

**272.321 Member objecting to merger or consolidation to be paid for stock -- Value, how fixed -- Disposal of shares.**

- (1) A member of a constituent association to be affected by a merger or consolidation may give to the association prior to or at the meeting of its members to which the proposal of merger or consolidation is submitted to a vote, written notice that he objects to such proposal. Within twenty (20) days after the date on which the vote was taken, such member may, unless he votes in favor of the proposal, make written demand on the association for payment of the fair market value of his stock or other property rights or interest in the association. Such demands shall state the number and class of shares of stock owned by him or the nature and amount of other property rights or interest owned by him in the association. In addition to any other right he may have in law or equity, a member giving such notice shall be entitled, if and when the merger or consolidation is effected, to be paid by the surviving association, or new association, the fair market value of such stock, or other property rights or interests, as of the day prior to the date on which the vote was taken, subject only to the surrender by him of the certificate, or certificates of such stock or other evidence of ownership or other property rights or interests.
- (2) If within thirty (30) days after the date upon which the objecting member tendered his written demand for payment of his stock or other property rights or interest, the fair market value of such stock or other property rights or interests is agreed upon between the member and the surviving association, the payment therefor shall be made within sixty (60) days after the date of such agreement, upon surrender of the certificate or other evidence of such property rights or interests, whereupon the member shall cease to have any interest in such stock or other property rights or interest in the association.
- (3) If, during the thirty (30) day period mentioned in the preceding subsection, the member and the surviving association or new association do not agree as to the fair market value of such stock or other property rights or interests, the member may, within sixty (60) days thereafter, file a petition in the Circuit Court of the county in which the surviving association or new association has its registered office or principal place of business asking for the appointment of three (3) disinterested appraisers to appraise the fair market value of his stock or other property rights or interests. A summons, together with a copy of the petition, shall be served on the surviving association or new association at least twenty (20) days prior to a hearing on the petition by the court. The award of the appraisers, or a majority of them, if no exceptions be filed thereto within ten (10) days after the award has been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive, and the member, upon depositing with the court the proper stock certificates or other evidence of such property rights or interests, shall be entitled to judgment against the association for the appraised value thereof as of the day prior to the date on which the vote was taken. If either party files exceptions to the award of the appraisers within ten (10) days after the award has been filed in court, the case shall be transferred to the civil issue docket of the Circuit Court for trial and shall be there tried in the same manner, as near as may be practicable, as is provided for the trial of cases under the eminent domain law of this state, and with the same right of appeal to the Court of Appeals. The court shall assess

the cost of the proceedings as it deems equitable. Upon payment of the judgment, the surviving association or new association is entitled to have the member's stock certificates or other evidence of such property rights or interests surrendered to it by the clerk of the court. Unless the member files such a petition within the time prescribed, he, his assigns and heirs claiming under him shall have no right to payment hereunder, but in that event nothing herein shall impair his status as a member.

- (4) If the notices sent to members in connection with any meeting to vote upon a proposed merger or consolidation make no reference to the provisions of subsection (1) of this section, a member entitled to but through lack of actual knowledge did not avail himself of the provisions of this section, unless he voted for the proposal, is entitled, if he so demands in writing within one (1) year after the date on which the vote was taken on the proposed merger or consolidation, to recover from the surviving association or new association any actual damage which he suffered from failure of the association of which he was a member to make such reference.
- (5) The liability to pay for stock or other property rights or interests or to pay damages imposed by subsection (4) of this section on an association extends to the surviving association or new association.
- (6) Shares of stock acquired by an association, a surviving association, or a new association pursuant to the payment of an agreed fair market value thereof or to payment of a judgment entered therefor may be held and disposed of by such association as in the case of other treasury shares.
- (7) This section does not apply to a merger if on the date of the filing of the articles of merger the surviving association is the owner of all outstanding shares of the other association or associations, domestic or foreign, participating in the merger and if the merger makes no changes in the relative rights of the members of the surviving association.
- (8) No member of a constituent association to be affected by a merger or consolidation, who objects thereto and makes written demand for payment of the fair market value of his stock or other property rights or interests in the association, as provided in this section, is entitled to payment at any time prior to the time that he would otherwise be entitled to payment pursuant to valid provisions of such stock, or valid provisions of the articles of incorporation or bylaws of the association, in effect on the date of the vote for such merger or consolidation.

**Effective:** July 13, 1984

**History:** Amended 1984 Ky. Acts ch. 111, sec. 121, effective July 13, 1984. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 259, effective January 2, 1978. -- Created 1966 Ky. Acts ch. 208, sec. 28.