

SENATE BILL 261

C1, N2

2lr1767
CF HB 342

By: **Senator West**

Introduced and read first time: January 14, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 13, 2022

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Associations – Limited Liability Companies and Partnerships**
3 **– Operating Agreements and Partnership Agreements**

4 FOR the purpose of authorizing the operating agreement of a limited liability company to
5 provide for the transfer or assignment of an interest in the company to a certain
6 person on the occurrence of certain events regardless of whether the person is a
7 member; authorizing a member of a limited liability company to retain the member's
8 noneconomic interest in the company on assignment of all of the member's economic
9 interest in the company under certain circumstances; authorizing a partnership
10 agreement to provide for the transfer or assignment of an interest in the partnership
11 to a certain person on the occurrence of certain events regardless of whether the
12 person is a partner; establishing that transfers on death pursuant to an operating
13 agreement or a partnership agreement are not testamentary; and generally relating
14 to operating agreements of limited liability companies and partnership agreements.

15 BY repealing and reenacting, without amendments,
16 Article – Corporations and Associations
17 Section 4A–101(a), 4A–606, 9A–601, and 10–402
18 Annotated Code of Maryland
19 (2014 Replacement Volume and 2021 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Corporations and Associations
22 Section 4A–101(q), 4A–203, 4A–402(a), 4A–603(d), 9A–503, and 10–702
23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2014 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 1–401
Annotated Code of Maryland
(2017 Replacement Volume and 2021 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.

(q) “Operating agreement” means the agreement of the members and any amendments thereto[, as to the affairs of a limited liability company and the conduct of its business] **CONCERNING THE MATTERS DESCRIBED IN § 4A–402(A) OF THIS TITLE.**

4A–203.

Unless otherwise provided by law or unless otherwise agreed, a limited liability company has the general powers, whether or not set forth in its articles of organization or operating agreement, to:

(1) Have perpetual existence, although existence may be limited to a specified period of time if the limitation is set forth in its articles of organization;

(2) Sue, be sued, complain, and defend in all courts;

(3) Transact its business, carry on its operations, and have and exercise the powers granted by this article in any state and in any foreign country;

(4) Make contracts and guarantees, incur liabilities, and borrow money;

(5) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

(6) Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(7) Issue notes, bonds, and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets;

1 (8) Purchase, take, receive, subscribe for or otherwise acquire, own, hold,
2 vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use
3 and deal in and with stock or other interests in and obligations of other corporations,
4 associations, general or limited partnerships, limited liability companies, foreign limited
5 liability companies, business trusts, and individuals;

6 (9) Invest its surplus funds, lend money in any manner which may be
7 appropriate to enable it to carry on the operations or fulfill the purposes of the limited
8 liability company, and take and hold real property and personal property as security for
9 the payment of funds so loaned or invested;

10 (10) Render professional services within or without this State;

11 (11) Elect or appoint agents and define their duties and fix their
12 compensation;

13 (12) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise
14 dispose of all or any part of its property and assets;

15 (13) Be a promoter, stockholder, partner, member, associate, or agent of any
16 corporation, partnership, limited liability company, foreign limited liability company, joint
17 venture, trust, or other enterprise;

18 (14) Indemnify and hold harmless any member, agent, or employee from and
19 against any and all claims and demands, except in the case of action or failure to act by the
20 member, agent, or employee which constitutes willful misconduct or recklessness, and
21 subject to the standards and restrictions, if any, set forth in the articles of organization or
22 operating agreement;

23 (15) Make and alter operating agreements[, not inconsistent with its
24 articles of organization or with the laws of this State, for the administration and regulation
25 of the affairs of the limited liability company] **AS PROVIDED IN § 4A-402(A) OF THIS**
26 **TITLE;**

27 (16) Cease its activities and dissolve; and

28 (17) Do every other act not inconsistent with law which is appropriate to
29 promote and attain the purposes of the limited liability company.

30 4A-402.

31 (a) Except for the requirement set forth in § 4A-404 of this subtitle that certain
32 consents be in writing, members may enter into an operating agreement **NOT**
33 **INCONSISTENT WITH THE ARTICLES OF ORGANIZATION** to regulate or establish any
34 aspect of the affairs of the limited liability company, **THE CONDUCT OF ITS BUSINESS**, or
35 the relations of its members, including provisions establishing:

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

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

7 (3) The rights of the members to assign all or a portion of their membership
8 interest;

9 (4) The circumstances in which a person may be admitted as a member of
10 the limited liability company;

11 (5) (i) The right to have and a procedure for having a member's
12 membership interest evidenced by a certificate issued by the limited liability company,
13 which may be issued in bearer form only if specifically allowed by the operating agreement;

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

16 (iii) Any other provisions dealing with the certificate;

