

DRAFT
FOR DISCUSSION ONLY

SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 6 – 8, 2015 Drafting Committee Meeting

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ON UNIFORM STATE LAWS

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October 15, 2015

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ENTITIES ACT**

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1 **REPORTER’S INTRODUCTORY NOTE**

2 In General^{1 2}

- 3
- 4 1. This draft of the Uniform Protected Series Act (“UPSA”)³ provides for a stand-alone act,
- 5 with its scope limited to limited liability companies.
- 6
- 7 2. Braces – { } – within the statutory text indicate optional or alternative language.
- 8
- 9 3. This draft is intended to dovetail with the LLC statute of each enacting state, regardless
- 10 of whether the state has previously enacted ULLCA.
- 11
- 12 4. The stand-alone/dovetail approach creates an important question with regard to
- 13 definitions.
- 14
- 15 a. The act will depend on concepts defined in the LLC act of each enacting state –
- 16 e.g., operating agreement, member. It is essential that each such concept be
- 17 defined in this act exactly as the concept is defined in the LLC act of the enacting
- 18 state.
- 19 b. In the opinion of the Chair and Reporter, it would be bad practice to restate in this
- 20 act the definition from an LLC act, because doing so would create the risk of a
- 21 legislature amending a definition in one act without amending the corresponding
- 22 definition in the other act.
- 23
- 24 5. Therefore, this act contains several provisions in this format: “X” has the meaning stated
- 25 in [ULLCA § 102[applicable paragraph]]. A legislative note will: (i) instruct an enacting
- 26 state to replace the bracketed language with a reference to the appropriate definition in
- 27 the state LLC act; and (ii) suggest inserting the appropriate ULLCA (2013) definition as
- 28 to any term LLC not defined in the state LLC act.
- 29
- 30 6. Another approach under consideration is to convert the act to a module (e.g., in ULC
- 31 terms, an article), intended to be inserted into the LLC act of each enacting state. The
- 32 module approach would eliminate the need to cross reference definitions from the
- 33 relevant LLC act. (For enactment purposes, the Committee might consider
- 34 recommending three versions of its work: ULLCA (2013) with the protected series
- 35 provisions as an article; a stand-alone act; a module.)

¹ This draft, intended primarily for the Drafting Committee, assumes a reader’s familiarity with the protected series concept. Readers without that familiarity may acquire it by reading the *Prefatory Note – Preliminary* to the 2015 Annual Meeting Draft: http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2015AM_SeriesBusinessEntities_Draft.pdf, at 1 (last visited 10/14/15).

² Footnotes having served their purpose, future drafts will instead have tentative comments.

³ Name tentative, pending approval by Drafting Committee and then the Executive Committee.

1 7. The “extrapolation” of LLC act and operating agreement provisions to protected series
 2 leads to parallelism in terminology, as shown in the following table.
 3
 4

| concept | defined term pertaining to a series limited liability company | defined term pertaining to a protected series |
|---|---|---|
| person with both governance and economic rights | member | associated member (member associated with a protected series) |
| governance rights | no defined term (standard ULC approach) | no defined term (standard ULC approach) |
| economic rights | transferable interest (rights to distributions from the limited liability company) | distributable interest (rights to distributions from a protected series) |
| owner solely of economic rights | transferee <i>of a transferable interest pertaining to the LLC</i> | associated distributee <i>of a distributable interest pertaining to a protected series</i> |

5
 6 **Protecting against Liability Shield Abuses**
 7

8 All modern business entities provide the traditional, “vertical” shield – protecting the entity’s
 9 owners (and their respective assets) from automatic, vicarious liability for the entity’s debts.
 10

11 A “series” limited liability company provides novel, “horizontal” shields – protecting each
 12 protected series (and its assets) from automatic, vicarious liability for the debts of the company
 13 and for the debts of any other protected series of the company. A horizontal shield likewise
 14 protects the series limited liability company (and its assets) from creditors of any protected series
 15 of the company.
 16

17 If each protected series were an entirely separate limited liability company, the horizontal
 18 protection would exist as a matter of course. What makes the horizontal shield novel in a series
 19 limited liability company is that a protected series is not entirely distinct from the company.
 20

21 The following material describes how the Uniform Protected Series Act (“UPSA”) approaches
 22 each shield so as to deter abuses (the “shell game”) and compares the UPSA approach to the
 23 approach of existing series laws.
 24

25
 26
 27 1. Traditional (“vertical”) liability shield – protects an entity’s owners from being held
 28 vicariously liable for the entity’s debts.

29 Principle examples: members/LLC; shareholders/corporation
 30

31 *Under UPSA – The same rules of law and equity (primarily “piercing”) apply to hold*
 32 *members of a series limited liability company vicariously liable for the company’s debts and*

1 to hold members associated with a protected series vicariously liable for the protected
2 series' debts.

3
4 Other "series" statutes compared with UPSA – No current series statute addresses this issue.
5 Only UPSA acknowledges the issue and expressly makes applicable the relevant principles of
6 law and equity.

7
8 2. "Horizontal" shields – asset protection among protected series, the series limited liability
9 company, and *vice versa*.

10 Under series statutes and the UPSA, a limited liability company may create separate
11 protected series, with the assets of each protected series available only to the creditors of
12 that protected series. Put more colloquially, a limited liability company may establish
13 separate "protected cells"⁴ of assets and operations, with each "cell" no more liable for
14 the debts of another corral than one LLC is liable for the debts of another.

15 This "horizontal" asset protection is the crux of the protected series concept and raises
16 two issues: (i) whether a public filing is necessary to create the horizontal shields; and
17 (ii) what, if any, rules of law and equity apply to override the horizontal shields.

18
19 Public filing: Historically, for an entity to acquire any type of liability shield it
20 was necessary to make a public filing with a government office.

21 Under UPSA – To establish a protected series (and thereby create the
22 horizontal shields), the limited liability company must make a public
23 filing.

24 Other "series" statutes compared with UPSA – Most series statutes permit
25 a limited liability company to establish a protected series without a public
26 filing, so long as the public filing establishing the company states that the
27 company "may" have protected series. Therefore, the public record
28 provides no information as to most of the thousands of currently existing
29 protected series.

30
31 Overriding the horizontal shields:

32
33 Under UPSA – Under the broad category of "affiliate liability," well-
34 established rules of law and equity exist to hold one entity liable for the
35 debts of another. UPSA makes the same affiliate liability rules applicable
36 among a series limited liability company and its protected series.

37
38 Other "series" statutes compared with UPSA – No current series statute
39 addresses this issue. Only UPSA acknowledges the issue and expressly
40 makes applicable the relevant principles of law and equity.

41

4 The Reporter uses this term advisedly, because the phrase is a term of art both in the realm of reinsurance and some off-shore jurisdictions.

Example 1 – Frost Series Limited Liability Company (“Frost”) has established two protected series – Frost LLC Protected Series Steve (“Protected Series Steve”) and Frost LLC Protected Series Wendy (“Protected Series Wendy”). Applying affiliate liability doctrine, a court determines that Protected Series Steve is liable for the debts of Protected Series Wendy. All assets owned by Protected Series Steve are available to the creditors of Protected Series Wendy as well as to the creditors of Protected Series Steve.

3. UPSA’s novel, additional protection against the “shell game” – the association requirement. Generally, in the absence of “affiliate liability,” assets owned by one entity are not subject to the enforcement of claims by creditors of any other entity.

Under UPSA – Even if a protected series is not liable for the debts of its series limited liability company or any other protected series of the company (i.e., no affiliate liability), an asset owned by the protected series is available for creditors of the company or another protected series of the company unless the protected series has complied with strict recordkeeping requirements and thereby “associated” the asset with the protected series.

Example 2 – Frost Series Limited Liability Company (“Frost Series LLC”) has established two protected series – Frost LLC Protected Series Steve (“Protected Series Steve”) and Frost LLC Protected Series Wendy (“Protected Series Wendy”). Protected Series Steve owns Widget, but, due to deficiencies in recordkeeping, Widget is not associated with Protected Series Steve. The horizontal shields are effective – i.e., the facts do not support affiliate liability. However, because Widget is owned by but not associated with Protected Series Steve, Widget is available for the enforcement of claims by creditors not only of Protected Series Steve but also of claims of Protected Series Wendy and of Frost Series LLC.

