

**CHAPTER 32**  
**CONVERSIONS OF ASSOCIATIONS**

**Authority**

N.J.S.A. 17:12B-1 et seq.

**Source and Effective Date**

R.1993 d.535, effective November 1, 1993.  
See: 25 N.J.R. 2799(a), 25 N.J.R. 4900(c).

**Executive Order No. 66(1978) Expiration Date**

Chapter 32, Conversions of Associations, expires on November 1, 1998.

**Chapter Historical Note**

Chapter 32, originally Stock Associations, became effective with Subchapter 1, Conversion of a Mutual Association to a Capital Stock Association, adopted as R.1975 d.352, effective January 1, 1976. See: 7 N.J.R. 92(c), 8 N.J.R. 9(c). Subchapter 2, Conversion of an Association to a Savings Bank, was adopted as R.1991 d.294, effective June 17, 1991. See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b). Pursuant to Executive Order No. 66(1978), Chapter 32 expired on October 3, 1993, and subsequently was adopted as new rules by R.1993 d.535. See: Source and Effective Date. See, also, section annotations.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. CONVERSION OF A MUTUAL ASSOCIATION TO A CAPITAL STOCK ASSOCIATION**

- 3:32-1.1 Authorization for conversion
- 3:32-1.2 Application
- 3:32-1.3 Conversion; general
- 3:32-1.4 Meeting of members
- 3:32-1.5 Voting in person or by proxy
- 3:32-1.6 Stock purchase rights
- 3:32-1.7 Purchase price of stock
- 3:32-1.8 Capital stock; no par value
- 3:32-1.9 Liquidation account
- 3:32-1.10 3121 Associations
- 3:32-1.11 Fees; conversion from mutual to capital stock association

**SUBCHAPTER 2. CONVERSION OF AN ASSOCIATION TO A SAVINGS BANK**

- 3:32-2.1 Definitions
- 3:32-2.2 Authorization for conversion
- 3:32-2.3 Application for conversion

**SUBCHAPTER 3. MUTUAL STATE ASSOCIATION HOLDING COMPANIES**

- 3:32-3.1 Definitions
- 3:32-3.2 Formation of mutual state association holding company
- 3:32-3.3 Application
- 3:32-3.4 Approval of application
- 3:32-3.5 Board of directors
- 3:32-3.6 Officers
- 3:32-3.7 Division of surplus

**SUBCHAPTER 1. CONVERSION OF A MUTUAL ASSOCIATION TO A CAPITAL STOCK ASSOCIATION**

**3:32-1.1 Authorization for conversion**

(a) An insured mutual association may convert to a capital stock association subject to the limitations and provisions of article XXI of the Savings and Loan Act (1963) as amended, N.J.S.A. 17:12B-1 et seq., and this chapter. The association shall also be subject to the same requirements promulgated by the Federal Savings and Loan Insurance Corporation in 12 CFR 563b of the regulations for insurance of accounts.

(b) A 3121 Association, as defined in N.J.A.C. 3:32-1.10(a), may convert to a capital stock association subject to this chapter and, where applicable, to article XXI of the Savings and Loan Act (1963) as amended N.J.S.A. 17:12B-1 et seq.

Amended by R.1988 d.472, effective October 3, 1988.  
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).  
Added subsection (b).

**3:32-1.2 Application**

(a) Applications and other forms provided by the Federal Savings and Loan Insurance Corporation shall be considered as acceptable material by the Commissioner for compliance with the provisions of this chapter and article XXI of the Savings and Loan Act (1963) as amended N.J.S.A. 17:12B-1 et seq. Copies of all forms required to be filed with the Federal Savings and Loan Insurance Corporation should be forwarded to the Commissioner as part of the application for preliminary approval.

(b) A 3121 Association may comply with this section by submitting the form provided by the Commissioner.

Amended by R.1988 d.472, effective October 3, 1988.  
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).  
Added (b).

**3:32-1.3 Conversion; general**

(a) A State chartered association making such conversion shall comply with the following conditions and procedures:

1. Any plan for conversion shall be approved by two-thirds of the board of such association, and a resolution shall be adopted to that effect;
2. A preliminary application for approval of conversion with a proxy statement and a proxy form shall be submitted to the commissioner who shall determine that:
  - i. The plan of conversion has been adopted and approved by the board of directors;
  - ii. The plan of conversion is fair and equitable to all members;

iii. Sufficient provision has been made to protect the interest of the depositors of the prospective capital stock association;

(b) If the preliminary application for approval of conversion is deemed acceptable by the commissioner, he shall issue an intent of approval subject to the affirmative vote of a majority of eligible members and compliance with the conditions prescribed in the conversion provisions of article XXI of the Savings and Loan Act (1963) as amended, and this regulation.

