



Ohio Revised Code

Section 1705.42 [Repealed Effective 2/11/2022 - See R.C. 1706.83] Complaint for relief - payment of fair cash value.

Effective: October 12, 2006

Legislation: House Bill 301

(A)(1) When authorized by division (F) of section 1705.41 of the Revised Code, a dissenting member of a domestic limited liability company may file a complaint for the relief described in this section. The complaint shall contain a brief statement of the relevant facts, including the vote or action by the members of that company pertaining to the merger, consolidation, or conversion and the facts entitling the dissenting member to the relief described in this section, and a demand for that relief. When authorized by division (F) of section 1705.41 of the Revised Code, the company, or a surviving or new entity or converted entity, also may file a complaint under this section. Notwithstanding the Rules of Civil Procedure, no answer to a complaint filed under this section is required.

(2) Upon the filing of the complaint and upon motion of the complainant, the court shall enter an order that fixes a date for a hearing on the complaint and that requires the service of a copy of the complaint and a notice of its filing and the date for the hearing on the defendants in the manner prescribed in the Rules of Civil Procedure for the service of process. On the date fixed for the hearing or any adjournment of the hearing, the court shall determine from the complaint and from all evidence submitted at the hearing by the parties whether the dissenting member is entitled to be paid the fair cash value of any membership interests and, if the dissenting member is to be so paid, the number and class of those interests. If the court finds that the dissenting member is to be so paid, it may appoint one or more persons as appraisers to receive evidence as to the fair cash value and to make recommendations to the court relative to the amount of the fair cash value. The appraisers shall have the power and authority that the court specifies in the order of appointment, and the court shall fix reasonable compensation for their services.

After receiving the recommendations of any appointed appraisers or if appraisers are not appointed, the court shall make findings as to the fair cash value of the membership interests and render judgment against the limited liability company for the payment of that fair cash value and interest at the rate and from the date that the court considers equitable. The costs of the proceeding, including



reasonable compensation to any appraisers as fixed by the court, shall be assessed or apportioned as the court considers equitable.

(3) The proceeding described in this section is a special proceeding, and final orders in it may be vacated, 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. If, during the pendency of any proceeding described in this section, an action or proceeding is commenced to enjoin or otherwise prevent the carrying out of the merger or consolidation or other action as to which the member has dissented, the proceeding commenced under this section shall be stayed until the final determination of the other action or proceeding.

(4) Unless division (G) of section 1705.41 of the Revised Code is applicable, the fair cash value of the membership interests that is agreed upon by the dissenting member and the limited liability company or fixed by a court in a proceeding under this section shall be paid within thirty days after the later of the final determination of the fair cash value in a proceeding under this section or the date of the consummation of the merger, consolidation, or conversion. Upon the occurrence of the later event, payment of the fair cash value shall be made to those entitled to the payment as follows:

(a) Immediately to the holders of uncertificated membership interests;

(b) Upon and simultaneously with the surrender to the limited liability company of certificates representing the membership interests to the holders of certificated membership interests.

(B) If the proposal of merger, consolidation, or conversion was submitted to the members of a domestic limited liability company at a meeting, the fair cash value of the membership interests as to any of those members that seek relief shall be determined as of the day before the day on which the vote on the proposal was taken. If the proposal of merger, consolidation, or conversion was submitted to the members of a domestic limited liability company for written approval or other action without a meeting, the fair cash value of the membership interests as to which those members seek relief shall be determined as of the day before the day on which the request for approval or other action was sent.

The fair cash value of a membership interest for purposes of this section is the amount that a willing



seller who is under no compulsion to sell would be willing to accept and that a willing buyer who is under no compulsion to purchase would be willing to pay, but the fair cash value paid to any member shall not exceed the amount specified in the demand for payment of that member. In computing the fair cash value of a membership interest, any appreciation or depreciation in market value resulting from the merger, consolidation, or conversion shall be excluded.