

Chapter 597

(House Bill 637)

AN ACT concerning

Limited Liability Company Act

FOR the purpose of establishing the policy of certain provisions of law relating to limited liability companies; providing that a certain provision of law that may be changed by the terms of an operating agreement may also be changed by the terms of the articles of organization of a limited liability company; providing that a certain certificate representing the interest of a member of a limited liability company may ~~only~~ be issued in bearer form only under certain circumstances; authorizing an operating agreement to require that an amendment to the agreement be approved by a certain person or on satisfaction of certain conditions; authorizing an operating agreement to establish the rights of certain persons; providing that, if an operating agreement provides the manner in which the agreement may be amended, then the agreement may be amended only in that manner; providing that a certain approval or condition for amending an operating agreement may be waived in certain circumstances; establishing that an amendment to an operating agreement is not required to be in writing, with certain exceptions; clarifying that an operating agreement is not unenforceable on the ground that there is only one party to the agreement; establishing that a limited liability company is not required to execute its operating agreement and is bound by the operating agreement regardless of whether the company has executed the agreement; establishing that each member and assignee of a member is bound by the operating agreement of a limited liability company regardless of whether the member or assignee executed the operating agreement; authorizing an operating agreement to provide that an action that otherwise requires unanimous consent may be taken without the consent of a member or members of the limited liability company; providing that an operating agreement may require the consent of certain persons who are not members of the limited liability company to take an action requiring unanimous consent of the members; ~~authorizing an operating agreement to expand, restrict, or eliminate certain duties; providing that, unless otherwise provided in an operating agreement, certain persons are not liable for breach of fiduciary duty for good faith reliance on the operating agreement; authorizing an operating agreement to provide for the limitation or elimination of certain liabilities;~~ providing that a person may become a member of a limited liability company in accordance with a provision of law that authorizes the personal representative, successor, or assignee of the last remaining member to admit the person as a member of the limited liability company; clarifying that the admission of an assignee as a member of a limited liability company is governed by certain provisions of law relating to

assignments; providing that the admission of a certain personal representative or successor is governed by a certain provision of law; providing that, unless otherwise provided in the operating agreement, an assignment of the interest of a person in a limited liability company entitles the assignee only to the assignor's share of profits, losses, and distributions; providing that, unless otherwise provided in the operating agreement, a member of a limited liability company ceases to be a member on assignment of all of the member's interest; providing that, unless otherwise provided in the operating agreement, a certain encumbrance in or against the interest of a member of a limited liability company does not cause the member to cease being a member or to have the power to exercise certain rights; altering the circumstances under which an assignee may become a member of a limited liability company; authorizing a certain creditor of a certain debtor holding an interest in a limited liability company to apply to a court for a certain order; authorizing a court to take certain actions on the application of a certain creditor in certain circumstances; authorizing, before a certain foreclosure, a certain interest to be redeemed with certain property; providing that this Act does not deprive a debtor of a certain right; providing that this Act provides the exclusive remedy by which a certain person may attach the interest or otherwise affect the rights of a member of a limited liability company; altering the circumstances under which a limited liability company may not be dissolved or required to wind up its affairs after the occurrence of certain conditions; making certain technical, stylistic, and clarifying changes; defining certain terms; and generally relating to limited liability companies.

BY repealing and reenacting, without amendments,
Article – Corporations and Associations
Section 4A-101(a)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Corporations and Associations
Section 4A-101(g), 4A-402, 4A-404, 4A-601, 4A-603, 4A-604, and 4A-902
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY adding to
Article – Corporations and Associations
Section 4A-102, ~~4A-402.1~~, and 4A-607
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing
Article – Corporations and Associations
Section 4A-607

Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Corporations and Associations

4A-101.

(a) In this title the following terms have the meanings indicated.

(g) “Corporation” means a Maryland corporation or a foreign corporation [as defined in § 1-101 of this article].

4A-102.

(A) UNLESS OTHERWISE PROVIDED, THE POLICY OF THIS TITLE IS TO GIVE THE MAXIMUM EFFECT TO THE PRINCIPLES OF FREEDOM OF CONTRACT AND TO THE ENFORCEABILITY OF OPERATING AGREEMENTS.

(B) A PROVISION OF THIS TITLE THAT MAY BE CHANGED BY THE TERMS OF AN OPERATING AGREEMENT ALSO MAY BE CHANGED BY THE TERMS OF THE ARTICLES OF ORGANIZATION.

4A-402.