In chart form:

| | |
|--|--|
| <p>property owned by the series limited liability company <i>but not associated with the company (inadequate record keeping)</i></p> <p>Item by Item Protection Status: None</p> | <p>property owned by a protected series, <i>but not associated with the protected series (inadequate record keeping)</i></p> <p>Item by Item Asset Protection Status: None</p> |
| <p>property owned by <i>and associated with the series LLC (satisfactory record keeping)</i></p> <p>Item by Item Protection Status: Good (but irrelevant if affiliate liability established)</p> | <p>property owned by <i>and associated with a protected series (satisfactory record keeping)</i></p> <p>Item by Item Protection Status: Good (but irrelevant if affiliate liability established)</p> |

1 *Other “series” statutes compared with UPSA – No current series statute addresses this issue.*
2 *Only UPSA protects against “shell game” manipulation by distinguishing property merely*
3 *“owned” by a protected series or series limited liability company from property associated*
4 *with its owner through stringent recording requirements.*
5

1 **SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform {Limited
5 Liability Company} Protected Series Act.⁵

6 **SECTION 102. DEFINITIONS.**

7 (a) Except as otherwise provided in subsection (b), in this [act]:

8 (1) “Associated distributable interest” means a distributable interest pertaining to
9 a particular protected series.⁶

10 (2) “Associated distributee” means, with regard to a protected series and its
11 associated distributable interests, a person, other than the series limited liability company or a
12 member associated with the protected series, to which all or part of an associated distributable
13 interest has been transferred, regardless of the identity of the transferor. The term includes a
14 person that owns an associated distributable interest as a result of having ceased to be associated
15 with the protected series.

16 (3) “Associated member” means a member that has become associated with a
17 protected series under Section 302.

⁵ The revised name reflects the decision to confine the act to limited liability companies. On information and belief, Style does not accept abbreviations in the names of acts (or in statutory text). Adding the bracketed language makes the act’s scope immediately explicit, but at the cost of a more cumbersome name. Any change in the name of an act must be approved by the Executive Committee.

⁶ This draft uses “associated” as the term of art to indicate the connection to a protected series of: (i) economic rights (associated distributable interest); (ii) a holder of economic rights (associated distributee); (iii) members of the series LLC (associated members); and (iv) assets (associated property). The term “associated property” has an additional, very important role; the term identifies assets protected by the non-enforcement aspect of the internal shield of a protected series. *See* Section 402(a) and Introductory Note, Protecting against Liability Shield Abuses, para. 3.

1 (4) “Associated property” means property that is associated with a protected
2 series or a series limited liability company under Section 301.⁷

3 (5) “Distributable interest” means the right, as initially owned by the series
4 limited liability company or {by} a person in the person’s capacity as an associated member of a
5 protected series of the company, to receive distributions from the protected series, regardless of
6 whether the person remains an associated member or the member or company continues to own
7 any part of the right. The term applies to any fraction of the interest{, regardless of which person
8 owns it}.

9 (6) “Distributee” means a person to which all or part of a distributable interest has
10 been transferred, regardless of the identity of the transferor.

11 (7) “Foreign limited liability company” has the meaning stated in [ULLCA §
12 102(5)].

13 (8) “Foreign protected series” means a structure, arrangement, entity, or person
14 other than an individual,⁸that has been established {by} {with respect to} a foreign limited
15 liability company and would be a protected series if established under this [act].⁹

⁷ For several reasons, the Drafting Committee (“Committee”) has decided to permit a series LLC to have associated property. Doing so is the simplest way to: (i) provide an internal shield for property owned by a series LLC; (ii) allow the series LLC as a whole to share in the profits from a protected series; and (iii) implement the agreed upon default rule that – absent associated members – the profits from a protected series inure to the LLC and not directly to all members.

⁸ The Drafting Committee has decided to characterize a domestic protected series as a person. *See* Section 104. However, it would be unwise to limit the scope of “foreign protected series” based on that characterization, because most current statutes avoid the characterization issue. Therefore, to use “person” alone in this definition would indicate that being a person is a precondition to being a foreign protected series. *Compare* Section 105(8) (stating that the law of this jurisdiction governs the characterization of a protected series as a person) *with* Section 701 (omitting a comparable provision for a foreign protected series).

⁹ Derived from ULLCA (2013) § 102(5), which defines “foreign limited liability company” as “an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited

1 (9) “Foreign series limited liability company” means a foreign limited liability
2 company that has at least one foreign protected series.

3 (10) “Jurisdiction of formation” has the meaning stated in [ULLCA § 102(7)].

4 (11) “Limited liability company” has the meaning stated in [ULLCA § 102(8)]
5 and includes a series limited liability company.

6 (12) “Manager”, except in the phrase “series manager”, has the meaning stated in
7 [ULLCA § 102(9)].

8 (13) “Member” has the meaning stated in [ULLCA § 102(11)].¹⁰

9 (14) “Person” has the meaning stated in [ULLCA § 102(15) and ¹¹ includes a
10 protected series;¹²

11 (15) “Protected series”, except in the phrase “foreign protected series”, means a
12 person established under Section 201.

13 (16) “Publicly filed record” means the record whose public filing by or with a
14 government office is necessary to form a foreign limited liability company and any other records
15 maintained in that office and pertaining to the company, including records pertaining to a foreign
16 protected series of the company.

liability company if formed under the law of this state.”

¹⁰ We have a substantial technical problem with this and several definitions, because the terms are used in Article 6, which deals with foreign series limited liability companies and foreign protected series. ULLCA, ULPA, and UPA use the terms in their respective articles dealing with foreign entities, even though those three acts define those terms as exclusively pertaining to the domestic context.

¹¹ The Committee on Style has the standard definition of “person” under review, due to concerns expressed that the current definition is problematic with regard to some types of unincorporated business organizations.

¹² This definition excludes a foreign protected series, because this act neither requires a foreign protected series to be, nor provides that a foreign protected series is, a person. *See* Section 102(10) (referring to a “[f]oreign protected series” as “a structure, arrangement, entity, or person other than an individual”).

1 (17) “Record” has the meaning stated in [ULLCA § 102(18)].

2 (18) “Series limited liability company”, except in the phrase “foreign series
3 limited liability company”, means a limited liability company that has at least one protected
4 series.¹³

5 (19) “Series manager” means a person under whose authority the powers of a
6 protected series of a series limited liability company are exercised and under whose direction the
7 activities and affairs of the protected series are managed {pursuant to} {under} this [act] and the
8 operating agreement of the limited liability company that established the protected series. The
9 term includes persons that have the authority and provide the direction collectively.

10 (20) “Sign” has the meaning stated in [ULLCA § 102(21)].

11 (21) “State” has the meaning stated in [ULLCA § 102(22)].

12 (22) “Titled property” means property that is subject to a titling system.

13 (23) “Titling system” means a system for registering or recording title under the
14 law of this state or another jurisdiction.¹⁴

15 (24) “Transferable interest” has the meaning stated in [ULLCA § 102(24)].

16 (25) “Transferee” has the meaning stated in [ULLCA § 102(25)].

17 (b) When a term defined in subsection (a) is used in reference to a foreign series limited
18 liability company or foreign protected series, the term has the meaning {accorded it} {accorded}
19 {given it} {given} {stated} in the statute under which the foreign company was formed or the

¹³ Under this definition, an LLC might go in and out of “series limited liability company” status (and back in again).

¹⁴ This definition applies to property located in the enacting state regardless of whether the property owner is domestic or foreign. The defined term also encompasses titled property located in another jurisdiction. In the latter context, the act applies its titling requirements to property located in another jurisdiction only if owned by a series limited liability company or protected series.

1 foreign protected series established.¹⁵

2 **SECTION 103. NATURE OF PROTECTED SERIES.** A protected series is a person
3 and, except as otherwise provided in Section 104(d)(4),¹⁶ distinct from:

4 (1) the limited liability company that established the protected series;

5 (2) any other protected series of the company;

6 (3) any member of the company, regardless of whether the member is associated with the
7 protected series;

8 (4) any transferee of a transferable interest pertaining to the company; and

9 (5) any distributee, regardless of whether associated with the protected series.

