

Report of the Corporation Law Committee

1 *To the Council of Delegates:*

2 The Corporation Law Committee respectfully requests your favorable
3 consideration of the following proposed amendments to R.C. 1745 and R.C. 1702. The
4 amendments to R.C. 1745, the only Ohio statute that specifically applies to
5 unincorporated associations, are substantial, changing what is essentially a “bare bones”
6 provision into a comprehensive chapter governing the organization, authority, internal
7 governance and dissolution of these entities, as well as providing rules for their merger or
8 consolidation with other associations or other types of entities. The proposal generally
9 adopts the language and structure of the Revised Uniform Unincorporated Nonprofit
10 Association Act. The amendments to R.C. 1702, dealing with nonprofit corporations,
11 address the merger and consolidation of these entities, as well as adopting other
12 appropriate changes that conform to recent legislative changes to the General Corporation
13 Law.

14 Respectfully submitted,
15 **William J. Kelly**, *Columbus*
16 Chair

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18

CHAPTER 1745

19

UNINCORPORATED NONPROFIT ASSOCIATION ACT

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[This act may be cited as the Unincorporated Nonprofit Association Act]

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1745.01. Unincorporated association may contract, sue, or be sued

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23 Any unincorporated association may contract or sue in behalf of those who are
24 members and, in its own behalf, be sued as an entity under the name by which it is
commonly known and called.

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1745.02. Assets subject to judgment, execution and other process

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27 All assets, property, funds, and any right or interest, at law or in equity, of such
28 unincorporated association shall be subject to judgment, execution and other process. A
29 money judgment against such unincorporated association shall be enforced only against
30 the association as an entity and shall not be enforceable against the property of an
individual member of such association.

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1745.04. Action not affected by change in officers or membership

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No cause of action by or against any such unincorporated association shall abate

33 by reason of the death, removal, or resignation of any officer, or by the death or legal
34 incapacity of any member, or by reason of any change in membership of the association
35 during the pendency of the cause.

36 **1745.05. Definitions.**

37 As used in this chapter, unless the context otherwise requires:

38 (A) “Authorized communications equipment” means any communications
39 equipment that provides a transmission, including, but not limited to, by telephone,
40 telecopy, or any electronic means, from which it can be determined that the transmission
41 was authorized by, and accurately reflects the intention of, the member or manager
42 involved and, with respect to meetings, allows all persons participating in the meeting to
43 contemporaneously communicate with each other.

44 (B) “Entity” means

45 (1) An unincorporated nonprofit association existing under the laws of this
46 state or any other state;

47 (2) A nonprofit corporation existing under the laws of this state or any other
48 state;

49 (3) A for profit corporation existing under the laws of this state or any other
50 state;

51 (4) Any of the following organizations existing under the laws of this state,
52 the United States, or any other state:

53 (a) An unincorporated business or for profit organization, including a general
54 or limited partnership;

55 (b) A limited liability company; or

56 (c) Any other legal or commercial entity having a statute governing its
57 formation and operation.

58 or any other legal or commercial entity having a statute governing its formation
59 and operation. The term includes a domestic or foreign entity.

60 (C) “Established practices” means the practices used by an unincorporated
61 nonprofit association without material change during the most recent five years of its
62 existence or if it has existed for less than five years, during its entire existence.

63 (D) “Governing principles” means all agreements, whether oral, in a record, or
64 implied from its established practices, or in any combination thereof, that govern the
65 purpose or operation of an unincorporated nonprofit association and the rights and
66 obligations of its members and managers. The term includes any amendment or

67 restatement of the agreements constituting the governing principles.

68 (E) “Manager” means a person that is responsible, alone or in concert with
69 others, for the management of an unincorporated nonprofit association as stated in section
70 1745.32(e).

71 (F) “Member” means a person that, under the governing principles of an
72 unincorporated nonprofit association, is entitled to participate in the selection of persons
73 authorized to manage the affairs of the association or in the adoption of the policies and
74 activities of the association.

75 (G) “Mutual benefit association” means any unincorporated nonprofit
76 association organized under this chapter other than a public benefit association.

77 (H) “Person” means an individual, corporation, business trust, statutory entity
78 trust, estate, trust, partnership, limited liability company, cooperative, association, joint
79 venture, public corporation, government or governmental subdivision, agency, or
80 instrumentality, two or more persons having a joint or common interest, or any other
81 legal or commercial entity.

82 (I) “Public benefit association” means an unincorporated nonprofit
83 association exempt from federal income taxation under section 501(c)(3) of the “Internal
84 Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C. 1, as amended, or is organized for a
85 public or charitable purpose and that upon dissolution must distribute its assets to a public
86 benefit association, the United States, a state or any political subdivision of a state, or a
87 person that is recognized as exempt from federal income taxation under section 501(c)(3)
88 of the “Internal Revenue Code of 1986,” as amended.

89 (J) “Public benefit entity” means an entity that is recognized as exempt from
90 federal income taxation under section 501(c)(3) of the “Internal Revenue Code of 1986,”
91 100 Stat. 2085, 26 U.S.C. 1, as amended, or is organized for a public or charitable
92 purpose and that upon dissolution must distribute its assets to a public benefit entity, the
93 United States, a state or any political subdivision of a state, or a person that is recognized
94 as exempt from federal income taxation under section 501(c)(3) of the “Internal Revenue
95 Code of 1986,” as amended. “Public benefit entity” does not include an entity that is
96 organized by one or more municipal corporations to further a public purpose that is not a
97 charitable purpose.

98 (K) “Record” means information that is inscribed on a tangible medium or that
99 is stored in an electronic or other medium and is retrievable in perceivable form.

100 (L) “Unincorporated nonprofit association” means an unincorporated
101 organization, consisting of two or more members joined by mutual consent pursuant to an
102 agreement written, oral, or inferred from conduct, for one or more common, nonprofit
103 purposes that is not: (i) a trust; (ii) a marriage, domestic partnership, common law
104 relationship, or other domestic living arrangement; (iii) an organization that is formed
105 under any other statute that governs the organization and operation of unincorporated
106 associations; (iv) joint tenancy, tenancy in common, or tenancy by the entireties even if

107 the co-owners share use of the property for a nonprofit purpose; or (v) a religious
108 organization that operates according to the rules, regulations, canons, discipline or
109 customs established by the organization, including any ministry, apostolate, committee or
110 group within such organization.

111 **COMMITTEE COMMENT (2010)**

112 Based on section 2 of the Revised Uniform Unincorporated Nonprofit Association
113 Act (RUUNAA) and section 1702.01 of the Revised Code.

114 **1745.06. Relation to Other Law.**

115 Principles of law and equity supplement this chapter unless displaced by a
116 particular provision of it. A statute in this state governing a particular type of
117 unincorporated nonprofit association prevails over an inconsistent provision in this
118 chapter, to the extent of the inconsistency. This chapter supplements all regulatory laws
119 that are applicable to nonprofit organizations operating in the State of Ohio. In the event
120 of a conflict, those other laws prevail.

121 **COMMITTEE COMMENT (2010)**

122 Based on section 3 of RUUNAA.

123 **1745.07. Governing law; territorial application.**

124 Except as otherwise provided in the following sentence, the law of the State of
125 Ohio governs all unincorporated nonprofit associations formed or operating in this state.
126 Unless its governing principles specify a different jurisdiction, the law of the jurisdiction
127 in which an unincorporated nonprofit association has its main place of activities governs
128 the internal affairs of the association.

129 **COMMITTEE COMMENT (2010)**

130 Based on section 4 of RUUNAA.

131 **1745.08. Legal entity; perpetual existence; powers.**

132 An unincorporated nonprofit association is a legal entity distinct from its
133 members and managers. An unincorporated nonprofit association has perpetual duration
134 unless its governing principles otherwise specify. An unincorporated nonprofit
135 association has the same powers as an individual to do all things necessary or convenient
136 to carry on its activities. An unincorporated nonprofit association may engage in profit-
137 making activities but any profits from such activities must be used or set aside for the
138 association's nonprofit purposes.

139 **COMMITTEE COMMENT (2010)**

140 Based on section 5 of RUUNAA.

141 **1745.09. Ownership and transfer of property.**

142 An unincorporated nonprofit association may acquire, hold, encumber, or transfer
143 in its name an estate or interest in real or personal property. An unincorporated nonprofit
144 association may be a legatee, a devisee, or a beneficiary of a trust or contract. All
145 property acquired by an unincorporated nonprofit association by purchase, gift, devise,
146 bequest, or otherwise shall be the absolute property of the association, unless at the time
147 of acquiring such property it is otherwise in writing specified.

148 **COMMITTEE COMMENT (2010)**

149 Based on section 6 of RUUNAA and section 1702.35 of the Revised Code.

150 **1745.10. Liabilities.**

151 A debt, obligation or other liability of an unincorporated nonprofit association,
152 whether arising in contract, tort, or otherwise, is solely the debt, obligation or other
153 liability of the association and does not become the debt, obligation, or other liability of a
154 member or manager solely because the member acts as a member or the manager acts as
155 a manager. A person's status as a member or a manager of an unincorporated nonprofit
156 association does not prevent or restrict laws other than this chapter from imposing
157 liability on the person or association because of the person's conduct.

158 **COMMITTEE COMMENT (2010)**

159 Based on section 8 of RUUNAA.

160 **1745.11. Assertion and defense of claims.**

161 An unincorporated nonprofit association has the capacity to sue and be sued in its
162 own name. A member or a manager may assert a claim that the member or manager has
163 against an unincorporated nonprofit association. An unincorporated nonprofit association
164 may assert a claim it has against a member or a manager.

165 **COMMITTEE COMMENT (2010)**

166 Based on section 9 of RUUNAA.

167 **1745.12. Assets subject to judgment, execution and other process.**

168 All assets, property, funds, and any rights or interests, at law or in equity, of any
169 unincorporated nonprofit association shall be subject to judgment, execution and other
170 process. A money judgment against an unincorporated nonprofit association shall be
171 enforced only against the association as an entity and shall not be enforceable against the
172 property of any manager or member of the association.

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COMMITTEE COMMENT (2010)

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Based on former section 1745.02 of the Revised Code.

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1745.13. Appointment of agent to receive service of process.

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(A) An unincorporated nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process. The statement appointing an agent must set forth the name of the unincorporated nonprofit association and the name and address in the state of the agent, including street and number or other particular description, and shall otherwise be in such form as the secretary of state prescribes. The secretary of state shall keep a record of the names of all unincorporated nonprofit associations that have filed a statement appointing an agent authorized to receive service of process and the names and addresses of their respective agents.

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(B) A statement appointing an agent authorized to receive service of process shall be signed by a person authorized to manage the affairs of the unincorporated nonprofit association. The statement shall also be signed by the person appointed as agent accepting the appointment. The appointed agent may resign by filing with the secretary of state, on a form prescribed by the secretary of state, a written notice to that effect that is signed by the agent and by sending a copy of the notice to the association at the current or last known address of its principal office on or prior to the date that notice is filed with the secretary of state.

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(C) An unincorporated nonprofit association may revoke the appointment of an agent by filing with the secretary of state, on a form prescribed by the secretary of state, a written appointment of another agent and a statement that the appointment of the former agent is revoked.

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COMMITTEE COMMENT (2010)

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Based on section 11 of RUUNAA and section 1702.06(G) of the Revised Code.

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1745.14. Service of process.

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In an action or proceeding against an unincorporated nonprofit association, a summons and complaint or other process may be served on an agent authorized by appointment to receive service of process or a manager of the association or in any other manner authorized by the law of this state.

204

COMMITTEE COMMENT (2010)

205

Based on section 12 of RUUNAA.

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1745.15. Action or proceeding not abated by change.

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An action or proceeding against an unincorporated nonprofit association does not

208 abate merely because of a change in its members or managers.

209 **COMMITTEE COMMENT (2010)**

210 Based on section 13 of RUUNAA.

211 **1745.16. Venue.**

212 Unless otherwise provided by law, venue of an action against an unincorporated
213 nonprofit association brought in this state shall be determined under the statutes
214 applicable to an action brought in this state against a nonprofit corporation.

215 **COMMITTEE COMMENT (2010)**

216 Based on section 14 of RUUNAA.

217 **1745.17. Member not an agent.**

218 A member of an unincorporated nonprofit association is not an agent of the
219 association solely by reason of being a member.

220 **COMMITTEE COMMENT (2010)**

221 Based on section 15 of RUUNAA.

222 **1745.18. Approval by members.**

223 Except as otherwise provided in its governing principles, an unincorporated
224 nonprofit association must have the approval of its members to:

225 (1) admit, suspend, dismiss or expel a member;

226 (2) select and dismiss a manager;

227 (3) adopt, amend, or repeal its governing principles;

228 (4) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the
229 association's property, with or without the association's goodwill, outside the ordinary
230 course of its activities;

231 (5) dissolve under Section 1745.48 or a merge or consolidate under Section
232 1745.46 or Section 1745.461 of the Revised Code;

233 (6) undertake any other act outside the ordinary course of the association's
234 activities if the association has annual gross receipts of less than \$25,000;

235 (7) determine the purposes of the association and, if the association has annual
236 gross receipts of less than \$25,000, determine the policies of the association; or

274 (C) Unless the governing principles otherwise provide, all rights and
275 privileges of a member in an unincorporated nonprofit association and its property shall
276 cease on termination of membership.

277 (D) Whenever the number of members of an unincorporated nonprofit
278 association that, under the law or its governing principles, must have a specified number
279 of members, is reduced below the specified number, the unincorporated nonprofit
280 association shall not be required because of that reduction to cease carrying on its
281 activities, but the continuing members may fill all vacancies.

282 (E) Unless otherwise provided in the governing principles of an
283 unincorporated nonprofit association, all members have the same membership rights and
284 privileges.

285 (F) All members of an unincorporated nonprofit association shall exercise
286 their membership rights and privileges consistent with the obligation of good faith and
287 fair dealing.

288 **COMMITTEE COMMENT (2010)**

289 Based on section 1702.13 of the Revised Code.

290 **1745.21 Meetings of voting members - calling and place of meeting.**

291 (A) Unless the governing principles provide otherwise, meetings of voting
292 members of an unincorporated nonprofit association may be called by any of the
293 following:

294 (1) The president, or, in case of the president's absence, death, or disability,
295 the vice-president authorized to exercise the authority of the president;

296 (2) The managers by action at a meeting, or a majority of the managers acting
297 without a meeting;

298 (3) The lesser of (a) ten per cent of the voting members or (b) twenty-five of
299 the voting members, unless the governing principles specify for such purpose a smaller or
300 larger proportion or number, but not in excess of fifty per cent of the voting members;

301 (4) Any other officers or persons that the governing principles authorize to
302 call such meetings.

303 (B) If so provided in the governing principles, meetings of voting members
304 may be held either within or without this state or solely by means of authorized
305 communications equipment.

306 (C) Unless the governing principles provide otherwise, the voting members
307 and proxyholders who are not physically present at a meeting of voting members may
308 attend the meeting by the use of authorized communications equipment that enables the

309 voting members and proxyholders an opportunity to participate in the meeting and to vote
310 on matters submitted to the voting members, including an opportunity to read or hear the
311 proceedings of the meeting, participate in the proceedings, and contemporaneously
312 communicate with the persons who are physically present at the meeting. Any voting
313 member who uses authorized communications equipment under this division is deemed
314 to be present in person at the meeting whether the meeting is held at a designated place or
315 solely by means of authorized communications equipment. The members or managers
316 may adopt procedures and guidelines for the use of authorized communications
317 equipment in connection with a meeting of voting members to permit the corporation to
318 verify that a person is a voting member or proxyholder and to maintain a record of any
319 vote or other action taken at the meeting.

