

IC 23-1.5-3

Chapter 3. Ownership

IC 23-1.5-3-1

Shares; issuance; transfer

Sec. 1. (a) Except as provided in IC 25-2.1-5, a professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

- (1) individuals who are authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation;
- (2) general partnerships in which all the partners are authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation;
- (3) professional corporations authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation; and
- (4) the trustee of a qualified trust.

(b) When determined necessary by the licensing authority for any profession in order to prevent violations of the ethical standards of the profession, the licensing authority may by rule further restrict, condition, or abridge the authority of professional corporations to issue shares, but no such rule may, of itself, have the effect of causing a shareholder of a professional corporation at the time the rule becomes effective to become a disqualified person. All shares issued in violation of:

- (1) this section; or
- (2) any rule adopted by a licensing authority as provided by this section;

are void.

(c) Except as provided in IC 25-2.1-5, a shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to individuals, general partnerships, professional corporations, and trustees of qualified trusts qualified under this article to own shares issued directly to them by the professional corporation. A transfer of shares in violation of this subsection is void; however, this subsection does not apply to the transactions described in section 3 of this chapter.

(d) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares represented by that certificate are subject to:

- (1) restrictions on transfer imposed by this article; and
- (2) such restrictions on transfer as may be imposed by the licensing authority under this article.

(e) This section does not permit or authorize an individual to practice within Indiana any profession with respect to which a license or registration is required by the state without the individual being licensed or registered under the laws of the state.

As added by P.L.239-1983, SEC.1. Amended by P.L.34-1997, SEC.5; P.L.128-2001, SEC.2.

IC 23-1.5-3-2

Authority to purchase shares from disqualified persons

Sec. 2. A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or earned surplus for the purchase; however, no purchase of or payment for its own shares may be made at a time when the corporation is insolvent or when the purchase or payment would make it insolvent.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-3-3

Transfer or purchase of shares from disqualified persons; procedure

Sec. 3. (a) Whenever:

- (1) a shareholder of a professional corporation dies;
- (2) a shareholder of a professional corporation becomes a disqualified person;
- (3) a charitable remainder unitrust or charitable remainder annuity trust that holds shares of a professional corporation becomes a disqualified person; or
- (4) shares of a professional corporation are transferred by operation of law or court decree to a disqualified person;

the shares of the deceased shareholder or disqualified person may be transferred to a qualified person. If the shares are not so transferred, the shares shall be purchased or redeemed by the corporation to the extent of funds that may legally be made available for the purchase, as provided in section 2 of this chapter.

(b) Within five (5) months after such death or thirty (30) days after such a disqualification or transfer, if the price and method of payment for such shares is not fixed or ascertainable by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation shall make a written offer to pay for the shares at a specified price determined by the corporation to be the fair value of the shares as of the date of the death, disqualification, or transfer. The offer:

- (1) shall be given to the disqualified person, which, in the case of a deceased shareholder, is the executor, administrator, or heirs at law if there is no executor or administrator; and
- (2) must be accompanied by:
 - (A) a balance sheet of the corporation, as of the latest available date and not more than twelve (12) months before the making of the offer; and
 - (B) an income statement of the corporation for the twelve (12) month period ending on the date of the balance sheet.

(c) If the fair value of the shares is agreed upon between the disqualified person and the corporation within thirty (30) days after the date of the written offer from the corporation, payment for the

shares shall be made upon surrender of the certificate or certificates representing the shares:

- (1) within sixty (60) days after the date of the offer; or
- (2) at such other time as the parties may fix by agreement.

Upon payment of the agreed value, the disqualified person ceases to have any interest in the shares.

(d) If the disqualified person and the corporation do not agree on the fair value of the shares within thirty (30) days after the corporation's written offer, the following procedures apply:

- (1) The disqualified person may make written demand within sixty (60) days after the date of the corporation's written offer that the corporation file a petition in the circuit or superior court in the county where the principal office of the corporation is located, requesting that the fair value of the shares be determined. The corporation shall file a petition under this subdivision within thirty (30) days after receipt of written demand from the disqualified person. If the corporation fails to institute the proceeding as required by this subdivision, the disqualified person may do so within sixty (60) days after delivery of the written demand to the corporation.