10 **SECTION 104. POWERS, PURPOSE, AND DURATION OF PROTECTED**
11 **SERIES.**

12 (a) A protected series has the capacity to sue and be sued in its own name.¹⁷

13 (b) Except as otherwise provided in subsections (c) through (e), a protected series:

14 (1) has the same powers as the limited liability company that established the
15 protected series;¹⁸ and

¹⁵ This subsection fixes a problem that the Harmonization Committee did not resolve.

¹⁶ The cited paragraph provides that a protected series cannot exist on its own; therefore, a protected series is not entirely distinct from the limited liability company whose existence is necessary to the existence of the protected series.

¹⁷ Stated separately to enable the act to render this provision non-waivable. It has been urged that this provision use “may” instead of “has the capacity”. The current language tracks ULLCA and ULPA.

¹⁸ Beginning with ULPA (2001) § 105, the Conference has eschewed listing in detail the powers of a business organization. For example, ULLCA (2013) § 109 provides: “A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.” The Drafting Committee initially decided to follow that approach in this act, with a comment providing examples of the powers provided. However, a recent case may cause the Committee to revisit the issue. *See Pac Re 5-AT v. Amtrust N. Am., Inc.*, No. CV-14-131-BLG-CSO, 2015 WL 2383406, at *4 (D. Mont. May 13, 2015) (interpreting Montana’s statute providing for

1 (2) may have any lawful purpose, regardless of whether for profit.¹⁹
2 (c) A protected series may be party to a merger only if when the merger becomes
3 effective:
4 (1) the protected series is not the surviving party; or
5 (2) the protected series continues as:
6 (A) a protected series of its or another series limited liability company; or
7 (B) a foreign protected series whose establishment is reflected in the
8 publicly filed records of its foreign series limited liability company.
9 (d) A protected series may not:
10 (1) establish a protected series or be associated with a protected series of its series
11 limited liability company;²⁰
12 (2) be a party to a merger except as provided in subsection (c);
13 (3) be a party to an interest exchange, conversion, domestication, or comparable
14 transaction;²¹ [or]

protected cell captive insurance companies [PCC]); noting that “the statute does not contemplate that the assets of a protected cell will be used to satisfy the liabilities of any other cell,” but holding that “[w]ithout a separate legal identity, and absent a statutory grant to the contrary, a protected cell does not have the capacity to sue and be sued independent of the larger PCC”). At minimum, a comment will take care to distinguish *Pac Re 5-AT*.

¹⁹ Subsection (b) states default rules. Thus, the operating agreement of a series limited liability company can: (i) cause a protected series to have fewer powers than its series limited liability company; (ii) accord powers to a protected series which transcend limitations imposed by the operating agreement on the series limited liability company; or (iii) confine the purposes of a protected series so as to correspond to limitations applicable to the series limited liability company or in any other way.

²⁰ The phrases “or be associated with” and “series of its series limited liability company” are new. Without the new language, this paragraph’s reference to “same powers” would conflict with Section 302(a) (“Only a member or the series limited liability company may become associated with a protected series of the company.”).

²¹ Allowing interest exchanges, conversions, or domestications could do great mischief to the concept of internal affairs.

1 (4) continue after its series limited liability company has dissolved and completed
2 winding up, unless:

3 (A) the protected series has been a party to a merger in accordance with
4 section (c)(2); and

5 (B) the merger becomes effective before the series limited liability
6 company has completed winding up[.] [; or]

7 [(4)]²²

8 (e) If the law of this state prohibits a limited liability company from engaging in an
9 activity or affair, conducting a business, entering into a transaction, or functioning or operating
10 in any other way, the prohibition applies to any protected²³ series.²⁴

11 **SECTION 105. GOVERNING LAW.** The law of this state governs:

12 (1) the internal affairs of a protected series, including the relations between a protected
13 series and:²⁵

14 (A) the series limited liability company;

15 (B) another protected series of the company;

16 (C) a member of the company, regardless of whether the member is associated
17 with the protected series;

18 (D) a transferee of a transferable interest pertaining to the company; and

²² A legislative note will note that conduct a state considers acceptable for a series limited liability company might be unacceptable for a “mere” protected series – e.g., banking?

²³ Not necessary to refer to limitations on who may be a member, so long as being a member is a precondition to being an associated member.

²⁴ Non-waivable.

²⁵ These provisions cover each relationship in both directions.

1 (E) an associated distributee of any protected series of the company;
2 (2) any²⁶ liability of the series limited liability company for a debt, obligation, or other
3 liability of a protected series of the company;²⁷
4 (3) any liability of a protected series for a debt, obligation, or other liability of the series
5 limited liability company or any other protected series of the company;
6 ²⁸(4) any liability for a debt, obligation, or other liability of a protected series of:
7 (A) a member of the series limited liability company, regardless of whether the
8 member is associated with the protected series;
9 (B) a transferee of a transferable interest pertaining to the company;
10 (D) a distributee of a distributable interest pertaining to any protected series of
11 the company;
12 (E) a series manager of any protected series of the company; and
13 (F) a manager of the company or a person acting in a comparable capacity.²⁹
14 ³⁰(5) whether a claim against a series limited liability company may be enforced against
15 property owned by a protected series of the company;
16 (6) whether a claim against a protected series may be enforced against property owned by
17 the series limited liability company or another protected series of the company; {or} {and}

²⁶ A comment will note that under normal circumstances no such liability will exist.

²⁷ This paragraph and the next establish the non-liability aspect of the protected series construct.

²⁸ This paragraph establishes the traditional type of liability shield – *i.e.*, this paragraph does not provide asset partitioning but rather establishes the traditional “veil” between an enterprise and its owners, transferees/distributees, and managers.

²⁹ *I.e.*, members in a member-managed series limited liability company.

³⁰ Paragraphs 5 and 6 pertain to the internal shields.

1 (7) whether a protected series is a person.

2 **SECTION 106. RELATIONSHIP OF [ACT] TO OTHER LAW;**
3 **EXTRAPOLATION OF [ACT] AND OPERATING AGREEMENT TO PROTECTED**
4 **SERIES.**³¹

5 (a) This [act] prevails in any conflict between this [act] and [ULLCA].³²

6 ³³(b) Except as otherwise provided in this [act] or the operating agreement of a series
7 limited liability company, each provision of [ULLCA] and the company’s operating agreement
8 applies to each protected series established by the company, and each associated member,
9 associated distributee, and associated distributive interest as if:

10 (1) the protected series were the company;

11 (2) any associated member of the protected series were a member of the company
12 referred to in subsection (b)(1);

13 (3) any associated distributee of the protected series were a transferee with regard
14 to the company referred to in subsection (b)(1).

15 (4) any distributable interest pertaining to the protected series were a transferable
16 interest pertaining to the company referred to in subsection (b)(1);³⁴

17 (5) a judgment creditor of an associated member or associated distributee were a
18 judgment creditor of respectively a member of the company referred to in subsection (b)(1) or a

³¹ The “extrapolation” is added to encompass subsection (b), which extrapolates provisions not only of the LLC act but also of the operating agreement.

³² For a legislative note – If an enacting state locates name requirements outside the state’s LLC statute, this provision should be expanded to refer to the section(s) on name requirements.

³³ This section contains the “extrapolation” approach.

³⁴ For a comment – Because a distributable interest and transferable interest are separate, non-overlapping concepts, the transfer of one does not cause the transfer of the other.

1 transferee with regard to that company; and

2 (6) each series manager were a manager of the company referred to in subsection

3 (b)(1).³⁵

4 (c) Service of a process, notice, demand, or other record on a series limited liability

5 company constitutes service on each protected series of the company.³⁶

6 (d) Service of a process, notice, demand, or other record on a protected series is not

7 service on the series limited liability company or any other protected series of the company.

