

5. **Report provided at EC Meeting (Labor Day 2022)** Michelle Suarez
- a. For the summary that CSFS reported to the Executive Council meeting and made motions for at the Labor Day Retreat of 2022, please see attached **Schedule 5**.
6. **Chapter 617 Task Force (FL's Not-For Profit Statute)** Toni Tsvetanova/ Professor Stu Cohn
- a. The Ch. 617 Task Force has divided into subgroups that have met regularly to undergo review of Ch. 617 provisions and make recommendations with respect to necessary revisions. The Task Force has commenced Task Force-wide meetings to review such subgroup recommendations. They met most recently on Jan. 17th and will be meeting again at the in-person BLS Winter meetings, on Jan. 26 (Thursday) from 1-3pm.
7. **Chapter 517 Task Force (FL's Securities Statute)** Willard Blair/
Professor Stu Cohn
- a. The Ch. 517 Task Force has divided into subgroups and are meeting approximately once a month to address several sections of proposed revisions to the statute. The Task Force is looking to other state's securities laws and the Uniform Securities Act in developing a proposed draft legislation which the Task Force hopes to have ready in time to present to this Committee, and the Executive Council, in time for the 2024 legislative session.
8. **Opinion Standards Committee Update** Robert Barron
9. **Chapter 607 Task Force Update** Phil Schwartz/Gary Teblum
- a. The Chapter 607 subcommittee is currently working on a draft of proposed sections to be added to the FBCA dealing with the ratification of defective corporate actions and overissues of securities. The subcommittee met several times this fall and will be meeting over the next two or three months to finalize the draft of those sections. The subcommittee also intends to take up the direct vs. derivative issue to determine whether changes are required to s. 607.0750 (and the corollary provision in Chapter 605) based on questions that have been raised (primarily by litigators) about whether the wording of those statutes need revisions.
10. **CLE Projects** Michelle Suarez & Greg Yadley
- a. ***Regulation D and A/A+ CLE*** Michelle Suarez
- Took place on October 19th, 2022 (1.5 hours) via Zoom online; recorded live. It was presented by Rebecca DiStefano and Willard Blair. The Program was well attended with over 50 registrants and will presumably bring in more revenue through online registrations as the event will be made available for up to a year after its recording. Due to transitions within the Florida Bar, we are still waiting to hear back as to final numbers on revenue generated so far by this CLE, and confirm if the CLE will be made available for only a year or longer. Preliminary feedback from CLE attendees who reached out to this Committee's chair reported that while the CLE was very informative, it was

still very “high level” for many of the attendees, suggesting that in the future this CLE could be broken up into several components or perhaps a longer series version of this CLE with some background explanatory component.

- b. *Securities Institute (March 2023)* Greg Yadley

- c. *Legislative Process CLE* M. Suarez/Gary Teblum
 - i. Gary Teblum has all of the materials necessary to present this CLE. We were hoping to have another panelist to help him in the presentation and/or moderation and for that panelist/moderator to meet diversity criteria, and to preferably have some type of experience with the legislative process. If anyone knows of someone who fits this description, please reach out to Michelle Suarez at MSuarez@FloridaEntrepreneurLaw.com. This CLE would be 1 hour, relatively simple to prepare, and should be ready to present by May 2023, which means we have to start the approval process no later than March 1st, 2023.

11. **Other Matters for Discussion/Good Order** Michelle Suarez/Members

12. **Adjourn** Michelle Suarez

SCHEDULE 1

THE FLORIDA BAR BUSINESS LAW SECTION CORPORATIONS, SECURITIES & FINANCIAL SERVICES COMMITTEE MEETING

Saturday, September 3, 2022

Meeting: 1:30 p.m. – 4:00 p.m. (including CLE)

Location: JW Marriott, Marco Island Florida
Calusa 1-2

and via Zoom

MINUTES

1. Call to Order and Welcome. The meeting of the Corporations, Securities and Financial Services Committee (the “Committee”) was called to order at 1:30 P.M. by Michelle Suarez, Chair of the Committee, who presided at the meeting. Mrs. Valeria Angelucci, the Second Vice Chair, was also present. The meeting was well attended with few people appearing online and about 30 people in person.

2. Report from Series LLC Task Force. Lou Conti commented on the status of the Task Force.

- a. The Uniform Law Commission’s model series LLC act has been the starting point for the Series LLC Act, to be included in Chapter 605. Those new provisions will create one class of a protected series. Florida is a uniform LLC act state. We have centrally adopted, with modifications, the most recent version of the revised uniform LLC Act. There are about 23 other states have adopted series LLC’s and several of them have modeled them after the uniform LLC Act. number of states that have allowed for the creation of Series LLC. He also opined that there are tweaks we should make to the revised LLC Act. Process is just starting to have a Florida bill by mid-July.
- b. Lou provided a brief history and explanation regarding the proposed rules. The concept is that one legal entity can create and form the equivalent of a subsidiary that would be part of the entity that is originally formed. On the federal tax level, is that any mother ship LLC will be taxed as a separate entity. We will allow foreign entities to operate in Florida by registering as a foreign entity.
- c. Lou opened the floor for comments or questions:
 - i. Michelle asked whether certain LLCs may be treated as Series LLC even if that was not the intention. Lou explained that if someone creates an LLC and wishes it to be treated as a Series LLC, then it would file the articles required to qualify the LLC as a Series LLC (filing would indicate PS or “Protected Series”), to put parties on notice of the intention to create a PS. If there are foreign Series, they would be also treated as a protected Series. However, we do not change what the state of formation provides for the specific LLC.

- d. It is not expected to be effective until at least 2024. The drafting committee believes there will be at least one year before this can become effective (e.g. if passed in June 2023, probably not until June 2024). Ultimately it will depend on the department of state.
- e. Lou made a triple motion:

“that the Florida Bar Business Law Section (the "Section") supports proposed legislation adding Protected Series Limited Liability Company provisions to the Florida Revised Limited Liability Company Act, Chapter 605 (the "Florida LLC Act"), by adding new Sections 605.12101 through 605.12803, Florida Statutes, with respect to the creation of Florida Protected Series Limited Liability Companies, and for rules addressing the registration and requirements for foreign Series Limited Liability Companies doing business in Florida. The proposed new sections being added to the Florida LLC Act are based on the Uniform Protected Series Act promulgated and adopted by the Uniform Law Commission. The form of the proposed Protected Series LLC provisions are substantially in the form of the draft legislation, draft dated as of August 31, 2022, as presented to the Executive Council of the Section, and subject to such further changes as are deemed appropriate and approved by (i) the Protected Series Limited Liability Company Task Force, and (ii) the Executive Committee of the Section; and that the Proposed Legislation: (1) Is within the Section’s subject matter jurisdiction as described in the Section’s bylaws; (2) Either is beyond the scope of the bar’s permissible legislative or political activity, or is within the bar’s permissible scope of legislative or political activity and the proposed Section position is consistent with an official bar position on that issue; and (3) Does not have the potential for deep philosophical or emotional division among a substantial segment of the bar’s membership.”

Michelle Suarez seconded; no objection was made. Motion passed and will be presented for approval at the Executive Council meeting.

3. Executive Council and Legislative Chairs came in: Doug Bates expressed appreciation for the work of the Committee. Introduction of Leadership team. Peter Valori, chair of legislation updates: any bill that is proposed by any committee or task force needs to be circulated to other committees before the triple motion presentation. If planning to propose legislation in 2024, we need to work on that early on. Doug Bell explained 2023 session will start in March, it will be a 60-day session, but then 2024 session meetings will likely be starting in September. Doug Bates also mentioned working on producing 50 minutes CLEs.

4. Approval of Meeting Minutes. The Committee, upon motion duly seconded, approved the minutes of meeting of the Committee’s meeting held in June 2022. Motion made to approve by Valeria Angelucci; seconded by Will Blair. Minutes approved.

5. Chapter 617 Matters – Corporations Not-For Profit

- a. Report provided by Stuart Cohen.
- b. Professor Cohen encouraged to volunteer to help. It will be a year-long project at least but it will be an interesting project.

6. Chapter 517 Matters

- a. Will Blair provided a report.
 - b. Currently comparing the statute to the Uniform Securities Act. This will be a lengthy project.
 - c. Asked for volunteers to help.
- 7. Opinion Standards Committee Update.**
- a. Gary Teblum reported there are no updates. Gary Teblum and Dan Peterson are now co-chairs of this Committee.
- 8. Chapter 607 Task Force Update.**
- a. Phil reported that the Task Force looked at the Uniform Act that was not initially considered regarding ratification of defective corporate actions and securities. Group had a meeting late last month and expects to have a meeting in September to review a draft of the proposed legislation. The draft will be relatively short and the task force is hoping to have something this fall and to present it as likely a 2024 legislative proposal. Group is also still looking at:
 - ii. Ratification of Defective Acts, which would include remedies for ratification of defective corporate acts, after looking to Subchapter E of Article 1 of the MBCA.
 - iii. Direct v. Derivative Action. The task force is reviewing whether the standard established in s. 607.0750 of the FBCA defining when an action is a "direct" action vs. being a "derivative" action should be modified. Also discussed was whether the committee should remove this section (and the corollary section in Chapter 605 on the same topic) from both the corporate and the LLC statute. Unfortunately, the committee was not able to reach consensus on how to proceed on this topic. At the same time, the committee continues to hear concerns from various lawyers (and even a few judges) around the state about the statute that was adopted in the FBCA, but without clarity as to how the statute should be changed. The leaders of the committee plan to consult with members of the Business Litigation Committee and come back to the subcommittee with additional thoughts on this topic for further discussion once the committee concludes its discussions on Ratification of Defective Acts.
 - a. derivative versus direct actions and defective acts and being able to correct defective acts (like in Delaware). Trying to get some feedback from business litigators before going back to this issue.
 - b. Phil also intends to review the oppression of minority shareholders and judicial dissolution and revisit this issue in the Task Force, to possibly bring before this Committee in the future.
 - c. Gary Teblum mentioned that since many litigators are participating today, it would be interesting to hear about any feedback about experience with the revised Chapter 607, and 605.0801
 - d. Detra Shaw-Wilder wanted to discuss more in depth the 607.1436 right to exercise the right to buy out in lieu of dissolution. Phil encouraged her to reach out to him

and Gary to review the issue and discuss, and also indicated the commentary on the webpage would be likely useful when considering whether this issue needs to be revisited since they addressed this issue as best as they could in the 2020 amendments. As such, they would really want to hear about how this issue is playing out in post 2020 amendment affected cases and scenarios.

9. CLE Projects.

- a. Greg Yadley announcement: The 39th Securities Federal Institutes, which will include Phil Schwartz, Will Blair, judicial chairs and many prominent professional, will take place on March 2 and March 3 in Miami at the JW Marriott.
- b. October 19, 2022 live or recorded: Regulation D and A/A+ Basics, Updates, & Real-World Applications
 - i. Date/Location: October 19th, 2022 (likely from 12pm – 1:30pm) Zoom online; recorded live.
 - ii. Presented by: Rebeca DiStefano and Willard Blair. Moderated by Michelle Suarez.
 - iii. Program Description: The Securities Act of 1933 and the 1934 Securities and Exchange Act (“Securities laws”) are two of the primary federal laws that govern what companies can and can’t do when it comes to selling their securities. Many practitioners that work with businesses engage in securities work without even knowing it and are ethically required to be aware of these regulations at least a basic level. It’s for that reason that we’ve put together a CLE and panel that will cover two of the most commonly used regulations, Regulation D and Regulation A/A+, to give you a basic sense of what companies need to know when raising capital, as well as recent updates that went into effect last year.
- c. Michelle Suarez encouraged committee members to reach out to her to discuss ideas for new CLEs coming out of this Committee; would like to have 2 more CLE’s come out of this committee by June 2023, in addition to the Securities Institute and Reg D/Reg A CLE already in the works.
- d. CLE in the works: Gary Teblum presenting on how a bill becomes a law. Looking for one more panelist that is diverse.

10. Other Matters for Discussion/Good Order.

- a. No other matters.

11. Adjourn.

- a. Motion made by Anessa Santos; seconded by Greg Yadley. Meeting adjourned at 2:27PM.

SCHEDULE 2

WHITE PAPER

ANALYSIS OF PROPOSED REVISIONS TO CHAPTER 605

ADDITION OF THE UNIFORM PROTECTED SERIES LLC PROVISIONS

SECTIONS 605.12101-605.12803

*Prepared by the Protected Series LLC Task Force of
The Business Law Section of The Florida Bar*

January 13, 2023

I. Background

The Business Law Section (“BLS”) of The Florida Bar formed the Protected Series LLC Task Force (the “Task Force”) in 2020 to analyze the Uniform Protected Series Act (the “UPSA”) promulgated and adopted by the Uniform Law Commission in 2017, and to consider adopting its provisions as new provisions of Fla. Stat. Chapter 605, the Florida Revised Limited Liability Company Act (the “Florida LLC Act”).