#### 3:32-1.4 Meeting of members

(a) Savings and/or borrowing members, as defined by the mutual association's bylaws, who are 16 years of age, or over, shall be entitled to vote at the special meeting to consider conversion to a capital stock association.

(b) The record date for determining those members eligible to vote at the special meeting called to consider the plan of conversion shall not be less than 90 days prior to the date of approval of such plan by the board of directors.

(c) A special meeting of the members shall be called by the board of directors, not later than 180 days following preliminary approval of the plan of conversion by both the Commissioner and the Federal Savings and Loan Insurance Corporation. In the case of a 3121 Association, a special meeting of the members shall be called by the board of directors not later than 180 days following preliminary approval of the plan of conversion by the Commission. The members shall consider and vote upon, either in person or by proxy, the following business:

1. The adoption of the plan of conversion of the mutual association into a capital stock association;
2. The election of directors to hold office from the effective date of conversion until the next annual meeting; and
3. The adoption of bylaws for the capital stock association.

(d) Upon the affirmative vote of a majority or, in the case of a 3121 Association, the affirmative vote of at least two-thirds of the members present either in person or by proxy, determining to convert the mutual association into a capital stock association, the board of directors shall within 45 days file with the Commissioner the following documents:

1. A copy of the minutes of the proceedings of such meeting;
2. A certificate of incorporation as provided in article XXI, section 18 of the Savings and Loan Act (1963), as amended;
3. A copy of the bylaws for the stock corporation; and

4. The conversion application for final approval.

Amended by R.1988 d.472, effective October 3, 1988.  
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).  
Substantially amended.

#### 3:32-1.5 Voting in person or by proxy

(a) Every proxy shall be executed and dated by the member or his agent and filed with the secretary of the association not later than the commencement of the scheduled meeting.

(b) A proxy shall be revocable at will; however the presence of the member at the meeting of the members shall not revoke such proxy unless the member files a written notice of such revocation with the secretary of the meeting prior to the voting of such proxy.

(c) A proxy shall not be revoked by the death or incapacity of the member but such proxy shall continue in force until revoked by the legally constituted or appointed representative or guardian of the member.

(d) The proxies shall be valid only for the meeting at which a conversion plan will be voted upon.

(e) Requirements as to proxy forms:

1. Shall indicate in boldface type whether proxy is solicited on behalf of management;
2. Shall provide specifically designated blank spaces for dating and signing the proxy;
3. Shall clearly identify each matter or group of related matters to be voted upon;
4. Shall be clearly labeled "revocable proxy" in boldface type;
5. Shall contain an acknowledgement by the person giving the proxy that he has received a proxy statement prior to signing the proxy form;
6. Shall contain the date, time and place of meeting;
7. Shall provide by a box, or otherwise, a means whereby a person solicited can indicate his choice between approval or disapproval of each matter to be acted upon;
8. Shall indicate in boldface type how the proxy shall be voted on each matter where no choice is specified;
9. Shall clearly show the procedure for revocation of proxy set forth in subsection (b) of this section.

Amended by R.1976 d.337, effective October 27, 1976.  
See: 8 N.J.R. 452(d), 8 N.J.R. 543(a).

**3:32-1.6 Stock purchase rights**

(a) Eligible account holders shall be entitled to subscription rights to purchase capital stock pro rata to the value of their holdings. Eligible account holders under 18 years of age shall be entitled to purchase stock under a custodian agreement.

(b) The exercise of the subscription rights of the eligible account holders shall be in accordance with 12 CFR 563b of the regulations for insurance of accounts.

(c) An "eligible account holder" means any person holding a savings account in a converting association on the eligibility record date established by the commissioner which shall be not less than 90 days prior to the approval of the plan of conversion by the board of directors.

(d) Notwithstanding (a) and (b) above, subscription rights of eligible account holders of 3121 Associations shall be determined pursuant to N.J.A.C. 3:32-1.10.

Amended by R.1988 d.472, effective October 3, 1988.  
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).  
Added (d).

**3:32-1.7 Purchase price of stock**

(a) The application for final approval shall fix a subscription price per share not less than \$5.00 and not more than \$50.00, except that the subscription price may exceed \$50.00 per share upon a showing of special circumstances.