8 **SECTION 107. RELATION OF OPERATING AGREEMENT {OF SERIES**

9 **LIMITED LIABILITY COMPANY} TO PROTECTED SERIES {OF THE COMPANY}.³⁷**

10 (a) Except as otherwise provided in subsections (b) and (c), the operating agreement of a

11 series limited liability company governs:³⁸

12 (1) the activities and affairs of a protected series of the company and the conduct

13 of those activities and affairs;

14 (2) relations among the protected series, the company, and any other protected

³⁵ Query – Would the following language be redundant: “each right and obligation of a person in the person’s capacity as an associated member were a right and obligation in the person’s capacity as a member of the company referred to in subsection (b)(1)”?

³⁶ For a comment – This rule’s principal purpose is to facilitate service of a charging order, which, for example, might be addressed to “Series LLC Alpha and any protected series of Series LLC Alpha.” The rule will also facilitate requests for documents in discovery. Service on a protected series does not by itself obligate the protected series if the record is inapposite to the protected series. For example, serving a protected series with a charging order pertaining to a judgment debtor has no effect if the debtor is neither an associated member nor associated distributee.

³⁷ A comment will explain that a protected series: (i) has no operating agreement of its own; (ii) is governed by the operating agreement of the series limited liability company; and (iii) will have whatever amount of “self-governance” that agreement provides. Another comment will discuss the variety of ways an operating agreement might provide for protected series, including appendices, exhibits, etc.

³⁸ This provision is non-waivable.

- 1 series of the company;
- 2 (3) relations among the associated members of the protected series;
- 3 (4) relations between the associated members of the protected series and:
- 4 (A) the protected series;
- 5 (B) the company;
- 6 (C) another protected series of the company;
- 7 (D) a member not associated with the protected series;
- 8 (E) a transferee { with regard to the company } { of a transferable interest
- 9 pertaining to the company };
- 10 (F) an associated distributee of any protected series of the company; and
- 11 (5) the rights and duties under this [act] of a person in the capacity of series
- 12 manager.
- 13 (b) To the extent the operating agreement of a series limited liability company does not
- 14 provide for a matter described in subsection (a), this [act] governs the matter.³⁹
- 15 (c) The operating agreement of a series limited liability company may not:
- 16 (1) vary:^{40 41}

³⁹ For a comment – Under Section 106, this act will make provisions of the LLC act applicable as well.

⁴⁰ To be completed when the Committee has finished deciding which provisions are not waivable. The Reporter expects that the main protection will be a clear statement extrapolating ULLCA (2013) § 105(c) to operating agreement provisions pertaining to a protected series. However, this provision will also include some “protected-series specific” provisions – *e.g.* Section 501(a) (“A member associated with a protected series ceases to be associated when the member dissociates from the series limited liability company.”).

⁴¹ Earlier drafts also listed “(B) any requirement, procedure, or other provision of this [act] concerning: (i) registered agents; or (ii) the [Secretary of State], including provisions concerning records authorized or required to be delivered to the [Secretary of State] for filing under this [act].” This draft omits that language as redundant of ULLCA § 105(c)(3) (the source verbatim of the now deleted language).

1 or

2 (2) provide that a protected series of a series limited liability company has a
3 power greater than or additional to the powers the company has under [ULLCA § 109].⁴²

4 (d) Establishing a protected series does not affect a vote, consent, or other requirement
5 for amending the operating agreement of the limited liability company that established the
6 protected series.⁴³

7 **SECTION 108. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced by
8 particular provisions of this [act], the principles of law and equity supplement this [act].

9 **SECTION 109. APPLICATION TO EXISTING RELATIONSHIPS.**

10 Details to TBD. As of October 14, 2015:

- 11 • long drag-in period – 2 years
- 12 • authorize an existing series LLC to opt in before the drag-in date
- 13 • authorize those with managerial authority to comply with this act’s recordkeeping
14 and filing requirements without need for member approval (domestic only)
- 15 • provide that re-titling an asset to comply is not a transfer and not subject to a
16 transfer tax (effective for property located within the enacting jurisdiction; of
17 dubious effect elsewhere, except where the act is also being adopted)

⁴² Section 104(b)(1) provides that a protected series “has the same powers as the series limited liability company that established the protected series.” Because that provision is a default rule, the operating agreement of a series limited liability company may accord to a protected series a power that the agreement denies to the company. However, the operating agreement cannot provide a protected series any power beyond those granted to the limited liability company by its LLC statute.

⁴³ This subsection states a default rule.

1 [ARTICLE] 2

2 ESTABLISHING PROTECTED SERIES

3 SECTION 201. ESTABLISHING PROTECTED SERIES; PROTECTED SERIES
4 DESIGNATION; AMENDMENT OF DESIGNATION.

5 (a) With the affirmative vote or consent of all its members, a limited liability company
6 may establish a protected series in accordance with this section.⁴⁴

7 (b) To establish a protected series, a limited liability company must deliver to the
8 [Secretary of State] for filing a protected series designation, signed by the company, stating the
9 name of the company and the name of the protected series.^{45 46}

10 (c) A protected series is established when the protected series designation becomes
11 effective.⁴⁷

12 (d) A series limited liability company may amend a protected series designation by
13 delivering to the [Secretary of State] for filing a statement of designation⁴⁸ change that states the

⁴⁴ The operating agreement may vary the consent requirement, but not the rest of this section.

⁴⁵ Omitted – language permitting additional information. Rationale: keeping the designation as simple as possible; dispensing with language explaining how additional information may not be used to evade restrictions on the operating agreement.

⁴⁶ For a legislative note – If the LLC statute of the enacting state requires the certificate of formation (however denominated) to identify a person with governance authority, the same requirement should appear here.

⁴⁷ A protected series can be established without any associated members, associated assets, or associated distributees. *Contrast* ULLCA (2013) § 201(d) (“A limited liability company is formed when the certificate of organization becomes effective and at least one person has become a member.”) Under Section 302(c), associated distributable interests will necessarily exist (owned by the series limited liability company).

⁴⁸ “Statement of designation change” is used to avoid confusion with statutes that use “statement of change” for a different purpose. *See, e.g.*, ULLCA (2006) (Last Amended 2013), § 116 (Change of Registered Agent or Address for Registered Agent by Limited Liability Company).

1 name of the company, the name of the protected series to which the designation applies, and the
2 information to be in effect as a result of the statement becoming effective.⁴⁹

3 **SECTION 202. NAME.** The name of a protected series must:

4 (1) except as otherwise provided in paragraph (3), comply with [ULLCA § 112]⁵⁰
5 [UBOC⁵¹ §§ 1-301 and 1-302].⁵²

6 (2) contain the phrase “Protected Series” or “protected series” or the abbreviation “P.S.”,
7 “PS”, “Prot. Ser.”, or “Prot Ser”; and

8 (3) begin with the name of the series limited liability company that is establishing the
9 protected series, including any word or abbreviation required by [ULLCA § 112(a)] [UBOC § 1-
10 302(d)] to designate that the company is a limited liability company.⁵³

11 **SECTION 203. REGISTERED AGENT; SERVICE OF PROCESS, NOTICE, OR**
12 **DEMAND.**

13 (a) The registered agent of a series limited liability company is the registered agent for
14 each protected series of the company.⁵⁴

⁴⁹ Query: If a series limited liability company changes its name, must the company amend its filed statements of designation? The same query applies to registration statements of foreign limited liability companies and foreign protected series.

⁵⁰ ULLCA § 112 states name requirements.

⁵¹ UBOC = Uniform Business Organizations Code.

⁵² If name requirements are in a junction box statute (e.g., as in the UBOC), cite to that provision.

⁵³ This formulation is intended to facilitate searching in the public record, but the Drafting Committee needs further conversation with IACA to determine whether the formulation is correct. Ideally, this provision would accommodate the most common approach to naming series: [name of limited liability company] – [name or number of protected series]. In any event, this provision will override any provision of an enacting state’s law which limits the use of LLC designators to LLCs.

⁵⁴ This provision does not apply to a foreign protected series. Section 604(a) applies instead.

1 (b) Before delivering a protected series designation to the [Secretary of State] for filing, a
2 limited liability company shall arrange with its registered agent that the registered agent will also
3 serve as the registered agent for the protected series to be established when the certificate
4 becomes effective.

