

MEMORANDUM

March 27, 2018

FROM: Dan Kleinberger
Steve Frost

RE: UNIFORM PROTECTED SERIES ACT – ISSUES FOR THE FILING OFFICE

PART 1 – INTRODUCTION TO SERIES LLCs AND PROTECTED SERIES

Hand out materials

- 1) This outline;
- 2) Title page, introduction to Uniform Law Commission, table of contents and prefatory note to UPSA; and
- 3) URL for full text and comments is:
http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/UPSA_Final%20Act_2017nov14.pdf

Speakers

Dan Kleinberger, professor and reporter to the UPSA drafting committee

Steve Frost, Uniform Law Commissioner from Illinois and chair of the UPSA drafting committee

Concepts to understand

Series LLC – an LLC that has established one or more protected series.

Protected series – described by the UPSA as a person that is distinct from the series LLC and members of the LLC, with rights and obligations, but not necessarily a separate entity. A protected series may have associated assets and non-associated assets. A protected series may have associated members that must be members of the series LLC.

Associated asset (vs. non-associated asset) – an asset of a protected series or of a series LLC that satisfies certain identification and record keeping requirements.

Associated member – a member (or members) of a series LLC that is (or are) associated with a protected series in accordance with the operating agreement of the series LLC.

Liability – associated assets of a protected series may not be used to satisfy claims against the series LLC or other protected series of the series LLC, and associated assets of the series LLC may not be used to satisfy claims against protected series of the series LLC.

Examples (diagramed on slides)

Example 1 – traditional LLC with three members, A, B and C and three assets, asset 1, asset 2 and asset 3.

Example 2 – series LLC with three members, A, B and C, and three assets, asset 1, asset 2 and asset 3, and two protected series, AB (asset 1 is the associated asset and A and B are the associated members of protected series AB) and BC (asset 2 is the associated asset and B and C are the associated members of protected series BC). Asset 3 is not associated with either protected series.

Example 3 – series LLC with three members, A, B and C, two assets, asset 1 and asset 2, and two protected series, AB (asset 1 is the associated asset and A and B are the associated members of protected series AB) and ABCC (asset 2 is the associated asset of protected series ABCC and series LLC and C own all of the interests of this protected series).

When is a series LLC used – while no clear pattern, in Illinois appear to be used predominately for separating ownership of real estate. Uses can be very sophisticated.

Key terms

Term	UPSA	Delaware	Illinois
How is a PS established	§201. Consent of members and a filing.	§18-215(a). In an operating agreement.	§37-40(a) In an operating agreement with the filing of a certificate of designation.
Is a separate public filing necessary?	Yes. §201(b)	No	Yes. §180/37-40(d).
Must name of PS include the name of	Yes. §202(b)	No	Yes. 180/37-40(c).

Term	UPSA	Delaware	Illinois
the Series LLC			
Is a PS defined as a “person”	Yes. §§ 102(7), 103	Yes. §18-101(12)	No, but may be an “entity” if set forth in articles of organization. §37-40(b).
Registered agent	§203. Registered agent for series LLC is registered agent for each PS.	No specific provision.	§37-40(f). Registered agent for series LLC is registered agent for each PS.
Service of process	§204. Service on a (foreign) series LLC or any of its (foreign) PSs is notice to the (foreign) series LLC and other (foreign) PSs of summons and complaint	No specific provision.	No specific provision.
Certificate of good standing	§205. Secretary of State shall issue certificate of good standing for domestic PS and certificate of registration for a foreign PS when conditions listed are satisfied.	No specific provision.	§37-40(e). PS in good standing as long as series LLC in good standing.
Information required in periodic reports	§206.	??	No specific provision.
Powers of PS	§104. Include capacity to sue and be sued. Otherwise, a PS has same powers and purposes as the series LLC. Limitations in §104(d).	§18-215(c). PS may carry on any lawful business, purpose, activity (with exception of banking) and in own name contract, hold title, grant liens and security interests and sue and be sued.	§37-40(b). PS may in own name contract, hold title, grant liens and security interests and sue and be sued and otherwise conduct business and exercise powers of an LLC under Act.

Term	UPSA	Delaware	Illinois
Management	§204. Default rule that PS governed in same manner as series LLC.	§18-215g). Except as provided in agreement, vested in members.	§37-40(h). Except as provided in agreement, vested in members.
Information rights	§305. A member of a series LLC which is not an associated member of a PS has same rights to information as a member that is not a manager of a manager-managed LLC.	No specific provision.	No specific provision.
Liability			
Is there an “asset by asset” consequence for non-associated assets?	Yes. §404	No	No
Does Act limit ability to associate assets after a claim is made?	Yes. §404	No	No
Does Act address rights of judgment creditors of associated members?	Yes. §403	No	No
Does Act permit application of domestic shield requirements to foreign PSs?	Yes. §§ 404(c) and 404(e)	No	No
Dissolution			
Is duration of PS limited to duration of series LLC?	Yes. §104(c)(1)	No	Yes. §180/37-40(m)

Term	UPSA	Delaware	Illinois
Foreign series LLCs and PSs			
Does Act require foreign series LLCs and PSs to comply with same requirements?	Yes. §604(c)	No	Yes. §180/37-40(c)
Disclosure requirements for foreign PSs	Yes. §§704, 703(b)(2)	No	No
Entity transactions	Article 6. No participation by PSs, and limited for series LLCs.	No Limits??	No limits??
Foreign series LLCs			
No attribution of activities and affairs of a series LLC or PSs to others.	Yes. §702		
Registration of foreign series LLCs and PSs	Yes. §703	§18-215(n). List of requirements for foreign series LLCs that register in Delaware.	§37-40(n) and (o). Limited.
Disclosure when a party to litigation in state	Yes. §704	No specific provision.	No specific provision.