A Virginia Series LLC
& Business Trust

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I. What is a "protected series"

A. "Protected series" is a specific term with a specific meaning. It is different than a "series." Virginia *(Effective July 1, 2021)* Va. Code §.13.1-1098 (Article 16 "Protected Series")

Article 16 of the Virginia Limited Liability Company Act, the Protected Series is authorized and governed. § 13.1-1088 et seq.

B. This was adopted from the Uniform Protected Series Act approved and recommended by the National Conference of Commissioners on Uniform State Laws. Feb 8, 2019.

Under the Protected Series Act, the LLC is authorized to establish a "protected series" within the entity to hold those assets designated to be held and operated within such series, *i.e*., a "series limited liability company." It is considered to be a "quasi-distinct legal person existing *within* an overarching entity." Uniform Protected Series Act, the National Conference of Commissioners on Uniform State Laws February 8, 2019, Prefatory Note, p 4

C. The assets of the limited liability company are separate in nature, under the umbrella of a series limited liability company, and

The assets within a specified protected series cannot be used to satisfy the debts arising from the activities of another protected series, within the same limited liability company.

D. "Thus, a series limited liability company contains "internal shields" – i.e., asset partitions reserving the assets of each protected series solely to creditors of that protected series. These "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. Uniform Protected Series Act, *Id.,* Prefatory Note p.2

A protected series of a series LLC is deemed to be an LLC that is organized separately from the series LLC and distinct from the series LLC and any other protected series of the series LLC. § 13.1-1094(A)(1). It is designed to work with any limited liability company.

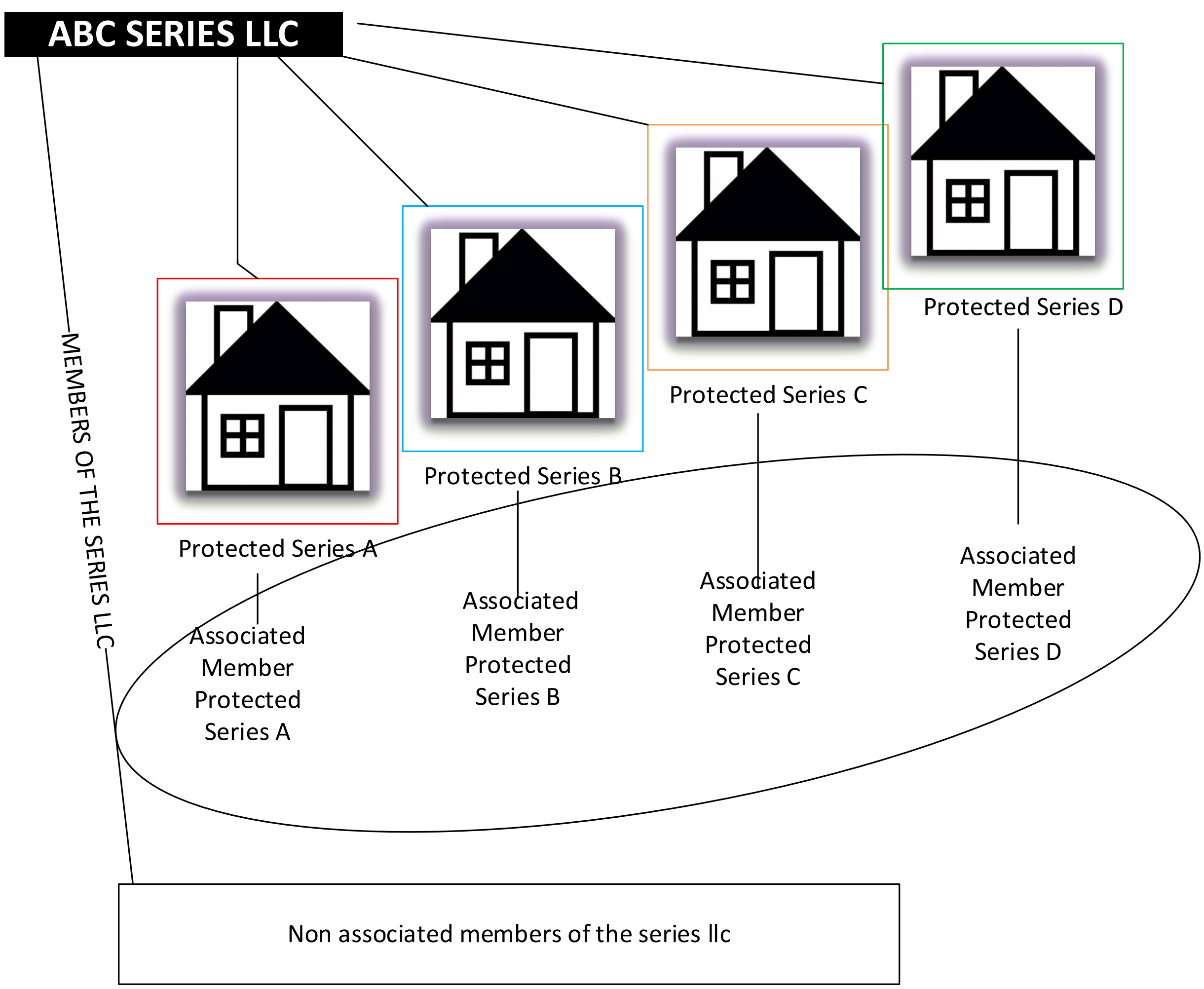
E. A protected series has the same powers and purposes as the series limited liability company.