5 (c) A person that signs a protected series designation delivered to the [Secretary of State]
6 for filing affirms as a fact⁵⁵ that the limited liability company on whose behalf the certificate is
7 delivered for filing has complied with subsection (b).

8 (d) Except as otherwise agreed by a limited liability company⁵⁶ and its registered agent,
9 the agent is not obligated to distinguish between a process, notice, demand, or other record
10 concerning a protected series of the company and a process, notice, demand, or other record
11 concerning the company or another protected series of the company.^{57 58}

12 **[SECTION 204. [ANNUAL] [BIENNIAL] REPORT.**⁵⁹ The [annual][biennial] report
13 required by [ULLCA § 212] [UBOC § 1-213] must include the name of each protected series of
14 the limited liability company as of the date the company delivers the report to the [Secretary of

⁵⁵ Derived from UBOC, § 1-209(c): “A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.”

⁵⁶ This subsection refers to a limited liability company rather than a series limited liability company to encompass an agreement by a limited liability company before establishing its first protected series.

⁵⁷ Thus, the registered agent is not required to perform a sorting function unless so provided in an agreement with the series LLC. This draft adds “or other record” to the standard formulation because that latter formulation authorizes, while this provision protects. The addition has the salutary side effect of clarifying that a “process, notice, demand” must be in record form.

⁵⁸ Query: Does Section 203 adequately address what happens when a registered agent resigns? (Probably – because if the series LLC does not arrange for a new registered agent, the series LLC is subject to administrative dissolution. Dissolution (administrative or otherwise) of a series LLC dissolves each protected series. Query: Does Section 203 adequately address the “resurrection” issue?

⁵⁹ The Drafting Committee has not yet decided whether to provide for certificates of good standing for a protected series. ULLCA § 112 provides for such certificates for limited liability companies.

1 State] for filing.⁶⁰

2 [ARTICLE] 3

3 ASSOCIATED PROPERTY, MEMBERS, AND DISTRIBUTABLE INTERESTS;

4 MANAGEMENT

5 SECTION 301. ASSOCIATING PROPERTY WITH PROTECTED SERIES OR
6 SERIES LIMITED LIABILITY COMPANY.⁶¹

7 (a) Only property owned by a protected series may be associated with the protected
8 series. {Only property owned by a limited liability company may be associated with the
9 company.} {alternative – locate in subsection (e)}

10 (b) Subject to subsection (c), property⁶² owned⁶³ by a protected series is associated with

⁶⁰ For a legislative note – Include this provision only if the enacting state’s LLC statute requires an annual or biennial report.

⁶¹ This section states the mechanics of associating property. Section 402 states the consequence of compliance *vel non*.

⁶² A protected series may own one or all of the “bundle of sticks” pertaining to a particular item of property. *Cf.* UCC Article 9, § 9-203(b)(2) (“ a security interest is enforceable against the debtor and third parties with respect to the collateral only if...the debtor has rights in the collateral”).

⁶³ Only property “owned” by a protected series may be associated with the series. Associated property is a subset of owned property (although the subset may be co-extensive with the set). For the meaning of “owns,” see OWNERSHIP, BLACK’S LAW DICTIONARY (10th ed. 2014) (“The bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control); *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979) (characterizing “the right to exclude others” as “one of the most essential sticks in the bundle of rights that are commonly characterized as property”).

1 the series only if the series limited liability company⁶⁴ creates and maintains⁶⁵ a record⁶⁶ that
2 identifies the protected series and contains:
3 (1) a description of the property which is sufficiently specific⁶⁷ to permit a
4 reasonable person with no connection to or interest in the company or protected series to identify
5 the item of property and distinguish it from:
6 (A) property owned by the company; and
7 (B) property owned by any other protected series of the company; and
8 (2) a record stating when and from what person the protected series acquired the
9 property.⁶⁸

⁶⁴ Query: Should the act require that the records of associated property for all protected series be kept together or at least be retrievable together? Otherwise, the series limited liability company could delegate the responsibility in a way that might split the records and make life more difficult for creditors. (For example, the series limited liability company might delegate the recordkeeping responsibility for property associated with each protected series to the protected series with which the property is associated.)
Query: Refine by drawing from the “records contact” concept in the Uniform Law Enforcement Access to Entity Information Act, § 2(19) or from the concept of a “tax matters partner”?

⁶⁵ Under the “maintains” requirement, property once associated with a protected series will cease to be associated if *inter alia*: (i) the series limited liability company or another protected series acquires property that renders insufficient a previously adequate description; or (ii) the series limited liability company otherwise fails to maintain the records adequately.

⁶⁶ Non-record designation (“the memory of man runneth not to the contrary”) could not possibly satisfy the specificity requirement stated in Section 301. *But see Anderson v. City of Huntington*, 40 Ind. App. 130, 81 N.E. 223, 224 (1907) (“If the fence lines at this point have been maintained as they now are, so long that ‘the mind of man runneth not to the contrary,’ we take it no one would contend that the county commissioners could declare that said road was 60 feet wide at such place and appropriate sufficient land from the adjoining property owners to make said road 60 feet wide without any legal proceedings or process.”)

⁶⁷ A comment will note that different methods may be appropriate for describing different types of property (e.g., fungible versus non-fungible goods; tangible property versus intangible property). For example, funds held in a single bank account in undifferentiated fashion can nevertheless be associated with different protected series, so long as a record maintained by the series limited liability company identifies what amount is associated with which protected series.

⁶⁸ Under this subsection, property might be owned by a protected series without being associated with the protected series. That result is intentional. Only associated property benefits from the internal shields.

1 (c) For titled property,⁶⁹ the following rules apply:

2 (1) For property to be associated with a protected series, the property must be titled in
3 compliance with the applicable titling system.

4 (2) A protected series may register titled property in the name of another person,
5 other than the series limited liability company or another protected series of the company, if:

6 (A) the title states that the titled holder of record holds the title in a
7 representative capacity on behalf of the protected series or a person not identified on the title; and

8 (B) the applicable titling system so permits.

9 (3) Titling property in the name of the protected series or as provided in paragraph
10 (2) satisfies subsection (a)(1).

11 (d) Subject to subsections (a) and (b), a protected series may hold associated property
12 directly or indirectly, through a representative, nominee, or otherwise, except in the name of the
13 series limited liability company or another protected series of the company.

14 (e) A series limited liability company may associate property with itself in accordance
15 with subsections (a) through (c). {Only property owned by the company may be associated with
16 the company.} {alternative – locate in subsection (a)}

17 (f) A series limited liability company shall maintain its record of property associated with
18 a protected series or itself until the earlier of:

19 (1) [six] years after the date on which the protected series or company ceases to

See Section 402. Being properly identified is the only entryway into that protected situation. Property owned by a protected series but not associated is outside the series' internal shield— *i.e.* available through an enforcement action not only to creditors of the protected series but also to creditors of the series limited liability company and any other protected series of the company. *Id.*

⁶⁹ With the revised definition of “titled property”, Section 102(23) (not confined to property located in the enacting state) these transparency provisions extend to property owned by a domestic protected series or series limited liability company but subject to a recording system under the law of a foreign jurisdiction.

1 have any interest in the property; or

2 (2) the date on which the company completes winding up its activities and affairs.

3 (g) In a dispute concerning whether property is associated property, the person asserting
4 association has the burden of proof.⁷⁰ A person’s failure to comply with this section does not
5 revive a claim that has been barred by a statute of limitation or statute of repose.

6 **SECTION 302. ASSOCIATED MEMBER; ASSOCIATED DISTRIBUTABLE**
7 **INTEREST.**

8 (a) Only a member or the series limited liability company⁷¹ may become associated with
9 a protected series of the company.⁷²

⁷⁰ This subsection is modeled on ULLCA (2006) (Last Amended 2013) § 410(h) (“In a dispute concerning the reasonableness of a restriction under this subsection [permitting an LLC to impose access and use restrictions on information], the company has the burden of proving reasonableness.”). How complicated applying this subsection will be depends on who is disputing association.

