



Ohio Revised Code

Section 3913.03 Rights and privileges of dissenting stockholder.

Effective: March 17, 1987

Legislation: House Bill 412 - 116th General Assembly

If a stockholder of any domestic stock life insurance corporation planning to become a mutual life insurance corporation under section 3913.01 of the Revised Code files with the corporation, prior to or at the meeting of the stockholders at which the plan is submitted to a vote, a written objection to such plan and does not vote in favor of it, and such stockholder, within twenty days after the plan is approved by such meeting, makes written demand on the corporation for payment of the fair cash value of his shares as of the day prior to the date on which such plan is approved by the stockholders, excluding from such fair cash value any appreciation or depreciation in consequence of such mutualization, such stockholder shall be entitled to receive, within ninety days after such fair cash value is agreed upon or determined, upon surrender of his certificates representing his shares, such fair cash value of his shares. Any stockholder who fails to make such objection or having objected fails to make demand within the twenty-day period shall be conclusively presumed to have consented to the plan and shall be bound by the terms of it.

Any such objection and demand for the payment of the fair cash value of shares shall state the number and kind of shares held by the dissenting stockholder making the demand, and the amount which such stockholder claims is their fair cash value.

The right of a dissenting stockholder to be paid the fair cash value of his shares shall cease when the corporation, for any reason and in accordance with the provisions set forth in this section, abandons the plan to mutualize the corporation.

No demand for payment of such fair cash value may be withdrawn by the stockholder making the demand unless the corporation, by its board of directors, consents to such withdrawal.

Within ten days after the receipt of any such demand, the corporation shall inform such stockholder in writing whether it will pay the demanded amount, and, if it refuses to pay such amount, it shall offer in writing to pay another amount as such fair cash value.



If, within thirty days after the date of the written demand made by the dissenting stockholder, the value of such shares is agreed upon between the dissenting stockholder and the corporation and such value is approved by the superintendent of insurance, payment shall be made within ninety days after the date of such agreement, upon the surrender of the stockholder's certificates representing such shares. Upon payment of the agreed value, the dissenting stockholder ceases to have any interest in such shares and ceases to be a stockholder in the corporation, but the shares previously held by him and upon which he has been paid such fair cash value shall be transferred to and held by the trustees appointed under section 3913.04 of the Revised Code for the benefit of the corporation.

If, within such period of thirty days, the stockholder and the corporation do not agree upon the value of the shares, the corporation, or the dissenting stockholder if he has complied with this section, within sixty days after the expiration of the thirty-day period, may petition the court of common pleas of the county in which the principal office of the corporation is located, to determine the fair cash value of the shares mentioned in such demand as of the day before the vote was taken approving such plan.

If such petition is not filed within the sixty-day period, the fair cash value of the shares is conclusively deemed to be equal to the amount offered to the dissenting stockholder by the corporation if any such offer has been made or, if not, then an amount equal to that demanded by the dissenting stockholder.

Such petition shall contain a brief statement of the facts and shall show the vote and action objected to and facts entitling such dissenting stockholder to the relief demanded.

Upon the filing of such petition, the court, on the motion of the petitioner, shall enter an order fixing a date for hearing, and requiring a notice of the filing and prayer of such petition and of the date for hearing to be given to the respondent or defendant in the manner in which a summons is required to be served or substituted service is required to be made in other cases.

On the day fixed for the hearing of such petition, or any adjournment of it, the court shall determine from the petition and such evidence as is submitted by either party whether the dissenting stockholder is entitled to be paid the fair cash value of any shares, and the number of such shares, and, if the court finds and orders that such stockholder is entitled to be paid the fair cash value of any



number of shares, the court shall appoint three appraisers to determine the fair cash value of such number of shares as of the day before the vote objected to was taken, excluding from such fair cash value any appreciation or depreciation in consequence of the mutualization or vote of the corporation, and the court further shall instruct the appraisers respecting their duties in making such determination.

The appraisers forthwith shall proceed to determine the fair cash value, and the appraisers, or a majority of them, shall make a report or award within ten days, unless the court increases that time, and shall file such report in the office of the clerk of the court of common pleas, whereupon, on the motion of either party, the report shall be submitted to the court and considered on such evidence as the court considers relevant, and if the award is found to be reasonable, and is confirmed and approved by the court, judgment shall be rendered against the corporation for the payment of the amount of the award, with interest at six per cent from a date which shall be fixed in such judgment.

If such appraisers, or a majority of them, fail to make and file an award within ten days, or within such further time as may be fixed by the court, or the award is not confirmed by the court, it summarily shall determine the fair cash value of the number of shares and render judgment for it.

Any judgment further shall provide that simultaneously with its payment the certificates evidencing the shares of stock affected shall be surrendered to the corporation and, upon the failure of the holder of the shares to surrender such certificates, the judgment shall stand as a cancellation of such certificates.

The costs of the proceedings, including reasonable compensation to the appraisers to be fixed by the court, shall be assessed or apportioned as the court considers equitable.

Such a proceeding is a special proceeding, and final orders in the proceeding may be reviewed and affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Two or more dissenting stockholders may join as plaintiffs or be joined as defendants in any proceeding under this section, and two or more such proceedings may be consolidated.



A stockholder who so objects in writing and demands in writing payment of the fair cash value of any shares shall not be entitled to vote such shares or to exercise any rights respecting such shares or to receive any dividends or distributions on them, unless the plan of mutualization is abandoned, or, with the consent of the corporation, the objection and demand are withdrawn; provided that if, prior to such abandonment, dividends are paid in money to stockholders who are of the same class as those dissenting and who are of record on or after the day on which the vote was taken authorizing such mutualization, then an amount of money equal to the dividends otherwise payable upon such dissenting shares shall be paid to the holders of record of such shares who would, except for their dissent, be entitled to receive such dividends, and each such payment shall be a credit upon the total amount to be paid for such shares by the corporation. All the holders of such dissenting shares of record at the time of any such abandonment, shall be restored on such abandonment to the status of a stockholder, and any payments made previously on such shares shall be considered as dividends on them.

Any stockholder who has assented to the plan or who has been concluded by the vote of the assenting stockholders, and any stockholder who has objected and made demand in writing for the fair cash value of his shares subsequent to which an agreement has been reached fixing such fair cash value, but who fails to surrender his certificates for cancellation upon payment of the amount to which he is entitled, may be ordered to do so by a decree of the court of common pleas for the county in which the principal office of such corporation is located after notice and hearing in an action instituted by the corporation for that purpose, and such decree may provide that, upon the failure of the stockholder to surrender such certificates for cancellation, the decree shall stand in lieu of such surrender and cancellation.

At any time before there has been a vote of the policyholders approving a plan of mutualization, the corporation may abandon such plan by the same vote of the directors and of the stockholders as was required for its adoption. Upon such abandonment, the rights of any stockholders to be paid for their stock in accordance with the plan, and the rights of any dissenting stockholders to be paid the fair cash value of their stock, whether or not judgment may have been rendered for it, shall terminate, and the corporation shall continue to conduct its business as a domestic stock life insurance corporation as though no plan of mutualization had ever been adopted.