

REPORT OF THE MARYLAND STATE BAR ASSOCIATION BUSINESS LAW SECTION
COMMITTEE ON UNINCORPORATED BUSINESS ASSOCIATIONS WITH RESPECT TO THE
MARYLAND LIMITED LIABILITY COMPANY ACT OF 2011

JUNE 20, 2011

The Maryland Limited Liability Company Act (the “LLC Act”) was signed into law during the 1992 session of the Maryland General Assembly. At the time of enactment and again when amended in 1997, the LLC Act was among the leading limited liability company acts in the country. In the fourteen years that have elapsed since the last revision, significant developments in both law and practice have necessitated further amendment.

Throughout the fall of 2010, the Maryland State Bar Association Business Law Section Committee on Unincorporated Business Associations undertook a searching analysis of the LLC Act and prepared suggested amendments to the statute. The amendments were proposed to ensure that Maryland continues in its tradition as a leader in limited liability company law and governance.

This Explanation is respectfully submitted by the Committee on Unincorporated Business Associations on behalf of the Business Law Section of the Maryland State Bar Association. For additional information contact:

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LIMITED LIABILITY COMPANY ACT OF 2011

I. INTRODUCTION AND BACKGROUND

The Business Law Section of the Maryland State Bar Association strives to stay abreast of the needs of its members and their clients in the Maryland business community. To that end, the Business Law Section's Committee on Unincorporated Business Associations (the "Committee") undertook an extensive review of the Maryland Limited Liability Company Act (the "LLC Act"). The Committee identified certain issues in the LLC Act that required revision to clarify the original intent of the legislation and to ensure accurate and consistent application of the LLC Act. These revisions comprise the Maryland Limited Liability Company Act of 2011 (the "2011 Act") and are set forth below. This Report provides a synthesis of the key provisions of the 2011 Act.

The LLC Act provides a form of business entity for parties organizing businesses in Maryland that is based in contract and thereby allows parties to negotiate and tailor the terms of the business entity to the needs and objectives of their particular business endeavor. A core purpose of the LLC Act is to provide a set of default rules to govern the operation of a limited liability company in the absence of an operating agreement entered into by the members of the limited liability company. Accordingly, the 2011 Act adds § 4A-102(a) that underscores the principle of freedom of contract and the enforceability of operating agreements. In addition, § 4A-102(b) clarifies that any provision of the LLC Act that may be changed under the operating agreement also may be changed under the articles of organization.

The 2011 Act also clarifies the amendment process applicable to operating agreements and the parties bound by the operating agreement and any amendments. For example, the 2011 Act provides that the parties may include a process for amending the operating agreement in the operating agreement itself or in the articles of organization. If the parties provide for such a process, however, that process must be followed in order for an amendment to the operating agreement to be duly authorized. In addition, the 2011 Act clarifies that, unless prohibited by the operating agreement or articles of organization, oral amendments to the operating agreement are permissible if all members of the limited liability company approve the amendment and there are no assignees of an interest in the limited liability company who are not also members. Moreover, the 2011 Act explains when parties are bound by a duly authorized or adopted operating agreement or amendment even if they did not execute the operating agreement or amendment.

Several provisions of the 2011 Act address the assignment of an interest of a member of the limited liability company and the rights and obligations of the assignor and assignee in that

context. For example, the 2011 Act amends § 4A-603 to clarify that an assignment of a member's interest in the limited liability company entitles the assignee to receive, to the extent assigned, only the assignor's share of profits, losses and distributions. In addition, that section is amended to explain that a member ceases to be a member of the limited liability company and to have the power to exercise any rights or powers of a member upon assignment of all of the member's interest in a limited liability company. Accordingly, the intent of this section is that, unless otherwise provided in the operating agreement, a partial assignment of a member's economic interest would allow the member to retain the same non-economic rights in the limited liability company held previously by the member. This section further provides that a pledge of or granting of a security interest, lien or other encumbrance in or against, any or all of a member's interest does not affect a member's non-economic rights. These provisions may be changed by the operating agreement or the articles of organization.

