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State Comparative Chart LLC and LLP Statutes

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**WILLIAM & MARY TAX CONFERENCE
PLANNING WITH LIMITED LIABILITY COMPANIES**

**STATE COMPARATIVE CHART
LLC AND LLP STATUTES**

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**COMPARATIVE CHART
LLC AND LLP STATUTES**

	Virginia	Delaware	Maryland	Uniform Act
LLCs				
Filing Document	Articles of Organization. § 13.1-1002	Certificate of Formation. § 18-201	Articles of Organization. § 4A-101(b)	Articles of Organization. § 101(l)
Filing Fee	\$100.00 §13.1-1005(1)(a)	\$50.00 § 18-1105(a)	\$50.00	N/A
Annual Fee	\$50.00 § 13.1-1062(A)	\$100.00 §18-1107	None (but subject to an annual tangible personal property tax).	N/A
Foreign Qualification Filing Fee	\$100.00 § 13.1-1005(1)(b)	\$50.00 § 18-1105(a)	\$50.00	N/A
Other Costs	None.	None.	None.	N/A
Business Restrictions	Any lawful business (not insurance or banking). § 13.1-1008	No insurance or banking. § 18-106	No insurance. § 4A-201	None.

	Virginia	Delaware	Maryland	Uniform Act
Name	LC, L.C., LLC, L.L.C., or words spelled out. § 13.1-1012	L.L.C., LLC or words spelled out. § 18-102	LC, L.C., LLC, L.L.C. or words limited liability company. § 4A-208	LC, L.C., LLC, L.L.C., or words spelled out. § 105
Minimum Members	One. (former definition deleted in 1996)	One. § 18-101(6)	One. § 4A-202(a)	One.
Who Can File	One or more persons, who need not be members. § 13.1-1010	One or more "authorized persons". § 18-201(a)	Any authorized individual. § 4A-206(a)	One or more persons. § 202(a)
Duration Statement	Not required.	Not required.	Not required, permits perpetual duration. § 4A-203(1)	Not required, but must specify whether a "term" company, and if so, the "term". § 203(a)(5)
Names of Managers Required	No.	No.	No.	Yes. § 203(a)(6)

	Virginia	Delaware	Maryland	Uniform Act
Names of Members Required	No.	No.	No.	No, but must name "organizers". § 203(a)(4)
Management Form Required to be Specified	Only in order to trigger agency limitations. § 13.1-1021.1(B)(1)	No.	No.	Yes. § 203
Conversion From Partnership Allowed	Yes. § 13.1-1010.1	Yes. § 18-214 (also from other unincorporated entities)	Yes. § 4A-211	Yes. § 902
Conversion to Partnership Allowed	No.	Yes. § 18-216 (also to other unincorporated entities)	No.	No.
Conversion to/from Corporation Allowed	No.	Yes. §§ 18-214, 18-216	No.	No.
Merger Allowed	Yes. § 13.1-1070	Yes. § 18-209	Yes. § 4A-701	Yes. § 904

	Virginia	Delaware	Maryland	Uniform Act
Default Merger Vote Required	Unanimous. § 13.1-1071	Greater than 50%. § 18-209(b)	Unanimous. § 4A-702(e)	Unanimous. § 904(c)(1)
Interentity Mergers Allowed	Yes. § 13.1-1070	Yes. § 18-209	Yes. § 4A-701	Yes.
Merger Restrictions	Partnership cannot be the survivor of a merger involving a corporation. § 13.1-1070(A)(7) No provision for business trusts.	None.	None.	None.
Foreign Entities	Special "domestication" statute. § 13.1-1010.3	Special "domestication" statute. § 18-212	No special provisions.	No special provisions.
Statutory Dissenters/Appraisal Rights	No.	No, but contractual rights provided for. § 18-210	Yes. Same as for a Maryland corporation. § 4A-705	No.

	Virginia	Delaware	Maryland	Uniform Act
Agency Rule	All members may bind if member-managed. If manager-managed, and so specified in articles, members cannot bind. 13.1-1021.1	All members and managers may bind, unless otherwise provided in LLC agreement. § 18-402	All members can bind, unless articles contain a limiting statement. § 4A-401(a)	Articles must specify whether manager-managed. If so, members cannot bind. § 301
Constructive Notice Rule	Articles may contain a restriction on the transfer of real estate. § 13.1-1021.1(C)	None. Effect of LLC agreement restriction on 3rd parties not specified. Disclaimer in certificate of organization is not binding because it is not required to be set forth there.	A limiting statement in the articles is presumptive notice to a person dealing with a member. § 4A-401(a)(3)	Articles may contain a restriction on the transfer of real estate. § 301(c)
Oral/Written Operating Agreement	Either.	Either. Called an LLC agreement in Delaware. § 18-101(7)	Either. § 4A-402	Either.

	Virginia	Delaware	Maryland	Uniform Act
Single-Member Operating Agreement Provisions	Must be written. § 13.1-1023(A)(2).	Provides that they are not unenforceable by reason of there being only one party. § 18-101(7)	No specific provisions.	No specific provisions.
Operating Agreement Amendment Vote	Unanimous. § 13.1-1023(B)(2)	Unclear.	Unanimous. § 4A-402(b)(3)	Unanimous. § 404(c)
Default Member Vote	Majority vote, in proportion to contributions, as adjusted. § 13.1-1022	More than 50 percent. § 18-402	Majority vote, by interest in profits. § 4A-403	Equal vote, majority governs unless unanimity required (but there is a laundry list of events). § 404
Default Manager Vote	Majority vote. § 13.1-1024(G)	Majority vote.	No rule specified (statute does not use "manager" terminology)	Equal vote, majority governs unless unanimity required (but there is a laundry list of events). § 404

