

RE: Acquisition of Stock when a Corporation Owner Dies

A “qualified person” is an individual, professional corporation, or general partnership that is eligible to be issued stock by a professional corporation. (Md. Code, §5-101(h)) A professional corporation may only issue stock, rights, and options to purchase stock to *an individual who is authorized by law in this or another state to render a professional service* (such as a service provided by a physician) *named in the corporation’s articles of incorporation.* (Md. Code, §5-101(g)(92)(viii) and §5-109 (*parenthetical added*)) That is, if the professional corporation provides physician services, then the professional corporation may only issue stock, rights, and options to another physician. Any transfer of stock or the right to purchase stock to a non-qualified person will be void. (Md. Code, §5-111) A non-physician cannot hold stock in a medical practice that is a professional corporation. The non-physician would be considered a “disqualified person,” who is an individual or entity that is ineligible to receive stock from a professional organization. (Md. Code, §5-101(b)). A “disqualified person” can also be the personal representative of the estate of a deceased stockholder or a transferee. (Md. Code, §5-114(a)).

If a stockholder dies and the transferee or personal representative is a disqualified person, the professional corporation shall acquire or sell the stock to a qualified person. (Md. Code, §5-113). The acquisition of stock proceeding must follow these requirements found in Md. Code, §5-113.

1. The professional corporation must send, by certified mail, postage prepaid, return receipt requested, a written notice to the disqualified stockholder, offering to purchase the stock at a fair value of price.
2. The fair value price is determined as of the date of the death, disqualification, or transfer.
3. However, if the articles of incorporation, the bylaws of the corporation, or another agreement between parties contains a formula for determining the price, that price will control.
4. The offer notice must be accompanied by the components listed below.
 - a. The corporation’s balance sheet for the fiscal year ending not more than 16 months before the effective date of the offer notice;
 - b. An income statement for that year;
 - c. A statement of changes in stockholders’ equity for that year; and
 - d. The latest available interim financial statements, if any.
5. The disqualified stockholder may send, by certified mail, postage prepaid, return receipt requested, a written notice demanding that the corporation commence a proceeding to determine the fair value of the stock if any of the below circumstances apply.
 - a. The disqualified stockholder does not receive a written offer notice within 60 days after the date of disqualification or transfer; or
 - b. The disqualified stockholder rejects the corporation’s offer within 30 days of receipt of the offer by the disqualified stockholder.
6. If the corporation fails to commence a proceeding to determine fair value within 60 days of written notice of demand, then the disqualified stockholder may commence a proceeding against the corporation to determine the fair value of the stock.*

7. If the disqualified stockholder accepts the corporation's offer, then corporation shall make payment when stockholder surrenders stock.
8. If the disqualified person fails to respond within 30 days after delivery of notice, then the person is deemed to have accepted the offer.
 - a. However, this deemed acceptance would not apply to the deceased's estate's personal representative if the offer was made before the appointment of the personal representative. The offer will be deemed accepted if the personal representative does not respond to the offer within 30 days after the personal representative is appointed.
9. Payment must be made within 60 days of effective date of the offer notice, unless a later time is agreed upon.
10. If within 120 days of either (1) the appointment of a personal representative of the deceased stockholder or (2) the date an acquisition of stock becomes required, the corporation fails to deliver an offer notice and the disqualified person has not demanded a proceeding to determine the fair value of the stock, then the corporation shall cancel the stock of the disqualified person. That is, even if the disqualified stockholder of the corporation failed to commence an acquisition proceeding in a timely manner, the disqualified stockholder still may not keep his or her stock. The disqualified person will not have any further interest as a stockholder other than the right to payment of the stock's fair value.

* A summary of how to commence a fair value proceeding can be provided on further request.