

### **275.337 Derivative actions.**

- (1) A member may maintain a direct action against a limited liability company, another member, or a manager to redress an injury sustained by, or to enforce a duty owed to, the member if the member can prevail without showing an injury or breach of duty to the company.
- (2) A member may maintain a derivative action to redress an injury sustained by or enforce a duty owed to a limited liability company if:
  - (a) The member shall first make a demand on the other members and, if the company is manager-managed, the managers, requesting that they cause the company to bring an action to redress the injury or enforce the right, and they do not bring the action within a reasonable time; or
  - (b) A demand would be futile.
- (3) A derivative action on behalf of a limited liability company shall be maintained only by a person that is a member at the time the action is commenced and who:
  - (a) Was a member when the conduct giving rise to the action occurred; or
  - (b) Acquired the status as a member by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct giving rise to the action occurred.
- (4) In a derivative action on behalf of the limited liability company, the complaint shall state with particularity:
  - (a) The date and content of the member's demand and the response to the demand; or
  - (b) The reason the demand should be excused as futile.
- (5) Except as otherwise provided in subsection (8) of this section:
  - (a) Any proceeds or other benefits of a derivative action on behalf of a limited liability company, whether by judgment, compromise, or settlement, are the property of the company and not of the plaintiff; and
  - (b) If the plaintiff receives any proceeds or other benefits, the plaintiff shall immediately remit them to the company.
- (6) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.
- (7) The proper venue for a direct action under subsection (1) of this section or a derivative action shall be the Circuit Court for the county in which the company maintains its registered office and agent.
- (8) On termination of the proceeding brought pursuant to this section, the court may:
  - (a) Require the plaintiff member to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding to the extent it finds that the proceeding or any portion thereof was commenced without reasonable cause or for an improper purpose; and
  - (b) Require the limited liability company to pay the plaintiff member's reasonable expenses, including counsel fees, incurred in the proceeding to the

extent it finds that the proceeding has resulted in a substantial benefit to the company.

**Effective:** June 24, 2015

**History:** Created 2015 Ky. Acts ch. 34, sec. 50, effective June 24, 2015.