



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

To: Maryland House of Delegates – Economic Matters Committee

From: MSBA Estate & Trust Law Section

Date: March 6, 2023

Subject: **HB 981**– Limited Liability Companies – Articles of Organization – Required Information

Position: **Oppose**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **opposes House Bill 981 – Limited Liability Companies – Articles of Organization – Required Information**

Description of HB 981

House Bill 981 would require the name and home address of each individual member of a limited liability company to be published on the company’s articles of organization on formation. Further, if a person knowingly files articles of organization with incorrect information, that person would be guilty of a misdemeanor and subject to a fine up to \$10,000.

Relation to Estate Planning Transactions

Our clients, Maryland families, create limited liability companies for estate planning purposes. Family members may want to pool their resources, facilitate making gifts of smaller property interests, or set up a mechanism for family ownership of a vacation home.

Because of the nature of these family LLCs, ownership often changes. A parent will give shares to a child, shares will be moved in trust, or a new member of the family will join. In fact, clients often set up an LLC initially with one member of the family, and then immediately thereafter, interests will be gifted to other family members.



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

Privacy Concerns

For clients creating family LLCs, this bill would allow anyone searching SDAT for “Smith Family LLC” to have the names and addresses of their family members. Clients often have legitimate safety concerns about sharing their home addresses, or the address of a family member, online and take steps to avoid doing so.

Our clients understand that they will soon need to report the beneficial ownership of many of their family LLCs to the Financial Crimes Enforcement Network (FinCEN) pursuant to the Corporate Transparency Act. At first glance, HB 981 appears to duplicate some aspects of the CTA at the state level. However, FinCEN has recognized the privacy concerns and is working to develop a secure, non-public database to store private information and allows individuals to apply for a FinCEN identifier rather than sharing their personal information to each company they own. HB 981 would instead add names and addresses to a document that is available to the public.

Burden of Amendment

The requirement of members being listed in the articles of organization suggests a duty of the LLC to update the articles when members change. This is particularly onerous for family LLCs, whose purpose is often to facilitate gifting of assets. Indeed, if membership changes, and the company forgets to update the articles, arguably the company would be in violation of the act and guilty of a misdemeanor.

Filing new articles of amendment each time there was a change in membership would add significant cost and burden to the creation of a family LLC in Maryland. We anticipate that few clients would choose to take on the risk of creating their LLCs in Maryland with these additional requirements.

Competitive Disadvantage

If HB 981 were adopted, our members would likely advise clients to create their family LLCs in another jurisdiction such as Delaware. Setting up their LLCs in Delaware would allow clients to safeguard the names and addresses of their family members and avoid filing new documentation



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

with the state each time a membership interest is transferred. Further, there would be no risk of inadvertently being subject to a fine of up to \$10,000 in Delaware.

In fact, for any company seeking to hide such information from Maryland, the workaround of organizing in another jurisdiction is so simple that one wonders how this legislation would allow any crimes to be discovered.

To keep Maryland LLCs in Maryland, the Estate and Trust Law Section of the MSBA **opposes HB 981 and urges an unfavorable committee report.**

For further information, please contact:

Christine W. Hubbard
(410) 798-4533
christine@chubbardlaw.com

Sarah B. Kahl
(410) 244-7584
sbkahl@venable.com

Christia Pritts
(410)828-7775
cpritts@simscampbell.law