320 **COMMITTEE COMMENT (2010)**

321 Based on section 1702.17 of the Revised Code.

322 **1745.22 Notice of meeting.**

323 Unless the governing principles provide for notice of meetings otherwise than as
324 provided in this section, written notice stating the place, if any, and the time of a meeting
325 and the means, if any, by which the voting members can be present and vote at the
326 meeting through the use of authorized communications equipment, and, in case of a
327 special meeting, the purpose or purposes for which the meeting is called, shall be given in
328 the manner described in section 1745.19 of the Revised Code, not less than ten or not
329 more than sixty days before the date of the meeting: (A) to each member entitled to
330 notice of the meeting; (B) by or at the direction of the president or the secretary or any
331 other person required or permitted by the governing principles to give notice or the
332 officers or persons calling the meeting. If mailed or sent by overnight delivery service,
333 that notice shall be addressed to the member at the member's address as it appears on the
334 records of the unincorporated nonprofit association. If sent by means of authorized
335 communications equipment, that notice shall be sent to the address furnished by the
336 voting member for transmissions by authorized communications equipment. Notice of
337 adjournment of a meeting need not be given if the place, if any, and the time to which it
338 is adjourned and the procedure by which the voting members can be present and vote at
339 the adjourned meeting through the use of authorized communications equipment are
340 fixed and announced at the meeting.

341 **COMMITTEE COMMENT (2010)**

342 Based on section 1702.18 of the Revised Code.

343

344 **1745.23 Waiver of notice.**

345 (A) Notice of the place, if any, the time, and the purposes of any meeting of
346 voting members or managers, as the case may be, whether required by law, may be
347 waived in writing, either before or after the holding of such meeting, by any member, or

348 by any manager, which writing shall be filed with or entered upon the records of the
349 meeting. A transmission by authorized communications equipment that contains a waiver
350 is a writing for purposes of this division.

351 (B) If a member or manager attends a meeting described in division (A) of this
352 section without protesting prior to or at the commencement of the meeting, then the lack
353 of proper notice shall be deemed to be a waiver by the member or manager of notice of
354 the meeting.

355 (C) Unless the governing principles provide otherwise, a member shall be
356 considered in attendance at a meeting described in division (A) of this section if the
357 member is present in person, by the use of authorized communications equipment, by
358 mail, or, if permitted, by proxy. Unless the governing principles provide otherwise, a
359 manager shall be considered in attendance at a meeting described in division (A) of this
360 section if the manager is present in person or by the use of authorized communications
361 equipment.

362 **COMMITTEE COMMENT (2010)**

363 Based on section 1702.19 of the Revised Code.

364 **1745.24. Quorum for voting members' meeting.**

365 Unless the governing principles otherwise provide:

366 (A)(1) The voting members present in person, by the use of authorized
367 communications equipment, by mail, or, if permitted, by proxy at any meeting of voting
368 members shall constitute a quorum for the meeting.

369 (2) The affirmative vote of a majority of the voting members present at a
370 meeting at which a quorum is present as provided in division (A)(1) of this section shall
371 be necessary for the authorization or taking of any action voted upon by the members,
372 except that no action required by law or by the governing principles to be authorized or
373 taken by a specified proportion or number of the voting members or of any class of
374 voting members may be authorized or taken by a lesser proportion or number.

375 **COMMITTEE COMMENT (2010)**

376 Based on section 1702.22 of the Revised Code.

377

378 **1745.25 Voting.**

379 (A) Except as otherwise provided in the governing principles, each member,
380 regardless of class, shall be entitled to one vote on each matter properly submitted to the
381 members for their vote, consent, waiver, release, or other action.

415 may be authorized or taken without a meeting with the affirmative vote or approval of,
416 and in a writing or writings signed by, all the members, or all of the managers, as the case
417 may be, who would be entitled to notice of a meeting for that purpose, or, in the case of
418 members, any other proportion or number of voting members, not less than a majority,
419 that the governing principles permit. Any such writing shall be filed with or entered upon
420 the records of the unincorporated nonprofit association. Any certificate with respect to
421 the authorization or taking of any action described in this division that is required to be
422 filed in the office of the secretary of state shall recite that the authorization or taking of
423 that action was in a writing or writings approved and signed as specified in this section.

424 (B) Any transmission by authorized communications equipment that contains
425 an affirmative vote or approval of the person described in division (A) of this section is a
426 signed writing for purposes of this section. The date on which that transmission by
427 authorized communications equipment is sent is the date on which the writing is signed.

428 **COMMITTEE COMMENT (2010)**

429 Based on section 1702.25 of the Revised Code.

430 **1745.29. Admission, suspension, dismissal, or expulsion of members.**

431 (A) A person becomes a member of an unincorporated nonprofit association
432 and may be suspended, dismissed, or expelled in accordance with the association's
433 governing principles. If there are no applicable governing principles, a person may
434 become a member or be suspended, dismissed, or expelled from an association by a vote
435 of its members. A person may not be admitted as a member of an unincorporated
436 nonprofit association without the person's consent.

437 (B) Unless the governing principles otherwise provide, the suspension,
438 dismissal or expulsion of a member of an unincorporated nonprofit association does not
439 relieve the member from any unpaid capital contribution, dues, assessments, fees, or
440 other obligation incurred or commitment made by the member before the suspension,
441 dismissal or expulsion.

442 **COMMITTEE COMMENT (2010)**

443 Based on section 19 of RUUNAA.

444 **1745.30. Member's resignation.**

445 (A) A member may resign from membership in an unincorporated nonprofit
446 association in accordance with the governing principles. In the absence of applicable
447 governing principles, a member may resign at any time.

448 (B) Unless the governing principles otherwise provide, resignation of a
449 member of an unincorporated nonprofit association does not relieve the member from any
450 unpaid capital contribution, dues, assessments, fee, or other obligation incurred or
451 commitment made by the member before resignation.

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COMMITTEE COMMENT (2010)

453

Based on section 20 of RUUNAA.

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1745.31. Membership interest not transferable.

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Except as otherwise provided in the governing principles, a member's interest or any right under the governing principles is not transferable.

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COMMITTEE COMMENT (2010)

458

Based on section 21 of RUUNAA.

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1745.32. Selection of managers; management rights of managers.

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Except as otherwise provided in this chapter or the governing principles: (a) the members of an unincorporated nonprofit association may select the manager or managers; (b) a manager may be a member of the association; (c) if no manager is selected, all members are managers; (d) each manager has equal rights in the management and conduct of the association's activities; (e) all matters relating to the association's activities are decided by its managers, except for those matters reserved for approval by members in section 1745.18 of the Revised Code; and (f) a difference among managers is decided by a majority of the managers.

468

COMMITTEE COMMENT (2010)

469

Based on section 22 of RUUNAA.

470

1745.33. Authority and duties of manager; standard of care.

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(A) Except where the law or the governing principles require that action be otherwise authorized or taken, all of the authority of an unincorporated nonprofit association shall be exercised by or under the direction of its managers.

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(B) The only fiduciary duties a manager owes to the association are the duties set forth in this division (B) of this section. The duties of a manager are to act in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the unincorporated nonprofit association, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. A manager serving on a committee of managers is acting as a manager.

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(C) In performing the duties of a manager, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that are prepared or presented by the following:

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(1) One or more managers, officers, or employees of the association who the manager reasonably believes are reliable and competent in the matters prepared or presented;

486 (2) Counsel, public accountants, or other persons as to matters that the
487 manager reasonably believes are within the person's professional or expert competence;

488 (3) A committee of the managers upon which the manager does not serve,
489 duly established in accordance with a provision of the governing principles as to matters
490 within its designated authority, which committee the manager reasonably believes to
491 merit confidence.

492 (D) For purposes of division (B) of this section:

493 (1) A manager shall not be found to have failed to perform the manager's
494 duties in accordance with that division, unless it is proved by clear and convincing
495 evidence, in an action brought against the manager that the manager has not acted in good
496 faith, in a manner the manager reasonably believes to be in or not opposed to the best
497 interests of the unincorporated nonprofit association, or with the care that an ordinarily
498 prudent person in a like position would use under similar circumstances. Such an action
499 includes, but is not limited to, an action that involves or affects any of the following:

500 (a) A change or potential change in control of the association;

501 (b) A termination or potential termination of the manager's service to the
502 association as manager;

503 (c) The manager's service in any other position or relationship with the
504 association;

505 (2) A manager shall not be considered to be acting in good faith if the
506 manager has knowledge concerning the matter in question that would cause reliance on
507 information, opinions, reports, or statements that are prepared or presented by the persons
508 described in divisions (C) (1) to (3) of this section, to be unwarranted.

509 (3) The provisions of this division do not limit relief available under section
510 1745.42 of the Revised Code.

511 (E)(1) Subject to divisions (E)(2) and (3) of this section, a manager is liable in
512 damages for any act that the manager takes or fails to take as manager only if it is proved,
513 by clear and convincing evidence, in a court with jurisdiction that the act or omission of
514 the manager was one undertaken with a deliberate intent to cause injury to the association
515 or was one undertaken with a reckless disregard for the best interests of the association.

516 (2) Division (E)(1) of this section does not affect the liability of a manager
517 under section 1745.54 of the Revised Code.

518 (3) Subject to division (E)(2) of this section, division (E)(1) of this section
519 does not apply if, and only to the extent that, at the time of an act or omission of a
520 manager that is the subject of complaint, the governing principles of the association state,
521 by specific reference to that division, that its provisions do not apply to the association.

522 (F) For purposes of this section, in determining what a manager reasonably
523 believes to be in or not opposed to the best interests of the association, a manager shall
524 consider the purposes of the association and may consider any of the following:

525 (1) The interests of the employees, suppliers, creditors, and customers of the
526 association;

527 (2) The economy of this state and of the nation;

528 (3) Community and societal considerations;

529 (4) The long-term and short-term best interests of the association, including,
530 but not limited to, the possibility that those interests may be best served by the continued
531 independence of the association.

532 (G) Divisions (E) and (F) of this section do not affect the duties of a manager
533 who acts in any capacity other than in the capacity as a manager.

534 **COMMITTEE COMMENT (2010)**

535 Based on section 1702.30 of the Revised Code.

536 **1745.34 Meetings of managers - notice.**

537 Unless otherwise provided in governing principles:

538 (A) Meetings of the managers may be called by the chairperson of the board,
539 the president, any vice-president, or any two managers.

540 (B) Meetings of the managers may be held at any place within or without the
541 state, including by means of authorized communications equipment, unless the governing
542 principles prohibit participation by managers at a meeting by means of authorized
543 communications equipment. Participation in a meeting pursuant to this division
544 constitutes presence at that meeting.

545 (C) Notice of the place, if any, and time of each meeting of the managers shall
546 be given to each manager either by personal delivery or by mail, by overnight delivery
547 service, or by means of authorized communications equipment at least two days before
548 the meeting. That notice need not specify the purposes of the meeting.

549 (D) Notice of adjournment of a meeting need not be given if the time and
550 place to which it is adjourned are fixed and announced at that meeting.

551 **COMMITTEE COMMENT (2010)**

552 Based on section 1702.31 of the Revised Code.

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554 **1745.35. Quorum for managers' meeting.**

555 Unless the governing principles otherwise provide, a majority of the whole
556 authorized number of managers is necessary to constitute a quorum for a meeting of the
557 managers, except that a majority of the managers in office constitutes a quorum for filling
558 a vacancy in the board. The act of a majority of the managers present at a meeting at
559 which a quorum is present is the act of the board, unless the act of a greater number is
560 required by the governing principles.

561 **COMMITTEE COMMENT (2010)**

562 Based on section 1702.32 of the Revised Code.

563 **1745.36. Executive and other committees of managers.**

564 (A) The governing principles may provide for the creation by the managers of
565 an executive committee or any other committee of the managers, to consist of one or
566 more managers, and may authorize the delegation to any such committee of any of the
567 authority of the managers, however conferred.

568 (B) The managers may appoint one or more managers as alternate members of
569 any committee, described in division (A) of this section, who may take the place of any
570 absent member or members at any meeting of the particular committee.

571 (C) Each committee described in division (A) of this section shall serve at the
572 pleasure of the managers, shall act only in the intervals between meetings of the
573 managers, and shall be subject to the control and direction of the managers.

574 (D) Unless otherwise provided in the governing principles or ordered by the
575 managers, any committee described in division (A) of this section may act by a majority
576 of its members at a meeting or by a writing or writings signed by all of its members.

577 (E) Meetings of committees described in division (A) of this section may be
578 held by any means of authorized communication equipment, unless participation by
579 members of the committee at a meeting by means of authorized communications
580 equipment is prohibited by the governing principles or any order of the managers.
581 Participation in a meeting pursuant to this division constitutes presence at the meeting.

582 (F) An act or authorization of an act by any committee described in division
583 (A) of this section within the authority delegated to it shall be as effective for all purposes
584 as the act or authorization of the managers.

585 **COMMITTEE COMMENT (2010)**

586 Based on section 1702.33 of the Revised Code.

587 **1745.37. Officers; authority and removal.**

588 (A) The officers of an unincorporated nonprofit association, if any, may
589 consist of a president, a secretary, a treasurer, and, if desired, a chairperson of the board,
590 one or more vice-presidents, and such other officers and assistant officers as may be
591 deemed necessary, each of whom may be designated by such other titles as may be
592 provided in the governing principles, or resolutions of the managers. Unless the
593 governing principles otherwise provide, none of the officers need be a manager. Any two
594 or more offices may be held by the same person. The officers shall be elected or
595 appointed at such time, in such manner, and for such terms as may be prescribed in the
596 governing principles. In the absence of any such provision, all officers shall be elected
597 annually by the managers.

598 (B) Unless the governing principles otherwise provide:

599 (1) All officers, as between themselves and the association, shall respectively
600 have such authority and perform such duties as are determined by the persons authorized
601 to elect or appoint them;

602 (2) Any officer may be removed, with or without cause, by the persons
603 authorized to elect or appoint the officer without prejudice to the contract rights of such
604 officer. The election or appointment of an officer for a given term, or a general provision
605 in the governing principles with respect to term of office, shall not be deemed to create
606 contract rights;

607 (3) The persons authorized to elect or appoint officers may fill any vacancy in
608 any office occurring from whatever reason.

609 **COMMITTEE COMMENT (2010)**

610 Based on section 1702.34 of the Revised Code.

611 **1745.38. Association mortgages.**

612 The managers of an unincorporated nonprofit association may authorize any
613 mortgage, pledge, or deed of trust of all or any of the property of the association of any
614 description, or any interest therein, for the purpose of securing the payment or
615 performance of any obligation or contract. Unless the governing principles, or the terms
616 of any trust on which the association holds any particular property, otherwise provide, no
617 vote or consent of members or authorization from the court under section 1715.39 of the
618 Revised Code is necessary for such action.

619 **COMMITTEE COMMENT (2010)**

620 Based on section 1702.36 of the Revised Code.

621 **1745.39 Right of a member or manager to information.**

622 (A) On reasonable notice, a member or manager of an unincorporated
623 nonprofit association may inspect and copy during the association's regular operating
624 hours, at a reasonable location specified by the association, any record maintained by the
625 association regarding its activities, financial condition, and other circumstances, to the
626 extent the information is material to the member's or manager's rights and duties under
627 the governing principles or this chapter.

