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# Getting Stock Transferred— Are You Doing It the Hard Way?

By *THOMAS H. JOLLS of the Illinois Bar*

**A**T one time or another most lawyers have experienced a sense of irritation at the delays and frustrations involved in the sale or distribution of stock held in an estate or trust. The transfer agent is often regarded as a sort of ill-tempered policeman whose principal objective is to obstruct what should be a simple process.

Actually, the professional transfer agent's interest lies in making the transfer process easy, rather than difficult. Specifically, he is paid for the transfers that he puts through—not for those he refuses. Every time he writes a letter asking for additional information or papers, it costs him money, and when the reply comes, he is put to further expense to find the pending item and match it with what is tendered.

While some of the responsibility for delays may still be laid at the

door of the transfer agent, most of the causes for delay can be obviated if advantage is taken of the simplified procedure established by legislation enacted in almost all of the states during the past six years.

## SIMPLIFICATION LEGISLATION

### *Security Transfers*

The governing law in every state except Hawaii and Vermont has been radically changed since 1957. In that year, a statute was adopted in Illinois to simplify fiduciary transfers. Subsequently, it was adopted in Delaware and Connecticut.

Meanwhile, the Commissioners on Uniform State Laws took up the subject, and, using the Illinois act as a basis, developed the **UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS**,

which has since been enacted in 36 states. During this period, Article 8 of the UNIFORM COMMERCIAL CODE was being revised with respect to transfers of securities, to incorporate the basic principles of the prior acts. The CODE has been enacted in 28 states. The net result is effective simplification legislation relating to fiduciary transfers in every state except Hawaii and Vermont.

### *Advantages*

This legislation has had a tremendous effect on the handling of securities transfers by fiduciaries for two reasons:

- It has virtually swept away the conflict-of-laws problem, never fully settled, as to whether the transfer agent should look to the law of the domicile of the stockholder or of the place of transfer or of the state of incorporation as governing; obviously, if the transfer laws in all three places are substantially the same, the question as to which law applies is of no consequence.
- It establishes the principle that the registered owner of the certificate, or one who can show his entitlement by producing letters testamentary, for example, may have his assignment recognized without inquiry as to the scope of his authority to sell or distribute. In other words, the ability to assign the stock is based upon proof of

status; once status is established, one may transfer with impunity so far as the corporation or its transfer agent is concerned.

To some, it may come as a shock that there should be no inquiry by the transfer agent into the propriety of the transfer by a fiduciary. However, the doctrine that such inquiry on the part of the corporation is required is purely an American invention; there is no corresponding doctrine in either the common or the statutory law of England. In any event, it is no longer practical in a commercialized society to tie nationwide transactions in stocks to old theories that were originally evolved to protect the continuity of trusts of landed estates.

### INHERITANCE TAX WAIVERS

Another area where we have had helpful legislation in recent years is that of inheritance tax waivers. Requirements in this area are most difficult to anticipate. A lawyer for a Kansas estate sending stock of a Delaware corporation to a transfer agent in Illinois cannot know, without considerable checking, whether he will be asked for a waiver from Kansas, Delaware, or Illinois, or all three, or perhaps an affidavit in lieu of the waiver. As a result, he generally sends in the transfer with no waivers, resigning himself to letting the transfer agent tell him what is required. Again, this is time-consuming for both sides.

Fortunately, several of the important incorporation states have recognized that the requirement of waivers for nonresidents of those states produced much paper work, but no revenues. States that have just recently taken the step of abolishing this requirement for nonresidents are Illinois, Michigan, Minnesota, Ohio, and Wisconsin. Sometimes an affidavit is required, but this is still simpler than applying for, and obtaining a waiver from, a foreign state.

#### EFFECT OF CHANGES ON PRACTICE

In order that the full benefits of these statutes may be realized, lawyers as well as transfer agents must change their routines. Since 1957, as more and more states have adopted simplification legislation, there has been a gradual diminution in the quantity of paper sent to transfer agents, but the flow has not ebbed as much as it should, and it is evident that many lawyers are not taking full advantage of the streamlined procedures available to save their time and their clients' money.

A number of years ago, it was customary upon opening a new estate that owned, for example, 10 issues of stock, to order immediately 10 certified copies of letters testamentary and 10 certified copies of the will. Assuming that nothing was sold during administration, and that the estate could close in

due course, after passage of a year, the stocks would be shipped off accompanied by letters testamentary, the wills, and tax waivers. Very likely, the harvest would be something like three requests for waivers from other states, six requests for affidavits of payment of debts, four requests for orders of distribution, and 10 requests for stamp tax funds. By the second or third go-round, the job would be done.

Under the statutes in effect today, it is the rare case when certified wills or affidavits as to payment of debts or even court orders will be necessary. It is a mistake to send such documents in the first instance, because then the transfer agent may consider itself on notice of all their provisions, and the old chain of questions and answers is started. It is also a mistake to order certified letters immediately upon opening the estate, unless immediate sales are contemplated. The statutes require the letters to be certified within 60 days, and, if they are stale, the transfer agent will require new letters or other evidence of incumbency.

