

PLAN OF MERGER

The requirements for 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 shows that “implementation 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 Texas 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.