17 (6) The method by which the operating agreement may from time to time
18 be amended, which may include a requirement that an amendment be approved:

19 (i) By a person who is not a party to the operating agreement or who
20 is not a member of the limited liability company; or

21 (ii) On the satisfaction of other conditions specified in the operating
22 agreement;

23 (7) The rights of any person, including a person who is not a party to the
24 operating agreement or who is not a member of the limited liability company, to the extent
25 set forth in the operating agreement; **[or]**

26 (8) Procedures relating to:

27 (i) Notice of the time, place, or purpose of any meeting at which any
28 matter is to be voted on by members;

29 (ii) Waiver of notice of meetings;

30 (iii) Action by consent without a meeting;

31 (iv) The establishment of a record date;

- 1 (v) Quorum requirements;
- 2 (vi) Voting in person or by proxy;
- 3 (vii) Voting rights of various classes of members; or
- 4 (viii) Any other matter with respect to the exercise of voting rights by
- 5 members; **OR**

6 **(9) THAT A MEMBERSHIP INTEREST, AN ECONOMIC INTEREST, OR A**

7 **NONECONOMIC INTEREST MAY OR SHALL BE TRANSFERRED OR ASSIGNED IN WHOLE**

8 **OR IN PART TO ONE OR MORE PERSONS, INCLUDING ON THE OCCURRENCE OF ANY**

9 **OF THE EVENTS DESCRIBED IN § 4A-606 OF THIS TITLE, REGARDLESS OF WHETHER**

10 **THE PERSONS TO WHOM THE INTEREST IS TRANSFERRED OR ASSIGNED ARE**

11 **MEMBERS.**

12 4A-603.

13 (d) **[On] UNLESS OTHERWISE AGREED, ON** assignment of all of a member's

14 economic interest in a limited liability company, the member ceases to be a member of the

15 limited liability company and forfeits the member's noneconomic interest in the limited

16 liability company.

17 4A-606.

18 Unless otherwise agreed, a person ceases to be a member of a limited liability

19 company upon the occurrence of any of the following events:

20 (1) The person withdraws from the limited liability company as authorized

21 by § 4A-605 of this subtitle;

22 (2) The person is removed as a member in accordance with the operating

23 agreement;

24 (3) The person:

25 (i) Makes an assignment for the benefit of creditors;

26 (ii) Institutes a voluntary proceeding with respect to the person

27 under the federal bankruptcy code;

28 (iii) Is adjudged bankrupt or insolvent or has entered against the

29 person an order for relief in any bankruptcy or insolvency proceeding;

1 (iv) Files a petition or answer seeking for that person any
2 reorganization, arrangement, composition, readjustment, liquidation, dissolution, or
3 similar relief under any statute, law, or regulation;

4 (v) Seeks, consents to, or acquiesces in the appointment of a trustee
5 for, receiver for, or liquidation of the member or of all or any substantial part of the person's
6 properties; or

7 (vi) Files an answer or other pleading admitting or failing to contest
8 the material allegations of a petition filed against the person in any proceeding described
9 in this item;

10 (4) The continuation of any proceeding against the person seeking
11 reorganization, arrangement, composition, readjustment, liquidation, dissolution, or
12 similar relief under any statute, law, or regulation, for 120 days after the commencement
13 thereof, or the appointment of a trustee, receiver, or liquidator for the members or all or
14 any substantial part of the person's properties without the person's agreement or
15 acquiescence, which appointment is not vacated or stayed for 120 days or, if the
16 appointment is stayed, for 120 days after the expiration of the stay during which period the
17 appointment is not vacated;

18 (5) In the case of a member who is an individual, the individual's:

19 (i) Death; or

20 (ii) Adjudication by a court of competent jurisdiction as incompetent
21 to manage the individual's person or property;

22 (6) In the case of a member who is acting as a member by virtue of being a
23 trustee of a trust, the termination of the trust;

24 (7) In the case of a member that is a partnership or another limited liability
25 company, the dissolution and commencement of winding up of the partnership or limited
26 liability company;

27 (8) In the case of a member that is a corporation, the dissolution of the
28 corporation or the revocation of its charter;

29 (9) In the case of a member that is an estate, the distribution by the
30 fiduciary of the estate's entire economic interest in the limited liability company; or

31 (10) On assignment of all of a person's economic interest in the limited
32 liability company as provided in § 4A-603(d) of this subtitle.

33 9A-503.

1 (a) A transfer, in whole or in part, of a partner's transferable interest in the
2 partnership:

3 (1) Is permissible;

4 (2) Does not by itself cause the partner's dissociation or a dissolution and
5 winding up of the partnership business; and

6 (3) Does not, as against the other partners or the partnership, entitle the
7 transferee, during the continuance of the partnership, to participate in the management or
8 conduct of the partnership business, to require access to information concerning
9 partnership transactions, or to inspect or copy the partnership books or records.

