

Series LLC Updates: Registered Series, Protected Series, Mergers, Taxes and More

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Protected Series, Registered Series, and... Neither of the Above

- New TBOC definitions allows three categories of series:
 - Protected Series
 - Default category of series
 - Registered Series
 - Requires filing of Certificate of Registered Series
 - Contractual Series
 - Neither registered nor protected – a creature of contract
- Powers of series and updated definition of a ‘person’ under TBOC are allocated to protected and registered series only
- Still not an ‘entity’ under TBOC 101.622

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Requirements Applicable to Both a Protected Series and Registered Series

- State in COF or company agreement the division of assets amongst the protected series or registered series and/or limitations on enforcement of liabilities against a particular protected or registered series
 - Include statutory language from TBOC 101.602(a)(1) and (2) in COF
 - No requirement to use the term ‘protected series’ or ‘registered series’
 - Can choose to have SLLC and series jointly or proportionately liable for debts under 101.602(d)
- Maintain records that account for the division of assets amongst the SLLC and protected series or registered series
 - Best practices suggest separate set of books and records, but not technically required; lists of assets and liabilities may be sufficient
- Notable change in language in TBOC 101.602(b)(1) and 101.603:
 - “~~IF~~ TO THE EXTENT the records of a protected series or registered series are maintained ...”

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Protected Series

- Default category of series that meet general requirements for records and notice of separation of liabilities/assets
- Series pre-dating June 1, 2022 will be treated as protected series by default provided that they meet TBOC requirements
- SLLC must file an assumed name for each protected series
 - Assumed Name Certificate(s) must state the name of the SLLC and the name of the protected series
- Protected series CANNOT file its own assumed name per SOS guidance

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Registered Series

- A 'registered organization' for financing purposes under revisions to BC&C
- SOS can provide certificate of fact/status
- Meet criteria for protected series plus file a certificate of registered series
 - No anticipated form from the SOS
 - Name of SLLC, name of registered series, and if created by merger, a statement to that effect
 - Suggestion: include the filing number of the SLLC
 - May contain other information
 - Must be filed simultaneously with merger or conversion
 - Certified statement and executed by appropriate signer for SLLC
 - \$300 filing fee
- Name of registered series must include both name of the SLLC and name of registered series and include the term "Registered Series" or "R.S."
 - XYZ, LLC, 2016 Chateau Margaux, R.S.
 - 2016 Chateau Margaux, a Registered Series of XYZ, LLC
 - Registered Series 2016 Chateau Margaux, a series of XYZ, LLC
 - 2016 Chateau Margaux, R.S., a series of XYZ, LLC
- Name of registered series must also pass tests for unique names applicable to filing entities and subject to the same limitations
 - Distinguishable from other names on file
 - No inappropriate terms (lottery, veterans, or name implying a business purpose the RS can't pursue)

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Registered Series

- If a manager/member becomes aware of a false statement in a certificate of registered series, they shall file an amendment to the certificate of registered series
 - Unclear if this allows for a bypass of usual manager/member vote/approval requirement
- Can reserve a proposed registered series name ahead of time
- Registered series can now also file an assumed name certificate for a name that differs from the name of the registered series
 - The certificate must contain:
 - The assumed name being used by the registered series
 - The name of the registered series
 - The name of the SLLC [suggestion: include the filing number of the SLLC if using your own form]

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"A Series of Changes: Recent Developments in Texas Series LLCs"