

# WEST VIRGINIA CODE: §31c-10-2

## §31C-10-2. Merger of credit unions.

(a) A credit union organized under this chapter may, with the approval of the commissioner and regardless of common bond, merge with one or more other credit unions organized under this chapter, the laws of another state or territory of the United States or the laws of the United States.

(b) When two or more credit unions merge, they shall either designate one of them as the continuing credit union, or they shall structure a totally new credit union and designate it as the new credit union. If the latter procedure is followed, the new credit union shall be organized under article two of this chapter. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(c) Any merger of credit unions shall be done according to a plan of merger. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the commissioner for review and hearing to grant preliminary approval. If the plan includes the creation of a new credit union, all documents required by section one, article two of this chapter shall be submitted as part of the plan. In addition to any other documents or information required by the commissioner, each participating credit union shall submit the following:

- (1) The time and place of the meeting of the board of directors at which the plan was agreed upon;
- (2) The vote of the directors in favor of the adoption of the plan; and
- (3) A copy of the resolution or other action by which the plan was agreed upon.

(d) The commissioner shall after review and hearing, grant preliminary approval by written order, if: (i) The plan has been approved properly by each board of directors; (ii) the documentation required to form a new credit union, if any, complies with section one, article two of this chapter; (iii) the action would not result or tend to create a monopoly, or substantially lessen competition, or otherwise further a restraint of trade, unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the members to be served; and (iv) taking into consideration the financial and managerial resources and further prospects of the credit unions concerned, the action would not be contrary to the best interests of the community whose shares are affected by such action, nor detrimental to the safety and soundness of the credit union to be acquired.

(e) After the commissioner grants preliminary approval, each merging credit union shall, unless waived by the commissioner, conduct a membership vote on its participation in the

plan. The vote shall be conducted either at a special membership meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the commissioner indicating the vote by which the members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

(f) The commissioner may waive the membership vote described in subsection (e) of this section for any credit union upon determining that the credit union is insolvent or about to be insolvent.

(g) The commissioner shall grant final approval of the plan of merger after determining that the requirements of subsection (e) of this section in the case of each merging credit union have been met. If the plan of merger includes the creation of a new credit union, the commissioner must approve the organization of the new credit union under section two, article two of this chapter as part of the approval of the plan of consolidation. The commissioner shall notify all participating credit unions of the approval of the plan.

(h) Upon final approval of the plan by the commissioner and the filing of the proper documents with the office of the Secretary of State, all property, property rights, and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed, endorsement, or other instrument of transfer, and all debts, obligations and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact; however, if a person is a member of more than one of the participating credit unions, that person shall be entitled to only a single set of membership rights in the continuing or new credit union.

(i) If the surviving or new credit union created by the transaction is chartered by another state or territory of the United States, it shall, in addition to the criteria set forth in subsection (c) of this section, be subject to the requirements of section six, article two of this chapter. No merger resulting in an out-of-state credit union acquiring a West Virginia credit union shall be permitted unless that other state or territory permits a West Virginia credit union to merge or acquire credit unions in their state or territory on terms that are, on the whole, substantially no more restrictive than those established under the terms of this section: Provided, That no such merger shall be approved where the West Virginia credit union to be acquired has been in operation for less than two years.

(j) Notwithstanding any other provision of law, the commissioner may, without prior hearing, authorize a merger or consolidation of a credit union which is insolvent or is about to be insolvent with any other credit union or may authorize a credit union to purchase any of the assets of, or assume any of the liabilities of, any other credit union which is insolvent or about to be insolvent if the commissioner is satisfied that:

(1) An emergency requiring expeditious action exists with respect to such other credit union;

(2) Other alternatives are not reasonably available; and

(3) The public interest would best be served by approval of such merger, consolidation, purchase or assumption.

(k) Notwithstanding any other provision of law, the commissioner may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of, or assume any of the liabilities of, a credit union which is insolvent or about to be insolvent, except that prior to exercising this authority the commissioner should consider attempting to effect a merger or consolidation with, or purchase and assumption by, another credit union as provided in subsection (j) of this section; and

(l) For purposes of the authority contained in subsection (k) of this section, insured share and deposit accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the commissioner and the insuring organization shall be absolved of any liability to the credit union's members with respect to those accounts.