10 (b) A transferee of a partner's transferable interest in the partnership has a right:

11 (1) To receive, in accordance with the transfer, distributions to which the
12 transferor would otherwise be entitled;

13 (2) To receive upon the dissolution and winding up of the partnership
14 business, in accordance with the transfer, the net amount otherwise distributable to the
15 transferor; and

16 (3) To seek under § 9A-801(6) of this title a judicial determination that it
17 is equitable to wind up the partnership business.

18 (c) In a dissolution and winding up, a transferee is entitled to an account of
19 partnership transactions only from the date of the latest account agreed to by all of the
20 partners.

21 (d) Upon transfer, the transferor retains the rights and duties of a partner other
22 than the interest in distributions transferred.

23 (e) A partnership need not give effect to a transferee's rights under this section
24 until it has notice of the transfer.

25 (f) A transfer of a partner's transferable interest in the partnership in violation
26 of a restriction on transfer contained in the partnership agreement is ineffective as to a
27 person having notice of the restriction at the time of transfer.

28 **(G) A PARTNERSHIP AGREEMENT MAY PROVIDE THAT A PARTNER'S**
29 **TRANSFERABLE INTEREST IN THE PARTNERSHIP MAY OR SHALL BE TRANSFERRED**
30 **OR ASSIGNED IN WHOLE OR IN PART TO ONE OR MORE PERSONS, INCLUDING ON THE**
31 **OCCURRENCE OF ANY OF THE EVENTS DESCRIBED IN § 9A-601 OF THIS TITLE,**
32 **REGARDLESS OF WHETHER THE PERSONS TO WHOM THE INTEREST IS**
33 **TRANSFERRED OR ASSIGNED ARE PARTNERS.**

1 9A-601.

2 A partner is dissociated from a partnership upon the occurrence of any of the
3 following events:

4 (1) The partnership's having notice of the partner's express will to
5 withdraw as a partner or on a later date specified by the partner;

6 (2) An event agreed to in the partnership agreement as causing the
7 partner's dissociation;

8 (3) The partner's expulsion pursuant to the partnership agreement;

9 (4) The partner's expulsion by the unanimous vote of the other partners if:

10 (i) It is unlawful to carry on the partnership business with that
11 partner;

12 (ii) There has been a transfer of all or substantially all of that
13 partner's transferable interest in the partnership, other than a transfer for security
14 purposes, or a court order charging the partner's interest, which has not been foreclosed;

15 (iii) Within 90 days after the partnership notifies a corporate partner
16 that it will be expelled because it has filed articles of dissolution or the equivalent, its
17 charter has been revoked, or its right to conduct business has been suspended by the
18 jurisdiction of its incorporation, there is no revocation of the articles of dissolution or no
19 reinstatement of its charter or its right to conduct business; or

20 (iv) A partnership that is a partner has been dissolved and its
21 business is being wound up;

22 (5) On application by the partnership or another partner, the partner's
23 expulsion by judicial determination because:

24 (i) The partner engaged in wrongful conduct that adversely and
25 materially affected the partnership business;

26 (ii) The partner willfully or persistently committed a material
27 breach of the partnership agreement or of a duty owed to the partnership or the other
28 partners under § 9A-404 of this title; or

29 (iii) The partner engaged in conduct relating to the partnership
30 business which makes it not reasonably practicable to carry on the business in partnership
31 with the partner;

32 (6) The partner's:

- 1 (i) Becoming a debtor in bankruptcy;
- 2 (ii) Executing an assignment for the benefit of creditors;
- 3 (iii) Seeking, consenting to, or acquiescing in the appointment of a
4 trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's
5 property; or
- 6 (iv) Failing, within 90 days after the appointment, to have vacated or
7 stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or
8 substantially all of the partner's property obtained without the partner's consent or
9 acquiescence, or failing within 90 days after the expiration of a stay to have the
10 appointment vacated;
- 11 (7) In the case of a partner who is an individual:
- 12 (i) The partner's death;
- 13 (ii) The appointment of a guardian or general conservator for the
14 partner; or
- 15 (iii) A judicial determination that the partner has otherwise become
16 incapable of performing the partner's duties under the partnership agreement;
- 17 (8) In the case of a partner that is a trust or is acting as a partner by virtue
18 of being a trustee of a trust, distribution of the trust's entire transferable interest in the
19 partnership, but not merely by reason of the substitution of a successor trustee;
- 20 (9) In the case of a partner that is an estate or is acting as a partner by
21 virtue of being a personal representative of an estate, distribution of the estate's entire
22 transferable interest in the partnership, but not merely by reason of the substitution of a
23 successor personal representative; or
- 24 (10) Termination of a partner who is not an individual, partnership,
25 corporation, trust, or estate.