(a) Except for the requirement set forth in § 4A-404 of this subtitle that certain consents be in writing, members may enter into an operating agreement to regulate or establish any aspect of the affairs of the limited liability company or the relations of its members, including provisions establishing:

(1) The manner in which the business and affairs of the limited liability company shall be managed, controlled, and operated, which may include the granting of exclusive authority to manage, control, and operate the limited liability company to persons who are not members;

(2) The manner in which the members will share the assets and earnings of the limited liability company;

(3) The rights of the members to assign all or a portion of their interests in the limited liability company;

(4) The circumstances in which any assignee of a member’s interest may be admitted as a member of the limited liability company;

(5) (i) The right to have and a procedure for having a member's interest in the limited liability company evidenced by a certificate issued by the limited liability company, **WHICH MAY BE ISSUED ~~ONLY~~ IN BEARER FORM ONLY IF SPECIFICALLY ALLOWED BY THE OPERATING AGREEMENT;**

(ii) The procedure for assignment, pledge, or transfer of any interest represented by the certificate; and

(iii) Any other provisions dealing with the certificate; [and]

(6) The method by which the operating agreement may from time to time be amended, **WHICH MAY INCLUDE A REQUIREMENT THAT AN AMENDMENT BE APPROVED:**

(I) BY A PERSON WHO IS NOT A PARTY TO THE OPERATING AGREEMENT OR WHO IS NOT A MEMBER OF THE LIMITED LIABILITY COMPANY; OR

(II) ON THE SATISFACTION OF OTHER CONDITIONS SPECIFIED IN THE OPERATING AGREEMENT; AND

(7) THE RIGHTS OF ANY PERSON, INCLUDING A PERSON WHO IS NOT A PARTY TO THE OPERATING AGREEMENT OR WHO IS NOT A MEMBER OF THE LIMITED LIABILITY COMPANY, TO THE EXTENT SET FORTH IN THE OPERATING AGREEMENT.

(b) (1) [(i)] The initial operating agreement shall be agreed to by all persons who are then members.

[(ii)] (2) Unless the articles of organization specifically require otherwise, the operating agreement need not be in writing.

[(2)] (C) (1) If the operating agreement does not provide for the method by which the operating agreement may be amended, then all of the members must agree to any amendment of the operating agreement.

(2) **TO THE EXTENT THAT AN OPERATING AGREEMENT PROVIDES FOR THE MANNER IN WHICH THE OPERATING AGREEMENT MAY BE AMENDED, THE OPERATING AGREEMENT MAY BE AMENDED ONLY IN THAT MANNER, PROVIDED THAT THE APPROVAL OF A PERSON MAY BE WAIVED BY THE PERSON AND THAT CONDITIONS MAY BE WAIVED BY A PERSON FOR WHOSE BENEFIT THE CONDITIONS WERE INTENDED.**

(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, OR UNLESS THE OPERATING AGREEMENT SPECIFICALLY REQUIRES OTHERWISE, AN AMENDMENT TO AN OPERATING AGREEMENT IS NOT REQUIRED TO BE IN WRITING.

(II) An amendment to an operating agreement must be evidenced by a writing signed by an authorized person **OF THE LIMITED LIABILITY COMPANY** if:

[(i)] 1. The amendment was adopted without the unanimous consent of **THE** members; or

[(ii)] 2. An interest in the limited liability company has been assigned to a person who has not been admitted as a member.

(4) A copy of any written amendment to the operating agreement shall be delivered to each member who did not consent to the amendment and to each assignee who has not been admitted as a member.

[(c)] (D) (1) A court may enforce an operating agreement by injunction or by granting such other relief which the court in its discretion determines to be fair and appropriate in the circumstances.

(2) As an alternative to injunctive or other equitable relief, when the provisions of § 4A–903 of this title are applicable, the court may order dissolution of the limited liability company.

(3) AN OPERATING AGREEMENT OF A LIMITED LIABILITY COMPANY WITH ONE MEMBER IS NOT UNENFORCEABLE ON THE GROUNDS THAT THERE IS ONLY ONE PERSON WHO IS PARTY TO THE OPERATING AGREEMENT.

(4) A LIMITED LIABILITY COMPANY:

(I) IS NOT REQUIRED TO EXECUTE ITS OPERATING AGREEMENT; AND

(II) IS BOUND BY ITS OPERATING AGREEMENT, REGARDLESS OF WHETHER THE LIMITED LIABILITY COMPANY HAS EXECUTED THE OPERATING AGREEMENT.

