

## Treatment of Marketability and Minority Discounts by Jurisdiction

Alabama	<p>The marketability discount “made possible in this case is precisely the sort of squeeze- out oppression that the appraisal remedy based on ‘fair value’ was designed to prevent.” <u>Offenbecher v. Baron Servs.</u>, 874 So. 2d 532, 539 (Ala. Civ. App., 2002).</p> <p>In rejecting the marketability discount, the court seemingly rejected minority discounts in stating “[a marketability] discount can claim more theoretical support than the minority discount.” <u>Id.</u> Quoting F. Hodge O’Neal &amp; Robert B. Thompson, <u>O’Neal’s Oppression of Minority Shareholders</u>, § 5.32 (2d ed. 1999).</p>
Arizona	<p>“The superior court correctly decided that minority and marketability discounts should not be applied.” <u>Pro Finish United States, Ltd. v. Johnson</u>, 63 P.3d 288, 294 (Ariz. Ct. App. 2003)</p>
California	<p>[T]he rule justifying the devaluation of minority shares in closely held corporations for their lack of control has little validity when the shares are to be purchased by someone who is already in control of the corporation. <u>Brown v. Allied Corrugated Box Co.</u>, 154 Cal. Rptr. 170, 176 (Cal. Ct. App. 1979). Furthermore, “a minority shareholder who brings an action for the involuntary dissolution of a corporation should not, by virtue of the controlling shareholder’s invocation of the buy-out remedy, receive less than he would have received had the dissolution been allowed to proceed.” <u>Id.</u></p>
Colorado	<p>“Therefore, we conclude that the trial court properly determined that, under the circumstances of this case, a minority discount was not applicable as a matter of law.” <u>M Life Ins. Co. v. Sapers &amp; Wallack Ins. Agency</u>, 40 P.3d 6, 13 (Colo. Ct. App. 2001)</p> <p>“Finally, we hold that the proper interpretation of fair value is the shareholder’s proportionate interest in the value of the corporation. Therefore, a marketability discount should not be applied at the shareholder level to determine the ‘fair value’ of the dissenter’s shares.” <u>Pueblo Bancorporation v. Lindoe, Inc.</u>, 63 P.3d 353, 361 (Colo. 2003).</p>
Connecticut	<p>“Thus the court concludes that discounts for lack of control or of marketability should not be allowed in determining fair value.” <u>Devivo v. Devivo</u>, 2001 Conn. Super. LEXIS 1285 (Conn. Super. Ct. 2001)</p>
Delaware	<p>“All references in this Opinion to values advocated by the Companies are made without regard to minority or nonmarketability discounts. The Court has previously determined that such discounts are improper as a matter of law.” <u>Cavalier Oil Corp. v. Harnett</u>, 1988 Del. Ch. LEXIS 28 (Del. Ch., 1988).</p>
Florida	<p>“[W]e rely on New York case law as persuasive in this matter.” <u>Munshower v. Kolbenheyer</u>, 732 So. 2d 385, 386 (Fla. Dist. Ct. App., 1999). “A discount for lack of marketability is properly factored into the equation because the shares of a closely held corporation cannot be readily sold on a public market.” <u>Id.</u> Quoting <u>Blake v. Blake Agency, Inc.</u>, 486 N.Y.S.2d 341, 349 (N.Y. App. Div. 1985).</p>
Georgia	<p>“Accordingly, based on the clear expression by the amended Model Act and the</p>