The Task Force is comprised of members of the Business Law Section representing all committees of the BLS, as well as representatives from the Tax Section of The Florida Bar, and representatives of the Real Property Probate and Trust Law Section of The Florida Bar.

The Task Force met every month, via ZOOM videoconference, and met in person and by Zoom at all in-person meetings of the BLS through January 11, 2023. Additional meetings are scheduled in February and March of 2023, as needed to work with legislative sponsors and staff on the proposed legislation.

The leadership of the Department of State Division of Corporations, in the persons of the Division Director and the Commercial Filings Bureau Chief, actively participated in the Task Force drafting sessions, and we continue to work with them in connection with all Division of Corporations filings that would be required by the proposed protected series (hereafter, “Protected Series”) additions to the Florida LLC Act.

The Task Force compared the UPSA with the series provisions of the Delaware LLC Act (which include “series,” “protected series” and “registered series” LLC provisions), as well as the recently revised Virginia LLC Act (which adopted the UPSA in 2021), and with the Texas Revised LLC Act which incorporated non-uniform series provisions into the Texas Revised LLC Act in 2013. The Task Force also occasionally referred to other state LLC Acts, including Illinois, which contained series or protected series provisions.

The Task Force included representatives of the Corporations, Securities and Financial Services Committee, the Business Litigation Committee, and the Bankruptcy/UCC Committee, as well as representatives of the Real Property Probate and Trust Law Section.

After extensive meetings and analysis, the Task Force proposed that new Sections 605.12101 through 605.12803 be added to the Florida LLC Act to permit the formation of Protected Series LLCs in Florida.

Of particular note are a few non-uniform deviations from the UPSA in the proposed Florida Protected Series provisions which were added based on the recommendations from representatives of The Real Property Probate and Trust Law Section of The Florida Bar to address concerns expressed regarding (i) associating a real property asset or liability with either the series LLC and/or a Protected Series, and (ii) the interplay with recorded title to real property or liens or other instruments affecting real property which are recorded in local real property recording offices around the state addressing the authority of the persons signing those records and their status as records for purposes of dealing with associates assets. These non-uniform provisions are reflected in Sections 605.12301(2)(b) and 605.12301(3)(b).

The other non-uniform change of importance was a deviation from the extrapolation provision of the UPSA (which utilized the concept of extrapolation to apply only to specified sections of the main LLC act, as reflected in Section 605.12108(1)). The Florida Task Force decided that a more general application of the extrapolation concept was advisable, so we adopted a construct whereby it is clear that the provisions of the existing chapter 605 (Florida LLC Act) would be generally applicable to protected series, except where explicitly treated otherwise in the protected series provisions of 605.12101 - 605.12803. This change is reflected in the addition of subparagraph (3) in Section 605.12108(3), which subparagraph is further discussed in the “Extrapolation” concept below in Section C. 2 of this paper.

The Task Force believes that adding these Protected Series provisions will be beneficial for Florida businesses and citizens, as well as for lawyers and judges being asked to address matters affecting both domestic and foreign series limited liability companies that are doing business in Florida utilizing series LLCs.

II. Series LLCs around the Country

There are now 21 jurisdictions which provide for the formation of some type of “series” limited liability companies. Delaware led the way when it passed series LLC legislation in 1996, which it borrowed from its own Business Trust law where “series” trusts was initially utilized. Delaware also provides for series limited partnerships. Prior to the application of series” to trusts, LLCs and limited partnerships, the series construct was most often used in the context of investment funds, mutual funds, and captive insurance companies.

Delaware's adoption of series provisions to its LLC Act in 1996, was followed by the adoption of “series” limited liability company provisions by Wisconsin in 2001, then later by Oklahoma, Illinois, Nevada, Tennessee, Iowa, Texas, Puerto Rico, District of Columbia, Kansas, Missouri, Montana, Utah, Alabama, Indiana, Arkansas, Nebraska, North Dakota, Virginia, and Ohio.

Florida currently has nothing in the Florida LLC Act that addresses series LLCs. However, series limited liability companies formed in other states are currently permitted to qualify to do business in Florida by the Florida Division of Corporations, and each such series within a foreign series LLC is currently required to separately qualify to do business in Florida, as if each foreign

series were a separate legal entity. Florida does not keep statistics on how many foreign series LLCs are doing business in Florida, but it is likely that the number of foreign series doing business in Florida will increase, whether or not Florida adopts series LLC legislation.

Generally, for states that do not have their own series LLC provisions, Delaware has become the default jurisdiction for most series limited liability companies, at least for sophisticated parties who want to take advantage of Delaware's business friendly laws, contractual freedom, and its efficient and competent Court of Chancery.

Delaware amended its LLC Act (Sec 18-215 et. seq.) to add a “protected series” (in addition to adding a “registered series”) to the Delaware series provisions, in large part because of the work that went into the creation of UPSA, where Delaware lawyers were on the drafting committee and observers to the UPSA drafting sessions. The UPSA was drafted to use “Protected Series” as the single “series” construct, without need of an additional “registered” series, since the Protected Series construct will satisfy UCC aspects which apply to a legal “person” and since a Protected Series requires the public filing of a separate designation for each protected series created by the limited liability company.

III. Summary of the Proposed Legislation

A. Intent of the Proposed Legislation and Reasons for Adoption

The intent of the proposed legislation is to allow, for the first time in Florida, the creation of Florida Protected Series LLCs, and to add statutory rules addressing foreign series LLCs (formed in other states) transacting business in Florida. The proposed legislation utilizes the relatively new, but well thought out and considered, set of rules in the Uniform Protected Series Act (the “UPSA”) promulgated and adopted by the Uniform Law Commission in 2017, after a five-year period of study and drafting.

The principal reasons for adoption of the proposed Protected Series LLC provisions are:

(1) Series LLC legislation is now found in 21 jurisdictions. All of the series LLCs operating in Florida currently were formed in some other state or territory; however, there are no provisions in the Florida LLC Act (Chapter 605) to provide guidance to Florida citizens or businesses doing business with a foreign series LLC, or to lawyers and judges who are being asked to address them in connection with contracts, claims, or disputes.

(2) Adding Protected Series LLC provisions to the existing Florida LLC Act will prove beneficial to Florida citizens and businesses, as well as to lawyers who are being asked to form and use a series LLC for doing business in Florida, and for judges who may be faced with issues associated with foreign series LLCs operating in Florida and with Florida series LLCs which will be utilized in the future under these new provisions.

(3) The proposed legislation provides comprehensive series provisions with robust rules for greater transparency to the public, and greater clarity as to the myriad issues raised in the “Series LLC” construct; particularly given the diversity of treatment of series LLCs in the jurisdictions which currently address series in their LLC acts, which will make Florida a more attractive jurisdiction for businesses wanting to do business in this state with a series LLC.

(4) The proposed legislation is based on the Uniform Protected Series Act adopted by the Uniform Law Commission in 2017 (the “UPSA”). The UPSA was formulated specifically to be “plugged into” the Revised Uniform Limited Liability Company Act, which Florida adopted in 2013, effective January 1, 2014. The proposed Protected Series provisions would be added as Part II of the existing Chapter 605, with continuous section numbering in new Article 12 of the Florida LLC Act as sections 605.12101 through 605.12803.

B. “Protected Series” as a Term of Art

Following long-standing practice with statutory trusts and investment companies, many series statutes in other jurisdictions use “series” as the term of art for the construct of a “Protected Series” described in the UPSA and the proposed Florida Protected Series provisions. “Protected Series” is being used to distinguish the proposed construct from the simple term “series,” since the term “series” has an established and very different meaning with regard to bonds, corporate stock, mutual funds, partnership interests, *et cetera*, and to avoid the potential for confusion with series LLCs formed in other jurisdictions which are not based on the UPSA.

In an effort to avoid such confusion, the UPSA and in turn the proposed Florida Protected Series legislation, uses the term “Protected Series” – both to signal a different meaning than just “series,” and to call attention to the new internal, horizontal shields which are the protected series construct’s defining characteristic. These new “Horizontal” or “Internal” liability shields are discussed in further detail below.

C. Key Aspects of the Protected Series Limited Liability Company

(1) Protected Series Existence

A Protected Series Limited Liability Company (also called a series limited liability company, a series LLC, and occasionally referred to by the Task Force as the “mothership”) is statutorily defined to be a *legal entity*, which can establish one or more “Protected Series” in its operating agreement and by a series designation filed with the Florida Department of State. Each Protected Series can have its own associated members, managers, assets and liabilities, and each Protected Series can conduct its own business activities, separate and apart from the series LLC and any other Protected Series which was formed by the series LLC.

A Protected Series created by the series LLC is ***not*** a separate and distinct legal entity. Rather, a Protected Series is statutorily described as a “*Person*” in proposed Section 605.12103 (“*[a] protected series... is a person*”) fully empowered to conduct its own business activities in its own name, and, in most respects, is “*deemed*” to be treated “*as if*” it was a limited liability company subject to the overall provisions of the Florida LLC Act. The use of the term “*Person*” in describing a Protected Series is to assure that it is deemed a “*person*” within the meaning of Article 1 of the Uniform Commercial Code (“UCC”), and therefore an “*organization*” that can be a debtor under the UCC.

Section 605.12104(c) provides that a Protected Series of a series LLC cannot exist on its own; therefore, a Protected Series is not entirely separate and distinct from the series LLC on whose existence the Protected Series depends. There is one narrow exception to this rule, where a Protected Series may survive the dissolution of the series LLC as the result of a merger under Section 605.12604 in which a Protected Series may be “relocated” *from* a merging

series LLC that does not survive the merger, *to* the series LLC that does survive the merger.

Section 605.12501(1) further reflects this reality by stating that the dissolution of a series LLC causes the dissolution of each Protected Series of the series LLC. Section 605.12502(d) also reflects this reality by providing that a series LLC has not completed its own “winding up” until the series LLC has completed the winding up of each Protected Series created by the series LLC.

(2) “Extrapolation” (analogizing the provisions of the Florida Limited Liability Company Act to the new Protected Series)

Section 605.12108 provides rules for applying the provisions of the existing Florida LLC Act to the series LLC and the Protected Series via an “extrapolation” by analogy approach, which is fundamental to the Protected Series construct in UPSA. With a few exceptions, this extrapolation by analogy construct provides the mechanics for the “*deemed*” treatment of a Protected Series to be treated “*as if*” it was a limited liability company separate and apart from the series LLC under which it was created, and also distinct from any other Protected Series of the “*mothership*” series LLC. This extrapolation approach is at the core of UPSA and the proposed Florida Protected Series provisions.

In effect, this provision treats each listed item at the Protected Series level as if the item were the analogous construct at the limited liability company level. However, the intrinsic nature of the item being “*deemed up*” does not change. As Black’s explains, “*deem*” means “[t]o treat (something) as if ... it has qualities *that it does not have*.” Black’s Law Dictionary (10th ed. 2014) (*emphasis added*). So, the “*deeming up*” of a Protected Series to be deemed as if it were a separate and distinct limited liability company; when in reality a Protected Series is statutorily described as a “*person*” (rather than a legal entity), does not make the Protected Series an actual legal entity.

Extrapolation occurs under the UPSA when expressly invoked by some provision of the proposed series provisions, and, when invoked, proceeds according to the following example as described in proposed Section 605.12108(1):

Except as otherwise provided in subsection (2) and s. 605.12107 [the additional non-variable limitations on operating agreements of a series LLC]..., the following rules apply:

- a Protected Series of a series limited liability company is deemed to be *treated as if it were* a separate hypothetical limited liability company;
- any associated member of the Protected Series is deemed to be *treated as if it were* a member of the separate hypothetical limited liability company;
- any protected-series transferee of the Protected Series is deemed to be *treated as if it were* a transferee of the separate hypothetical limited liability company;
- any protected-series transferable interest of the Protected Series is deemed to be *treated as if it were* a transferable interest of the separate hypothetical limited liability company;
- a protected-series manager of the Protected Series is deemed to be *treated as if it were* a manager of the separate hypothetical limited liability company;

- an asset of the Protected Series is deemed to be *treated as if it were* an asset of the separate hypothetical limited liability company, whether or not the asset is an associated asset of the Protected Series; and
- any creditor or other obligee of the Protected Series is deemed to be *treated as if it were* a creditor or obligee of the separate hypothetical limited liability company.

The Task Force deviated from the UPSA when it came to one aspect of extrapolation. Under the UPSA, extrapolation occurs when it is “expressly invoked” by a specific provision in UPSA. For example, UPSA invokes extrapolation in the specific references to specific provisions in Section 108(1) of UPSA.

The Task Force, by consensus, and as requested by representatives from other sections of The Florida Bar, believe that a more general rule of extrapolation should be included, whereby the default rules of the Florida LLC Act apply both to the series LLC and to the Protected Series created by the series LLC, *unless* there is a specific provision in proposed Sections 605.12101 through 605.12803 which apply different default rules or requirements on a series LLC or its Protected Series.