Example 1: Judgment creditor of Protected Series Steve seeks to levy on Widget, asserting that Widget is associated neither with the series LLC or any other protected series. Protected Series Wendy asserts that Widget is associated with Wendy. Wendy has the burden proof.

Example 2: Protected Series Steve and Protected Series Wendy dispute the ownership of Widget. The burden of proof is on whichever protected series is the plaintiff.

Example 3: Protected Series Steve and Protected Series Wendy dispute the ownership of Widget, and Wendy sues Steve for a declaratory judgment. Steve’s Answer to Wendy’s Complaint alleges that Widget is associated with Steve. If the evidence supporting Steve’s allegation is adduced merely to counter Wendy’s allegation of ownership, the burden of proof remains on Wendy. However, if (for some reason) Steve wishes to establish “association,” Steve has the burden of proof on that point.

Example 4: Alpha, a judgment creditor of Protected Series Steve, levies on Widget, and Beta, a judgment creditor of Protected Series Wendy, contests the levy, asserting that Widget is associated with Wendy. Beta has the burden of proof. (If Alpha has competent counsel, Alpha will not becloud the burden of proof issue by seeking to establish that Widget is associated with Protected Series Steve. Instead, if evidence of such association exists, Alpha will use it to defeat Beta’s claim of association.)

⁷¹ At its March 2015 meeting, the Drafting Committee decided to permit a series limited liability company to be itself associated with one or more of its own protected series.

⁷² By definition, a member cannot become associated with the limited liability company itself, because governance and economic rights belong to the member *qua* member. Consonantly, the economic rights

1 (b) Subject to subsection (c), a member of a limited liability company or the company
2 becomes associated with a protected series when the company’s operating agreement or a
3 procedure established under the agreement identifies:⁷³

4 (1) the member or company as associated with the protected series; and

5 (2) any associated distributable interest owned by the member or company in
6 connection with becoming or being associated with the protected series.

7 (c) If a protected series has no associated members when established, the series limited
8 liability company is associated with the protected series and owns all the associated distributable
9 interests.

10 **SECTION 303. MANAGEMENT OF PROTECTED SERIES; RIGHTS AND**
11 **DUTIES OF SERIES MANAGER.**⁷⁴

12 {(a) A series limited liability company is the series manager of each of the company’s
13 protected series and has the right and duty to make all decisions concerning each protected series
14 regardless of whether the decision concerns a matter in or outside the ordinary course of the
15 activities and affairs of the series.}⁷⁵

16 {(a) If a protected series has associated members, those members are the series manager
17 of the protected series.⁷⁶ Otherwise, the series limited liability company is the series manager of

comprise a transferable interest, not a distributable interest.

⁷³ For example, an operating agreement could provide that a member is associated when so stated in the “books and records” of the series limited liability company.

⁷⁴ Dissolution does not change this arrangement. *See* Section 502(b).

⁷⁵ Query: Is it necessary to state that this provision does not authorize conduct in breach/violation of the LLC statute or the company’s operating agreement?

⁷⁶ For a comment – Unless the operating agreement provides otherwise, Section 106(b) will provide the management rules by extrapolation.

1 the protected series and has the right and duty to make all decisions concerning each protected
2 series regardless of whether the decision concerns a matter in or outside the ordinary course of
3 the activities and affairs of the series. }

4 (b) A series manager of a protected series does not in that capacity owe any duties to:

5 (1) the series limited liability company or the members of the company in their
6 capacity as members; or

7 (2) another protected series of the company or the associated members of that
8 protected series.⁷⁷

9 (c) If this [act] or the operating agreement of a series limited liability company requires
10 or authorizes the company to make a decision that has the potential to benefit a protected series
11 of the company to the prejudice of the company or another protected series or the company, or to
12 benefit the company to the detriment of a protected series of the company, the company is not
13 liable for damages or subject to other remedy, whether the claim is in law or equity, if the
14 company makes the decision with:

15 (1) the honest⁷⁸ belief that the decision serves the best interests of the company or
16 one or more protected series of the company;⁷⁹ and

⁷⁷ A comment will indicate that the reference to no duties to members associated with another protected series implies nothing about duties, if any, to members associated with the protected series for which the series manager is a manager. **Query:** Should this provision also refer to transferees and distributees? Perhaps a legislative note should indicate that – if the relevant LLC statute provides rights to transferees – this provision should refer to them and also to distributees? (Even without such reference, Section 106(b) would cause transferee rights to be extrapolated to distributees.)

⁷⁸ The Reporter prefers “honest” to “good faith” because the latter term has multiple meanings.

⁷⁹ An organization can have a state of mind only by imputation of its agents’ respective states of mind. *Cf.* RESTATEMENT (THIRD) OF AGENCY § 5.03 (2006) (stating that, subject to exceptions, “notice of a fact that an agent knows or has reason to know is imputed to the principal if knowledge of the fact is material to the agent’s duties to the principal”).

1 (2) the reasonable belief that the decision does not breach any member’s⁸⁰ rights
2 under the company’s operating agreement.⁸¹

3 (d) If a series limited liability company is not the sole series manager of a protected series
4 and the management of the protected series is deadlocked so that it is not reasonably practicable
5 to carry on the activities and affairs of the protected series in conformity with this [act] and the
6 company’s operating agreement, the company may take any action it reasonably considers
7 necessary and proper to resolve the deadlock.⁸²

⁸⁰ Note the omission of “transferee” and “distributee.” To include them would be to suggest that transferees and distributees have standing to sue.

⁸¹ On the instructions of the Drafting Committee at its November, 2014 meeting, the Reporter drafted this provision to address “the *Sinven/Nemec* problem.” See *Sinclair Oil Corp. v. Levien*, 280 A.2d 717 (Del. 1971) (shareholders of one corporate subsidiary [Sinven] brought derivative claims against the parent in part because the parent had allocated a business opportunity to another subsidiary); *Nemec v. Shrader*, 991 A.2d 1120 (Del. 2010) (deciding by a 3-2 vote that calling preferred stock did not breach the implied covenant of good faith and fair dealing, even though the call substantially prejudiced the owners of preferred stock to the benefit of the owners of common stock). At its March, 2015 meeting, the Drafting Committee decided to retain this provision while leaving for further discussion whether the operating agreement may reduce the standards stated in Paragraphs 1 and 2. At the 2015 annual meeting, at least one critical comment from the floor indicated a misunderstanding of this provision. The misunderstanding apparently resulted from the commentator’s lack of knowledge of how entity law approaches conflict of interest situations.

⁸² This idea arose at the March 2015 meeting of the Drafting Committee. To delineate the triggering circumstances, this draft uses language from ULLCA (2013) § 701(a)(4)(B) (authorizing judicial dissolution). There are many other formulations available. See, e.g., Cal. Corp. Code § 308 (2014) (authorizing a court to appoint a provisional director “if a corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired or lost”). Statutes vary as to the specificity they provide in delineating the concept. Compare Minn. Stat. 322B.833, subd. 1(2)(1) (authorizing a court to dissolve a limited liability company if “the governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock”) with *Application of Pivot Punch & Die Corp.*, 15 Misc. 2d 713, 715, 182 N.Y.S.2d 459, 462 (Sup. Ct.) modified, 9 A.D.2d 861, 193 N.Y.S.2d 34 (1959) (discussing General Corporation Law § 103 as referring to the fact “[t]hat the stockholders are in fact so divided that they cannot elect a Board of Directors”).

1 (B) being or acting⁸⁵ as a series manager of the protected series: or
2 (C) having the protected series be or act as a manager of the company;⁸⁶
3 (4) a protected series is not liable, directly or indirectly, by way of contribution or
4 otherwise, for a debt, obligation, or other liability of the series limited liability company or
5 another protected series solely by reason of:

6 (A) being a protected series of the company or having as a series manager
7 the company or another protected series of the company; or

8 (B) being or acting as a manager of the company or a series manager of
9 another protected series of the company; and

10 ⁸⁷(b) Subject to subsection (c) and Section 402, a person is not liable, directly or
11 indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a series
12 limited liability company or a protected series of the company solely by reason of being or acting
13 as a member of the company, a member associated with the protected series, a manager of the
14 company, or a series manager of the protected series.

