



**Bar Association of the City of Richmond  
Business Law Section Practice Note**

**August 2010**

**Knowing Who Your Shareholders Are:  
Revisiting *Young v. Young***

Back in March, we alerted the Business Law Section community of some of the major proposed changes to the Virginia Stock Corporation Act under Senate Bill 100, which was approved April 21, 2010. One of the sections affected by this amendment was Section 13.1-661 of the Code of Virginia (the “Code”). Prior to approval of Senate Bill 100, Section 13.1-661 of the Code stated that, “The original share transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer book or to vote at any meeting of shareholders.” The recent amendment has removed this language.

As local business attorneys, many of us deal with closely held corporations and are therefore familiar with the confusion that can sometimes arise as a result of multiple transfers and gifts of shares between family members. Does the removal of the above-referenced language from the Code change our analysis of who owns what? It appears that *Young v. Young*, 240 Va. 57, 393 S.E.2d 398 (1990) still applies in these situations. In *Young*, the Court considered whether a father’s purported transfer of shares to his daughters constituted a valid gift.

In 1970, Lehman H. Young, Sr. (“Young Sr.”) formed a corporation called *Fairfax Printers Inc.* and contributed all of the assets of his printing business (a sole proprietorship named *The Virginia Press*) in exchange for 405 shares of Class A voting stock in the corporation. The Articles of Incorporation of the corporation provided for Class A voting stock and Class B non-voting stock, but did not specify how to convert one class into another. He transferred most of these shares to his sister to be held in trust for himself. For the next 10 years he would purchase additional shares of Class A stock, again transferring most of them to his sister to be held in trust. Beginning in 1980 and through 1984, he began directing that his sister transfer these shares to his son and two daughters. Each transfer was represented by a new certificate in the child’s name. Although Young Sr. arranged annual gifts of Class A stock to his daughters, the new certificates were issued to them for Class B stock. No action was taken to reclassify these shares. Each of the new certificates was registered in the corporation’s stock transfer ledger, but Young Sr. retained possession of most of the certificates, and he, himself, acknowledged receipt of delivery by signing the stock transfer ledger as “L H Young Sr. Atty.”

Neither of the daughters appointed Young Sr. as their attorney in fact, nor did they have knowledge of the gifts after the initial gift in 1980.

In October of 1987 Young Sr. caused 254 shares of stock purportedly owned by his daughters to be transferred on the ledger from them to him and caused a new certificate to be issued in his name showing the shares as Class A voting stock, giving him voting control. At the 1988 shareholders' meeting Young Sr. was elected to the board of directors, and the board subsequently appointed him as President. Young Sr.'s son filed a proceeding for a petition to set aside an election of directors under the 1988 meeting. The court held that the election of directors was invalid because voting was based on improper voting lists and Class B Stock was improperly voted, among other reasons. Young Sr. appealed.

In determining whether Young Sr.'s transfers to his daughters were valid gifts, the Court referenced *Swan v. Swann's Ex'r*, 136 Va. 496, 519, 117 S.E. 858, 865 (1923) in which it stated:

[I]t is quite possible and often happens for reasons of convenience or otherwise, that stock held in the name of one person really belongs to another. In such a case the certificate, though *prima facie* evidence of ownership in the person to whom it has been issued, possesses no such magic or sacredness as to prevent an inquiry into the facts. Sometimes the transferee is merely a nominal holder or "dummy," and in that event, although the transfer may be perfectly regular and complete on its [face], the true ownership remains in the transferor, and that fact may be shown.

Because no consideration was paid for the shares transferred to the daughters, the Court examined the transfers under the principles governing *inter vivos* gifts, the elements required to establish an *inter vivos* gift being: "(1) The gift must be of personal property; (2) possession of the property must be delivered at the time of the gift to the donee, or some other for him and the gift must be accepted by the donee; and (3) the title of the property must vest in the donee at the time of the gift." The Court further stated that under the Uniform Commercial Code pertaining to the transfer of securities, a transfer required that the transferee must acquire possession of the certificated security.

The Court concluded that while the change of ownership was reflected in the corporation's stock transfer ledger, Young Sr. retained dominion and control over the shares, and, therefore, the shares were never delivered to the daughters nor to anyone designated by them to receive the shares and no *inter vivos* gift was ever made.

Prepared by Catherine C. Ayres  
McSweeney, Crump, Childress & Temple, P.C.  
11 South Twelfth Street  
Richmond, VA 23219  
cayres@mcsweeneycrump.com  
(804) 783-6812