The more general extrapolation to the Florida LLC Act is codified in new subsection (3) of proposed Section 605.12108(3). There is no subsection (3) in UPSA Section 108. In essence, the proposal to add subsection (3) to 605.12108 deviates from UPSA by statutorily applying the extrapolation construct to the default provisions of the Florida LLC Act, by making it clear that those default rules apply to a series LLC as well as to a Protected Series of a series LLC, except where there are specific provisions in Sections 605.12101 through 605.12803 to the contrary which implement the protected series LLC provisions for Florida limited liability companies.

Extrapolation provides two significant advantages:

First, the approach avoids burdening the Protected Series LLC provisions with lengthy provisions largely duplicative of provisions already in the Florida LLC Act.

Second, where appropriate, the approach imports to the Protected Series level the same policy choices reflected in the existing Florida LLC Act.

The following examples of Extrapolation display the additional benefit of applying “parallelism” in concept and terminology between what we know in the existing Florida LLC Act, and applying parallel terms for application with a Protected Series.

concept	defined term pertaining to a series limited liability company	defined term pertaining to a protected series
person with both governance and economic rights	member	associated member
economic rights	transferable interest (rights to distributions from the series limited liability	protected-series transferable interest (rights to distributions from a

	company)	protected series)
owner of solely economic rights	transferee	protected-series transferee ¹
owned assets	associated assets of the series limited liability company	assets of a protected series
		associated assets/ non-associated assets of a protected series ²

(3) Fundamental Aspects of Asset Association & Required Record-Keeping

The Protected Series construct has the following fundamental aspects:

- (i) an identifiable set of assets segregated within a limited liability company (“a series limited liability company” or “series LLC”);
- (ii) a Protected Series is empowered to conduct activities in its own name;
- (iii) its assets must be identified by thorough recordkeeping that distinguishes them from assets of the series limited liability company and assets of any other Protected Series of the company;
- (iv) its assets are obligated solely to persons asserting claims pertaining to activities related to the segregated assets;
- (v) its assets are not available to persons asserting claims arising from the activities of the series limited liability company or any other Protected Series of the series limited liability company;
- (vi) one or more members of the series limited liability company may be associated with the Protected Series, but not necessarily; if no members of the series limited liability company are associated with a Protected Series, the series LLC itself is deemed to be associated with the Protected Series;
- (vii) distributions arising from the assets and activities of a Protected Series go to either: (a) the members associated with the Protected Series, if any; or (b) if the series has no associated members, the series limited liability company.

¹Although a series limited liability company may own a protected-series transferable interest of a protected series of the series limited liability company, the defined term, “protected-series transferee” does not include the series limited liability company. See Section 605.12303(4), and the comment to UPSA section 303(d).

²A protected series can own an asset without the asset being associated with the protected series. The proposed Protected Series provisions label this category of property as a “non-associated asset.” However, only an “associated asset” is protected by the internal shields of a Protected Series. See proposed Sections 605.12301 and 605.12404.

Section 605.12301 addresses the association of assets of a Protected Series, and the record-keeping requirements to assure proper “association” of assets among the series LLC and/or any of its Protected Series.

The fundamental record-keeping requirement to properly “associate” an asset with a specific Protected Series, is stated in proposed Section 605.12301(2)(a), “... ***only 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 any other asset of the protected series, any asset of the series LLC, and any asset of any other protected series;*

(ii) *determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and*

(iii) *if the protected series acquired the asset from the series LLC or another protected series of the company, determine any consideration paid, the payor, and the payee.*

There are parallel rules for the association of an asset with the series LLC in proposed Section 605.12301(3)(a).

Both proposed Section 605.12301(2)(b) and proposed Section 605.12301(3)(b) include non-uniform language designed to make it clear that deeds and other instruments granting an interest in real property to, respectively, a Protected Series or a series limited liability company or affecting real property owned by, respectively, a Protected Series or a series limited liability company that is properly recorded, and is in favor of a person who gives value without knowledge of the lack of authority of the person signing and delivering the instrument is conclusive as to such authority and also has the effect of being a record for purposes of associating the asset or liability with the respective Protected Series or series limited liability company.

Also notable is the expansive latitude given to the record-keeping requirements, whereby records may be “...*organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.*”

(4) *New “Horizontal” or “Internal” Shields*

An entity’s traditional liability shield – i.e., the “*vertical*” shield – protects an entity’s owners from automatic, status-based liability for the entity’s debts and thereby protects each owner’s personal assets from creditors of the entity.

Thus, the traditional *vertical* shield has two parts: a non-liability rule (no status-based liability) and a non-recourse rule (no creditor recourse against an owner's assets). This distinction is immaterial in the context of a vertical shield but is essential to understanding the proposed Protected Series provision's novel approach to the new “*horizontal*” or “*internal*” shields.

A Protected Series limited liability company contains new “internal shields” – i.e., asset and liability partitions reserving the assets of each Protected Series solely to creditors of that Protected Series. These new “horizontal” shields are conceptually and practically quite different from the traditional, “vertical” shield that protects the owners of an organization from automatic, status-based liability for the organization’s obligations.

Like the traditional “vertical shield,” a Protected Series' horizontal shields contain both a non-liability rule and a non-recourse rule. The UPSA and the proposed Florida Protected Series provisions, treat these rules separately to create an important inducement to good recordkeeping.

- under the non-liability rule (proposed Section 605.12401(2)):
 - a Protected Series is not liable for the debts of the series limited liability company or any other Protected Series of the series limited liability company, and vice versa.
- under the non-recourse rule (proposed Sections 605.12301 and 605.12404):
 - only an associated asset of a Protected Series is shielded against collection efforts of judgment creditors of the series limited liability company or of any other Protected Series of the series limited liability company, and the same is true for associated assets of the series limited liability company; and such “association of assets” is accomplished by creating and maintaining the required records.

Thus, even when the non-liability rule is firmly in place for a Protected Series,³ the non-recourse rule for each asset of the Protected Series is subject to challenge on the grounds that: (i) the relevant records are deficient; (ii) the asset is therefore non-associated; and (iii) as a result the asset is “up for grabs,” not only by a creditor of the Protected Series but also by any judgment creditor of the series limited liability company and any judgment creditor of any other Protected Series of the series limited liability company.⁴

(5) Overcoming the Shields - Proposed Section 605.12402

“Piercing the veil” is the foremost doctrine for overcoming the traditional vertical shield separating an entity from its owners. When a creditor succeeds with a piercing claim, the shield falls *in toto*. That is, all the owners' non-exempt assets are available to the judgment creditor of the entity.

The piercing doctrine (and any related theories that conflate an organization and its owners) applies to the vertical shield between a series limited liability company and its members and to the vertical shield between a Protected Series and its associated members.

Likewise, the piercing doctrine (and related theories of affiliate liability) will apply to the internal/horizontal shields – *i.e.*, in the proper circumstances, a court will disregard the internal/horizontal shields, negate the non-liability rule, and thus render the non-

³Like the non-liability rule of a vertical shield, the non-liability rule of a horizontal shield is subject to “piercing” claims. *See* Section 402 of the UPSA.

⁴The situation is the same for assets of the series limited liability company itself.

recourse rule moot. For a detailed discussion of this issue, see the UPSA Section 402 comment by the UPSA Drafting Committee.

(6) Remedies of a Judgment Creditor- Sections 605.12403 and 605.12404

The current Florida LLC Act in Section 605.0503, (as modified in response to the Florida Supreme Court *Olmstead* opinion), provides that the remedies for a judgment creditor of a multi-member Florida LLC is limited to a charging order; however, if the judgment is against the sole member of a single-member Florida LLC, the judgment creditor may seek a court order compelling distributions to satisfy the judgment, under appropriate circumstances described in the Florida LLC Act.

The proposed Protected Series provisions in Section 605.12403 will apply the same rules to a judgment creditor of: (i) the sole associated member of a single-member Protected Series, or (ii) the sole associated member of a single-member series limited liability company.

(7) Protected Series Governing Law

Proposed Section 605.12105 provides that the law of Florida governs the internal affairs of a Protected Series of a series LLC formed in Florida. The concept of “internal affairs” presupposes an organization that is a legal person and thus applies the internal affairs doctrine to a Protected Series of a series LLC under the proposed provisions. See Section 605.12103 (stating that “[a] protected series ... is a person”).

Since the Protected Series is a novel construct, the following details fundamental aspects of a Protected Series’ internal affairs. Proposed Section 605.12105(1) provides the basic internal affairs rules for a Florida series LLC and its Protected Series. The internal affairs of a Protected Series of a series LLC includes:

- (a) relations among any associated members of the Protected Series;
- (b) relations among the Protected Series and, any associated member, any Protected Series manager, or any Protected Series transferee;
- (c) relations between any associated member and any Protected Series manager or any Protected Series transferee;
- (d) the rights and duties of a Protected Series manager;
- (e) governance decisions of the Protected Series and the conduct of its activities and affairs; and
- (f) procedures and conditions for becoming an associated member or transferee of a Protected Series.

Proposed Section 605.12105(2) provides additional rules (that are not within traditional rules of internal affairs), to govern the relationship between a Protected Series of a series LLC and each of the following:

- (a) the series LLC;
- (b) another Protected Series of the series LLC;
- (c) a member of the series LLC which is not an associated member of the Protected Series;
- (d) a Protected Series manager of a different Protected Series within the same series LLC; and
- (e) a Protected Series transferee of a different Protected Series within the same series LLC.

Proposed Section 605.12105(3) provides a non-liability rule for a status-based person, solely for being or acting as an associated member, manager or transferee of a Protected Series, or solely for being or acting as a member, manager or transferee of the series LLC.

Proposed Section 605.12105(4) provides a non-liability rule for the series LLC solely based on filings made with the Florida Department of State (e.g., filing a protected series designation of a Protected Series, or a statement of designation change), or being or acting as a Protected Series manager, or having the Protected Series being or acting as a manager of the series LLC, or owning any Protected Series transferable interest.

Proposed Section 605.12105(5) provides a non-liability rule for a Protected Series of a series limited liability company, where liability for a debt obligation or other liability of the series LLC or of another Protected Series, is being asserted solely by reason of: (i) the Protected Series being a Protected Series of the series LLC, or (ii) being or acting as a Protected Series manager of another Protected Series of the series LLC or a manager of the series LLC, or (iii) the series LLC owning a Protected Series transferable interest of the Protected Series.

(8) *Operating Agreements for Protected Series*

Pursuant to proposed Section 605.12106, the written operating agreement of the series LLC governs the activities and affairs (including governance and membership) of a Protected Series formed by that series LLC. A Protected Series does not have an operating agreement of its own, so the operating agreement of the series limited liability company must address issues pertaining to each of the series LLC's Protected Series.

An operating agreement of the series LLC may do so in its main body, through a different exhibit or appendix for each Protected Series, through an exhibit or appendix applicable to all Protected Series, or through some combination.

The current Florida LLC Act permits oral and implied-in-fact operating agreements, defining the operating agreement as an agreement among all the members, "*whether oral, implied, in a record, or in any combination thereof.*" However, given the complexity inherent in the Protected Series construct, prudence *demand a written operating agreement* – and, moreover, demands one that is not subject to amendment except through a signed writing. Consequently, under the proposed Protected Series provisions, there cannot be an oral or implied operating agreement for a Protected Series.

Unless prohibited or limited by the operating agreement, associated members of a Protected Series may make contracts among themselves pertaining to the Protected Series. To the extent permitted by other law (principally the law of contracts), such contracts bind the parties but have no effect on the operating agreement or the rights and duties of members of the series limited liability company who are not party to the agreement (whether or not the non-party member is an associated member of the Protected Series).

If the Florida LLC Act restricts the power of an operating agreement, such restrictions also apply to the Protected Series provisions of the operating agreement. Further, if the law of Florida other than Chapter 605 imposes a restriction, prohibition, limitation, condition, obligation, liability, or other restriction on an LLC, they apply to Protected Series in accordance with Section 605.12108.

Proposed Section 605.12107 provides new “non-variable” rules for the new Protected Series construct, which the operating agreement may not vary. These restrictions are to be read “*in addition to*” the non-variable rules set forth in the Florida LLC Act under current Section 605.0105(3), which are also applied by extrapolation to the Protected Series level.

Occasionally, comments to the Florida LLC Act refer to a variable provision as a “*default rule*” and a mandatory provision as “*non-variable*.” These references are merely to draw attention to the default/non-variable distinction in particular contexts, and have neither the intent nor the power to affect the default/non-variable status of the many provisions of the Florida LLC Act.

(9) *Management of Protected Series & Duties*

The current Florida LLC Act applies the statutory apparent authority default rule that members of a member-managed Florida LLC have authority to manage the activities and affairs of the LLC, unless otherwise provided in an operating agreement.

Pursuant to proposed Section 605.12304(7), an associated member of a Protected Series is an agent for the Protected Series with power to bind the Protected Series to the same extent that a member of a Florida LLC is an agent for the LLC under Section 605.04074(1)(a).