- (2) If the corporation so elects at any time within sixty (60) days after the date of the corporation's written offer, it may file a petition for the determination of the fair value of the shares in the circuit or superior court in the county where the principal office of the corporation is located.

- (3) The disqualified person shall be made a party to any proceeding under this subsection.

- (4) All proceedings instituted under this subsection shall be governed by the Indiana rules of trial procedure.

- (5) In a proceeding under this subsection, the court may appoint one (1) or more persons as appraisers to receive evidence and make a recommendation to the court on the question of the fair value of the shares. The appraisers have such authority as shall be specified in the appointment order of the court.

(e) In a proceeding under subsection (d), the disqualified person is entitled to judgment against the corporation for the amount of the fair value of his shares as of the date of death, disqualification, or transfer, upon surrender to the corporation of the certificate or certificates representing the shares. The court may order that the judgment be paid by the corporation in such installments as the court determines to be fair and just. The judgment may include an allowance for interest, not to exceed the legal rate of interest for judgments specified in IC 24-4.6-1-101, from the date of death, disqualification, or transfer.

(f) Except as provided in this subsection, the costs and expenses of any proceeding under subsection (d) shall be determined by the court and shall be assessed against the corporation. If the fair value of the shares as determined by the court does not exceed the amount specified in the last written offer made by the corporation, the court may assess all or any part of the costs and expenses of the proceeding

against the disqualified person. For purposes of this subsection, expenses include:

- (1) reasonable compensation for and reasonable expenses of the appraisers; and
- (2) reasonable fees and expenses of counsel.

(g) If a purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within ten (10) months after the death of the deceased shareholder or within five (5) months after the disqualification or transfer, the corporation shall immediately cancel the shares on its books, and the disqualified person as of the date of cancellation has no further interest as a shareholder in the corporation other than his right to payment for such shares under this section. A corporation may not cancel its shares if a petition for a determination of fair value has been filed under this section in a circuit or superior court.

(h) Shares acquired by a corporation:

- (1) in payment of the agreed value for the shares; or
- (2) in payment of a judgment entered for the payment of those shares, as provided in this section;

may be held and disposed of by the corporation as in the case of other treasury shares.

(i) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement is specifically enforceable in the courts of this state.

(j) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

As added by P.L.239-1983, SEC.1. Amended by P.L.172-1996, SEC.5.

IC 23-1.5-3-4

Proxies; voting trusts

Sec. 4. (a) A proxy for shares of a professional corporation is valid only if it is given to a qualified person of that corporation.

(b) A voting trust with respect to shares of a professional corporation is valid only if all the trustees and beneficiaries of the voting trust are qualified persons.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-3-5

Powers of administrator, executor, guardian, and others of estate of shareholder who holds all outstanding shares

Sec. 5. This section applies to an administrator, executor, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation. Such a person may:

- (1) exercise voting rights; and

(2) serve as a director and officer of the corporation; for the purposes of amending the articles of incorporation as provided in IC 23-1.5-4-2 or dissolving the corporation.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-3-6

Filing of articles of incorporation; notice of change of ownership or address

Sec. 6. (a) A professional corporation shall file a copy of its articles of incorporation, certified by the secretary of state, with the bureau. Thereafter, the corporation shall file with the bureau certified copies of all amendments to its articles of incorporation, including articles of acceptance and all articles of merger to which the corporation is a party.

(b) A professional corporation shall notify the bureau of a change in the ownership of any of the shares in the professional corporation or a change in its business address within thirty (30) days after the date of the change. Notice of change in ownership must contain the names and post office addresses of the transferor shareholder and the transferee shareholder, and notice of change of business address must contain the street address of the old location and the street address of the new location.

As added by P.L.239-1983, SEC.1. Amended by P.L.34-1997, SEC.6.