additional copies submitted will be certified upon request and payment of the \$8.00 per copy certification fee.

**WHERE TO FILE:** The merger document(s) can be mailed to Secretary of State, Document Filing Support Unit, 1500 11<sup>th</sup> Street, 3<sup>rd</sup> Floor, Sacramento, CA 95814 or delivered in person to the Sacramento office. Merger documents are only filed in the Secretary of State's Sacramento office. Please refer to the Secretary of State file number(s) when submitting document(s) for filing to ensure proper application. For easier completion, the Certificate of Merger (Form OBE MERGER-1) is available on the Secretary of State's website at <http://www.sos.ca.gov/business/> and can be viewed, filled in and printed from your computer. If you are not completing the form online, please type or legibly print in black or blue ink.

## SIGNATORY REQUIREMENTS

A Certificate of Merger (Form OBE MERGER-1) shall be executed and acknowledged by each constituent other business entity as set forth in California Corporations Code section [1113\(g\)\(1\) or \(2\)](#), [6019.1\(f\)](#), [8019.1\(g\)](#), [12540.1\(g\)](#), [15678.4\(a\)](#), [15911.14\(a\)](#), [16915\(b\)](#) or [17552\(a\)](#). The following table clarifies these signatory requirements:

Entity Type	Domestic or Foreign	Signatories
Corporations	Domestic and Foreign	Executed and acknowledged by the chairperson of the board, president or a vice president <b>and</b> also by its secretary or an assistant secretary.
Limited Liability Companies	Domestic	Executed and acknowledged by all managers of the limited liability company (unless a lesser number is specified in the articles of organization or operating agreement).
	Foreign	Executed and acknowledged by one or more managers.
Limited Partnerships	Domestic	Executed and acknowledged by all general partners (unless a lesser number is provided in the certificate of limited partnership or limited partnership agreement).
	Foreign	Executed and acknowledged by one or more general partners.
General Partnerships and Limited Liability Partnerships	Domestic	Executed and acknowledged by two partners (unless a lesser number is provided in the partnership agreement).
	Foreign	Executed and acknowledged by one or more general partners.
Business Trusts; Real Estate Investment Trusts; Unincorporated Associations	Domestic and Foreign	Executed by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons.

If the certificate is signed by an attorney-in-fact, the signature should be followed by the words "attorney-in-fact for (name of the person)."

If the certificate is signed by an entity, the person who signs on behalf of the entity should note their name and position/title, the exact entity name and the entity's relation to the merging entity. Example: If a limited liability company ("Smith LLC") is the manager of a merging limited liability company, the signature of the person signing on behalf of Smith LLC should be reflected as Joe Smith, Manager of Smith LLC, Manager.

If the certificate is signed by a trust, the trustee should sign as follows: \_\_\_\_\_, trustee for \_\_\_\_\_ trust (including the date of the trust, if applicable). Example: Mary Todd, trustee of the Lincoln Family Trust (U/T/A 5/1/94).

If a constituent other business entity in the merger is a limited partnership, and the certificate is filed by any person other than the general partner(s), the signature must be followed by the words "signature pursuant to Section \_\_\_\_\_" identifying the appropriate statutory authority. (California Corporations Code section [15625\(c\)](#) or [15902.05\(d\)](#).)

## INSTRUCTIONS FOR COMPLETING THE CERTIFICATE OF MERGER (FORM OBE MERGER-1)

For easier completion, this form is available on the Secretary of State's website at <http://www.sos.ca.gov/business/> and can be viewed, filled in and printed from your computer. The completed form can be mailed to Secretary of State, Document Filing Support Unit, 1500 11<sup>th</sup> Street, 3<sup>rd</sup> Floor, Sacramento, CA 95814 or delivered in person to the Sacramento office. If you are not completing this form online, please type or legibly print in black or blue ink. This form is filed only in the Sacramento office.