(5) AN OPERATING AGREEMENT THAT IS DULY ADOPTED OR AMENDED IS BINDING ON EACH PERSON WHO IS OR BECOMES A MEMBER OF THE LIMITED LIABILITY COMPANY AND EACH PERSON WHO IS OR BECOMES AN ASSIGNEE OF A MEMBER OF THE LIMITED LIABILITY COMPANY, REGARDLESS OF

WHETHER THE PERSON HAS EXECUTED THE OPERATING AGREEMENT OR AMENDMENT.

~~4A-402.1.~~

~~(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, TO THE EXTENT THAT, AT LAW OR IN EQUITY, A MEMBER OR ANOTHER PERSON HAS DUTIES, INCLUDING FIDUCIARY DUTIES, TO A LIMITED LIABILITY COMPANY, ANOTHER MEMBER, OR ANOTHER PERSON THAT IS A PARTY TO OR IS OTHERWISE BOUND BY AN OPERATING AGREEMENT, THE MEMBER'S OR OTHER PERSON'S DUTIES MAY BE EXPANDED, RESTRICTED, OR ELIMINATED BY PROVISIONS IN THE OPERATING AGREEMENT.~~

~~(2) AN OPERATING AGREEMENT MAY NOT ELIMINATE THE IMPLIED CONTRACTUAL COVENANT OF GOOD FAITH AND FAIR DEALING.~~

~~(B) UNLESS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT, A MEMBER OR ANOTHER PERSON IS NOT LIABLE TO A LIMITED LIABILITY COMPANY, ANOTHER MEMBER, OR ANOTHER PERSON THAT IS A PARTY TO OR IS OTHERWISE BOUND BY AN OPERATING AGREEMENT FOR BREACH OF FIDUCIARY DUTY FOR THE MEMBER'S OR OTHER PERSON'S GOOD FAITH RELIANCE ON THE PROVISIONS OF THE OPERATING AGREEMENT.~~

~~(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN OPERATING AGREEMENT MAY PROVIDE FOR THE LIMITATION OR ELIMINATION OF ANY AND ALL LIABILITIES FOR BREACH OF CONTRACT AND BREACH OF DUTIES, INCLUDING FIDUCIARY DUTIES, OF A MEMBER OR ANOTHER PERSON TO A LIMITED LIABILITY COMPANY, ANOTHER MEMBER, OR ANOTHER PERSON THAT IS A PARTY TO OR IS OTHERWISE BOUND BY AN OPERATING AGREEMENT.~~

~~(2) AN OPERATING AGREEMENT MAY NOT LIMIT OR ELIMINATE LIABILITY FOR ANY ACT OR OMISSION THAT CONSTITUTES A BAD FAITH VIOLATION OF THE IMPLIED CONTRACTUAL COVENANT OF GOOD FAITH AND FAIR DEALING.~~

4A-404.

Wherever this title requires the unanimous consent of THE members to allow the limited liability company to act:

- (1) The consent shall be in writing; and

(2) The operating agreement may provide that [the]:

(I) 1. **THE** action may be taken on consent of less than all of the members [or that the];

2. **THE** consent of certain members or classes of members is not required to take the action; **OR**

3. **NO CONSENT OF A MEMBER OR MEMBERS IS REQUIRED TO TAKE THE ACTION; AND**

(II) **THE ACTION MAY BE TAKEN ONLY WITH THE CONSENT OF ONE OR MORE PERSONS WHO IS OR ARE NOT A MEMBER OR MEMBERS OF THE LIMITED LIABILITY COMPANY, IN WHICH CASE THE CONSENT OF THAT PERSON OR THOSE PERSONS SHALL BE REQUIRED IN ORDER FOR THE LIMITED LIABILITY COMPANY TO TAKE THE ACTION.**

4A-601.

(a) A person becomes a member of a limited liability company **AT**:

(1) [At the] **THE** time the limited liability company is formed; [or]

(2) [At any] **A** later time specified in the operating agreement; **OR**

(3) **THE TIME SPECIFIED IN § 4A-902(B)(1) OF THIS TITLE.**

(b) After the formation of a limited liability company, a person may be admitted as a member:

(1) In the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the unanimous consent of the members; [or]

(2) In the case of an assignee of an interest of a member [who has the power], **ONLY** as provided in § 4A-604 of this subtitle [to grant the assignee the right to become a member, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of that power]; **OR**

(3) **IN THE CASE OF A PERSONAL REPRESENTATIVE OR SUCCESSOR TO THE LAST REMAINING MEMBER WHO IS NOT AN ASSIGNEE OF THE LAST REMAINING MEMBER, AS PROVIDED IN § 4A-902(B)(1) OF THIS TITLE.**

(c) Unless otherwise provided in the articles of organization or the operating agreement of a limited liability company, a person may be admitted as a member of a limited liability company and may be the sole member of a limited liability company without:

- (1) Making a contribution to the limited liability company;
- (2) Being obligated to make a contribution to the limited liability company; or
- (3) Acquiring an interest in the limited liability company.