628 (B) An unincorporated nonprofit association may impose reasonable
629 restrictions on access to and use of information to be furnished under this section,
630 including designating the information confidential and imposing nondisclosure and
631 safeguarding obligations on the recipient.

632 (C) An unincorporated nonprofit association may charge a person that makes a
633 demand under this section reasonable copying costs, limited to the costs of labor and
634 materials.

635 (D) A former member or manager may have access to information to which
636 the member or manager was entitled while a member or manager if the information
637 pertains to the period during which the person was a member or manager, the former
638 member or manager seeks the information in good faith, and the former member or
639 manager satisfies divisions (A) through (C) of this section.

640 **COMMITTEE COMMENT (2010)**

641 Based on section 25 of RUUNAA.

642 **1745.40. Distributions prohibited; compensation and other permitted payments.**

643 (A) Except as otherwise provided in division (B) of this section, an
644 unincorporated nonprofit association may not pay dividends or distribute any part of its
645 income or profits to a member, manager, officer or other private person.

646 (B) An unincorporated nonprofit association may: (1) pay reasonable
647 compensation or reimburse reasonable expenses to a member or manager for services
648 rendered; (2) confer benefits on a member or manager in conformity with its nonprofit
649 purposes; (3) repurchase a membership and repay a capital contribution made by a
650 member to the extent authorized by its governing principles; or (4) make distributions of
651 property to members upon winding up and termination to the extent permitted by section
652 1745.50 of the Revised Code.

653 **COMMITTEE COMMENT (2010)**

654 Based on section 26 of RUUNAA.

655 **1745.41 Removal of managers and filling vacancies.**

656 (A) The office of a manager becomes vacant if the manager dies or resigns,
657 which resignation shall take effect immediately or at such other time as the manager may
658 specify.

659 (B) A manager may be removed from office pursuant to any procedure
660 therefor provided in governing principles and such removal shall create a vacancy.

661 (C) Unless the governing principles otherwise provide, the remaining
662 managers, though less than a majority of the whole authorized number of managers, may,
663 by the vote of a majority of their number, fill any vacancy in the managers for the
664 unexpired term. Within the meaning of this section, a vacancy exists in case the voting
665 members increase the authorized number of managers but fail at the meeting at which
666 such increase is authorized, or an adjournment thereof, to elect the additional managers
667 provided for, or in case the voting members fail at any time to elect the whole authorized
668 number of managers.

669 **COMMITTEE COMMENT (2010)**

670 Based on section 1702.29 of the Revised Code.

671 **1745.42 Interest of member, manager or officer in contract.**

672 (A) Unless otherwise provided in the governing principles:

673 (1) No contract, action, or transaction is void or voidable with respect to an
674 unincorporated nonprofit association because the contract, action, or transaction is
675 between or affects the association and one or more of its members, managers or officers,
676 or is between or affects the corporation and any other person in which one or more of the
677 corporation's members, managers or officers are members, managers or officers, or in
678 which one or more of the corporation's members, managers or officers have a financial or
679 personal interest, or because one or more interested members, managers or officers
680 participate in or vote at the meeting of the members, managers or a committee of the
681 managers that authorizes the contract, action, or transaction, if any of the following
682 applies:

683 (a) The material facts as to the member's, manager's or officer's relationship
684 or interest and as to the contract, action, or transaction are disclosed or are known to the
685 managers or the committee, and the managers or committee, in good faith reasonably
686 justified by the material facts, authorizes the contract, action, or transaction by the
687 affirmative vote of a majority of the disinterested managers, even though the disinterested
688 managers constitute less than a quorum of the managers or the committee;

689 (b) The material facts as to the member's, manager's or officer's relationship
690 or interest and as to the contract, action, or transaction are disclosed or are known to the
691 members entitled to vote on the contract, action, or transaction, and the contract, action,
692 or transaction is specifically approved at a meeting of the members held for the purpose

693 of voting on the contract, action, or transaction, by the affirmative vote of a majority of
694 the voting members of the unincorporated nonprofit association who are not interested in
695 the contract, action, or transaction;

696 (c) The contract, action, or transaction is fair as to the unincorporated
697 nonprofit association as of the time it is authorized or approved by the managers, a
698 committee of the managers, or the members.

699 (2) Common or interested managers may be counted in determining the
700 presence of a quorum at a meeting of the managers, or of a committee of the managers,
701 that authorizes such a contract, action, or transaction.

702 (3) The managers, by the affirmative vote of a majority of those in office, and
703 irrespective of any financial or personal interest of any of the managers, shall have
704 authority to establish reasonable compensation, which may include pension, disability,
705 and death benefits, for services to the unincorporated nonprofit association by managers
706 and officers, or to delegate that authority to establish reasonable compensation to one or
707 more officers or managers.

708 (B) Divisions (A)(1) and (2) of this section do not limit or otherwise affect the
709 liability of managers under section 1745.54 of the Revised Code.

710 (C) For purposes of division (A) of this section, a manager is not an interested
711 manager solely because the subject of a contract, action, or transaction may involve or
712 effect a change in control of the unincorporated nonprofit association or the manager's
713 continuation in office as a manager of the association.

714 (D) For purposes of this section, "action" means a resolution that is adopted by
715 the managers or a committee of the managers.

716 **COMMITTEE COMMENT (2010)**

717 Based on section 1702.301 of the Revised Code.

718 **1745.43. Indemnification; advancement of expenses.**

719 (A)(1) An unincorporated nonprofit association may indemnify or agree to
720 indemnify any person who was or is a party or is threatened to be made a party to any
721 threatened, pending, or completed civil, criminal, administrative, or investigative action,
722 suit, or proceeding, other than an action by or in the right of the association, by reason of
723 the fact that the person is or was a manager, employee, or agent of or a volunteer of the
724 association, or is or was serving at the request of the association as a director, officer,
725 employee, member, manager, or agent of or a volunteer of any other entity, against
726 expenses, including attorney's fees, judgments, fines, and amounts paid in settlement
727 actually and reasonably incurred by the person in connection with such action, suit, or
728 proceeding, if the person acted in good faith and in a manner the person reasonably
729 believed to be in or not opposed to the best interests of the association, and, with respect
730 to any criminal action or proceeding if the person had no reasonable cause to believe the

731 person's conduct was unlawful. The termination of any action, suit, or proceeding by
732 judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its
733 equivalent, shall not create, of itself, a presumption that the person did not act in good
734 faith and in a manner the person reasonably believed to be in or not opposed to the best
735 interests of the association, and, with respect to any criminal action or proceeding, a
736 presumption that the person had reasonable cause to believe that the person's conduct
737 was unlawful.

738 (2) An unincorporated nonprofit association may indemnify or agree to
739 indemnify any person who was or is a party, or is threatened to be made a party, to any
740 threatened, pending or completed action or suit by or in the right of the association to
741 procure a judgment in its favor by reason of the fact that the person is or was a manager,
742 employee, or agent of or a volunteer of the association, or is or was serving at the request
743 of the association as a director, officer, employee, member, manager, or agent of or
744 volunteer of any other entity against expenses, including attorney's fees, actually and
745 reasonably incurred by the person in connection with the defense or settlement of such
746 action or suit if he acted in good faith and in a manner the person reasonably believed to
747 be in or not opposed to the best interests of the association, except that no
748 indemnification shall be made in respect of any of the following:

749 (a) Any claim, issue, or matter as to which the person is adjudged to be liable
750 for negligence or misconduct in the performance of the person's duty to the
751 unincorporated nonprofit association unless and only to the extent that the court of
752 common pleas or the court in which the action or suit was brought determines, upon
753 application, that, despite the adjudication of liability but in view of all the circumstances
754 of the case, the person is fairly and reasonably entitled to indemnity for such expenses as
755 the court of common pleas or such other court considers proper;

756 (b) Any action or suit in which liability is asserted against a manager and that
757 liability is asserted only pursuant to section 1745.54 of the Revised Code.

758 (3) To the extent that a manager, employee, member, agent, or volunteer has
759 been successful on the merits or otherwise in defense of any action, suit, or proceeding
760 referred to in division (A)(1) or (2) of this section, or in defense of any claim, issue, or
761 matter in such an action, suit, or proceeding, that person shall be indemnified against
762 expenses, including attorney's fees, actually and reasonably incurred by the person in
763 connection with that action, suit, or proceeding.

764 (4) Unless ordered by a court and subject to division (A)(3) of this section,
765 any indemnification under division (A)(1) or (2) of this section shall be made by the
766 unincorporated nonprofit association only as authorized in the specific case upon a
767 determination that indemnification of the manager, employee, member, agent, or
768 volunteer is proper in the circumstances because the person has met the applicable
769 standard of conduct set forth in division (A)(1) or (2) of this section. Such determination
770 shall be made in any of the following manners:

771 (a) By a majority vote of a quorum consisting of managers of the

772 indemnifying unincorporated nonprofit association who were not and are not parties to or
773 threatened with the action, suit, or proceeding referred to in division (A)(1) or (2) of this
774 section;

775 (b) Whether or not a quorum as described in division (A)(4)(a) of this section
776 is obtainable, and if a majority of a quorum of disinterested managers so directs, in a
777 written opinion by independent legal counsel other than an attorney, or a firm having
778 associated with it an attorney, who has been retained by or who has performed services
779 for the association or any person to be indemnified within the past five years;

780 (c) By the members;

781 (d) By the court of common pleas or the court in which the action, suit, or
782 proceeding referred to in division (A)(1) or (2) of this section was brought.

783 If an action or suit by or in the right of the unincorporated nonprofit association is
784 involved, any determination made by the disinterested managers under division (A)(4)(a)
785 of this section or by independent legal counsel under division (A)(4)(b) of this section
786 shall be communicated promptly to the person who threatened or brought the action or
787 suit under division (A)(2) of this section, and, within ten days after receipt of such
788 notification, such person shall have the right to petition the court of common please or the
789 court in which such action or suit was brought to review the reasonableness of such
790 determination.

791 (5)(a)(i) Unless, at the time of a manager's or volunteer's act or omission that is
792 the subject of an action, suit, or proceeding referred to in division (A)(1) or (2) of this
793 section, the governing principles of the unincorporated nonprofit association stated, by
794 specific reference to this division, that its provisions do not apply to the association, or
795 unless the only liability asserted against a manager in an action, suit, or proceeding
796 referred to in division (A)(1) or (2) of this section is pursuant to section 1745.54 of the
797 Revised Code, or unless division (A)(5)(a)(ii) of this section applies, the expenses shall
798 be paid as they are incurred, in advance of the final disposition of the action, suit, or
799 proceeding, including attorney's fees, shall be paid by the unincorporated nonprofit
800 association. Upon the request of the manager or volunteer and in accordance with
801 division (A)(5)(b) of this section, those expenses shall be paid as they are incurred, in
802 advance of the final disposition of the action, suit, or proceeding.

803 (ii) Notwithstanding division (A)(5)(a)(i) of this section, the expenses
804 incurred by a manager or volunteer in defending an action, suit, or proceeding referred to
805 in division (A)(1) or (2) of this section, including attorney's fees, shall not be paid by the
806 unincorporated nonprofit association upon the final disposition of the action, suit, or
807 proceeding, or, if paid in advance of the final disposition of the action, suit, or
808 proceeding, shall be repaid to the association by the manager or volunteer, if it is proved,
809 by clear and convincing evidence, in a court with jurisdiction that the act or omission of
810 the manager or volunteer was one undertaken with a deliberate intent to cause injury to
811 the association or was one undertaken with a reckless disregard for the best interests of
812 the association.

813 (b) Expenses, including attorney’s fees, incurred by a manager, employee,
814 member, agent, or volunteer in defending any action, suite, or proceeding referred to in
815 division (A)(1) or (2) of this section may be paid by the unincorporated nonprofit
816 association as the are incurred, in advance of the final disposition of the action, suit, or
817 proceeding, as authorized by the managers in the specific case, upon receipt of an
818 undertaking by or on behalf of the manager, employee, member, agent, or volunteer to
819 repay the amount if it ultimately is determined that the person is not entitled to be
820 indemnified by the association.

821 (6) The indemnification authorized by this section is not exclusive of, and
822 shall be in addition to, any other rights granted to those seeking indemnification, pursuant
823 to the governing principles, any agreement, a vote of the members or disinterested
824 managers, or otherwise, both as to action in their official capacities and as to action in
825 another capacity while holding their offices or positions, and shall continue as to a person
826 who has ceased to be a manager, employee, member, agent, or volunteer and shall inure
827 to the benefit of the heirs, executors, and administrators of such a person.

828 (7) An unincorporated nonprofit association may purchase and maintain
829 insurance, or furnish similar protection, including, but not limited to, trust funds, letters
830 of credit or self-insurance, for or on behalf of any person who is or was a manager,
831 employee, agent, or volunteer of the association, or is or was serving at the request of the
832 association as a manager, employee, member, agent, or volunteer of any other entity,
833 against any liability asserted against the person and incurred by the person in any such
834 capacity, or arising out of the person’s status as such, whether or not the association
835 would have the power to indemnify the person against that liability under this section.
836 Insurance may be so purchased from or so maintained with a person in which the
837 association has a financial interest.

838 (8) The authority of an unincorporated nonprofit association to indemnify
839 persons pursuant to division (A)(1) or (2) of this section does not limit the payment of
840 expenses as they are incurred, in advance of the final disposition of an action, suit, or
841 proceeding, pursuant to division (A)(5) of this section or the payment of indemnification,
842 insurance, or other protection that may be provided pursuant to division (A)(6) or (7) of
843 this section. Divisions (A)(1) and (2) of this section do not create any obligation to repay
844 or return payments made by the association pursuant to division (A)(5), (6), or (7) of this
845 section.

846 (9) As used in division (A) of this section, “unincorporated nonprofit
847 association” includes all constituent entities in a consolidation or merger, and the new or
848 surviving entity, so that any person who is or was a manager, employee, agent, or
849 volunteer of a constituent entity or is or was serving at the request of a constituent entity
850 as a director, officer, employee, member, manager, agent, or volunteer of any other
851 entity, shall stand in the same position under this section with respect to the new or
852 surviving entity as the person would if the person had served the new or surviving entity
853 in the same capacity.

854

855 COMMITTEE COMMENT (2010)

856 Based on section 1702.12(E) of the Revised Code.

857 1745.44. Sale or other disposition of assets.

858 (A)(1) Unless the governing principles of the unincorporated nonprofit
859 association, otherwise provide, the lease, sale, exchange, transfer, or other disposition of
860 any assets of the association may be made without the necessity of procuring
861 authorization from the court under section 1715.43 of the Revised Code, upon terms and
862 for the consideration, that may authorized by the managers, except that a lease, sale,
863 exchange, transfer other disposition of all, or substantially all, the assets may be made
864 only when that transaction is also authorized (either before or after authorization by
865 managers) by the voting members of the association at a meeting held for that purpose.

