

## **IC 28-3-2**

### **Chapter 2. Merger—State Banks and National Associations**

#### **IC 28-3-2-1**

##### **Authority to convert, merge, or consolidate**

Sec. 1. (a) Subject to the applicable provisions of IC 28-2-13 or IC 28-2-17, any bank or trust company may convert into or merge or consolidate with a national banking association. Nothing contained in this chapter or in any other law of this state shall be construed to require the approval of any officer, department, or agency of this state as a condition to the right of any bank or trust company to convert into or merge or consolidate with a national banking association. Subject to the applicable provisions of IC 28-2-13 or IC 28-2-17, upon approval by the department of financial institutions any national banking association may convert into or merge or consolidate with a resulting bank or trust company (as defined in IC 28-1-1-3). Approval shall be granted if the department of financial institutions determines by examination of the converting, merging, or consolidating institutions, or otherwise, that the resulting bank or trust company meets the standards as to location, condition of assets, capital structure, and quality of management required of banks and trust companies by IC 28-11-5 or IC 28-2.

(b) A savings bank may merge, consolidate, or join together with a national banking association under section 10 of this chapter.

*(Formerly: Acts 1953, c.69, s.1.) As amended by P.L.263-1983, SEC.3; P.L.36-1987, SEC.18; P.L.171-1996, SEC.38.*

#### **IC 28-3-2-2**

##### **Plan of conversion, merger, or consolidation; required approvals**

Sec. 2. The plan of conversion, merger, or consolidation shall be approved by the board of directors of the bank or trust company and shall be approved by the board of directors of the national banking association. In cases where a national banking association proposes to convert into a resulting bank or trust company, it shall follow the procedure prescribed by the laws of the United States and shall be granted a charter under and pursuant to the provisions of IC 28-1 or IC 28-12 upon filing articles of incorporation on forms prescribed by the director of the department of financial institutions and approved by the holders of at least two-thirds (2/3) of each class of the capital stock of the national banking association and with the approval of the department of financial institutions, as provided in section 1 of this chapter. In cases where a national banking association proposes to merge or consolidate with a resulting bank or trust company, the plan of merger or consolidation shall be in accordance with and subject to, and shall have the effect provided in, IC 28-1 pertaining to the merger and consolidation of banks and trust companies except as otherwise expressly provided in this chapter, but the provisions of IC 28-1-7-21 shall not apply to the extent that the provisions thereof conflict with the laws of the United States pertaining to the rights of dissenting shareholders of any national banking association upon the

merger or consolidation of such association with a bank or trust company.

*(Formerly: Acts 1953, c.69, s.2.) As amended by P.L.263-1985, SEC.129; P.L.14-1992, SEC.110; P.L.171-1996, SEC.39.*

### **IC 28-3-2-3**

#### **Shareholders' meeting; completion of conversion, merger, or consolidation**

Sec. 3. The board of directors of the bank or trust company and the board of directors of the national banking association shall each give notice of the time, place, and object of the shareholders' meeting, to act upon the plan of conversion, merger, or consolidation, to each of their respective shareholders of record, which notice may be waived specifically by any shareholder. The meeting of the shareholders of a bank or trust company shall be called in accordance with the provisions of IC 28-13, and the meeting of the shareholders of a national banking association shall be called in accordance with the provisions of the laws of the United States. The plan of conversion, merger, or consolidation shall be adopted provided the shareholders of at least two-thirds (2/3) of each class of the capital stock of the bank or trust company and the shareholders of at least two-thirds (2/3) of each class of the capital stock of the national banking association vote affirmatively in favor of such plan. The conversion of a bank or trust company into a national banking association shall be considered as completed upon the issuance of a national bank charter or other evidence of conversion by the comptroller of the currency. The conversion of a national banking association into a state bank shall be considered completed upon the acceptance of articles of incorporation by the department of financial institutions and the issuance of a certificate of incorporation by the secretary of state of the state of Indiana. The merger and consolidation of a bank or trust company with a national banking association shall be considered completed upon filing with the department of financial institutions a certificate of merger or consolidation executed by the comptroller of the currency. The merger and consolidation of a national banking association with a bank or trust company shall be considered completed upon the approval, by the department of financial institutions, of articles of merger or consolidation and the execution of a certificate of merger or consolidation by the secretary of state of the state of Indiana.

*(Formerly: Acts 1953, c.69, s.3.) As amended by P.L.263-1985, SEC.130; P.L.171-1996, SEC.40.*

### **IC 28-3-2-4**

#### **Termination of corporate status of state bank merged or consolidated with national banking association**

Sec. 4. Whenever any bank or trust company shall have merged or consolidated with a national banking association, such bank or trust company shall thereupon cease to be a corporation under the laws of this state, except that for a term of three (3) years thereafter its

corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and of enabling it to close its concerns, and to dispose of and convey its property.  
*(Formerly: Acts 1953, c.69, s.4.)*

