WEST VIRGINIA CODE CHAPTER 31b ARTICLE 7

WV Legislature

§31B-7-701. Company purchase of distributional interest.

(a) A limited liability company shall purchase a distributional interest of a:

(1) Member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under section 8-801; or

(2) Member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under section 8-801.

(b) A limited liability company must deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than thirty days after the date determined under subsection (a) of this section. The purchase offer must be accompanied by:

(1) A statement of the company's assets and liabilities as of the date determined under subsection (a) of this section;

(2) The latest available balance sheet and income statement, if any; and

(3) An explanation of how the estimated amount of the payment was calculated.

(c) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under section 8-801(b)(5)(iv).

(d) If an agreement to purchase the distributional interest is not made within one hundred twenty days after the date determined under subsection (a) of this section, the dissociated member, within another one hundred twenty days, may commence a proceeding against the limited liability company to enforce the purchase. The company at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(e) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in section 7-702 together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(f) Damages for wrongful dissociation under section 6-602(b), and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company,

WV Legislature

must be offset against the purchase price.

WV Legislature

§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

§31B-7-703. Dissociated member's power to bind limited liability company.

For two years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under article nine of this chapter, is bound by an act of the dissociated member which would have bound the company under section 3-301 before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated member was then a member;

(2) Did not have notice of the member's dissociation; and

(3) Is not deemed to have had notice under section 7-704.

WV Legislature

§31B-7-704. Statement of dissociation.

(a) A dissociated member or a limited liability company may file in the office of the Secretary of State a statement of dissociation stating the name of the company and that the member is dissociated from the company.

(b) For the purposes of sections 3-301 and 7-703, a person not a member is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

WV Legislature