866 (B)(1) A public benefit association may not dispose of its assets with value equal
867 to more than fifty percent of the fair market value of the net tangible and intangible
868 assets, including goodwill, of the association over a period of thirty-six consecutive
869 months in a transaction or series of transactions, including the lease, sale, exchange,
870 transfer, or other disposition of those assets, that are outside the ordinary course of its
871 business or that are not in accordance with the purpose or purposes for which the
872 association was organized, as set forth in its governing principles, unless one or more of
873 the following apply:

874 (a) The transaction has received the prior approval of the court of common
875 pleas of the county in this state in which the principal office of the unincorporated
876 nonprofit association is located, in a proceeding of which the attorney general's
877 charitable law section has been given written notice by certified mail within three days of
878 the initiation of the proceeding, and in which proceeding the attorney general may
879 intervene as of right.

880 (b) The unincorporated nonprofit association has provided written notice of
881 the proposed transaction, including a copy or summary of the terms of such transaction,
882 at least twenty days before consummation of the lease, sale, exchange, transfer, or other
883 disposition of the assets, to the attorney general's charitable law section and to the
884 members of the association, and the proposed transaction has been approved by the
885 members.

886 (c) The transaction is in accordance with the purpose or purposes for which
887 the unincorporated nonprofit association was organized, as set forth in its governing
888 principles, and the lessee, purchaser, or transferee of the assets is a public benefit entity.

889 (2) The attorney general may require, pursuant to section 109.24 of the
890 Revised Code, the production of the documents necessary for review of a proposed
891 transaction under division (B)(1) of this section. The attorney general may retain, at the
892 expense of the public benefit association, one or more experts, including an investment
893 banker, actuary, appraiser, certified public accountant, or other expert, that the attorney

894 general considers reasonably necessary to provide assistance in reviewing a proposed
895 transaction under division (B)(1) of this section.

896 (C) The attorney general may institute a civil action to enforce the
897 requirements of division (B)(1) of this section in the court of common pleas of the county
898 in this state in which the principal office of the unincorporated nonprofit association is
899 located or in the Franklin county court of common pleas. In addition to any civil
900 remedies that may exist under common law or the Revised Code, a court may rescind the
901 transaction or grant injunctive relief or impose any combination of these remedies.

902 (D) The unincorporated nonprofit association by its managers may abandon
903 the proposed lease, sale, exchange, transfer, or other disposition of the assets of the
904 association pursuant to division (A) or (B) of this section, subject to the contract rights of
905 other persons, if that power of abandonment is conferred upon the managers either by the
906 terms of the transaction or by the same vote of members and at the same meeting of
907 members as that referred to in division (A) or (B) of this section, as applicable, or at any
908 subsequent meeting.

909 (E) An action to set aside a conveyance by an unincorporated nonprofit
910 association, on the ground that any section of the Revised Code applicable to the lease,
911 sale, exchange, transfer, or other disposition of the assets of such association has not been
912 complied with, shall be brought within one year after that transaction, or the action shall
913 be forever barred.

914 **COMMITTEE COMMENT (2010)**

915 Based on section 1702.39 of the Revised Code.

916 **1745.45. Judicial sale of assets.**

917 Property of any description, and any interest therein, of an unincorporated
918 nonprofit association, domestic or foreign, may be sold under the judgment or decree of a
919 court, as provided in the Revised Code with respect to similar property of natural persons,
920 at public or private sale, in such manner, at such time and place, on such notice by
921 publication or otherwise, and on such terms, as the court adjudging or decreeing such sale
922 deems equitable and proper, but it shall not be necessary to appraise such property or to
923 advertise the sale thereof otherwise than as the court adjudges or decrees.

924 **COMMITTEE COMMENT (2010)**

925 Based on section 1702.40 of the Revised Code.

926 **1745.46 Merger or consolidation into domestic unincorporated nonprofit**
927 **association.**

928 (A)(1) Pursuant to an agreement of merger, an unincorporated nonprofit
929 association and one or more additional domestic or foreign entities may be merged into a
930 surviving unincorporated nonprofit association. Pursuant to an agreement of

931 consolidation, one or more domestic or foreign entities may be consolidated into a new
932 unincorporated nonprofit association. If any constituent entity is formed or organized
933 under the laws of any state other than this state or under any chapter of the Revised Code
934 other than this chapter, the merger or consolidation also must be permitted by the chapter
935 of the Revised Code under which each domestic constituent entity exists and by the laws
936 under which each foreign constituent entity exists.

937 (2) To effect such merger or consolidation, the managers of each constituent
938 unincorporated nonprofit association shall approve an agreement of merger or
939 consolidation to be signed by the chairperson of the board, the president, or a vice-
940 president and by the secretary or an assistant secretary or, if there are no officers, by one
941 or more authorized managers, and the agreement of merger or consolidation shall be
942 approved or otherwise authorized by or on behalf of each other constituent entity in
943 accordance with the laws under which it exists.

944 (3) The agreement of merger or consolidation shall set forth:

945 (a) The name and the form of entity of each constituent entity and the state
946 under the laws of which each constituent entity exists;

947 (b) That the named constituent entities have agreed to merge into a specified
948 constituent unincorporated nonprofit association, herein designated the surviving
949 unincorporated nonprofit association, or that the named constituent entities have agreed
950 to consolidate into a new unincorporated nonprofit association to be formed by the
951 consolidation, herein designated the new unincorporated nonprofit association;

952 (c) All statements and matters required to be set forth in an agreement of
953 merger or consolidation by the laws under which each constituent entity exists;

954 (d) The name of the surviving or new unincorporated nonprofit association,
955 which may be the same as or similar to that of any constituent unincorporated nonprofit
956 association;

957 (e) The place in this state where the principal office of the surviving or new
958 unincorporated nonprofit association is to be located;

959 (f) The names and addresses of the first managers and officers, if any, of the
960 surviving or new unincorporated nonprofit association, and, if desired, their term or terms
961 of office;

962 (g) The name and address of the statutory agent, if any, upon whom any
963 process, notice, or demand against any constituent entity or the surviving or new
964 unincorporated nonprofit association may be served;

965 (h) The terms of the merger or consolidation and the mode of carrying the
966 same into effect;

967 (i) The governing principles of the surviving or new unincorporated nonprofit

968 association or a provision to the effect that the governing principles of a specified
969 constituent unincorporated nonprofit association shall be the governing principles of the
970 surviving or new unincorporated nonprofit association or to the effect that the voting
971 members or the managers of the surviving or new unincorporated nonprofit association
972 may adopt governing principles, or any combination thereof.

973 (4) The agreement may also set forth:

974 (a) The specification of a date, which may be the date of the filing of the
975 agreement or a date subsequent thereto, upon which the merger or consolidation shall
976 become effective;

977 (b) A provision conferring upon the managers of one or more of the
978 constituent unincorporated nonprofit associations or the comparable representatives of
979 any other constituent entity the power to abandon the merger or consolidation prior to the
980 filing of the agreement;

981 (c) Any additional provision permitted to be included in the articles of a
982 newly formed unincorporated nonprofit association;

983 (d) Any additional provision deemed necessary or desirable with respect to
984 the proposed merger or consolidation.

985 (B)(1) A merger or consolidation in which a public benefit association is one of
986 the constituent entities must be approved by the court of common pleas of the county in
987 this state in which the principal office of the public benefit association is located, in a
988 proceeding of which the attorney general's charitable law section has been given written
989 notice by certified mail within three days of the initiation of the proceeding, and in which
990 proceeding the attorney general may intervene as of right; provided that no such approval
991 shall be required if:

992 (a) A public benefit association is the surviving entity in the case of a merger
993 and continues to be a public benefit association, or is the new unincorporated nonprofit
994 association in the case of a consolidation and continues to be a public benefit association;
995 or

996 (b) A public benefit association is not the surviving entity in the case of a
997 merger, or is not the new unincorporated nonprofit association in the case of a
998 consolidation, and all of the following apply:

999 (i) On or prior to the effective date of the merger or consolidation, assets with
1000 a value equal to the greater of the fair market value of the net tangible and intangible
1001 assets, including goodwill, of the public benefit association or the fair market value of the
1002 public benefit association if it is to be operated as a business concern, are transferred or
1003 conveyed to one or more persons that would have received its assets under section
1004 1745.50(D)(2) of the Revised Code had it voluntarily dissolved.

1005 (ii) The public benefit association returns, transfers, or conveys any assets

1006 held by it upon a condition requiring return, transfer, or conveyance, which condition
1007 occurs by reason of the merger or consolidation, in accordance with that condition.

1008 (iii) The merger or consolidation is approved by a majority of managers of the
1009 public benefit association who will not receive any financial or other benefit, directly or
1010 indirectly, as a result of the merger or consolidation or by agreement, and who are not
1011 and will not as a result of the merger or consolidation become members, partners or other
1012 owners (however denominated) of, shareholders in, or managers, officers, employees,
1013 agents, or other representatives of or consultants to the surviving or new entity.

1014 (2) At least twenty days before consummation of any merger or consolidation
1015 of a public benefit association pursuant to division (B)(1)(b) of this section, written
1016 notice, including a copy of the proposed plan of merger or consolidation, shall be
1017 delivered to the attorney general's charitable law section. The attorney general's
1018 charitable law section may review a proposed merger or consolidation of a public benefit
1019 association under division (B)(1)(b) of this section. The attorney general may require,
1020 pursuant to section 109.24 of the Revised Code, the production of the documents
1021 necessary for review of a proposed merger or consolidation under division (B)(1)(b) of
1022 this section. The attorney general may retain, at the expense of the public benefit
1023 association, one or more experts, including an investment banker, actuary, appraiser,
1024 certified public accountant, or other expert, that the attorney general considers reasonably
1025 necessary to provide assistance in reviewing a proposed merger or consolidation under
1026 division (B)(1)(b) of this section. The attorney general may extend the date of any merger
1027 or consolidation of a public benefit association under division (B)(1)(b) of this section for
1028 a period not to exceed sixty days and shall provide notice of that extension to the public
1029 benefit association. The notice shall set forth the reasons necessitating the extension.

1030 (3) No member (other than a member that is a public benefit entity) or
1031 manager of a public benefit association in that person's capacity as a member or manager
1032 may receive or keep anything as a result of a merger or consolidation other than as a
1033 member or manager in the surviving or new public benefit association, without the prior
1034 written consent of the attorney general or of the court of common pleas of the county in
1035 this state in which the principal office of the public benefit association is located, in a
1036 proceeding in which the attorney general's charitable law section has been given written
1037 notice by certified mail within three days of the initiation of the proceeding, and in which
1038 proceeding the attorney general may intervene as of right. The court shall approve the
1039 transaction if it is in the public interest.

1040 (4) The attorney general may institute a civil action to enforce the
1041 requirements of divisions (B)(1), (2), and (3) of this section in the court of common pleas
1042 of the county in this state in which the principal office of the public benefit association is
1043 located or in the Franklin county court of common pleas. In addition to any civil remedies
1044 that may exist under common law or the Revised Code, a court may rescind the
1045 transaction or grant injunctive relief or impose any combination of these remedies.

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COMMITTEE COMMENT (2010)

1047

Based on section 1702.41 of the Revised Code.

1048

1745.461 Merger or consolidation into entity other than domestic unincorporated nonprofit association.

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(A)(1) Pursuant to an agreement of merger or consolidation between the constituent entities as provided in this section, a domestic unincorporated nonprofit association and, if so provided, one or more additional domestic or foreign entities, may be merged into a surviving entity other than a domestic unincorporated nonprofit association, or a domestic unincorporated nonprofit association together with one or more additional domestic or foreign entities may be consolidated into a new entity other than a domestic unincorporated nonprofit association, to be formed by such consolidation. The merger or consolidation must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

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(2) To effect such merger or consolidation, the managers of each constituent unincorporated nonprofit association shall approve an agreement of merger or consolidation to be signed by the chairperson of the board, the president, or a vice-president and by the secretary or an assistant secretary or if there are no officers, by an authorized manager, and the agreement of merger or consolidation shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

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(3) The agreement of merger or consolidation shall set forth:

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(a) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

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(b) In the case of a merger, that one or more specified constituent entities will be merged into a specified surviving foreign entity or surviving domestic entity other than a domestic unincorporated nonprofit association or, in the case of a consolidation, that the constituent entities will be consolidated into a new foreign entity or domestic entity other than a domestic unincorporated nonprofit association. The name of such surviving or new entity may be the same as or similar to that of any constituent entity;

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(c) The terms of the merger or consolidation and the mode of carrying the same into effect;

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(d) If the surviving or new entity is a foreign unincorporated nonprofit association, all additional statements and matters, other than the name and address of the statutory agent, that would be required by section 1745.46 of the Revised Code if the surviving or new unincorporated nonprofit association were a domestic unincorporated nonprofit association;

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(e) The name and the form of entity of the surviving or new entity, the state

1084 under the laws of which the surviving entity exists or the new entity is to exist, and the
1085 location of the principal office of the surviving or new entity in that state;

1086 (f) All statements and matters required to be set forth in an agreement of
1087 merger or consolidation by the laws under which each constituent entity exists and, in the
1088 case of a consolidation, the new entity is to exist;

1089 (g) The consent of the surviving or the new entity to be sued and served with
1090 process in this state and the irrevocable appointment of the secretary of state as its agent
1091 to accept service of process in any proceeding in this state to enforce against the
1092 surviving or new entity any obligation of any domestic constituent unincorporated
1093 nonprofit association.

1094 (h) If the surviving or new entity is a foreign unincorporated nonprofit
1095 association that desires to transact business in this state as a foreign unincorporated
1096 nonprofit association, a statement to that effect, together with a statement regarding the
1097 appointment of a statutory agent and service of any process, notice, or demand upon that
1098 statutory agent or the secretary of state, as required when a foreign unincorporated
1099 nonprofit association applies for a license to transact business in this state.

1100 (i) If the surviving or new entity is a foreign limited partnership that desires
1101 to transact business in this state as a foreign limited partnership, a statement to that effect,
1102 together with all of the information required under section 1782.49 of the Revised Code
1103 when a foreign limited partnership registers to transact business in this state;

1104 (j) If the surviving or new entity is a foreign limited liability company that
1105 desires to transact business in this state as a foreign limited liability company, a statement
1106 to that effect, together with all of the information required under section 1705.54 of the
1107 Revised Code when a foreign limited liability company registers to transact business in
1108 this state.

1109 (k) If the surviving or new entity is a foreign unincorporated association that
1110 desires to transact business in this state as a foreign unincorporated association, a
1111 statement to that effect, together with all of the information required under section
1112 1745.46 of the Revised Code when a foreign unincorporated association registers to
1113 transact business in this state.

1114 (4) The agreement of merger or consolidation may also set forth any
1115 additional provision permitted by the laws of any state under the laws of which any
1116 constituent entity exists, consistent with the laws under which the surviving entity exists
1117 or the new entity is to exist.

1118 (B)(1) A merger or consolidation pursuant to this section in which a public
1119 benefit association is one of the constituent entities shall be subject to, and must comply
1120 with, the provisions of divisions (B)(1)(b) and (B)(2), (3) and (4) of section 1745.46 of
1121 the Revised Code.

1122

COMMITTEE COMMENT (2010)

1123

Based on section 1702.411 of the Revised Code.

1124

1745.47 Agreement of merger or consolidation - vote by members.

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(A) The managers of each domestic constituent unincorporated nonprofit association, upon approving an agreement of merger or consolidation, shall direct that the agreement be submitted to the members entitled to vote on it at a meeting of voting members of such unincorporated nonprofit association held for that purpose, and notice of the meeting shall be given to all members of the constituent unincorporated nonprofit association entitled to vote at the meeting. The notice shall be accompanied by a copy or summary of the material terms of the agreement.

