WEST VIRGINIA CODE: §31B-7-702

§31B-7-702. Court action to determine fair value of distributional interest.

(a) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(1) Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(2) Specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price and a covenant not to compete or other restriction on a dissociated member; and

(3) Require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(b) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers or managers, if any, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the company or the remaining members that is not terminated by the court.

(c) If the purchase is not completed in accordance with the specified terms, the company is to be dissolved upon application under section 8-801(b)(5)(iv). If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale had not been ordered.

(d) If the court finds that a party to the proceeding acted arbitrarily, vexatiously or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with section 7-701(b).

(e) Interest must be paid on the amount awarded from the fair market value determined under section 7-701(a) to the date of payment.

WV Legislature