

Section 402 Redraft
dsk – 9-~~16~~18-16
~~(the “getting pretty close” draft)-~~
~~two outstanding issues below the draft~~

Responding to concerns about relying on the UVTA and building on the observations that in some states service of process suffices to create a lien, this draft closes the applicability gap. The latest revision is the addition of “lien” is the key phrase: when enforcement against the asset is obtained under this section by attachment, levy, **lien**, or the like.

**SECTION 402. ENFORCEMENT OF CLAIM AGAINST NON-ASSOCIATED
ASSET**

(a) In addition to any other remedy provided by the law of this state other than this [act] or by equity, a judgment against a series limited liability company or a protected series may be enforced according to the following rules.

(1) A judgment against a series limited liability company may be enforced against an asset of a protected series of the company if:

(A) the asset was a non-associated asset of the protected series when the liability giving rise to the judgment was incurred; or

(B) the asset is a non-associated asset of the protected series when enforcement ~~regarding against~~ the asset is ~~first sought~~obtained under this section by attachment, levy, lien, or the like.

(2) A judgment against a protected series may be enforced against an asset of the series limited liability company if:

(A) the asset was a non-associated asset of the company when the liability giving rise to the judgment was incurred; or

(B) the asset is a non-associated asset of the company when enforcement

~~regarding against~~ the asset is ~~first sought~~obtained under this section by attachment, levy, lien, or the like.

(3) A judgment against a protected series may be enforced against an asset of another protected series of the company if:

(A) the asset was a non-associated asset of the other protected series when the liability giving rise to the judgment was incurred; or

(B) the asset is a non-associated asset of the other protected series when enforcement ~~regarding against~~ the asset is ~~first sought~~obtained under this section by attachment, levy, lien, or the like.

(b) The rules stated in subsection (a) apply in a proceeding seeking a prejudgment remedy as permitted by applicable law, ~~whether~~ by attachment, levy, lien, or the like, even though no judgment has been {entered} {ordered}.

~~(c) Enforcement regarding an asset is first made under this section when the person seeking enforcement first serves process on the owner of the asset, seeking enforcement under this section by attachment, levy, or the like.~~

~~—(d) In a proceeding under this section, the party asserting that an asset is an associated asset has the burden of proof on the issue.~~

~~Wording query: Should “enforcement *regarding* the asset” be replaced by “enforcement *against* the asset”? Is one, the other, or some other formulation, the term of art?~~

~~The Issue of the Writ and After-Acquired Property: We need to determine whether a writ of attachment, levy, etc. encompasses property that comes into the possession/control of the person served with the writ after the writ has been served. As currently drafted, Section 402 would not~~

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~~apply to such property. For Section 402 to apply, the asset at issue must have been a non-associated asset at at least one of two points:~~

- ~~• When the liability was incurred — no, the “incurrence” occurred long before the new asset was acquired~~
- ~~• When enforcement is first sought — no, by hypothesis the new asset was acquired after that moment~~

~~Initial responses from our experts on the issue of the writ and after-acquired property have been heterogeneous. Further discussions are being arranged. If the answer to the issue is yes, the committee will have to decide whether and, if so, how to address the gap in Section 402’s applicability.~~