



Business Entities: Transfer, Conversion, Merger, Termination, and Dissolution

Course #3104A

Taxes

2 Credit Hours

Support@PacificCPE.com | (800) 787-5313

PacificCPE.com

BUSINESS ENTITIES: TRANSFER, CONVERSION, MERGER, TERMINATION, AND DISSOLUTION

This course covers the factors to consider related to transfers, conversions, and mergers of business entities. It also covers the rules governing the dissolution of various business forms.

LEARNING ASSIGNMENTS AND OBJECTIVES

As a result of studying each assignment, you should be able to meet the objectives listed below each individual assignment.

SUBJECTS

**Transfer, Conversion, and Merger of Entities
Termination/Dissolution of Business Entities**

Study the course materials from pages 1 to 62

Complete the review questions at the end of each chapter

Answer the exam questions 1 to 10

Objectives:

- Identify the factors to consider related to transfers, conversions, and mergers of business entities.
- Recall the rules governing the dissolution of various business forms.

NOTICE

This course is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice and assumes no liability whatsoever in connection with its use. Since laws are constantly changing, and are subject to differing interpretations, we urge you to do additional research and consult appropriate experts before relying on the information contained in this course to render professional advice.

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EXAM OUTLINE

- **TEST FORMAT:** The final exam for this course consists of 10 multiple-choice questions and is based specifically on the information covered in the course materials.
- **ACCESS FINAL EXAM:** Log in to your account and click Take Exam. A copy of the final exam is provided at the end of these course materials for your convenience, however you must submit your answers online to receive credit for the course.
- **LICENSE RENEWAL INFORMATION:** This course qualifies for **2** CPE hours.
- **PROCESSING:** You will receive the score for your final exam immediately after it is submitted. A score of 70% or better is required to pass.
- **CERTIFICATE OF COMPLETION:** Will be available in your account to view online or print. If you do not pass an exam, it can be retaken free of charge.

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CHAPTER 1: TRANSFER, CONVERSION, AND MERGER OF ENTITIES

Chapter Objective

After completing this chapter, you should be able to:

- Identify the factors to consider related to transfers, conversions, and mergers of business entities.

Hypothetical 1: *Bill and Dan pool their resources and open a bar. Bill and Dan form a general partnership. Both work full time in the business. The bar becomes wildly popular and Bill and Dan want to expand. David wants to invest money in the business to help with the expansion but does not want to give up his job. He also does not want to assume personal liability for the business. Can Bill and Dan simply “admit” David to their partnership as a limited partner?*

Hypothetical 2: *John is a successful businessman who owns a number of rental properties throughout the town. He holds each property in his own name. John’s son, Frank, is close to graduating from college and coming to work with John. John eventually wants to transfer his property to his son and retire. What type of entity would make this type of transfer easy?*

These hypothetical situations illustrate the importance of considering ease of transfer, conversion and merger when making a choice of business entity. The issue can arise in many contexts, including, as the above examples illustrate, the need for additional capital infusion or estate planning considerations.

I. PARTNERSHIPS

A. TRANSFER

Partners normally retain the right to transfer their interest in receiving the profits of the partnership but are limited in their ability to transfer the partnership interest as a whole. Pursuant to the Uniform Partnership Act and as generally set forth in state law, a partner may only transfer his or her interest in receipt of partnership profits. An ownership interest in a partnership itself can only be transferred by consent of all other partners, unless otherwise provided in a written partnership agreement. The policy behind this restriction is basically the freedom to contract: a person should not be forced to become a partner with someone not of his or her own choosing. This makes sense particularly in light of the fact that general partners are jointly and severally liable for the debts and obligations of the partnership. The rights of a transferee of a partnership are set forth in state law and normally include:

- The right to receive, in accordance with the terms of the assignment, any distributions to which the transferor would otherwise have been entitled under the partnership agreement before dissolution;
- After dissolution, the right to receive the net amount that would otherwise have been distributed to the transferor upon the winding up of the business;
- Standing to seek a judicial dissolution and winding up of the partnership business; and
- The right to an account of partnership transactions, limited to the period since the date of the last account agreed to by all of the partners.

A partner has other interests in the partnership that may not be transferred absent the required consent of the other partners, such as the right to participate in the management of the business. Those rights are included in the broader concept of a “partner’s interest in the partnership.”

B. MERGER

A partnership may convert or merge in any manner provided by applicable state law. A number of states currently authorize the merger of limited partnerships, and some authorize them to merge with other business entities such as corporations and limited liability companies. A few states currently authorize the merger of a general and a limited partnership or the conversion of a general to a limited partnership.

1. Plan of Merger

The first step in the process of a merger is normally the adoption of a plan of merger by the merging entities.

Pursuant to the UPA, § 905, the plan of merger must set forth:

- The name of each partnership or limited partnership that is a party to the merger;
- The name of the surviving entity into which the other partnerships or limited partnerships will merge;
- Whether the surviving entity is a partnership or a limited partnership and the status of each partner;
- The terms and conditions of the merger;
- The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and
- The street address of the surviving entity’s chief executive office.

UPA § 905 (c) provides that the plan of merger must be approved: (1) in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and (2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the

limited partnership is organized, and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement. As we said during the discussion on conversions, the purpose of the unanimity requirement is to protect limited partners from exposure to liability as general partners without their clear and knowing consent.

California law, Corporations Code § 15678.2, allows the plan of merger to be approved by “all general partners of each constituent limited partnership and the principal terms of the merger shall be approved by a majority in interest of each class of limited partners of each constituent limited partnership, unless a greater approval is required by the partnership agreement of the constituent limited partnership.”

However, if the limited partners of any constituent limited partnership become personally liable for any obligations of a constituent limited partnership or constituent other business entity as a result of the merger, the principal terms of the agreement of merger must, under California law, be approved by all of the limited partners of the constituent limited partnership.

UPA § 905 (d) provides that the plan of merger may be amended or abandoned at any time before the merger takes effect, if the plan so provides.

2. Effective Date of Merger

The merger takes effect, according to UPA § 905 (e), on the later of:

- Approval by all parties to the merger;
- Filing of all required documents; or
- The effective date specified in the plan.

The surviving entity must file all notices and documents relating to the merger required by other applicable statutes governing the entities that are parties to the merger, such as articles of merger or a certificate of limited partnership. It may also amend or cancel a statement of partnership authority previously filed by any party to the merger.

3. Effect of Merger

When a merger of partnerships takes effect, the separate legal existence of the merging partnerships ceases and all property of the merging entities vests with the surviving partnership. Likewise, all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity, and any action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

4. Liability of Partners

A partner of the surviving partnership or limited partnership is normally liable for:

- All obligations of a party to the merger for which the partner was personally liable before the merger;