

§ 54-166. Rights of objecting members.

(a) Any member of an association effecting a merger or consolidation may give to the association prior to or at the meeting of the members to which the proposal of merger or consolidation is submitted to a vote, written notice that he objects to such proposal. Within 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 demand 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 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 or other evidence of ownership of such stock or other property rights or interests.

(b) If within 30 days after the date upon which the objecting member becomes entitled to payment for such 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 or new association, as the case may be, payment therefor shall be made within 60 days after the 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 interests in the association.

(c) If within the 30-day period mentioned in subsection (b) of this section the member and the association do not agree as to the fair market value of the stock or other property rights or interests, the member may, within 60 days after the expiration of the 30-day period, file a petition in the superior court of the county in which the association has its registered office or principal place of business asking for the appointment by the clerk of the superior court of that county of three qualified and disinterested appraisers to appraise the fair market value of the stock or other property rights or interests. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the association at least 10 days prior to the hearing of the petition by the court. The award of the appraisers, or a majority of them, if no exceptions are filed thereto within 10 days after the award is filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive. The member, upon depositing with the court the proper stock certificates or other evidence of 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, together with interest thereon to the date of the confirmation. If either party files exceptions to the award within 10 days after the award is filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during term and shall be there tried in the same manner, as near as may be practicable, as is provided in Chapter 40A of the General Statutes for the trial of cases under the eminent domain law of this State, and with the same right of appeal to the appellate division as is permitted in that Chapter. The court shall assess the cost of the proceedings as it shall deem equitable. Upon payment of the judgment, the owner of the stock or other property rights or interests shall cease to have any interest in the association and the association shall be entitled to have the stock certificates or other evidence of the property rights or interests surrendered to the association by the clerk of court. Unless the member files a petition within the time herein prescribed, the member and all persons claiming under the member shall have no right of payment hereunder, but in that event nothing herein shall impair the member's status as a member.

(d) If in the notices sent to members in connection with the meeting to vote upon a proposed merger or consolidation no reference is made as required by this Article to the

provisions of this section, any member entitled to but who 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 year after the effective date of the merger or consolidation, to recover from the surviving or new association, as the case may be, any damage which he suffered from failure of the association of which he was a member to make the aforesaid reference.

(e) The liability to pay for shares or to pay damages imposed by this section on an association extends to the successor association which acquires the assets of the predecessor, whether by merger or consolidation.

(f) Shares of stock acquired by an association pursuant to payment of the agreed fair market value thereof or to payment of the judgment entered therefor as in this section provided, may be held and disposed of by the association as in the case of other treasury shares.

(g) The provisions of this section shall 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 the outstanding shares of the other association, domestic or foreign, participating in the merger and if such merger makes no changes in the relative rights of the members of the surviving association.

(h) Notwithstanding any of the foregoing provisions of this section, no member of an association effecting 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 hereinbefore provided in this section, shall be entitled to such 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 charter or the bylaws of the association, in effect on the date of the vote for such merger or consolidation. However, in any case where the owner of such stock or other property rights or interests in the association is not entitled, because of valid provisions of his stock, or because of valid provisions of the charter or bylaws of the association, to payment at the time hereinbefore provided in this section, the fair market value of such stock or other property rights or interests in the association, as of the day prior to the date on which the vote was taken, may be determined in any manner hereinbefore provided in this section, and the amount so determined, without interest, shall be an obligation of the surviving or new association, as the case may be, and shall be due and payable at the time that the owner thereof would be entitled to payment pursuant to valid provisions of such stock, or valid provisions of the charter or the bylaws of the association. (1963, c. 1168, s. 13; 1973, c. 108, s. 19; 2001-487, s. 38(c).)