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(B)(1) In order to be adopted, the agreement (including any amendments or additions to the agreement proposed at each such meeting) must receive the affirmative vote of a majority of the voting members of the domestic unincorporated nonprofit association present at that meeting if a quorum is present, or, if the governing principles provide or permit, the affirmative vote of a greater or lesser proportion or number of the voting members, and the affirmative vote of the voting members of any particular class that is required by the governing principles. If the agreement would have an effect or authorize any action by the unincorporated nonprofit association that, under any applicable provision of law or under the governing principles of the domestic constituent unincorporated nonprofit association, could be effected or authorized only by or pursuant to a specified vote of the members, the agreement (including any amendments or additions to the agreement proposed at each such meeting) must be adopted by the same vote as would be required for such action.

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(2) For purposes of division (B)(1) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

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(C) At any time prior to the filing of the agreement, the merger or consolidation may be abandoned by the managers of one or more of the constituent unincorporated nonprofit associations or the comparable representatives of any other constituent entity, if the power of abandonment is conferred either by the agreement or by the same vote or action as was required to adopt that agreement.

1154

COMMITTEE COMMENT (2010)

1155

Based on section 1702.42 of the Revised Code.

1156

1745.48 Effect of merger or consolidation.

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(A) When a merger or consolidation becomes effective, all of the following apply:

1159 (1) The separate existence of each constituent entity other than the surviving
1160 entity in a merger shall cease, except that whenever a conveyance, assignment, transfer,
1161 deed, or other instrument or act is necessary to vest property or rights in the surviving or
1162 new entity, the officers, general partners, or other authorized representatives of the
1163 respective constituent entities shall execute, acknowledge, and deliver those instruments
1164 and do those acts. For these purposes, the existence of the constituent entities and the
1165 authority of their respective officers, managers, general partners, or other authorized
1166 representatives is continued notwithstanding the merger or consolidation.

1167 (2) In the case of a merger in which the surviving entity is a domestic
1168 unincorporated nonprofit association, the governing principles of the domestic surviving
1169 unincorporated nonprofit association in effect immediately prior to the time the merger
1170 becomes effective shall continue as its governing principles after the merger except as
1171 otherwise provided in the agreement of merger. In the case of a consolidation, the new
1172 entity exists when the consolidation becomes effective and, if it is a domestic
1173 unincorporated nonprofit association, the governing principles contained in or provided
1174 for in the agreement of consolidation shall be its governing principles.

1175 (3) The surviving or new entity possesses all assets and property of every
1176 description, and every interest in the assets and property, wherever located, and the
1177 rights, privileges, immunities, powers, franchises, and authority, of a public as well as of
1178 a private nature, of each constituent entity, and all obligations belonging to or due to each
1179 constituent entity, all of which are vested in the surviving or new entity without further
1180 act or deed. Title to any real estate or any interest in the real estate vested in any
1181 constituent entity shall not revert or in any way be impaired by reason of such merger or
1182 consolidation.

1183 (4) The surviving or new entity is liable for all the obligations of each
1184 constituent entity. Any claim existing or any action or proceeding pending by or against
1185 any constituent entity may be prosecuted to judgment, with right of appeal, as if the
1186 merger or consolidation had not taken place, or the surviving or new entity may be
1187 substituted in its place.

1188 (5) All the rights of creditors of each constituent entity are preserved
1189 unimpaired, and all liens upon the property of any constituent entity are preserved
1190 unimpaired, on only the property affected by those liens immediately prior to the
1191 effective date of the merger or consolidation. If a general partner of a constituent
1192 partnership is not a general partner of the entity surviving or the new entity resulting from
1193 the merger or consolidation, then the former general partner shall have no liability for any
1194 obligation incurred after the merger or consolidation except to the extent that a former
1195 creditor of the constituent partnership in which the former general partner was a partner
1196 extends credit to the surviving or new entity reasonably believing that the former general
1197 partner continued as a general partner of the surviving or new entity.

1198 (B) If a general partner of a constituent partnership is not a general partner of
1199 the entity surviving or the new entity resulting from the merger or consolidation, the
1200 provisions of division (B) of section 1782.434 of the Revised Code shall apply.

1268 expired, the association shall cease to carry on its activities and shall do only such acts as
1269 are required to wind up its affairs, and for such purposes it shall continue as an
1270 unincorporated nonprofit association.

1271 (B) Any claim existing or action or proceeding pending by or against the
1272 unincorporated nonprofit association or that would have accrued against it may be
1273 prosecuted to judgment, with right of appeal as in other cases, but any proceeding,
1274 execution, or process, or the satisfaction or performance of any order, judgment, or
1275 decree, may be stayed as provided in section 1745.36 of the Revised Code.

1276 (C) Any process, notice, or demand against the unincorporated nonprofit
1277 association may be served by delivering a copy to a manager, liquidator, or person having
1278 charge of its assets or, if no such person can be found, to the statutory agent.

1279 (D) The managers of the unincorporated nonprofit association and their
1280 survivors or successors shall act in accordance with the governing principles until the
1281 affairs of the association are completely wound up. Subject to the orders of courts of this
1282 state having jurisdiction over the association, the managers shall proceed as speedily as is
1283 practicable to a complete winding up of the affairs of the association and, to the extent
1284 necessary or expedient to that end, shall exercise all the authority of the association.
1285 Without limiting the generality of such authority, they may fill vacancies, elect managers,
1286 carry out contracts of the association, make new contracts, borrow money, mortgage or
1287 pledge the property of the association as security, sell its assets at public or private sale,
1288 make conveyances in the association's name, lease real estate for any term, including
1289 ninety-nine years renewable forever, settle or compromise claims in favor of or against
1290 the association, employ one or more persons as liquidators to wind up the affairs of the
1291 association with such authority as the managers see fit to grant, cause the title to any of
1292 the assets of the association to be conveyed to such liquidators for that purpose, apply
1293 assets to the payment of obligations, perform all other acts necessary or expedient to the
1294 winding up of the affairs of the association, and, after paying or adequately providing for
1295 the payment of all known obligations of the association, distribute the remainder of the
1296 assets as follows:

1297 (1) Assets held upon condition requiring return, transfer, or conveyance,
1298 which condition shall have occurred by reason of the dissolution or otherwise, shall be
1299 returned, transferred, or conveyed in accordance with such requirements;

1300 (2) In the case of a public benefit association: (a) assets held by it in trust for
1301 specified purposes shall be applied so far as is feasible in accordance with the terms of
1302 the trust, (b) the remaining assets not held in trust shall be applied so far as is feasible
1303 towards carrying out the purposes stated in its governing principles, (c) in the event and
1304 to the extent that, in the judgment of the managers, it is not feasible to apply the assets as
1305 provided in above clauses (a) and (b), the assets shall be applied as may be directed by
1306 the court of common pleas of the county in this state in which the principal office of the
1307 association is located, in an action brought for that purpose by the managers or by the
1308 association or any thereof, to which action the attorney general of the state shall be a
1309 party, or in an action brought by the attorney general in a court of competent jurisdiction,

1310 or in an action brought as provided in section 1745.51 of the Revised Code for the
1311 purpose of winding up the affairs of the association under the supervision of the court,

1312 (3) In the case of a mutual benefit association, any remaining assets shall be
1313 distributed in accordance with the applicable provisions of the governing principles or, to
1314 the extent that no such provision is made, the assets shall be distributed pursuant to a plan
1315 of distribution adopted by the members at a meeting held for the purpose of voting on
1316 dissolution, or any adjournment thereof. If no plan of distribution is so adopted by the
1317 members, then said remaining assets shall be distributed pursuant to a plan of distribution
1318 adopted by the managers. If no plan of distribution is so adopted by the members or
1319 managers, then the remaining assets shall be applied as may be directed by the court of
1320 common pleas of the county in this state in which the principal office of the association is
1321 located, in an action brought for that purpose by the mutual benefit association, by the
1322 managers or any one of them, or by the attorney general in a court of competent
1323 jurisdiction, or in an action brought as provided in section 1745.51 of the Revised Code
1324 for the purpose of winding up the affairs of the association under the supervision of the
1325 court.

1326 (E) Without limiting the authority of the managers, any action within the
1327 purview of this section that is authorized or approved by the members at a meeting held
1328 for such purpose, shall be conclusive for all purposes upon all members of the
1329 association, except that nothing herein set forth shall impair the jurisdiction of courts of
1330 competent jurisdiction to enforce the duties of a public benefit association in respect of
1331 the application of its assets towards its public or charitable purposes, or impair the power
1332 of the state, acting through the attorney general, to require such assets to be applied, as
1333 nearly as may be, towards its public or charitable purposes.

1334 (F) All deeds and other instruments of the association shall be in the name of
1335 the association and shall be executed, acknowledged, and delivered by a manager of the
1336 unincorporated nonprofit association.

1337 (G) At any time during the winding up of its affairs, the unincorporated
1338 nonprofit association by its managers may make application to the court of common pleas
1339 of the county in this state in which the principal office of the association is located to
1340 have the winding up continued under supervision of the court, as provided in section
1341 1745.51 of the Revised Code.

1342 **COMMITTEE COMMENT (2010)**

1343 Based on section 1702.49 of the Revised Code.

1344 **1745.53. Jurisdiction of court over winding up of affairs of voluntarily dissolved**
1345 **unincorporated nonprofit association.**

1346 (A) Without limiting the generality of its authority, the court of common pleas of
1347 the county in this state in which is located the principal office of a voluntarily dissolved
1348 unincorporated nonprofit association or of an association whose period of existence has
1349 expired, upon the complaint of the association, a majority of the managers, or a creditor

1350 or member, and upon such notice to all the managers and such other persons interested as
1351 the court considers proper, at any time may order and adjudge in respect of the following
1352 matters:

1353 (1) The presentation and proof of all claims and demands against the
1354 association and of all rights, interests, or liens in or on any of its property; the fixing of
1355 the time within which and the manner in which such proof shall be made and the person
1356 to whom such presentation shall be made; and the barring from participation in any
1357 distribution of assets of all persons failing to make and present proofs as required by the
1358 order of the court;

1359 (2) The stay of the prosecution of any proceeding against the association or
1360 involving any of its property, and the requirement that the parties to it present and prove
1361 their claims, demands, rights, interests, or liens at the time and in the manner required of
1362 creditors or others; or the grant of leave to bring or maintain an independent proceeding
1363 to enforce liens;

1364 (3) The settlement or determination of all claims of every nature against the
1365 association or any of its property; the determination of the assets required to be retained
1366 to pay or provide for the payment of such claims, or any claim; the determination of the
1367 assets available for distribution among members and others; and the making of new
1368 parties to the proceeding so far as the court considers proper for the determination of all
1369 matters;

1370 (4) The determination of the rights of members or others in and to the assets
1371 of the association;

1372 (5) The presentation and the filing of intermediate and final accounts of the
1373 managers or of the liquidators and hearings on them; the allowance, disallowance, or
1374 settlement of such accounts; and the discharge of the managers, the liquidators, or any of
1375 them from their duties and liabilities;

1376 (6) The appointment of a special master commissioner to hear and determine
1377 any such matters with such authority as the court considers proper;

1378 (7) The filling of any vacancies in the number of managers or liquidators
1379 when the managers are unable to act on the vacancies for want of a quorum or for any
1380 other reason;

1381 (8) The appointment of a receiver, in accordance with the usages of a court in
1382 equitable matters, to wind up the affairs of the association, to take custody of any of its
1383 property, or for any other purpose;

1384 (9) The issuance or entry of any injunction or any other order that the court
1385 considers proper in the administration of the trust involved in the winding up of the
1386 affairs of the association and the giving of notice of it;

1423 **1745.55. Judicial dissolution.**

1424 (A) An unincorporated nonprofit association may be dissolved judicially and
1425 its affairs wound up:

1426 (1) By an order of the supreme court or of a court of appeals in an action in
1427 quo warranto brought as provided by sections 2733.02 to 2733.39 of the Revised Code, in
1428 which event the court may order the affairs of the association to be wound up by its
1429 managers as in the case of voluntary dissolution, or by proceedings in, and under the
1430 order of, the court of common pleas of the county in this state in which the association
1431 has its principal office;

1432 (2) By an order of the court of common pleas of the county in this state in
1433 which such association has its principal office, in an action brought by members entitled
1434 to dissolve the association voluntarily, when it is established:

1435 (a) That its period of existence as set forth in its governing principles has
1436 expired and that it is necessary in order to protect the members that the association be
1437 judicially dissolved;

1438 (b) That the association is insolvent or is unable to afford reasonable security
1439 to those who may deal with it and that it is necessary in order to protect the creditors of
1440 the association that the association be judicially dissolved;

1441 (c) That the objects of the association have wholly failed or are entirely
1442 abandoned or that their accomplishment is impracticable;

1443 (3) By an order of the court of common pleas of the county in this state in
1444 which the association has its principal office, in an action brought by a majority of the
1445 voting members, or such lesser proportion or number of members as are entitled by the
1446 governing principles to dissolve the association voluntarily, when it is established that it
1447 is beneficial to the members that the association be judicially dissolved;

1448 (4) By an order of the court of common pleas of the county in this state in
1449 which the association has its principal office, in an action brought by one-half of the
1450 managers when there is an even number of managers or by one-half of the members,
1451 when it is established that the association has an even number of managers who are
1452 deadlocked in the management of the association's affairs and the members are unable to
1453 break the deadlock, or when it is established that the association has an uneven number of
1454 managers and that the members are deadlocked in voting power and unable to agree upon
1455 or vote for the election of managers as successors to managers whose terms normally
1456 would expire upon the election of their successors.

1457 (B) A complaint for judicial dissolution shall be verified by any of the
1458 complainants and shall set forth facts showing that the case is one of those specified in
1459 this section. Unless the complainants set forth in the complaint that they are unable to
1460 annex a list of members, a schedule shall be annexed to the complaint setting forth the
1461 name of each member and the member's address if it is known.

1502 (B) Managers who vote for or assent to:

1503 (1) A distribution of assets to members contrary to law or the governing
1504 principles;

1505 (2) A distribution of assets to persons other than creditors during the winding
1506 up of the affairs of the association, on dissolution or otherwise, without the payment of
1507 all known obligations of the association, or without making adequate provision therefore;

1508 (3) The making of loans, other than in the usual conduct of its affairs or in
1509 accordance with provisions therefore in the governing principles, to an officer, manager,
1510 or member of the association; shall be jointly and severally liable to the association as
1511 follows: in cases under division (B)(1) of this section up to the amount of such
1512 distribution in excess of the amount that could have been distributed without violation of
1513 law or the governing principles but not in excess of the amount that would inure to the
1514 benefit of the creditors of the association if it was insolvent at the time of the distribution
1515 or there was reasonable ground to believe that by such action it would be rendered
1516 insolvent, or to the benefit of the members other than members of the class in respect of
1517 which the distribution was made; and in cases under division (B)(2) of this section, to the
1518 extent that such obligations (not otherwise barred by statute) are not paid, or for the
1519 payment of which adequate provision has not been made; and in cases under division
1520 (B)(3) of this section, for the amount of the loan with interest thereon at the rate of six
1521 percent per annum until such amount has been paid, except that a manager shall not be
1522 liable under division (B)(1) or (2) of this section if in determining the amount available
1523 for any such distribution, the manager in good faith relied on a financial statement of the
1524 association prepared by an officer or employee of the association in charge of its accounts
1525 or certified by a public accountant or firm of public accountants, or in good faith the
1526 manager considered the assets to be of their book value, or the managers followed what
1527 the manager believed to be sound accounting and business practice.

