



## Ohio Revised Code Section 1729.40 Plan of division.

Effective: August 5, 1998

Legislation: House Bill 600

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(A) Any association may divide itself into two or more associations. A written plan of division shall be approved by the association's board. Such plan shall set forth all the terms of the division and the proposed effect of the division on all members and stockholders of the association. The plan also shall contain the articles of incorporation and bylaws of each association resulting from the division, which articles and bylaws shall conform to the requirements for associations organized under this chapter.

(B)(1) If the plan of division provides that a holder of stock other than membership stock or patronage stock will be affected, the following apply:

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

(b) The board 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 plan of division 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 plan of division 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 any additional restriction on 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 in a resulting association;

(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 aggregate number of authorized shares of any other class having the same or higher preferences as to dividends or upon dissolution in the resulting associations beyond the authorization for such classes in the original association;

(f) Requires or permits an exchange of shares of any class with lower preferences as to dividends or upon dissolution in the original association for shares of any other class with higher preferences in a resulting association.

(C) The plan of division is approved if both of the following conditions are met:

(1) Notice of the meeting to vote on the plan, the plan of division, 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 plan 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 plan, and a simple majority of the votes cast by the affected stockholders entitled to vote under division (B) of this section approve the plan.

(D) After approval of a plan of division under this section, but before the division is effective, the plan may be amended or abandoned in accordance with a provision for amendment or abandonment set forth in the plan, provided that an amendment made subsequent to approval of the plan by the members 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 division;



(2) Change the articles of incorporation or bylaws of the resulting associations as provided for in the plan;

(3) Change any provision of the plan with respect to the rights of members or the manner of voting in the resulting associations.

(E)(1) Upon approval of a plan of division, a certificate, signed by any authorized officer of the original association, shall be filed with the secretary of state on a form prescribed by the secretary of state setting forth the following:

(a) The name of the original association and the name of each resulting association;

(b) A statement that the original association has adopted the plan of division, the manner of adoption, and that the plan was adopted in compliance with this section;

(c) The effective date of the division, which date may be on or after the date of filing of the certificate;

(d) A statement that the original association will be divided into specified resulting associations;

(e) The name and address of the statutory agent upon whom any process, notice, or demand against the original association may be served, and the name and address of a statutory agent for each resulting association upon whom process, notice, or demand against that resulting association may be served.

(2) The articles of incorporation of each of the resulting associations shall be filed with the certificate.