



Ohio Revised Code

Section 1776.78 Dissenting partner's complaint.

Effective: August 6, 2008

Legislation: House Bill 332 - 127th General Assembly

(A)(1) When authorized by division (F) of section 1776.77 of the Revised Code, a dissenting partner or a partnership may file a complaint under this section demanding the relief this section describes. Any complaint shall contain a brief statement of the facts, including the vote or action by the partners and the facts entitling the dissenting partner to the relief demanded. No answer to a complaint is required. Upon the filing of a complaint, the court, on motion of the petitioner, shall enter an order fixing a date for a hearing and require a copy of the complaint, a notice of the filing, and the date for the hearing be given to the respondent or defendant pursuant to the Rules of Civil Procedure.

(2) On the date fixed for the hearing, the court shall determine from the complaint and from evidence either party submits whether the dissenting partner is entitled to be paid the fair cash value of any interests and, if so, the number and class of those interests. The court may appoint one or more persons as appraisers to receive evidence and to recommend a decision on the amount of the fair cash value if the court finds that the dissenting partner is entitled to the payment of the fair cash value of interests. The appraisers have the power and authority as the order of their appointment specifies. The court shall make a finding as to the fair cash value of the interests and shall render judgment against the partnership for the payment of it, with interest at a rate and from a date as the court considers equitable.

(3) The court shall assess or apportion the costs of the proceeding, including reasonable compensation to the appraisers to be fixed by the court, as the court considers equitable. The proceeding 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, to Chapter 2505. of the Revised Code.

(4) If, during the pendency of any proceeding under this section, a suit or proceeding is instituted to enjoin or otherwise to prevent the carrying out of the action as to which the partner has dissented, the proceeding instituted under this section shall be stayed until the final determination of the other



suit or proceeding.

(5) Unless any provision of division (G) of section 1776.77 of the Revised Code applies, the fair cash value of the interests that the parties agree upon under section 1776.77 of the Revised Code or that the court fixes under this section shall be paid within thirty days after the date of final determination of value or the consummation of the merger, consolidation, or conversion, whichever occurs last, provided that in the case of holders of interests represented by certificates, payment shall be made only upon and simultaneously with the surrender to the domestic partnership of the certificates representing the interests for which the payment is made.

(B) If the proposal of merger, consolidation, or conversion is submitted to the partners of the partnership for a vote at a meeting, the fair cash value as to those partners shall be determined as of the day before the day on which the vote is taken. If the proposal is submitted to the partners for written approval or other action, the fair cash value as to those partners shall be determined as of the day prior to the day on which the request for the approval or action is sent.

(C) The fair cash value of an 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. In no case shall the fair cash value paid to any partner exceed the amount specified in that partner's demand. The computation of the fair cash value shall exclude any appreciation or depreciation in value resulting from the merger, consolidation, or conversion.