

## 2018 Kansas Statutes

**17-1637. Merger or consolidation of cooperative associations and corporations.** (a) Any two or more associations incorporated under the cooperative marketing act, cited at K.S.A. 17-1601 et seq., and amendments thereto, or any association incorporated under the cooperative marketing act, cited at K.S.A. 17-1601 et seq., and amendments thereto, and a corporation existing under the laws of this state, may merge into a single association or corporation, which may be any of the constituent associations or corporations or they may consolidate into a new association or corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) The board of directors of each association or corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

(1) The terms and conditions of the merger or consolidation;

(2) the mode of carrying the same into effect;

(3) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving association or corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving association or corporation shall be its articles of incorporation;

(4) in the case of consolidation, that the articles of incorporation of the resulting association or corporation shall be as is set forth in an attachment to the agreement;

(5) the manner of converting the shares of each of the constituents into shares or other securities of the association or corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituents are not to be converted solely into shares or other securities of the surviving or resulting association or corporation, the cash, property, rights or securities of any other association or corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of the certificates evidencing certificated shares, which cash, property, rights or securities of any other association or corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting association or corporation; and

(6) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of K.S.A. 17-6405, and amendments thereto.

(c) The agreement adopted as provided in this section shall be executed in accordance with K.S.A. 17-6003, and amendments thereto. Any terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(d) The agreement required by subsection (b) shall be submitted to the members or stockholders of each constituent association or corporation at an annual or special meeting for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member or holder of stock of the association or corporation, whether voting or nonvoting, at the member's or stockholder's address as it appears on the records of the association or corporation, at least 20 days prior to the date of the meeting. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If the agreement is adopted by a vote representing a majority of all members of the association or, a majority vote of all outstanding stock of the corporation entitled to vote thereon, as applicable, that fact shall be certified on the agreement by the secretary or assistant secretary of the association or corporation. In lieu of an affirmative vote of a majority of all members of the association or, a majority vote of all outstanding stock of the association entitled to vote, as applicable, the agreement may be adopted by a vote of 2/3 of the members or voting stockholders present and voting at any annual meeting or special meeting called for such purpose. The method of adoption and the votes cast shall be certified on the agreement by the secretary or assistant secretary of the association or corporation. If the agreement is adopted and certified by each constituent association or corporation, the agreement shall then be executed and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. In lieu of filing the agreement of merger or consolidation, the surviving or resulting association or corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states:

(1) The name and state of incorporation of each of the constituent associations or corporations;

(2) that an agreement of merger or consolidation has been approved, adopted, certified and executed by each of the constituent associations or corporations in accordance with this subsection;

(3) the name of the surviving or resulting association or corporation;

(4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving association or corporation as are desired to be effected by the merger or, if no such changes or amendments are desired, a statement that the articles of incorporation of one of the surviving associations or corporation shall be the articles of incorporation;

(5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving association or corporation, stating the address thereof; and

(7) that a copy of the agreement of consolidation or merger will be furnished by the surviving association or corporation, on request and without cost, to any member or stockholder of any constituent association or corporation.

(e) Any agreement of merger or consolidation may contain a provision that at any time prior to the filing of the agreement with the secretary of state, the agreement may be terminated by the board of directors of any constituent association or corporation notwithstanding approval of the agreement by the members or stockholders of all or any of the constituent associations or corporations. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent associations or corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the secretary of state provided that an amendment made subsequent to the adoption of the agreement by the members or stockholders of any constituent association or corporation shall not:

(1) Alter or change the amount or kind of shares, securities, cash, property or rights, or any of the proceedings, in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent association or corporation;

(2) alter or change any term of the articles of incorporation of the surviving association or corporation to be effected by the merger or consolidation; or

(3) alter or change any of the terms and conditions of the agreement if such alteration or change would

adversely affect the members or holders of any class of series thereof of such constituent association or corporation.

(f) In the case of a merger, the articles of incorporation of the surviving association or corporation shall automatically be amended to the extent, if any, that change in the articles of incorporation are set forth in the agreement of merger.

(g) Notwithstanding the requirements of subsection (d), unless required by its articles of incorporation, no vote of members or stockholders of a constituent association or corporation surviving a merger shall be necessary to authorize a merger if:

(1) The agreement of merger does not amend in any respect the articles of incorporation of the surviving corporation; and

(2) the aggregate stockholders' equity, as determined in accordance with generally accepted accounting principles, of the stock or other equity of the surviving association or corporation to be issued or delivered under the plan of merger does not constitute more than 25% of the aggregate stockholders' equity, as determined in accordance with generally accepted accounting principles, of all classes of stock or other equity of the surviving association or corporation immediately following the effectiveness of the merger. If an agreement of merger is adopted by the constituent association or corporation surviving the merger, by action of its board of directors and without any vote of the constituent association's or corporation's members or stockholders pursuant to this subsection, the secretary or assistant secretary of such association or corporation shall certify on the agreement, under the seal, that the agreement has been adopted pursuant to this subsection and that, as of the date of such certificate, the stockholders' equity of the association or corporation was such as to render this subsection applicable. The agreement adopted and certified as provided in this section shall be executed and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

**History:** L. 1991, ch. 74, § 1; L. 1998, ch. 189, § 1; L. 2000, ch. 39, § 6; July 1.