

ARTICLES OF MERGER **INSTRUCTIONS FOR FILING**

Plan of Merger

The requirements of a plan of merger are set forth in Section 10.002 of the Texas Business Organizations Code (“BOC”), which is generally applicable to a Texas state banking association as if it were a for-profit corporation, and to a Texas limited banking association as if it were a limited liability company, pursuant to Texas Finance Code §32.008. In the specific case of a merger, Texas Finance Code §32.301 states that “[i]mplementation of the merger by the parties and approval of the board, shareholders, or owners of the parties must be made or obtained in accordance with the Business Organizations Code as if the state bank were a domestic entity and all other parties to the merger were foreign entities, except as may be otherwise provided by applicable rules.”

The plan **must** include:

1. the name, organizational form, and jurisdiction of formation of each entity that is a party to the merger;
2. the name of each organization that will survive the merger;
3. the name of each new organization to be created by the plan of merger;
4. the manner and basis of converting any of the ownership interests of each party into one, or a combination of:
 - a. ownership interests, obligations, rights to purchase securities, or other securities of one or more surviving or new entities;
 - b. cash; or,
 - c. other property;
5. the certificate of formation of each new Texas filing entity to be created by the plan of merger (may be included as an attachment or exhibit); and,
6. the governing documents of each new Texas nonfiling entity (such as a Texas general partnership) to be created by the plan of merger (may be included as an attachment or exhibit).

If there is more than one surviving entity, the plan must include (BOC §10.003):

- a. the manner and basis for dividing the property of each party among the surviving or new organizations;
- b. the name of each surviving or new organization primarily responsible for the payment of fair value of dissenter’s rights; and,
- c. the manner and basis of distributing the liabilities of the parties among the surviving or new organizations.

The plan of merger **may** include (BOC §10.004):

1. amendments to the organizational documents of any surviving organization;
2. provisions relating to a share exchange; and,
3. any other provisions relating to the merger.

Articles of Merger (other than a short form merger under BOC §10.006)

The form and filing requirements for articles of merger (certificate of merger in the BOC) are set forth in BOC §10.151. If all of the parties are financial institutions, and at least one of the surviving entities is a Texas state bank, the articles of merger are filed with the Texas Department of Banking (“DOB”). If at least one of the survivors is a Texas state bank, and one or more of the parties are entities that are required to file with the Texas Secretary of State or an authority of another jurisdiction, the articles of merger must be filed with both the DOB and with the Texas Secretary of State or other jurisdictional authority. The articles of merger must be signed on behalf of each party by an officer or other authorized person, and must include:

1. the plan of merger or, in lieu of the plan of merger, a statement certifying the following:
 - a. the name, organizational form, and jurisdiction of formation of each party to the merger;
 - b. the name, organizational form, and jurisdiction of formation of each entity to be created by the plan of merger;
 - c. that restated articles of association, with or without amendments, for each state bank that survives the merger, are attached as an exhibit;
 - d. that a signed plan of merger is on file at the principal place of business of each surviving or new party to the merger, and the address of each principal place of business; and
 - e. that a copy of the plan of merger will upon written request be provided without cost by each surviving or new entity to any shareholder or other interest-owner of an entity that is party to, or is to be created by the merger. If more than one entity is to survive, the statement must include any creditor or obligee of any party to the merger if a liability or obligation is then outstanding.
2. if approval of the shareholders (or other interest-owners) that is a party to the plan of merger is not required, a statement to that effect.
3. a statement that the plan of merger has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger and by the governing documents of those organizations.

The DOB does not specify a form for articles of merger. The following is example of a form which meets minimum requirements. Bracketed text ([...]) should be modified to

suit the specific transaction, or eliminated if not needed; comments are in *italics* and should not be part of the final document.

ARTICLES OF MERGER

Pursuant to chapter 10 and Title 2 of the Business Organizations Code, and sections 32.301-.304 of the Finance Code, the undersigned parties submit this articles of merger.

1. Parties.

a. [Anywhere State Bank, 123 Main Street, Anywhere], Texas, a Texas state banking association, charter number [xxxx-xx]. [Anywhere State Bank] will survive the merger.

b. [AnyBank, 36 First Avenue, Somewhere], Texas, a Texas state savings bank. [AnyBank] will not survive the merger. *Or*

b. [ASB Acquisition Corp., Inc., 145 Central Avenue, Anywhere, Texas], a Texas for-profit business corporation. [ASB Acquisition Corp., Inc.] will not survive the merger.

2. The plan of merger is attached as Exhibit A. *Or*

2. A signed plan of merger is on file at the principal place of business of each surviving or new party to the merger, at the address listed above. A copy of the plan of merger will upon written request be provided without cost by each surviving or new entity to any shareholder or other interest-owner of an entity that is party to, or is to be created by the merger. *If more than one surviving entity. Add [, or any creditor or obligee of any party to the merger if a liability or obligation is then outstanding.]*

3. The restated articles of association, without amendment [*or with further amendments*] of Anywhere State Bank are attached as Exhibit [B].

4. The plan of merger has been approved as required by the laws of the jurisdiction of formation or each organization that is a party to the merger and by the governing documents of those organizations.

[5. The approval of the shareholders of [Anywhere State Bank] is not required by the Business Organizations Code.] *See BOC §21.459 for circumstances when such approval is not required.*

[6]. [Anywhere State Bank], as the surviving entity, will be responsible for the payment of any franchise taxes owed by another party to the merger if such taxes are not timely paid.

[7]. This document becomes effective when accepted and filed by the Department of Banking. *Or*

[7] This document becomes effective on [January 31, 2010, at 12:01 a.m.] which is not more than 90 days from the date of signing. *Or*

[7] This document becomes effective upon acceptance and filing with the Secretary of State and the Department of Banking, the occurrence of the latter of which filings shall not be more than 90 days from the date of signing.

Execution.

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent document. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the merging entity, to execute the filing instrument.

_____ Date _____
[Anywhere State Bank]

Signature of authorized person

Printed or typed name of authorized person

_____ Date _____
[AnyBank]

Signature of authorized person

Printed or typed name of authorized person