

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) The derivative proceeding shall not be maintained if:
 - (a) It appears that the person commencing the proceeding does not fairly and adequately represent the interests of the members in enforcing the rights of the limited liability company; or
 - (b) The person commencing the proceeding ceases to be a member in the limited liability company.
- (6) Except as otherwise provided in subsection (9) 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.
- (7) A derivative action on behalf of a limited liability company shall not be voluntarily dismissed or settled without the court's approval.
- (8) 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.
- (9) 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 29, 2017

History: Amended 2017 Ky. Acts ch. 193, sec. 15, effective June 29, 2017. -- Created 2015 Ky. Acts ch. 34, sec. 50, effective June 24, 2015.

Legislative Research Commission Note (6/29/2017). Subsection (5) of this statute concerning when a derivative action involving a limited liability company cannot be maintained was amended in 2017 Ky. Acts ch. 188, sec. 2. New language added to subsection (5)(a) of this statute read, in part, "represent the interests of the shareholder in enforcing the rights." In codification, the Reviser of Statutes corrected a manifest clerical or typographical error under the authority of KRS 7.136(1)(h) by changing the word "shareholder" to "members" since limited liability companies do not have shareholders, but rather members, to be consistent with actual practice and language used in Sections 20 and 23 of that Act.