#### BASIC STOCK TRANSFER OUTLINE

The following is a suggested basic outline for the types of transfers that occur most frequently. *This outline must be read in conjunction with the notes that immediately follow it.*

<i>Stock Registered in the Name of</i>	<i>Endorsement</i>	<i>Tax Waivers or Affidavits of Domicile</i>	<i>Special Requirements</i>
Individual owner or owners	By owner or owners	None	None
Individual owner or owners	By agent or attorney in fact	None	Certified copy of power of attorney
Joint tenants	By surviving joint tenant	Probably from state of domicile of deceased stockholder—possibly from state of incorporation (See Note 2)	Certified copy of death certificate of deceased cotenant
Decedent	By executor or administrator	Same as immediately above	Copy of letters testamentary or of administration, certified within 60 days
Minor or ward	By guardian or conservator	None	Copy of letters of guardianship or conservatorship, certified within 60 days
Trustee, executor, administrator, guardian, or conservator	By registered owner	Ordinarily none	None
Corporation	By the corporation by an officer or officers	None	Certified copy of resolutions or bylaws demonstrating authority for this transaction
Deceased or resigned trustee	By successor trustee	Ordinarily none	Certified copy of trust instrument showing succession

*Note 1:* As indicated in the text, Hawaii and Vermont do not have simplification statutes relating to fiduciary transfers. If one of these is the state of incorporation or of situs of the stock or of the transfer, additional documentation on any fiduciary transfer is likely to be required.

*Note 2:* Space does not permit the detailing of waiver requirements for 50 states. The following general comments can be made:

(a) Regardless of the place of incorporation, the transfer agent will often request a waiver from the state of residence of a decedent if its law requires one. The practitioner handling an estate will, of course, be familiar with waiver requirements of the state of residence.

(b) Some states require waivers by virtue of the fact that the corporation is incorporated there, even if the decedent was a nonresident. Fortunately this is not true of the following important incorporation states: Delaware, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. In some of the states listed an affidavit of nonresidence will be asked for.

*Note 3:* On all transfers, there must be an unqualified guarantee of the signature of the assignor. Most large city transfer agents will accept guarantees by brokers who are members of the New York Stock Exchange, American Stock Exchange, Midwest Stock Exchange, or of some of the other regional exchanges. They will also generally accept a guarantee of a commercial bank that has its office in, or a correspondent in, the city where the transfer agent is located.

A signature guarantee under the UNIFORM COMMERCIAL CODE (Article 8, sections 8-312 and 8-308) imposes upon the guarantor the responsibility of verifying not only the identity of the person making the assignment, but also his possession of the status attributed to him. For example, if he has signed as a surviving joint tenant, it is guaranteed that he is, in fact, the survivor of the joint tenants.

*Note 4:* There is a federal tax on transfer of stock at the rate of 4¢ per \$100 (or major fraction thereof) of actual value, with a maxi-

mum of 8¢ per share. Treasury Regulations should be consulted in any special situation or one in which an appreciable amount of tax may be involved. For the everyday small transfer from one stockholder to another or in distribution of an estate, the following is suggested as a guide:

(a) Actual value will ordinarily be the sale price, if a sale is involved, or the current market value, as shown by published quotations.

(b) The following statement should accompany the transfer:  
IT IS HEREBY CERTIFIED THAT THE ACTUAL  
VALUE ON \_\_\_\_\_ OF THE  
(date of taxable transfer or sale)

ACCOMPANYING INSTRUMENT(S) IS \$ \_\_\_\_\_,  
AS DETERMINED BY \_\_\_\_\_

(basis of valuation — sale price, mean

\_\_\_\_\_.  
selling price on market, etc.)

\_\_\_\_\_  
Signature of transferor, transferee, or agent of either

(c) Certain transfers are exempt from tax when no change of ownership is involved. Common examples are: deceased to executor, ward to guardian, guardian to ward, joint tenant to survivor, and custodian to minor attaining 21 years.

(d) If the certification in Note 4(b) is included, together with a check for the tax payable to the transfer agent, the transfer will be expedited. It should be reiterated that there are many problems of transfer tax that cannot be dealt with in the scope of this brief outline, which is intended only to guide the most common transactions involving small amounts.

**Note 5:** A few states (New York, Texas, and Florida are examples) levy taxes on stock transfers. It is impossible to generalize because of the varying nature and application of these taxes.

#### CONCLUSION

The subject of security transfers has undergone considerable change in recent years. Some updating on

the part of lawyers, banks, and brokers is still needed, because it appears that a substantial proportion (perhaps as high as 50 per cent)

of so-called "legal transfers" that come to the transfer agents are encumbered with excess documents that must either be thrown away or returned. It is most unfortunate that someone has spent time and money bringing these documents together.

All of the fault is not on the side of the presentors for transfer. There are still some corporations and some transfer agents that have not fully awakened to changes that have taken place in the governing state laws over the past six years. These few need to be reminded of the existence of the simplification statutes and the UNIFORM COMMERCIAL CODE—particularly the latter, which carries penalties for requiring excess documentation. §§8-401 (2), 8-402(4). But before taking the transfer agent to task, bear in mind:

- The basic law has been in a condition of change in 48 out of 50 states for six years. Not every state has fully developed interpretations of the pertinent changes.

- There are still baffling variations in the tax and waiver requirements of the various states. Much work remains to be done to persuade legislatures to abolish or simplify certain of the waiver statutes that make work for all concerned, without producing any revenue for the state.

Lawyers who want to be assured that 95 per cent of their "legal transfers" will be handled with a minimum of effort and expense will, it is believed, achieve that result by following the outline suggested.

However, this outline cannot possibly give the answer to all of the problems that may arise in connection with transfers of stock. Lawyers who wish to go more deeply into the subject should consult the statutes cited and the commentaries on them; CHRISTY, *THE TRANSFER OF STOCK*, (Baker, Voorhis & Co., Mt. Kisco, N. Y., 3d ed. 1962); and the *COMMERCE CLEARING HOUSE STOCK TRANSFER GUIDE* (Chicago, loose-leaf service, 1912 to date).



#### ODE TO A PUBLIC SPEAKER

Just get to the speech  
 Instead of prelude,  
 And finish it fast,  
 Including concluding.

LENORE EVERSOLE FISHER,  
*Good Housekeeping Magazine*, Oct., 1963, p. 63.



# Securities



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