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TRANSFERS OF STOCKS ON THE RECORD OF A WISCONSIN CORPORATION

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IN THE affairs of a corporation, usually there is not much attention given to the transfer of its stock after the stock has once been issued. After the lawyer has completed the organization, the officers take charge of the affairs, and unless special situations arise, he is seldom consulted afterwards. It is also true that in a great majority of corporations there are only a very limited number of stockholders and as a consequence, no question ever does arise with reference to the transfer of stock.

The average person who had accumulated an estate, until a comparatively recent time, usually made his investments in bonds, real estate mortgages, banks and securities of a kindred nature. In recent years, a good many of these investors have realized that there was a possibility for greater profits in purchasing stocks, with the result that more time and attention was devoted to an analysis and study of this class of securities and more of their money is invested in stocks. As this class of investors acquired interest in stock, it resulted in a much greater distribution of stock of corporations, and it is being held in smaller units than before. At the present time, more corporations are offering stock for sale to the public than ever before.

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This change in conditions is one of the reasons why it is necessary for corporations and transfer agents to be more fully acquainted with the laws governing stock transfers because questions became more numerous as to stock owned by joint tenants, husband and wife, belonging to estates and trusts, situations where the certificates were lost or destroyed and questions of similar nature.

LIABILITY OF A CORPORATION

A corporation, to a certain extent, is a trustee for the stockholder in respect to his stock. It is therefore its duty to exercise reasonable care and due diligence to protect the stockholder's interest by preventing unauthorized transfers, and it must respond in damages for any injuries sustained by him in consequence of its negligence or misconduct in this regard. It has the right and it is its duty, when a transfer is demanded, to use *reasonable diligence* to ascertain whether or not the transfer requested is duly authorized, and to make those transfers that are so authorized and to prevent those that are not.¹

When a corporation makes an authorized transfer, the person lawfully entitled to the stock may demand that the certificate for the stock be issued to him, and upon a refusal by the corporation to do so issue a certificate, may sue for the reasonable value of the stock.²

A Wisconsin corporation is made liable for any inheritance tax due on a transfer of stock in a domestic corporation, owned by a non-resident of the state, unless a release from the *Tax Commission of Wisconsin* is first obtained.³

There is no stamp tax law in Wisconsin, but under the *Federal Act*, a corporation is required to collect a transfer tax on the transfer of stock and to see to it that such stamps are attached upon the records and properly cancelled.⁴

UNIFORM STOCK TRANSFER ACT

The rights and liabilities governing transfers of stock, as between the transferor and transferee, are defined by the Statutes of Wisconsin.⁵ This law is commonly referred to as the Uniform Stock Transfer Act. This act does not, however, define the rights and liabilities of a corporation in respect to the transfer of stock, excepting as to lost certificates and the method of compelling a transfer.

¹ *Fletcher Cyclopedia Corporations*, volume 6—6420.

² *Greenleaf v. Ludington*, 15 Wis. 618; *Casper v. Kalt-Zimmers Mfg. Co.*, 159 Wis. 517.

³ *Wisconsin Statutes Laws of 1927*, sec. 72.11, subsection 2.

⁴ Section 801—*Revenue Act of 1928*.

⁵ *Wisconsin Statutes Laws of 1927*, Chapter 183.

RESTRICTIONS

The stock of a corporation is personal property⁶ and may be *transferred at will*. The corporation, when all conditions have been complied with, cannot prevent a transfer. Transfers may be restricted,

- a. By provisions of the charter or constitution,
- b. By its by-laws,
- c. By general law,
- d. By an agreement between the parties,
- e. By reason of the transferee being a person incapable of becoming a stockholder.

In order that a restriction upon the right of transfer be valid, it is necessary that such restriction be stated upon the face of the stock certificate.⁷

In the ordinary transfer, when a person holding stock of a corporation endorses and surrenders the certificate for cancellation, little question arises as to the transfer and it is usually promptly made. It is the duty of a corporation, if it has the facilities to compare the signature, to make sure that it is genuine or to use other means to have it properly identified.⁸ Some corporations require that the signature on the assignment of the stock be certified or guaranteed by a bank or trust company.

CERTIFICATE ISSUED TO TWO OR MORE PERSONS

In cases where the certificate is issued to two or more persons with a description of the interest of such persons in said stock, the corporation is confronted with its most serious problem. The primary object in nearly all cases in placing more than one name on the stock certificate is to *secure a distribution* or change of ownership in and to the stock upon the death of one of the parties, without the formality of a probate or administration proceeding. Usually one of the parties furnishes the money or property given in consideration for the stock and fully intends, during his lifetime, to have the full benefit and enjoyment of the stock. This method of transferring property upon death is most uncertain and inadequate, because in many cases the stockholder does not succeed in accomplishing his purpose, and this fact is discovered when it is too late.