1528 (C) A manager who is present at a meeting of the managers or a committee
1529 thereof at which action on any matter is authorized or taken and who has not voted for or
1530 against such action shall be presumed to have voted for the action unless the manager's
1531 written dissent therefrom is filed either during the meeting or within a reasonable time
1532 after the adjournment thereof, with the person acting as secretary of the meeting or with
1533 the secretary of the association.

1534 (D) A member who knowingly receives any distribution made contrary to law
1535 or the governing principles shall be liable to the association for the amount received by
1536 the member that is in excess of the amount that could have been distributed without
1537 violation of law or the governing principles.

1538 (E) A manager against whom a claim is asserted under or pursuant to this
1539 section and who is held liable thereon shall be entitled to contribution, on equitable
1540 principles, from other managers who are also liable; and in addition, any manager against
1541 whom a claim is asserted under or pursuant to this section or who is held liable shall have
1542 a right of contribution from the members who knowingly received any distribution made

1543 contrary to law or the governing principles, and such members as among themselves shall
1544 also be entitled to contribution in proportion to the amounts received by them
1545 respectively.

1546 (F) No action shall be brought by or on behalf of an association upon any
1547 cause of action arising under division (B)(1) or (2) of this section at any time after two
1548 years from the day on which the violation occurs.

1549 (G) Nothing contained in this section shall preclude any creditor whose claim
1550 is unpaid from exercising such rights as the creditor otherwise would have by law to
1551 enforce the creditor's claim against assets of the association distributed to the members or
1552 other persons.

1553 **COMMITTEE COMMENT (2010)**

1554 Based on section 1702.55 of the Revised Code.

1555 **1745.57. Savings clause.**

1556 An [act] does not affect an action or proceeding commenced or right accrued
1557 before this [act] takes effect.

1558 **COMMITTEE COMMENT (2010)**

1559 Based on section 33 of RUUNAA.

1560

CHAPTER 1702

1561 **1702.01 Nonprofit corporation law definitions.**

1562 As used in this chapter, unless the context otherwise requires:

1563 (A) “Corporation” or “domestic corporation” means a nonprofit corporation
1564 formed under the laws of this state, or a business corporation formed under the laws of
1565 this state that, by amendment to its articles as provided by law, becomes a nonprofit
1566 corporation.

1567 (B) “Foreign corporation” means a nonprofit corporation formed under the laws
1568 of another state.

1569 (C) “Nonprofit corporation” means a domestic or foreign corporation that is
1570 formed otherwise than for the pecuniary gain or profit of, and whose net earnings or any
1571 part of them is not distributable to, its members, directors, officers, or other private
1572 persons, except that the payment of reasonable compensation for services rendered and
1573 the distribution of assets on dissolution as permitted by section 1702.49 of the Revised
1574 Code is not pecuniary gain or profit or distribution of net earnings. In a corporation all of
1575 whose members are nonprofit corporations, distribution to members does not deprive it of
1576 the status of a nonprofit corporation.

1577 (D) “State” means the United States; any state, territory, insular possession, or
1578 other political subdivision of the United States, including the District of Columbia; any
1579 foreign country or nation; and any province, territory, or other political subdivision of a
1580 foreign country or nation.

1581 (E) “Articles” includes original articles of incorporation, agreements of merger or
1582 consolidation if and only to the extent that articles of incorporation are adopted or
1583 amended in the agreements, amended articles, and amendments to any of these, and, in
1584 the case of a corporation created before September 1, 1851, the special charter and any
1585 amendments to it made by special act of the general assembly or pursuant to general law.

1586 (F) “Incorporator” means a person who signed the original articles of
1587 incorporation.

1588 (G) “Member” means one having membership rights and privileges in a
1589 corporation in accordance with its articles or regulations.

1590 (H) “Voting member” means a member possessing voting rights, either generally
1591 or in respect of the particular question involved, as the case may be.

1592 (I) “Person” includes, but is not limited to, a nonprofit corporation, a business
1593 corporation, a partnership, an unincorporated society or association, and two or more
1594 persons having a joint or common interest.

1595 (J) The location of the “principal office” of a corporation is the place named as

1596 such in its articles.

1597 (K) “Directors” means the persons vested with the authority to conduct the affairs
1598 of the corporation irrespective of the name, such as trustees, by which they are
1599 designated.

1600 (L) “Insolvent” means that the corporation is unable to pay its obligations as they
1601 become due in the usual course of its affairs.

1602 (M)(1) Subject to division (M)(2) of this section, “volunteer” means a director,
1603 officer, or agent of a corporation, or another person associated with a corporation, who
1604 satisfies both of the following:

1605 (a) Performs services for or on behalf of, and under the authority or auspices of,
1606 that corporation;

1607 (b) Does not receive compensation, either directly or indirectly, for performing
1608 those services.

1609 (2) For purposes of division (M)(1) of this section, “compensation” does not
1610 include any of the following:

1611 (a) Actual and necessary expenses that are incurred by a volunteer in connection
1612 with the services performed for a corporation, and that are reimbursed to the volunteer or
1613 otherwise paid;

1614 (b) Insurance premiums paid on behalf of a volunteer, and amounts paid or
1615 reimbursed, pursuant to division (E) of section 1702.12 of the Revised Code;

1616 (c) Modest perquisites.

1617 (N) “Business corporation” means any entity, ~~as defined in section 1701.01 of the~~
1618 ~~Revised Code, other than a public benefit corporation or a mutual benefit corporation,~~
1619 ~~that is organized pursuant to Chapter ~~1701.1701~~ of the Revised Code other than a public~~
1620 ~~benefit entity.~~

1621 (O) “Mutual benefit corporation” means any corporation organized under this
1622 chapter other than a public benefit corporation.

1623 (P) “Public benefit corporation” means a corporation that is recognized as exempt
1624 from federal income taxation under section 501(c)(3) of the “Internal Revenue Code of
1625 1986,” 100 Stat. 2085, 26 U.S.C. 1, as amended, or is organized for a public or charitable
1626 purpose and that upon dissolution must distribute its assets to a public benefit
1627 ~~corporation~~entity, the United States, a state or any political subdivision of a state, or a
1628 person that is recognized as exempt from federal income taxation under section 501(c)(3)
1629 of the “Internal Revenue Code of 1986,” as amended. “Public benefit corporation” does
1630 not include a nonprofit corporation that is organized by one or more municipal
1631 corporations to further a public purpose that is not a charitable purpose.

1632 (Q) “Authorized communications equipment” means any communications
1633 equipment that provides a transmission, including, but not limited to, by telephone,
1634 telecopy, or any electronic means, from which it can be determined that the transmission
1635 was authorized by, and accurately reflects the intention of, the member or director
1636 involved and, with respect to meetings, allows all persons participating in the meeting to
1637 contemporaneously communicate with each other.

1638 (R) “Entity” means

1639 (1) A corporation existing under the laws of this state or any other state;

1640 (2) A business corporation existing under the laws of this state or any other state;

1641 (3) Any of the following organizations existing under the laws of this state, the
1642 United States, or any other state:

1643 (a) An unincorporated business or for profit organization, including a general or
1644 limited partnership;

1645 (b) A limited liability company;

1646 (c) An unincorporated nonprofit association.

1647 (S) “Public benefit entity” means an entity that is recognized as exempt from
1648 federal income taxation under section 501(c)(3) of the “Internal Revenue Code of 1986,”
1649 100 Stat. 2085, 26 U.S.C. 1, as amended, or is organized for a public or charitable
1650 purpose and that upon dissolution must distribute its assets to a public benefit entity, the
1651 United States, a state or any political subdivision of a state, or a person that is recognized
1652 as exempt from federal income taxation under section 501(c)(3) of the “Internal Revenue
1653 Code of 1986,” as amended. “Public benefit entity” does not include an entity that is
1654 organized by one or more municipal corporations to further a public purpose that is not a
1655 charitable purpose.

1656 **1702.41 Merger or consolidation of into domestic corporations corporation.**
1657 **[Replaces current 1702.41. New language modeled on 1705.36]**

1658 ~~(A)(1) Any two or more corporations may merge into a single corporation which~~
1659 ~~shall be one of the constituent corporations, or may consolidate into a single corporation~~
1660 ~~which shall be a new corporation to be formed by the consolidation.~~

1661 (A)(1) Pursuant to an agreement of merger, a domestic corporation and one or
1662 more additional domestic or foreign entities may be merged into a surviving domestic
1663 corporation. Pursuant to an agreement of consolidation, one or more domestic or foreign
1664 entities may be consolidated into a new domestic corporation. If any constituent entity is
1665 formed or organized under the laws of any state other than this state or under any chapter
1666 of the Revised Code other than this chapter, the merger or consolidation also must be
1667 permitted by the chapter of the Revised Code under which each domestic constituent
1668 entity exists and by the laws under which each foreign constituent entity exists.

1669 (2) To effect such merger or consolidation, the directors of each domestic
1670 constituent corporation shall approve an agreement of merger or consolidation to be
1671 signed by the chairperson of the board, the president, or a vice-president and by the
1672 secretary or an assistant secretary, ~~which~~ and the agreement of merger or consolidation
1673 shall be approved or otherwise authorized by or on behalf of each other constituent entity
1674 in accordance with the laws under which it exists.

1675 (3) The agreement of merger or consolidation shall set forth:

1676 (a) The name and the form of entity of each constituent entity and the state under
1677 the laws of which each constituent entity exists;

1678 (b) That the named constituent ~~corporations~~ entities have agreed to merge into a
1679 specified constituent corporation, herein designated the surviving corporation, or that the
1680 named constituent ~~corporations~~ entities have agreed to consolidate into a new corporation
1681 to be formed by the consolidation, herein designated the new corporation;

1682 (c) All statements and matters required to be set forth in an agreement of merger
1683 or consolidation by the laws under which each constituent entity exists;

1684 (d) The name of the surviving or new corporation, which may be the same as or
1685 similar to that of any constituent corporation;

1686 (e) The place in this state where the principal office of the surviving or new
1687 corporation is to be located;

1688 (f) The names and addresses of the first directors and officers of the surviving or
1689 new corporation, and, if desired, their term or terms of office;

1690 (g) The name and address of the statutory agent upon whom any process, notice,
1691 or demand against any constituent ~~corporation~~ entity or the surviving or new corporation
1692 may be served;

1693 (h) The terms of the merger or consolidation and the mode of carrying the same
1694 into effect;

1695 (i) The regulations of the surviving or new corporation or a provision to the
1696 effect that the regulations of ~~one of the~~ a specified constituent ~~corporations~~ corporation
1697 shall be the regulations of the surviving or new corporation or to the effect that the voting
1698 members or the directors of the surviving or new corporation may adopt regulations, or
1699 any combination thereof.

1700 (34) The agreement may also set forth:

1701 (a) The specification of a date, which may be the date of the filing of the
1702 agreement or a date subsequent thereto, upon which the merger or consolidation shall
1703 become effective;

1704 (b) A provision conferring upon the directors of one or more of the constituent
1705 corporations or the comparable representatives of any other constituent entity the power
1706 to abandon the merger or consolidation prior to the filing of the agreement;

1707 (c) Any additional provision permitted to be included in the articles of a newly
1708 formed corporation;

1709 (d) Any additional provision deemed necessary or desirable with respect to the
1710 proposed merger or consolidation.

1711 (B)(1) ~~Without the prior approval of~~ A merger or consolidation in which a
1712 domestic public benefit corporation is one of the constituent entities must be approved by
1713 the court of common pleas of the county in this state in which the principal office of the
1714 public benefit corporation is located, in a proceeding of which the attorney general's
1715 charitable law section has been given written notice by certified mail within three days of
1716 the initiation of the proceeding, and in which proceeding the attorney general may
1717 intervene as of right, a public benefit corporation may merge or consolidate only with any
1718 of the following; provided that no such approval shall be required if:

1719 (a) A domestic public benefit corporation is the surviving entity in the case of a
1720 merger and continues to be a public benefit corporation, or is the new corporation in the
1721 case of a consolidation and continues to be a public benefit corporation; or

1722 (b) ~~A foreign corporation that would qualify under the Revised Code as a public~~
1723 ~~benefit corporation;~~~~(c) A mutual benefit corporation or a business corporation, provided~~
1724 ~~that the domestic public benefit corporation is not the surviving corporation entity in the~~
1725 ~~case of a merger and continues to be a public benefit corporation or that a public benefit~~
1726 ~~corporation is, or is not the new corporation in the case of a consolidation;~~~~(d) A business~~
1727 ~~corporation or mutual benefit corporation, provided that, and all of the following apply:~~

1728 (i) On or prior to the effective date of the merger or consolidation, assets with a
1729 value equal to the greater of the fair market value of the net tangible and intangible
1730 assets, including goodwill, of the domestic public benefit corporation or the fair market
1731 value of the domestic public benefit corporation if it is to be operated as a business
1732 concern, are transferred or conveyed to one or more persons that would have received its
1733 assets under section 1702.49 of the Revised Code had it voluntarily dissolved.

1734 (ii) ~~¶~~The domestic public benefit corporation returns, transfers, or conveys any
1735 assets held by it upon a condition requiring return, transfer, or conveyance, which
1736 condition occurs by reason of the merger or consolidation, in accordance with that
1737 condition.

1738 (iii) The merger or consolidation is approved by a majority of directors of the
1739 domestic public benefit corporation who will not receive any financial or other benefit,
1740 directly or indirectly, as a result of the merger or consolidation or by agreement, and who
1741 are not and will not as a result of the merger or consolidation become members, partners
1742 or other owners (however denominated) of, shareholders in, or directors, officers,
1743 managers, employees, agents, or other representatives of or consultants ~~of~~ the surviving

1744 or new ~~business corporation or mutual benefit corporation~~ entity.

1745 (2) At least twenty days before consummation of any merger or consolidation of a
1746 domestic public benefit corporation pursuant to division (B)(1)(d**b**) of this section,
1747 written notice, including a copy of the proposed plan of merger or consolidation, shall be
1748 delivered to the attorney general's charitable law section. The attorney general's
1749 charitable law section may review a proposed merger or consolidation of a domestic
1750 public benefit corporation under division (B)(1)(d**b**) of this section. The attorney general
1751 may require, pursuant to section 109.24 of the Revised Code, the production of the
1752 documents necessary for review of a proposed merger or consolidation under division
1753 (B)(1)(d**b**) of this section. The attorney general may retain, at the expense of the domestic
1754 public benefit corporation, one or more experts, including an investment banker, actuary,
1755 appraiser, certified public accountant, or other expert, that the attorney general considers
1756 reasonably necessary to provide assistance in reviewing a proposed merger or
1757 consolidation under division (B)(1)(d**b**) of this section. The attorney general may extend
1758 the date of any merger or consolidation of a domestic public benefit corporation under
1759 division (B)(1)(d**b**) of this section for a period not to exceed sixty days and shall provide
1760 notice of that extension to the domestic public benefit corporation. The notice shall set
1761 forth the reasons necessitating the extension.