**LEGAL AUTHORITY:** Statutory filing provisions are found in California Corporations Code sections [1113\(g\)](#), [6019.1](#), [8019.1](#), [9640](#), [12540.1](#), [15678.4](#), [15911.14](#), [16915\(b\)](#) and [17552](#). All statutory references are to the California Corporations Code, unless otherwise indicated. **Note:** If a limited partnership governed by the Uniform Limited Partnership Act of 2008 (Act of 2008) is a party to the merger, signing the Certificate of Merger (Form OBE MERGER-1) constitutes an affirmation under penalty of perjury that the facts stated in the document are true. (Section [15902.08\(b\)](#).)

- The Certificate of Merger (Form OBE MERGER-1) may be used for mergers between: (1) limited liability companies only, in which a one or more California limited liability companies are a party to the merger; (2) limited partnerships only, in which one or more California limited partnerships are a party to the merger; or (3) other business entities (i.e., interspecies mergers), in which one or more California corporations, limited liability companies, limited partnerships or partnerships are a party to the merger. [The term "other business entity" is defined in Sections [174.5](#), [5063.5](#), [12242.5](#), [15611\(v\)](#), [15911.01\(k\)](#), [16901\(12\)](#) and [17001\(ac\)](#).]
- It is recommended that legal counsel be consulted prior to submitting the Certificate of Merger (Form OBE MERGER-1) to ensure that all issues are appropriately addressed.

**ACT OF 2008:** A California limited partnership is subject to the Act of 2008: (1) if it was formed on or after January 1, 2008; or (2) if it was formed prior to January 1, 2008, and has elected to be governed by the Act of 2008. All registered foreign limited partnerships, regardless of when they registered in California, are subject to the Act of 2008. Effective January 1, 2010, all California limited partnerships will be subject to the Act of 2008. The Act of 2008 can be found in the California Corporations Code commencing with Section [15900](#).

**FEES:** The fee for filing the Certificate of Merger (Form OBE MERGER-1) is: (1) \$150.00 for interspecies mergers; (2) \$70.00 for mergers involving only limited liability companies; and (3) \$70.00 for mergers involving only limited partnerships. There is an additional \$15.00 special handling fee for processing a document delivered in person to the Sacramento office. The special handling fee must be remitted separately for each submittal and will be retained whether the document is filed or rejected. The preclearance and/or expedited filing of a document within a guaranteed time frame can be requested for an additional fee (in lieu of the special handling fee). Please refer to the Secretary of State's website at <http://www.sos.ca.gov/business/precexp.htm> for detailed information regarding preclearance and expedited filing services. The special handling fee or preclearance and expedited filing services are not applicable to documents submitted by mail. Check(s) should be made payable to the Secretary of State.

**COPIES:** The Secretary of State will certify two copies of the filed document without charge, provided that the copies are submitted to the Secretary of State with the document to be filed. Any additional copies submitted will be certified upon request and payment of the \$8.00 per copy certification fee.

**ADDITIONAL INFORMATION & FILING REQUIREMENTS:** Please refer to the attached "[Certificate of Merger - General Information](#)" document for additional information and requirements for filing a Certificate of Merger.

### Complete the Certificate of Merger (Form OBE MERGER-1) as follows:

**Items 1-8.** Enter the following information for the surviving entity (Items 1-4) and the disappearing entity (Items 5-8): The exact name of the entity, the type of entity (e.g., corporation, limited liability company, limited partnership, etc.), the file number issued to the entity by the California Secretary of State (if any), and the jurisdiction (state or country) under which the entity was organized. If more than one entity is disappearing, attach additional pages with the required information.

**Item 9.** This statement is required by statute and must not be altered. If a vote was required pursuant to the applicable law, specify the class and the number of outstanding interests of each class entitled to vote on the merger **and** the percentage vote required for each class. Attach additional pages, if necessary.

