

# Series LLC Plumbing Issues

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# Series LLCs



# IACA “Plumbing” Issues

- Formation
- Transparency & Records
- Series Name
- Service of Process
- Voluntary Termination or Dissolution
- Involuntary Termination or Dissolution
- Merger
- Foreign Qualification

# Formation



# Formation

DE: File LLC certificate of formation with notice of “series LLC” and the limitation of liability as to each series.

- Thereafter all series are created internally as provided in its agreement and no further notice is necessary.
- Communications contact person presumable will have access to membership records.
  - But see limitation of access to information
- No provisions as to names

# Formation

- Illinois: File an Series LLC articles of organization and notice of the limitation on liabilities of a series.
  - Thereafter all series are created in the operating agreement and then filed as a certificate of designation with SOS:
    - List the name of the series and
    - If not the same as the mothership
      - » the name(s) of the members if member managed or ,
      - » Names of managers, if manager managed.
  - The series' name must contain the entire name of the LLC and must be distinguishable from the names of the LLC's other series
- Certificates of designation may be executed by the limited liability company or any manager, person or entity designated in the operating agreement for the limited liability company.

# Formation

- Uniform Law Commission (ULC), Series Uniform Business Entity Act (SUBEA): Formation Requirements
  - Affirmative vote or consent of all members of LLC to establish one or more series
  - File a protected series designation
    - Name of the organization
    - Name of protected series
    - Signed by the organization.
    - The Registered Agent is the same as the RA for the series entity (motherhood) and the series entity (motherhood) has made arrangements that RA will also represent the designated series.

# Transparency, Records

- DE offers least amount of transparency
  - No public filing information available about series, managers, members
  - LLC must maintain records of members and managers that are accessible by the contact person.
    - LLC agreement may preclude access to records by some members. Therefore it is possible that one series cannot access information from another series.
  - No LLC annual report.



# Transparency and records

- IL requires disclosure of series, managers and member/managers
  - Public filing for every series with names of managers or member/managers
  - LLC Records required located at principal place of business with member access, presumable this include all series information.
    - (1) A list of the full name and last known address of each member setting forth the amount of cash each member has contributed, a description and statement of the agreed value of the other property or services each member has contributed or has agreed to contribute in the future, and the date on which each became a member.
    - (2) A copy of the articles of organization and powers of attorney for execution.
    - (3) Copies of the limited liability company's federal, State, and local income tax returns and reports, if any, for the 3 most recent years.
    - (4) Copies of any then effective written operating agreement and any amendments thereto and of any financial statements of the limited liability company for the 3 most recent years.

# Transparency, Records

IL: Annual report required that includes any update info including:

- 1) The name of the limited liability company.
- (2) Registered Office and Agent including mailing and street address,
- (3) Principal place of business, mailing and street address.
- (4) The names and addresses of its managers or, if none, the members.
- (5) Additional information that may be necessary or appropriate in order to enable the Secretary of State to administer this Act and to verify the proper amount of fees payable by the limited liability company.

# Transparency, Records

- SUBEA ULC Requires disclosure of series and responsible person for LLC
  - Mothership information filed with filing office
    - Name of mothership, name of responsible person (ie manager, or member manager) RA and address. etc.
  - Records kept at designated office
  - Entity with designated protected series annual report
    - Standard annual report required information plus
    - List of current protected series.

# Series Name

- Series Name
  - DE: no specific mention of name requirements other than that must be a legal name (can't list bank in the name unless regulated by banking under [§ 126 of Title 8](#). of Delaware codes.)
  - IL: Name of the series must
    - contain the entire name of the limited liability company and
    - be distinguishable from the names of the other series set forth in the articles of organization.
    - Other LLC name restrictions apply
  - SUBEA: Protected Series name requirements:
    - Name that complies with (name standards) and
      - Contains at the beginning the name of the LLC (motherhood) then series name
      - Contains the phrase "protected series" or "P.S." etc.
      - For example, "Motherhood Daughter 1, PS"
    - Name standards are based on filing office requirements that usually require the name be distinguishable on the record and not contain offensive language or include bank, trust, etc.

# Service of Process

- Service of process procedures:
  - DE: Service is on the LLC mothership registered agent.
    - There is no information about the series or name and therefore is no independent way to identify the name or LLC mothership.
    - Note each series can sue and be sued. Therefore it can be sued in its name without regard to the mothership. Likewise they can establish any legal name.
    - The question becomes: what happens if the mothership LLC fails to notify the RA about the existence and name of its series. Who is liable if the RA rejects the SOP? Does service then fall upon the SOS?
  - IL: Service of process is upon the LLC mothership's registered agent.
    - Name of series includes the name of the mothership so presumable the RA would know that service on the series would be directed to the LLC mothership or if instructed to the series.
  - SUBEA: Service of process upon the Protected Series is upon the LLC mothership's registered agent.