1762 (3) ~~Without~~ No member (other than a member that is a public benefit entity) or
1763 director of a domestic public benefit corporation in that person's capacity as a member or
1764 director may receive or keep anything as a result of a merger or consolidation other than
1765 membership or directorship in the surviving or new public benefit corporation, without
1766 the prior written consent of the attorney general or of the court of common pleas of the
1767 county in this state in which the principal office of the domestic public benefit
1768 corporation is located, in a proceeding in which the attorney general's charitable law
1769 section has been given written notice by certified mail within three days of the initiation
1770 of the proceeding, and in which proceeding the attorney general may intervene as of
1771 right, ~~no member.~~ The court shall approve the transaction if it is in the public interest.

1772 (4) The attorney general may institute a civil action to enforce the requirements of
1773 divisions (B)(1), (2), and (3) of this section in the court of common pleas of the county in
1774 this state in which the principal office of the domestic public benefit corporation is
1775 located or in the Franklin county court of common pleas. In addition to any civil remedies
1776 that may exist under common law or the Revised Code, a court may rescind the
1777 transaction or grant injunctive relief or impose any combination of these remedies.

1778 **1702.411 Merger or consolidation into entity other than domestic corporation. [New**
1779 **Section modeled on 1705.37]**

1780 (A)(1) Pursuant to an agreement of merger or consolidation between the
1781 constituent entities as provided in this section, a domestic corporation and, if so provided,
1782 one or more additional domestic or foreign entities, may be merged into a surviving
1783 entity other than a domestic corporation, or a domestic corporation together with one or
1784 more additional domestic or foreign entities may be consolidated into a new entity other
1785 than a domestic corporation, to be formed by such consolidation. The merger or

1786 consolidation must be permitted by the chapter of the Revised Code under which each
1787 domestic constituent entity exists and by the laws under which each foreign constituent
1788 entity exists.

1789 (2) To effect such merger or consolidation, the directors of each constituent
1790 domestic corporation shall approve an agreement of merger or consolidation to be signed
1791 by the chairperson of the board, the president, or a vice-president and by the secretary or
1792 an assistant secretary, and the agreement of merger or consolidation shall be approved or
1793 otherwise authorized by or on behalf of each other constituent entity in accordance with
1794 the laws under which it exists.

1795 (3) The agreement of merger or consolidation shall set forth:

1796 (a) The name and the form of entity of each constituent entity and the state under
1797 the laws of which each constituent entity exists;

1798 (b) In the case of a merger, that one or more specified constituent entities will be
1799 merged into a specified surviving foreign entity or surviving domestic entity other than a
1800 domestic corporation or, in the case of a consolidation, that the constituent entities will be
1801 consolidated into a new foreign entity or domestic entity other than a domestic
1802 corporation. The name of such surviving or new entity may be the same as or similar to
1803 that of any constituent entity;

1804 (c) The terms of the merger or consolidation and the mode of carrying the same
1805 into effect;

1806 (d) If the surviving or new entity is a foreign corporation, all additional statements
1807 and matters, other than the name and address of the statutory agent, that would be
1808 required by section 1702.41 of the Revised Code if the surviving or new corporation were
1809 a domestic corporation;

1810 (e) The name and the form of entity of the surviving or new entity, the state under
1811 the laws of which the surviving entity exists or the new entity is to exist, and the location
1812 of the principal office of the surviving or new entity in that state;

1813 (f) All statements and matters required to be set forth in an agreement of merger
1814 or consolidation by the laws under which each constituent entity exists and, in the case of
1815 a consolidation, the new entity is to exist;

1816 (g) The consent of the surviving or the new entity to be sued and served with
1817 process in this state and the irrevocable appointment of the secretary of state as its agent
1818 to accept service of process in any proceeding in this state to enforce against the
1819 surviving or new entity any obligation of any domestic constituent corporation.

1820 (h) If the surviving or new entity is a foreign corporation that desires to transact
1821 business in this state as a foreign corporation, a statement to that effect, together with a
1822 statement regarding the appointment of a statutory agent and service of any process,
1823 notice, or demand upon that statutory agent or the secretary of state, as required when a

1824 foreign corporation applies for a license to transact business in this state.

1825 (i) If the surviving or new entity is a foreign limited partnership that desires to
1826 transact business in this state as a foreign limited partnership, a statement to that effect,
1827 together with all of the information required under section 1782.49 of the Revised Code
1828 when a foreign limited partnership registers to transact business in this state;

1829 (j) If the surviving or new entity is a foreign limited liability company that desires
1830 to transact business in this state as a foreign limited liability company, a statement to that
1831 effect, together with all of the information required under section 1705.54 of the Revised
1832 Code when a foreign limited liability company registers to transact business in this state.

1833 (k) If the surviving or new entity is a foreign unincorporated association that
1834 desires to transact business in this state as a foreign unincorporated association, a
1835 statement to that effect, together with all of the information required under section
1836 1745.461 of the Revised Code when a foreign unincorporated association registers to
1837 transact business in this state.

1838 (4) The agreement of merger or consolidation may also set forth any additional
1839 provision permitted by the laws of any state under the laws of which any constituent
1840 entity exists, consistent with the laws under which the surviving entity exists or the new
1841 entity is to exist.

1842 (B)(1) A merger or consolidation in which a domestic public benefit corporation
1843 is one of the constituent entities must be approved by the court of common pleas of the
1844 county in this state in which the principal office of the domestic public benefit
1845 corporation is located, in a proceeding of which the attorney general's charitable law
1846 section has been given written notice by certified mail within three days of the initiation
1847 of the proceeding, and in which proceeding the attorney general may intervene as of
1848 right; provided that no such approval shall be required if:

1849

1850 (a) A public benefit entity is the surviving entity in the case of a merger and
1851 continues to be a public benefit entity, or is the new entity in the case of a consolidation
1852 and continues to be a public benefit entity; or

1853

1854 (b) A public benefit entity is not the surviving entity in the case of a merger, or is
1855 not the new entity in the case of a consolidation, and all of the following apply:

1856 (i) On or prior to the effective date of the merger or consolidation, assets with a
1857 value equal to the greater of the fair market value of the net tangible and intangible
1858 assets, including goodwill, of the domestic public benefit corporation or the fair market
1859 value of the domestic public benefit corporation if it is to be operated as a business
1860 concern, are transferred or conveyed to one or more persons that would have received its
1861 assets under section 1702.49 of the Revised Code had it voluntarily dissolved.

1862 (ii) The domestic public benefit corporation returns, transfers, or conveys any
1863 assets held by it upon a condition requiring return, transfer, or conveyance, which
1864 condition occurs by reason of the merger or consolidation, in accordance with that
1865 condition.

1866 (iii) The merger or consolidation is approved by a majority of directors of the
1867 domestic public benefit corporation who will not receive any financial or other benefit,
1868 directly or indirectly, as a result of the merger or consolidation or by agreement, and who
1869 are not and will not as a result of the merger or consolidation become members, partners
1870 or other owners (however denominated) of, shareholders in, or directors, officers,
1871 managers, employees, agents, or other representatives of or consultants to the surviving
1872 or new entity.

1873 (2) At least twenty days before consummation of any merger or consolidation of a
1874 domestic public benefit corporation pursuant to division (B)(1)(b) of this section, written
1875 notice, including a copy of the proposed plan of merger or consolidation, shall be
1876 delivered to the attorney general’s charitable law section. The attorney general’s
1877 charitable law section may review a proposed merger or consolidation of a domestic
1878 public benefit corporation under division (B)(1)(b) of this section. The attorney general
1879 may require, pursuant to section 109.24 of the Revised Code, the production of the
1880 documents necessary for review of a proposed merger or consolidation under division
1881 (B)(1)(b) of this section. The attorney general may retain, at the expense of the domestic
1882 public benefit corporation, one or more experts, including an investment banker, actuary,
1883 appraiser, certified public accountant, or other expert, that the attorney general considers
1884 reasonably necessary to provide assistance in reviewing a proposed merger or
1885 consolidation under division (B)(1)(b) of this section. The attorney general may extend
1886 the date of any merger or consolidation of a domestic public benefit corporation under
1887 division (B)(1)(b) of this section for a period not to exceed sixty days and shall provide
1888 notice of that extension to the domestic public benefit corporation. The notice shall set
1889 forth the reasons necessitating the extension.

1890 (3) No member (other than a member that is a public benefit entity) or director of
1891 a domestic public benefit corporation in that person’s capacity as a member or director
1892 may receive or keep anything as a result of a merger ~~or~~ consolidation other than
1893 membership or directorship in the surviving or new public benefit ~~corporation.~~ entity,
1894 without the prior written consent of the attorney general or of the court of common pleas
1895 of the county in this state in which the principal office of the domestic public benefit
1896 corporation is located, in a proceeding in which the attorney general’s charitable law
1897 section has been given written notice by certified mail within three days of the initiation
1898 of the proceeding, and in which proceeding the attorney general may intervene as of
1899 right. The court shall approve the transaction if it is in the public interest.

1900 (4) The attorney general may institute a civil action to enforce the requirements of
1901 divisions (B)(1), (2), and (3) of this section in the court of common pleas of the county in
1902 this state in which the principal office of the domestic public benefit corporation is
1903 located or in the Franklin county court of common pleas. In addition to any civil remedies
1904 that may exist under common law or the Revised Code, a court may rescind the

1905 transaction or grant injunctive relief or impose any combination of these remedies.~~(C) A~~
1906 ~~corporation may be the surviving or new entity in a merger or consolidation with one or~~
1907 ~~more business corporations, or a corporation may merge or consolidate into one or more~~
1908 ~~business corporations with a business corporation, a mutual benefit corporation, or a~~
1909 ~~foreign corporation as the surviving or new entity, provided that the corporation complies~~
1910 ~~with the provisions of this section and sections 1702.42 and 1702.43 of the Revised~~
1911 ~~Code, as applicable to the corporation, and that the business corporation complies with~~
1912 ~~the provisions of section 1701.781 or 1701.791 of the Revised Code, as applicable to the~~
1913 ~~business corporation.~~

1914 **1702.42 Agreement of merger or consolidation - vote by members.**

1915 (A) The directors of each constituent domestic corporation, upon approving an
1916 agreement of merger or consolidation, shall direct that the agreement be submitted to the
1917 voting members entitled to vote on it at a meeting of voting members of such corporation
1918 held for that purpose, and notice of the meeting shall be given to all members of the
1919 constituent corporation entitled to vote at the meeting. The notice shall be accompanied
1920 by a copy or summary of the material terms of the agreement.

1921 (B)(1) At each meeting described in division (A) of this section, a vote of the
1922 members shall be taken on the proposed agreement. In order to be adopted, the agreement
1923 (including any amendments or additions to the agreement proposed at each such meeting)
1924 must receive the affirmative vote of a majority of the voting members of each constituent
1925 corporation present at that meeting ~~in person, by the use of authorized communications~~
1926 ~~equipment, by mail, or, if permitted, by proxy~~ if a quorum is present, or, if the articles or
1927 the regulations of that corporation provide or permit, the affirmative vote of a greater or
1928 lesser proportion or number of the voting members, and the affirmative vote of the voting
1929 members of any particular class that is required by the articles or the regulations of such
1930 corporation. If the agreement would have an effect or authorize any particular corporate
1931 action that, under any applicable provision of law or under the ~~existing~~ articles ~~of one or~~
1932 ~~more of the constituent corporations~~, could be effected or authorized only by or pursuant
1933 to a specified vote of ~~voting~~ the members, the agreement (including any amendments or
1934 additions to the agreement proposed at each such meeting) ~~in order to~~ must be adopted
1935 ~~must receive~~ by the same affirmative vote ~~so specified as would be required for such~~
1936 action.

1937 (2) For purposes of division (B)(1) of this section, participation by a voting
1938 member at a meeting through the use of any of the means of communication described in
1939 that division constitutes presence in person of that voting member at the meeting for
1940 purposes of determining a quorum.

1941 (C) At any time prior to the filing of the agreement, the merger or consolidation
1942 may be abandoned by the directors of one or more of the constituent corporations or the
1943 comparable representatives of any other constituent entity, if the power of abandonment
1944 is conferred ~~upon those directors~~ either by the agreement or by the same vote ~~of voting~~
1945 ~~members of each of the constituent corporations and at the same meetings as those~~
1946 ~~referred to in division (B) of this section or at subsequent meetings~~ or action required to

1947 adopt that agreement.

1948 **1702.43 Certificate of merger or consolidation.**

1949 (A) Upon adoption by each constituent ~~corporation~~entity of an agreement of
1950 merger or consolidation pursuant to section ~~1702.42~~1702.41 or ~~1702.45~~1702.411 of the
1951 Revised Code, a certificate of merger or consolidation, signed by any authorized
1952 representative of each constituent ~~corporation~~entity, shall be filed with the secretary of
1953 state. The certificate shall be on a form prescribed by the secretary of state and shall set
1954 forth only the information required by this section.

1955 (1) The certificate of merger or consolidation shall set forth all of the following:

1956 (a) The name of each constituent entity and the state under whose laws each
1957 constituent entity exists;

1958 (b) A statement that each constituent entity has complied with all of the laws
1959 under which it exists and that the laws permit the merger or consolidation;

1960 (c) The name and mailing address of the person or entity that is to provide, in
1961 response to any written request made by a member or other person, a copy of the
1962 agreement of merger or consolidation;

1963 (d) The effective date of the merger or consolidation, which date may be on or
1964 after the date of the filing of the certificate;

1965 (e) The signature of each representative authorized to sign the certificate on behalf
1966 of each constituent entity and the office each representative authorized to sign holds or
1967 the capacity in which the representative is acting;

1968 (f) A statement that the agreement of merger or consolidation is authorized on
1969 behalf of each constituent entity and that each person who signed the certificate on behalf
1970 of each entity is authorized to do so;

1971 (g) In the case of a merger, a statement that one or more specified constituent
1972 entities will be merged into a specified surviving entity or, in the case of a consolidation,
1973 a statement that the constituent entities will be consolidated into a new entity;

1974 (h) In the case of a merger, if the surviving entity is a foreign entity not licensed
1975 to transact business in this state, the name and address of the statutory agent upon whom
1976 any process, notice, or demand may be served;

1977 (i) In the case of a consolidation, the name and address of the statutory agent upon
1978 whom any process, notice, or demand against any constituent entity or the new entity
1979 may be served.

1980 (2) In the case of a consolidation into a new domestic corporation, the certificate
1981 of consolidation shall be accompanied by a copy of the articles of incorporation of the

1982 new domestic corporation.

1983 (3) In the case of a merger into a domestic corporation, the certificate of merger
1984 shall be accompanied by a copy of any amendments to the articles of incorporation of the
1985 surviving domestic corporation.

1986 (4) If the surviving or new entity is a foreign entity that desires to transact
1987 business in this state as a foreign corporation, limited liability company, limited
1988 partnership or unincorporated association the certificate of merger or consolidation shall
1989 ~~contain a statement to that effect and a statement with respect to the appointment of the~~
1990 ~~statutory agent and with respect to the consent to service of any process, notice, or~~
1991 ~~demand upon that statutory agent or the secretary of state, as required when a foreign~~
1992 ~~corporation applies for a certificate authorizing it to transact business in this state~~be
1993 accompanied by the information required by division (A)(3)(h), (i), (j) or (k) of section
1994 1702.411 of the Revised Code.

