Maine's New Limited Liability Company Act

Article 1 in a Series of 3

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This article is the first of three articles about Maine's new Limited Liability Company Act, 31 M.R.S.A § 1501 *et seq.* (the "New Act"). In this Article, we will describe and discuss why we formed a committee to draft the New Act, foundational principles of the New Act, and the elements and mechanics of forming a limited liability company ("LLC") under the New Act. Upcoming articles will address other key provisions of the New Act, including provisions about apparent and actual authority of members, managers and officers; duties, liabilities and indemnification of managers and officers; transferrable interests; dissociation; and entity dissolution.

The New Act differs significantly from the current Maine LLC Act, 31 M.R.S.A. § 601 *et seq.* (the "Current Act"). Our goal in drafting these articles is to guide you through these differences.

Background – Why a New LLC Act?

When the Current Act was enacted in 1993, business practitioners seldom used the LLC. Several factors account for this fact. The LLC was a new concept, and most business lawyers were not familiar with it. Additionally, while states were enacting LLC legislation at a rapid clip, the LLC was not available in every state, and some practitioners felt that it would be unwise to use an LLC in a state that had not enacted LLC legislation.

While business law factors influenced the pace of the LLCs early popularity (or lack thereof), the income tax issues surrounding LLCs' probably had the greatest influence. At the time, the income tax treatment depended on a four-factor test that measured whether an LLC was more like a corporation or a partnership. If the LLC had more corporate characteristics than partnership characteristics, it would be treated as a corporation for income tax purposes. Faced with this test, and knowing that most taxpayers using an LLC would want the LLC to be treated as a partnership, states (including Maine) adopted LLC statutes with partnership characteristics.

By 1997 all states had adopted LLC legislation, and business lawyers were becoming familiar with LLCs. These developments contributed to the growing popularity of the LLC. However, no one thing did as much for increasing the popularity of LLCs as the issuance of the so-called "check-the-box" regulations. These regulations, issued by the Treasury Department, adopted a very different approach to determining the tax treatment of LLCs. Under this approach, a domestic LLC with two or more members is a partnership, unless an election is made to treat the LLC as a corporation. A domestic LLC with one member is treated as a disregarded entity unless a corporate election is made.

Practitioners responded to the check-the-box regulations proclaiming that the LLC would be the entity of choice for non-publicly-traded business ventures. The popularity of the LLC skyrocketed. At the same time, LLC law developed remarkably. Jurists, legal scholars and commentators produced opinions, articles, and treatises creating and developing both consensus and debate on key legal issues. Moreover, in the last five years, the National Conference of Commissioners on Uniform State Laws and the American

Bar Association's Business Section have produced new model LLC Acts.

The Current Act reflects some of these developments, but not all. While the Current Act reflects some of the best thinking of the time when it was enacted, it is fundamentally at odds with current law and scholarship. For this reason, the authors of this article and 34 other Maine business lawyers formed a committee to draft a complete revision of the Current Act. This committee, the LLC Act Drafting Committee of the Maine State Bar Association's Business Section (the "Drafting Committee"), began work on revisions in October, 2008. Initially, we reviewed several LLC Act models to find the appropriate base from which we would draft our proposal. The models we reviewed include the Revised Uniform Limited Liability Company Act (the "Uniform Act"), the ABA Prototype Limited Liability Company Act draft as of August, 2008 (the "Prototype"), and several LLC Acts from other states, notably Illinois, Colorado, Massachusetts, Texas, and Delaware. Based on our review, we determined to use the ABA Prototype as a base. Though it was still in draft form, the ABA Prototype was, in our view, substantially complete. Knowing that the Prototype was a work in progress, we checked it against the Uniform Act, which was then in final form and current Maine law. Using this process, we are confident that using the Prototype as a base was a good choice, but it is important to note that the final version of the New Act (as defined below) includes many provisions from the Uniform Act where the Drafting Committee thought that such provisions were more consistent with other entity statutes in Maine.

Our choice to use the Prototype as the base was influenced largely by our view of developments and trends in LLC law and scholarship. Many of the developments in LLC law and scholarship – and much of the academic debate – focused on the extent to which LLC law should reflect the contractual nature of the LLC. Both the Uniform Act and the Prototype reflect the view that an LLC is a contractual entity. They differ, however, on the standards by which contractual provisions should be reviewed by courts. The Prototype adopts the approach taken by the Delaware Limited Liability Company Act. Under this approach, ordinary contract principles apply to determine whether provisions of an operating agreement will be respected. So, for example, a provision will not be enforced if it is found to be unconscionable.[1] Alternatively, the Uniform Act supplies a new standard for construing some operating agreement provisions, notably the provisions that permit parties to alter duties. This standard – a manifestly unreasonable standard – and how it is applied are described in detail in the Uniform Act. The Drafting Committee determined that applying this additional standard imposes unnecessary restrictions on the ability of the parties to contract freely and chose to not include such restrictions in the New Act.

