

**274.095 Withdrawing shareholders -- Procedure for redemption of stock --
Procedure upon death of sole shareholder -- Insolvency.**

- (1) The articles of incorporation may provide for the purchase or redemption of all of the shares of any shareholder within a period not to exceed one (1) year after the death or disqualification to practice the profession of such shareholder, or for the purchase or redemption within said time of all of the shares of any shareholder desiring to sell them, all of whom are herein sometimes called "withdrawing shareholders" or, in default of such provisions in the articles of incorporation, the foregoing provisions and time limitation may be included in the bylaws of a professional service corporation, or, if no such provision and time limitation is made in the articles of incorporation or bylaws, they may be provided for by such private agreement or agreements as the shareholders and corporation may enter into. If such an article, bylaw or agreement is adopted or provided for and such stock is not redeemed by the corporation within said one (1) year period, then within ten (10) days following the end of said period the president and/or secretary of the corporation shall give notice thereof to the Secretary of State of Kentucky and, upon receipt of such notice by the Secretary of State, the charter of the corporation shall be immediately void.
- (2) In the absence of such provisions in the articles of incorporation, bylaws or by private agreement, a professional service corporation shall redeem the shares of a withdrawing shareholder within ninety (90) days after the death or disqualification of a shareholder or of the receipt by the corporation of written notice from a shareholder that he desires to sell or transfer all his shares of stock in the corporation upon terms mutually agreeable to the parties. Should a redemption not occur within the time limit provided herein, the shares shall immediately be cancelled on the books of the corporation and the holder of such shares shall be reimbursed as provided in subsection (4) of this section as a general creditor of the corporation.
- (3) If the sole shareholder of a professional service corporation organized pursuant to this chapter dies:
 - (a) It shall be the duty of his personal representative to so notify the Secretary of State, whereupon the charter of such corporation shall lapse; or
 - (b) The administrator, executor, guardian, conservator, or receiver of the estate of the deceased sole shareholder may amend the articles of incorporation by signing a written consent to such amendment. Articles of amendment to be adopted shall set forth:
 1. The name of the corporation;
 2. The amendments so adopted;
 3. The date of adoption of the amendment by the administrator, executor, guardian, conservator, or receiver;
 4. The number of shares outstanding; and
 5. The number of shares held by the administrator, executor, guardian, conservator, or receiver.

The amendment to the articles of incorporation may allow the corporation to continue as a professional service corporation or may convert the corporation to a private business corporation provided, however, that the corporation shall not render professional services until such time as all outstanding shares are held by qualified persons and the corporation conforms to the provisions of this chapter; or

- (c) The administrator, executor, guardian, conservator, or receiver of the estate of the deceased shareholder shall transfer all outstanding shares of the corporation to other qualified persons or person within the meaning of this chapter. The professional service corporation shall cease to render professional services until such time as the transfer or transfers provided in this subsection are completed.
- (4) In the absence of an article, bylaw or agreement as provided for in subsection (1) of this section, or a sale as provided for within the time stated in subsection (2) of this section, a professional service corporation, within one hundred eighty (180) days after the death or disqualification of a shareholder or within the same period after receiving written notice from a shareholder that he desires the corporation to redeem all of his stock in the corporation, shall institute an equitable action for a determination of the fair market value of all of the shares of the corporation's outstanding stock cancelled pursuant to subsection (2) of this section and owned by such shareholder.
- (a) The court shall designate a time for a hearing and at said hearing shall appoint a disinterested appraiser to determine the fair market, pre-cancellation value of such shares. The court shall administer an oath to the appraiser to honestly and faithfully discharge his duties and shall fix a time and place for the appraiser to begin hearing evidence on such fair market value. The appraiser shall have the powers conferred upon master commissioners by KRS 31A.010 and shall afford a reasonable opportunity to the corporation and the shareholder or personal representative of a deceased shareholder to introduce pertinent evidence on such fair market value. The appraiser shall conduct his hearings as expeditiously as practicable, and upon completion of the hearing shall report in writing to the court his determination of the fair market pre-cancellation value of such shares and shall file with the court a written transcript of the testimony heard by him, together with all exhibits introduced in evidence.
 - (b) The corporation or any withdrawing shareholder may, within ten (10) days after the filing of the appraiser's report, file exceptions thereto. Such exceptions shall be heard and decided by the court upon the evidence submitted to the appraiser as shown by the transcript. After hearing the exceptions to the appraiser's report, or if no exceptions thereto have been filed within the time hereinbefore provided for, the court shall enter final judgment determining such fair market, pre-cancellation value of the shares of each withdrawing shareholder and shall direct payment thereof by the corporation to each withdrawing shareholder and the surrender of the duly indorsed

certificate or certificates representing his shares. The court shall be empowered to direct payment by the corporation in installments reasonably calculated to avoid any impending corporate insolvency while reimbursing the withdrawing shareholder in as direct a manner as may be practicable.

- (5) If a professional service corporation fails to bring the above provided for action for the redemption of its shares within the time provided, then within ten (10) days after the end of said period, the president of the corporation, or if he be then dead, the secretary thereof, shall so notify, in writing, the Secretary of State of Kentucky, and upon receipt of such notice by the Secretary of State of Kentucky, the charter of the professional service corporation shall be void.
- (6) If the obligation of the corporation to redeem any shares of its outstanding stock as set out in subsections (1) to (5) of this section would render the corporation insolvent and the court has deemed an installment redemption as provided in subsection (4) of this section to be unwarranted, then without delay the corporation shall commence to liquidate and dissolve, unless the remaining shareholders shall have prior thereto purchased or redeemed all of the withdrawing shareholder's shares or satisfied such shareholder's claim against the corporation.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 188, sec. 240, effective July 15, 1980; and ch. 288, sec. 12, effective July 15, 1980. -- Amended 1968 Ky. Acts ch. 166, sec. 1. -
- Created 1962 Ky. Acts ch. 236, sec. 10.

Legislative Research Commission Note. This section was amended by two 1980 acts which do not appear to be in conflict and have been compiled together.