

## CERTIFICATE OF MERGER

### INSTRUCTIONS FOR FILING

**Certificate of Merger** (other than a short form merger under the Texas Business Organizations Code (BOC) § 10.006)

The form and filing requirements for a certificate of merger 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 certificate of merger is 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 certificate of merger must be filed with both the DOB and with the Texas Secretary of State or other jurisdictional authority. The certificate 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 certificate of formation, 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 a certificate of merger. The following is an 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.

**SAMPLE CERTIFICATE  
CERTIFICATE OF MERGER**

Pursuant to the Texas Business Organizations Code (BOC), and Sections 32.301-.304 of the Texas Finance Code, the undersigned parties submit this certificate 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 certificate of formation, 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 Texas 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 Texas Secretary of State and Texas 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 Texas Business Organizations Code, or other law applicable to and governing the merging entity, to execute the filing instrument.

\_\_\_\_\_  
Anywhere State Bank

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Name of authorized person

\_\_\_\_\_  
Any Bank

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Name of authorized person