The 2011 Act also amends § 4A-604 to explain the circumstances under which an assignee may become a member of the limited liability company. For example, the parties may delineate the conditions under which an assignee may become a member in the operating agreement or articles of organization; alternatively, the default rule under the 2011 Act continues to require the unanimous consent of all members of the limited liability company in order for an assignee to become a member. In addition, the amendments to § 4A-604 clarify that, if there are no remaining members of the limited liability company at the time, or as a result, of the assignment of an interest to the assignee, the assignee may establish the terms for the admission of the assignee as a member in the context of the assignee agreeing to continue the limited liability company under § 4A-902(b)(1) of this title. The 2011 Act amends § 4A-601(b) by cross-referencing § 4A-604(a) to govern the admission of an assignee as a member of the limited liability company. This amendment, as well as the cross-reference to § 4A-902(b)(1), provides consistent treatment of the rights of assignees throughout the LLC Act.

Finally, the 2011 Act addresses the terms under which a third party may obtain a charging order against an interest of a member of the limited liability company and the effect of that charging order on the member's rights and interest in the limited liability company. The 2011 Act provides specific definitions for the terms 'creditor' and 'debtor' as well as empowers courts of competent jurisdiction to charge the interest of a debtor in a limited liability company. The 2011 Act specifies both that a charging order made against a debtor's interest in a limited liability company constitutes a lien against such interest as well as crafts a procedure to redeem that interest prior to any foreclosure sale. In addition, new Section 4A-607(f) provides that this section constitutes the sole remedy by which a creditor or a person holding an interest in a limited liability company may attach the interest or otherwise affect the rights of a member of a limited liability company.

Overall, the Committee believes that the 2011 Act clarifies and strengthens the original purpose of the LLC Act and will benefit significantly members of the Maryland business community and the lawyers, judges and other parties working with them.

II. SPECIFIC AMENDMENTS

This section will first present the text of the amendment and then describe the intent with which the Committee proposed the amendment.

A. Construction of LLC Act (New Section 4A-102)

The 2011 Act adds §4A-102 (a) and (b). Part (a) contains the following language:

Unless otherwise provided, the policy of this title is to give the maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.

A core purpose of the LLC Act is to provide a set of default rules to govern the operation of a limited liability company in the absence of an operating agreement entered into by the members of the limited liability company. When the members adopt an operating agreement, the LLC Act allows for flexibility in the terms of the agreement, giving the members the opportunity to shape the structure of the limited liability company in the best way for the nature of the business conducted through it. New Section 4A-102 is meant to emphasize and clarify those existing policy objectives.

New Section 4A-102(a) generally provides that it is the policy of the LLC Act to give maximum effect to the principle of freedom of contract and the enforceability of operating agreements. Accordingly, unless the LLC Act specifically provides otherwise and subject to other applicable law, members of a limited liability company may establish the terms governing the financing, control, operation and other aspects of the limited liability company by the operating agreement. This new section underscores the contractual nature of limited liability companies.

Part (b) provides that:

A provision of this title that may be changed by the terms of an operating agreement also may be changed by the terms of the articles of organization.

While the operating agreement governs a limited liability company, a limited liability company is formed by filing articles of organization with the State Department of Assessments and Taxation of Maryland. New Section 4A-102(b) is added to clarify that any provision of the LLC Act that may be changed by the terms of the operating agreement also may be changed by the terms of the articles of organization.

B. The LLC Operating Agreement (Section 4A-402)

LLC Member Certificates (Section 4A-402(a)(5))

To §4A-402(a)(5)(i), the 2011 Act adds:

The right to have a procedure for having a member's interest in the limited liability company evidenced by a certificate issued by the limited liability company, **which may be issued in bearer form only if specifically allowed by the operating agreement.**

Current Section 4A-402(a)(5) permits an operating agreement of a limited liability company to provide members with the right to have (and a procedure for having) their interests evidenced by a certificate. Section 4A-402(a)(5) is amended to clarify that certificates representing a member's interest in a limited liability company may be issued *in bearer form*. If a certificate is in bearer form, the certificate is the *sole* evidence of the member's interest in the limited liability company. Accordingly, the amendments also provide that certificates may be issued in bearer form *only* if specifically permitted by the operating agreement.

