

322B.833 JUDICIAL INTERVENTION AND EQUITABLE REMEDIES, DISSOLUTION, AND TERMINATION.

Subdivision 1. **When permitted.** A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:

(1) in a supervised winding up and termination pursuant to section 322B.83;

(2) in an action by a member when it is established that:

(i) the governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;

(ii) the governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members or governors of any limited liability company, or as managers or employees of a closely held limited liability company;

(iii) the members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;

(iv) the limited liability company assets are being misapplied or wasted; or

(v) an event of dissolution has occurred under section 322B.80, subdivision 1, clause (1), (4) or (5) but the limited liability company is not acting to wind up its affairs;

(3) in an action by a creditor when:

(i) the claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or

(ii) the limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or

(4) in an action by the attorney general to dissolve the limited liability company in accordance with section 322B.843 when it is established that a decree of termination is appropriate.

Subd. 2. **Buy-out on motion.** In an action under subdivision 1, clause (2), in which one or more of the circumstances described in that clause is established, the court may, upon motion of a limited liability company or a member, order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to either the limited liability company or the moving members, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any membership interest so sold must be the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization or a member control agreement states a price for the redemption or buy-out of

membership interests, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the limited liability company shall provide each selling member with the information it is required to provide under section 322B.386, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the membership interests under the provisions of section 322B.386, subdivision 7, may allow interest or costs as provided in section 322B.386, subdivisions 1 and 8, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.

The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of a membership interest under this subdivision and provided that the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member shall no longer have any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.

Subd. 3. Condition of limited liability company. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but shall not refuse to order any particular form of relief solely on the ground that the limited liability company has accumulated or current operating profits.

Subd. 4. Considerations in granting relief involving closely held limited liability companies. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the duty that all members in a closely held limited liability company owe one another to act in an honest, fair, and reasonable manner in the operation of the limited liability company and the reasonable expectations of all members as they exist at the inception and develop during the course of the members' relationship with the limited liability company and with each other. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements, between or among members or between or among one or more members and the limited liability company are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements.

Subd. 5. Considerations as to dissolution. In determining what relief to order, the court shall take into account that relief that results in the termination of a member's membership interest may cause dissolution of the limited liability company. If the court orders relief that results in dissolution of the limited liability company, the court shall make appropriate orders providing for the winding up and termination of the dissolved limited liability company.

Subd. 6. Liquidation remedy. In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a member control agreement, such as any form of equitable relief, or a buy-out or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (2) or (3). Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

Subd. 7. **Expenses.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

Subd. 8. **Venue and parties.** Proceedings under this section must be brought in a court within the county in which the registered office of the limited liability company is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

History: 1992 c 517 art 2 s 114; 1996 c 361 s 49-51; 1999 c 85 art 2 s 89-91