

**17-1642. Payment for interest of member objecting to merger; demand for payment; appraisal and determination of value; taxation of costs; status of member's interest; section inapplicable to certain member's interest.** (a) Except as provided in subsection (j), the association or corporation surviving or resulting from any merger or consolidation, within 10 days after the effective date of the merger or consolidation, shall notify each member or stockholder of any association or corporation of this state so merging or consolidating who objected thereto in writing and whose shares either were not entitled to vote or were not voted in favor of the merger or consolidation, and who filed such written objection with the association or corporation before the taking of the vote on the merger or consolidation, that the merger or consolidation has become effective. If any such member or stockholder, within 20 days after the date of mailing of the notice, shall demand in writing, from the association or corporation surviving or resulting from the merger or consolidation, payment of the value of the member's or stockholder's interest, the surviving or resulting association or corporation shall pay to the member or stockholder, within 30 days after the expiration of the period of 20 days, the value of the member's or stockholder's interest on the effective date of the merger or consolidation, exclusive of any element of value arising from the expectation or accomplishment of the merger or consolidation.

(b) If during a period of 30 days following the period of 20 days provided for in subsection (a), the association and any such member or stockholder fail to agree upon the value of such member's or stockholder's interest, any such member or stockholder, or the association or corporation surviving or resulting from the merger or consolidation, may demand a determination of the value of the member's or stockholder's interest by an appraiser or appraisers to be appointed by the district court, by filing a petition with the court within four months after the expiration of the thirty-day period.

(c) Upon the filing of any such petition by a member or stockholder, service of a copy shall be made upon the surviving association or corporation, which shall file with the clerk of the district court, within 10 days after such service, a duly verified list containing the names and addresses of all members or stockholders who have demanded payment for such member's or stockholder's interest and with whom agreements as to the value of such member's or stockholder's interest have not been reached by the association or corporation. If the petition is filed by the surviving association or corporation, the petition shall be accompanied by such duly verified list. The surviving association or corporation shall give notice of the time and place fixed for the hearing of such petition pursuant to subsection (c) of K.S.A. 60-303, and amendments thereto, to the members or stockholders shown upon the list at the addresses therein stated and notice shall also be given by publishing a notice at least once, at least one week before the day of the hearing, in a newspaper of general circulation in the county in which the district court is located. The court may direct such additional publication of notice as the court deems advisable. The forms of the notices by mail and by publication shall be approved by the court.

(d) After the hearing on the petition the court shall determine the members or stockholders who have complied with the provisions of this section and become entitled to the valuation of and payment for such member's or stockholder's interest, and shall appoint an appraiser or appraisers to determine such value. The appraiser or appraisers may examine any of the books and records of the associations or corporations the stock of which such appraiser or appraisers is charged with the duty of valuing, and following an investigation, the appraiser or appraisers shall make a determination of the value of the member's or stockholder's interest. The appraiser or appraisers shall also afford a reasonable opportunity to the parties interested to submit to the appraiser or appraisers pertinent evidence on the value of the member's or stockholder's interest. The appraiser or appraisers, also, shall have the powers and authority conferred upon masters by K.S.A. 60-253, and amendments thereto.

(e) The appraiser or appraisers shall determine the value of the stock of the members or stockholders adjudged by the district court to be entitled to payment therefor and shall file a report respecting such value in the office of the clerk of the district court, and notice of the filing of such report shall be given by the petitioners to the parties in interest. Such report shall be subject to exceptions to be heard before the court both upon the law and facts. The court by decree shall determine the value of the stock of the members or stockholders entitled to payment and shall direct the payment of such value, together with interest, if any, to the members or stockholders entitled by the surviving or resulting corporation. Upon payment of the judgment by the surviving or resulting corporation, the clerk of the district court shall surrender to the surviving association or corporation the certificates of shares of stock held by the clerk pursuant to subsection (f). The decree may be enforced as other judgments of the district court may be enforced, whether such surviving or resulting association be an association of this state or of any other state.

(f) At the time of appointing the appraiser or appraisers, the court shall require the members or stockholders who hold certificated shares and who demanded payment for the shares to submit the certificates of stock to the clerk of the court, to be held by the clerk pending the appraisal proceedings. If any member or stockholder fails to comply with such direction, the court shall dismiss the proceedings as to such member or stockholder.

(g) The cost of any such appraisal, including reasonable fees and expenses of the appraiser or appraisers, but exclusive of fees of counsel or of experts retained by any party, shall be determined by the court and taxed upon the parties to such appraisal or any of them as appears to be equitable, except that the cost of giving the notice by publication and by certified mail shall be paid by the surviving association or corporation. Postjudgment interest, if any, shall be in accordance with K.S.A. 16-204, and amendments thereto, to be paid upon the value of the stock of the members or stockholders entitled thereto.

(h) Any member or stockholder who has demanded payment of the member's or stockholder's interest as herein provided shall not thereafter be entitled to vote such member's or stockholder's stock for any purpose or be entitled to the payment of dividends or other distribution on such stock, except dividends or other distributions payable to members or stockholders of record at a date which is prior to the effective date of the merger or consolidation, unless the appointment of an appraiser or appraisers shall not be applied for within the time herein provided, or the proceeding be dismissed as to such member or stockholder, or unless such member or stockholder with the written approval of the surviving association or corporation shall deliver to the association or corporation a written withdrawal of the member's or stockholder's objections to and an acceptance of the merger or consolidation, in any of which cases the right of such member or stockholder to payment for the member's or stockholder's interest shall cease.

(i) The shares of the surviving or resulting association or corporation into which the shares of such objecting members or stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting association or corporation.

(j) This section shall not be applicable to the members, stockholders or other holders of equity securities of the surviving association or corporation in any merger where the active members of the surviving association or corporation continue to be eligible to be members of the surviving association or corporation after the merger and the agreement of merger does not amend the articles of incorporation, and shall not apply to the members, stockholders or other holders of equity securities of the constituent association or corporation not surviving the merger in any merger where the active members of such constituent association or corporation are eligible to become members of the surviving association or corporation on the same terms and conditions as other similarly classified members of the surviving association or corporation.

**History:** L. 1991, ch. 74, § 6; L. 2000, ch. 175, § 1; July 1.