

§ 54B-33. Conversion of mutual to stock association.

(a) Any mutual association may convert from mutual to the stock form of ownership as provided in this section.

(b) A mutual association may apply to the Commissioner of Banks for permission to convert to a stock association and for certification of appropriate amendments to the association's certificate of incorporation. Upon receipt of an application to convert from mutual to stock form the Commissioner of Banks shall examine all facts connected with the requested conversion. The expenses and cost of such examination, monitoring and supervision shall be paid by the association applying for permission to convert.

(c) The association shall submit a plan of conversion as a part of the application to the Commissioner of Banks, and he may approve it with or without amendment, if it appears that:

- (1) After conversion the association will be in sound financial condition and will be soundly managed;
- (2) The conversion will not impair the capital of the association nor adversely affect the association's operations;
- (3) The conversion will be fair and equitable to the members of the association and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the conversion;
- (4) The savings and loan services provided to the public by the association will not be adversely affected by the conversion;
- (5) The substance of the plan has been approved by a vote of two thirds of the board of directors of the association;
- (6) All shares of stock issued in connection with the conversion are offered first to the members of the association; except that any one or more tax qualified stock benefit plan may first purchase in the aggregate not more than ten percent (10%) of the total offering of shares;
- (7) All stock shall be offered to members of the association and others in prescribed amounts and otherwise pursuant to a formula and procedure which is fair and equitable and will be fairly disclosed to all interested persons;
- (8) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the association and any provision limiting or denying said rights; and
- (9) The conversion shall not be complete until all stock offered in connection with the conversion has been subscribed.

If the Commissioner of Banks approves the plan, then the plan shall be submitted to the members as provided in subsection (d) of this section. If the Commissioner of Banks refuses to approve the plan, the Commissioner of Banks shall state the objections in writing and give the converting association an opportunity to amend the plan to obviate the objections or to appeal the Commissioner of Banks' decision to the Commission.

(d) After lawful notice to the members of the association and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes which members of the association are eligible and entitled to cast. Such a vote by the members may be in person or by proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the association shall be filed with the Commissioner of Banks. The Commissioner of Banks shall then either approve or disapprove the requested conversion. After approval of the conversion, the Commissioner of Banks shall supervise and monitor the conversion process and he shall ensure that the conversion is conducted pursuant to law and the association's approved plan of conversion.

(e) Upon conversion of a mutual association to the stock form of ownership, the legal existence of the association shall not terminate but the converted stock association shall be a continuation of the mutual association. The conversion shall be deemed a mere change in identity or form of organization. All rights, liabilities, obligations, interest and relations of whatever kind of the mutual association shall continue and remain in the stock-owned association. All actions and legal proceedings to which the association was a party prior to conversion shall be unaffected by the conversion and proceed as if the conversion had not taken place.

(f) The Commissioner of Banks may promulgate such rules and regulations as may be necessary to govern conversions; provided, however, that such rules and regulations as may be promulgated by the Commissioner of Banks shall be equal to or exceed the requirements for conversion imposed by the rules and regulations governing conversions of federal chartered mutual savings and loan associations.

(g) Repealed by Session Laws 1987, c. 237, s. 3(d). (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 7; 1983, c. 144, s. 6; 1987, c. 237, s. 3; 1989 (Reg. Sess., 1990), c. 806, s. 2; 1991 (Reg. Sess., 1992), c. 829, s. 3; 2001-193, s. 16.)