

2012 Kansas Statutes

17-1638. Merger or consolidation of cooperative associations and domestic and foreign corporations; service of process upon surviving or resulting corporation. (a) Any one or more associations incorporated under the cooperative marketing act, cited at K.S.A. 17-1601 *et seq.*, and amendments thereto, may merge or consolidate with one or more other associations or corporations of any other state or states of the United States, or of the District of Columbia if the laws of such other jurisdiction permit an association or corporation of such jurisdiction to merge or consolidate with an association or corporation of another jurisdiction. The constituent associations or corporations may merge into a single association or corporation, which may be any one of the constituents, or they may consolidate into a new association or corporation formed by the consolidation, which may be an association or corporation of the state of incorporation of any one of the constituent associations or corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more associations or corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more associations incorporated under the cooperative marketing act, cited at K.S.A. 17-1601 *et seq.*, and amendments thereto, if the surviving or resulting association or corporation will be an association or corporation of this state, and if the laws under which the other associations or corporations are formed permit an association or corporation of such jurisdiction to merge or consolidate with an association or corporation of another jurisdiction.

(b) All the constituent associations or corporations shall enter into 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) the manner of converting the shares of each of the constituent associations or corporations 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 the shares or other securities of the surviving or resulting association or corporation;

(4) 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 of the surviving or resulting association or corporation or of any other association or corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of K.S.A. 17-6405, and amendments thereto; and

(5) such other provisions or facts as shall be required to be set forth in articles of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting association or corporation and that can be stated in the case of a merger or consolidation.

(c) Any of the 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 shall be adopted, approved, certified and executed by each of the constituent associations or corporations in accordance with the laws under which it is formed, and, in the case of a Kansas association, in the same manner as provided in K.S.A. 17-1637 and amendments thereto. The agreement shall be filed and shall become effective for all purposes of the laws of this state as provided in K.S.A. 17-1637 and amendments thereto with respect to the merger or consolidation of associations or corporations of this state. 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 constituents;

(2) that an agreement of merger or consolidation has been approved, adopted, certified and executed by each of the constituents 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 amendments or changes are desired, a statement that the articles of incorporation of the surviving association or corporation shall be the association's or corporation's articles of incorporation;

(5) in the case of a consolidation, that the articles of incorporation of the resulting association or 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 and address thereof;

(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;

(8) if the association or corporation surviving or resulting from the merger or consolidation is to be an association or corporation of this state, the authorized capital stock of each constituent association or corporation which is not an association or corporation of this state; and

(9) the agreement, if any, required by subsection (e).

(e) If the association or corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent association or corporation of this state, as well as for enforcement of any obligation of the surviving or resulting association or corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any member or stockholder as determined in appraisal proceedings pursuant to the provisions of K.S.A. 17-1642, and amendments thereto, and shall irrevocably appoint the secretary of state as such association's or corporation's last known agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies to such surviving or resulting association or

corporation at such association's or corporation's last known address.

(f) The provisions of subsection (e) of K.S.A. 17-1637, and amendments thereto, shall apply to any merger or consolidation under this section. The provisions of subsection (f) of K.S.A. 17-1637, and amendments thereto, shall apply to a merger under this section in which the surviving association or corporation is an association or corporation of this state. The provisions of subsection (g) of K.S.A. 17-1637, and amendments thereto, shall apply to any merger under this section.

History: L. 1991, ch. 74, § 2; L. 1998, ch. 189, § 2; L. 2000, ch. 39, § 7; July 1.