- Item 10.** If equity securities of a parent party are to be issued in the merger, check the applicable statement regarding the vote of the shareholders of the parent party. Only one box may be checked.
- Item 11.** If the surviving entity in the merger is a domestic limited liability company, limited partnership or registered general partnership, enter any requisite changes to the information set forth in the surviving entity's Articles of Organization, Certificate of Limited Partnership or Statement of Partnership Authority resulting from the merger, if any, and include the text of each amendment adopted. Attach additional pages, if necessary. (Sections [15678.4](#), [15911.14](#), [16915](#) and [17552](#).)
- Item 12.** If a disappearing entity in the merger is a domestic limited liability company, limited partnership or partnership, enter the address of the principal place of business of the surviving entity. Item 12 should not be completed when the merger is between entities of the same type where there is a surviving domestic entity (e.g., a disappearing domestic or foreign limited liability company merging into a surviving domestic limited liability company). (Sections [15678.4](#), [15911.14](#), [16915](#) and [17552](#).)
- Item 13.** Enter any other information required to be stated in the Certificate of Merger by the laws under which each party to the merger was organized. Attach additional pages, if necessary.
- Item 14.** Set forth the statutory authority or other basis under which each foreign corporation or other business entity is authorized by law to effect the merger.
- Item 15.** Enter a valid future effective date of the Certificate of Merger, if any. If none is indicated, the merger shall be effective upon filing with the California Secretary of State, or as otherwise provided by law.
- Item 16.** This statement confirms that attachments to the Certificate of Merger, if any, are incorporated by reference.
- Item 17.** The Certificate of Merger must be signed and acknowledged by each constituent other business entity as set forth in Sections [1113\(g\)\(1\)](#) or [\(2\)](#), [6019.1\(f\)](#), [8019.1\(g\)](#), [12540.1\(g\)](#), [15678.4\(a\)](#), [15911.14\(a\)](#), [16915\(b\)](#) or [17552\(a\)](#). If additional signature space is necessary, the acknowledged signature(s) may be made on an attachment to the Certificate of Merger. Note: If a constituent other business entity is a business trust, real estate investment trust or an unincorporated association, set forth the provision of law or other basis for the authority of the person signing.

Any attachments to the Certificate of Merger are incorporated by reference and made part of the Certificate of Merger. All attachments should be 8 ½" x 11", one-sided and legible.





## CORPORATE MERGERS

A corporate merger is a combining of corporations in which one of two or more corporations survives. There are several types of mergers with a variety of filing requirements based not only on the number of corporations merging and the type of merger, but also the domicile of the corporations merging and whether or not any foreign (out of state) corporations are qualified to transact business in the State of California. There is no way to provide information and sample documents for each set of circumstances. The following definitions and samples contain basic information and requirements for the type of merger identified and are provided as guidelines only. Documents must be drafted in accordance with applicable code sections, dependent upon the particular circumstances of the corporations involved. Due to the complexity of merger transactions, it is recommended that the advice of private legal counsel, specializing in corporate matters, be sought regarding the specific needs of the merging entities.

When preparing merger documents, regardless of the type of merger, be sure the corporate name included in the documents is exactly as it appears on the records of the Secretary of State, including corporate ending, if any, punctuation and abbreviations. Prior to filing please verify the status of the corporations being merged; merger documents **cannot** be filed on behalf of suspended corporations. (See Revenue and Taxation Code sections [23301](#) and [23775](#).)

### SHORT FORM MERGER – CERTIFICATE OF OWNERSHIP

California Corporations Code section [1110](#) allows the merger of a subsidiary corporation into the parent by a simplified procedure if the parent owns 100 percent of the outstanding shares of the subsidiary. The merger is accomplished by filing a Certificate of Ownership with the Secretary of State. A sample document follows this discussion. Two or more subsidiary corporations can be merged using a single Certificate of Ownership by adding appropriate statements in the certificate.

Either the parent corporation or one or more of the subsidiary corporations can be foreign corporations, whether or not qualified in California, as long as either the parent corporation or at least one of the subsidiary corporations is a California corporation, and the laws of the place of incorporation of the foreign corporation permit a merger to be effected in the manner provided by Corporations Code section [1110](#).

While Corporations Code section [1110](#) also allows a merger of a parent corporation into its subsidiary corporation and allows a merger where the parent corporation owns less than 100 percent, but at least 90 percent of the outstanding shares of each class, the statutory requirements for the filing are more complex. As the number of such filings is few compared to the number of 100 percent owned mergers, a sample of this format is not included in the information provided. For further information, refer to Corporations Code section [1110](#).

