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RE: NEW TEXAS LEGAL ENTITY; THE "SERIES" LLC

The State of Texas has created a novel and extraordinarily flexible type of entity called a "Series LLC". Seven other states currently have this entity namely, Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee and Utah.

Briefly, a series LLC is an LLC whose company agreement establishes one or more LLC substructures called a "Series," each of which has a statutory "internal liability shield" that protects it from claims against other series and from claims against the LLC itself. The law provides that the "Parent" LLC, or called the "Host" LLC, will be protected from claims against each of the other series.¹ Each "Cell" associated with the series LLC is considered a separate

¹ Note that the word "owned" is not used, so what "associated" means is not defined. The law refers to assets being "associated with" a series rather than "owned" by it indicating that the law does not intend the

entity, with its own separate assets and liabilities. It is unusual for a series LLC to be used in operating companies, including real estate development companies, but perhaps quite useful for managing many rental real estate properties.

Advantage. Many entities can be formed under an umbrella entity with only one filing with the Secretary of State of Texas. Thus, someone owning 30 separate rental real estate properties could establish a separate entity (the “Host”) and then 30 “Cells,” but pay only 1 filing fee with the Secretary of State instead of 30 separate fees, or a \$375.00 fee rather than \$11,250, not to mention the attorney fees. Each of the 30 entities would have its own separate assets and liabilities.

Advantage. Another advantage, is that each “Cell” can have different: (i) owners than the “Host”, (ii) federal income tax elections; (iii) Employer Identification Number (or none at all); (iv) tax returns or be combined with the “Host” in one tax return, (v) different company agreements, (vi) different accounting methods...etc..

§101.602, Enforceability of Obligations and Expenses of Series Against Asset. ... The debts, liabilities, obligations and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series... only if: (1) the records maintained for that particular series account for the assets associated with that series separately from the other assets of company or any of the series; (2) the company agreement contains a statement of the limitations, and (3) the company's certificate of formation contains a notice of these limitations.

§101.603, Assets of Series. ... Assets associated with the series may be held directly or indirectly including being held in the name of the series, in the name of the limited liability, through a nominee, or otherwise... if the records of the series are maintained in a manner so that the assets of the series can be reasonably identified by separate listing or other objectively determined methods.

A series limited liability company is formed by stating so on the certificate of formation. This "Host" or "Parent" or “Holding Company" among other terms, is the traditional business entity. The substructures, "Cells" are not formed by the Secretary of State and indeed the only paperwork filed with the Secretary of State is an assumed name certificate. The statute does require however separate company agreements for the Cells.

Of course, it is very unclear is how the courts in other states will treat the entity or entities. Therefore, it is recommended that true operating companies not use this structure until the law becomes clearer. Nonetheless, the structure seems to be most adaptable to rental real estate where the assets and the liability, like a mortgage, are easily identified.

Be sure to contact your attorney on this technique.

series to actual entities within the normal meaning of business organization law.