

**286.3-172 Conditions of and procedure for conversion of national banking association to state bank or merger with state bank.**

- (1) A national banking association may convert into or merge with a state bank under a state charter, provided that the action taken complies with federal law.
- (2) In the case of each conversion, a written plan of conversion shall be submitted, in duplicate, to the commissioner. Such plan shall be in form satisfactory to the commissioner, shall prescribe the terms and conditions of the conversion and the mode of carrying it into effect, and shall have annexed thereto and forming a part thereof the proposed articles of incorporation of the state bank which is to result from the conversion. Such articles of incorporation shall be in the form prescribed by law for the organization of state banks, with such variations, if any, as shall be satisfactory to the commissioner. With such plan of conversion there shall be submitted, in duplicate, to the commissioner a certificate of the president, secretary, or cashier of the national banking association certifying that all steps have been taken which are necessary under federal law to the consummation of the conversion. The commissioner shall approve or disapprove such plan of conversion within sixty (60) days of the submission thereof to him. In considering the approval or disapproval of the conversion plan the commissioner shall take into account:
  - (a) Any pending administrative or judicial action to which the bank or any officer or director of the bank is a party;
  - (b) The performance of the converting national bank for the five (5) years preceding the application for conversion as compared to similarly situated state-chartered banks; and
  - (c) The proposed name of the bank after conversion which shall not be the same as or deceptively similar to any existing state-chartered bank.

If the commissioner shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of such certificate submitted therewith and the original of the approval of the commissioner, in the office of the commissioner. After such filing in the office of the commission, the conversion shall become effective upon the filing and recording of the articles of incorporation as provided in KRS 286.3-050, unless a later date is specified in the plan, in which event the conversion shall become effective upon such later date. If the commissioner shall disapprove the conversion plan, he shall state his reasons for such disapproval in writing to which the converting national bank shall have the right of appeal as permitted by law.

- (3) In the case of each merger, a written plan of merger shall be submitted, in duplicate, to the commissioner. Such plan shall be in form satisfactory to the commissioner and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the state bank, as receiving corporation, if such name is to be changed. Such plan may also name the persons who shall constitute the first board of directors of the state bank after the merger shall have been accomplished, provided that the number and qualifications of such person shall be in accordance with the provisions of Subtitle 3 of KRS Chapter 286 relating to the number and qualifications of directors of a state bank; or

such plan may provide for a meeting of the stockholders to elect a board of directors within sixty (60) days after such merger, and may make provision for conducting the affairs of the state bank meanwhile. With such plan of merger there shall be submitted, in duplicate, to the commissioner the following:

- (a) By the national banking association, a certificate of the president, secretary, or cashier of such association certifying that all steps have been taken which are necessary under federal law to the consummation of their merger;
  - (b) By the state bank, a certificate of the president, secretary, or cashier certifying that such plan of merger has been approved by the board of directors of the state bank by a majority vote of all the members thereof, that such plan has been submitted to the stockholders of the state bank at a meeting thereof held; upon notice of at least fifteen (15) days, specifying the time and place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the state bank and published pursuant to KRS Chapter 424, and that such plan of merger has been approved at such meeting by the vote of the stockholders owning at least two-thirds (2/3) in amount of the stock of the state bank.
- (4) The commissioner shall approve or disapprove such plan of merger within sixty (60) days of such submission thereof to him. If the commissioner shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of each of such certificates and the original of the approval of the commissioner, in the office of the commissioner. Upon such filing in the office of the commissioner, the merger shall become effective, unless a later date is specified in the plan, in which event the merger shall become effective upon such later date.
- (5) At the time when such conversion or merger becomes effective:
- (a) The resulting state bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers, and duties, the resulting bank is a state bank;
  - (b) All of the property, rights, and powers and franchises of the national banking association shall vest in the resulting state bank and the resulting state bank shall be subject to and deemed to have assumed all of the debts, liabilities, obligations, and duties of the national banking association and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties, and relationships had been originally acquired, incurred, or entered into by the resulting state bank; provided, however, that the resulting state bank shall not, through such conversion or merger, acquire power to engage in any business or to exercise any right, privilege, or franchise which is not conferred by the provisions of Subtitle 3 of KRS Chapter 286 upon such resulting state bank;
  - (c) Any reference to the national banking association in any contract, will, or document, whether executed or taking effect before or after the conversion or merger, shall be considered a reference to the resulting state bank if not inconsistent with the other provisions of the contract, will, or document;

- (d) A pending action or other judicial proceeding to which the national banking association is a party, shall not be deemed to have abated or to have discontinued by reason of the conversion or merger, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion or merger had not been made; or the resulting state bank may be substituted as a party to such action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the national banking association if the conversion or merger had not occurred.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 627, effective July 15, 2010; and ch. 28, sec. 12, effective July 15, 2010. -- Amended 2000 Ky. Acts ch. 135, sec. 2, effective July 14, 2000. -- Amended 1980 Ky. Acts ch. 192, sec. 1, effective July 15, 1980. -- Amended 1966 Ky. Acts ch. 239, sec. 200, effective June 16, 1966. -- Created 1952 Ky. Acts ch. 222, sec. 2.

**Formerly codified as** KRS 287.172.

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts chs. 24 and 28. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 28, which was last enacted by the General Assembly, prevails under KRS 446.250.

**Legislative Research Commission Note (7/12/2006).** In accordance with 2006 Ky. Acts ch. 247, secs. 38 and 39, this statute has been renumbered as a section of the Kentucky Financial Services Code, KRS Chapter 286, and KRS references within this statute have been adjusted to conform with the 2006 renumbering of that code.