

**Document Alpha
for 11-30-16 UPSA Internet meeting**

11-28-16 Revision

**When Domestic Law Applicable to Foreign Series LLCs and Foreign Protected Series
Sections 401, 601 and 603**

*new provisions and provisions otherwise noteworthy are in italics
revisions made after the 11/14/16 internet meeting are shown by underline and ~~strikeout~~*

1 **SECTION 401. LIMITATIONS ON LIABILITY.**

2 ¹(a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for
3 a debt, obligation, or other liability of:

4 (A) a protected series solely by reason of being or acting as an associated
5 member of the protected series, a series manager of the protected series, a member of the series
6 limited liability company that established the protected series, or a person managing the
7 company or by having a series transferable interest in the protected series; or

8 (B) a series limited liability company solely by reason of being or acting
9 as an associated member or protected series manager of a protected series of the company.

10 ²(b) Subject to subsection (c) and Section 402:

11 (1) a debt, obligation, or other liability of a series limited liability company is
12 solely the debt, obligation, or other liability of the company;

13 (2) a debt, obligation, or other liability of a protected series is solely the debt,
14 obligation, or other liability of the protected series;

¹ Vertical shields.

² Horizontal shields.

15 (3) a series limited liability company is not liable, directly or indirectly, by way of
16 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the
17 company solely by reason of the company:

18 (A) having established the protected series;

19 (B) being or acting as a protected series manager of the protected series;

20 (C) having the protected series manage the company; or

21 (D) owning a protected series transferable interest in the protected series;

22 and

23 (4) a protected series is not liable, directly or indirectly, by way of contribution or
24 otherwise, for a debt, obligation, or other liability of the series limited liability company that
25 established the protected series or another protected series of the company solely by reason of:

26 (A) being a protected series of the company;

27 (B) being or acting as a person managing the company or a protected

28 (c) A claim to disregard a limitation stated in subsection (b) is governed by the principles
29 of law and equity, including principles providing rights to creditors or holding a person liable for
30 a debt, obligation, or other liability of another person, which would apply if each protected series
31 of the series limited liability company were a limited liability company, organized separately
32 from the company that established the protected series and distinct from the company and any
33 other protected series of the company.

34 (d) In a civil ~~{}or administrative}}~~³ action in this state, subsection (c) applies to a claim
35 to disregard a limitation of liability applicable to a foreign series limited liability company or
36 foreign protected series which is comparable to a limitation stated in subsection (b), if:

37 (1) the claimant is a resident of this state or doing business or registered to do
38 business in this state; ~~and~~⁴

39 (2) the claim is to establish or enforce⁵ a liability ~~governed by~~arising under⁶ the
40 law of this state or ~~arising~~ from an act or omission in this state.

41 **SECTION 601. GOVERNING LAW.** The law of the jurisdiction of formation of a
42 foreign series limited liability company governs:

43 (1) the internal affairs of a foreign protected series of the company;

44 (2) relations between the protected series and:

45 (A) the company;

46 (B) another protected series of the company;

47 (C) a member of the company which is not an associated member of the protected
48 series;

49 (D) a protected series transferee of another protected series of the company;

³ Query – How far do we want to go? To all proceedings other than criminal, for example?

⁴ Per decision at 11/14/16 internet meeting.

⁵ “[E]stablish or” added to recognize that some jurisdictions consider piercing, etc. to be a remedy while others consider it to be a cause of action.

⁶ “[G]overned” deleted because the word might have been read to include the enforcement of a foreign judgment that has been registered in the enacting state.

- 50 (E) a transferee of a transferable interest of the company; and
- 51 (3) the liability of a person for a debt, obligation, or other liability of a foreign protected
52 series of a foreign series limited liability company if the debt, obligation, or other liability is
53 asserted solely by reason of the person being or acting as:
- 54 (A) an associated member, series transferee, or protected series manager of the
55 protected series;
- 56 (B) a member of the company not an associated member of the protected series;
- 57 (C) a series transferee of another protected series of the company;
- 58 (D) a protected series manager of another protected series of the company;
- 59 (E) a person managing the company; or
- 60 (F) a transferee of a transferable interest of the company;
- 61 (4) subject to sections *401(d)* and 603:
- 62 (A) the liability of the company for a debt, obligation, or other liability of a
63 protected series if the debt, obligation, or other liability is asserted solely by reason of the
64 company:
- 65 (i) having established the protected series;
- 66 (ii) being or acting as a protected series manager of the protected series;
- 67 (iii) having the protected series manage the company; or
- 68 (iv) owning a protected series transferable interest in the protected series;
- 69 and

70 (B) the liability of a foreign protected series for a debt, obligation, or other
71 liability of the company or another protected series of the company if the debt, obligation, or
72 other liability is asserted solely by reason of the protected series:

73 (i) being a protected series of the company or having the company or
74 another protected series of the company be or act as protected series manager of the protected
75 series; or

76 (ii) managing the company or being or acting as a series manager of
77 another protected series of the company.

78 **SECTION 603. APPLICATION OF SECTION 402 TO FOREIGN SERIES**
79 **LIMITED LIABILITY COMPANY AND FOREIGN PROTECTED SERIES.** *Section 402*
80 *applies to an asset of a foreign series limited liability company or foreign protected series if:*

81 (1) *the asset is real or tangible property located in this state;*

82 (2) ~~*the foreign company or foreign protected series is subject to the personal jurisdiction*~~
83 ~~*of the courts of this state;*~~⁷

84 ~~*(3) the claimant is a resident of this State-state or doing business or registered to do*~~
85 ~~*business in this state and-or*~~⁸ ~~*the claim under Section 402 is to enforce a judgment arising*~~
86 ~~*frompertaining to a liability established underarising from the law of this state or an act or*~~
87 ~~*omission in this state; and*~~

88 ~~*(43) the asset is not identified in the records of the foreign company or foreign protected*~~
89 ~~*series in a manner comparable to the manner required by section 301 {{and the lack of such an*~~

⁷ Former Paragraph (2) is unnecessary because under Paragraph (1), *in rem* jurisdiction will exist.

⁸ This change is implicit in the decision concerning Section 401(d) (conjunctive to disjunctive).

90 ~~association~~indentification has caused and will cause a material and inequitable prejudice to the
91 judgment creditor.}}.⁹

⁹ Language in braces proposed by Dave McBride, and not discussed during the 11/14/16 internet meeting.