### MERGER BY AGREEMENT OF MERGER

When there is a merger by Agreement of Merger with a California corporation as the survivor, there must be filed a copy of the Agreement of Merger with an officers' certificate for each corporation attached. The documents should be stapled together with the Agreement of Merger on top, followed by a separate officers' certificate for the survivor and each of the merging corporation(s). (See Corporations Code sections [173](#), [1101](#), [1102](#), and [1103](#).)

An officers' certificate must be prepared and attached for the survivor and for each merging corporation, even for a merging corporation, which is a foreign corporation not qualified in California.

A sample of an Agreement of Merger and an officers' certificate are included and have been designed to meet minimum statutory requirements in a situation where there is only one class of shares and 100% shareholder approval is received.

It is preferable to state the basis for converting the shares of the merging corporation in terms of each share, i.e., "On the effective date of the merger, each outstanding share of common stock of the Merging Corporation shall be converted into one share of common stock of the Surviving Corporation."

## **TRIANGULAR MERGER**

In many instances of a corporate acquisition by merger, the transaction will be structured as a merger of the corporation being acquired into a subsidiary of the acquiring corporation. This type of merger is referred to as a triangular merger and is specifically recognized in Corporations Code section 1101. A variation on the triangular merger is the reverse triangular merger in which the subsidiary is merged into the corporation being acquired.

In a triangular merger there usually are two agreements which typically might be called "Agreement of Merger" and "Agreement of Reorganization", respectively. The Agreement of Merger is the statutory agreement drafted, executed and filed with the Secretary of State pursuant to Sections 1101 and 1103. The Agreement of Merger (sample attached) is intended to meet minimum statutory requirements and normally is much shorter than the Agreement of Reorganization. The agreement of reorganization sets forth the entire agreement of the parties. It is generally the Agreement of Merger and not the agreement of reorganization which is filed with the Secretary of State pursuant to Section 1103.

## **FILING PROCEDURES RELATING TO MERGERS INVOLVING DOMESTIC AND FOREIGN CORPORATIONS**

Where a FOREIGN corporation SURVIVES the merger: If at least one California corporation is a party (disappearing) to the merger, there are three alternatives for completing the merger filing in California. (Corporations Code section 1108(d).)

1. A certified copy of the merger filing made in the foreign jurisdiction (the certification must be made by the public official having custody over the original filed document).
- OR** 2. A merger filing meeting the requirements of California law, including a copy of the Agreement of Merger and originally executed officers' certificate for the surviving foreign corporation and EACH domestic constituent corporation (Corporations Code section 1103), or, if appropriate, an originally executed Certificate of Ownership (Corporations Code section 1110).
- OR** 3. An executed counterpart of the merger filing made in the foreign jurisdiction (in the form required by the laws of the foreign jurisdiction) must provide proof that it has been filed in the foreign jurisdiction.

If no California corporation is a party to the merger (all parties are foreign corporations), the correct filing is a [Certificate of Surrender of Right to Transact Intrastate Business](#) filed on behalf of each disappearing, qualified foreign corporation. (See Corporations Code section 2112.) There is no filing fee for the Certificate of Surrender of Right to Transact Intrastate Business.

In cases where the party surviving the merger is a foreign corporation and the merger filing is made in accordance with the laws of the foreign jurisdiction, the merger proceedings are nevertheless subject to shareholder approval and dissenters' rights with respect to the disappearing California corporations. (See Corporations Code sections [1200 et seq.](#) and [1300 et seq.](#))

When the surviving corporation in a merger is a foreign corporation, the merger is effective in accordance with the laws of the foreign jurisdiction. The filing is generally effective with regard to a

An officers' certificate must be prepared and attached for the survivor and for each merging corporation, even for a merging corporation, which is a foreign corporation not qualified in California.

A sample of an Agreement of Merger and an officers' certificate are included and have been designed to meet minimum statutory requirements in a situation where there is only one class of shares and 100% shareholder approval is received.