This default rule of prohibiting certificates in bearer form reflects the close, personal relationships that frequently give rise to individuals or entities wanting to pursue a business endeavor together in the form of a limited liability company. Such parties likely would not want or expect the free transferability and other aspects commonly associated with instruments (like a membership certificate) in bearer form. This approach also is consistent with the restrictions on assignment of a member's interest under Section 4A-603 of the LLC Act. Members may vary this default rule by incorporating a specific provision in the operating agreement permitting certificates in bearer form.

Rights of Non LLC Members and Non Parties pursuant to the Operating Agreement (Sections 4A-402(a)(6) and (7))

The 2011 Act makes changes to Section 4A-402(6) by adding:

The method by which the operating agreement may from time to time be amended, **which may include a requirement that an amendment be approved:**

(i) by a person who is not a party to the operating agreement or who is not a member of the limited liability company; or

(ii) on the satisfaction of other conditions specified in the operating agreement; and

In addition, new Section 4A-402(7) is added, as follows:

(7) the rights of any person, including a person who is not a party to the operating agreement or who is not a member of the limited liability company, to the extent set forth in the operating agreement

Currently, the default rule in Section 4A-402(a)(6) provides that an operating agreement may include a provision establishing the method by which it may be amended. Frequently lenders or other third party beneficiaries of a limited liability company operating agreement will require certain approval rights or the satisfaction of conditions before an operating agreement may be amended. Section 4A-402(a)(6) is amended and Section 4A-402(a)(7) is added to clarify

that these rights and conditions, and the rights of any person not a member of the limited liability company, will be enforceable to the extent set forth in the operating agreement.

Initial Operating Agreement and Amendments to the Operating Agreement (Sections 4A-402(b) and 4A-402(c))

To Section 4A-402(b), the 2011 Act makes changes to both the LLC Act's structure and its content. Sections 4A-402(c)(2) and (3) have been added and provides that:

(2) To the extent that an operating agreement provides for the manner in which the operating agreement may be amended, the operating agreement may be amended only in that manner, provided that the approval of a person may be waived by the person and that conditions may be waived by a person for whose benefit the conditions were intended.

(3)(i) Except as provided in subparagraph (ii) of this paragraph, or unless the operating agreement specifically requires otherwise, an amendment to an operating agreement is not required to be in writing.

Former Section 4A-402(b) has been divided into new Sections 4A-402(b) and 4A-402(c) to separate provisions dealing with the operating agreement initially adopted by the members from those dealing with amendments to the operating agreement.

New Section 4A-402(c)(2) has been added to clarify that if the operating agreement provides the manner in which it may be amended, as permitted by Section 4A-401(a)(6), then it may be amended only in that manner. However, the approval of a person whose consent is required to amend the operating agreement may be waived, and conditions may be waived by each person for whose benefit the conditions were intended.

Section 4A-402(c)(3) has been amended for consistency with Section 4A-402(b)(2), concerning the initial operating agreement.

Confirming Enforceability of Operating Agreement of a Single Member LLC (Section 4A-402(d)(3))

The 2011 Act adds Section 4A-402(d)(3):

An operating agreement of a limited liability company with only one member is not unenforceable on the grounds that there is only one person who is party to the operating agreement.

The operating agreement of a limited liability company with only one member is frequently signed only by that person, in his or her capacity as a member of the limited liability company and as the manager of the limited liability company. Paragraph (d)(3) is added to

clarify that the operating agreement is enforceable even though there is only one party to the agreement.