(b) Prices are to be established by persons independent of the converting association who are experienced and expert in corporate appraisal. The independence of the persons shall not be deemed to have been compromised merely because they participated in selling the stock or received from the association a fee for price appraisal services. The persons shall be acceptable to the Commissioner and the corporation.

Amended by R.1976 d.337, effective October 27, 1976.  
See: 8 N.J.R. 452(d), 8 N.J.R. 543(a).  
Amended by R.1988 d.472, effective October 3, 1988.  
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).  
Substantially amended.

**3:32-1.8 Capital stock; no par value**

The stated capital for stock issued without par value shall be not less than \$2.00 per share.

**3:32-1.9 Liquidation account**

Appropriate subaccount records shall be maintained for each eligible account holder with respect to each savings account. Such subaccount will represent a related inchoate interest in a portion of the liquidation account balance. Such initial interest shall be adjusted for withdrawals in the savings account subsequent to the eligibility record date in accordance with section 563b of the rules and regulations for insurance of accounts.

**3:32-1.10 3121 Associations**

(a) A "3121 Association" shall mean a mutual association whose board of directors adopts a resolution to convert to a stock association after July 29, 1987, and before October 1, 1988, and which at the time its board of directors adopts such a resolution is not insured by the Federal Savings and Loan Insurance Corporation.

(b) The Commissioner shall not approve any conversion plan submitted by a 3121 Association which, in the judgment of the Commissioner, does not provide for the payment of fair value to the members for their interest in the association, or which is, in any other aspect, unfair or inequitable to the members.

New Rule, R.1988 d.472, effective October 3, 1988.  
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).

**3:32-1.11 Fees; conversion from mutual to capital stock association**

An application fee as set forth in N.J.A.C. 3:1-2.26 shall accompany every application for the conversion of a mutual association to a capital stock association.

New Rule, R.1988 d.472, effective October 3, 1988.  
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).  
Amended by R.1991 d.294, effective June 17, 1991.  
See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b).

Deleted reference to conversion fee of \$1,500 and added reference to application fee in N.J.A.C. 3:1-2.26.

**SUBCHAPTER 2. CONVERSION OF AN ASSOCIATION TO A SAVINGS BANK**

**3:32-2.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Capital stock association" shall have the meaning ascribed to it in N.J.S.A. 17:12B-244.

"Capital stock savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.

"Mutual savings bank" means any savings bank organized pursuant to N.J.S.A. 17:9A-1 et seq. without capital stock.

"Savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-1.

"State association" and "mutual association" shall have the meanings ascribed to those terms in N.J.S.A. 17:12B-5.

**3:32-2.2 Authorization for conversion**

(a) Any mutual association may apply to the Commissioner to convert itself to a mutual savings bank by organizing and transferring its assets and liabilities to a newly-chartered mutual savings bank, and any capital stock association may apply to the Commissioner to convert itself to a capital stock savings bank by organizing and transferring its assets and liabilities to a newly-chartered capital stock savings bank.

(b) Before applying to the Commissioner for a conversion pursuant to (a) above, the association shall obtain a resolution of the association's board of directors indicating that the conversion is advisable and in the best interests of the members or shareholders.

(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days' written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the members or shareholders shall vote on whether the association shall convert to a savings bank. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

**3:32-2.3 Application for conversion**

(a) An application for a conversion from an association to a savings bank shall contain the following:

1. A certified copy of the resolution of the board of directors authorizing the conversion;
2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:
  - i. The total number of votes eligible to be cast;
  - ii. The total number of votes represented in person or by proxy at the special meeting;
  - iii. The total number of votes cast in favor and against each matter; and
  - iv. The percentage of votes cast in favor and against each matter.
3. A certificate of incorporation for the new savings bank;
4. Biographical information for each of the incorporators and/or directors on forms approved by the Commissioner;
5. A completed form from the New Jersey State Police requesting criminal history record information for each director and/or incorporator, along with a cashier's check, certified check or money order for the applicable amount, payable to the State Police, stapled to the front of each form;

6. A copy of the association's most recent quarterly financial report;

7. Financial projections for the converted savings bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year;

8. Copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or, if no application or approval is required, a statement or opinion of counsel to that effect; and

9. The application fee for the conversion.

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### SUBCHAPTER 3. MUTUAL STATE ASSOCIATION HOLDING COMPANIES

**Authority**

N.J.S.A. 17:1-8, 17:1-8.1, 17:9A-8.1 et seq.,  
17:9A-382 et seq. and 17:12B-319.

