

CHAPTER 6
CONVERSION FROM MUTUAL TO CAPITAL STOCK OWNERSHIP
[Prior to 3/25/87, Auditor of State[130] Ch 6]

197—6.1(534) Introduction. These rules shall govern the conversion of state-chartered savings and loan associations from mutual to stock form of ownership, pursuant to Iowa Code section 534.509, except as the superintendent of savings and loan associations may otherwise provide in supervisory cases.

197—6.2(534) Definitions.

“*Applicant*” means a mutual association which is applying to the superintendent to convert to a capital stock association.

“*Capital stock association*” means an association which has authority to issue capital stock.

“*FSLIC*” means the Federal Savings and Loan Insurance Corporation.

“*Mutual association*” means an association which is organized on a mutual ownership basis and does not have authority to issue capital stock.

“*Superintendent*” means the superintendent of savings and loan associations.

“*Supervisory case*” means a case in which the applicant’s operations and state of affairs are such that action is warranted by the superintendent pursuant to Iowa Code section 534.405.

197—6.3(534) Application to superintendent. An applicant shall file with the superintendent three copies of an “Application for Approval of Conversion,” with supporting exhibits, in the form required by the FSLIC, including forms AC, PS and OC. The applicant shall also furnish to the superintendent additional information as the superintendent may request which is not included in the applicant’s filing with the FSLIC.

197—6.4(534) Content of restated articles of incorporation and bylaws.

6.4(1) As part of the application, the applicant shall submit to the superintendent restated articles of incorporation and bylaws to operate as a capital stock association.

6.4(2) The restated articles of incorporation shall set forth:

- a. The name of the association;
- b. That the association is a capital stock association and became such by conversion from mutual to stock form in accordance with the Code of Iowa;
- c. That the association will operate under Iowa Code chapter 534;
- d. That the association will have perpetual duration;
- e. The designation by title of the officer or officers, authorized to sign instruments pertaining to real estate;
- f. Whether the association’s corporate seal must be affixed to instruments pertaining to real estate;
- g. The amount of authorized capital stock, the classes of stock and number of shares authorized for each class, with the par value and conditions of each class of the shares, and the time when and conditions under which it is to be paid in;
- h. Reference to the liquidation account established for the benefit of eligible savings account holders upon conversion;
- i. Whether holders of capital stock shall be entitled to preemptive rights with respect to any shares of the association which may be issued;
- j. The minimum number of directors;
- k. The manner in which the articles may be amended;
- l. The person to whom the certificate of incorporation should be mailed by the secretary of state after filing;
- m. The address of its registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its registered agent or agents at the address;
- n. Any information applicable, as specified in Iowa Code section 496A.49, subsections 4, 5, 6 and 7;

o. Other provisions that are not inconsistent with these rules and the Iowa Code, and are approved by the superintendent.

197—6.5(534) Content of applicant's plan of conversion. The applicant's plan of conversion shall comply with the requirements of the FSLIC, pursuant to 12 CFR Part 563b, as amended through March 23, 1984. The plan of conversion shall include the determination of the eligibility record with respect to subscription rights to purchase the applicant's conversion stock, and shall state the effect of the conversion on each type of member of the converting association. The plan of conversion may also provide for employment contracts for the applicant's officers and employees upon conversion and for a stock option plan which shall be subject to approval by the superintendent. The superintendent may require provisions in an applicant's plan of conversion in addition to the requirements of the FSLIC if the superintendent determines that such additional provisions are necessary for an equitable conversion. An applicant shall attach to its plan of conversion, and incorporate by reference, the applicant's proposed restated articles of incorporation and proposed restated bylaws.

197—6.6(534) Approval of plan of conversion by superintendent. The plan of conversion must be submitted to the superintendent for approval. The superintendent will reject a plan of conversion if the superintendent finds that plan is inconsistent with applicable statutes or regulations, or does not contain all required information, or is inequitable to a class of members of the applicant. The superintendent will notify the applicant of the superintendent's decision, and the reasons for rejection if the plan is rejected. If the plan of conversion is approved, the superintendent will also give preliminary approval to the applicant's proposed restated articles of incorporation and bylaws. In addition to approval of the plan by the superintendent, the plan must also be approved by the FSLIC, a majority of the board of directors of the converting association and a majority vote of the members of the association present in person or by proxy at an annual meeting or a special meeting of the members.

197—6.7(534) Vote by applicant's members on plan of conversion.

6.7(1) No plan of conversion shall be implemented unless it is approved at a meeting of the voting members of an applicant called to consider such action, by a majority vote of the total number of votes present, in person or by proxy. The board of directors shall cause written notice of the meeting at which the members will be asked to vote on the proposal, to be mailed by first-class mail, postage prepaid to each member of the association not less than 30 days prior to the date of the meeting. The board shall also cause a copy of this notice to be posted in a conspicuous location in each of the association's offices from the date of mailing until the date of the meeting. The mailed notice may be included in an envelope containing a periodic statement of account to the member.