Confirming Enforceability of Operating Agreements with Respect to the LLC (Section 4A-402(d)(4))

The 2011 Act adds Section 4A-402(d)(4):

A limited liability company:

(i) is not required to execute its operating agreement; and

(ii) is bound by its operating agreement, regardless of whether the limited liability company has executed the operating agreement

New Section 4A-402(d)(4) is added to clarify that a limited liability company is bound by its operating agreement even if it is not a signatory to the agreement. This approach is implicit in the existing language of the LLC Act and assumed to be the general rule in practice. The proposed amendment will avoid any unnecessary confusion or uncertainty regarding the enforceability of the operating agreement by and against the limited liability company.

Enforceability of Operating Agreement with Respect to Members and Assignees (4A-402(d)(5))

The 2011 Act adds Section 4A-402(d)(5):

An operating agreement that is duly adopted or amended is binding on each person who is or becomes a member of the limited liability company and each person who is or becomes an assignee of a member of the limited liability company, regardless of whether the person has executed the operating agreement or amendment.

The member of a limited liability company may assign his or her economic interest in the limited liability company, and a person may become a member after the operating agreement is adopted by the initial members. New Section 4A-402(d)(5) is added to clarify that all members and assignees of members are bound by the company's operating agreement regardless of whether they agree to be bound by the operating agreement and, in the case of an assignee, regardless of whether admitted as a member. This approach is consistent with the contractual nature of a limited liability company, and it gives certainty to the other members and to third parties dealing with the limited liability company that a new member or the assignee of a member is also bound by the operating agreement.

C. Voting and Unanimous Consent (Section 4A-404)

The 2011 Act amends Section 4A-404 as follows:

Wherever this title requires the unanimous consent of **the** members to allow the limited liability company to act . . .

(2) the operating agreement may provide that

(i)(1) **the** action may be taken on consent of less than all the members;

(2) **the** consent of certain members or classes of members is not required to take the action; **or**

(3) no consent of a member or members is required to take the action; and

(ii) the action may be taken only with the consent of one or more persons who is or are not a member or members of the limited liability company, in which case the consent of that person or those persons shall be required in order for the limited liability company to take the action.

Section 4A-404 currently provides that whenever the LLC Act requires the unanimous consent of all of the members of a limited liability company, the consent has to be in writing. The operating agreement, however, may provide that the action may be taken with the consent of less than all the members of the limited liability company and that certain members or categories of members are not required to take the action.

The amendments to Section 4A-404(2) clarify that the operating agreement may provide that any action otherwise requiring unanimous consent may be taken without the consent of any member of the limited liability company. New Section 4A-404(2)(ii) is added to provide that the operating agreement may require the consent of third-party, non-members to take an action requiring unanimous consent of the members. This change is consistent with the new Section 4A-402(a)(7).

D. Admission of Members (Section 4A-601)

The 2011 Act makes changes to when a person becomes a member of a limited liability company by adding Section 4A-601(a)(3) and (b)(3). Section 4A-601(a)(3) states:

A person becomes a member of a limited liability company **at:** . . .

(3) the time specified in §4A-902(b)(1) of this title.

§4A-601(b)(3) adds:

In the case of a personal representative or successor to the last remaining member who is not an assignee of the last remaining member, as provided in §4A-902(B)(1)

Section 4A-601 addresses the terms and conditions of a person being admitted as a member of a limited liability company. Section 4A-601(a)(3) has been added to clarify that a person may become a member of a limited liability company pursuant to the provisions of Section 4A-902(b)(1), which provides that the last remaining member's personal representative, successor or assignee may admit him, her or itself as a member of the limited liability company.

Section 4A-601(b)(2) is amended to clarify that the admission of an assignee as a member of the limited liability company is governed by the assignment provisions of Section 4A-604(a).

Section 4A-601(b)(3) is added to clarify that the admission of a personal representative or successor to the last remaining member is governed by Section 4A-902(b)(1).

