



Ohio Revised Code

Section 1776.77 Dissenting partner's demand for fair cash value of interests.

Effective: August 6, 2008

Legislation: House Bill 332 - 127th General Assembly

(A) A partner of a domestic partnership is entitled to relief as a dissenting partner with respect to the proposals described in section 1776.76 of the Revised Code only as this section provides.

(B)(1) When a proposal of merger, consolidation, or conversion is submitted to the partners at a meeting, a partner may be a dissenting partner only if that partner is a record holder of the partnership interests as to which the partner seeks relief as of the date fixed for the determination of partners entitled to notice of the meeting, and has not voted those interests in favor of the proposal.

(2) Not later than ten days after the date on which a vote on a proposal for merger, consolidation, or conversion is taken at the meeting of the partners, a dissenting partner shall deliver to the partnership a written demand for payment of the fair cash value of the interests to which the dissenting partner seeks relief. The demand shall state the dissenting partner's address, the number and class of those interests, and the amount the dissenting partner claims as the fair cash value of the interests.

(C)(1) If the proposal of merger, consolidation, or conversion is submitted to the partners for written approval or other action without a meeting, a partner may be a dissenting partner only if on the date the request for approval or action is sent to the partners entitled to act or approve the partner is a record holder of those interests of the partnership to which the partner seeks relief and the partner did not indicate approval of the proposal in the partner's capacity as a holder of those interests.

(2) Not later than fifteen days after the date on which the request for approval of or action on the proposal is sent to the partners, the dissenting partner shall deliver to the partnership a written demand for payment of the fair cash value of the interests to which the partner seeks relief. The demand shall state the dissenting partner's address, the number and class of interests, and the amount the partner claims as the fair cash value of those interests.



(D) In any merger or consolidation, a demand served on the involved constituent domestic partnership constitutes service on the surviving entity or the new entity, whether that demand is served before, on, or after the effective date of the merger or consolidation. In any conversion, a demand served on the converting domestic partnership constitutes service on the converted entity, whether that demand is served before, on, or after the effective date of the conversion.

(E)(1) When the interests as to which a dissenting partner seeks relief are represented by certificates, and the domestic partnership sends the dissenting partner a request for certificates representing those interests, within fifteen days from the date on which the request is sent, the dissenting partner shall deliver to the partnership the requested certificates. The partnership shall endorse a legend on each certificate to the effect that the partner has made a demand for the fair cash value of the interests the certificate represents. The partnership promptly shall return the endorsed certificates to the dissenting partner.

(2) At the option of the partnership, the partnership may terminate a partner's rights as a dissenting partner by sending a written notice to the dissenting partner within twenty days after the lapse of the fifteen-day period if the partner fails to deliver the certificates, unless a court for good cause shown otherwise directs. A partnership's request pursuant to this division is not an admission that the holder of the interest is entitled to relief under this section.

(3) If an interest represented by a certificate that contains a legend is transferred, each new certificate issued shall bear a similar legend and the name of the original dissenting holder of those interests.

(4) Upon receiving a demand for payment from a dissenting partner who is a record holder of uncertificated interests, the partnership shall make an appropriate notation of the demand for payment in its records. When an uncertificated interest for which a dissenting partner demands payment is to be transferred, any writing to evidence that transfer shall bear the legend required for certificated interests as this section provides.

(5) A transferee of interests who receives an endorsed certificate or an uncertificated interest with a notation acquires only those rights in the partnership as the original partner holding those interests had immediately after the service of a demand for payment of the fair cash value of the interests.



(F) Unless the partnership agreement of the constituent domestic partnership provides a reasonable basis for determining and paying the fair cash value of the interests for which a dissenting partner seeks relief, or unless the partnership and the dissenting partner have come to an agreement on the fair cash value of the interests, the dissenting partner or the partnership, which may be the surviving or new entity in the case of a merger or consolidation, or the converted entity in the case of a conversion, within ninety days after the service of the dissenting partner's demand, may file a complaint under section 1776.78 of the Revised Code in the court of common pleas of the county in which the principal office of the partnership that issued the interests is located or was located when the partners adopted the proposal of merger, consolidation, or conversion. The complaint shall be filed in the court of common pleas of Franklin county if the domestic partnership does not have, or did not have at the time of the demand, its principal office in this state.

Other dissenting partners, within that ninety-day period, may join as plaintiffs or may be joined as defendants, and any two or more proceedings may be consolidated.

(G) The right and obligation of a dissenting partner to receive fair cash value and to sell the interests to which the dissenting partner seeks relief, and the right and obligation of the domestic partnership to purchase those interests and to pay the fair cash value of them, terminate under any of the following circumstances:

(1) The dissenting partner does not comply with this section, unless the partnership waives that failure.

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

(3) The dissenting partner withdraws the demand, with the consent of the partnership.

(4) The partnership agreement does not provide a reasonable basis for determining and paying the dissenting partner the fair cash value of the dissenting partner's interest, the partnership and the dissenting partner have not agreed upon the fair cash value of the interest, and neither the dissenting



partner nor the partnership has filed or joined in a complaint under division (F) of this section within the period that division provides.

(H)(1) Unless otherwise provided in the partnership agreement, from the time the dissenting partner gives a demand until either the termination of the rights and obligations arising from it or the purchase of the interests by the partnership, 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 interests of that class, or any dividend, distribution, or interest is paid in money upon any securities issued in extinguishment of, or in substitution for, that interest, the holder of record shall be paid as a credit upon the fair cash value of the interests an amount equal to the dividend, distribution, or interest that would have been payable upon those interests or securities, if not for the suspension.

(2) If the right to receive the fair cash value is terminated other than by the purchase of the interests by the partnership, all rights of the dissenting partner shall be restored and all distributions that would have been made if not for the suspension shall be made to the holder of record of the interests at the time of termination.