

700 Corporation Law for State Banks and Trust Companies

**711 Application for Approval of the Conversion or Simultaneous Conversion and
Acquisition of a Building and Loan Association to a Bank**

5 Del.C. §794

Formerly Regulation No.: 5.794.0015

Effective Date: December 31, 1993

1.0 Scope

- 1.1 This regulation applies to every building and loan association regulated pursuant to Chapter 17, Title 5, **Delaware Code**. The purpose of this regulation is to provide the procedures and application for the conversion or the simultaneous conversion and acquisition (the "Simultaneous Transaction") of a building and loan association to a bank (the "Bank") which shall be deemed as having been formed under and which shall be governed by the provisions of Chapter 7 of Title 5 as provided for in Section 794 of Title 5, **Delaware Code**. If an application is made for conversion of a building and loan association pursuant to Section 794 of Title 5, **Delaware Code**, in connection with an application for acquisition pursuant to Subchapter IV of Chapter 8 of Title 5, **Delaware Code**, the application may cross-reference documents so that duplication is not necessary.

2.0 Notice of Intent

- 2.1 Notice of the intention of the directors of the building and loan association (the "Applicant") to convert a building and loan association to a bank or to engage in a Simultaneous Transaction ("Notice of Intent") shall be filed with the Commissioner.
- 2.2 A \$1,000 non-refundable investigation fee shall be submitted with the Notice of Intent, payable to the "Office of the State Bank Commissioner."
- 2.3 The Notice of Intent shall specify: (1) the names of all directors of the Bank at conversion or at the completion of the Simultaneous Transaction; (2) the name of the Bank; (3) the city or town of the building and loan association and the location of the Bank; (4) the capital stock and paid-in-surplus of the Bank at conversion or at the completion of the Simultaneous Transaction; (5) the identity of the Delaware bank holding company or out-of-state bank holding company in a Simultaneous Transaction.
- 2.4 The Notice of Intent of the directors shall have attached as exhibits: (1) a copy of an application in such form as the Commissioner may from time to time prescribe, submitted and sworn to by the directors of the Applicant (**Form A**); (2) a copy of the proposed Articles of Association; (3) a proposed form of public notice as provided for under Section 4.0 of this Regulation (the "Public Notice"); (4) a copy of a corporate resolution, sworn to and certified by the Corporate Secretary, authorizing the directors to execute and file the Notice of Intent and Application on behalf of the Applicant; and (5) a copy of the Application for Determination of Public Convenience and Advantage (**Form B**), executed by the proposed directors of the Bank.

3.0 Application for Determination of Public Convenience and Advantage (Form B)

- 3.1 The Applicant shall file with the Notice of Intent an Application for Determination of Public Convenience and Advantage set forth in subsection **Form B** of this Regulation.
- 3.2 The Commissioner will not deem any application as filed until the Commissioner has determined that all of the information requested in the application has been provided; that the application has been properly executed; that all required exhibits are attached; and that the \$1,000 investigation fee has been paid.
- 3.3 Supplemental information may be requested by the Commissioner.

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4.0 Public Notice

- 4.1 At least once during each of the first two weeks following the filing of an application pursuant to Section 794 and this regulation, the Commissioner will cause to be published in a newspaper having state-wide circulation, at the expense of the Applicant, a notice of the filing of such application, which notice shall invite public inspection and comment thereon prior to the expiration of a 45-day period.
- 4.2 If the Notice of Intent and the attached exhibits filed with the Commissioner are in the form required by this Regulation and are approved by the Commissioner, the Commissioner will schedule a formal, evidentiary hearing not to be held prior to the end of the 45 day comment period. Notice of the hearing will be given at least 20 days before the day the hearing is to be held.

5.0 Public Hearing

- 5.1 The public hearing provided for in this Regulation may be conducted by the Commissioner or by a Deputy Commissioner or Deputy Attorney General designated for that purpose. At such hearing, the Commissioner or his designate shall accept all relevant, non-cumulative evidence offered by or on behalf of the Applicant or by any interested person. Interested parties may appear at the public hearing, in person or by counsel or by other representative.
- 5.2 A record from which a verbatim transcript can be prepared shall be made. The Applicant shall be responsible for arranging for a certified court reporter to be present at the public hearing and shall bear the expense of an original written transcript for the Commissioner's use (which shall be supplied to the Commissioner as promptly as practical following the public hearing). Additional transcripts provided to any interested person shall be at the expense of the person requesting the transcript.

