



Ohio Revised Code

Section 1729.46 Written demand for payment of fair cash value of stock.

Effective: September 3, 2004

Legislation: House Bill 288 - 125th General Assembly

(A) In order to obtain payment of the fair cash value, a stockholder entitled to payment of the fair cash value of stock under section 1729.09, 1729.35, 1729.36, or 1729.40 of the Revised Code shall deliver a written demand for payment of the fair cash value of the stock to the association no later than fifteen days after notice is sent to members and stockholders in accordance with section 1729.09, 1729.35, 1729.36, or 1729.40 of the Revised Code, as the case may be. The written demand shall state the name and address of the stockholder, the number and class of the stock for which fair cash value is demanded, and the amount claimed by the stockholder to be the fair cash value of the stock. Delivery of written demand for payment of fair cash value of stock in accordance with this section is sufficient if delivered to the association or to the surviving or new association or entity resulting from the merger, consolidation, division, or conversion, whether the demand is delivered before, on, or after the effective date of the action. If written demand is not timely delivered in conformity with this section, the stockholder's right to payment of fair cash value with respect to the amendment to the articles of incorporation, agreement of merger or consolidation, plan of division, or conversion shall be barred.

(B) If a timely demand is delivered in accordance with this section, fair cash value of the stock shall be determined and paid to the stockholder in accordance with the following procedures:

(1) The association or the surviving, new, or resulting association or entity shall send a written acknowledgment of receipt of the demand for fair cash value to the address specified in the demand no later than fifteen days after receipt of the demand. If the board of the association or the surviving, new, or resulting association or entity believes that the demand has failed to comply with the requirements of this section, the acknowledgment shall state any such defects. The acknowledgment also shall state what the board believes to be the fair cash value of the stock that is the subject of the demand. If the articles of incorporation of the constituent or original association provide a value for the stock upon redemption, the fair cash value of the stock presumptively shall be the lesser of the redemption value or the fair market value of the stock immediately prior to the merger, consolidation, division, or conversion.



(2) The stockholder shall not transfer, encumber, pledge, or otherwise dispose of the stock that is the subject of the demand for fair cash value, or any certificate representing the stock, until the demand is finally resolved by agreement, withdrawal, or final judicial determination as provided in section 1729.47 of the Revised Code.

(3) If the association's articles of incorporation or bylaws provide a reasonable basis for determining and paying the fair cash value of the stock that is the subject of the demand for fair cash value, or if the association or the surviving, new, or resulting association or entity and the demanding stockholder reach an agreement on the fair cash value of the stock within three months after delivery of the demand for fair cash value, the fair cash value of the stock shall be determined in accordance with the constituent or original association's articles of incorporation or bylaws or as agreed upon, as the case may be. The association shall thereupon tender payment of the fair cash value so determined to the stockholder within thirty days of delivery of any certificates representing the stock or the stockholder's written waiver and release of claim to all rights to the stock to the association or the surviving, new, or resulting association or entity. Without precluding other possible reasonable bases for determining fair cash value of stock under this section, a provision in the constituent or original association's articles of incorporation or bylaws that fair cash value shall be determined by final and binding arbitration or that fair cash value shall be the lesser of par value, book value, or fair market value, shall be considered a reasonable basis for determining and paying the fair cash value of stock.

(C) The right of a demanding stockholder to receive the fair cash value of stock as to which the stockholder seeks relief and the obligation of the association or the surviving, new, or resulting association or entity to furnish the fair cash value for those interests terminate if any of the following applies:

(1) The demanding stockholder fails to comply with this section.

(2) The association abandons the amendment of articles, merger, consolidation, division, or conversion or is finally enjoined or prevented from taking such action.

(3) The demanding stockholder withdraws the demand for fair cash value with consent of the association.



(4) The demanding stockholder attempts to sell, transfer, or encumber the stock which is the subject of the demand prior to final determination of its fair cash value under this section or section 1729.47 of the Revised Code.

(5) All of the following apply:

(a) The articles of incorporation or bylaws of the association do not provide a reasonable basis for determining and paying fair cash value to an affected stockholder;

(b) The association and the affected stockholder have not agreed upon the fair cash value of the stock which is the subject of the demand;

(c) The affected stockholder does not file a timely complaint under section 1729.47 of the Revised Code.

(D) The fair cash value that is agreed upon by the affected stockholder and the association, or determined using a reasonable basis for determining and paying fair cash value in the association's articles of incorporation or bylaws, or fixed by a court in a proceeding under section 1729.47 of the Revised Code, shall be paid within thirty days as follows:

(1) Immediately to the holder of uncertificated stock;

(2) Upon and simultaneously with the surrender of certificates representing certificated stock.