

322B.386 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Limited liability company" means a limited liability company whose members have obtained rights to dissent under section 322B.383, subdivision 1, and includes any successor by merger.

(c) "Fair value of the membership interests" means the value of the membership interests of a limited liability company immediately before the effective date of the limited liability company action referred to in section 322B.383, subdivision 1.

(d) "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in section 322B.383, subdivision 1, up to and including the date of payment, calculated at the rate provided in section 549.09 for interest on verdicts and judgments.

(e) "Member" includes a former member when dissenters' rights exist because:

(1) the membership of that former member has terminated causing dissolution; and

(2) the dissolved limited liability company has then entered into a winding up merger under section 322B.81, subdivision 3.

Subd. 2. **Notice of action.** If a limited liability company calls a member meeting at which any action described in section 322B.383, subdivision 1, is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 322B.383 and this section and a brief description of the procedure to be followed under these sections. For members who have assigned some or all of their financial rights, the description must also include the procedures under subdivision 9.

Subd. 3. **Notice of dissent.** If the proposed action must be approved by the members and the limited liability company holds a meeting of members, a member who is entitled to dissent under section 322B.383 and who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.

Subd. 4. **Notice of procedure.** (a) After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to (i) all members who have complied with subdivision 3, (ii) all members who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section

322B.383, and (iii) all members entitled to dissent if no member vote was required, a notice that contains:

(1) the address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;

(2) a form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

(3) a copy of section 322B.383 and this section and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the membership interests, a dissenting member must demand payment within 30 days after the notice required by paragraph (a) was given, but the dissenter retains all other rights of a member until the proposed action takes effect.

Subd. 5. Payment. (a) After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subdivisions 3 and 4 the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:

(1) the limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date of the limited liability company action, together with the latest available interim financial statements;

(2) an estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and

(3) a copy of section 322B.383 and this section and a brief description of the procedure to be followed in demanding supplemental payment.

(b) The limited liability company may withhold the remittance described in paragraph (a) from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subdivisions 3 and 4, the limited liability company shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

Subd. 6. Supplemental payment. If a dissenter believes that the amount remitted under subdivision 5 is less than the fair value of the membership interests plus interest, the dissenter

may give written notice to the limited liability company of the dissenter's own estimate of the fair value of the membership interests, plus interest, within 30 days after the limited liability company mails the remittance under subdivision 5, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the limited liability company.

Subd. 7. Petition and determination. If the limited liability company receives a demand under subdivision 6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the limited liability company or file in court a petition requesting that the court determine the fair value of the membership interests, plus interest. The petition must be filed in the county in which the registered office of the limited liability company is located, except that a surviving foreign corporation that receives a demand relating to the membership interests of a constituent limited liability company shall file the petition in the county in this state in which the last registered office of the constituent limited liability company was located. The petition must name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the limited liability company. The limited liability company shall, after filing the petition, serve all parties with a summons and copy of the petition under the Rules of Civil Procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the Rules of Civil Procedure apply to this proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court considers proper, to receive evidence on and recommend the amount of the fair value of the membership interests. The court shall determine whether the member or members in question have fully complied with the requirements of this section, and shall determine the fair value of the membership interests, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment in cash for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

Subd. 8. Costs, fees and expenses. (a) The court shall determine the costs and expenses of a proceeding under subdivision 7, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the limited liability company, except that the court may assess part or all of those costs and expenses against

a dissenter whose action in demanding payment under subdivision 6 is found to be arbitrary, vexatious, or not in good faith.

(b) If the court finds that the limited liability company has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court considers equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

(c) The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

Subd. 9. Procedures as to assignees of financial rights. When an assignment of some or all of the financial rights of a membership interest is in effect, then as to that membership interest the provisions of subdivisions 1 to 8 must be followed subject to the following revisions.

(a) All rights to be exercised and actions to be taken by a member under subdivisions 2 to 8 shall be taken by the member and not by any assignee of the member's financial rights. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees.

(b) Instead of remitting a payment under subdivision 5, paragraph (a), the limited liability company shall forward to the dissenter member:

- (i) the materials described in subdivision 5, paragraph (a);
- (ii) an offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and
- (iii) a statement of that allocation.

(c) If the dissenter member accepts the amount of the offer made under paragraph (b) but disputes the allocation, the dissenter shall promptly so notify the limited liability company and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the limited liability company is located, or in the case of a surviving foreign corporation that is complying with this section following a merger or an exchange with a constituent limited liability company the suit must be filed in the county in this state in which the last registered office of the constituent limited liability company was located. The suit must name as parties the member, the limited liability company and all assignees of the member's financial rights. Upon being served with the action, the limited liability

company shall promptly pay into the court the amount offered under paragraph (b) and shall then be dismissed from the action.

(d) If the dissenter considers the amount offered under paragraph (b) inadequate, the dissenter may decline the offer and demand payment under subdivision 6. If the dissenter makes demand, subdivisions 7 and 8 apply, with the court having jurisdiction also to determine the correctness of the allocation.

(e) If the member fails to take action under either paragraph (c) or (d), then:

(i) as to the limited liability company, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under paragraph (b); and

(ii) the limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under paragraph (b).

History: 1992 c 517 art 2 s 51; 1996 c 361 s 28,29; 1997 c 10 art 4 s 15; 1999 c 85 art 2 s 40-43; 2004 c 199 art 14 s 43,44