The Drafting Committee members nearly unanimously supported the view that it is better to allow co-venturers to tailor their contract to their business deal under ordinary contract principles. Imposing additional standards creates uncertainty in results and provides opportunities for disgruntled members or former members to attempt to alter the intended result.

The Drafting Committee members were not persuaded by arguments that imposing additional review standards is necessary to protect unrepresented or unsophisticated co-venturers. There are equitable remedies available under current contract law to protect these parties. Also, the Drafting Committee saw no reason why an LLC operating agreement should be treated differently than other contracts, such as contracts for the sale of real estate. Further, the Drafting Committee were persuaded that those seeking to shift risks bear a burden to make such risk-shifting provisions crystal clear to the other parties in order to ensure that those provisions will be enforced. As such, there seems to be little risk of slipping one by a party that takes time to read the document. Finally, the operating agreement is, like any other contract, a legal document. The Drafting Committee members are not persuaded that, as a matter of policy, we should deprive co-venturers the opportunity to tailor their contract to their particular business deal to protect the person who agrees to be bound by contracts without taking care to understand their consequences. Again, there are equitable contract principles to protect the truly innocent.

Introduction to the New Act

The New Act takes effect July 1, 2011. It is fundamentally different from the Current Act.[2] The primary difference is the predominant role that the limited liability company agreement (the "LLC Agreement") (referred to as the operating agreement in the Current Act) takes in the New Act. Under the Current Act, an LLC can be formed without an operating agreement, and the Current Act limits the ability of the members to tailor the operating agreement to reflect the basis for formation and/or the negotiated terms of each business union. The New Act conditions the formation of an LLC on the existence of an LLC Agreement and allows the members maximum flexibility in structuring their relationship by limiting the mandatory provisions of the New Act.

Any discussion of the New Act should begin with how certain key terms are defined in the New Act. For example, the definitions of "limited liability company" and "limited liability company agreement" differ from their predecessor definitions. Under the Current Act, a limited liability was simply defined as "an organization formed under this chapter" and encompassed within its scope the term "domestic limited liability company," which is occasionally used in the Current Act to differentiate the term from a foreign limited liability company.[3] In contrast, however, the definition of "limited liability company" under the

New Act, in addition to providing that it is an entity formed in accordance with the New Act, emphasizes that an LLC must have at least one member and an LLC Agreement. This definition tracks the formation requirements in the New Act.[4] The new definition encompasses those entities formed under the New Act or the Current Act.

The term "limited liability company agreement", of course, did not exist in the Current Act; its role is served by the "operating agreement," which is succinctly defined in the Current Act as "an agreement among all of the members of a limited liability company governing the conduct of its business and affairs."[5] Its updated counterpart is more expansive, incorporating within its scope any agreement, regardless of how it is referenced or whether it is oral or written, provided such agreement is by and among the members of an LLC and governs its affairs and activities.[6] It also removes any doubt that an LLC Agreement is valid, appropriate and enforceable even if there is only one member of the LLC, and concludes that the term as used throughout the New Act includes any amendments to the LLC Agreement.[7]

The Importance of the LLC Agreement

The New Act elevates the status of the LLC Agreement, giving it a central role in the existence and operation of each LLC. Under the New Act, an LLC cannot be formed without an LLC Agreement.[8] This is a major departure from the Current Act. Under the New Act, the LLC Agreement can be oral, but the mere requirement that one exist at the time of formation provides a legal backstop for practitioners to strongly encourage clients to memorialize their agreements in writing at the outset, and to have the sometimes difficult and complex conversations about the current and future relationships members have with one another and the LLC prior to drafting and finalizing each LLC Agreement. Under the New Act, with very few limited exceptions (all of which are clearly set forth in a single section, §1522), the LLC Agreement can modify the provisions of the New Act governing the relations among members and between the members and the limited liability company, making it the primary document addressing the affairs of the LLC. It is distinct from the Current Act not only because it spotlights the LLC Agreement at center stage, but also because it is precise about when and where the LLC Agreement does not and cannot trump the New Act. Rather than preface certain sections with "[e]xcept as provided in the operating agreement," we elected to forego the ambiguity and confusion the presence (or absence) that preamble sometimes generates and state the following only once:

> *Agreement Governs. Except as otherwise provided in subsection 3 and section 1522, the limited liability company agreement governs relations among the members as members and between the members and the limited liability company.*[9]

Because the LLC Agreement plays such a paramount role, subchapter 2 of the New Act (§§ 1521-1524) is of central importance. It establishes the LLC Agreement as the determinative document with respect to the rights and obligations of the members and transferees of membership interest(s) in the LLC. Subchapter 2 of the New Act also permits members to shape duties, define liability for breach of fiduciary duty and establish whether and what extent members and officers can and will be indemnified against liability for actions and omissions arising from their company relationships.

The firm emphasis on the LLC Agreement is indicative of the view that the LLC, like other unincorporated organizations, is a contractual entity. The New Act allows and facilitates parties and their counsel to mold provisions to the contours of a particular deal or venture and the interests of its participants, their relationships to one another and to the LLC. Ordinary contract principles and equitable doctrines apply to the LLC Agreement, and therefore inhibit the ability of one party to unfairly disadvantage another. In this way, the LLC Agreement looks, acts and is like any other contract.

The preceding paragraphs make it clear that the overarching theme of the New Act is the power accorded the LLC Agreement. The default rules of the New Act apply only if and when the LLC Agreement cannot or does not otherwise address an issue with regard to the affairs of the members and the members and the LLC. Section 1521 sets forth the scope of the LLC Agreement and qualifies the power of the members to form a binding agreement by providing that the members may not eliminate the implied contractual covenant of good faith and fair dealing; otherwise, the members are free to expand upon, limit or even eliminate the duties and liabilities flowing therefrom in the LLC Agreement.[10]

As noted above, § 1522 sets forth those discrete areas where the New Act expressly trumps the LLC Agreement with regard to members relations with one another and with the limited liability company. Namely, the LLC Agreement may not vary the LLC's distinction from its members as a separate legal entity,[11] and as such may not vary the ability for the LLC to sue and be sued.[12] It may not override the applicability of Maine law,[13] seek to restrict the rights of any person other than a member or transferee[14] or alter the power of the Kennebec County Superior Court to compel the execution and/or delivery of limited liability company records to the Office of the Secretary of State.[15] Just as the LLC Agreement cannot eliminate the implied contractual covenant of good faith and fair dealing, it cannot vary the liability of a member acting in bad faith to the LLC and/or the other members of the LLC for money damages.[16] Finally, the LLC Agreement is prohibited from waiving the necessity that a membership contribution (or obligation to make a membership contribution) be in writing[17] or that the LLC wind up its business in accordance with § 1597 of the New Act after filing

articles of dissolution.[18]

With respect to the admission of new members under the Current Act, currently practitioners advise their clients to have each new member sign a counterpart signature page to the existing operating agreement or have each current and new member execute an amended and restated operating agreement. While this will continue to be the best practice under the New Act, the unwaivable language of § 1523(2) of the New Act, which establishes that any person who is admitted as a member to the LLC becomes a party to the LLC Agreement, is intended to make clear that a member is, upon admission – however established, bound by and may enforce the LLC Agreement. This provision echoes the preceding subsection, § 1523(1), which provides that each LLC is a party to its own LLC Agreement, regardless of whether it is a signatory to or has otherwise manifested assent to such agreement.

The LLC Agreement may also provide for the manner in which the LLC Agreement may be amended. Under both the New Act and the Current Act, unless otherwise provided for in the LLC Agreement[19] or the operating agreement,[20] respectively, amendment of such agreement requires the unanimous consent of all members.[21] The New Act differs from the Current Act in that it expressly provides that the LLC Agreement may grant rights (but not obligations) to non-members.[22] In other words, the LLC Agreement may have third party beneficiaries, as with any other contract.

Formation

The formation provisions of the New Act closely follow the approach of the Delaware Limited Liability Company Act. Under the New Act, an LLC is formed when it has at least one member,[23] an LLC Agreement exists[24] and the certificate of formation (the articles of organization under the Current Act) has been executed and filed with the office of the Secretary of State.[25] The form required by the Secretary of State will differ slightly from its predecessor. Each certificate of formation must include the (a) name of the limited liability company,[26] (b) the required information with respect to the appointment of a registered agent and (c) any other information the members "determine to include."[27]

The existence of a properly completed and executed certificate of formation on file in the office of the Secretary of State is notice to the world that an LLC Agreement exists for such entity seeking to comply with the formation provisions of the New Act.[28] Failure to properly complete or execute a certificate of formation means that no such entity exists in the eyes of the state, and therefore its members do not have the benefits of the statute, including the protections of limited liability.

