

Section 602 Redux
“How did things ever get so far?”¹

Once upon a time ... we had a meeting to discuss a proposed Section 601, which provided a narrow channel through which assets could transfer in or out of a protected series by operation of law, i.e., by merger. That discussion bogged down with concerns that even the proposed narrow channel was too complicated to consider so late in the drafting process.

The reporter recommended, and the chair later agreed, to table the discussion of Section 601 and turn instead to Section 602, because:

- Section 602 addresses issues that the drafting committee cannot avoid.
 - Section 602 involves much more complexity than Section 601 – both conceptually and in drafting.
 - Once the committee handles the Section 602 issues, it will be better able to determine whether the complexity involved in Section 601 warrants rejecting the construct.
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As you consider proposed Section 602 and its introductory explanation, please keep in the following points

1. The committee cannot leave this topic alone, because:
 - a. If the act does not address the Section 602 issues, other uniform acts will authorize a wide spectrum of entity transactions involving protected series and series limited liability companies.
 - b. The bare authorization would leave open a myriad of issues, many of which could not be solved simply by sophisticated drafting of agreements, including:
 - i. third party issues (e.g., transfer by operation of law); and
 - ii. filing office issues
2. A complete ban on entity transactions involving protected series:
 - a. Is simple:
 - i. conceptually (no entity transaction in which a protected series or series limited liability company is a party or the surviving entity created by the transaction); and
 - ii. to draft (see previous parenthetical); but
 - b. Unduly hampers the utility of the act and eschews what could be an important advantage in enactment efforts.
3. Allowing “everything” or almost everything:
 - a. requires considering a daunting number of permutations (see Tom Rutledge’s slides); and
 - b. is unnecessary in this first-generation act, given the availability of step transactions.

¹ <https://www.youtube.com/watch?v=6jpwqWPKAUc>, at approximately 0:39.

4. Note that the current version of Section 602 prohibits series LLCs from being a party to all entity transactions other than certain mergers.

We need to identify the issues we need to address to complete Section 602. In considering what issues apply, note that we're beginning with a discussion of the transactions identified in slides 5, 6 and 7 of Tom's list of potential merger transactions. Some of the issues we have identified include the following:

- a. Is there any impact on association? Do assets need to be re-associated? Presumably not as the records are the records, but should that be clarified or addressed?
- b. If an LLC that is not a series LLC is a party to the merger, how are its assets treated as a result of the merger? Are they non-associated assets or are they associated assets based on Section 301 and the records of the LLC at the time of the merger and is the result clear from our text?
- c. Confirm Section 304(d) applies to the merger so that as a default rule, each member of the LLC must consent to a merger, except to the extent that under Section 106 the operating addresses otherwise addresses approval and requires different levels of consent.
- d. Have we otherwise changed rights of creditors to their detriment?
- e. In addition to what would be required by the general LLC merger rules, in our current draft of Section 602, a protected series designation must be filed for protected series being established in the merger and a statement of termination must be filed for any protected series that will not survive the merger. Should any other requirements apply?
- f. Is the effect of a termination of a protected series in a merger clear?
- g. Does the statement of merger contain all information that should be included?
- h. Other issues within this limited approach?
- i. Is the current limited approach the correct approach or should other transactions be permitted?

We would appreciate it if you would send us your concerns via email by Monday at noon so that we can circulate a more complete list of issues to consider during the internet meeting next week on Wednesday, January 18 (2-3:30 PM Central).