It is preferable to state the basis for converting the shares of the merging corporation in terms of each share, i.e., "On the effective date of the merger, each outstanding share of common stock of the Merging Corporation shall be converted into one share of common stock of the Surviving Corporation."

## **TRIANGULAR MERGER**

In many instances of a corporate acquisition by merger, the transaction will be structured as a merger of the corporation being acquired into a subsidiary of the acquiring corporation. This type of merger is referred to as a triangular merger and is specifically recognized in Corporations Code section [1101](#). A variation on the triangular merger is the reverse triangular merger in which the subsidiary is merged into the corporation being acquired.

In a triangular merger there usually are two agreements which typically might be called "Agreement of Merger" and "Agreement of Reorganization", respectively. The Agreement of Merger is the statutory agreement drafted, executed and filed with the Secretary of State pursuant to Sections [1101](#) and [1103](#).

The Agreement of Merger (sample attached) is intended to meet minimum statutory requirements and normally is much shorter than the Agreement of Reorganization. The agreement of reorganization sets forth the entire agreement of the parties. It is generally the Agreement of Merger and not the agreement of reorganization which is filed with the Secretary of State pursuant to Corporations Code section [1103](#).

## **FILING PROCEDURES RELATING TO MERGERS INVOLVING DOMESTIC AND FOREIGN CORPORATIONS**

Where a **FOREIGN** corporation **SURVIVES** the merger: If at least one California corporation is a party (disappearing) to the merger, there are three alternatives for completing the merger filing in California. (Corporations Code section [1108\(d\)](#).)

1. A certified copy of the merger filing made in the foreign jurisdiction (the certification must be made by the public official having custody over the original filed document).
- OR** 2. A merger filing meeting the requirements of California law, including a copy of the Agreement of Merger and originally executed officers' certificate for the surviving foreign corporation and EACH domestic constituent corporation (Corporations Code section [1103](#)), or, if appropriate, an originally executed Certificate of Ownership (Corporations Code section [1110](#)).
- OR** 3. An executed counterpart of the merger filing made in the foreign jurisdiction (in the form required by the laws of the foreign jurisdiction) must provide proof that it has been filed in the foreign jurisdiction.

If no California corporation is a party to the merger (all parties are foreign corporations), the correct filing is a [Certificate of Surrender of Right to Transact Intrastate Business](#) filed on behalf of each disappearing, qualified foreign corporation. (See Corporations Code section [2112](#).) There is no filing fee for the Certificate of Surrender of Right to Transact Intrastate Business.

In cases where the party surviving the merger is a foreign corporation and the merger filing is made in accordance with the laws of the foreign jurisdiction, the merger proceedings are nevertheless subject to shareholder approval and dissenters' rights with respect to the disappearing California corporations. (See Corporations Code sections [1200 et seq.](#) and [1300 et seq.](#))

When the surviving corporation in a merger is a foreign corporation, the merger is effective in accordance with the laws of the foreign jurisdiction. The filing is generally effective with regard to a

domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction, but only after an appropriate merger filing is made in California. However, if the date of filing in California is more than six months after the time of effectiveness in the foreign jurisdiction, or if the California corporation is suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the California disappearing corporation as of the date of filing in California.

The California Secretary of State does not have authority to accept appointment as a corporation's Agent for Service of Process in California.

**Where a CALIFORNIA corporation SURVIVES the merger:**

The merger filing must be made in California by filing an Agreement of Merger and originally executed officers' certificate for EACH constituent corporation (Corporations Code section [1103](#)) or, if appropriate, by filing an originally executed Certificate of Ownership (Corporations Code section [1110](#)).

An officers' certificate must be prepared and attached for the survivor and for each merging corporation, even for a merging corporation, which is a foreign corporation not qualified in California.

**Additional Information**

A merger of a domestic corporation with a foreign corporation is subject to authorization to effect such a merger under the laws of the state of incorporation of the foreign constituent corporation(s).

