

The Nevada Series LLC

Introduction

Suppose you own five small apartment buildings and you are concerned about protecting these assets from claims of creditors. In particular, you are worried about the possibility that a claim from an individual injured at one of these buildings might be able to reach the other buildings in order to satisfy a judgment. The advice most commonly given to you is to create five separate legal entities (corporations, limited partnerships or limited liability companies); one to hold each apartment building. You understand the benefits of following this advice, but are reluctant to implement this solution, because you will be required to obtain tax identification numbers for each of these entities; file an income tax return for each entity and pay an annual fee to the Secretary of State and obtain a Nevada business license for each entity.

However, the Nevada Series LLC may provide the solution. It allows for the creation of separate “series” in the LLC operating agreement, with each series being subject to the rules specified for that series. When properly drafted and implemented, the debts, liabilities, obligations and expenses incurred by a series are enforceable only against the assets of that series – and not the assets of the company generally or any other series. So, in the case described above, you could create a separate series for each apartment building and isolate each asset from the other in the case of a claim against one of them. You would need only one tax identification number; would file only one income tax return and pay only one fee to the Secretary of State and obtain one business license. In order to obtain these benefits, certain formalities must be followed.

Formation

Forming a series LLC in Nevada is much like forming a non-series LLC. The promoter must file Articles of Organization which specify the name of the entity; the name and address of the resident agent for the entity; the name and address of each of the organizers; and whether the company will be managed by its members or by one or more managers. The names and addresses of those managers or members are also required. For a series LLC, simply check the box on the right hand side of the form. The company will be in effect once the Articles are filed with the Secretary of State (or later if so specified in the articles); the filing of the certificate of acceptance by the resident agent with the Secretary of State, and payment of the filing fee. Once the Articles are on file with the Secretary of State notice is effective that the company is a limited liability company as well as that it is a series LLC.

Operation

In addition to formation requirements, and disclosure in the Articles of Organization, the series LLC must also maintain separate and distinct records for each series; and “...the assets associated with the series are held, directly or indirectly, including through a nominee or otherwise, and accounted for separately from the other assets

of the company and any other series.” In our hypothetical case, this would require that each building is properly titled to its respective series; that all of the books and records associated with each building are maintained separately from the books and records of the other buildings; and that each series has its own bank accounts and pays its own bills.

Conclusion

The Nevada series LLC might be the right entity for you to create. It can provide asset protection and isolation at a fraction of the cost and complexity of traditional multiple entity planning.