#### **IC 28-3-2-5**

##### **Effect of conversion, merger, or consolidation on obligations of state bank**

Sec. 5. The merger or consolidation of a bank or trust company with, or the conversion of a bank or trust company into a national banking association shall not release such bank or trust company from its obligation to pay and discharge all of the liabilities created by law or incurred by such bank or trust company before it was merged or consolidated with, or was converted into a national banking association, or to pay any and all taxes imposed under and by virtue of the laws of this state up to the date on which it was merged or consolidated with or was converted into such national banking association, in proportion to the time which has elapsed since the last preceding payment and assessment therefor, or to pay any and all assessments, penalties and forfeitures imposed or incurred under the laws of this state up to the date on which it is merged or consolidated with, or is converted into a national banking association.  
*(Formerly: Acts 1953, c.69, s.5.)*

#### **IC 28-3-2-6**

##### **Effect of conversion, merger, or consolidation on property, rights, privileges, powers, duties, and functions of state bank**

Sec. 6. At the time when the merger or consolidation of a bank or trust company with or the conversion of a bank or trust company into a national banking association, or under such charter as may be issued thereafter, becomes effective, all of the property of such bank or trust company, including all of its rights, title and interest in and to any and all property of whatsoever kind, whether real, personal or mixed, and to things in action, and to every right, privilege, interest and asset of any value or benefit whatsoever, then existing, belonging or pertaining to it, or which would inure to it, shall, immediately, by act of law, and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of such national banking association, which shall have, hold and enjoy the same, in its own right, as fully and to the same extent as the same was possessed, held and enjoyed by such bank or trust company; and such national banking association shall be deemed to be a continuation of the entity and of the identity of such bank or trust company, and all of the rights, obligations and relations of such bank or trust company to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust, and in, or in respect to, any executorship or trusteeship, or in any other trust or fiduciary capacity, or appointment thereto, shall remain unimpaired, and such national banking association, at the time of the taking effect of such merger, consolidation or conversion, shall succeed to all of such rights,

obligations, relations, appointments, and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trust or relation in the same manner as though such national banking association had itself been appointed to and/or assumed such trust or relation, including the obligations and liabilities connected therewith.

*(Formerly: Acts 1953, c.69, s.6.)*

#### **IC 28-3-2-7**

##### **Effect of conversion, merger, or consolidation on fiduciary relations of state bank**

Sec. 7. If any bank or trust company is acting as the administrator, coadministrator, executor, coexecutor, trustee or cotrustee of or in respect to any estate or trust or guardian of any person or estate which is being administered under the laws of this state, or has been named or designated as such in any will or other writing theretofore executed, such relation, as well as any and all other similar fiduciary relations, and all rights, privileges, duties and obligations connected therewith shall remain unimpaired, and shall continue into and in such national banking association from and as of the time of the taking effect of such merger, consolidation or conversion, irrespective of the date when any such relation shall have been created or established, and irrespective of the date of any agreement relating thereto or of the date of the death of any testator or decedent whose estate is being so administered.

*(Formerly: Acts 1953, c.69, s.7.)*

#### **IC 28-3-2-8**

##### **Effect of conversion, merger, or consolidation on letters of administration, letters testamentary, or trusteeship**

Sec. 8. Nothing done in connection with the merger or consolidation of any bank or trust company with, or the conversion of any bank or trust company into a national banking association shall be deemed to be or to effect a renunciation or revocation of any letters of administration or letters testamentary, pertaining to such relation, or a removal or resignation from any such executorship or trusteeship or any other fiduciary relationship, nor to be of the same effect as if the executor or trustee or other fiduciary had died or had otherwise become incompetent to act.

*(Formerly: Acts 1953, c.69, s.8.)*

#### **IC 28-3-2-9**

##### **Definitions**

Sec. 9. As used in this chapter:

(1) the term "bank or trust company" means any bank or trust company organized under the provisions of any statute of this state; and

(2) the term "national banking association" means any national bank organized under the laws of the United States.

*(Formerly: Acts 1953, c.69, s.9.) As amended by P.L.263-1985,*

*SEC.131; P.L.171-1996, SEC.41.*

**IC 28-3-2-10**

**Savings banks; request for order to merge, consolidate, or join with acquiring national banking association; requirements**

Sec. 10. (a) A savings bank may request that the department order the savings bank to merge, consolidate, or otherwise join with an acquiring institution that is a national banking association.

(b) A savings bank may make a request under subsection (a) only if its board of trustees has, at a regular or special meeting called for that purpose, by a vote of at least two-thirds (2/3) of the then qualified and acting trustees, adopted a resolution stating that in the opinion of the board, the merger, consolidation, or other joining together is in the best interests of the depositors and other creditors of the savings bank.

(c) The department may order a merger, consolidation, or other joining requested under subsection (a) if it determines that:

- (1) the depositors of the savings bank would not receive any liquidating dividend upon the dissolution of the savings bank; and
- (2) the acquiring institution is willing to be the surviving corporation.

(d) The approval of the depositors of a savings bank is not required for a merger, consolidation, or joining together under this section.

(e) A savings bank and an acquiring institution may not merge, consolidate, or join together under this section if they are located in different counties.

(f) When two (2) or more institutions merge, consolidate, or join together under this section, the resulting institution may maintain as a branch office any principal or branch office of the institution or institutions with which it merged, consolidated, or joined together.

(g) To facilitate a merger, consolidation, or joining together under this section, the department may convert the charter, form of ownership, or operating powers of a savings bank into the charter, form of ownership, or operating powers of the acquiring institution.

*As added by P.L.263-1983, SEC.4.*