One significant change from the Current Act is that the New Act separates or de-links actual authority from apparent authority. Under the Current Act, the articles of organization required each LLC to be identified as "member run" or "manager run." The effect of this designation was to establish whether the members or the managers had authority to act to bind the LLC. LLCs formed under the New Act will no longer be identified as either member run or manager run. Consistent with the central role of the LLC Agreement under the New Act, the LLC Agreement, and not the certificate of formation, will designate who has the authority to act on behalf of the LLC. The Drafting Committee was concerned, however, that since the LLC Agreement will not be filed with the Secretary of State, a third party will not be able to determine who has authority to act on behalf of the LLC without reading the LLC Agreement. To allow third parties to be able to determine who has apparent authority to act on behalf of an LLC without having to request and then read the LLC Agreement, the New Act provides that any member, manager, president or treasurer has apparent authority to bind the LLC unless a statement of authority setting forth the specific individuals or offices that have authority to bind the LLC has been filed in the office of the Secretary of State.[29] As a result, to limit the individuals and offices that will be deemed to have authority to on behalf of the LLC, the members advised to file a statement of author in the office of the Secretary of State the time the certificate of formation filed. The statement of authority is new form that will be generated by t office of the Secretary of State pursua to the New Act. It is a form that c be filed at the time of formation or any time during the company's ex tence.[30] The statement of authority w supersede the presumption that a member, manager, president or tr surer has apparent authority to bi the LLC and will provide conclus evidence of authority to bind the LL when someone gives value in reliar on the grant of authority, unless su person has knowledge in contradicti to the purported authority.[31] A sta ment of authority can also be amend or cancelled by filing the appropri form with the office of the Secretary State.[32] A person named in a statem of authority can also file a statement denial by filing the appropriate fo with the Secretary of State and copyi the LLC.[33] The Drafting Committ strongly recommends that practiti ners file a statement of authority at t time the certificate of formation is fil limiting the individuals or offices th have apparent authority to act on beh of the LLC.

No Shelf LLCs

One of the main formation questio that faced the Drafting Committee w whether to allow "shelf LLCs" or LL to be formed without members a without an LLC Agreement. For t reasons discussed below, the Drafti Committee adopted the view follow by the majority of states, includi Delaware, and the statute requires LLC to have at least one member a an LLC Agreement at the time formation.[34] The Drafting Committ decided that shelf LLCs were unn essary in Maine and could result unintended consequences if adopted.

While most states require an LLC have at least one member at the time formation, a few states and the Unifo

Act permit shelf LLCs.[35] Under these statutes, an LLC becomes a legal entity upon the filing of certificate of formation or articles of organization with a state and it exists without having members or a limited liability company agreement. As a result, these states and the Uniform Act provide that LLCs are formed by statute rather than through an agreement of the members making LLCs more like corporations than other unincorporated entities.[36]

The primary reason for allowing shelf LLCs appears to stem from concerns about issuing third party legal opinions.[37] Supporters of the shelf LLC concept argue that due to inefficiencies at local filing offices, it is advisable in some circumstances to file organizing documents before the composition of ownership and the LLC Agreement have been agreed upon.[38] In such a case, if shelf LLCs are not permitted by statute, the organization of the LLC may be defective.

The Drafting Committee did not believe that the problem of an inefficient filing office was issue in Maine. On the contrary, the office of the Maine Secretary of State allows for an LLC to be formed and effective on the same day the filing is made.

The Drafting Committee did acknowledge that opinion issues could arise if the filing was made prior to the LLC having members or an LLC Agreement, but did not believe that allowing shelf LLCs was the most efficient way to solve the problem raised. Instead, the Drafting Committee addressed the concern about issuing third party legal opinions in the formation provisions of the statute.[39] The statute provides that an LLC is only formed when there has been substantial compliance with the requirements in the statute.[40] As a result, the LLC is not formed upon filing the certificate of formation, but on the latest to occur of the filing of the certificate, the existence of an LLC Agreement and having one or more members. A practitioner may file the certificate of formation prior to the LLC having at least one member and an LLC Agreement, but the LLC is only formed when there is compliance with all of the requirements of the statute. For opinion purposes, the valid formation opinion should then relate to the date that there has been substantial compliance with the New Act.

