

## Series LLCs and the Arkansas Uniform Protected Series Act



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Arkansas' most recent legislative session saw the adoption of a number of laws, none more complicated than Act 665, an Act to adopt the Uniform Protected Series Act. Arkansas' Uniform Protected Series Act (the "UPSA") is set out at Ark. Code Ann §4-41-101 et. seq.

The series LLC is in part designed to allow limited liability protection among groups of assets without the formal organization of a separate legal entity for each grouping of assets. Take, for instance, a client that owns several rental properties. A limited liability company ("LLC") might offer the client some limited liability protection; however, if all of the client's rental properties are in one LLC then all of the rental properties are exposed to the liabilities of each property. Alternatively, the client might form several LLC's and place one or two rental properties in each LLC, attempting to isolate the exposure of any property to just that one property. However, the costs associated with multiple LLCs might outweigh the benefits.

The "series LLC" allows the aggregation of assets within divisions or cells in a single LLC to be treated as separate, allowing each division or cell to be isolated from the liabilities of the other divisions or cells; similar to how brother-sister subsidiary corporations might be owned by a single parent corporation.

For example, say your client has 10 rental properties. Your client might set up a "series LLC," treating each rental property as a "protected series" so that the liabilities associated with any one rental property won't leak over to the other 9 rental properties.

- A "series LLC" is a limited liability company that has at least one "protected series." The series LLC is similar to the umbrella entity or parent in a holding company structure.
- A "protected series" is the aggregated division/cell. The protected series is similar to a subsidiary in a holding company, except that the protected series is not a separate legal entity.

In its simplest form, a series LLC may have several protected series, all owned by the series LLC, with the same manager, distributions rights and business purposes – for instance, the multiple rental property series LLC in the above example. Alternatively, a series LLC can have protected series with different members, managers, business purposes and tax structures. The series LLC statutes can be relatively straightforward in the former, or extremely complicated in the later.

The Arkansas Statutes -- Some of the high points of Arkansas' UPSA include:

- To establish a protected series, the LLC must file with the Arkansas Secretary of State a protected series designation that states the name of the series LLC and the name of the protected series. (Ark. Code Ann. §4-41-201(b)).
- The name of a protected series of a series LLC must begin with the name of the series LLC and contain the phrase "protected series," "protected series," "P.S." or "PS". (Ark. Code Ann. §4-41-202).

- For example, if Client Properties, LLC, a series LLC, owns three rental properties each with a protected series designation filed with the Arkansas Secretary of State, the names might be:

Client Properties, LLC – PS Property #1 Address

Client Properties, LLC – PS Property #2 Address

Client Properties, LLC – PS Property #3 Address

- The series LLC must include in its annual franchise tax report filed with the Secretary of State the name of each protected series for which the series LLC has previously filed a protected series designation and that has not been dissolved. (Ark. Code Ann. §4-41-206).
- Recordkeeping is critical in a series LLC. Only assets that are sufficiently connected to the protected series (“associated assets”) are considered as owned by the protected series, and thus protected from creditors of the series LLC or the other protected series of the series LLC. Sufficient connection is established by recordkeeping. (Ark. Code Ann. §4-41-301 and §4-41-404(b)).
- An “associated asset” is only available to creditors of the protected series the asset is associated with, it is not available to the creditors of other protected series of the LLC or creditors of the series LLC. A “non-associated asset” is available to any creditor of the series LLC or creditor of other protected series of the series LLC. (Ark. Code Ann. §4-41-404(b)).
- An asset is an associated asset of a particular protected series if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(i) identify the asset and distinguish it from other assets of the protected series, other protected series of the series LLC and the series LLC,

(ii) determine when and from what person the protected series acquired the asset, and

(iii) if acquired from the series LLC or another protected series of the series LLC, determine the consideration paid. (Ark. Code Ann. §4-41-301(b)).

- Similarly, an asset is an associated asset of a series LLC if the series LLC creates and maintains records that state the name of the series LLC and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(i) identify the asset and distinguish it from other assets of the series LLC, and any protected series of the series LLC,

(ii) determine when and from what person the series LLC acquired the asset, and

(iii) if acquired from a protected series of the series, determine the consideration paid. (Ark. Code Ann. §4-41-301(c)).

- The effective date of Arkansas’ USPA is October 1, 2019, with transitional provisions for series LLCs formed and protected series established prior to January 1, 2020. (Ark. Code Ann. §4-41-803 and §4-41-805).

Tax Classification – The Treasury Department issued Proposed Reg. §301.7701-1 in September, 2010, concerning the tax classification of protected series of a series LLC.

The proposed regulations generally treat each protected series as a separate entity. If the protected series has multiple owners it is treated as a partnership and files a partnership income tax return, or as a corporation if it has elected to be taxed as a corporation. If the protected series has a single member it is a disregarded entity.

The USPA statutes are complex, and the laws interpreting series LLC are not settled. Extra caution should be taken when establishing a series LLC and the underlying protected series.