Section 605.12304(1) of the proposed Protected Series provides that “*A protected series may have more than one protected-series manager.*” That term is defined in the Definitions section 605.12102(9): “*Protected Series Manager*” means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed under the operating agreement and this chapter.”

There is also an explicit default rule in Section 605.12304(2) addressing management where there are no associated members of a Protected Series – “*If a protected series has no associated members, the series LLC is the protected series manager.*”

Any duties (including fiduciary duties) of a Protected Series Manager are applied in Section 605.12304(3) by reference to Section 605.12108 by extrapolation to deem a Protected Series Manager to be a *deemed* manager of a *deemed* Florida LLC, and subject to the duties imposed on a manager of a Florida LLC.

Solely by reason of being or acting as a protected-series manager of a Protected Series, that person owes no duties to the series LLC, another Protected Series, or another person in that person's capacity as a member of the series LLC which is not an associated member or transferee of the Protected Series, or a transferee of the series LLC.

An associated member of a Protected Series has the same rights to vote on, or consent to, any action to which a member of a regular Florida LLC has pursuant to the Florida LLC Act or pursuant to an operating agreement.

An associated member of a series LLC or a Protected Series may bring a derivative action on behalf of the series LLC or a Protected Series, to the same extent as a member may bring a derivative action on behalf of a Florida LLC pursuant to existing Section 605.0802.

(10) *Dissolution and Winding Up of Protected Series*

Section 605.12501 of the Protected Series provisions state five grounds for dissolution of a Protected Series (three of which are non-variable):

- (1) On dissolution of the series LLC;
- (2) an event specified in the operating agreement;
- (3) the affirmative vote or consent of all associated members of the Protected Series;
- (4) by court order upon application by an associated member or protected-series manager of the Protected Series (applying the same grounds for dissolution of an LLC as stated in the Florida LLC Act); and
- (5) by court order upon application by the series LLC, or a member or manager of the series LLC pursuant to Section 605.0702.

A dissolved Protected Series winds up its activities and affairs in the same manner that a dissolved LLC winds up its activities and affairs. Judicial supervision or another judicial remedy is available in the winding up of a Protected Series to the same extent and under the same conditions and same effects that apply in the Florida LLC Act under Section 605.0709(5).

(11) *Entity Transactions Restricted*

The construct of a Protected Series being a “person” rather than a “legal entity” places significant limitations on what a Protected Series may do when it comes to entity transactions; actually, it is more about what a Protected Series may “not do” in connection with entity transactions.

Pursuant to proposed Section 605.12602, a Protected Series may not: (1) be an acquiring, acquired, converting, converted, merging, or surviving entity; (2) participate in a domestication; or (3) be a party to or be formed, organized, established, or created in a transaction substantially like a merger, interest exchange, conversion, or domestication.

There are also restrictions that apply to the series LLC which has created a Protected Series in Section 605.12603: “*A series limited liability company may not be: (1) an acquiring, acquired, converting, converted, domesticating, or domesticated entity; or (2) except as otherwise provided in Section 604, a party to or the surviving company of a merger.*”

A Protected Series may only be a party to a merger, if it is as part of a merger of the series LLC, but “*only if*” (1) *each party to the merger is a LLC; and (2) the surviving company is not created in the merger.* See Section 605.12604. The rationale for the very “narrow channel” through which a Protected Series may travel in a merger under this section is tied to the fundamental concept that the Protected Series does not exist independently, and so exists only through its mothership - the Protected Series LLC.

IV. Conclusion

The foregoing summary addresses some of the most significant aspects of the proposed Protected Series legislation. However, there are a significant number of issues that were discussed by the Task Force with respect to the Protected Series provisions which could not be addressed in summary fashion. This White Paper reflects what we believe are the most significant aspects of the proposed legislation.

The consensus of the Task Force is that since foreign series LLCs are already operating in Florida, and more foreign series LLCs are sure to follow, Florida should statutorily address series LLCs.

Consequently, the Task Force believes it is incumbent on Florida to address Series LLCs, to provide statutory rules to permit the formation of Florida Protected Series LLCs, and to provide basic statutory requirements for foreign series LLCs doing business in Florida.

The Task Force and the Business Law Section of The Florida Bar advocates for enactment of the amendments proposed in the draft provisions of Sections 605.12101 through 605.12803 as reflected in the Appendix hereto.

Respectfully submitted on behalf of the Protected Series LLC Task Force of the Business Law Section of The Florida Bar by Louis T. M. Conti, Chair of the Task Force, who would like to acknowledge the valuable contributions of Gary I. Teblum in the editing of this White Paper, and the efforts of James Marx in coordinating the discussions and input from the Real Property, Probate & Trust Law Section of The Florida Bar.

[Appendix to contain the draft provisions of proposed Sections 605.12101 through 605.12803 to be added as Part II of the Florida LLC Act]

SCHEDULE 3

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PROTECTED SERIES PROVISIONS

GENERAL PROVISIONS

605.12101. SHORT TITLE. Sections 605.12101 - 605.12803
may be cited as the Uniform Protected Series Provisions
comprising Part II of this chapter. *Added by Laws 2023, c. 2023-*
[] eff. [] 2024.

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605.12102. DEFINITIONS. As used in Sections 605.12101 -
605.12803:

(1) "Asset" means property:

(a) In which a series limited liability company or a
protected series has rights; or

(b) As to which the company or protected series has
the power to transfer rights.

(2) "Associated asset" means an asset that meets the
requirements of s. 605.12301.

(3) "Associated member" means a member that meets the
requirements of s. 605.12302.

(4) "Foreign protected series" means an arrangement,
configuration, or other structure established by a foreign
limited liability company which has attributes comparable to a
protected series established under this chapter. The term
applies whether or not the law under which the foreign company
is organized refers to "series" or "protected series".

(5) "Foreign series limited liability company" means a
foreign limited liability company that has at least one foreign
series or protected series.

(6) "Non-associated asset" means:

(a) An asset of a series limited liability company
which is not an associated asset of the company; or

(b) An asset of a protected series of the company
which is not an associated asset of the protected series.

(7) "Person" as defined in s. 605.0102(48) includes a
protected series and a foreign protected series.

(8) "Protected series", except in the phrase "foreign
protected series", means a protected series established under s.
605.12201.

41 (9) "Protected-series manager" means a person under whose
42 authority the powers of a protected series are exercised and
43 under whose direction the activities and affairs of the
44 protected series are managed under the operating agreement and
45 this chapter.

46 (10) "Protected-series transferable interest" means a right
47 to receive a distribution from a protected series.

48 (11) "Protected-series transferee" means a person to which
49 all or part of a protected-series transferable interest of a
50 protected series of a series limited liability company has been
51 transferred, other than the company. The term includes a person
52 that owns a protected-series transferable interest as a result
53 of ceasing to be an associated member of a protected series.

54 (12) "Series limited liability company", except in the
55 phrase "foreign series limited liability company", means a
56 limited liability company that has at least one protected
57 series.

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61 **605.12103. NATURE OF PROTECTED SERIES.** A protected series
62 of a series limited liability company is a person distinct from:

63 (1) The company, subject to ss. 605.12104(1), 605.12501(1),
64 and 605.12502(4);

65 (2) Another protected series of the company;

66 (3) A member of the company, whether or not the member is
67 an associated member of the protected series;

68 (4) A protected-series transferee of a protected series of
69 the company; and

70 (5) A transferee of a transferable interest of the company.

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73 **605.12104. POWERS AND DURATION OF PROTECTED SERIES.**

74 (1) A protected series of a series limited liability
75 company has the capacity to sue and be sued in its own name.

76 (2) Except as otherwise provided in subsections (3) and
77 (4), a protected series of a series limited liability company
78 has the same powers and purposes as the company.

79 (3) A protected series of a series limited liability
80 company ceases to exist not later than when the company
81 completes its winding up.

82 (4) A protected series of a series limited liability
83 company may not:

84 (A) be a member of the company;

85 (B) establish a protected series; or

86 (C) except as permitted by law of this state other
87 than this chapter, have a purpose or power that the law of this
88 state other than this chapter prohibits a limited liability
89 company from doing or having.

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92 **605.12105. PROTECTED SERIES GOVERNING LAW.** The law of
93 this state governs:

94 (1) The internal affairs of a protected series of a series
95 limited liability company, including:

96 (a) Relations among any associated members of the
97 protected series;

98 (b) Relations among the protected series and:

99 1. any associated member;

100 2. any protected-series manager; or

101 3. any protected-series transferee;

102 (c) Relations between any associated member and:

103 1. any protected-series manager: or

104 2. any protected-series transferee;

105 (d) The rights and duties of a protected-series
106 manager;

107 (e) Governance decisions affecting the activities and
108 affairs of the protected series and the conduct of those
109 activities and affairs; and

110 (f) Procedures and conditions for becoming an
111 associated member or protected-series transferee;

112 (2) The relations between a protected series of a series
113 limited liability company and each of the following:

114 (a) The company;

115 (b) Another protected series of the company;

116 (c) A member of the company which is not an associated
117 member of the protected series;

118 (d) A protected-series manager that is not a
119 protected-series manager of the protected series; and

120 (e) A protected-series transferee that is not a
121 protected-series transferee of the protected series;

122 (3) The liability of a person for a debt, obligation, or
123 other liability of a protected series of a series limited

124 liability company if the debt, obligation, or liability is
125 asserted solely by reason of the person being or acting as:

126 (a) An associated member, protected-series transferee,
127 or protected-series manager of the protected series;

128 (b) A member of the company which is not an associated
129 member of the protected series;

130 (c) A protected-series manager that is not a
131 protected-series manager of the protected series;

132 (d) A protected-series transferee that is not a
133 protected-series transferee of the protected series;

134 (e) A manager of the company; or

135 (f) A transferee of a transferable interest of the
136 company;

137 (4) The liability of a series limited liability company for
138 a debt, obligation, or other liability of a protected series of
139 the company if the debt, obligation, or liability is asserted
140 solely by reason of the company:

141 (a) Having delivered to the department for filing
142 under s. 605.12201(2) a protected series designation pertaining
143 to the protected series or under ss. 605.12201(4) or
144 605.12202(c) a statement of designation change pertaining to the
145 protected series;

146 (b) Being or acting as a protected-series manager of
147 the protected series;

148 (c) Having the protected series be or act as a manager
149 of the company; or

150 (d) Owning a protected-series transferable interest of
151 the protected series; and

152 (5) The liability of a protected series of a series limited
153 liability company for a debt, obligation, or other liability of
154 the company or of another protected series of the company if the
155 debt, obligation, or liability is asserted solely by reason of:

156 (a) The protected series:
157 1. Being a protected series of the company or
158 having as a protected-series manager the company or another
159 protected series of the company; or
160 2. Being or acting as a protected-series manager
161 of another protected series of the company or a manager of the
162 company; or
163 (b) The company owning a protected-series transferable
164 interest of the protected series.
165

166 **605.12106. RELATION OF OPERATING AGREEMENT AND THE**
167 **PROTECTED SERIES PROVISIONS OF THIS CHAPTER.**

168 (1) Except as otherwise provided in this section and subject to
169 ss. 605.12107 and 605.12108, the operating agreement of a series
170 limited liability company governs:

171 (a) The internal affairs of a protected series,
172 including:

173 1. Relations among any associated members of the
174 protected series;

175 2. Relations among the protected series and:

176 a. any associated member;

177 b. and protected-series manager; or

178 c. any protected-series transferee;

179 3. Relations between any associated member and:

180 a. any protected-series manager; or

181 b. any protected-series transferee;

182 4. The rights and duties of a protected-series
183 manager;

184 5. Governance decisions affecting the activities
185 and affairs of the protected series and the conduct of those
186 activities and affairs; and

187 6. Procedures and conditions for becoming an
188 associated member or protected-series transferee;

189 (b) Relations among the protected series, the company,
190 and any other protected series of the company;

191 (c) Relations between:

192 1. The protected series, its protected-series
193 manager(s), any associated member of the protected series, or
194 any protected-series transferee of the protected series; and

195 2. A person in the person's capacity as:

196 a. A member of the company which is not an
197 associated member of the protected series;

198 b. A protected-series transferee or
199 protected-series manager of another protected series; or
200 c. A transferee of the company.

201 (2) If this chapter restricts the power of an operating
202 agreement to affect a matter, the restriction applies to a
203 matter under these protected series provisions, in accordance
204 with s. 605.0105.

205 (3) If law of this state other than this chapter imposes a
206 prohibition, limitation, requirement, condition, obligation,
207 liability, or other restriction on a limited liability company,
208 a member, manager, or other agent of the company, or a
209 transferee of the company, except as otherwise provided in law
210 of this state other than this chapter, the restriction applies
211 in accordance with s. 605.12108.

212 (4) Except as otherwise provided in s. 605.12107, if the
213 operating agreement of a series limited liability company does
214 not provide for a matter described in subsection (1) in a manner
215 permitted by ss. 605.12101 - 605.12803, the matter is determined
216 in accordance with the following rules:

217 (a) To the extent ss. 605.12101 - 605.12803 addresses
218 the matter, ss. 605.12101 - 605.12803 governs.