**Source and Effective Date**

R.1994 d.373, effective July 18, 1994.  
See: 26 N.J.R. 1213(a), 26 N.J.R. 2892(b).

**3:32-3.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Capital stock state association" means any association chartered pursuant to the provisions of P.L. 1974, c.137 (N.J.S.A. 17:12B-244 et seq.).

"Commissioner" means the Commissioner of the Department of Banking.

"Department" means the New Jersey Department of Banking.

"Mutual state association" means a mutual association which has its principal place of business in this State.

"Mutual state association holding company" means a mutual state association holding company which has its principal office of business in this State and which has been formed by a mutual state association pursuant to N.J.S.A. 17:12B-298 through N.J.S.A. 17:12B-318.

"Organizing mutual state association" means a mutual state association which has its principal office or business in this State, the board of directors of which propose to form a mutual state association holding company pursuant to the provisions of this subchapter.

"State association" means any savings and loan association or any corporation, however named, now or hereafter chartered pursuant to P.L. 1963, c.144 (N.J.S.A. 17:12B-1 et seq.).

"Subsidiary capital stock state association" means a capital stock state association which has been incorporated by the directors of a mutual state association holding company, a majority of the stock of which subsidiary capital stock state association is held by a mutual state association holding company.

### 3:32-3.2 Formation of mutual state association holding company

(a) The board of directors of an organizing mutual state association may apply to the Commissioner to form a mutual state association holding company in any of the following ways:

1. Plan 1: The board of directors may apply to incorporate a mutual state association holding company, transfer a portion of the organizing mutual state association's assets to the mutual state association holding company, and then convert the organizing mutual state association to a capital stock state association;

2. Plan 2: The board of directors may apply to incorporate a mutual state association holding company, form a subsidiary capital stock state association, and either merge the organizing mutual state association into the capital stock state association or sell or transfer the assets and liabilities of the organizing mutual state association to the capital stock state association and liquidate the organizing mutual state association;

3. Plan 3: The board of directors may apply to form a mutual state association holding company by incorporating a subsidiary capital stock state association, and by transferring a substantial part of the assets and liabilities of the organizing mutual state association to the newly formed capital stock state association in return for a majority of its capital stock; or

4. Any other method of reorganization approved by the Commissioner.

### 3:32-3.3 Application

(a) The board of directors of an organizing mutual state association may apply to form a mutual state association holding company by submitting the following to the Commissioner:

1. A description of the proposed formation of the mutual state association holding company;

2. A certified copy of the resolution of the board of directors of the organizing mutual state association authorizing the application by a two-third vote of the board.

3. A certificate of incorporation for the mutual state association holding company containing:

i. The name by which the mutual state association holding company shall be known;

ii. The street, street number, and municipality where the principal office of the mutual state association holding company is to be located;

iii. The names and addresses of the directors of the organizing mutual state association;

iv. The number of directors of the mutual state association holding company;

v. The names of persons who are to act as directors of the mutual state association holding company, until their successors are elected and qualified;

vi. The amount of capital deposits and surplus which are to be transferred from the organizing mutual state association to the mutual state association holding company;

vii. A provision allowing for the retention of any interests of the respective depositors of the organizing mutual state association in the assets of the organizing mutual state association, according to a fair valuation, including assets which are proposed to be transferred from the organizing mutual state association to the mutual state association holding company; and

viii. A provision providing for the establishment of a liquidation account;

4. Biographical statements for each director of the subsidiary capital stock state association and mutual state association holding company;

5. A completed form from the New Jersey State Police requesting criminal history record information for each director of the subsidiary capital stock state association and mutual state association holding company;

6. Proposed by-laws of the subsidiary capital stock state association and mutual state association holding company;

7. A business plan for the subsidiary capital stock state association and mutual state association holding company;

8. A copy of any applications for establishment of a mutual state association holding company filed with any Federal regulator; and

9. An application fee of \$10,000.

(b) Within 60 days after its execution, the directors shall submit a certificate of incorporation for any subsidiary capital stock state association setting forth the following:

1. The name by which the subsidiary capital stock state association shall be known;

2. The street, street number and municipality in which the principal office of the subsidiary capital stock state association is to be located;

3. The names and addresses of the directors of the mutual state association holding company who will be the incorporators of the subsidiary capital stock state association;