E. Assignor Liability (Section 4A-603)

The 2011 Act amends Section 4A-603(c) and adds part (d). Part (c) makes the following revision:

Unless otherwise provided in the operating agreement, an assignment entitles the assignee to receive, to the extent assigned, only the assignor's share or profits, losses, and distributions.

Part (d) states:

Unless otherwise provided in the operating agreement, if an assignee of an interest in a limited liability company becomes a member of the limited liability company, the assignor is not released from the assignor's liability under §4A-502 of this title to the limited liability company.

Section 4A-603(d) addresses an assignor's liability to the limited liability company upon an assignee becoming a member of the limited liability company. This section is moved from Section 4A-604(c) and redesignated as Section 4A-603(d) because it discusses the consequences of an assignment under Section 4A-603. The section is otherwise unchanged.

The 2011 Act adds Section 4A-603(e):

Unless otherwise provided in the operating agreement, an assignment under this section of all of a member's interest in a limited liability company, the member ceases to be a member of the limited liability company and to have the power to exercise any right or power of a member.

New Section 4A-603(e) clarifies the consequences of an assignment of a member's interest under Section 4A-603. Unless otherwise provided in the operating agreement or under Section 4A-604 of this subtitle, an assignment of a member's interest in a limited liability company is limited to an assignment of the assignor's *economic interest* in the limited liability company and entitles the assignee only to "the distributions to which the assignor would be entitled" under Section 4A-603(c). If an assignment is a complete assignment of the member's economic interest, the section provides that the assignor ceases to be a member of the limited liability company. The intent of this section is that, unless otherwise provided in the operating agreement, a partial assignment of a member's economic interest would allow the member to retain the same non-economic rights in the limited liability company held previously by the member (for example, the member's voting rights and rights of inspection). These provisions may be changed by the operating agreement. This section does not speak to the rights of members outside of the assignment context.

The 2011 Act adds Section 4A-603(f):

Unless otherwise provided in the operating agreement, the pledge or grant of a security interest, lien, or other encumbrance in or against all or a part of an interest of a member may not cause the member to cease to be a member or to have the power to exercise any right or power of a member.

New Section 4A-603(f) clarifies that, unless otherwise provided in the operating agreement, the pledge of, or grant of a security interest, lien or other encumbrance in or against, all or any part of a member's interest in a limited liability company does not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

F. Admission of Assignees as Members (Section 4A-604)

The 2011 Act makes several changes to the LLC Act by both subtracting from and adding to the text:

(a) An assignee of an interest in a limited liability company may become a member [if and to the extent that] **of the limited liability company under any of the following circumstances:**

(1) [the assignor gives the assignee that right under authority described in the operating agreement] **In accordance with the terms of the operating agreement providing for the admission of a member;**

(2) [the members unanimously] **by the unanimous consent of the members;** or

(3) [Except as otherwise provided in the operating agreement, if the limited liability company has no members, all of the assignees of members may elect to become members] **if there are no remaining members of the limited liability company at the time the assignee**

obtains the interest, on terms that the assignee may determine in accordance with §4A-902(b)(1) of this title.

Section 4A-604(a)(1) allows members to provide in the operating agreement conditions for the admission of an assignee as a member of the company. If the operating agreement is silent on the admission of an assignee as a member of the limited liability company, the unanimous consent of the members is required, as provided in Section 4A-604(a)(2). This is consistent with the policy of allowing the members to establish the terms governing the operation of the limited liability company. Section 4A-604(a)(3) is amended to clarify that if there are no remaining members of the limited liability company at the time of the assignee obtaining the interest, the assignee may establish the terms for the admission of the assignee as a member in the context of the assignee agreeing to continue the limited liability company under Section 4A-902(b)(1) of the LLC Act.

Former Section 4A-604(c) is moved to Section 4A-603(d); see commentary to Section 4A-603 for further discussion.

