
WRITTEN TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY

Assembly Bill 123

Series Limited-Liability Companies

TESTIMONY BY RICHARD G. BARROWS

May 1, 2017

My name is Richard G. Barrows. I have practiced law in northeastern Nevada for 44 years. My legal practice includes the formation of business entities. I have encountered four areas of uncertainty under the existing LLC statutes as they pertain – or have been argued to pertain – to **series** LLCs. ¹

In 2005, the Nevada Legislature amended Chapter 86 of NRS to authorize the creation of a new type of business entity in Nevada: the **series** limited-liability company. ² The creation of a **series** LLC was authorized to enable the owner of multiple assets to enjoy separate limited-liability protection for *each* asset *without* having to pay the Secretary of State organizational and annual fees for multiple

¹ See NRS 86.061, NRS 86.1255, NRS 86.151, NRS 86.161, 86.201, NRS 86.281, NRS 86.296, and NRS 86.311.

² SB 338, CH 459 Statutes of Nevada (2005).

LLCs. ³ For example, the promise of the 2005 amendment was that if mom and pop owned a chain of restaurants or multiple rental properties, they could *organize* one LLC by filing the articles of organization with the Secretary of State and pay one organizational filing fee. Thereafter, mom and pop could *create* separate **series** LLCs for each restaurant or rental property by executing a separate **series** operating agreement for each property with each **series** owning one of the properties. ⁴ Since an LLC operating agreement is an internal document not filed with the Secretary of State, no organizational or annual fees would be due to the Secretary of State for any of the **series** LLCs mom and pop created.

The four uncertainties with the existing Nevada **series** LLC statutes are:

1. Who is the registered agent for each **series** LLC?
2. In order to *create* a **series** LLC, must articles of organization be filed with the Secretary of State?
3. May a **series** LLC sue, be sued, contract and own property in its own name? and
4. How does a creditor, a person contracting with, or a person injured by, a **series** LLC discover who its registered agent is if nothing is filed with the Secretary of State?

AB 123 is needed to address these four questions under existing Nevada **series** LLC statutes.

³ Jeffrey L. Burr, *Perfect Solution or Added Burden? Practical Analysis of the Serial LLC Statute in Nevada*, Nevada Lawyer (November 2005); Jonathan Tew, *Series LLCs: Protect Your Investment*, Nevada Business Magazine (March 23, 2012).

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One of the keys to understanding this Bill are the verbs that it uses:

- Chapter 86 uses the term “company” to refer to the non-series LLC that is “*organized*” by filing articles of organization with the Secretary of State;
- The non-series LLC “*authorizes*” the “*creation*” of one or more **series** LLCs;
- A non-series LLC is “*organized*” and not “*created*”; and a “**series**” LLC is “*created*” and not *organized*.

Sec. 1. (Page 2, Lines 3-10)

Intended to remove all doubt under existing law that the registered agent for a “master” LLC (*i.e.*, the one which was *organized* by filing articles of organization with the secretary of state) is, as a matter of law, the registered agent for each **series** LLC that the master LLC has *authorized* to be *created*.

Sec. 1.3 (Page 2, Lines 13&14)

Intended to eliminate confusion between Chapter 86's use of “limited-liability company”/“company” to refer to the “master” LLC (*i.e.*, the one *organized* by filing articles of organization with the secretary of state and that *authorizes* the creation of one or more **series** LLCs) as opposed to a **series** LLC; and to remove all doubt under existing law that articles of organization must be filed to *organize* only the “master” LLC and not to *create* a **series** LLC when the articles or operating agreement of a “master” has *authorized* **series** LLCs to be created. This clarification is needed in view of a recent order by the district court in Clark County that a **series** LLC cannot be *created* by the operating agreement of the **series** LLC itself, even if authorized by the master LLC. In so ruling, the court held – in the face of NRS 86.296 – that a Clark County **series** LLC did not legally *exist* – and its members were *personally liable* – because NRS 86.151 and 86.201 require that all

LLCs – including **series** LLCs – may be created *only* by filing articles of organization with the secretary of state. Grand Canal Shops v. AB Venetian, LLC, Case No. A-16-737610-C, Clark County District Court, Dept XXXII, (2-14-2017).

Sec. 1.5 (Page 2, Lines 18-28)

Intended to eliminate confusion between Chapter 86's use of “limited-liability company”/“company” to refer to the “master” LLC (*i.e.*, the one *organized* by filing articles of organization with the secretary of state and that *authorizes* the creation of one or more **series** LLCs) as opposed to a **series** LLC; and to remove all doubt under existing law that articles of organization must be filed to *organize* only the “master” LLC and not to *create* a **series** LLC when the articles or operating agreement of a “master” has *authorized series* LLCs to be created. This clarification is needed in view of a recent order by the district court in Clark County that a **series** LLC cannot be *created* by the operating agreement of the **series** LLC itself, even if authorized by the master LLC. In so ruling, the court held – in the face of NRS 86.296 – that a Clark County **series** LLC did not legally *exist* – and its members were *personally liable* – because NRS 86.151 and 86.201 require that all LLCs – including **series** LLCs – may be created *only* by filing articles of organization with the secretary of state. Grand Canal Shops v. AB Venetian, LLC, Case No. A-16-737610-C, Clark County District Court, Dept XXXII, (2-14-2017).

Section 1.7(2) (Page 3, Lines 8-17)

Intended to eliminate confusion between Chapter 86's use of “limited-liability company”/“company” to refer to the “master” LLC (*i.e.*, the one *organized* by filing articles of organization with the secretary of state and that *authorizes* the creation of one or more **series** LLCs) as opposed to a **series** LLC; and to remove all doubt

under existing law that articles of organization must be filed to *organize* only the “master” LLC and not to *create* a **series** LLC when the articles or operating agreement of a “master” has *authorized series* LLCs to be created. This clarification is needed in view of a recent order by the district court in Clark County that a **series** LLC cannot be *created* by the operating agreement of the **series** LLC itself, even if authorized by the master LLC. In so ruling, the court held – in the face of NRS 86.296 – that a Clark County **series** LLC did not legally *exist* – and its members were *personally liable* – because NRS 86.151 and 86.201 require that all LLCs – including **series** LLCs – may be created *only* by filing articles of organization with the secretary of state. Grand Canal Shops v. AB Venetian, LLC, Case No. A-16-737610-C, Clark County District Court, Dept XXXII, (2-14-2017).

Section 1.7(2) (Page 3, Lines 20-32)

Intended to remove all doubt under existing law that a **series** LLC has the same rights as a non-series LLC with respect to suits, contracts and property ownership.

Section 2. (Page 5, Lines 1-19)

Intended to remove all doubt under existing law that a **series** LLC has the same rights as a non-series LLC with respect to owning real and personal property *in its own name*.

Section 3. (Page 5, Lines 31-38)

Intended to protect creditors, persons contracting with, or persons injured by, a **series** LLC by enabling them to ascertain who to serve with legal process in a suit against a **series** LLC. The **series** LLC would be required to file a certificate of fictitious with the county clerk advising the name of the master LLC whose

registered agent is filed with the secretary of state.

Section 4. (Page 6, Lines 24-31)

Intended to address the information that must be included in a certificate of fictitious name filed for a **series** LLC.

Section 4. (Page 7, Lines 1-12)

Intended to allow the same representatives of a **series** LLC to sign a certificate of fictitious name as those that can sign a mortgage or deed of **series** LLC real property under Section 2. of the Bill.

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