524.1402 Requirements for a merger.

The requirements for a merger which must be satisfied by the parties to the merger are as follows:

1. The parties shall adopt a plan stating all of the following:

a. The names of the parties proposing to merge and the name of the bank into which they propose to merge, which is the "resulting bank".

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the shares of each party into shares, obligations, or other securities of the resulting bank or of any other corporation, or, in whole or in part, into cash or other property.

d. The rights of the shareholders of each of the parties.

e. An agreement concerning the merger.

f. Such other provisions with respect to the proposed merger which are deemed necessary or desirable.

2. In the case of a state bank which is a party to the plan, if the proposed merger will result in a state bank subject to this chapter, adoption of the plan by such state bank requires the affirmative vote of at least a majority of the directors and approval by the shareholders, in the manner and according to the procedures prescribed in section 490.1104, at a meeting called in accordance with the terms of that section. In the case of a national bank, or if the proposed merger will result in a national bank, adoption of the plan by each party to the merger shall require the affirmative vote of at least such directors and shareholders whose affirmative vote on the plan is required under the laws of the United States. Subject to applicable requirements of the laws of the United States in a case in which a national bank is a party to a plan, any modification of a plan which has been adopted shall be made by any method provided in the plan, or in the absence of such provision, by the same vote as required for adoption.

3. If a proposed merger will result in a state bank, application for the required approval by the superintendent shall be made in the manner prescribed by the superintendent. There shall also be delivered to the superintendent, when available, the following:

a. Articles of merger.

b. Applicable fees payable to the secretary of state, as specified in section 490.122, for the filing and recording of the articles of merger.

c. If there is any modification of the plan at any time prior to the approval by the superintendent under section 524.1403, an amendment of the application and, if necessary, of the articles of merger, signed in the same manner as the originals, setting forth the modification of the plan, the method by which the modification was adopted and any related change in the provisions of the articles of merger.

d. Proof of publication of the notice required by subsection 4.

4. If a proposed merger will result in a state bank, within thirty days after the application for merger is accepted for processing, the parties to the plan shall publish a notice of the proposed transaction in a newspaper of general circulation published in the municipal corporation or unincorporated area in which each party to the plan has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which each party to the plan has its principal place of business. The notice shall be on forms prescribed by the superintendent and shall set forth the names of the parties to the plan and the resulting state bank, the location and post office address of the principal place of business of the resulting state bank and of each office to be maintained by the resulting state bank, and the purpose or purposes of the resulting state bank. Proof of publication of the notice shall be delivered to the superintendent within fourteen days.

5. Within thirty days after the date of the publication of the notice required under subsection 4, any interested person may submit to the superintendent written comments and data on the application. Comments challenging the legality of an application shall be submitted separately in writing. The superintendent may extend the thirty-day comment period if, in the superintendent's judgment, extenuating circumstances exist.

6. Within thirty days after the date of the publication of the notice required under subsection 4, any interested person may submit to the superintendent a written request for

a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. Written requests for hearings shall be evaluated by the superintendent, who may grant or deny such requests in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

7. If a request for a hearing is denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. Interested persons may submit to the superintendent, with simultaneous copies to the applicant, additional written comments or data on the application within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period. The superintendent may waive this seven-day period upon request by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested persons.

8. The articles of merger shall be signed by two duly authorized officers of each party to the plan and shall contain all of the following:

a. The names of the parties to the plan, and of the resulting state bank.

b. The location and the post office address of the principal place of business of each party to the plan, and of each additional office maintained by the parties to the plan, and the location and post office address of the principal place of business of the resulting state bank, and of each additional office to be maintained by the resulting state bank.

c. The votes by which the plan was adopted, and the date and place of each meeting in connection with such adoption.

d. The number of directors constituting the board of directors, and the names and addresses of the individuals who are to serve as directors until the next annual meeting of the shareholders or until their successors be elected and qualify.

e. Any amendment of the articles of incorporation of the resulting state bank.

f. The plan of merger.

9. If a proposed merger will result in a national bank, a state bank which is a party to the plan shall do all of the following:

a. Notify the superintendent of the proposed merger.

b. Provide such evidence of the adoption of the plan as the superintendent may request.

c. Notify the superintendent of any abandonment or disapproval of the plan.

d. File with the superintendent and with the secretary of state evidence of approval of the merger by the comptroller of the currency of the United States.

e. Notify the superintendent of the date upon which the merger is to become effective.

[C54, 58, 62, 66, §528B.4, 528B.5; C71, 73, 75, 77, 79, 81, §524.1402]

90 Acts, ch 1076, §1; 90 Acts, ch 1205, §45, 46; 95 Acts, ch 148, §109; 2002 Acts, ch 1154, §115, 125; 2004 Acts, ch 1141, §28; 2005 Acts, ch 19, §112

Referred to in §524.1403