	<p>sound reasoning of the majority view, we find that under Georgia’s dissenters’ rights statute a court should not apply minority or marketability discounts in determining the fair value of dissenters’ shares”. <u>Blitch v. Peoples Bank</u>, 540 S.E.2d 667, 670 (Ga. Ct. App. 2000)</p>
Indiana	<p>“As we noted above, H&amp;G’s expert opined that the discounts were appropriate for ‘lack of control’ and ‘lack of market,’ concepts that have been rejected by the majority of courts that have written on this issue. The expert did not relate any extraordinary circumstances that would require a determination ‘on the facts.’ Accordingly, we hold as a matter of law that the trial court erred in applying minority and marketability discounts in valuing Wenzel’s stock.” <u>Wenzel v. Hopper &amp; Galliher, P.C.</u>, 779 N.E.2d 30, 39-40 (Ind. Ct. App. 2002).</p>
Iowa	<p>“[Discounts] only applicable to minority shares...cannot be considered. <u>Security State Bank v. Ziegeldorf</u>, 554 N.W.2d 884, 890 (Iowa, 1996). To allow a marketability discount...would undermine the legislature’s intent to protect minority shareholders from being forced out at a price below the fair value of their pro-rata share of the corporation.” <u>Id.</u></p>
Kansas	<p>“We hold that minority and marketability discounts are not appropriate when the purchaser of the stock is either the majority shareholder or the corporation itself.” <u>Arnaud v. Stockgrowers State Bank</u>, 992 P.2d 216, 220 (Kan., 1999).</p>
Kentucky	<p>“Nor do we feel that the discount herein was applied merely because of the minority position of the appellants.” <u>Ford v. Courier-Journal Job Printing Co.</u>, 639 S.W.2d 553, 556-557 (Ky. Ct. App., 1982). “The report indicates that the ‘minority interest’ would be a consideration in discarding the ‘earnings related approach’ as unsound, but that the discount applied to the net asset approach was an ‘over-all’ or a ‘marketability discount,’ not a ‘minority’ discount.” <u>Id.</u></p>
Maine	<p>[T]o fail to accord to a minority shareholder the full proportionate value of his shares imposes a penalty for lack of control, and unfairly enriches the majority shareholders who may reap a windfall from the appraisal process by cashing out a dissenting shareholder, a clearly undesirable result.” <u>In re Valuation of Common Stock of McLoon Oil Co.</u>, 565 A.2d 997, 1004-1005 (Me. 1989).</p>
Massachusetts	<p>“The task assigned to the court...is not to reconstruct an ‘intrinsic value’ of each share of the enterprise but, rather, to determine what a willing buyer realistically would pay for the enterprise as a whole...Only in this fashion can minority stockholders be assured that insiders in control of a company, burdened by conflicting interests, may not purchase the enterprise at a price less than that obtainable in the marketplace of qualified buyers and avoid paying a full and fair price to the minority.” <u>BNE Massachusetts Corp. v. Sims</u>, 588 N.E.2d 14, 19 (Mass. App. Ct. 1992).</p>
Minnesota	<p>“However, because the legislature has enacted the statute with the evident aim to protect the dissenting shareholder, we must prohibit application of minority discounts when determining ‘fair value’ in statutory dissenter’s rights cases in Minnesota. This result is also in accord with the approach of the majority of states which have addressed this issue.” <u>MT Properties, Inc. v. CMC Real Estate Corp.</u>, 481 N.W.2d 383, 388 (Minn. Ct. App. 1992).</p> <p>“[A]bsent extraordinary circumstances, fair value in a court-ordered buy-</p>

	out...means a pro rata share of the value of the corporation as a going concern without discount for lack of marketability.” <u>Advanced Commun. Design, Inc. v. Follett</u> , 615 N.W.2d 285, 292-293 (Minn. 2000).
Mississippi	“Despite the superficial appeal of the defendants’ argument, the court is unconvinced that a minority share of stock should be valued as though it were a controlling share of a corporation.” <u>Hernando Bank v. Huff</u> , 609 F. Supp. 1124, 1126 (D. Miss., 1985). “Accordingly, the court concludes that in the present case a minority discount is proper in determining the fair value of the stock of the dissenters.” <u>Id.</u>
Montana	“We further conclude that application of a minority discount is inappropriate when minority shareholders in a close corporation sell their shares to the corporation or majority shareholders in a situation controlled by the dissenters’ rights statute.” <u>Hansen v. 75 Ranch Co.</u> , 957 P.2d 32, 42 (Mont. 1998)
Nebraska	We are persuaded, however, that in the event of a merger, neither a minority discount nor a deduction for lack of marketability is to be given in determining the fair value of a dissenter’s shares...Only by not doing so can the statutory policy of fully compensating a dissenting minority shareholder be achieved.” <u>Rigel Corp. v. Cutchall</u> , 511 N.W.2d 519, 526 (Neb. 1994).
Nevada	The court applied a marketability discount to the minority shares that is ‘toward the smaller end of the range’ because the corporation itself is buying the shares and because it is extremely unlikely that the shares will ever be resold. <u>Steiner Corp. v. Benninghoff</u> , 5 F. Supp. 2d 1117, 1129 (D. Nev., 1998).
New Jersey	While the court did not address the validity of minority discounts, it cited the ALI Principles, and the controlling cases from Delaware and Maine, all of which emphasize the minority shareholder receiving his proportionate share of the corporation’s entire value. <u>Lawson Mardon Wheaton, Inc. v. Smith</u> , 734 A.2d 738, 749 (N.J. 1999). “We find most persuasive those cases holding that marketability discounts should not be applied in determining the ‘fair value’ of a dissenting shareholder’s share in an appraisal action.” <u>Id.</u>
New Mexico	“There was substantial evidence in the record from which the court could properly conclude that plaintiff’s shares should be discounted to reflect their true value as non-controlling shares in a close family corporation.” <u>McCauley v. Tom McCauley &amp; Son</u> , 724 P.2d 232, 244-245 (N.M. Ct. App., 1986). “Given the broad discretion of a trial court under the principles of Tome we determine that the court properly exercised its discretion in determining an appropriate discount value.” <u>Id.</u>
New York	“[The] discount should only reflect the lack of marketability of petitioner’s shares in the closely held corporation. No discount should be applied simply because the interest to be valued represents a minority interest in the corporation.” <u>Blake v. Blake Agency, Inc.</u> , 486 N.Y.S.2d 341, 349 (N.Y. App. Div. 1985).
North Carolina	“The Court believes that North Carolina law does not favor application of discounts for lack of control or lack of marketability under these circumstances [where dissolution is an appropriate remedy] and will not apply discounts in this case.” <u>Royals v. Piedmont Elec. Repair Co.</u> , 1999 NCBC 1, P57 (NCBC, 1999)
Oregon	“To include a minority discount would simply penalize him while allowing the corporation to buy his shares cheaply. That is not the protection that the