	Virginia	Delaware	Maryland	Uniform Act
Fiduciary Duties	Subjective good faith business judgment. § 13.1-1024.1	Refers generally to existence of duties at law/equity. See § 18-1101(c)	None specified.	Duty of loyalty and duty of care. § 409(b),(c) Certain duties not waivable. § 103
Remedies for Default on Contribution Obligations	Forfeiture as well as other remedies permitted. § 13.1-1027(D)	Forfeiture as well as other remedies permitted. § 18-502(c)	Forfeiture as well as other remedies permitted. § 4A-502(c)	No specific provision.
Default Allocation Rule	On the basis or value of contributions. §§ 13.1-1029, -1030	On the basis of agreed value of contributions, adjusted for returns. §§ 18-503, 18-504	Profits and losses allocated by "capital interests," distributions allocated by profits interest. § 4A-503	Equal shares. § 405(a)
Interim Distributions	Allowed as permitted in operating agreement or articles. § 13.1-1031	Allowed as provided in LLC agreement. § 18-601	Not addressed.	Require default unanimous agreement. § 404(c)(6)

	Virginia	Delaware	Maryland	Uniform Act
Unlawful Distributions	Solvency and balance sheet tests. § 13.1-1035	Balance sheet tests. § 18-607(a)	Not addressed. But see Maryland Uniform Fraudulent Conveyance Act.	Solvency and balance sheet tests. § 406(a)
Liability for Distributions	Liable for 6 years, irrespective of fault. § 13.1-1036	With knowledge of unlawfulness, liable for 3 years. § 18-607(b), (c)	Not addressed.	If approved or assented to distribution, or knew of unlawfulness, liable for 2 years. § 407
Default Right to Withdraw	No default right. § 13.1-1032	No default right. § 18-603	On 6 months notice. § 4A-605	May dissociate by will at any time. § 602(a)

	Virginia	Delaware	Maryland	Uniform Act
Default Economic Rights Upon Withdrawal	None. (§ 13.1-1033 repealed in 1995)	Fair value within reasonable time (applies to all dissociations). Clarified in 1999 to make clear that a member is not entitled to payment if the member ceases to be a member other than by resigning (which a member has no default right to do.) § 18-604	None. (" <u>May</u> elect to pay") § 4A-606-1	In at-will company, must purchase interest. In term company, must purchase at end of term. § 603
Default Vote to Admit New Member	Majority vote. § 13.1-1038.1	Unanimous. § 18-301(b)(1)	Unanimous. § 4A-601(b)	Unanimous. § 404(c)(7)
Default Vote to Admit Transferee	Majority vote. § 13.1-1040(A)	Unanimous. §§ 18-301(b)(1), (b)(2), 18-704(a)	Unanimous. § 4A-604	Unanimous. § 503(a)
Effect of Member Dissociation on Dissolution	None (unless last member).	None (unless last member).	None (unless last member).	None.

	Virginia	Delaware	Maryland	Uniform Act
Default Dissolution Triggers	At agreed time or events, upon unanimous consent, when there are no members. § 13.1-1046	At agreed time or event, upon written consent, when there are no members. § 18-801(a)	At agreed time or events, upon unanimous consent, when there have been no members for 90 days. § 4A-902	Specified events, term expiration, consent. § 801
Effect of Last Member's Dissociation	Dissolves unless personal representative of last member agrees to continuation and new member within 6 months. § 13.1-1046(3)	Dissolves unless personal representative of last member agrees to continuation and new member within 90 days. LLC Agreement may obligate the personal representative to agree. LLC Agreement may also provide for an agreed upon method to admit a member. § 18-801(a)(4)	Dissolves without a member after 90 days. § 4A-902	Not specified.
Bankruptcy Cases	DeLuca cases.	None.	Antonelli case.	N/A
Securities Law Treatment	Howey.	Not addressed.	Howey.	N/A

	Virginia	Delaware	Maryland	Uniform Act
Judicial Treatment	Limited.	Limited. In <u>Elf Atochem North America, Inc. v. Jaffari</u> , 727 A.2d 286 (1999) the Delaware Supreme Court noted that the provisions of the Delaware LLC Act are “prolix, sometimes oddly organized, and do not always flow evenly.”	Limited.	N/A

	Virginia	Delaware	Maryland
LLPs			
Filing Fee	\$100.00 § 50-73.83(F)(1)(a)	\$100 per partner per year, maximum of \$120,000. Title 6, § 1544	\$50.00
Annual Renewal Fee	\$50.00 § 50-73.83(F)(2)(c)	\$50.00 § 50-73.83(F)(2)(c)	None (but subject to an annual tangible personal property tax)
Foreign Registration Filing Fee	\$100.00 § 50-73.83(F)(1)(b)	\$100.00 § 50-73.83(F)(1)(b)	\$50.00
Business Restrictions	None.	None.	None.
Extent of Shield	Full shield. § 50-73.96(C)	Full shield. Title 6, § 1515(b)	Full shield. § 9A-306(C)
Effect of Partner Change	None. § 50-73.136	No savings provision.	No effect. § 9A-1001(F)

	Virginia	Delaware	Maryland
Effect of Failure to Renew	LLP status revoked, but can be retroactively reinstated for two years. § 50-73.134	LLP status lapses. Title 6, § 1544	Right to use name is forfeited if annual tax is not paid by October 1. § 9A-1007 Retroactive reinstatement is permitted within 60 days after forfeiture. § 9A-1008(B)
Insurance/Financial Requirements	None.	At least \$1 million of insurance or segregated funds. Title 6, § 1546	None.