6.7(2) The notice required in subrule 6.7(1) shall contain the date, time and purpose of the meeting. In addition, the following statement shall also be included in the notice:

In the event that any member or members desire to communicate with other members of the association, with reference to this special meeting, they shall:

1. Request of the association a statement of the approximate number of members of the association;
2. Request of the association an estimate of the cost of forwarding the communication to the members;
3. Submit the communication to the superintendent for review;
4. If approved by the superintendent, make payment to the association of the expenses for the preparation and mailing of the communication.

6.7(3) The superintendent shall approve the communication if the superintendent finds it to be appropriate, truthful and in the best interests of the association and all its members. The superintendent may also request that the association substantiate the cost of forwarding the communication, if it appears excessive.

6.7(4) The superintendent may require that the date for the meeting of the members be postponed to a date certain, not more than 30 days after the date originally prescribed, if the superintendent determines

that additional time is necessary to enable members who have requested communication with other members, to properly exercise that right.

6.7(5) The applicant shall file with the superintendent promptly after the meeting of the applicant's voting members called to consider the plan of conversion, a certified copy of each resolution adopted at the meeting relating to the plan of conversion together with the following information:

- a. The total number of votes eligible to be cast;
- b. The total number of votes represented in person or by proxy at the meeting;
- c. The total number of votes cast in favor of and against each matter; and
- d. The percentage of votes present in person or by proxy cast in favor of and against each matter.

6.7(6) The applicant shall also file with the superintendent an opinion of counsel that the meeting was held in compliance with all applicable state and federal laws.

6.7(7) The certified copy of each resolution adopted at the meeting (being part of the minutes of the meeting), when filed, shall be presumptive evidence of the holding of the meeting and of the action taken.

197—6.8(534) Filing of offering circulars. The offering circulars for the applicant's subscription offering and any additional offering to the general public shall be prepared in compliance with regulations of the FSLIC and any additional requirements imposed by the superintendent. Three copies of each offering circular in preliminary form shall be filed with the superintendent, and no offering circular shall be distributed to the applicant's members or to the general public in final form unless it has first been declared effective by the superintendent.

197—6.9(534) Effective date of conversion. Subsequent to a meeting of the members, upon a finding by the superintendent that the procedures outlined in Iowa Code chapter 534 and these rules have been complied with, and prior to the execution of orders for the applicant's conversion stock, the superintendent shall issue to the applicant a certificate of conversion, which will include the name of the applicant before and after conversion and the effective date of conversion. The original of the certificate shall be filed by the superintendent with the secretary of state and the applicant's restated articles of incorporation and restated bylaws shall become effective. Concurrently, the applicant shall execute all orders received for its conversion stock.

197—6.10(534) Change of control.

6.10(1) Application. Any person or group of persons desiring to purchase or otherwise acquire outstanding shares of a (capital stock) association, which would result in control or a change of control of that association, shall include with their letter application to the superintendent the following items:

- a. Copy of the agreement between the purchaser and seller for the sale of stock which results in the buyer acquiring a majority interest in the association.
- b. Terms of any financing to facilitate the purchase of the stock including the amount to be borrowed, rate of interest, term of the loan, collateral pledged to secure the indebtedness and any other pertinent information relating to the loan.
- c. Personal financial statement of the purchaser(s), plus a resumé of each individual purchaser which describes experience and affiliations covering at least the previous ten years.
- d. Pro forma statement of the purchaser's income and expenses during the term of the loan financing the purchase of the stock, and a statement from the purchaser indicating which assets will be converted to cash or pledged as security to provide the initial equity.
- e. Projections of the statement of condition of the association to be purchased during the term of the association stock loan.
- f. Projections of income and expenses of the association to be purchased during the term of the association stock loan.
- g. A copy of a business plan for the association, plus any plans which the purchaser may have which would represent major changes in the present staff or policies of the association being acquired.

h. An affidavit signed by the purchaser stating that the majority interest in the association is not being acquired for the benefit of another person or company.

6.10(2) Investigation. The superintendent may conduct an investigation of the applicant as deemed necessary and proper to determine whether or not a certificate of approval for the proposed change of control should be issued.

6.10(3) Approval. The superintendent shall determine whether or not approval of an application for change in control should be granted.

6.10(4) Certificate of approval. If approval is granted, a certificate of approval will be issued by the superintendent. Upon receipt of this certificate, the applicant may proceed to close the purchase transaction, subject to any terms and conditions that the superintendent may impose.

These rules are intended to implement Iowa Code section 534.509.

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