Under California law there are no provisions for effecting the redomestication of a corporation. Consequently, when a foreign corporation reorganizes in another state, the filings in California are the Surrender of Right to Transact Intrastate Business on behalf of the corporation in its original state of incorporation, and the Statement and Designation by Foreign Corporation qualifying the corporation from the new state to do business in California.

**NONPROFIT CORPORATIONS:** Provisions relating to the merger of nonprofit corporations are discussed in Corporations Code sections [6010 et seq.](#) for public benefit corporations, sections [8010 et seq.](#) for mutual benefit corporations, section [9640](#) for religious corporations; and sections [12530 et seq.](#) for consumer cooperative corporations.

To effect a merger involving a nonprofit corporation, generally there must be filed with the Secretary of State a copy of the Agreement of Merger and an officers' certificate (as defined by Corporations Code section [5062](#) or [12241](#)) for the surviving corporation and for each disappearing corporation.

Attorney General notice and approval of mergers involving a nonprofit corporation, including prior written consent, is required in some situations. You should review the appropriate Corporations Code provisions to ensure satisfaction of all legal requirements.

**INTERSPECIES MERGERS:** See the attached [Certificate of Merger – General Information](#) document for filing requirements specifically related to mergers between corporations and other business entities.

**FEES:** The fee for filing a merger between corporations is \$100.00. A \$15.00 special handling fee is applicable for processing documents delivered in person to the Sacramento office. The special handling fee must be remitted by separate check for each submittal and will be retained whether the document is filed or rejected. The preclearance and/or expedited filing of a document *within a guaranteed time frame* can be requested for an additional fee (in lieu of the special handling fee). Please refer to the Secretary of State's website at <http://www.sos.ca.gov/business/precexp.htm> for detailed information regarding preclearance and expedited filing services. The special handling fee or preclearance and expedited filings services are not applicable to documents submitted by mail. Check(s) should be made payable to the Secretary of State.

**COPIES:** The Secretary of State will certify two copies of the filed merger documents without charge, provided that the copies are submitted to the Secretary of State with the documents to be filed. Any additional copies submitted will be certified upon request and payment of the \$8.00 per copy certification fee.

**WHERE TO FILE:** The merger document(s) can be mailed to Secretary of State, Document Filing Support Unit, 1500 11th Street, 3<sup>rd</sup> Floor, Sacramento, CA 95814 or delivered in person to the Sacramento office. Merger documents are only filed in the Secretary of State's Sacramento office. Please refer to the Secretary of State file number(s) when submitting document(s) for filing to ensure proper application.

The information included in this package is also available on the Secretary of State's website at <http://www.sos.ca.gov/business/> and can be viewed and printed from your computer.

**CERTIFICATE OF OWNERSHIP**

\_\_\_\_\_ and \_\_\_\_\_ certify that:

1. They are the **president** and the **secretary**, respectively, of \_\_\_\_\_ (NAME OF SURVIVING CORPORATION), a California corporation.
2. This corporation owns 100% of the outstanding shares of \_\_\_\_\_ (NAME OF DISAPPEARING CORPORATION), a California corporation.
3. The board of directors of this corporation duly adopted the following resolution:

RESOLVED, that this corporation merge (NAME OF DISAPPEARING CORPORATION), its wholly-owned subsidiary corporation, into itself and assume all its obligations pursuant to Section 1110, California Corporations Code.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: \_\_\_\_\_

(Signature of President)  
(Typed Name of President), President

(Signature of Secretary)  
(Typed Name of Secretary), Secretary

*The sample Certificate of Ownership is for use by a parent corporation owning 100 percent of the outstanding shares of the subsidiary. The sample is provided to be used as a guideline ONLY in the preparation of original documents for filing with the Secretary of State. For other situations, refer to Corporations Code section 1110.*

**AGREEMENT OF MERGER**

This Agreement of Merger is entered into between  (NAME OF SURVIVING CORPORATION) , a California corporation (herein "Surviving Corporation") and  (NAME OF DISAPPEARING CORPORATION) , a California corporation (herein "Merging Corporation").

1. Merging Corporation shall be merged into Surviving Corporation.
2. The outstanding shares of Merging Corporation shall be canceled without consideration.