A protected series does not have its own operating agreement. The series limited liability company operating agreement controls the protected series.

F. The act operates on the following concepts:

1. The protected series is dealt with **"as if it were"** a separate limited liability company;

Any asset of, creditor of, associated member, manager or a transferee or any transferable interest of the protected series is treated **"as if it were"** an asset of, a creditor of, a member of or manager of or transferee of the separate, quasi company;



II. Difference between a series LLC & a non-series LLC

A. Assume that a limited liability company has been formed and it owns five real estate rental properties. Should the LLC suffer a liability through the operation of one of those five properties, all of the five assets are exposed to the LLC's creditor to satisfy the claim or judgment. The liability protection that the LLC offers is protection of the members and managers from liability of the company's creditors. The National Conference of Commissioners on Uniform State Laws refers to this as a "vertical shield."

B. If the limited liability company in a jurisdiction that authorizes a "protected series LLC" and in the formation documents, each of the five properties are designated as belonging in each of the separate series: Such as Series A, Series B, Series C, and Series D. If one of the properties designated in Series A generates liability, the liability attributed to that one property is limited to the assets of Series A assets and the creditor has no claim against the assets in Series B, C, or D. The National Conference of Commissioners on Uniform State Laws refers to this as a "horizontal shield."

The key to this liability protection is good record keeping. The horizontal shield will fail if the record keeping with regard to the associated assets is deficient; or if the asset is not associated with that protected series.

Here are examples:

1. **EXAMPLE**: ABC, LLC, a series limited liability company, has two protected series, ABC, LLC – Protected Series Abel ("Abel") and ABC, LLC – Protected Series Baker ("Baker"). Baker has several valuable assets, each of which has been properly documented and thereby associated with Baker since first acquired by Baker. A judgment creditor of Able attempts to levy on an associated asset of Baker. The attempt will fail for two reasons: (i) the attempt is an effort to hold Baker liable for Abel's debts, which contravenes the non-liability rule; and (ii) the non-recourse rule protects Baker's associated assets from claims except for claims asserted by Baker's creditors.

2. **EXAMPLE**: Same facts, except that, when Abel's judgment creditor attempts to levy on Baker's property, one of Baker's assets is a "non-associated asset." Although Baker is not liable on the judgment against Abel and the asset remains Baker's property, since it is a non-associated asset, it is nonetheless subject to levy by the judgment creditor of Abel.

Virginia Business Trust Act

1. See Code § 13.1-1219(B)(1) where a series may be created in the formation of the trust.