

ABEL_FAV_SB888

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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.

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Uploaded by: SDAT, State Department of Assessments and Taxation

Position: FAV



**DEPARTMENT OF
ASSESSMENTS AND TAXATION**

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Michael L. Higgs, Jr., Director

DATE: February 25, 2020

BILL NUMBER: SB 888

COMMITTEE: Judicial Proceedings

BILL TITLE: Corporations and Associations – Limited Liability Companies and Partnerships – Series – Conversion

SDAT POSITION: Letter of Support with Amendments

The State Department of Assessments and Taxation (SDAT) supports SB 888 and the proposed amendments, a bill that would require a foreign limited liability company formed in its home state as a series LLC to disclose its series status when registering with SDAT to do business in Maryland.

The laws of some states create unique legal protections for limited liability companies formed as series LLCs. Presently, when a foreign series LLC registers with SDAT, it is not required to disclose that it is a series LLC in its home state. Subsequently, it is not clear from the information and documents filed with SDAT that the foreign LLC may be afforded unique legal protections.

Requiring a foreign series LLC to provide notification that it maintains a series status in its home state will mean that SDAT's public records are more accurate and better reflect the status of the foreign series LLC. SB 888 promotes transparency and creates awareness for Maryland businesses and individuals transacting with a foreign series LLC registered to engage in commerce in Maryland.

For these reasons, we strongly urge a favorable report by the Committee for Senate Bill 888.

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WEST_FAV_SB888

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February 25, 2020

Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 888 – Corporations and Associations – Limited Liability Companies and Partnerships – Series – Conversion

Dear Chairman Smith and Members of the Committee:

I am pleased to introduce legislation that was brought to me by the Maryland State Bar Association Committee on Unincorporated Associations.

Senate Bill 888 aims to do several things. First, it changes the process of dissolving a Limited Liability Corporation (LLC). Current law does not provide an authority to settle the affairs of an LLC that has no living or competent members and is also without an alternative arrangement for the settling of those affairs. Senate Bill 888 provides that in the event of the death of the last member, or a ruling of incompetency of the last member, the personal representative or guardian of that member must be admitted as a new member unless the personal representative or guardian renounces the admission in writing or designates a willing new member. Additionally this bill states that an operating agreement may provide that the last remaining member's guardian must agree in writing to continue the LLC and to be admitted as a member or appoint a designee. The personal representative, guardian, or other successor may settle the LLC's affairs.

In addition to altering the LLC dissolving process, Senate Bill 888 seeks to alter the registration for a foreign LLC that is a series company as well as repeal several redundant provisions. There is an amendment being offered on this bill that was drafted by the MSBA and is simply a clarifying amendment.

I ask the committee for a favorable report.