219 (b) To the extent ss. 605.12101 - 605.12803 do not
220 address the matter, this chapter governs the matter in
221 accordance with s. 605.12108.
222

223 **605.12107. ADDITIONAL LIMITATIONS ON OPERATING AGREEMENT.**

224 (1) An operating agreement may not vary the effect of:

225 (a) This section;

226 (b) Section 605.12103;

227 (c) Section 605.12104(1);

228 (d) Section 605.12104(2) to provide a protected series
229 a power beyond the powers in this chapter provides a limited
230 liability company;

231 (e) Sections 605.12104(3) or (4);

232 (f) Section 605.12105;

233 (g) Section 605.12106;

234 (h) Section 605.12108;

235 (i) Section 605.12201, except to vary the manner in
236 which a series limited liability company approves establishing a
237 protected series;

238 (j) Section 605.12202;

239 (k) Section 605.12301;

240 (l) Section 605.12302;

241 (m) Section 605.12303(1) or (2);

242 (n) Section 605.12304(3) or (6);

243 (o) Section 605.12401, except to decrease or eliminate
244 a limitation of liability stated in s. 605.12401;

245 (p) Section 605.12402;

246 (q) Section 605.12403;

247 (r) Section 605.12404;

248 (s) Sections 605.12501(1), (4), and (5);

249 (t) Section 605.12502, except to designate a different
250 person to manage winding up;

251 (u) Section 605.12503;

252 (v) Sections 605.12601- 605.12608;

253 (w) Sections 605.12701 - 605.12704;

254 (x) Sections 605.12801 - 605.12803, except to vary:

255 1. The manner in which a series limited liability
256 company may elect under s. 605.12802(1)(b) to be subject to this
257 chapter; or

258 2. The person that has the right to sign and
259 deliver to the department for filing a record under s.
260 605.12802(2)(b); or

261 (y) A provision of this chapter pertaining to:

262 1. registered agents; or

263 2. the department, including provisions
264 pertaining to records authorized or required to be delivered to
265 the department for filing under this chapter.

266

267 (2) An operating agreement may not unreasonably restrict the
268 duties and rights under s. 605.12305 but may impose reasonable
269 restrictions on the availability and use of information obtained
270 under s. 605.12305 and may provide appropriate remedies,
271 including liquidated damages, for a breach of any reasonable
272 restriction on use.

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276 **605.12108. RULES FOR APPLYING THIS CHAPTER TO SPECIFIED**
277 **PROVISIONS OF PROTECTED SERIES.**

278

279 (1) Except as otherwise provided in subsection (2) and s.
280 605.12107, the following rules apply in applying s. 605.12106,
281 ss. 605.12304(3) and (6), s. 605.12501(4)(a), s. 605.12502(1),
282 and s. 605.12503(2):

283 (a) A protected series of a series limited liability
284 company is deemed to be a limited liability company that is
285 formed separately from the series limited liability company and
286 is distinct from the series limited liability company and any
287 other protected series of the series limited liability company.

288 (b) An associated member of the protected series is
289 deemed to be a member of the company deemed to exist under
290 paragraph (1).

291 (c) A protected-series transferee of the protected
292 series is deemed to be a transferee of the company deemed to
293 exist under paragraph (1).

294 (d) A protected-series transferable interest of the
295 protected series is deemed to be a transferable interest of the
296 company deemed to exist under paragraph (1).

297 (e) A protected-series manager is deemed to be a
298 manager of the company deemed to exist under paragraph (1).

299 (f) An asset of the protected series is deemed to be
300 an asset of the company deemed to exist under paragraph (1),
301 whether or not the asset is an associated asset of the protected
302 series.

303 (g) Any creditor or other obligee of the protected
304 series is deemed to be a creditor or obligee of the company
305 deemed to exist under paragraph (1).

306

307 (2) Subsection (1) does not apply if its application would:

308 (a) contravene s. 605.0105; or
309 (b) authorize or require the department to:
310 1. accept for filing a type of record that this
311 chapter does not authorize or require a person to deliver to the
312 department for filing; or
313 2. make or deliver a record that this chapter
314 does not authorize or require the department to make or deliver.
315
316 (3) Except to the extent otherwise specified in ss. 605.12101
317 through 605.12803, the provisions of this chapter applicable to
318 limited liability companies generally, their managers, members
319 and transferees, including without limitation, formation,
320 operation, existence, management, court proceedings, and filings
321 with the department and other state or local government
322 agencies, shall be applicable to each series limited liability
323 company and to each protected series established pursuant to s.
324 605.12201.

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326

327 **ESTABLISHING PROTECTED SERIES**

328 **605.12201. PROTECTED SERIES DESIGNATION; AMENDMENT.**

329 (1) With the affirmative vote or consent of all members of
330 a series limited liability company, the company may establish a
331 protected series.

332 (2) To establish a protected series, a series limited
333 liability company shall deliver to the department for filing a
334 protected series designation, signed by the company, stating the
335 name of the company and the name of the protected series to be
336 established, and any other information which the department
337 requires for filing.

338 (3) A protected series is established when the protected
339 series designation takes effect under s. 605.0207.

340 (4) To amend a protected series designation, a series
341 limited liability company shall deliver to the department for
342 filing a statement of designation change, signed by the company,
343 that changes the name of the company, the name of the protected
344 series to which the designation applies, or both. The change
345 takes effect when the statement of designation change takes
346 effect under s. 605.0207.
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605.12202. PROTECTED SERIES NAME.

(1) Except as otherwise provided in subsection (2), the name of a protected series must comply with s. 605.0112.

(2) The name of a protected series of a series limited liability company must:

(a) Begin with the name of the series limited liability company, including any word or abbreviation required by s. 605.0112; and

(b) Contain the phrase "Protected Series" or "protected series" or the abbreviation "P.S." or "PS".

(3) If a series limited liability company changes its name, the company shall deliver to the department for filing a statement of designation change for each of the company's protected series, changing the name of each protected series to comply with this section.

365 **605.12203. REGISTERED AGENT.**

366

367 (1) The registered agent in this state for a series limited
368 liability company is the registered agent in this state for each
369 protected series of the series limited liability company.

370

371 (2) Before delivering a protected series designation to the
372 department for filing, a series limited liability company shall
373 agree with a registered agent that the agent will serve as the
374 registered agent in this state for both the company and the
375 protected series.

376

377 (3) A person that signs a protected series designation delivered
378 to the department for filing affirms as a fact that the series
379 limited liability company on whose behalf the designation is
380 delivered has complied with subsection (2).

381

382 (4) A person that ceases to be the registered agent for a series
383 limited liability company ceases to be the registered agent for
384 each protected series of the company.

385

386 (5) A person that ceases to be the registered agent for a
387 protected series of a series limited liability company, other
388 than as a result of the termination of the protected series,
389 ceases to be the registered agent of the company and any other
390 protected series of the company.

391

392 (6) Except as otherwise agreed by a series limited liability
393 company and its registered agent, the agent is not obligated to
394 distinguish between a process, notice, demand, or other record
395 concerning the company and a process, notice, demand, or other
396 record concerning a protected series of the company.

397 **605.12204. SERVICE OF PROCESS, NOTICE, DEMAND, OR OTHER**
398 **RECORD.**

399

400 (1) A protected series of a series limited liability company may
401 be served with a process, notice, demand, or other record
402 required or permitted by law by:

403 (a) Serving the company;

404 (b) Serving the registered agent of the protected
405 series; or

406 (c) Other means authorized by law of this state other
407 than chapter 605.

408

409 (2) Service of a summons and complaint on a series limited
410 liability company is notice to each protected series of the
411 company of service of the summons and complaint and the contents
412 of the complaint.

413

414 (3) Service of a summons and complaint on a protected series of
415 a series limited liability company is notice to the series
416 limited liability company and any other protected series of the
417 company of service of the summons and complaint and the contents
418 of the complaint.

419

420 (4) Service of a summons and complaint on a foreign series
421 limited liability company is notice to each foreign protected
422 series of the foreign company, of service of the summons and
423 complaint and the contents of the complaint.

424

425 (5) Service of a summons and complaint on a foreign protected
426 series of a foreign series limited liability company is notice
427 to the foreign company and any other foreign protected series of
428 the company, of service of the summons and complaint and the

429 contents of the complaint.

430

431 (6) Notice to a person under subsection (2), (3), (4), or (5) is
432 effective whether or not the summons and complaint identify the
433 person if the summons and complaint name as a party and
434 identify:

435 (a) The series limited liability company or a
436 protected series of the series limited liability company; or

437 (b) The foreign series limited liability company or a
438 foreign protected series of the foreign series limited liability
439 company.

440

441 **605.12205. CERTIFICATE OF STATUS FOR PROTECTED SERIES.**

442

443 (1) On request of any person, the department shall issue a
444 certificate of status for a protected series of a series limited
445 liability company, or a certificate of registration for a
446 foreign protected series, if:

447 (a) In the case of a protected series:

448 1. No statement of dissolution, termination, or
449 relocation pertaining to the series limited liability company or
450 the protected series, has been filed; and

451 2. The series limited liability company has
452 delivered to the department for filing the most recent annual
453 report required by s. 605.0212 and the report includes the name
454 of the protected series, unless:

455 a. When the series limited liability company
456 delivered the report for filing, the protected series
457 designation pertaining to the protected series had not yet taken
458 effect; or

459 b. After the series limited liability
460 company delivered the report for filing, the company delivered
461 to the department for filing a statement of designation change
462 changing the name of the protected series; or

463 (b) In the case of a foreign protected series, it is
464 registered to do business in this state.

465

466 (2) A certificate issued under subsection (1) must state:

467 (a) In the case of a protected series:

468 1. The name of the protected series of the series
469 limited liability company and the name of the series limited
470 liability company;

471 2. That the requirements of subsection (1) are
472 met;

473 3. The date the protected series designation
474 pertaining to the protected series took effect; and
475 4. If a statement of designation change
476 pertaining to the protected series has been filed, the effective
477 date and contents of the statement;
478 (b) In the case of a foreign protected series, that it
479 is registered to do business in this state;
480 (c) That the fees, taxes, interest, and penalties owed
481 to this state by the protected series or the foreign protected
482 series and collected through the department have been paid, if:
483 1. Payment is reflected in the records of the
484 department; and
485 2. Nonpayment affects the status of the protected
486 series or the foreign protected series; and
487 (d) Other facts reflected in the records of the
488 department pertaining to the protected series or foreign
489 protected series which the person requesting the certificate
490 reasonably requests.
491
492 (3) Subject to any qualification stated by the department in a
493 certificate issued under subsection (1), the certificate may be
494 relied on as conclusive evidence of the facts stated in the
495 certificate.
496

497
498 **605.12206. INFORMATION REQUIRED IN ANNUAL REPORT; EFFECT**
499 **OF FAILURE TO PROVIDE.**

500
501 (1) In the annual report required by s. 605.0212, a series
502 limited liability company shall include the name of each
503 protected series of the company:

504 (a) For which the series limited liability company has
505 previously delivered to the department for filing a protected
506 series designation; and

507 (b) Which has not dissolved and completed winding up.

508
509 (2) A failure by a series limited liability company to comply
510 with subsection (1) with regard to a protected series prevents
511 issuance of a certificate of status pertaining to the protected
512 series, but does not otherwise affect the protected series.

513

514 **ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES**
515 **TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION**
516 **605.12301. ASSOCIATED ASSET.**

517

518 (1) Only an asset of a protected series may be an associated
519 asset of the protected series. Only an asset of a series limited
520 liability company may be an associated asset of the series
521 limited liability company.

522

523 (2) (a) An asset of a protected series of a series limited
524 liability company is an associated asset of the protected series
525 only if the protected series creates and maintains records that
526 state the name of the protected series and describe the asset with
527 sufficient specificity to permit a disinterested, reasonable
528 individual to:

529 (i) Identify the asset and distinguish it from any other
530 asset of the protected series, any asset of the company, and any
531 asset of any other protected series of the company;

532 (ii) Determine when and from what person the protected
533 series acquired the asset or how the asset otherwise became an
534 asset of the protected series; and

535 (iii) If the protected series acquired the asset from the
536 series limited liability company or another protected series of the
537 company, determine any consideration paid, the payor, and the
538 payee.

539 (b) A deed or other instrument granting an interest in real
540 property to or from one or more protected series of a series
541 limited liability company, or any other instrument otherwise
542 affecting an interest in real property held by one or more
543 protected series of a series limited liability company, in each
544 case to the extent such deed or other instrument is recorded in the
545 office for recording transfers or other matters affecting real

546 property, is conclusive in favor of a person who gives value
547 without knowledge of the lack of authority of the person signing
548 and delivering the deed or other instrument, and constitutes a
549 record that such interest in real property is an associated asset
550 or liability, as applicable, of the protected series.