Ordinarily, without words of explanation, where stock is taken in the names of two or more persons, except in cases of husband and wife, the law presumes that they hold, *as tenants in common*, an un-

⁶ In Re: *Klaus*, 67 Wis. 401.

⁷ *Wisconsin Statutes Laws of 1927*, sec. 183.14.

⁸ *Western U. Tel. Co. v. Davenport*, 97 U.S., 369.

divided and fractional⁹ interest in the property. This is especially true where the word "and" is used. Where the word "or" is used, there exists an apparent right to recognize the signature of either person in making transfers during the lifetime of the person, but after one of the parties has died, there is a serious question as to the right of the survivor or survivors to transfer. Except in cases of husband and wife, there appears to be no right of survivorship in such cases. There are cases holding that the word "or" may be construed to mean "and," and also vice versa, so that the facts in each particular case may have a material bearing on the rights of the stockholder.

Where two or more names are used with words indicating that there is to be a joint tenancy with right of survivorship, it is still impossible to recognize the rights of the survivor and transfer on his assignment alone.¹⁰

In Wisconsin, joint tenancies in personal property are *not favored*. If a joint tenancy is created, it is necessary that the following elements be present:

- a. Unity of title,
- b. Unity of time,
- c. Joint possession,
- d. Unity of interest.

If all of these elements are not present in a case, notwithstanding the fact that the stock may be described as being owned in joint tenancy, upon the death of one whose name appears on the stock certificate, the survivor *may not be entitled* to any part of the stock. This is especially true where the deceased person retained the stock certificate in his possession during his lifetime.¹¹

From the foregoing, it will be seen that when a transfer is requested, a corporation must be very cautious, because if it were to make a transfer to the survivor and a court would later hold that there was no survivorship and that the estate of the deceased person is entitled to the stock, the corporation would be liable to such estate for the amount of the stock erroneously transferred.

The law with reference to joint tenancies is somewhat different when applied to husband and wife. In such cases, usually all the elements of a joint tenancy exist and it is reasonably safe for the corporation to make transfers upon the endorsement of the surviving joint tenant.¹²

⁹ *Earl v. Stumpf*, 56 Wis. 50.

¹⁰ *Breitenbach v. Schoen*, 183 Wis. 589.

¹¹ *Breitenbach v. Schoen*, 183 Wis. 589.

¹² *Du Pont v. Jonet*, 165 Wis. 554.

STOCK TRANSFERRED BY TRUSTEES AND FIDUCIARIES

In making transfers for an executor where the stock is in the name of the decedent, the corporation is charged with notice of the existence of a will and it must be careful not to transfer in violation of the provisions of the will since the will is the source of the power of the executor.¹³ If the will contains a specific restriction on the power of the executor to transfer, the corporation cannot recognize his request without an order of the court, and if the specific stock is given by specific provisions of the will to a certain person, the transfer by the corporation can only be made to such legatee.¹⁴ It is for this reason that the corporation making the transfer *requests a surrender* of the certificate endorsed by the executor, a certified copy of the letters testamentary, and a certified copy of the will. The corporation has the right to demand such documentary proof.¹⁵

An administrator of an estate, under Wisconsin law, is subject to *no restrictions* so far as a transfer of personal property is concerned. The administrator has the absolute power to sell and dispose of all the personal property belonging to the estate of the deceased and in the absence of fraud or collusion, to give a good title thereto without any previous order of the Probate Court authorizing or directing such sale; but by so doing, he will make himself liable for the appraised value of the property sold whether he sells it for so much or not.¹⁶ In making a transfer of stock, a corporation must look to his letters. And it should require a certified copy, together with a surrender of the stock certificate properly endorsed.

Where a transfer is requested by a trustee or a guardian, a corporation is charged with a notice of the trust and it must be careful not to transfer in violation of it.¹⁷ Where the corporation has actual or constructive notice that the stock is held in trust, it becomes its duty to ascertain whether the trustee has the authority to transfer stock, and it is liable to the beneficiary if, without inquiry, it permits a transfer in violation of the terms of the trust.

INHERITANCE TAXES

In connection with the estates of deceased persons where the deceased person owning the stock was, at the time of his death, a non-resident of the state, the corporation must, in accordance with the

¹³ *Fletcher Cyclopedia Corporations*, volume 6—6456.

¹⁴ *Wooten v. Wilmington & W. R. Co.*, 56 L.R.A., 615.

¹⁵ *Western U. Tel. Co. v. Davenport*, 97 U.S., 369.

¹⁶ *Williams v. Ely*, 13 Wis. 1; *Munteith v. Rahn*, 14 Wis 210; *Cleveland v. Harrison*, 15 Wis. 671.