4A-603.

(a) Unless otherwise provided in the operating agreement, an interest in a limited liability company is assignable in whole or in part.

(b) An assignment of an interest in a limited liability company does not:

- (1) Dissolve the limited liability company; or
- (2) Unless the operating agreement provides otherwise, entitle the assignee to:
 - (i) Become a member; or
 - (ii) Exercise any rights of a member.

(c) Unless otherwise provided in the operating agreement, an assignment entitles the assignee to receive, to the extent assigned, only the **ASSIGNOR'S SHARE OF PROFITS, LOSSES, AND** distributions [to which the assignor would be entitled].

(D) UNLESS OTHERWISE PROVIDED IN THE OPERATING AGREEMENT, IF AN ASSIGNEE OF AN INTEREST IN A LIMITED LIABILITY COMPANY BECOMES A MEMBER OF THE LIMITED LIABILITY COMPANY, THE ASSIGNOR IS NOT RELEASED FROM THE ASSIGNOR'S LIABILITY UNDER § 4A-502 OF THIS TITLE TO THE LIMITED LIABILITY COMPANY.

(E) UNLESS OTHERWISE PROVIDED IN THE OPERATING AGREEMENT, ON ASSIGNMENT UNDER THIS SECTION OF ALL OF A MEMBER'S INTEREST IN A LIMITED LIABILITY COMPANY, THE MEMBER CEASES TO BE A MEMBER OF THE LIMITED LIABILITY COMPANY AND TO HAVE THE POWER TO EXERCISE ANY RIGHT OR POWER OF A MEMBER.

(F) UNLESS OTHERWISE PROVIDED IN THE OPERATING AGREEMENT, THE PLEDGE OR GRANT OF A SECURITY INTEREST, LIEN, OR OTHER ENCUMBRANCE IN OR AGAINST ALL OR A PART OF AN INTEREST OF A MEMBER MAY NOT CAUSE THE MEMBER TO CEASE TO BE A MEMBER OR TO HAVE THE POWER TO EXERCISE ANY RIGHT OR POWER OF A MEMBER.

4A-604.

(a) An assignee of an interest in a limited liability company may become a member [if and to the extent that] **OF THE LIMITED LIABILITY COMPANY UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:**

(1) [The assignor gives the assignee that right under authority described in the operating agreement] **IN ACCORDANCE WITH THE TERMS OF THE OPERATING AGREEMENT PROVIDING FOR THE ADMISSION OF A MEMBER;**

(2) [The members unanimously] **BY THE UNANIMOUS** consent **OF THE MEMBERS;** or

(3) [Except as otherwise provided in the operating agreement, if the limited liability company has no members, all of the assignees of members may elect to become members] **IF THERE ARE NO REMAINING MEMBERS OF THE LIMITED LIABILITY COMPANY AT THE TIME THE ASSIGNEE OBTAINS THE INTEREST, ON TERMS THAT THE ASSIGNEE MAY DETERMINE IN ACCORDANCE WITH § 4A-902(B)(1) OF THIS TITLE.**

(b) An assignee who becomes a member:

(1) Has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this title; and

(2) Is liable for any obligations of his assignor to make capital contributions.

[(c) If an assignee of an interest in a limited liability company becomes a member, the assignor is not released from the assignor's liability under § 4A-502 of this title to the limited liability company.]

[4A-607.

(a) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the interest of the member in the limited liability company with the payment of the unsatisfied amount of the judgment with interest.

(b) To the extent so charged, the judgment creditor shall have only the rights of an assignee of the member's interest in the limited liability company.

(c) This title does not deprive a member of the benefit of any exemption laws applicable to the member's interest in the limited liability company.]

4A-607.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CREDITOR" MEANS A PERSON FOR WHOM A COURT MAY ISSUE AN ATTACHMENT UNDER TITLE 3, SUBTITLE 3 OF THE COURTS ARTICLE.

