



Ohio Revised Code

Section 1705.41 [Repealed Effective 2/11/2022 - See R.C. 1706.83] Dissenting members - compliance with section - fair cash value of membership interest.

Effective: October 12, 2006

Legislation: House Bill 301

(A) A member of a domestic limited liability company is entitled to relief as a dissenting member as described in section 1705.40 of the Revised Code only in compliance with this section.

(B) If a proposal of merger, consolidation, or conversion is to be submitted to the members of a domestic limited liability company at a meeting, a dissenting member must be a member and a record holder of the membership interests as to which the dissenting member seeks relief as of the date fixed for the determination of members entitled to notice of the meeting, and those membership interests must not have been voted in favor of the proposal. Not later than ten days after the date on which the vote on the proposal was taken at the meeting of the members, the dissenting member shall deliver to the company a written demand for payment to the dissenting member of the fair cash value of the membership interests as to which the dissenting member seeks relief. The demand shall state the address of the dissenting member, the number and class of the membership interests, and the amount claimed by the dissenting member as the fair cash value of the membership interests.

(C) If the proposal of merger, consolidation, or conversion is to be submitted to the members of a domestic limited liability company for their written approval or other action without a meeting, a dissenting member must be a member and a record holder of the membership interests as to which the dissenting member seeks relief as of the date that the written request for approval or other action is sent to the members entitled to act or otherwise approve the proposal, and the dissenting member must not have indicated the dissenting member's approval of the proposal in the dissenting member's capacity as record holder of the membership interests. Not later than fifteen days after the date on which the request for approval or other action was mailed to the members, the dissenting member shall deliver to the company a written demand for payment to the dissenting member of the fair cash value of the membership interests as to which the dissenting member seeks relief. The demand shall state the address of the dissenting member, the number and class of the membership interests, and the amount claimed by the dissenting member as the fair cash value of the membership interests.



(D) A written demand for payment of the fair cash value of membership interests that is served on a domestic limited liability company under this section constitutes service on the surviving or new entity resulting from the merger or consolidation or on the entity resulting from a conversion, whether the demand is served before, on, or after the effective date of the merger, consolidation, or conversion.

(E)(1) If the membership interests as to which a dissenting member seeks relief are represented by certificates and if the domestic limited liability company sends to the dissenting member at the address specified in the dissenting member's demand for payment of the fair cash value of those interests a request for the certificates representing those interests, the dissenting member shall deliver the requested certificates to the company within fifteen days from the date on which the request is sent to the dissenting member so that the company may endorse a legend on the certificates to the effect that a demand for the fair cash value of those membership interests has been made. The company promptly shall return the endorsed certificates to the dissenting member.

At the option of the company, the failure of the dissenting member to deliver the certificates as described in this division shall terminate the dissenting member's rights as a dissenting member. If exercised, the option shall be exercised by a written notice sent to the dissenting member within twenty days after the lapse of the fifteen-day period described in this division, unless a court for good cause shown otherwise directs.

If membership interests represented by a certificate on which a legend has been endorsed under this division are transferred, each new certificate issued for the membership interests shall bear a similar legend and the name of the original dissenting holder of the membership interests.

(2) Upon receiving from a dissenting member a demand for payment of the fair cash value of membership interests that are not represented by a certificate, a domestic limited liability company shall make an appropriate notation of the demand in its records. If uncertificated membership interests for which payment has been demanded are to be transferred, any writing sent to evidence the transfer shall bear the legend required for certificated membership interests as described in division (E)(1) of this section.

(3) A transferee of membership interests who receives a certificate endorsed with a legend as



described in division (E)(1) of this section and a transferee of uncertificated membership interests with respect to which a notation has been made as described in division (E)(2) of this section acquires only the rights in the domestic limited liability company that the original dissenting member had immediately after the serving of the demand for payment of the fair cash value of the membership interests.

(4) A request for certificates under division (E)(1) of this section by a domestic limited liability company is not an admission by it that the member is entitled to relief under this section.

(F) Unless the operating agreement of the domestic limited liability company in which the dissenting member was a member provides a reasonable basis for determining and paying the fair cash value of the membership interests as to which the dissenting member seeks relief or unless that company and the dissenting member have come to an agreement on the fair cash value of those interests, within three months after the service of the demand for payment of the fair cash value of those interests, the dissenting member, that company, or the surviving or new entity may file a complaint under section 1705.42 of the Revised Code.

The complaint shall be filed in the court of common pleas of the county in which the principal office of the limited liability company that issued the membership interest is located or was located when the proposal for merger, consolidation, or conversion was adopted or approved by the members of that company. Within three months after the service of the demand for payment of the fair cash value of the membership interests of the dissenting member, other dissenting members may join as plaintiffs or may be joined as defendants in the proceeding described in section 1705.42 of the Revised Code, and any two or more proceedings commenced by dissenting members may be consolidated.

(G) The right of a dissenting member to receive the fair cash value for the membership interests as to which the dissenting member seeks relief, the obligation of the dissenting member to sell those interests, the right of the domestic limited liability company to purchase those interests, and the obligation of the company to pay the fair cash value for those interests terminate if any of the following applies:

(1) Unless the company waives the failure, the dissenting member fails to comply with this section.



(2) The company abandons the merger, consolidation, or conversion or is finally enjoined or prevented from carrying it out, or the members rescind their adoption or approval of the merger, consolidation, or conversion.

(3) The dissenting member withdraws the dissenting member's demand for payment of the fair cash value of the membership interests with the consent of the company.

(4) All of the following apply:

(a) The operating agreement of the domestic limited liability company in which the dissenting member was a member does not provide a reasonable basis for determining and paying the dissenting member the fair cash value of the dissenting member's membership interests.

(b) The company and the dissenting member have not agreed upon the fair cash value of the membership interests.

(c) Neither the dissenting member nor the company has filed, joined, or been joined in a complaint under division (F) of this section within the three-month period provided in that division.

(H) Unless otherwise provided in the operating agreement of the domestic limited liability company in which the dissenting member was a member, from the time that the dissenting member delivers the demand for payment of the fair cash value of the membership interests as to which the dissenting member seeks relief until the termination of the rights and obligations arising from that demand or the purchase of those interests by the company, all other rights accruing from those interests, including voting or distribution rights, are suspended. If, during the suspension, any distribution is paid in money upon membership interests of the class of those interests or any dividend, distribution, or interest is paid in money upon any securities issued in extinguishment of or in substitution for those interests, an amount equal to the dividend, distribution, or interest that, except for the suspension, would have been payable upon those interests or those securities shall be paid to the record holder of those interests or securities as a credit upon the fair cash value of those interests. If the right to receive the fair cash value of those interests is terminated other than by the purchase of those interests by the company, all rights of the dissenting member shall be restored and all



AUTHENTICATED,
OHIO LEGISLATIVE SERVICE
COMMISSION
DOCUMENT #291702

distributions that, except for the suspension, would have been made shall be made to the record holder of those interests at the time of termination.