4. The number of directors on the board of directors;

5. The names of the persons who will serve as directors until their successors are elected and qualified;

6. The amount of capital stock, the number or shares into which it is divided, and the par value of each share, not less than a majority of the total outstanding shares of which will be held in the name of the mutual state association holding company; and

7. The amount of surplus with which the subsidiary capital stock state association will commence business.

(c) Along with the certificate of incorporation, each incorporator of the subsidiary capital stock state association bank shall submit an affidavit setting forth the following:

1. That no fee, commission, or other compensation has been paid, directly or indirectly, by the mutual state association holding company or by the subsidiary capital stock state association in the course of organizing the subsidiary capital stock state association, and that no promotion fees or charges have been provided or are contemplated;

2. A complete disclosure of all fees paid or agree to be paid in the matter of chartering and organizing the proposed subsidiary capital stock state association;

3. That at least a majority of the shares of the authorized stock of the subsidiary capital stock state association is held by the mutual state association holding company; and

4. That the subsidiary capital stock state association proposes to either:

i. Merge with the organizing mutual state association;

ii. Purchase the assets of the organizing mutual state association; or

iii. Receive the assets and liabilities of the organizing mutual state association.

(d) Within 10 days after the date upon which a completed application is filed with the Commissioner, the applicant shall cause to be published a notice of application containing:

1. The name and address of the applicant;

2. A brief statement of the nature of the application; and

3. A statement advising that objections to the application can be filed with the New Jersey Commissioner of Banking, along with the address of the Commissioner.

### 3:32-3.4 Approval of application

(a) The Commissioner shall approve the application for a mutual state association holding company upon a finding of the following factors:

1. The establishment of a mutual state association holding company is in the best interests of the depositors of the mutual state association;

2. The qualifications, experience and character of the proposed officers and directors of the mutual state association holding company are sufficient to result in the successful operation of the mutual state association holding company;

3. The interests of the public will be served by the establishment of a mutual state association holding company;

4. The mutual state association holding company is adequately capitalized; and

5. The establishment of the mutual state association holding company meets the requirements of law.

(b) The Commissioner shall approve the charter application of a subsidiary capital stock state association filed with an application for a mutual state association holding company upon a finding of the following factors:

1. The qualifications, experience and character of the proposed officers and directors of the subsidiary capital stock state association are sufficient to result in the successful operation of the subsidiary capital stock state association;

2. The interests of the public will be served by the establishment of the subsidiary capital stock state association; and

3. The capital stock of the subsidiary capital stock state association is in accordance with the amount required for state associations pursuant to N.J.S.A. 17:12B-248.

### 3:32-3.5 Board of directors

(a) The board of directors of a mutual state association holding company shall be managed by a board of not less than six nor more than 21 directors.

(b) Directors of a mutual state association holding company shall be elected by a plurality of the members of the board of the mutual association holding company at the annual meeting for a term of up to three years, as provided in the by-laws.

(c) A vacancy on the board of directors may be filled by a plurality of the members of the board of directors for the remainder of the unexpired term. If the board fails to fill a vacancy for one year, the Commissioner may appoint a member to the board.

(d) Directors of a mutual association holding company may be paid reasonable compensation. The compensation paid to directors shall be fixed by a majority vote of the board. The Commissioner may direct that the amount of compensation paid to directors be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the director, and any other relevant factors, when making this determination.

### 3:32-3.6 Officers

(a) The board of directors of a mutual state association holding company at the first meeting following each annual meeting may elect a Chairman of the Board and shall elect a President, both of whom shall be directors. The board of directors shall select the Chairman of the Board, President or another officer who is a director to be the chief executive officer, and may elect a Secretary and a Treasurer, neither of whom need be directors.

(b) A mutual state association holding company may pay its officers any reasonable compensation as may be from time to time fixed by the board of directors. The Commissioner may direct that the amount of compensation paid to

officers be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the officer, and any other relevant factors, when making this determination.

### 3:32-3.7 Division of surplus

(a) The board of a mutual state association holding company may, by a majority vote of the directors, divide any surplus which is in excess of the amount required for the operations of the mutual state association holding company and which is not necessary to maintain the safety and soundness of the mutual state association holding company, and may distribute this surplus to the depositors of its subsidiary capital stock state association or associations. All such distributions shall be made equitably based on the amount deposited by each depositor in the mutual state association or associations.

(b) The Commissioner may, if he or she deems the surplus held by a mutual state association holding company to be excessive, either upon petition or on the Commissioner's own initiative, order the state association holding company to distribute the surplus to the depositors of the subsidiary capital stock state association or associations.