

Testimony from Ken Abel in Support of Senate Bill 888

MARYLAND STATE BAR ASSOCIATION

BUSINESS LAW SECTION

SENATE BILL 0888: BILL EXPLANATION

1. DELETION OF SECTION 4A-211, AMENDMENTS TO SECTIONS 4A-1103, 9A-1203, 10-7A-03 AND 12-1003.

Section 4A-211 provides for the conversion of partnerships into LLCs. In 2013, the Corporations and Associations Article was amended to permit the conversion of most legal entities into different legal entities (e.g., LLC to corporation). As applicable to limited liability company, these provisions are reflected in Sections 4A-1101 to -1107. However, when Sections 4A-1101 to -1107 were adopted in 2013, Section 4A-211, which was adopted prior to 2013 and became superfluous with the adoption of Sections 4A-1101 to -1107, was not deleted from the Maryland Limited Liability Company Act. The proposed amendments would delete 4A-211 from the Maryland Limited Liability Company Act.

Also, several of the conversion related sections themselves included duplicative provisions. The amendments to Sections 4A-1103, 9A-1203, 10-7A-03 and 12-1003 remove the duplicative provisions.

2. AMENDMENTS TO SECTIONS 1-101 (DEFINITIONS OF "PERSONAL REPRESENTATIVE" AND "GUARDIAN"), 4A-601, 4A-604, 4A-902, AND 4A-904

Section 4A-902(b) of the Maryland Limited Liability Company Act (the "Act") currently permits the personal representative or other successor to the last remaining member to become or to appoint, within 90 days after there are no remaining members, a new member, effective as of the date that there were no remaining members, thereby avoiding dissolution. In many cases, often due to oversight, no appointment or designation is made within that 90 days' period when the last remaining member dies or becomes incompetent, thereby resulting in dissolution of the LLC. If that occurs, the affairs of the LLC are to be wound up pursuant to Section 4A-904(a) of the Act.

Section 4A-904(a) of the Act addresses authority to wind up an LLC's affairs. It provides, as a default rule, that "the remaining members of a limited liability company" may wind up the LLC's affairs. Section 4A-904(a) permits the members to agree upon alternative arrangements with regard to winding up, so that, for example, an LLC's operating agreement may provide that if a dissolved LLC has no remaining members, the successor to the last remaining member may wind up the LLC's affairs. However, Section 4A-904(a) does not currently address the question of authority to wind up the dissolved LLC's affairs in the situation where the LLC has no members, and there is no agreed-upon alternative arrangement for winding up in the LLC's operating agreement.

The proposed amendment to Section 4A-902 is intended to minimize the risk that an LLC will inadvertently be dissolved in the first place upon the death or incompetence of the last remaining member. Instead of following the existing statutory regime that, as a default rule, the personal representative or successor to the deceased or incompetent member may elect to become or designate a substitute member within 90 days, it provides that in the event of a member's death or the member being adjudicated incompetent to manage the member's person or property, the personal representative or guardian of the member automatically becomes a new member unless the person renounces that appointment within 90 days or designates someone else to become a new member within that 90-days' period.

Regardless of the change to Section 4A-902, it remains possible that an LLC will dissolve without any members. Under the existing statutory regime, if the LLC has no members, no person has the authority to wind up the LLC's affairs absent a grant in the LLC's operating agreement (which may be silent on the matter). The amendment to Section 4A-904(a) is intended to assure that in such a case, the successor to the last member will have the authority to wind up the LLC's affairs even if not admitted as a member. Similarly, the amendment to Section 4A-904(b) would allow the successor to the last remaining member the authority to petition a court to wind up the LLC's affairs. Currently only a member can petition a court to wind up an LLC's affairs.

Definitions for "personal representative" and "guardian" have also been added. These terms are currently not defined in the Maryland Limited Liability Company Act.

3. AMENDMENTS TO SECTIONS 1-101 (DEFINITIONS OF "SERIES COMPANY" AND "SERIES STATUTE") AND 4A-1002.

Several states, including Delaware, allow for the formation of "series" LLCs. In general, a "series" LLC is a type of limited liability company whereby each "series" of the LLC is intended to be treated as to assets and liabilities separately from each other "series" (e.g., the intent of a "series" LLC may be that an obligation of one series may not be satisfied with the assets of another series).

Our understanding is that series of foreign limited liability companies are currently doing business in Maryland, and we expect this will continue and likely increase. However, the current registration requirements for a foreign limited liability company that will do business in Maryland do not require the limited liability company to indicate whether it is a "series" LLC. The amendment to Section 4A-1002 would require a foreign limited liability company that is registering to do business in Maryland to indicate if it is a "series" LLC.