



Ohio Revised Code

Section 1782.436 Written demand for payment of fair cash value of interests.

Effective: October 12, 2006

Legislation: House Bill 301 - 126th General Assembly

(A) A partner of a domestic limited partnership is entitled to relief as a dissenting partner in respect of the proposals described in section 1782.435 of the Revised Code only in compliance with this section.

(B) If the proposal of merger, consolidation, or conversion is to be submitted to the partners at a meeting, the dissenting partner shall be a partner and a record holder of the partnership interests as to which the dissenting partner seeks relief as of the date fixed for the determination of partners entitled to notice of the meeting, and such interests shall not have been voted in favor of the proposal. Not later than ten days after the date on which the vote on the proposal was taken at the meeting of the partners, the dissenting partner shall deliver to the limited partnership a written demand for payment to the dissenting partner of the fair cash value of the interests as to which the dissenting partner seeks relief that states the dissenting partner's address, the number and class of those interests, and the amount claimed by the dissenting partner as the fair cash value of the interests.

(C) If the proposal of merger, consolidation, or conversion is to be submitted to the partners for their written approval or other action without meeting, the dissenting partner shall be a partner and a record holder of the interests of the partnership as to which the dissenting partner seeks relief as of the date the writing was sent to the partners entitled to act or otherwise approve the proposal, and the dissenting partner shall not have indicated approval of the proposal in the dissenting partner's capacity as a holder of such interests. Not later than fifteen days after the date on which request for approval of the proposal was mailed to the partners, the dissenting partner shall deliver to the partnership a written demand for payment to the dissenting partner of the fair cash value of the interests as to which the dissenting partner seeks relief, which demand shall state the dissenting partner's address, the number and class of such interests, and the amount claimed by the dissenting partner as the fair cash value of those interests.

(D) In the case of a merger or consolidation, a demand served on the constituent domestic limited partnership involved constitutes service on the surviving entity or the new entity, whether the



demand is served before, on, or after the effective date of the merger or consolidation. In the case of a conversion, a demand served on the converting domestic limited partnership constitutes service on the converted entity, whether the demand is served before, on, or after the effective date of the conversion.

(E) If the interests as to which a dissenting partner seeks relief are represented by certificates and if the domestic limited partnership sends to the dissenting partner, at the address specified in the dissenting partner's demand, a request for certificates representing the interests as to which the dissenting partner seeks relief, the dissenting partner, within fifteen days from the date on which the request was sent, shall deliver to the limited partnership the certificates requested so that the limited partnership may endorse on them a legend to the effect that a demand for the fair cash value of such interests has been made. The limited partnership promptly shall return the endorsed certificates to the dissenting partner. The failure of a dissenting partner to deliver such certificates terminates rights as a dissenting partner, at the option of the limited partnership, exercised by written notice sent to the dissenting partner within twenty days after the lapse of the fifteen-day period, unless a court for good cause shown otherwise directs. If interests represented by a certificate on which a legend has been endorsed are transferred, each new certificate issued for them shall bear a similar legend, together with the name of the original dissenting holder of such interests. Upon receiving a demand for payment from a dissenting partner who is a record holder of uncertificated interests, the limited partnership shall make an appropriate notation of the demand for payment in its records. If uncertificated interests for which payment has been demanded are to be transferred, any writing sent to evidence the transfer shall bear the legend required for certificated securities as provided in this division. A transferee of the interests receiving a certificate so endorsed, or of uncertificated securities where such a notation has been made, acquires only rights in the limited partnership as the original partner holding such interests had immediately after the service of a demand for payment of the fair cash value of the interests. A request under this division by the limited partnership is not an admission by it that the holder of the interest is entitled to relief under this section.

(F) Unless the partnership agreement of the constituent domestic limited partnership in which the dissenting partner was a partner provides a reasonable basis for determining and paying the fair cash value of the interests as to which the dissenting partner seeks relief or unless the limited partnership and the dissenting partner have come to an agreement on the fair cash value of the interests as to which the dissenting partner seeks relief, the dissenting partner or the limited partnership, which in



the case of a merger or consolidation may be the surviving or new entity, or in the case of a conversion is the converted entity, within three months after the service of the demand by the dissenting partner, may file a complaint under section 1782.437 of the Revised Code. The complaint shall be filed in the court of common pleas of the county in which the principal office of the limited partnership that issued the interests is located or was located when the proposal was adopted by the partners of the limited partnership. Other dissenting partners, within that three-month period, may join as plaintiffs or may be joined as defendants in any such proceeding, and any two or more such proceedings may be consolidated.

(G) The right and obligation of a dissenting partner to receive fair cash value and to sell such interests as to which the dissenting partner seeks relief and the right and obligation of the domestic limited partnership to purchase such interests and to pay the fair cash value of them terminate if any of the following applies:

- (1) The dissenting partner has not complied with this section, unless the limited partnership waives such failure.
- (2) The limited 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 dissenting partner's demand, with the consent of the limited partnership.
- (4) All of the following apply:
 - (a) The partnership agreement of the constituent domestic limited partnership in which the dissenting partner was a partner does not provide a reasonable basis for determining and paying the dissenting partner the fair cash value of the dissenting partner's interest.
 - (b) The limited partnership and the dissenting partner have not agreed upon the fair cash value of the interest.



(c) Neither the dissenting partner nor the limited partnership has filed or joined in a complaint under division (F) of this section within the period provided in that division.

(H) Unless otherwise provided in the partnership agreement of the constituent domestic limited partnership in which the dissenting partner was a partner, from the time the dissenting partner gives the demand until either the termination of the rights and obligations arising from it or the purchase of the interests by the limited partnership, all other rights accruing from such interests, including voting or distribution rights, are suspended. If, during the suspension, any distribution is paid in money upon interests of a class or any dividend, distribution, or interest is paid in money upon any securities issued in extinguishment of, or in substitution for, such interest, an amount equal to the dividend, distribution, or interest that, except for the suspension, would have been payable upon such interests or securities shall be paid to the holder of record as a credit upon the fair cash value of the interests. If the right to receive fair cash value is terminated other than by the purchase of the interests by the limited partnership, all rights of the dissenting partner shall be restored and all distributions that, except for the suspension, would have been made shall be made to the holder of record of the interests at the time of termination.