More fundamentally, the Drafting Committee was concerned that shelf LLCs could undermine fundamental aspects of the LLC as an unincorporated entity, namely, the ability to choose who the members will be and the freedom of the members to negotiate their own agreement without intervention of third parties and mandatory rules. If LLCs were permitted to be formed by an incorporator without the need of members or an LLC Agreement, the LLC would be structurally indistinguishable from a corporation. The committee was concerned that without a clear differentiation between corporations and LLCs, a court would question the public policy rationale for allowing members of an LLC greater flexibility in creating and organizing their relationships than shareholders of a corporation.[41]

In addition, the committee in drafting the New Act embraced the principal that LLCs, unlike corporations, are products of the agreement among the members and not of statute. As a result, the New Act enforces the concept that LLCs are formed by and operated in accordance with the agreement between the members.[42] The limited liability company agreement is the central document for an LLC. As a result, it is antithetical to allow an LLC to be formed without at least one member and without a limited liability company agreement.

Overall, the committee determined that the reasons for adopting shelf LLCs could be addressed by other means and that shelf LLCs could cause more problems than they would solve.

No Maine Series LLCs

Another question that faced the Drafting Committee was whether to allow series LLCs to be formed in Maine. The series LLC is a type of LLC whose formation documents establish one or more designated series of members, managers, interests, or assets.[43] The series LLC type that has generated the most interest is a series LLC with one or more designated asset series. In such an LLC, one or more members may be associated with one or more asset series, but not any other. For example, assume A, B, and C are members of ABC LLC, a series LLC. A and B, and not C, may be associated with the assets of Series 1, but C and B, not A, may be associated with Series 2. If the LLC follows statutory requirements, the series LLC statutes provide that the assets and liabilities of one series are segregated from the assets and liabilities of the other series.

The unique structure of the series LLC is particularly best suited for mutual funds and investment funds. The series LLC format allows for the parent LLC[44] to file a single registration under the Investment Company Act of 1940, and then establish separate funds using the various underlying series. So, instead of making multiple SEC filings, the mutual fund makes one filing, saving the mutual fund a lot of money.

There are other uses of the series LLC, but none is as fitting as the fund use. Moreover, each other use of the series LLC has significant risks.[45] There are risks that a court in a jurisdiction that does not have a series LLC statute, or otherwise respect the series LLC form, will allow creditors of one series access to the assets of another series, ignoring the series LLC "liability shield" between series. There are risks that bankruptcy laws will be applied not to the series *per se*, but rather to the LLC in general, because the series is not a "person" under the Bankruptcy Act.

There also are additional burdens to forming and maintaining a series LLC. Internal records need to be maintained for each series. The LLC Agreement should define and prescribe duties, liability, and indemnification for the managers of each series separately. Each series should have its own allocation, distribution and liquidation provisions as well.

Last, but not least, there are significant tax issues. While the Treasury Department has issued proposed regulations[46] that, if finalized, would establish

that each series of a series LLC would constitute a separate business entity for tax purposes, there remain significant unanswered questions. Further, we still do not know how states will treat each series for income tax purposes.

The uncertainties surrounding the series LLC, the fact that the most suitable uses of a series LLC are not common in Maine, and the fact that Delaware has the series LLC available in its LLC Act for those who want a series LLC all lead the Drafting Committee to decide against including the series concept in the New Act. The Drafting Committee did, however, include language in the New Act that is intended to allow a series LLC to register to do business in Maine as a foreign LLC. So, a person who wishes to use a series LLC to do business in Maine may form a Delaware series LLC and register one or more of the series in Maine, each as a foreign LLC.

Conclusion

The New Act emphasizes that LLCs, like other unincorporated organizations, are contractual entities formed by an agreement among the members. The cornerstone of this effort is the focus on the LLC Agreement. As provided in subchapter 3 of the New Act, an LLC cannot be formed until all of the following occur: (a) a certificate of formation is filed with the office of the Secretary of State, (b) the LLC has at least one member and (c) an LLC Agreement exists. In addition, the terms of the LLC Agreement, and not the New Act, govern the relations among the members as provided in subchapter 2 of the New Act. If practitioner chooses to forego reading the New Act in its entirety, every attorney in the State of Maine whose practice touches limited liability companies should read subchapter 2. It is the heart of the New Act.

