



Legal Note - Delaware Series LLC

The assets held in a single business entity are generally exposed to all creditors of the entity. Prudent real estate investors and business owners therefore generally segregate real estate assets (i) from active business assets and (ii) from other real estate. Such segregation generally insulates each parcel of real estate from claims unrelated to the particular property. The use of multiple entities to segregate real estate from business and investment liabilities can, however, be cumbersome and expensive. Moreover, the expense associated with reorganizing an existing business or investment company to a conglomerate (separating various business and real estate assets) may be considerable and potentially complex from a tax prospective.

Delaware has attempted to address the issue of efficient liability segregation by creating the Delaware “Series” LLC. The Delaware legislation establishes an LLC which operates through one or several individual “series.” According to the statute, the debts and liabilities associated with one series are collectable only against the assets held by that particular series. The owner of the Series LLC (which may have more than one owner) may therefore operate independent businesses (or hold several properties) within a single LLC, while statutorily segregating the assets and liabilities of each business (or property). The series LLC therefore, avoids the complexity and cost associated with a conglomerate of entities. Moreover, new series (i.e., additional independent units) may be added and deleted by simply amending the LLC organizational documents.

Note, however, that very specific organizational requirements must be satisfied to properly organize a Series LLC. Moreover, although the Series LLC offers administrative simplicity and general cost savings, the protection offered by the Delaware statutes has not been tested by Florida courts. Also, the IRS has not provided dependable guidance regarding the tax status of the Delaware Series, LLC. The tax issues become especially complex when multiple parties own different interests in the various series.