551
552 (3) (a) An asset of a series limited liability company is an
553 associated asset of the series limited liability company only if
554 the series limited liability company creates and maintains records
555 that state the name of the series limited liability company and
556 describe the asset with sufficient specificity to permit a
557 disinterested, reasonable individual to:

558 (i) Identify the asset and distinguish it from any other
559 asset of the series limited liability company and any asset of any
560 protected series of the series limited liability company;

561 (ii) Determine when and from what person the series
562 limited liability company acquired the asset or how the asset
563 otherwise became an asset of the company; and

564 (iii) If the series limited liability company acquired
565 the asset from a protected series of the company, determine any
566 consideration paid, the payor, and the payee.

567 (b) A deed or other instrument granting an interest in real
568 property to or from a series limited liability company, or any
569 other instrument otherwise affecting an interest in real property
570 held by a series limited liability company, in each case to the
571 extent such deed or other instrument is recorded in the office for
572 recording transfers or other matters affecting real property is
573 conclusive in favor of a person who gives value without knowledge
574 of the lack of authority of the person signing and delivering the
575 deed or other instrument, and constitutes a record that such
576 interest in real property is an associated asset or liability, as
577 applicable, of the series limited liability company.

578
579 (4) The records and recordkeeping required by subsections (2) and
580 (3) may be organized by specific listing, category, type, quantity,
581 or computational or allocational formula or procedure, including a
582 percentage or share of any asset, or in any other reasonable
583 manner.

584
585 (5) To the extent permitted by this chapter and law of this
586 state other than this chapter, a series limited liability
587 company or protected series of the company may hold an
588 associated asset directly or indirectly, through a
589 representative, nominee, or similar arrangement, except that:

590 (a) a protected series may not hold an associated
591 asset in the name of the series limited liability company or
592 another protected series of the series limited liability
593 company; and

594 (b) the series limited liability company may not hold
595 an associated asset in the name of a protected series of the
596 company.

597

598 **605.12302. ASSOCIATED MEMBER.**

599

600 (1) Only a member of a series limited liability company may be
601 an associated member of a protected series of the company.

602

603 (2) A member of a series limited liability company becomes an
604 associated member of a protected series of the company if the
605 operating agreement or a procedure established by the operating
606 agreement states:

607 (a) That the member is an associated member of the
608 protected series;

609 (b) The date on which the member became an associated
610 member of the protected series; and

611 (c) Any protected-series transferable interest the
612 associated member has in connection with becoming or being an
613 associated member of the protected series.

614

615 (3) If a person that is an associated member of a protected
616 series of a series limited liability company is dissociated from
617 the company, the person ceases to be an associated member of the
618 protected series.

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605.12303. PROTECTED-SERIES TRANSFERABLE INTEREST.

(1) A protected-series transferable interest of a protected series of a series limited liability company must be owned initially by an associated member of the protected series or the series limited liability company.

(2) If a protected series of a series limited liability company has no associated members when established, the company owns the protected-series transferable interests in the protected series.

(3) In addition to acquiring a protected series transferable series interest under subsection (2), a series limited liability company may acquire a protected-series transferable interest through a transfer from another person or as provided in the operating agreement.

(4) Except for s. 605.12108(1)(c), a provision of this chapter which applies to a protected-series transferee of a protected series of a series limited liability company applies to the series limited liability company in its capacity as an owner of a protected-series transferable interest of the protected series. A provision of the operating agreement of a series limited liability company which applies to a protected-series transferee of a protected series of the company applies to the series limited liability company in its capacity as an owner of a protected-series transferable interest of the protected series.

650 **605.12304. MANAGEMENT.**

651 (1) A protected series may have more than one protected-series
652 manager.

653
654 (2) If a protected series has no associated members, the series
655 limited liability company is the protected-series manager.

656
657 (3) Section 605.12108 applies to determine any duties of a
658 protected-series manager of a protected series of a series
659 limited liability company to:

- 660 (a) The protected series;
661 (b) Any associated member of the protected series; and
662 (c) Any protected-series transferee of the protected
663 series.

664
665 (4) Solely by reason of being or acting as a protected-series
666 manager of a protected series of a series limited liability
667 company, a person owes no duty to:

- 668 (a) The series limited liability company;
669 (b) Another protected series of the company; or
670 (c) Another person in that person's capacity as:
671 1. A member of the series limited liability
672 company which is not an associated member of the protected
673 series;
674 2. A protected-series transferee or protected-
675 series manager of another protected series; or
676 3. A transferee of the series limited liability
677 company.

678
679 (5) An associated member of a protected series of a series
680 limited liability company has the same rights as any other
681 member of the company to vote on or consent to an amendment to

682 the company's operating agreement or any other matter being
683 decided by the members, whether or not the amendment or matter
684 affects the interests of the protected series or the associated
685 member.

686

687 (6) The right of a member to maintain a derivative action to
688 enforce a right of a limited liability company pursuant to s.
689 605.0802 shall apply to:

690 (A) An associated member of a protected series, in
691 accordance with s. 605.12108, and

692 (B) A member of a series limited liability company in
693 accordance with s. 605.12108.

694 (7) An associated member of a protected series is an agent
695 for the protected series with power to bind the protected series
696 to the same extent that a member of a limited liability company
697 is an agent for the company with power to bind the company under
698 s. 605.04074(1)(a).

699

700
701 **605.12305. RIGHT OF PERSON NOT AN ASSOCIATED MEMBER OF**
702 **PROTECTED SERIES TO INFORMATION CONCERNING PROTECTED SERIES.**

703
704 (1) A member of a series limited liability company which is not
705 an associated member of a protected series of the company has a
706 right to information concerning the protected series to the same
707 extent, in the same manner, and under the same conditions that a
708 member that is not a manager of a manager-managed limited
709 liability company has a right to information of the company
710 under ss. 605.0410(1) and 605.0410(3)(b).

711
712 (2) A person formerly an associated member of a protected series
713 has a right to information concerning the protected series to
714 the same extent, in the same manner, and under the same
715 conditions that a person dissociated as a member of a manager-
716 managed limited liability company has a right to information
717 concerning the company under s. 605.0410(4).

718
719 (3) If an associated member of a protected series dies, the
720 legal representative of the deceased associated member has a
721 right to information concerning the protected series to the same
722 extent, in the same manner, and under the same conditions that
723 the legal representative of a deceased member of a limited
724 liability company has a right to information concerning the
725 company under s. 605.0410(9).

726
727 (4) A protected-series manager of a protected series has a right
728 to information concerning the protected series to the same
729 extent, in the same manner, and under the same conditions that a
730 manager of a manager-managed limited liability company has a
731 right to information concerning the company under s.

732 605.0410(3)(a).

733

734 (5) The court-ordered inspection provisions of s. 605.0411 shall

735 also apply to the information rights regarding series limited

736 liability companies and protected series described in this s.

737 605.12305.

738

739 **LIMITATIONS ON LIABILITY AND ENFORCEMENT OF CLAIMS**

740

741 **605.12401. LIMITATIONS ON LIABILITY.**

742

743 (1) A person is not liable, directly or indirectly, by way of
744 contribution or otherwise, for a debt, obligation, or other
745 liability of:

746 (a) A protected series of a series limited liability
747 company solely by reason of being or acting as:

748 1. An associated member, protected-series
749 manager, or protected-series transferee of the protected series;
750 or

751 2. A member, manager, or a transferee of the
752 company; or

753 (b) A series limited liability company solely by
754 reason of being or acting as an associated member, protected-
755 series manager, or protected-series transferee of a protected
756 series of the company.

757

758 (2) Subject to s. 605.12404, the following rules apply:

759 (a) A debt, obligation, or other liability of a series
760 limited liability company is solely the debt, obligation, or
761 liability of the company.

762 (b) A debt, obligation, or other liability of a
763 protected series is solely the debt, obligation, or liability of
764 the protected series.

765 (c) A series limited liability company is not liable,
766 directly or indirectly, by way of contribution or otherwise, for
767 a debt, obligation, or other liability of a protected series of
768 the company solely by reason of the protected series being a
769 protected series of the company, or the series limited liability
770 company:

771 1. Being or acting as a protected-series manager
772 of the protected series;

773 2. Having the protected series manage the
774 company; or

775 3. Owning a protected-series transferable
776 interest of the protected series.

777 (d) A protected series of a series limited liability
778 company is not liable, directly or indirectly, by way of
779 contribution or otherwise, for a debt, obligation, or other
780 liability of the company or another protected series of the
781 company solely by reason of:

782 1. being a protected series of the series limited
783 liability company;

784 2. being or acting as a manager of the series
785 limited liability company or a protected-series manager of
786 another protected series of the company; or

787 3. having the series limited liability company or
788 another protected series of the company be or act as a
789 protected-series manager of the protected series.

790

791 **605.12402. CLAIM SEEKING TO DISREGARD LIMITATION OF LIABILITY.**

792

793 (1) Except as otherwise provided in subsection (2), a claim
794 seeking to disregard a limitation in s. 605.12401 is governed by
795 the principles of law and equity, including a principle
796 providing a right to a creditor or holding a person liable for a
797 debt, obligation, or other liability of another person, which
798 would apply if each protected series of a series limited
799 liability company were a limited liability company formed
800 separately from the series limited liability company and
801 distinct from the series limited liability company and any other
802 protected series of the series limited liability company.

803

804 (2) The failure of a limited liability company or a protected
805 series to observe formalities relating to the exercise of its
806 powers or management of its activities and affairs is not a
807 ground to disregard a limitation in s. 605.12401(1) but may be a
808 ground to disregard a limitation in s. 605.12401(2).

809

810 (3) This section applies to a claim seeking to disregard a
811 limitation of liability applicable to a foreign series limited
812 liability company or foreign protected series and comparable to
813 a limitation stated in s. 605.12401, if:

814 (a) The claimant is a resident of this state or doing
815 business or registered to do business in this state; or

816 (b) The claim is to establish or enforce a liability
817 arising under law of this state other than this chapter or from
818 an act or omission in this state.

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**605.12403. REMEDIES OF JUDGMENT CREDITOR OF ASSOCIATED
MEMBER OR PROTECTED-SERIES TRANSFEREE.**

The provisions of s. 605.0503 providing or restricting remedies available to a judgment creditor of a member or transferee of a limited liability company apply to a judgment creditor of:

(1) An associated member or protected-series transferee of a protected series; or

(2) A series limited liability company, to the extent the company owns a protected-series transferable interest of a protected series.

832 **605.12404. ENFORCEMENT AGAINST NON-ASSOCIATED ASSET.**

833 (1) In this section:

834 (a) "Enforcement date" means 12:01 a.m. on the date on
835 which a claimant first serves process on a series limited
836 liability company or protected series in an action seeking to
837 enforce under this section a claim against an asset of the
838 company or protected series by attachment, levy, or the like.

839 (b) Subject to s. 605.12608(2), "incurrence date"
840 means the date on which a series limited liability company or
841 protected series incurred the liability giving rise to a claim
842 that a claimant seeks to enforce under this section.

843

844 (2) If a claim against a series limited liability company or a
845 protected series of the company has been reduced to judgment, in
846 addition to any other remedy provided by law or equity, the
847 judgment may be enforced in accordance with the following rules:

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

851 1. Was a non-associated asset of the protected
852 series on the incurrence date; or

853 2. Is a non-associated asset of the protected
854 series on the enforcement date.

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

858 1. Was a non-associated asset of the series
859 limited liability company on the incurrence date; or

860 2. Is a non-associated asset of the series
861 limited liability company on the enforcement date.

862 (c) A judgment against a protected series may be
863 enforced against an asset of another protected series of the

864 series limited liability company if the asset:

865 1. was a non-associated asset of the other
866 protected series on the incurrence date; or

867 2. is a non-associated asset of the other
868 protected series on the enforcement date.

869

870 (3) In addition to any other remedy provided by law or equity,
871 if a claim against a series limited liability company or a
872 protected series has not been reduced to a judgment, and law
873 other than this chapter permits a prejudgment remedy by
874 attachment, levy, or the like, the court may apply subsection
875 (2) as a prejudgment remedy.

876

877 (4) In a proceeding under this section, the party asserting that
878 an asset is or was an associated asset of a series limited
879 liability company or a protected series of the series limited
880 liability company has the burden of proof on the issue.

881

882 (5) This section applies to an asset of a foreign series limited
883 liability company or foreign protected series if:

884 (a) the asset is real or tangible property located in
885 this state;

886 (b) the claimant is a resident of this state or doing
887 business or registered to do business in this state, or the
888 claim under s. 605.12404 is to enforce a judgment, or to seek a
889 pre-judgment remedy, pertaining to a liability arising from law
890 of this state other than this chapter or an act or omission in
891 this state; and

892 (c) the asset is not identified in the records of the
893 foreign series limited liability company or foreign protected
894 series in a manner comparable to the manner required by s.
895 605.12301.