1995 (5) If a domestic or foreign corporation licensed to transact business in this state is
1996 a constituent entity and the surviving or new entity resulting from the merger or
1997 consolidation is not a domestic or foreign corporation that is to be licensed to transact
1998 business in this state, the certificate of merger or consolidation shall be accompanied by
1999 the affidavits, receipts, certificates, or other evidence required by division (G) of section
2000 1702.47 of the Revised Code, with respect to each domestic corporation, and by the
2001 affidavits, receipts, certificates, or other evidence required by division (C) or (D) of
2002 section 1703.17 of the Revised Code, with respect to each foreign constituent corporation
2003 licensed to transact business in this state.

2004 (B) If any constituent entity in a merger or consolidation is organized or formed
2005 under the laws of a state other than this state or under any chapter of the Revised Code
2006 other than this chapter, there also shall be filed in the proper office all documents that are
2007 required to be filed in connection with the merger or consolidation by the laws of that
2008 state or by that chapter.

2009 (C) Upon the filing of a certificate of merger or consolidation and other filings as
2010 described in division (B) of this section, or at such later date as the certificate of merger
2011 or consolidation specifies, the merger or consolidation shall become effective.

2012 (D) The secretary of state shall furnish, upon request and payment of the fee
2013 specified in division (D) of section 111.16 of the Revised Code, a certificate setting forth
2014 the name and form of each constituent entity and the ~~state~~states under whose laws each
2015 constituent entity existed prior to the merger or consolidation, the name and form of the
2016 surviving or new entity and the state under whose laws the surviving entity exists or the
2017 new entity is to exist, the date of filing of the certificate of merger or consolidation with
2018 the secretary of state, and the effective date of the merger or consolidation. The certificate
2019 of the secretary of state or a copy of the merger or consolidation certified by the secretary
2020 of state may be filed for record in the office of the recorder of any county in this state
2021 and, if filed, shall be recorded in the records of deeds for that county. For that recording,
2022 the county recorder shall charge and collect the same fee as in the case of deeds.

2023 **1702.44 Effect of merger or consolidation.** [Modeled on 1701.82]

2024 (A) When such a merger or consolidation becomes effective, all of the following
2025 apply:

2026 (A1) The separate existence of all the each constituent corporations, except entity
2027 other than the surviving or new corporation, entity in a merger shall cease, except that,
2028 whenever a conveyance, assignment, transfer, deed, or other instrument, or act, is
2029 necessary to vest property or rights in the surviving or new corporation entity, the officers,
2030 general partners, or other authorized representatives of the respective constituent
2031 corporation entities shall execute, acknowledge, and deliver such those instruments; and do
2032 such those acts, and for such. For these purposes, the existence of the constituent
2033 corporations entities and the authority of their respective officers and, directors shall be
2034 deemed, general partners, or other authorized representatives is continued
2035 notwithstanding the merger or consolidation;

2036 (B) The constituent corporations shall become a single corporation which, in the
2037 case of a merger, shall be that one of the constituent corporations designated in the
2038 agreement of merger as the surviving corporation and, in the case of a consolidation, shall
2039 be the new corporation provided for in the agreement of consolidation;

2040 (C) The surviving or new corporation shall have all the rights, privileges,
2041 immunities, powers, franchises, and authority and shall be subject to all the obligations of
2042 a corporation formed under this chapter;

2043 (2) In the case of a merger in which the surviving entity is a domestic corporation,
2044 the articles of the domestic surviving corporation in effect immediately prior to the time
2045 the merger becomes effective shall continue as its articles after the merger except as
2046 otherwise provided in the agreement of merger. In the case of a consolidation, the new
2047 entity exists when the consolidation becomes effective and, if it is a domestic
2048 corporation, the articles contained in or provided for in the agreement of consolidation
2049 shall be its original articles.

2050 (D3) The surviving or new corporation shall thereupon and thereafter possess
2051 all entity possesses all assets and property of every description, and every interest in the
2052 assets and property, wherever located, and the rights, privileges, immunities, powers,
2053 franchises, and authority, as well of a public as well as of a private nature, of each of the
2054 constituent corporations; and all property of every description, and every interest
2055 therein entity, and all obligations, of or belonging to or due to each of the constituent
2056 corporations, shall thereafter be taken and deemed to be transferred to an entity, all of
2057 which are vested in the surviving or new corporation entity without further act or deed;
2058 and any right or interest in respect to any past or future devise, bequest, conditional gift,
2059 or trust, property, or fund restricted to particular uses, when vested in or claimed by such
2060 surviving or new corporation as a result of such merger or consolidation, shall belong to
2061 it as a continuation without interruption of the existence and identity of the constituent
2062 organization originally named as taker or beneficiary; and title to any real estate, or any
2063 interest therein, vested in any of the constituent corporations. Title to any real estate or

2064 any interest in the real estate vested in any constituent entity shall not revert or in any
2065 way be impaired by reason of such merger or consolidation;

2066 ~~(E) To the extent permitted by the laws of any other state in which any constituent~~
2067 ~~corporation has property, the provisions of division (D) of this section apply in such~~
2068 ~~state;~~(F4) The surviving or new corporation shall thenceforth be entity is liable for all the
2069 obligations of each of the constituent corporations; and any entity. Any claim existing or
2070 any action or proceeding pending by or against any of the constituent corporations entity
2071 may be prosecuted to judgment, with right of appeal as in other cases, as if such the
2072 merger or consolidation had not taken place, or the surviving or new corporation entity
2073 may be substituted in its place;

2074 ~~(G5) All the rights of creditors of each constituent corporation shall be entity are~~
2075 ~~preserved unimpaired, and all liens upon the property of any of the constituent~~
2076 ~~corporations shall be entity are preserved unimpaired, limited in lien to on only the~~
2077 ~~property affected by such those liens immediately prior to the effective date of the merger~~
2078 ~~or consolidation;~~ If a general partner of a constituent partnership is not a general partner
2079 of the entity surviving or the new entity resulting from the merger or consolidation, then
2080 the former general partner shall have no liability for any obligation incurred after the
2081 merger or consolidation except to the extent that a former creditor of the constituent
2082 partnership in which the former general partner was a partner extends credit to the
2083 surviving or new entity reasonably believing that the former general partner continued as
2084 a general partner of the surviving or new entity.

2085 ~~(H) The agreement shall operate as amended articles in the case of a merger and~~
2086 ~~as original articles in the case of consolidation.~~

2087 (B) If a general partner of a constituent partnership is not a general partner of the
2088 entity surviving or the new entity resulting from the merger or consolidation, the
2089 provisions of division (B) of section 1782.434 of the Revised Code shall apply.

2090 (C) In the case of a merger of a domestic constituent corporation into a foreign
2091 surviving corporation, limited liability company, limited partnership, or unincorporated
2092 association that is not licensed or registered to transact business in this state or in the case
2093 of a consolidation of a domestic constituent corporation into a new foreign corporation,
2094 limited liability company, limited partnership, or unincorporated association if the
2095 surviving or new entity intends to transact business in this state and the certificate of
2096 merger or consolidation is accompanied by the information described in division (A)(4)
2097 of section 1702.43 of the Revised Code, then, on the effective date of the merger or
2098 consolidation, the surviving or new entity shall be considered to have complied with the
2099 requirements for procuring a license or for registering to transact business in this state as
2100 a foreign corporation, limited liability company, limited partnership, or unincorporated
2101 association, as the case may be. In such a case, a copy of the certificate of merger or
2102 consolidation certified by the secretary of state constitutes the license certificate
2103 prescribed by the laws of this state for a foreign corporation transacting business in this
2104 state or the application for registration prescribed for a foreign limited partnership,
2105 limited liability company, or unincorporated association.

2106 (D) Any action to set aside any merger or consolidation on the ground that any
2107 section of the Revised Code applicable to the merger or consolidation has not been
2108 complied with shall be brought within ninety days after the effective date of that merger
2109 or consolidation or be forever barred.

2110 (E) As used in this section, “corporation” or “entity” applies to both domestic and
2111 foreign corporations and entities where the context so permits. In the case of a foreign
2112 constituent entity or a foreign new entity, this section is subject to the laws of the state
2113 under the laws of which the entity exists or in which it has property.

2114 **1702.45 Procedure for domestic corporation to merge with foreign corporation.**
2115 [Provision no longer necessary as a result of 1702.411]

2116 ~~One or more domestic corporations may merge or consolidate with one or more~~
2117 ~~foreign corporations in the following manner, if such merger or consolidation is~~
2118 ~~permitted by the laws of each state under the laws of which any constituent foreign~~
2119 ~~corporation exists:~~

2120 ~~(A) Each domestic corporation shall comply with the provisions of sections~~
2121 ~~1702.41, 1702.42, and 1702.43 of the Revised Code, and each foreign corporation shall~~
2122 ~~comply with the applicable provisions of the laws of the state under which it exists,~~
2123 ~~except that the agreement of merger or consolidation, by whatever name designated, shall~~
2124 ~~comply with divisions (B) and (C) of this section, and any merger or consolidation of a~~
2125 ~~public benefit corporation, whether domestic or foreign, shall comply with division (B) of~~
2126 ~~section 1702.41 of the Revised Code;~~

2127 ~~(B) The agreement shall set forth all statements and matters required by section~~
2128 ~~1702.41 of the Revised Code, except that the statement of the place in this state where the~~
2129 ~~principal office of the surviving or new corporation is to be located and the statement~~
2130 ~~with respect to the appointment of the statutory agent shall be set forth only if the~~
2131 ~~surviving or new corporation is to be a domestic corporation. In addition, the agreement~~
2132 ~~shall set forth:~~

2133 ~~(1) The names of the states under the laws of which each constituent corporation~~
2134 ~~exists;~~

2135 ~~(2) All statements and matters required to be set forth in agreements of merger or~~
2136 ~~consolidation by the laws of each state under the laws of which any constituent foreign~~
2137 ~~corporation exists;~~

2138 ~~(3) If the surviving or new corporation is to be a foreign corporation:~~

2139 ~~(a) the place where the principal office of the surviving or new corporation is to~~
2140 ~~be located in the state under the laws of which the surviving or new corporations is to~~
2141 ~~exist;~~

2142 ~~(b) the consent by the surviving or new corporation that it may be sued and served~~
2143 ~~with process in this state in any proceeding for the enforcement of any obligation of any~~

2144 constituent domestic corporation;

2145 (e) the irrevocable appointment of the secretary of state of this state as its agent to
2146 accept service of process in any such proceeding;

2147 (d) if it is desired that the surviving or new corporation exercise its corporate
2148 privileges in this state as a foreign corporation in a continual course of transactions, a
2149 statement to that effect and a statement with respect to the appointment of the statutory
2150 agent and with respect to the consent to service of any process, notice, or demand upon
2151 such statutory agent or the secretary of state, as required when a foreign corporation
2152 applies for a certificate authorizing it to do so;

2153 (C) The agreement may also set forth any additional provision permitted by the
2154 laws of any state under the laws of which any constituent corporation exists, to the extent
2155 not inconsistent with the laws of the state under the laws of which the surviving or new
2156 corporation is to exist.

2157 **1702.46 Effective date of merger or consolidation.**

2158 (A) Upon the filing of the certificate of merger or consolidation in compliance
2159 with the laws of each state under the laws of which any constituent ~~corporation~~entities
2160 exists, or at such later date as the certificate specifies, the merger or consolidation shall
2161 become effective.

2162 (B) ~~The effect of such merger or consolidation, if the surviving or new~~
2163 ~~corporation is to be a domestic corporation, shall be the same as in the case of the merger~~
2164 ~~or consolidation of domestic corporations. If the surviving or new corporation is to be a~~
2165 ~~foreign corporation:~~

2166 (1) ~~The surviving or new corporation shall thenceforth be liable for all the~~
2167 ~~obligations of each of the constituent corporations;~~

2168 (2) ~~All the rights of creditors of each constituent corporation shall be preserved~~
2169 ~~unimpaired, and all liens upon the property of any of the constituent corporations shall be~~
2170 ~~preserved unimpaired, limited in lien to the property affected by such liens immediately~~
2171 ~~prior to the effective date of the merger or consolidation;~~

2172 (3) ~~The effect of such merger or consolidation shall, in all other respects, be the~~
2173 ~~same as in the case of the merger or consolidation of domestic corporations except~~
2174 ~~insofar as the laws of such other state otherwise provide.~~

2175 (C) ~~If the surviving or new corporation is to be a foreign corporation and if the~~
2176 ~~certificate states that the surviving or new corporation desires to exercise its corporate~~
2177 ~~privileges in this state as a foreign corporation in a continual course of transactions, the~~
2178 ~~surviving or new corporation shall, when the merger or consolidation becomes effective,~~
2179 ~~be deemed to have complied with the requirements for procuring a certificate authorizing~~
2180 ~~it to do so, and a copy of the certificate of merger or consolidation, certified by the~~
2181 ~~secretary of state of this state, shall be considered and accepted as the license certificate~~

2182 ~~prescribed by the laws of this state for a foreign corporation exercising its corporate~~
2183 ~~privileges in this state in a continual course of transactions.~~

2184 **Rationale for Proposal**

2185 Chapter 1745 of the Ohio Revised Code, adopted in 1955, is the only Ohio statute
2186 that specifically applies to unincorporated associations (“Associations”). Currently,
2187 Chapter 1745 consists of three short sections that address: (a) the ability of an
2188 Association to contract, sue, and be sued as an entity (Section 1745.01); (b) the limitation
2189 of claims against the Association (Section 1745.02); and (c) the continued existence of
2190 the Association despite changes in its membership (Section 1745.04). Chapter 1745 is
2191 presently devoid of organizational and procedural guidelines as well as standards of
2192 conduct for members and managers of Associations.

2193 The amendments to Chapter 1745 are intended, in large part, to adopt the
2194 language and structure of the Revised Uniform Unincorporated Nonprofit Association
2195 Act (the “Uniform Act”) in order to preserve uniformity of interpretation with other
2196 jurisdictions that adopt all or parts of the Uniform Act. Where Ohio’s nonprofit
2197 corporation law (Chapter 1702) already contains well-developed procedures to protect
2198 charitable interests (e.g. mergers, consolidations, dissolutions, sales of assets), the
2199 amendments to Chapter 1745 follow the Chapter 1702 approach. In cases where the
2200 Uniform Act was lacking in detail or failed to cover a topic, the amendments to Chapter
2201 1745 provide a “default” mechanism similar to the approach used in Chapter 1702.
2202 Internal governance matters (e.g. voting procedures, meeting requirements, etc.) follow
2203 this “default” approach, which allows an Association to set its own “governing rules,” but
2204 if it fails to do so, the statute will provide those rules. The amendments add requirements
2205 that members and managers of Associations must exercise their rights and privileges and
2206 discharge their duties “consistent with the obligation of good faith and fair dealing” – a
2207 concept that is found in the Revised Uniform Partnership Act and in Section 1776.44(D)
2208 of the Revised Code. Finally, the amendments to Chapter 1745 permit Associations to
2209 merge and consolidate with other Associations and with other types of entities (e.g., for-
2210 profit corporations, nonprofit corporations and limited liability companies), as well as
2211 with entities organized under the laws of foreign jurisdictions. The merger and
2212 consolidation provisions generally follow the approach used for limited liability
2213 companies in Chapter 1705.

2214 The amendments to Chapter 1702 permit Ohio nonprofit corporations to merge
2215 and consolidate with a variety of other types of entities, both domestic and foreign.
2216 These amendments also generally follow the approach used for limited liability
2217 companies in Chapter 1705. Some of the definitions in Section 1702.01 have been
2218 amended to be consistent with the definitions used in the amendments to Chapter
2219 1745.