(3) "DEBTOR" MEANS A PERSON WHOSE PROPERTY OR CREDITS ARE SUBJECT TO ATTACHMENT UNDER TITLE 3, SUBTITLE 3 OF THE COURTS ARTICLE.

(B) (1) ON APPLICATION BY A CREDITOR OF A DEBTOR HOLDING AN INTEREST IN A LIMITED LIABILITY COMPANY, A COURT HAVING JURISDICTION MAY CHARGE THE INTEREST OF THE DEBTOR.

(2) THE COURT MAY APPOINT A RECEIVER FOR THE DISTRIBUTIONS DUE OR TO BECOME DUE TO THE DEBTOR WITH RESPECT TO THE LIMITED LIABILITY COMPANY AND MAKE ALL OTHER ORDERS, DIRECTIONS, ACCOUNTS, AND INQUIRIES THAT THE DEBTOR WOULD HAVE BEEN ENTITLED TO MAKE OR THAT THE CIRCUMSTANCES OF THE CASE MAY REQUIRE.

(C) (1) A CHARGING ORDER CONSTITUTES A LIEN ON THE INTEREST OF THE DEBTOR IN THE LIMITED LIABILITY COMPANY.

(2) (I) THE COURT MAY ORDER FORECLOSURE OF THE INTEREST SUBJECT TO THE CHARGING ORDER AT ANY TIME.

(II) THE PURCHASER AT THE FORECLOSURE SALE HAS ONLY THE RIGHTS OF AN ASSIGNEE AS PROVIDED IN §§ 4A-603 AND 4A-604 OF THIS SUBTITLE.

(D) BEFORE A FORECLOSURE UNDER THIS SECTION, AN INTEREST CHARGED MAY BE REDEEMED WITH PROPERTY:

(1) OTHER THAN PROPERTY OF THE LIMITED LIABILITY COMPANY, BY THE DEBTOR;

(2) OTHER THAN PROPERTY OF THE LIMITED LIABILITY COMPANY, BY ONE OR MORE OF THE MEMBERS OTHER THAN THE DEBTOR; OR

(3) OF THE LIMITED LIABILITY COMPANY, WITH THE CONSENT OF ALL OF THE MEMBERS WHOSE INTERESTS ARE NOT SO CHARGED.

(E) THIS TITLE DOES NOT DEPRIVE A DEBTOR OF A RIGHT UNDER EXEMPTION LAWS WITH RESPECT TO THE INTEREST OF THE DEBTOR IN THE LIMITED LIABILITY COMPANY.

(F) THIS SECTION PROVIDES THE EXCLUSIVE REMEDY BY WHICH A CREDITOR OR A PERSON HOLDING AN INTEREST IN A LIMITED LIABILITY COMPANY MAY ATTACH THE INTEREST OR OTHERWISE AFFECT THE RIGHTS OF A MEMBER IN THE LIMITED LIABILITY COMPANY.

4A-902.

(a) A limited liability company is dissolved and shall commence the winding up of its affairs on the first to occur of the following:

(1) At the time or on the happening of the events specified in the articles of organization or the operating agreement;

(2) At the time specified by the unanimous consent of the members;

(3) At the time of the entry of a decree of judicial dissolution under § 4A-903 of this subtitle; or

(4) Except as otherwise provided in the operating agreement or as provided in subsection (b) of this section, at the time the limited liability company has had no members for a period of 90 consecutive days.

(b) A limited liability company may not be dissolved or required to wind up its affairs if within 90 days after there are no remaining members of the limited liability company or within the period of time provided in the operating agreement:

(1) The last remaining member's personal representative [or], successor, **OR ASSIGNEE** agrees in writing to continue the limited liability company and to be admitted as a member or to appoint a designee as a member to be effective as of the time the last remaining member ceased to be a member; or

(2) A member is admitted to the limited liability company in the manner set forth in the operating agreement to be effective as of the time the last remaining member ceased to be a member under a provision in the operating

agreement that provides for the admission of a member after there are no remaining members.

(c) An operating agreement may provide that the last remaining member's personal representative [or], successor, **OR ASSIGNEE** shall be obligated to agree in writing to continue the limited liability company and to be admitted as a member or to appoint a designee as a member to be effective as of the time the last remaining member ceased to be a member.

(d) Except as otherwise provided in the operating agreement and subject to the provisions of subsection (b) of this section, the termination of a person's membership may not cause a limited liability company to be dissolved or to wind up its affairs and the limited liability company shall continue in existence following the termination of a person's membership.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, May 19, 2011.