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DISSOLUTION AND WINDING UP OF PROTECTED SERIES

605.12501. EVENTS CAUSING DISSOLUTION OF PROTECTED SERIES.

A protected series of a series limited liability company is dissolved, and its activities and affairs must be wound up, only on the:

- (1) Dissolution of the series limited liability company;
- (2) Occurrence of an event or circumstance the operating agreement states causes dissolution of the protected series;
- (3) Affirmative vote or consent of all associated members of the protected series; or
- (4) Entry by the court of an order dissolving the protected series on application by an associated member or protected-series manager of the protected series:
 - (a) In accordance with s. 605.12108; and
 - (b) To the same extent, in the same manner, and on the same grounds the court would enter an order dissolving a limited liability company on application by a member or manager of the limited liability company pursuant to s. 605.0702; or
- (5) Entry by the court of an order dissolving the protected series on application by the series limited liability company, or a member or manager of the series limited liability company:
 - (a) In accordance with s. 605.12108; and
 - (b) To the same extent, in the same manner, and on the same grounds the court would enter an order dissolving a limited liability company on application by a member or manager of the limited liability company pursuant to s. 605.0702.

926 **605.12502. WINDING UP DISSOLVED PROTECTED SERIES.**

927 (1) Subject to subsections (2) and (3) and in accordance with s.
928 605.12108:

929 (a) A dissolved protected series shall wind up its
930 activities and affairs in the same manner that a dissolved
931 limited liability company winds up its activities and affairs
932 under s. 605.0709, subject to the same requirements and
933 conditions, and with the same effects; and

934 (b) Judicial supervision or another judicial remedy is
935 available in the winding up of the protected series to the same
936 extent, in the same manner, under the same conditions, and with
937 the same effects that apply under s. 605.0709(5).

938

939 (2) When a protected series of a series limited liability
940 company dissolves, the company may deliver to the department for
941 filing articles of protected series dissolution stating the name
942 of the series limited liability company and the protected series
943 and that the protected series is dissolved. The filing of the
944 articles of dissolution by the department has the same effect
945 with regard to the protected series as the filing by a limited
946 liability company of articles of dissolution with the department
947 under s. 605.0707.

948

949 (3) When a protected series of a series limited liability
950 company has completed winding up in accordance with s. 605.0709,
951 the series limited liability company may deliver to the
952 department for filing a statement of designation cancellation
953 stating the name of the company and the protected series and
954 that the protected series is terminated. The filing of the
955 statement of designation cancellation by the department has the
956 same effect as the filing by the department of a statement of
957 termination under s. 605.0709(7).

958 (4) A series limited liability company has not completed its
959 winding up until each of the protected series of the company has
960 completed its winding up.
961

962 **605.12503. EFFECT OF REINSTATEMENT OF SERIES LIMITED**
963 **LIABILITY COMPANY OR REVOCATION OF VOLUNTARY DISSOLUTION.**

964 If a series limited liability company that has been
965 administratively dissolved is reinstated, or a series limited
966 liability company that voluntarily dissolved revokes its
967 articles of dissolution prior to filing a statement of
968 termination:

969 (1) each protected series of the series limited liability
970 company ceases winding up; and

971 (2) the provisions of s. 605.0708 applies to the series
972 limited liability company and applies to each protected series
973 of the series limited liability company in accordance with s.
974 605.12108.

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ENTITY TRANSACTIONS RESTRICTED

605.12601. DEFINITIONS.

As used in ss. 605.12601 - 605.12608, the terms:

(1) "After a merger" or "after the merger" means when a merger under s. 605.12604 becomes effective and afterwards.

(2) "Before a merger" or "before the merger" means before a merger under s. 605.12604 becomes effective.

(3) "Continuing protected series" means a protected series of a surviving series limited liability company which continues in uninterrupted existence after a merger under s. 605.12604.

(4) "Merging company" means a limited liability company that is party to a merger under s. 605.12604.

(5) "Non-surviving company" means a merging company that does not continue in existence after a merger under s. 605.12604.

(6) "Relocated protected series" means a protected series of a non-surviving company which, after a merger under s. 605.12604, continues in uninterrupted existence as a protected series of the surviving company.

(7) "Surviving company" means a merging company that continues in existence after a merger under s. 605.12604.

999 **605.12602. PROTECTED SERIES MAY NOT BE PARTY TO ENTITY**
1000 **TRANSACTION.**
1001 Except as provided in ss. 12605(2), 12606(2), and 12607(1), a
1002 protected series may not be a party to, formed, organized,
1003 established, or created in, or result from:
1004 (1) A conversion, domestication, interest exchange, or
1005 merger under:
1006 (a) This chapter; or
1007 (b) The law of a foreign jurisdiction, however the
1008 transaction is denominated under that law; or participate in a
1009 domestication; or
1010 (2) A transaction with the same substantive effect as a
1011 conversion, domestication, interest exchange or a merger.
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1013 **605.12603. RESTRICTION ON ENTITY TRANSACTION INVOLVING SERIES**
1014 **LIMITED LIABILITY COMPANY.**

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A series limited liability company may not be:

(1) A party to, formed organized, created in, or result from:

(a) A conversion, domestication, or interest exchange, under:

(i) This chapter; or

(ii) The law of a foreign jurisdiction, however the transaction is denominated under foreign law; or

(b) A transaction with the same substantive effect as a conversion, domestication, or interest exchange.

(2) except as otherwise provided in s. 605.12604, a party to or the surviving company of:

(a) A merger under:

(i) This chapter; or

(ii) The law of a foreign jurisdiction, however a merger is denominated under that law; or

(b) A transaction with the same substantive effect as a merger.

[The manner in which a protected series may be affected by a merger of its series limited liability company is specified in Sections 605(2), 606(2), and 607(1)].

1045 **605.12604. MERGER AUTHORIZED; PARTIES RESTRICTED.**

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1047 A series limited liability company may be party to a merger
1048 in accordance with the provisions of ss. 605.1021 - 605.1026,
1049 this section, and ss. 605.12605 - 605.12608, only if:

1050 (1) Each other party to the merger is a limited liability
1051 company; and

1052 (2) The surviving company is not created in the merger.

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1055 **605.12605. PLAN OF MERGER.**

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1057 In a merger under s. 605.12604, the plan of merger must:

1058 (1) Comply with the provisions of s. 605.1022 pertaining to
1059 the contents of a plan of merger of a limited liability company;
1060 and

1061 (2) State in a record:

1062 (a) For any protected series of a non-surviving
1063 company, whether after the merger the protected series will be a
1064 relocated protected series or be dissolved, wound up, and
1065 terminated;

1066 (b) For any protected series of the surviving company
1067 which exists before the merger, whether after the merger the
1068 protected series will be a continuing protected series or be
1069 dissolved, wound up, and terminated;

1070 (c) For each relocated protected series or continuing
1071 protected series:

1072 1. The name of any person that becomes an
1073 associated member or protected-series transferee of the
1074 protected series after the merger, any consideration to be paid
1075 by, on behalf of, or in respect of the person, the name of the
1076 payor, and the name of the payee;

1077 2. The name of any person whose rights or
1078 obligations in the person's capacity as an associated member or
1079 protected-series transferee will change after the merger;

1080 3. Any consideration to be paid to a person who
1081 before the merger was an associated member or protected-series
1082 transferee of the protected series and the name of the payor;
1083 and

1084 4. If after the merger the protected series will
1085 be a relocated protected series, its new name;

1086 (d) For any protected series to be established by the

1087 surviving company as a result of the merger:
1088 1. The name of the protected series;
1089 2. Any protected-series transferable interest to
1090 be owned by the surviving company when the protected series is
1091 established; and
1092 3. The name of and any protected-series
1093 transferable interest owned by any person that will be an
1094 associated member of the protected series when the protected
1095 series is established; and
1096 (e) For any person that is an associated member of a
1097 relocated protected series and will remain a member after the
1098 merger, any amendment to the operating agreement of the
1099 surviving limited liability company which:
1100 1. Is or is proposed to be in a record; and
1101 2. Is necessary or appropriate to state the
1102 rights and obligations of the person as a member
1103 of the surviving limited liability company.
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1106 **605.12606. ARTICLES OF MERGER FOR A PROTECTED SERIES.**

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1108 In a merger under s. 605.12604, the articles of merger
1109 must:

1110 (1) Comply with s. 605.1025 pertaining to the contents of
1111 articles of merger; and

1112 (2) Include as an attachment the following records, each to
1113 become effective when the merger becomes effective:

1114 (a) For a protected series of a merging company being
1115 terminated as a result of the merger, a statement of termination
1116 signed by the series limited liability company;

1117 (b) For a protected series of a non-surviving company
1118 which after the merger will be a relocated protected series:

1119 1. A statement of relocation signed by the non-
1120 surviving company which contains the name of the series limited
1121 liability company and the name of the protected series before
1122 and after the merger; and

1123 2. A statement of protected series designation
1124 signed by the surviving company; and

1125 (c) For a protected series being established by the
1126 surviving company as a result of the merger, a protected series
1127 designation signed by the surviving company.

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1130 **605.12607. EFFECT OF MERGER.**

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1132 When a merger of a protected series under s. 605.12604 becomes
1133 effective, in addition to the effects stated in s. 605.1026
1134 stating the effect of a merger:

1135 (1) As provided in the plan of merger, each protected
1136 series of each merging series limited liability company which
1137 was established before the merger:

1138 (a) Is a relocated protected series or continuing
1139 protected series; or

1140 (b) Is dissolved, wound up, and terminated;

1141 (2) Any protected series to be established as a result of
1142 the merger is established;

1143 (3) Any relocated protected series or continuing protected
1144 series is the same person without interruption as it was before
1145 the merger;

1146 (4) All property of a relocated protected series or
1147 continuing protected series continues to be vested in the
1148 protected series without transfer, reversion, or impairment;

1149 (5) All debts, obligations, and other liabilities of a
1150 relocated protected series or continuing protected series
1151 continue as debts, obligations, and other liabilities of the
1152 relocated protected series or continuing protected series;

1153 (6) Except as otherwise provided by law or the plan of
1154 merger, all the rights, privileges, immunities, powers, and
1155 purposes of a relocated protected series or continuing protected
1156 series remain in the protected series;

1157 (7) The new name of a relocated protected series may be
1158 substituted for the former name of the relocated protected
1159 series in any pending action or proceeding;

1160 (8) If provided in the plan of merger:

1161 (a) A person becomes an associated member or

1162 protected-series transferee of a relocated protected series or
1163 continuing protected series;

1164 (b) A person becomes an associated member of a
1165 protected series established by the surviving company as a
1166 result of the merger;

1167 (c) Any change in the rights or obligations of a
1168 person in the person's capacity as an associated member or
1169 protected-series transferee of a relocated protected series or
1170 continuing protected series take effect; and

1171 (d) Any consideration to be paid to a person that
1172 before the merger was an associated member or protected-series
1173 transferee of a relocated protected series or continuing
1174 protected series is due; and

1175 (9) Any person that is an associated member of a relocated
1176 protected series becomes a member of the surviving company, if
1177 not already a member.

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1180 **605.12608. APPLICATION OF s. 605.12404 AFTER MERGER.**

1181 (1) A creditor's right that existed under s. 605.12404
1182 immediately before a merger under s. 605.12604 may be enforced
1183 after the merger in accordance with the following rules:

1184 (a) A creditor's right that existed immediately before
1185 the merger against the surviving company, a continuing protected
1186 series, or a relocated protected series continues without change
1187 after the merger.

1188 (b) A creditor's right that existed immediately before
1189 the merger against a non-surviving company:

1190 1. May be asserted against an asset of the non-
1191 surviving company which vested in the surviving company as a
1192 result of the merger; and

1193 2. Does not otherwise change.

1194 (c) Subject to subsection (2), the following rules
1195 apply:

1196 1. In addition to the remedy stated in paragraph
1197 (1), a creditor with a right under s. 605.12404 which existed
1198 immediately before the merger against a non-surviving company or
1199 a relocated protected series may assert the right against:

1200 a. An asset of the surviving company, other
1201 than an asset of the non-surviving company which vested in the
1202 surviving company as a result of the merger;

1203 b. An asset of a continuing protected
1204 series; or

1205 c. An asset of a protected series
1206 established by the surviving company as a result of the
1207 merger;

1208 d. If the creditor's right was against an
1209 asset of the non-surviving company, an asset of a relocated
1210 series; or

1211 e. If the creditor's right was against an

1212 asset of a relocated protected series, an asset of another
1213 relocated protected series.

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1215 2. In addition to the remedy stated in paragraph (b),
1216 a creditor with a right that existed immediately before the
1217 merger against the surviving company or a continuing
1218 protected series may assert the right against:

1219 a. an asset of a relocated protected series;
1220 or

1221 b. an asset of a non-surviving company which
1222 vested in the surviving company as a result of the
1223 merger.

1224

1225 (2) For the purposes of subsection (1)(c) and ss.
1226 605.12404(2)(a)1, (b)1, and (c)1, the incurrence date is deemed
1227 be the date on which the merger becomes effective.