# Voluntary Termination

DE: No filing or notice required for Series

- Series is voluntarily terminated as provide in its LLC agreement:
  - At the time specified in the limited liability company agreement;
  - Upon the happening of events specified in the limited liability company agreement;
  - Unless otherwise provided in the limited liability company agreement,
    - » upon the affirmative vote or written consent of the members of the limited liability company associated with such series or,
    - » if there is more than 1 class or group of members associated with such series, then by each class or group of members associated with such series, in either case,
      - by members associated with such series who own more than 2/3 of the then-current percentage or
      - other interest in the profits of the series of the limited liability company owned by all of the members associated with such series or
      - by the members in each class or group of such series, as appropriate; or
  - Action by Chancery Court:
    - » On application by or for a member or manager associated with a series.
    - » Court of Chancery may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a limited liability company agreement.

# Voluntary Termination

- DE Continued
- Winding up is conducted by
  - Manager(s) of the series or
  - Members of the series if no managers
    - » or a person approved by the members associated with the series or,
    - » if there is more than 1 class or group of members associated with the series, then
      - by each class or group of members associated with the series, in either case,
        - by members who own more than 50 percent of the then current percentage or
        - other interest in the profits of the series owned by all of the members associated with the series or
        - by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series

# Voluntary Dissolution

## – IL Voluntary dissolution

- Filing with the Secretary of State a certificate of designation identifying the series being dissolved or by the dissolution of the limited liability company.
- As provided in the Operating Agreement

## – SUBEA ULC Voluntary dissolution

- Dissolution as part of the mothership dissolution or
- Dissolution of a protected series by delivering to the filing office a statement of designation cancellation stating:
  - Name of series and
  - The series is terminated.



# Involuntary Termination/ Dissolution



# Involuntary Termination/ Dissolution

- Involuntary Termination/Dissolution of a series
  - DE has no specific provisions related to involuntary termination or dissolutions of a Series other than if a mothership LLC dissolves for any reason then related Series also dissolve.
    - Mothership LLC involuntary dissolution the same as provided regular LLCs.
  - IL Series involuntary dissolution not provided in statutes other than involuntary dissolution of the Mothership dissolves all Series
    - A series of a limited liability company will be deemed to be in good standing as long as the limited liability company is in good standing.
    - Mothership LLC involuntary dissolution the same as regular LLC involuntary dissolution.
  - SUBEA Dissolution (voluntary or involuntary) of the series entity mothership causes the dissolution of all of the series.

# Merger

- Merger of a Series
  - DE has no provisions for merger of series with any other entity. No merger possible except merging another entity to the mothership and then dropping the assets down into a Series or alternatively transferring the assets of a Series into another entity.
  - IL has no specific provision for the merger of Series with other entities, however
    - If the Series is granted the authority by the mothership then merger might be possible .
      - Need to include statement in the mothership “Certificate of Formation” that the Series has the authority to be treated as a LLC for merger purposes.
      - However because there is no specific authority to conduct the merger; Hope the filing office permits the merger.
      - Alternatively, merge another entity to the mothership and then dropping the assets down into a Series or alternatively transfer the assets of a Series into another entity.
  - SUBEA: TBD

# Merger Question?????

- Series LLC into another entity
  - Do the separate protected series survive?
- Protected series into another entity
  - What does the record look like?
    - Is it asset transfer with terminated protected series or merged out ?
- Entity into a Series (mothership) LLC
  - Should be OK
- Entity into protected series
  - Should this happen and if so how?
    - Entity first merges with mothership then assets dropped down or
    - Entity merges directly into protected series
      - What does the record reflect.?

# Foreign Qualification

- Foreign Qualification
  - Recognition of Series liability shields would depend upon if the jurisdiction specifically recognizes Series LLCs or if the state has boilerplate language recognizing entity laws of another jurisdiction.
  - DE foreign qualification of Series LLC permitted
    - Must identify it as a Series LLC
      - Foreign qualification of a specific Series not permitted
      - Must be part of qualification of the mothership
    - Foreign qualification of a DE mothership in another jurisdiction would follow standard registration procedures however separate Series would be problematic because of the lack of evidence verifying the existing of a Series
      - Filing offices may reject a specific Series qualification or require some non-conforming evidence in lieu of a certificate of existence.

# Foreign Qualification

- IL foreign qualification permitted for both the mothership and or the separate Series
  - Application for admission of the mothership must state the liability protection for the Series and
  - Must qualify the mothership first and then obtain a certificate of designation for each Series doing business in the state.
  - Foreign qualification of a IL mothership into another jurisdiction would follow standard procedures
    - Foreign qualification of a IL Series would be determined by the policies of the filing office which would likely require evidence (certificate of existence or good standing,)
    - Foreign qualification of a IL Series can be just the Series.
    - There is evidence of each Series in IL because there is a certificate of destination for each series.
- SUBEA; Can qualify either the mothership or a separate series or both.
  - If the jurisdiction requires certificates of good standing for qualification then:
  - Certificate of good standing for both the mothership and the series if available.
  - If no good standing certificate available from the domicile jurisdiction available then
    - Affidavit from an individual on behalf of the applicant stating in fact of existence or good standing of the protected series.
- Question: What should it be?

# Final thoughts

- This is a work in progress and your input is important.
- If series LLC are adopted in your jurisdiction then try to be part of the process and specify how you want the “plumbing issues” handled.

# Thank You