G. Interests Subject to Charging Orders (Section 4A-607)

Section 4A-607 provides that a creditor of a member or assignee of a member of a limited liability company may apply to a court of competent jurisdiction to obtain a “charging order” against the limited liability company. A charging order entitles the creditor to receive any of the distributions made by the limited liability company which would have otherwise gone to the debtor member.

The section has been revised to be more consistent in general with the provisions of the Uniform Partnership Act, Section 9A-504 of the Maryland Corporations and Associations Article. It also clarifies the scope of the section to avoid the uncertainty that has arisen in at least one other state. For example, in *Shaun Olmstead, et al., v. Federal Trade Commission*, SC08-1009 (Fla. 2010), the Florida Supreme Court held that the absence of the words “sole and exclusive remedy” in the charging order provisions of the Florida Limited Liability Company Act allowed creditors of the sole member in a single-member LLC to exercise their other remedies against the member-debtor, including having the member-debtor surrender all rights in and title to the LLC. The dissent in the *Olmstead* decision suggested that the majority’s reasoning could apply equally to multi-member LLCs because of the majority’s reliance on the language of the Florida Limited Liability Company Act. The Florida legislature and other state legislatures have enacted amendments, or are considering amendments, to the charging order provisions of their LLC statutes to address the potential uncertainty created by the *Olmstead* decision.

Definition of “Debtor” and “Creditor”(Section 4A-607(a))

The 2011 Act adds Section 4A-607(a):

(a)(1) In this section the following words have the meanings indicated.

(2) “Creditor” means a person for whom a court may issue an attachment under title 3, subtitle 3 of the courts article.

(3) “Debtor” means a person whose property or credits are subject to attachment under title 3, subtitle 3 of the courts article.

New Section 4A-607(a) has been added to define the persons covered by the section. The terms “debtor” and “creditor” are defined by cross-references to Maryland Courts & Judicial Proceedings Article, Section 3-301 through Section 3-305. The cross-references are intended to make it clear that anyone who has a right to attach property of a debtor or obligor also has the right to seek a charging order against that debtor’s or obligor’s interest in a limited liability company.

Right of a Creditor to Obtain a Charging Order (Section 4A-607(b))

The 2011 Act adds Section 4A-607(b):

(b)(1) On application by a creditor of a debtor holding an interest in a limited liability company, a court having jurisdiction may charge the interest of the debtor.

(2) The court may appoint a receiver for the distributions due or to become due to the debtor with respect to the limited liability company and make all other orders, directions, accounts, and inquiries that the debtor would have been entitled to make or that the circumstances of the case may require.

Section 4A-607(b) includes the existing provision that enables a creditor of a member of a limited liability company or the member's assignee to seek a charging order from a court of competent jurisdiction to satisfy the liability owed to the creditor by the member or the member's assignee. The phrase added to Section 4A-607(b) “a person holding an interest in a limited liability company” is intended to make it clear that a person can obtain a charging order against an interest in a limited liability company even if the holder of the interest is not a member of the limited liability company, but is, for instance, merely a person who holds economic rights in the limited liability company, such as an assignee of a member. The provision allowing a court to appoint a receiver for the share of distributions due is very similar to the provision set forth in Section 9A-504 of the Corporations and Associations Article which enables a court to appoint a receiver for the distributions made subject to a charging order for a general partnership.

Creditor holding Charging Order has Rights of an Assignee (Section 4A-607(c))

The 2011 Act adds Section 4A-607(c):

(c)(1) A charging order constitutes a lien on the interest of the debtor in the limited liability company.

(2)(i) The court may order foreclosure of the interest subject to the charging order at any time.

(ii) The purchaser at the foreclosure sale has only the rights of an assignee as provided in §§ 4A-603 and 4A-604 of this subtitle.

