



## Ohio Revised Code

### Section 1729.35 Association may merge or consolidate with one or more associations.

Effective: September 3, 2004

Legislation: House Bill 288 - 125th General Assembly

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(A) An association may merge or consolidate with one or more associations under this chapter. Before an association may merge or consolidate with any other association, a written agreement of merger or consolidation shall be approved by the board of each constituent association and by the members of each constituent association. The agreement shall set forth the terms of the merger or consolidation, including any provisions for amendment or abandonment of the agreement. In the case of a consolidation, the agreement also shall contain the articles of incorporation of the new association.

(B)(1) If the agreement of merger or consolidation provides that a holder of stock other than membership stock or patronage stock in a constituent association will be affected, all of the following apply:

(a) Unless the board of the constituent association provides that division (B)(1)(b) of this section applies, the affected stockholder shall be entitled to cast one vote on the agreement regardless of the par or stated value, the number of shares, or the number of affected classes of the stock held.

(b) The board of a constituent association may provide that a stockholder otherwise entitled to vote under division (B)(1)(a) of this section shall instead be entitled to payment of fair cash value of the affected stock held by the stockholder in accordance with section 1729.46 of the Revised Code.

(c) A member holding stock affected by a proposed agreement of merger or consolidation may vote only as a member and shall not be entitled to vote or demand fair cash value as an affected stockholder.

(2) For purposes of this section, a holder of stock is affected as to any class of stock owned by the holder only if the agreement of merger or consolidation does any of the following:



- (a) Decreases the dividends to which that class may be entitled or changes the method by which the dividend rate on that class is fixed;
  - (b) Provides for additional restriction of rights to transfer shares of that class;
  - (c) Gives to another existing or any new class of stock or equity interest not previously entitled thereto any preference, as to dividends or upon dissolution, that is higher than preferences of that class;
  - (d) Changes the par value of shares of that class or of any other class having the same or higher preferences as to dividends or upon dissolution;
  - (e) Increases the number of authorized shares of any other class having the same or higher preferences as to dividends or upon dissolution beyond the aggregate authorizations for such classes in the constituent associations;
  - (f) Requires or permits an exchange of shares of any class with lower preferences as to dividends or upon dissolution for shares of any other class with higher preferences.
- (C) The agreement is approved if both of the following conditions are met with respect to each constituent association:
- (1) Notice of the meeting to vote on the agreement, the agreement, and a description of the method of voting have been sent to all members, and to all affected stockholders entitled either to vote on the agreement or to receive payment of fair cash value under division (B) of this section;
  - (2) Sixty per cent of the member votes cast approve the agreement, and a simple majority of the votes cast by the affected stockholders entitled to vote under division (B) of this section approve the agreement.
- (D) Notwithstanding division (C) of this section, no vote of the members or stockholders of a constituent association shall be necessary to approve a merger of a wholly owned subsidiary association with and into its parent cooperative or a merger or a consolidation of two or more



subsidiary associations that are wholly owned by a cooperative.

(E) After approval of an agreement under this section, but before the merger or consolidation is effective, the agreement may be amended in accordance with any provision for amendment set forth in the agreement, provided that an amendment made subsequent to adoption of the agreement by the members of any constituent association shall not do any of the following:

(1) Change the membership rights, or the amount or kind of stock, securities, cash, property, or other rights to be received, exchanged, or converted in the merger or consolidation;

(2) Change the articles of incorporation or bylaws of the surviving or new association as provided for in the agreement;

(3) Change any provision of the agreement with respect to the rights of members or the manner of voting in the surviving or new association.

(F) After approval of an agreement under this section, but before the merger or consolidation is effective, the merger or consolidation may be abandoned in accordance with any provision for abandonment set forth in the agreement.

(G) The merger or consolidation shall take effect in accordance with sections 1729.37 and 1729.38 of the Revised Code.