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Economic Matters Committee

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**TESTIMONY IN SUPPORT WITH AMENDMENT OF HB342
CORPORATIONS AND ASSOCIATIONS – LIMITED LIABILITY COMPANIES
AND PARTNERSHIPS- OPERATING AGREEMENTS AND PARTNERSHIP
AGREEMENTS**

Economic Matters Committee
February 9, 2022

Chair Wilson, Vice-Chair Crosby and Members of the Committee,

Thank you for the opportunity to testify before you on HB342, Corporations and Associations- Limited Liability Companies and Partnerships- Operating Agreements and Partnership Agreements. HB342 specifies that operating agreements and partnership agreements may provide for interests in limited liability companies (LLCs) and partnerships to be transferred or assigned to other persons, including to nonmembers/non-partners. The bill further specifies that transfers on death, pursuant to the terms of an LLC operating agreement or a partnership agreement of a general or limited partnership, are effective according to the agreement and are not to be considered testamentary. The bill applies to all LLC operating agreements, general partnership agreements, and limited partnership agreements in effect upon the bill's effective date.

HB 342 is a technical bill supported by the Maryland State Bar Association Business Law Section and Estates and Trusts Section to reverse the effect of 2021 Maryland Court of Specials Appeals case *Potter v. Potter*. In *Potter*, the members of a limited liability company or LLC included a provision in the LLC's operating agreement that provided that if a member died, the member's ownership interest transferred to a person named in the operating agreement. A member (Potter) passed away and a beneficiary of Potter's estate challenged the operating agreement provision that said that Potter's interest in the LLC transferred to the person named in the operating agreement. The Court of Special Appeals held that the transfer to the person named in the operating agreement was testamentary – meaning to be effective it had to meet the requirements of a will. Among other things, wills require two witnesses. Because the operating agreement did not have two witnesses, the operating agreement could not be enforced, and Potter's interest in the LLC transferred to his beneficiary.

The decision in *Potter* is not consistent with the practice and understanding of lawyers that draft operating agreements and lawyers that draft wills. HB342 simply rectifies this

decision and restores the orderly transition of businesses and dispositions of their owners' estates by allowing members of a LLC or partnership to determine what will happen to a decedent's business interests, through operating agreements and partnership agreements.

For these reasons, I am requesting a favorable report.

With kindest regards,

A handwritten signature in cursive script that reads "Benjamin T. Brooks". The signature is written in dark ink and is positioned below the closing of the letter.

Benjamin Brooks