



**THE EDWIN F. MANDEL LEGAL AID CLINIC
OF THE UNIVERSITY OF CHICAGO LAW SCHOOL**
THE ARTHUR O. KANE CENTER FOR CLINICAL LEGAL EDUCATION
6020 SOUTH UNIVERSITY AVENUE / CHICAGO, ILLINOIS 60637-2786
(773) 702-9611 / FAX: (773) 702-2063

Housing Initiative Clinic Briefs

Series LLCs

By Keiko Rose, '15 and Jeff Leslie, Clinical Professor
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This Housing Initiative Clinic Brief summarizes series limited liability companies (“series LLCs”), which can be formed in Illinois to manage affordable housing projects.

Overview of Series LLCs

In 2007, Illinois passed a statute allowing for the creation of series LLCs. A series LLC is a variation of a traditional LLC, consisting of one umbrella LLC and a collection of subunits that look and act like separate LLCs. In the Illinois statute, the umbrella LLC is called the “series LLC,” and each subunit is called a “series.” This brief will refer to the umbrella LLC and the subunits.

In Illinois, each subunit is a separate legal entity. A subunit may enter into contracts, hold title to property, enter into mortgages, sue and be sued, and otherwise function like a traditional LLC.

Each subunit can be structured in different ways and have its own property, debts, and investors.

Administrative Ease and Reduced Formation Costs

Series LLCs were designed to provide a simpler and cheaper method of creating multiple layers of entities. A series LLC eliminates the need to prepare multiple sets of formation documents and pay expensive administrative fees. Once the umbrella LLC is formed, subunits can be created simply by filing a separate certificate of designation. The certificate lists the subunit's name and identifies its members and managers. In Illinois, the formation fee for the umbrella LLC is \$750, and the formation fee for each subunit is \$50. Since the formation fee for each traditional LLC is \$500, the cost of creating several traditional LLCs would be much higher. LLCs must also file annual fees. The annual filing fee is \$250 for an umbrella LLC and \$50 for each subunit. The annual filing fee for a traditional LLC is \$250, so once again, the cost for multiple traditional LLCs would be much higher.

Liability Protections

Liability protections are another attractive feature of a series LLC, particularly in the context of real estate projects where it is desirable to hold properties in separate entities. The umbrella LLC is shielded from the liabilities of each of its subunits. Similarly, each subunit is shielded from the liabilities of other subunits. By utilizing a series LLC to manage several real estate projects, the umbrella LLC can limit its risk if a subunit's project is not completed, becomes insolvent, or needs to be foreclosed. It does not matter for liability purposes whether a subunit shares common ownership with another subunit or the umbrella LLC. The same can be accomplished with multiple traditional LLCs, but at greater cost.

Tax Implications

Taxes for the umbrella LLC and its subunits work the same way as they do for traditional LLCs. That is, taxes are not paid at the entity level, but instead are passed through and paid by the members. This is an advantage over corporations, which pay tax both at the entity level and at the shareholder level. This tax treatment for series LLCs is confirmed under proposed IRS regulations from 2010, which tax practitioners expect to be adopted in final form at some point.

Bankruptcy Implications

One area of concern is that bankruptcy courts have yet to hear a case involving a series LLC. Recall that one of the purposes of the series LLC structure is to separate the subunits from each other, so a default by one subunit does not affect the others. If an individual subunit files for bankruptcy, it is unclear whether a judge would respect that separation. The judge might instead collapse the umbrella LLC, its subunits, or some subset of them into the bankruptcy case where creditors could seize their collective assets. It is difficult to assess this risk. However, most courts respect separation of assets in traditional LLC structures in bankruptcy cases and may treat the subunits of a series LLC similarly. Additionally, commentators predict that in states like Illinois, where a statute expressly states that subunits are separate legal entities, a subunit would more likely be respected as a separate legal entity in a bankruptcy case.

Resources

The Housing Initiative at the Mandel Legal Aid Clinic has provided pro bono counsel to neighborhood associations and other non-profit organizations in the process of creating and maintaining affordable housing. Please contact us if we can be of any assistance to you.