	<p>legislature had in mind or that other courts have provided.” <u>Columbia Management Co. v. Wyss</u>, 765 P.2d 207, 214 (Or. Ct. App. 1988).</p> <p>In considering the marketability problems that affect the shares of all closely held corporations, the court found a marketability discount is appropriate in determining the fair value of the shares. <u>Columbia Management Co. v. Wyss</u>, 765 P.2d 207, 213 (Or. Ct. App. 1988)</p>
Rhode Island	<p>“We...hereby adopt the rule that in circumstances in which a corporation elects to buy out a shareholder's stock...we shall not discount the shares solely because of their minority status.” <u>Charland v. Country View Golf Club</u>, 588 A.2d 609, 612 (R.I. 1991).</p> <p>“We...today adopt the rule of not applying a discount for lack of marketability.” <u>Id.</u> at 613.</p>
South Carolina	<p>“This court concludes that no minority discount or marketability discount should be applied to reduce the fair value of Plaintiff’s shares. These discounts have not been recognized in South Carolina in the context of corporate dissolution actions and have been rejected by many courts.” <u>Morrow v. Martschink</u>, 922 F. Supp. 1093, 1105 (D.S.C. 1995).</p>
South Dakota	<p>Any discount that “fails to accord to a minority shareholder the full proportionate value of his shares penalizes the minority for taking advantage of the protection afforded by the appraisal statute” <u>First W. Bank Wall v. Olsen</u>, 621 N.W.2d 611, 619 (S.D. 2001).</p>
Utah	<p>“Therefore, the court should not employ discounts in its valuation of the Minority's shares...”. <u>Hogle v. Zinetics Med., Inc.</u>, 63 P.3d 80, 91 (Utah 2002)</p>
Vermont	<p>“[T]he ‘minority discount’ is inappropriate where the court has found oppression of the minority.” <u>Waller v. American Int’l Distrib. Corp.</u>, 706 A.2d 460, 463 (Vt. 1997)</p>
Virginia	<p>“This court therefore finds that no minority discount should be applied in determining the fair value of shares...”. <u>U. S. Inspect, Inc. v. McGreevy</u>, 57 Va. Cir. 511, 527 (Va. Cir. Ct. 2000)</p> <p>“The same policy considerations that have led most courts to reject application of a minority discount apply equally to a marketability discount.” <u>Id.</u> at 528.</p>
Washington	<p>“This, though, is one of the very reasons a minority shareholder’s stock should not be discounted to fair market value, because the value to [the majority shareholder] is different from what it would be in the market.” <u>Robblee v. Robblee</u>, 841 P.2d 1289, 1295 (Wash. Ct. App. 1992) “Where no market was involved in valuing [the minority shareholder’s] shares, and [the majority shareholder] had strong incentive to buy them, we find no justification...for the application of a fair market value minority discount.” <u>Id.</u></p> <p>“But to the extent that the trial court's order was intended to declare that, absent extraordinary circumstances, no such [marketability] discount can be applied at the shareholder level, we affirm.” <u>Matthew G. Norton Co. v. Smyth</u>, 51 P.3d 159, 167 (Wash. Ct. App. 2002)</p>
Wisconsin	<p>“A minority discount runs contrary to the protective purpose of the dissenters' rights statute by discounting a minority interest solely because it is the minority.” <u>HMO-W Inc. v. SSM Health Care Sys.</u>, 2000 WI 46 (Wis. 2000)</p>