15 (c) Subsections (a) and (b) must be applied as if each protected series were a limited
16 liability company, and a claim to disregard a liability limitation stated in subsection (a) or (b)
17 shall be determined under the rules of law and equity that would apply if each protected series
18 were a limited liability company, including rules:

⁸⁵ For a comment – These paragraphs refer to and protect solely against vicarious liability. For example, a series manager who in the course of her work defames a third party is directly liable to the victim, and the shield stated here in apposite.

⁸⁶ Query – Necessary to add “or any combination of the foregoing”?

⁸⁷ Made a separate subsection to distinguish between horizontal shields, subsection (a), and the vertical shield, this subsection.

- 1 (1) providing rights to creditors; and
2 (2) holding one entity, organization, or association liable for the debt, obligation
3 or other liability of another entity, organization, or association.

4 **SECTION 402. {ENFORCEMENT OF CLAIMS AGAINST ASSOCIATED**
5 **PROPERTY RESTRICTED}⁸⁸ {RESTRICTED AVAILABILITY OF ASSOCIATED**
6 **PROPERTY FOR THE ENFORCEMENT OF CLAIMS}.⁸⁹**

7 **Alternative A for Section 402(a)**
8 **stating enforceability as the general rule,**
9 **subject to an exception for properly associated property⁹⁰**

- 10
11 (a) Subject to subsections (b), (c), and (d):
12 (1) A claim against a series limited liability company may be enforced against
13 property owned by a protected series of the company, unless the property:
14 (A) is associated with the protected series when the claimant seeks
15 enforcement; and
16 (B) was associated with or not owned by the protected series when the
17 liability giving rise to the claim was incurred.⁹¹
18 (2) A claim against a protected series may be enforced against property owned by
19 the series limited liability company or another protected series of the company, unless the

⁸⁸ Query – Delete “of claims” so the heading would be: ENFORCEMENT AGAINST ASSOCIATED PROPERTY RESTRICTED.

⁸⁹ For a comment: Even in a jurisdiction in which “governance formalities” are not a piercing factor, that rule does not affect the recordkeeping required to associate property.

⁹⁰ This alternative was not in the feedback draft. However, attendees at the feedback meeting uniformly preferred an approach as now appears as Alternative A.

⁹¹ A comment will note that the property will also be subject to enforcement by the creditors of whoever owns the property.

1 property:

2 (A) is associated with the company or other protected series when the claimant
3 seeks enforcement; and

4 (B) was associated with or not owned by the company or other protected series
5 when the liability giving rise to the claim was incurred.

6 **Alternative B for Section 402(a)⁹²**
7 **stating the non-enforcement point as the rule for owned property,**
8 **subject to an exception for not satisfying the association requirement**
9

10 (a) Subject to subsections (b), (c), and (d):

11 (1) A claim against a series limited liability company may be enforced against
12 property owned by a protected series of the company only if the property:

13 (A) is not associated with the protected series when enforcement is sought;

14 or

15 (B) was owned by the protected series but not associated with it when the
16 liability giving rise to the claim was incurred.

17 (2) A claim against a protected series may be enforced against property owned by
18 the series limited liability company that established the protected series or another protected
19 series of the company only if the property:

20 (A) is not associated with the company or other protected series when
21 enforcement is sought; or

22 (B) was owned by the company or other protected series but not associated
23 with the company or other protected series when the liability giving rise to the claim was

⁹² In the feedback draft, Alternative B was the only version. However, attendees at the feedback meeting uniformly preferred an approach as now appears as Alternative A.

1 incurred.

2 **End of Alternates**

3 (b) If a claim to disregard a remedy limitation stated in Section 401(a)(1) or (3) succeeds
4 and causes a series limited liability company to be liable for a debt, obligation, or other liability
5 of a protected series of the company, a claim against the protected series may be enforced against
6 property owned by the company even if the property {meets the requirements of subsection (a)}
7 {:

8 (1) is associated with the company when enforcement is sought; and

9 (2) was associated with or not owned by the company when the liability giving
10 rise to the claim was incurred. }

11 (c) If a claim to disregard a remedy limitation stated in Section 401(a)(2) or (4) succeeds
12 and causes a protected series to be liable for a debt, obligation, or other liability of the series
13 limited liability company or another protected series of the company, a claim against the
14 company or the other protected series may be enforced against property owned by the protected
15 series even if the property {meets the requirements of subsection (a)} {:

16 (1) is associated with the protected series when enforcement is sought; and

17 (2) was associated with or not owned by the protected series when the liability
18 giving rise to the claim was incurred. }

19 (d) This section does not affect law pertaining to:

20 (1) fraudulent or voidable conveyances, transfers, or transactions;

21 (2) liens, mortgages, security interests; or

22 (3) other rules of law or equity under which ownership of property may be
23 determined.

1 (e) This section applies to enforcement of judgments by levy, attachment, judicial sale, or
2 other means and to pre-enforcement remedies of any kind.⁹³

3 **[ARTICLE 5]**

4 **CEASING TO BE ASSOCIATED MEMBER;**

5 **DISSOLUTION AND WINDING UP OF PROTECTED SERIES**

6 **SECTION 501. CEASING TO BE ASSOCIATED**

7 (a) A member associated with a protected series ceases to be associated when the
8 member dissociates from the series limited liability company.⁹⁴

9 (b) A member's ceasing to be associated with a protected series does not of itself:

10 (1) change the member's status as a member or as a member associated with
11 another protected series;⁹⁵ or

12 (2) discharge the member from any debt, obligation, or other liability to the
13 protected series or to another associated member of the protected series which the member
14 incurred while {an associated member of} {a member associated} with the protected series.

15 **SECTION 502. DISSOLUTION AND WINDING UP OF PROTECTED SERIES.**

16 (a) A protected series is dissolved and its activities and affairs must be wound up:

17 (1) when its series limited liability company dissolves;

18 (2) as provided in the company's operating agreement;

⁹³ This section does not mention charging orders because those orders affect the property rights of members, not the property of a series limited liability company or protected series.

⁹⁴ This provision is not waivable, as will be indicated in Section 107(c). The operating agreement of a series limited liability company may provide additional circumstances in which a member will cease to be associated with a protected series.

⁹⁵ At its March 2015 meeting, the Drafting Committee expressed concerns about the information rights of a member that ceases to be associated with a protected series. Section 106(b) – the extrapolation provision – addresses the issue.

1 (3) as determined by the company under section 303(d);⁹⁶

2 (4)⁹⁷

3 (b) The series manager of each protected series shall manage the winding up of the
4 activities and affairs of the protected series.⁹⁸

5 (c) When a protected series has completed winding up, the series limited liability
6 company may deliver to the [Secretary of State] for filing a statement of designation cancellation
7 stating the name of the protected series and that the protected series is terminated.

8 (d) A series limited liability company does not complete winding up until each of its
9 protected series has completed winding up.

⁹⁶ Section 303(d) authorizes the series LLC to “take any action it reasonably considers necessary and proper to resolve [a] deadlock” in the management of a protected series.

⁹⁷ Query – Add other causes of dissolution? ULLCA § 701 contains the following additional causes that could pertain to a protected series (revised to do so):

(2) the affirmative vote or consent of all the {members of the series limited liability company} {members associated with the protected series};

....

(4) on application by a {member of the series limited liability company} {member associated with the protected series}, the entry by [the appropriate court] of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all the protected activities and affairs of the protected series is unlawful;

(B) it is not reasonably practicable to carry on the protected series’s activities and affairs in conformity with the the operating agreement; or

(C) the series managers or those members in control of the protected series:

(i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant;

....

⁹⁸ If the position of series manager is vacant or the series manager declines to direct winding up and the operating agreement does not address the situation, Section 106(b) (the extrapolation provision) will apply.