6.0 Commissioner's Determination

- 6.1 If the Commissioner has cause to believe that because of the conversion or Simultaneous Transaction, accessible banking services will be significantly diminished or that the Applicant would not satisfy one or more of the criteria for the issuance of a Certificate of Public Convenience and Advantage in accordance with Section 726 of Title 5, **Delaware Code**, the Commissioner will, not later than 45 days after the close of the comment period, advise the Applicant of such objection, together with the grounds therefore. At the request of the Applicant, the Commissioner will proceed to give notice and conduct a hearing in accordance with the Administrative Procedures Act, Chapter 101, Title 29, **Delaware Code**.
- 6.2 If the Commissioner or Deputy Commissioner presides at a public hearing conducted pursuant to this Regulation and if the decision on the Application is not adverse to the Applicant, the Commissioner may waive the entry of a proposed order and may instead proceed directly to the entry of a final order.

7.0 Decision and Final Order

- 7.1 Every decision on an Application shall be incorporated in a final order which shall include: (1) a brief summary of the evidence; (2) findings of fact based upon the evidence; (3) conclusions of law; (4) any other conclusions or findings required by law; and (5) a concise statement of the determination or action on the case.
- 7.2 Every final order shall be authenticated by the signature of the Commissioner and shall be mailed or delivered to: (1) the Incorporators (or their agent); (2) each person that presented data, views or arguments at the hearing; and (3) any other person requesting a copy of the final order.

8.0 Amendment of Name on Certificate of Incorporation and Commencement of Business

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- 8.1 At any time after the Commissioner's decision approving the application for conversion or approving the Simultaneous Transaction, the Applicant shall submit for the Commissioner's endorsement the proposed Articles of Association attached as an exhibit to the Notice of Intent. The Articles of Association shall be filed with the Secretary of State within 30 days after the Commissioner's endorsement.
- 8.2 The existing Certificate of Incorporation issued to the Applicant by the Secretary of State shall be amended to reflect the name of the Bank.
- 8.3 Upon issuance of the amended Certificate of Incorporation by the Secretary of State and compliance with all provisions of law, a certified copy of the amended Certificate of Incorporation shall be recorded in the Office of the Recorder or Deeds for the county in which the Applicant was located and in which the place of business of the Bank is to be located, if not the same.
- 8.4 A certified copy of the Bank's amended Certificate of Incorporation shall be filed with the Commissioner together with a \$5,000 fee for each certificate to transact business requested. No transaction of business as a Chapter 7 institution can begin until authorized by the Commissioner by the issuance of a Certificate to Transact Business.
- 8.5 An application for a Certificate to Transact Business shall include a certification as to the issuance of the whole capital stock of the Bank; a list of stockholders (including the number of shares held by each and the residence and post office address of each stockholder), which list shall be certified by the president and the cashier or treasurer of the Bank; evidence of the deposit of the proceeds of any sale of capital stock in an account for the benefit of the Bank; and evidence satisfactory to the Commissioner demonstrating that FDIC deposit insurance for the Bank has been approved by the FDIC; and in a Simultaneous Transaction evidence that the out-of-state bank holding company has established a separate escrow account for an amount representing the capital stock and paid-in surplus to be contributed to the Bank upon the issuance of the Certificate to Transact Business.
- 8.6 The Commissioner shall review the application and the status of the Applicant's FDIC insurance. If the above referenced \$5,000 fee has been paid and it appears that all requirements of this Regulation and applicable law have been complied with and the Applicant's building and loan license has been surrendered, the Commissioner shall issue a certificate authorizing the Bank to begin the transaction of business.

Form A Application For Approval Of The Conversion Or The Simultaneous Conversion And Acquisition Of A Building And Loan Association To A Bank

Application for Certificate of Public Convenience and Advantage for the Conversion or Simultaneous Conversion and Acquisition of a Building and Loan Association