Section 4A-607(c) continues the provisions in existing Section 4A-607 that a creditor with a charging order against the interest of a limited liability company member has only those rights that an assignee of the member's interest would have. Section 4A-607(c)(1) contains an identical provision to that set forth in Section 9A-504 of the Corporations and Associations Article and states that a charging order constitutes a lien against the interest of the debtor in the limited liability company. Likewise, Section 4A-607(c)(2) incorporates a similar provision to that found in Section 9A-504 of the Corporations and Associations Article stating that a limited liability interest subject to a charging order may be foreclosed upon. Thus, Section 4A-607 provides two basic collection methods: (1) the diversion of the debtor's distributions to the creditor, and (2) the ultimate transfer of the economic interests of the debtor to the creditor should the first collection method prove unsatisfactory. Section 4A-607(c)(2) cross-references to Section 4A-604 to make it clear that, under appropriate circumstances, a party that acquires an interest in a limited liability company at foreclosure may become a member of the limited liability company. This may be of particular significance in the case of single member limited liability companies where the assets held by the limited liability company are valuable, but do not generate cash flow that is sufficient to liquidate the claim against the debtor in a reasonable period of time. If otherwise appropriate, a court could allow the foreclosure of the interest held by the debtor and the purchaser at the foreclosure sale could become the sole member of the limited liability company and liquidate the limited liability company's assets.

Interest Subject to Charging Order May Be Redeemed (Sections 4A-607(d) and (e))

The 2011 Act adds §4A-607(d) and (e):

(d) Before a foreclosure under this section, an interest charged may be redeemed with property:

(1) Other than property of the limited liability company, by the debtor;

(2) Other than property of the limited liability company, by one or more of the members other than the debtor; or

(3) Of the limited liability company, with the consent of all of the members whose interests are not so charged.

(e) This title does not deprive a debtor of a right under exemption laws with respect to the interest of the debtor in the limited liability company.

Section 4A-607(d) is amended to address the circumstances under which an interest subject to a charging order may be redeemed by the debtor or a member of the limited liability company other than the debtor. As a result of this new section, the provision addressing a debtor's exemption rights is now Section 4A-607(e).

Charging Order as Exclusive Remedy (Section 4A-607(f))

The 2011 Act adds Section 4A-607(f)

(f) This section provides the exclusive remedy by which a creditor or a person holding an interest in a limited liability company may attach the interest or otherwise affect the rights of a member in the limited liability company.

Section 4A-607(f) is added to clarify that the section provides the exclusive remedy available to creditors of any person holding an interest in a limited liability company. Such creditors may attach an interest in a limited liability company or otherwise affect a member's rights in the limited liability company only in accordance with, and subject to the terms of, Section 4A-607.

H. Dissolution and Winding Up (Section 4A-902)

The 2011 Act makes changes to Section 4A-902:

(a) A limited liability company is dissolved and shall commence the winding up of its affairs on the first to occur of the following . . .

(b) A limited liability company may not be dissolved or required to wind up its affairs if within 90 days after there are no remaining members of the limited liability company or within the period of time provided in the operating agreement:

(1) The last remaining member's personal representative [or], successor, **or assignee** agrees in writing to continue the limited liability company and to be admitted as a member or to appoint a designee as a member to be effective as of the time the last remaining member ceased to be a member; or . . .

(c) An operating agreement may provide that the last remaining member's personal representative [or], successor, **or assignee** shall be obligated to agree in writing to continue the limited liability company and to be admitted as a member or to appoint a designee as a member to be effective as of the time the last remaining member ceased to be a member.

Section 4A-902 addresses when a limited liability company is dissolved and required to wind up its affairs. Under certain circumstances, there may be no remaining members of the limited liability company. A limited liability company is dissolved if it has no members for at least 90 days. In some circumstances, described in the LLC Act, a personal representatives or successor to the last remaining member of a limited liability company may step in and continue the company, rather than subject it to dissolution. Sections 4A-902(b) and 4A-902(c) set forth rules regarding the continuation of a limited liability company with no remaining members.

Sections 4A-902(b)(1) and 4A-902(c) are amended to clarify that those sections also apply to an assignee of the last remaining member of a limited liability company, in addition to a personal representative or successor to the last remaining member of a limited liability company.