WEST VIRGINIA CODE CHAPTER 47B ARTICLE 7

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§47B-7-1. Purchase of dissociated partner's interest.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section one, article eight of this chapter, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection (b), section seven, article eight of this chapter if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership being wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under subsection (b), section two, article six of this chapter, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section two, article seven of this chapter.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section must be accompanied by the following:

(1) A statement of partnership assets and liabilities as of the date of dissociation;

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

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

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(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c) of this section, or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to paragraph (ii), subdivision (2), subsection (b), section five, article four of this chapter, to determine the buyout price of that partner's interest, any offsets under subsection (c) of this section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g) of this section.

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§47B-7-2. Dissociated partner's power to bind and liability to partnership.

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under article nine of this chapter, is bound by an act of the dissociated partner which would have bound the partnership under section one, article three of this chapter before dissociation only if at the time of entering into the transaction the other party:

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

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

(3) Is not deemed to have had knowledge under subsection (e), section three, article three or notice under subsection (c), section four, article seven of this chapter.

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) of this section.

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§47B-7-3. Dissociated partner's liability to other persons.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b) of this section.

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is personally liable as a partner to the other party on account of a partnership obligation incurred in connection with a transaction entered into by the partnership, or a surviving partnership under article nine of this chapter, within two years after the partner's dissociation, only if at the time of entering into the transaction the other party:

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

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

(3) Is not deemed to have had knowledge under subsection (e), section three, article three of this chapter or notice under subsection (c), section four of this article; and

(4) The obligation is one on account of which the partner would be personally liable under section six, article three of this chapter if the partner had not dissociated from the partnership.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

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§47B-7-4. Statement of dissociation.

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections (d) and (e), section three, article three of this chapter.

(c) For the purposes of subdivision (3), subsection (a), section two, and subdivision (3), subsection (b) of section three, article seven of this chapter, a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

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§47B-7-5. Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

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