

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 888

(Senator West)

Judicial Proceedings

Economic Matters

Corporations and Associations - Limited Liability Companies and Partnerships -
Series - Conversion

This bill alters the process for dissolution of a limited liability company (LLC); alters the registration process for a foreign LLC that is a series company; repeals duplicative provisions, including those relating to the conversion of partnerships into LLCs; and defines specified terms.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect governmental operations or finances.

Local Effect: The bill is not anticipated to materially affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Dissolution of Limited Liability Company

In the event of the death of the last member of an LLC or adjudication of the last member of an LLC as incompetent to manage the member's person or property, the personal representative or guardian of that member must automatically be admitted as a new member of the LLC, effective immediately on the death or adjudication, unless within

90 days after the personal representative or guardian first has knowledge of the event, the personal representative or guardian:

- renounces the admission in writing; or
- designates a person to become a new member, and the designee accepts the designee's admission in writing or by electronic communication to the personal representative or guardian.

An operating agreement may provide that the last remaining member's guardian must be obligated to agree in writing to continue the LLC and to be admitted as a member or to appoint a designee as a member to be effective at the same time as the last remaining member ceased to be a member.

In addition, if an LLC has no remaining members, the personal representative, guardian, or other successor to the last remaining member of the LLC may wind up the affairs of the LLC. On cause shown after dissolution of an LLC with no remaining members, the circuit court of the county in which the principal office of the LLC is located may wind up the affairs of the LLC on application of the personal representative, guardian, or other successor to the last remaining member of the LLC.

Limited Liability Company as a Series Company

Before doing any interstate, intrastate, or foreign business in the State, a foreign LLC that is a series company must submit to the State Department of Assessments and Taxation (SDAT) an application for registration as a foreign LLC executed by an authorized person and setting forth, among other things, a statement that the company is a series company.

Defined terms

“Guardian” means a person appointed by a court as guardian of the person or property or both of a disabled person.

“Personal representative” includes an administrator and an executor.

“Series company” means a foreign LLC that has been established and continues to operate under a series statute.

“Series statute” means the statutory provisions of a foreign jurisdiction that:

- allow the establishment of designated series, each of which is liable only for the debts, liabilities, obligations, and expenses of that series and is not liable for the

- debts, liabilities, obligations, and expenses of the foreign LLC generally or of any other series of the foreign LLC; or
- provide that the debts, liabilities, obligations, and expenses incurred or contracted for with respect to the foreign LLC generally or any other series of the foreign LLC are enforceable only against the assets of the foreign LLC generally or the other series of the foreign LLC.

Current Law:

Articles of Organization for an LLC

The articles of organization for an LLC must include (1) the name of the LLC; (2) the address of the principal office and the name and address of the resident agent; and (3) any other provision that is elected for inclusion by the members. Additionally, a foreign LLC must submit to SDAT an application for registration containing the name and address of its resident agent in the State, among other information.

Conversion of a Partnership to an LLC and Other Conversions

A partnership may convert to an LLC by filing articles of organization that meet specified requirements and include specified information. The terms and conditions of a conversion of a general or limited partnership to an LLC must be approved by the partners in the manner provided in the partnership agreement for amendments to the agreement, or if no such provision exists, by unanimous agreement of the partners. A conversion may be abandoned by (1) a vote of the partners in the manner provided in the partnership agreement for amendments to the agreement or (2) unanimous agreement of the partners, if no such provision is made in the partnership agreement.

Chapters 527 and 528 of 2013 established procedures for the conversion of an entity to an “other entity” that include approving the conversion in a specified manner and filing for record with SDAT properly executed articles of conversion. “Other entity” may mean, among other things, a foreign corporation, a domestic LLC, a foreign LLC, a partnership, a limited partnership, a foreign limited partnership, a business trust, or another form of unincorporated business formed under state or federal law or the laws of a foreign country. The provisions include the conversion of a partnership to an LLC.

The effects of a conversion include the following:

- the converting entity ceases to exist and continues to exist as the other entity, and the other entity is deemed to be the same entity as the converting entity;
- all assets of the converting entity vest in and devolve on the other entity without further act or deed and are the property of the other entity;

- any licenses, permits, and registrations granted to the converting entity before the conversion are not affected, invalidated, terminated, suspended, or nullified;
- the other entity is liable for all the converting entity's debts and obligations;
- any existing claim, action, or proceeding pending by or against the converting entity may be prosecuted to judgment as if the conversion had not taken place, or, on motion of the other entity or any party, the other entity may be substituted as a party and a judgment against the converting entity constitutes a lien on the other entity's property;
- the rights of creditors or any liens on the property of the converting entity are not impaired;
- subject to the treatment of the converting entity's ownership interest under the articles of conversion and the rights of an objecting stockholder, member, shareholder, partner, or owner, the ownership interests of the converting entity's stockholders, members, shareholders, partners, or owners cease to exist and continue to exist as ownership interests in the other entity;
- any debts, obligations, or liabilities of the converting entity or the personal liability of any person incurred before the conversion are not affected; and
- unless otherwise provided in the articles of conversion, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion does not constitute dissolution or a transfer of assets or liabilities of the converting entity.

Articles of conversion are effective on the later of the time SDAT accepts the articles for record or the future effective time of the articles as set forth in the articles accepted by SDAT.

The effects of the conversion commence once the conversion is completed.

Dissolution and Termination of an LLC

The dissolution of an LLC is a change in the relationship between the members; however, dissolution is not the winding up or termination of the LLC. An LLC is not terminated upon dissolution and continues until it is properly terminated in accordance with the law.

Dissolution of an LLC may occur upon (1) events specified in the articles of organization or operating agreement; (2) unanimous consent of the members; (3) a decree of judicial dissolution; or (4) the LLC having no members for a period of 90 consecutive days.

A circuit court may, upon application by or on behalf of a member, decree the dissolution of an LLC if it is not reasonably practicable to carry on the business in conformity with the articles of organization or the operating agreement.

Unless otherwise agreed, the remaining members of an LLC may wind up the affairs of the LLC. A circuit court may, on cause shown after dissolution, wind up the affairs of the LLC upon application of any member.

Upon the winding up and termination of an LLC, the assets must be distributed to the creditors and members of the LLC. The remaining members may also file articles of dissolution with SDAT at any time after dissolution but before termination.

An LLC is terminated on the date SDAT accepts the articles of cancellation or the effective date of the articles of cancellation, whichever is later. However, the LLC continues to exist for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing assets, and doing all other acts for purposes of liquidation and winding up its affairs.

Background: The bill generally implements recommendations of the Maryland State Bar Association, Committee on Unincorporated Associations.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 983 (Delegate Dumais) - Economic Matters.

Information Source(s): State Department of Assessments and Taxation; Department of Legislative Services

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