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1. See *Barrett v. McDonald Inv., Inc.*, 2005 ME 43, 870 A.2d 146.

2. While the New Act fundamentally differs from the Current Act in significant ways, many of its provisions perfectly or near perfectly continue the provisions of the Current Act. For example, most of the administrative provisions, all of which are set forth in subchapter 13 (§§ 1661-1680), are substantively drawn from the Current Act. Other areas will also look familiar to practitioners.

3. 31 M.R.S. § 602(8). See also *Id.* at § 602(6) (§ 1502(11) in the New Act) for the definition of "foreign limited liability company," which will be discussed in a later article in this series.

4. *Id.* at 31 M.R.S. § 1502(14). See also the discussion of formation below.

5. 31 M.R.S. § 602(13).

6. *Id.* at § 1502(15).

7. *Id.*

8. *Id.* at M.R.S. § 1531(B). See also § 1523(3) regarding the ability for the initial members to enter into an agreement that springs into action as the LLC Agreement upon the fulfillment of the other formation requirements, namely, the filing of the certificate of formation (the Articles of Organization under the Current Act) pursuant to § 1531(A).

9. *Id.* at § 1521(1).

10. The only exception to this other than the prohibition against eliminating the implied covenant of good faith and fair dealing found in 31 M.R.S. §§ 1521(3)(B) and 1522(2) is found is § 1611, which addresses specific fiduciary duties relative to low profit limited liability companies. Low profit limited liability companies together with a more extensive discussion of fiduciary duties will be discussed at length in a subsequent articles in this series.

11. 31 M.R.S. § 1522(A).

12. *Id.* at § 1522(B).

13. 31 M.R.S. § 1522(C) references the applicability of Maine under § 1506.

14. 31 M.R.S. § 1522(D).

15. 31 M.R.S. § 1522(E) addresses the court's power under § 1677 with respect to administrative issues.

16. 31 M.R.S. § 1522(F).

17. *Id.* at § 1522(G).

18. *Id.* at § 1522(1)(H).

19. *Id.* at § 1524(1).

20. 31 M.R.S. § 651(2) and (4).

21. 31 M.R.S. § 1556(3)(B) (regarding the New Act) and § 653(2)(A) (regarding the Current Act).

22. *Id.* at § 1524(1) and (2).

23. *Id.* at § 1531(1)(C).

24. *Id.* at § 1531(1)(B).

25. *Id.* at § 1531(1)(A).

26. *Id.* at § 1531(1)(A)(1). As required under the rules promulgated pursuant to the Current Act, the name must be sufficiently unique to be approved by the office of the Secretary of State.

27. *Id.* at § 1531(1)(A)(3).

28. *Id.* at § 1531(3).

29. *Id.* at § 1541(4).

30. *Id.* at § 1542.

31. *Id.* at § 1542(3).

32. *Id.* at § 1542(2).

33. *Id.* at § 1543.

34. See Del. Code Ann. Tit. 6 § 18-101 (6) and § 18-201.

35. See Uniform Act § 201.

36. For a discussion of the perceived shortcomings of the RULLCA shelf LLC provisions, See Larry E. Ribstein, An Analysis of the Revised Uniform Limited Liability Company Act, Illinois Law and Economics Research Paper Series, Research Paper No. LE07-027, http://papers.ssrn.com/pape.tar?abstract_id

37. Robert R. Keatinge, Shelf LLCs and Opinion Letter Issues: Exegesis and Eisegesis of LLC Statutes, 23-2 Pubogram 15 (2006).

38. *Id.*

39. 31 MRSA § 1531.

40. 31 MRSA § 1531(2).

41. *Id.* at 16.

42. See 31 MRSA § 1502(14); 31 MRSA § 1531(1).

43. See Del. Code Ann. Tit. 6 § 18-215(a).

44. For convenience, we describe the series LLC in this article as having a "parent," and series that underlie the parent. However, it's not clear that the "parent" is an entity with superior ownership of the series, as this terminology implies. The Delaware series LLC statute (6 Del. Code Ann. Tit. 6 § 18-215), upon which most of the other series LLC statutes are based, uses the terms the "series" and the "limited liability company generally."

45. For a more complete discussion of the risks associated with a series LLC, see McLoon and Callaghan, "The Dangerous Charm of the Series LLC" __ Me. Bar Journal 226 (Fall 2009).

46. Prop. Treas. Reg. § 301.7701-1, 75 F.R. 55699 (2010).