26 10-402.

27 A person ceases to be a general partner of a limited partnership upon the happening
28 of any of the following events:

- 29 (1) The person's withdrawal from the limited partnership as provided in §
30 10-602 of this title;
- 31 (2) The person's removal as a general partner in accordance with the
32 partnership agreement;

1 (3) Unless otherwise provided in the partnership agreement or with the
2 consent of all partners, the person's:

3 (i) Making an assignment for the benefit of creditors;

4 (ii) Filing a voluntary petition in bankruptcy;

5 (iii) Being adjudged bankrupt or insolvent or having entered against
6 him an order of relief in any bankruptcy or insolvency proceeding;

7 (iv) Filing a petition or answer seeking for himself any
8 reorganization, arrangement, composition, readjustment, liquidation, dissolution, or
9 similar relief under any statute, law, or regulation;

10 (v) Filing an answer or other pleading admitting or failing to contest
11 the material allegations of a petition filed against him in any proceeding of this nature; or

12 (vi) Seeking, consenting to, or acquiescing in, the appointment of a
13 trustee, receiver, or liquidation of the general partner or of all or any substantial part of
14 his properties;

15 (4) Unless otherwise provided in the partnership agreement or with the
16 consent of all partners, the continuation of any proceeding against him seeking
17 reorganization, arrangement, composition, readjustment, liquidation, dissolution, or
18 similar relief under any statute, law, or regulation, for 120 days after the commencement
19 thereof or the appointment of a trustee, receiver, or liquidator for the general partner or all
20 or any substantial part of his properties without his agreement or acquiescence, which
21 appointment is not vacated or stayed for 120 days or, if the appointment is stayed, for 120
22 days after the expiration of the stay during which period the appointment is not vacated;

23 (5) In the case of a general partner who is an individual, the individual's:

24 (i) Death; or

25 (ii) Adjudication by a court of competent jurisdiction as incompetent
26 to manage his person or his property;

27 (6) In the case of a general partner who is acting as a general partner by
28 virtue of being a trustee of a trust, the termination of the trust (but not merely the
29 substitution of a new trustee);

30 (7) In the case of a general partner that is a separate partnership or limited
31 partnership, the dissolution and commencement of winding up of the separate partnership
32 or limited partnership;

33 (8) In the case of a general partner that is a corporation, the dissolution of
34 the corporation or the revocation of its charter; or

1 (9) In the case of a general partner that is an estate, the distribution by the
2 fiduciary of the estate's entire interest in the partnership.

3 10-702.

4 (A) Unless otherwise provided in the partnership agreement, a partnership
5 interest is assignable in whole or in part.

6 (B) An assignment of a partnership interest does not dissolve a limited
7 partnership or entitle the assignee to become a partner or, unless otherwise provided in the
8 partnership agreement, exercise any rights of a partner.

9 (C) Unless otherwise provided in the partnership agreement, an assignment
10 entitles the assignee to receive, to the extent assigned, only the distributions to which the
11 assignor would be entitled.

12 (D) **A PARTNERSHIP AGREEMENT MAY PROVIDE THAT A ~~PARTNER'S~~
13 ~~TRANSFERABLE PARTNERSHIP INTEREST IN THE PARTNERSHIP~~ MAY OR SHALL BE
14 TRANSFERRED OR ASSIGNED IN WHOLE OR IN PART TO ONE OR MORE PERSONS,
15 INCLUDING ON THE OCCURRENCE OF ANY OF THE EVENTS DESCRIBED IN § 10-402
16 OF THIS TITLE, REGARDLESS OF WHETHER THE PERSONS TO WHOM THE INTEREST
17 IS TRANSFERRED OR ASSIGNED ARE PARTNERS.**

18 Article – Estates and Trusts

19 1-401.

20 (a) A provision in an account agreement, as defined in § 1-204(b)(2) of the
21 Financial Institutions Article, for a transfer on death is nontestamentary and shall be
22 effective according to the provisions of § 1-204 of the Financial Institutions Article.

23 (b) Transfers pursuant to § 1-204 of the Financial Institutions Article are
24 effective in the form and manner prescribed by that section and are not to be considered
25 testamentary.

26 (C) **TRANSFERS ON DEATH PURSUANT TO AN OPERATING AGREEMENT OF A
27 LIMITED LIABILITY COMPANY OR A PARTNERSHIP AGREEMENT OF A GENERAL OR
28 LIMITED PARTNERSHIP ARE EFFECTIVE ACCORDING TO THE OPERATING
29 AGREEMENT OR PARTNERSHIP AGREEMENT AND ARE NOT TO BE CONSIDERED
30 TESTAMENTARY.**

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
32 apply to all limited liability company operating agreements, general partnership
33 agreements, and limited partnership agreements in effect on the effective date of this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.