**OR**

2. Each outstanding share of Merging Corporation shall be converted into \_\_\_\_\_ shares of Surviving Corporation.
3. The outstanding shares of Surviving Corporation shall remain outstanding and are not affected by the merger.
4. Merging Corporation shall from time to time, as and when requested by Surviving Corporation, execute and deliver all such documents and instruments and take all such action necessary or desirable to evidence or carry out this merger.
5. The effect of the merger and the effective date of the merger are as prescribed by law.

IN WITNESS WHEREOF the parties have executed this Agreement.

*(NAME OF SURVIVING CORPORATION)*

(Signature of President)   
*(Typed Name of President), President*

(Signature of Secretary)   
*(Typed Name of Secretary), Secretary*

*(NAME OF DISAPPEARING CORPORATION)*

(Signature of President)   
*(Typed Name of President), President*

(Signature of Secretary)   
*(Typed Name of Secretary), Secretary*

**NOTE**  
*Use only one of the #2 statements*  
**DO NOT USE BOTH STATEMENTS**

*This sample Agreement of Merger is for use by stock corporations where there is only one class of shares and 100% shareholder approval is received. The sample is provided to be used as a guideline ONLY in the preparation of original documents for filing with the Secretary of State. For other situations, refer to Corporations Code section 1103.*

# SAMPLE – Officers' Certificate / Stock

## CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

\_\_\_\_\_ and \_\_\_\_\_ certify that:

1. They are the president and the secretary, respectively, of \_\_\_\_\_ (NAME OF CORPORATION), a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the board of directors and shareholders of the corporation which equalled or exceeded the vote required.
3. The shareholder approval was by the holders of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding entitled to vote on the merger is \_\_\_\_\_.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: \_\_\_\_\_

\_\_\_\_\_  
(Signature of President)  
(Typed Name of President), President

\_\_\_\_\_  
(Signature of Secretary)  
(Typed Name of Secretary), Secretary

*This sample officers' certificate is for use by stock corporations where there is only one class of shares and 100% shareholder approval is received. The sample is provided to be used as a guideline ONLY in the preparation of original documents for filing with the Secretary of State. For other situations, refer to Corporations Code section 1103.*

*An officers' certificate for each corporation MUST accompany the Agreement of Merger.*



# SAMPLE – Officers’ Certificate / Nonprofit

## CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

\_\_\_\_\_ and \_\_\_\_\_ certify that:

1. They are the president and the secretary, respectively, of       (NAME OF CORPORATION)      , a California Nonprofit       (PUBLIC BENEFIT, MUTUAL BENEFIT OR RELIGIOUS)       corporation.
2. The principal terms of the Agreement of Merger in the form attached were duly approved by the required vote of the members of the corporation.
3. There is only one class of members and the total number of members of the corporation entitled to vote on the merger is \_\_\_\_\_.
4. No other approvals are required.

**OR**

4.       (IDENTIFY OTHERS WHOSE APPROVAL IS REQUIRED)

The principal terms of the Agreement of Merger in the form attached were duly approved by the required vote of such other person(s).

5. The Attorney General of the State of California has been given notice of the merger.

**OR**

5. The Attorney General of the State of California has approved the merger.

**OR**

5. The Attorney General of the State of California is not required to be given notice of the merger.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: \_\_\_\_\_

\_\_\_\_\_  
(Signature of President)  
(Typed Name of President), President

\_\_\_\_\_  
(Signature of Secretary)  
(Typed Name of Secretary), Secretary

*This sample officers’ certificate is for use by nonprofit corporations having members. The sample is provided to be used as a guideline ONLY in the preparation of original documents for filing with the Secretary of State. For other situations, refer to Corporations Code section 6010 et. seq., 8010 et. seq. or 9640.*

*An officers’ certificate for each corporation MUST accompany the Agreement of Merger.*

**NOTE**  
Use only one  
of the #4  
statements  
  
DO **NOT** USE  
BOTH  
STATEMENTS

**NOTE**  
Use only one  
of the #5  
statements  
  
DO **NOT** USE  
ALL THREE  
STATEMENTS