1 [ARTICLE] 6

2 FOREIGN PROTECTED SERIES

3 SECTION 601. GOVERNING LAW; INTERNAL AFFAIRS; LIMITED

4 **LIABILITY OF MEMBERS.** The law of the jurisdiction of formation of a foreign series
5 limited liability company⁹⁹ governs:¹⁰⁰

6 (1) the internal affairs of a foreign protected series of the company, including the
7 relationship between a foreign protected series and:

8 (A) the company;

9 (B) another foreign protected series of the company;

10 (C) a member of the company, regardless of whether the member is associated
11 with the foreign protected series;

12 (D) a transferee of a transferable interest pertaining to the company; and

13 (E) an associated distributee of any foreign protected series of the company; and

14 (2) the liability for a debt, obligation, or other liability of a foreign protected series of:

15 (A) a member of the foreign series limited liability company, regardless of
16 whether the member is associated with the foreign protected series;

17 (B) a transferee of a transferable interest pertaining to the company;

18 (C) an associated distributee of any foreign protected series of the company; and

19 (D) a manager of the foreign protected series.

⁹⁹ This provision is limited to a foreign *series* LLC. The comparable provision for a foreign LLC without foreign protected series appears in the enacting state’s LLC act.

¹⁰⁰ Characterization of a foreign protected series as a person *vel non* is omitted. For example, an enacting state might want its own U.C.C, Article 9 to determine the person/entity/“thing” characterization issue. *Contrast* Section 105(7) (stating that domestic law governs whether a protected series is a person).

1 **SECTION 602. GOVERNING LAW; INTERNAL SHIELDS.**

2 (a) Except as otherwise provided in subsection (b), the law of the jurisdiction of
3 formation of a foreign series limited liability company governs:

4 (1) the liability of the company for a debt, obligation, or other liability of a
5 foreign protected series of the company; and

6 (2) the liability of a foreign protected series for a debt, obligation, or other
7 liability of the company or any other foreign protected series of the company;

8 (b) Subsection (a) applies only if:

9 (1) the name of each foreign protected series of the foreign series limited liability
10 company substantially complies section with Section 202(2) and (3);¹⁰¹ and

11 (2) either:

12 (A) the publicly filed records of the foreign limited liability company
13 include the name and street address of the registered agent or required office of the company and
14 of each of its foreign protected series; or

15 (B) the foreign limited liability company and each of its foreign protected
16 series are registered to transact business in this state.¹⁰²

17 (c) If subsection (a) does not apply:

¹⁰¹ These paragraphs address the designator and name requirements for protected series. Query: Too draconian? Per feedback meeting: to be revised to include an alternative for foreign protected series registered to do business in the enacting state – a complying assumed name.

¹⁰² This subparagraph does not require the registration of a foreign series LLC and all its foreign protected series (“complete registration”); the subparagraph merely provides complete registration as an alternative to complying with subparagraph (A). Per feedback meeting: to be revised to include an alternative approach for a foreign series LLC or foreign protected series registered to do business in the enacting state – disclosure of necessary information in the application for registration. Section 604(a) determines who must register to do business in the state.

1 (1) the foreign series limited liability company and its foreign protected series are
2 deemed to be a single limited liability company;

3 (2) the debts, liabilities, or other obligations of each protected series of the
4 company are deemed to be the debts, obligations, or other liabilities of the company {and not of
5 any of its protected series }; and

6 (3) the property owned by each protected series of the company is deemed to be
7 owned by the company and not by any of its protected series.

8 **SECTION 603. GOVERNING LAW; ASSOCIATED PROPERTY.**

9 (a) Subject to subsection (b), the law of the jurisdiction of formation of a foreign series
10 limited liability company governs:

11 (1) whether a claim against a foreign series limited liability company may be
12 enforced against property owned by a foreign protected series of the company; and

13 (2) whether a claim against a foreign protected series may be enforced against
14 property owned by the series limited liability company or another foreign protected series of the
15 company.

16 (b) Subsection (a) applies to property owned by a foreign series limited liability company
17 or a foreign protected series of the company only if:

18 (1) the record keeping of the foreign series limited liability company or foreign
19 protected series with regard to the property substantially complies with Section 301(a) and (b);
20 and

21 (2) if the property is titled property, regardless where the property is located, the
22 property is titled as required by Section 301(c).

23 (c) If subsection (a) does not apply to property:

1 (1) if a foreign protected series of the foreign series limited liability company
2 owns the property, the property is subject to enforcement {not only by creditors of the foreign
3 protected series but also by creditors of the company or another foreign protected series of the
4 company} {by creditors not only of the foreign protected series but also of the company or
5 another foreign protected series of the company}.

6 (2) if the foreign series limited liability company owns the property, the property
7 is subject to enforcement not only by creditors of the company but also creditors of a protected
8 series of the company. {Conform to language selected for Subsection (c)(1).}

9 **SECTION 604. TRANSACTING BUSINESS IN THIS STATE; FOREIGN**
10 **REGISTRATION; PERSONAL JURISDICTION.**

11 (a) The law of this state governing the registration of a foreign limited liability company
12 to do business in this state applies to a foreign protected series as if the foreign protected series

1 were a foreign limited liability company.^{103 104 105106}

2 (b) For purposes of determining whether a foreign limited liability company or foreign
3 protected series has transacted business in this state and whether this state has personal
4 jurisdiction over a foreign limited liability company or foreign protected series, the following
5 rules apply:

6 (1) The activities of the company are not attributable to a foreign protected series
7 of the company solely by reason of the company having established the foreign protected series.

8 (2) The activities of a foreign protected series are not attributable to the company
9 or another foreign protected series of the company solely by reason of the company having

¹⁰³ *Inter alia*, this provision extrapolates registered agent requirements.

¹⁰⁴ For a legislative note – If the law of the enacting state governing the registration of a foreign limited liability company to do business in the state requires an application for registration to include a statement of good standing pertaining to the company: (i) the current language should become subsection (a); (ii) the following subsections (b) and (c) should be added; and the remaining subsections re-lettered accordingly:

(b) Subject to subsection (c), when a foreign protected series applies for registration, the application must include a statement of good standing pertaining to the company and a statement of good standing pertaining to the foreign protected series.

(c) If the law of the jurisdiction of formation of a foreign series limited liability company does not provide for a statement of good standing pertaining to a foreign protected series, the application must include:

- (1) an affirmation of that fact by an individual on behalf of the applicant;
- and
- (2) a statement of good standing pertaining to the foreign series limited liability company.

¹⁰⁵ Per feedback meeting: to be revised to allow information required under Section 602(b) to be stated in the application for registration.

¹⁰⁶ This subsection incorporates the “no greater powers” concept from the LLC statute of the enacting state. *See, e.g.*, ULLCA § 901(c) (“Registration of a foreign limited liability company to do business in this state does not authorize the foreign company to engage in any activities and affairs or exercise any power that a limited liability company may not engage in or exercise in this state.”).

1 established the foreign protected series or the other foreign protected series.¹⁰⁷

2 **[ARTICLE] 7**

3 **MISCELLANEOUS PROVISIONS**

4 **SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
5 applying and construing this uniform act, consideration must be given to the need to promote
6 uniformity of the law with respect to its subject matter among states that enact it.

7 **SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
8 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the
9 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
10 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
11 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
12 U.S.C. Section 7003(b).

13 **Comment**

14 This section responds to specific language of the Electronic Signatures in Global and
15 National Commerce Act and is designed to avoid preemption of state law under that federal
16 legislation.

17
18 **SECTION 703. SAVINGS CLAUSE.** This [act] does not affect an action commenced,
19 proceeding brought, or right accrued before [the effective date of this [act]].

20 **[SECTION 704. SEVERABILITY CLAUSE.** If any provision of this [act] or its
21 application to any person or circumstance is held invalid, the invalidity does not affect other
22 provisions or applications of this [act] which can be given effect without the invalid provision or
23 application, and to this end the provisions of this [act] are severable.]

24 ***Legislative Note:*** *Include this section only if this state lacks a general severability statute or*

¹⁰⁷ A comment will state that, under Section 604(a), each foreign series limited liability company and each of its foreign protected series may and, if applicable, must qualify separately.

1 *decision by the highest court of this state stating a general rule of severability.*

2 **SECTION 705. REPEALS; CONFORMING AMENDMENT.**

3 (a) ...

4 (b) ...

5 (c) ...

6 **SECTION 706. EFFECTIVE DATE.** This [act] takes effect