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1229 (3) A merger under s. 605.12604 does not affect the manner in
1230 which s. 605.12404 applies to a liability incurred after the
1231 merger becomes effective.

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FOREIGN PROTECTED SERIES

605.12701. GOVERNING LAW OF FOREIGN PROTECTED SERIES.

The law of the jurisdiction of formation of a foreign series limited liability company governs:

(1) The internal affairs of a foreign protected series of the foreign series limited liability company, including:

(a) Relations among any associated members of the foreign protected series;

(b) Relations between the foreign protected series and:

- 1. Any associated member;
- 2. Any protected-series manager; or
- 3. Any protected-series transferee;

(c) Relations between any associated member and:

- 1. Any protected-series manager;
- 2. Any protected-series transferee;

(d) The rights and duties of a protected-series manager;

(e) Governance decisions affecting the activities and affairs of the foreign protected series and the conduct of those activities and affairs; and

(f) Procedures and conditions for becoming an associated member or protected-series transferee;

(2) Relations between the foreign protected series and:

(a) The foreign series limited liability company;

(b) Another foreign protected series of the company;

(c) A member of the company which is not an associated member of the foreign protected series;

(d) A foreign protected-series manager that is not a protected-series manager of the protected series;

1266 (e) A foreign protected-series transferee that is not
1267 a foreign protected-series transferee of the protected series;
1268 and

1269 (f) A transferee of a transferable interest of the
1270 foreign series limited liability company;

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1272 (3) Except as otherwise provided in ss. 605.12402 and
1273 605.12404, the liability of a person for a debt, obligation, or
1274 other liability of a foreign protected series of a foreign
1275 series limited liability company if the debt, obligation, or
1276 liability is asserted solely by reason of the person being or
1277 acting as:

1278 (a) An associated member, protected-series transferee,
1279 or protected-series manager of the foreign protected series;

1280 (b) A member of the foreign series limited liability
1281 company which is not an associated member of the foreign
1282 protected series;

1283 (c) A protected-series manager of another foreign
1284 protected series of the company;

1285 (d) A protected-series transferee of another foreign
1286 protected series of the company;

1287 (e) A manager of the company; or

1288 (f) A transferee of a transferable interest of the
1289 company; and

1290
1291 (4) Except as otherwise provided in ss. 605.12402 and
1292 605.12404:

1293 (a) The liability of the foreign series limited
1294 liability company for a debt, obligation, or other liability of
1295 a foreign protected series of the company if the debt,
1296 obligation, or liability is asserted solely by reason of the
1297 foreign protected series being a foreign protected series of the

1298 foreign series limited liability company, or the foreign
1299 protected series limited liability company:

- 1300 1. Being or acting as a foreign protected-series
1301 manager of the foreign protected series;
- 1302 2. Having the foreign protected series manage the
1303 foreign series limited liability company; or
- 1304 3. Owning a protected-series transferable
1305 interest of the foreign protected series; and

1306 (b) The liability of a foreign protected series for a
1307 debt, obligation, or other liability of the foreign series
1308 limited liability company or another foreign protected series of
1309 the company, if the debt, obligation, or liability is asserted
1310 solely by reason of the foreign protected series:

- 1311 1. Being a foreign protected series of the
1312 company or having the company or another foreign protected
1313 series of the company be or act as foreign protected-series
1314 manager of the foreign protected series; or
- 1315 2. Managing the foreign series limited liability
1316 company or being or acting as a foreign protected-series manager
1317 of another foreign protected series of the foreign series
1318 limited liability company.

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1321 **605.12702. NO ATTRIBUTION OF ACTIVITIES CONSTITUTING DOING**
1322 **BUSINESS OR FOR ESTABLISHING JURISDICTION.**

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1324 In determining whether a foreign series limited liability
1325 company or foreign protected series of the foreign series
1326 limited liability company does business in this state or is
1327 subject to the personal jurisdiction of the courts of this
1328 state:

1329 (1) The activities and affairs of the foreign series
1330 limited liability company are not attributable to a foreign
1331 protected series of the company solely by reason of the foreign
1332 protected series being a foreign protected series of the foreign
1333 series limited liability company; and

1334 (2) the activities and affairs of a foreign protected
1335 series are not attributable to the foreign series limited
1336 liability company or another foreign protected series of the
1337 company, solely by reason of the foreign protected series being
1338 a foreign protected series of the foreign series limited
1339 liability company.

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1342 **605.12703. REGISTRATION OF FOREIGN PROTECTED SERIES.**

1343 (1) Except as otherwise provided in this section and subject to
1344 ss. 605.12402 and 605.12404, the law of this state governing the
1345 registration of a foreign limited liability company to obtain a
1346 certificate of authority to do business in this state as
1347 required under s. 605.0902, including the effect of obtaining a
1348 certificate of authority under s. 605.0903, and the consequences
1349 of not complying with that law as described in s. 605.0904,
1350 apply to a foreign protected series of a foreign series limited
1351 liability company as if the foreign protected series were a
1352 foreign limited liability company formed separately from the
1353 foreign series limited liability company, and distinct from the
1354 foreign series limited liability company and any other foreign
1355 protected series of the foreign series limited liability
1356 company.

1357 (2) An application by a foreign protected series of a foreign
1358 series limited liability company for a certificate of authority
1359 to do business in this state must include:

1360 (a) The name and jurisdiction of formation of the
1361 foreign series limited liability company, and the other
1362 information required under s. 605.0902, as well as any other
1363 information required by the department; and

1364 (b) If the company has other foreign protected series,
1365 the name and street and mailing address of an individual who
1366 knows the name and street and mailing address of:

1367 1. Each other foreign protected series of the
1368 foreign series limited liability company; and

1369 2. The foreign protected-series manager of, and
1370 the registered agent for service of process for, each other
1371 foreign protected series of the foreign series limited liability
1372 company.

1373 (3) The name of a foreign protected series applying for a

1374 certificate of authority to do business in this state must
1375 comply with ss. 605.12202 and 605.0112, and may do so using a
1376 fictitious name pursuant to ss. 605.0906 and 865.09, if the
1377 fictitious name complies with ss. 605.0906, 605.0112, and
1378 605.12202.

1379 (4) The requirements in ss. 605.0907 pertaining to information
1380 required and amending f certificate of authority applies to the
1381 information required by subsection(2).

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1384 **605.12704. DISCLOSURE REQUIRED WHEN FOREIGN SERIES LIMITED**
1385 **LIABILITY COMPANY OR FOREIGN PROTECTED SERIES PARTY TO**
1386 **PROCEEDING.**

1387 (1) Not later than [30] days after becoming a party to a
1388 proceeding before a civil, administrative, or other adjudicative
1389 tribunal of or located in this state, or a tribunal of the
1390 United States located in this state:

1391 (a) A foreign series limited liability company shall
1392 disclose to each other party the name and street and mailing
1393 address of:

1394 1. Each foreign protected series of the company;
1395 and

1396 2. Each foreign protected-series manager of and a
1397 registered agent for service of process for each foreign
1398 protected series of the company; and

1399 (b) A foreign protected series of a foreign series
1400 limited liability company shall disclose to each other party the
1401 name and street and mailing address of:

1402 1. The company and each manager of the company
1403 and an agent for service of process for the company; and

1404 2. Any other foreign protected series of the
1405 company and each foreign protected-series manager of and an
1406 agent for service of process for the other foreign protected
1407 series.

1408 (2) If a foreign series limited liability company or foreign
1409 protected series challenges the personal jurisdiction of the
1410 tribunal, the requirement that the foreign series limited
1411 liability company or foreign protected series make disclosure
1412 under subsection (1) is tolled until the tribunal determines
1413 whether it has personal jurisdiction.

1414 (3) If a foreign series limited liability company or foreign
1415 protected series does not comply with subsection (1), a party to

1416 the proceeding may:

1417 (a) Request the tribunal to treat the noncompliance as
1418 a failure to comply with the tribunal's discovery rules; or

1419 (b) Bring a separate proceeding in the court to
1420 enforce subsection (1).

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MISCELLANEOUS PROVISIONS

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605.12801. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

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NATIONAL COMMERCE ACT. The provisions of Section 605.1102

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applies to ss. 605.12101 - 605.12803.

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1428 **605.12802. TRANSITIONAL PROVISIONS.**

1429 (1) Before [all-inclusive date], ss. 605.12101 - 605.12803
1430 governs only:

1431 (a) A protected series limited liability company
1432 formed, or a protected series established, on or after [the
1433 effective date]; and

1434 (b) A limited liability company that is a foreign
1435 series limited liability company before [the all-inclusive
1436 date], and elects, in the manner provided in its operating
1437 agreement or by law for amending the operating agreement, to be
1438 subject to ss. 605.12101 - 605.12803.

1439 (2) If a series limited liability company elects under
1440 subsection (1) (a) to be subject to ss. 605.101 - 605.12803:

1441 (a) The election applies to each protected series of
1442 the series limited liability company, whenever established; and

1443 (b) A manager of the foreign series limited liability
1444 company has the right to sign and deliver to the department for
1445 filing any record necessary to comply with this chapter, whether
1446 the record pertains to the foreign series limited liability
1447 company, a protected series of the company, or both.

1448 (3) On and after [all-inclusive date], this chapter governs all
1449 series limited liability companies and protected series.

1450 [(4) Until [one year after the effective date], ss. 605.12402
1451 and 605.12404 do not apply to a foreign protected series that
1452 was established before [the effective date] or a foreign limited
1453 liability company that became a foreign series limited liability
1454 company before [the effective date].

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1458 **605.12803. EFFECTIVE DATE.** Ss. 605.12101 - 605.12803 take
1459 effect [. . . .]

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1461 **Section 605.0103 Knowledge: Notice** is hereby amended to correct
1462 a scrivener's error in subsection s. 605.0103(1)(b) which
1463 currently provides:

1464 "(1) A person knows a fact if the person:

1465 (a) Has actual knowledge of the fact; or

1466 (b) Is deemed to know the fact under paragraph (4)(b), or a law
1467 other than this chapter."

1468 The cross-reference to paragraph (4)(b) was a scrivener's error.

1469 The correct cross-reference should have been to paragraph (4)(a)
1470 of s. 605.0103.

1471 Section 605.0103(1)(b) is hereby revised to read as follows:

1472 "(b) *Is deemed to know the fact under paragraph (4)(a), or a law*
1473 *other than this chapter.*

1474 The *Effective Date* of this correction to a scrivener's error in
1475 605.0103(1)(b) shall be the date this provision becomes law.

SCHEDULE 4

RESOLVED, that the Florida Bar Business Law Section support proposed legislation amending the Florida Revised Limited Liability Company Act (Chapter 605) to adopt the provisions of the Uniform Protected Series Act promulgated by the Uniform Law Commission, as new Sections 605.12101 through 605.0803 of the Florida Revised Limited Liability Company Act, substantially in the form of the draft legislation proposed by the Protected Series LLC Task Force of the Business Law Section with input from the Real Property Probate & Trust Law Section, dated as of January 13, 2023, that was circulated to the Corporations, Securities, and Financial Services Committee, and the Executive Council of the Florida Bar Business Law Section, and subject to such further technical and refinement changes as deemed appropriate and approved by the Protected Series LLC Task Force and the Executive Committee of the Florida Bar Business Law Section.

FURTHER RESOLVED, that the proposed legislation: (1) is within the Business Law Section's subject matter jurisdiction as described in the Section's bylaws; (2) is within the bar's permissible scope of legislative or political activity and the proposed Section position is not inconsistent with any official bar position on that issue; and (3) does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

Schedule 5

CSFS Summary provided at the Executive Council Labor Day Retreat, 2022

CSFS was well attended with over 30 in person and 4 members appearing virtually. A Triple Motion was made by Louis Conti, second by Michelle Suarez, and approved unanimously, regarding the passage of the Series LLC proposed legislation. The Ch. 617 Task Force (not for profits), led by Toni Tsvetanova and Professor Cohn, reported that the committee is actively looking at the MBCA and other state's not for profit acts to consider a major overhaul of Florida's not for profit statute. The Task Force is still looking for volunteers. Also, the Ch. 517 Task Force chaired by Willard Blair and supported by Professor Cohn, is also still looking for 4 to 6 more volunteers to assist in reviewing proposed changes to Florida's securities statute which will need to be ready to finalize and present to the Corporations Committee and Executive Council likely prior to the January BLS winter meeting. As such, they are urging volunteers, including Fellows, to reach out to Willard if interested. Phil and Gary reported on the Ch. 607 Task Force which is revisiting the issue of direct versus derivative acts and is also looking at the ratification of defective corporate acts. A very short proposed revision to the statute will likely be ready to circulate before the end of September. Finally, two CLE's are coming out of this Section in the next 6 months: The Annual Securities Institute which will take place in Miami on March 2nd and 3rd and a CLE on October 19th which will be presented live via Zoom and will present on Regulation D and Regulation A basics, recent amendments, and real world examples, and will be highly relevant to transactional practitioners and litigators alike.