

CHRIS WEST
Legislative District 42
Baltimore County

Judicial Proceedings Committee

Vice Chair, Baltimore County
Senate Delegation



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 303
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

District Office
1134 York Road, Suite 200
Lutherville -Timonium, MD 21093
410-823-7087

February 2, 2021
Senate Judicial Proceedings Committee
The Honorable William C. Smith Jr.
2 West Miller Senate Building
Annapolis, Maryland 21401

RE: SB 261 – Corporations and Associations – Limited Liability Companies and Partnerships - Operating Agreements and Partnership Agreements

Dear Chairman Smith and members of the Committee,

A limited liability company (LLC) is a business entity set up by one or more persons who are referred to as “members”. Each member of the LLC has a membership interest. The members generally execute an operating agreement which details the roles and responsibilities of the members and provides for how the LLC will be run. Another critical element of the operating agreement is a provision providing for the transfer of membership interests under various circumstances. This provision is especially important if one of the members of the LLC dies. Absent such a provision, the member’s interest in the LLC would devolve to the estate of the member, and in that event, the disposition of the membership interest would depend upon the member’s Will. This would present a challenge for the LLC because the LLC operating agreement rarely provides for the member’s estate to become a member of the LLC. So most LLC operating agreements provide for the transfer of the membership interest of a member who dies.

A 2021 decision of the Maryland Court of Appeals, however, held that an operating agreement provision directing the transfer of a member’s interest upon death was testamentary in nature and was not valid because the execution of the operating agreement was not accompanied by the formalities required by Maryland Law for the execution of a Will. This decision, known as *Potter v. Potter*, creates huge uncertainty about the validity of disposition on death provisions of virtually every single LLC operating agreement in Maryland.

Senate Bill 261 effectively overrides *Potter v. Potter* by providing that the members of an LLC are free to agree among themselves on disposition on death provisions in an operating agreement. It specifically states that a disposition on death provision in an operating agreement is not testamentary in nature and therefore is not subject to the formalities required by Maryland law for the execution of a Will.

I support Senate Bill 261 with a minor technical amendment which I will provide to the Committee.

I appreciate the Committee's consideration of Senate Bill 261 and would be happy to answer any follow-up questions the Committee may have.