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**To:** Maryland House of Delegates – Economic Matters Committee

**From:** MSBA Estate & Trust Law Section

**Date:** February 6, 2024

**Subject:** **HB 271**– Limited Liability Companies – Articles of Organization – Required Information

**Position:** **Oppose**

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The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **opposes House Bill 271 – Limited Liability Companies – Articles of Organization – Required Information**

### **Description of HB 271**

House Bill 271 would require the name and home address of each individual member of a limited liability company (“LLC”) who is authorized to act on behalf of the LLC to be published in the company’s articles of organization upon 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 of up to \$5,000.

### **Relation to Estate Planning Transactions**

Our clients, Maryland families, create LLCs 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 and management often changes. A parent will give an interest to a child, interests will be moved in trust, or a new member of the family will join. Any of these changes may also necessitate a change in the managing member(s). 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.



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## **Privacy Concerns**

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

Our clients understand that they are required to report the beneficial ownership of their family LLCs to the Financial Crimes Enforcement Network (FinCEN) pursuant to the Corporate Transparency Act (“CTA”). At first glance, HB 271 appears to duplicate some aspects of the CTA at the state level. However, FinCEN has acknowledged privacy concerns and has developed 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 271 would instead add names and home addresses to a document that is available to the public.

## **Burden of Amendment**

HB 271 also requires the LLC to update the articles when there is a change in the members who are authorized to act on behalf of the LLC. This is particularly onerous for family LLCs, whose purpose is often to facilitate gifting of assets. Indeed, if membership changes and different family members become involved with management, and the company forgets to update the articles, arguably the company would be in violation of the act and guilty of a misdemeanor. We anticipate that few clients would choose to take on the risk of creating their LLCs in Maryland with these additional requirements and the related costs and burdens.

## **Competitive Disadvantage**

If HB 271 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 with the state each time there is a change in who is authorized to act on behalf of the LLCs. Further, there would be no risk of inadvertently being guilty of a misdemeanor and subject to a fine of up to \$5,000 in Delaware.



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In fact, for any company seeking to hide such information from the State of 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 271 and urges an unfavorable committee report.**

**For further information, please contact:**

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