¹⁷ *Fletcher Cyclopedia Corporations*, volume 6—6444.

provisions of the *Wisconsin Inheritance Tax Law*, secure a release from the Tax Commission of Wisconsin before making any transfers.¹⁸ On July 18, 1929, a law became effective in Wisconsin whereby the stock of Wisconsin corporations, owned by non-residents, is exempt from Inheritance Tax in Wisconsin, provided the state of which the deceased was a resident at the time of his death granted similar privileges to residents of Wisconsin.¹⁹ At the present time, all of the forty-eight states grant similar privileges to residents of Wisconsin, excepting the following:

Arizona	Minnesota	Oklahoma
Kansas	Nebraska	Utah
Kentucky	Montana	South Dakota
Louisiana	North Dakota	

Residents of these states are not entitled to reciprocity and they are, therefore, liable to the Inheritance Tax in Wisconsin.

The Tax Commission of Wisconsin has formulated no rules as to the procedure for securing releases. At the present time, it requires a verified statement on a form prescribed by the Commission, and if it finds, from such proof, that the stock is not subject to the Inheritance Tax, it issues a certificate authorizing the transfer. In cases where the stockholder is a resident of a state to which the reciprocity law does not apply, it requires certain information regarding the estate and the distribution of it, and if there is no tax, it issues its certificate authorizing a transfer, but if there is a tax, upon payment of it, it issues such certificate.

The right of a partner in a partnership to transfer stock of a corporation is somewhat uncertain, but if it is transferred in the regular course of the partnership business, one partner is the agent of the partnership.²⁰

CORPORATIONS

In a case of a corporation owning stock, the transfer may be made by the proper officers.

Usually the assignment is made by the president or the vice-president, and countersigned by the secretary or assistant secretary. In cases of Trust companies having large numbers of officers, it is common for the board of directors to designate certain officers to whom full authority is given to transfer stock without a countersignature. In such cases, a certified copy of the resolution granting such authority should be required by the corporation before making a stock transfer.

¹⁸ *Wisconsin Statutes Laws of 1927*, sec. 72.11, subsection 2.

¹⁹ *Wisconsin Statutes Laws of 1929*, chapter 298.

²⁰ *Wisconsin Statutes Laws of 1927*, sec. 123.06.

UNINCORPORATED SOCIETIES

In the case of stock being held by an unincorporated organization or society, before any transfer of stock is made by the corporation, a certified copy of the resolution granting power to such officers or directors, should be filed with the corporation.

OTHER GENERAL MATTERS RELATING TO TRANSFERS OF STOCK

A corporation is often asked to make a transfer of stock directly to heirs when such stock constitutes the entire estate of the deceased person. This request is frequently made so that the interested person may avoid the expense of probate or administration proceedings. There is no law granting protection to a corporation making such transfers. It is largely a question of policy to be decided by a corporation itself, and where a very small amount of stock is involved and such stock constitutes the entire estate, a surety bond is sometimes accepted and the transfer made.

When a certificate of stock is lost, the corporation cannot make a *transfer*. One of the first requirements in making a transfer is the surrender for cancellation of the certificate. Under such circumstances, the owner of the stock may give a bond with sufficient surety to protect the corporation or any person injured by the issuance of the new certificate from any liability or expense which it may incur by reason of the original certificate remaining outstanding. With this protection, the corporation can then issue a new certificate in place of the one lost or destroyed.

If a corporation should refuse to issue such a certificate or to accept a bond, the stockholder may apply to the court and obtain an order for the issue of such new certificate.²¹

In case of a controversy involving the stock of a corporation where the corporation has no sufficient means to protect itself from conflicting claims, it may file a bill of interpleader and surrender the certificates to the court and have the court pass upon the conflicting claims and enter a final judgment before making a transfer.²²

Whenever a corporation, without sufficient cause, refuses to make a transfer, the person lawfully entitled to the stock has a remedy other than the one hereinbefore mentioned. He may apply to the court for an order requiring the corporation to show cause why the transfer should not be made, and if the court is satisfied that the demand for transfer is justified, it can make an order to the proper

²¹*Wisconsin Statutes, Laws of 1927*, sec. 183.16.

²²*Miller v. Doran*, 151 Ill. App. 527; *New York & N. H. R. Co. v. Schuyler*, 34 N.Y., 30.

officers of the corporation to make such transfer, and to punish for contempt if its order is not carried out.²³

A large per cent of the corporations have never deemed it necessary to secure any legal advice on questions of stock transfer, and for this reason a good many officers of corporations have not realized the importance of being fully acquainted with the laws governing transfers. This article is not written for the purpose of covering all the problems that may confront a corporation in connection with the transfer of stock, but covers only those more general questions which most frequently arise in the everyday affairs of a corporation.

²³*Wisconsin Statutes, Laws of 1927*, sec. 183.24.