

SECTION 602
ENTITY TRANSACTIONS INVOLVING PROTECTED SERIES RESTRICTED.
dsk – 11-30-16

Background

“Entity transactions” means mergers, interest exchanges, conversions and domestications.

Both ULLCA (2013) and the Uniform Business Organizations Code authorize a protected series to be a party to a merger, interest exchange, or conversion, if another party to the transaction is a domestic limited liability company. This authorization follows from the special, “entity transactions” definition of “entity,” which encompasses a protected series.¹

For various reasons, that authorization, if left intact, would create serious legal issues, some of which cannot be handled by agreements among the parties. Consequently, the Protected Series Act must restrict entity transactions involving protected series.

The issues arise in two categories of entity transactions:

- those to which a series limited liability company is a party – addressed by Section 602(a) and (b);

and

- those involving the establishment, termination, or continued existence of a protected series – addressed by Section 602(c).

(The two categories overlap with regard to the continued existence of a protected series; i.e., the transaction necessarily involves a series limited liability company.)

1 **SECTION 602. RESTRICTIONS ON ENTITY TRANSACTION INVOLVING**
2 **PROTECTED SERIES.**

¹ ULLCA (2013) § 1001(11)(A) defines “entity” to mean:

(i) a business corporation; (ii) a nonprofit corporation; (iii) a general partnership, including a limited liability partnership; (iv) a limited partnership, including a limited liability limited partnership; (v) a limited liability company; [(vi) a general cooperative association;] (vii) a limited cooperative association; (viii) an unincorporated nonprofit association; (ix) a statutory trust, business trust, or common-law business trust; or (x) any other person that has: (I) a legal existence separate from any interest holder of that person; or (II) the power to acquire an interest in real property in its own name; ... (Emphasis added.)

A protected series meets both prongs of Section 1001(11)(A)(x). (The Uniform Business Organizations Code contains the same definition.)

(a) A series limited liability company may not be:

(1) an acquiring, acquired, converting, converted, domesticating, or domesticated entity;²

(2) created by a merger;³ or

(3) except as provided in Section 601⁴ and subsection (b), a party to a merger.⁵

(b) A series limited liability company may be a party a merger under [cite the provisions of the limited liability company statute pertaining to mergers] according to the following rules:

(1) If a protected series of the company is to be established when the merger takes effect, the company delivers to the [Secretary of State] for filing a protected series designation for the protected series, as an attachment to the statement of merger, to take effect on the same date and time at which the statement takes effect.

(2) If a protected series of the company will no longer exist when the merger takes effect, the company delivers to the [Secretary of State] for filing a statement of termination

² The special “entity transactions” definitions define each of these terms.

³ A series limited liability company formed by a merger would not be able to make the filings contemplated in subsection (b)(1) and (2).

⁴ Section 601 is the merger in/merger out provision discussed at the end of the internet meeting on November 30, 2016. Obviously, if the drafting committee decides not to allow such mergers, the reference will be deleted.

⁵ This provision does not preclude a series limited liability company being involved in a triangular merger, and the company could provide consideration in the form of interests in a protected series. If the consideration were a full interest (i.e., the recipient would be an associated member of the protected series), the recipient would have to be a member of the company or become one as part of the overall transaction. See UPSA § 302(a) (“Only a member of a series limited liability company may be an associated member of a protected series of the company.”) The requirement does not apply to the extent the consideration is merely a series transferable interest.

for the protected series,⁶ as an attachment to the statement of merger, to take effect on the same date and time at which the statement takes effect.

(3) The statement of merger:

(A) identifies any protected series of the company that will be established, continued in existence, or terminated when the merger takes effect; and

(B) for any protected series of the company which will be terminated when the merger takes effect, states any consideration to be paid to associated members and protected series transferees of the protected series on account of the merger; and

(C) for a protected series of the company that will continue in existence after the merger takes effect, states:

(i) any change that will occur when the merger takes effect in the rights of associated members or series transferees of the protected series; and

(ii) any consideration to be paid to associated members or protected series transferees of the protected series on account of any change that will occur.

(c) A limited liability company that is not a series limited liability company may not be a party to a merger, conversion, interest exchange, domestication, or similar transaction involving the establishment, termination, or continued existence of a protected series, except for a merger authorized by subsection (b) or Section 601.

⁶ Query – is in proper circumstances the notion of termination consistent with the way META conceptualizes a merger?