THE TEXAS SERIES LIMITED LIABILITY COMPANY

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Choice of Entities in Texas

Sole proprietorship

Partnerships
- General Partnership
- Joint Venture
- Limited Partnership
- Limited Liability Partnership
- Family Partnership
- Master Limited Partnership

Corporation
- Close Corporation
- C Corporation
- S Corporation
- Small Business Investment Company
- Non-Profit

Limited Liability Company
- Manager Managed
- Member Managed
- Series

Professional
- Association
- LLC
- Corporation

Trusts

Miscellaneous
- Real Estate Mortgage Invest Conduit
- Real Estate Investment Trusts
- Regulated Investment Company
- Insurance companies and Banks

Why Choose One Entity Over Another

Non-Tax Reasons –

- Liability protection
- Licensing issues
- Management
- Equity and financing
- Compensation matters
- Exit strategies

Tax Reasons –

- Income tax planning – profit and losses – state and federal
- Estate tax planning
- Compensation Plans
- Asset transfers in and out
- Restrictions on owners
- Accounting methods
- Exit strategies

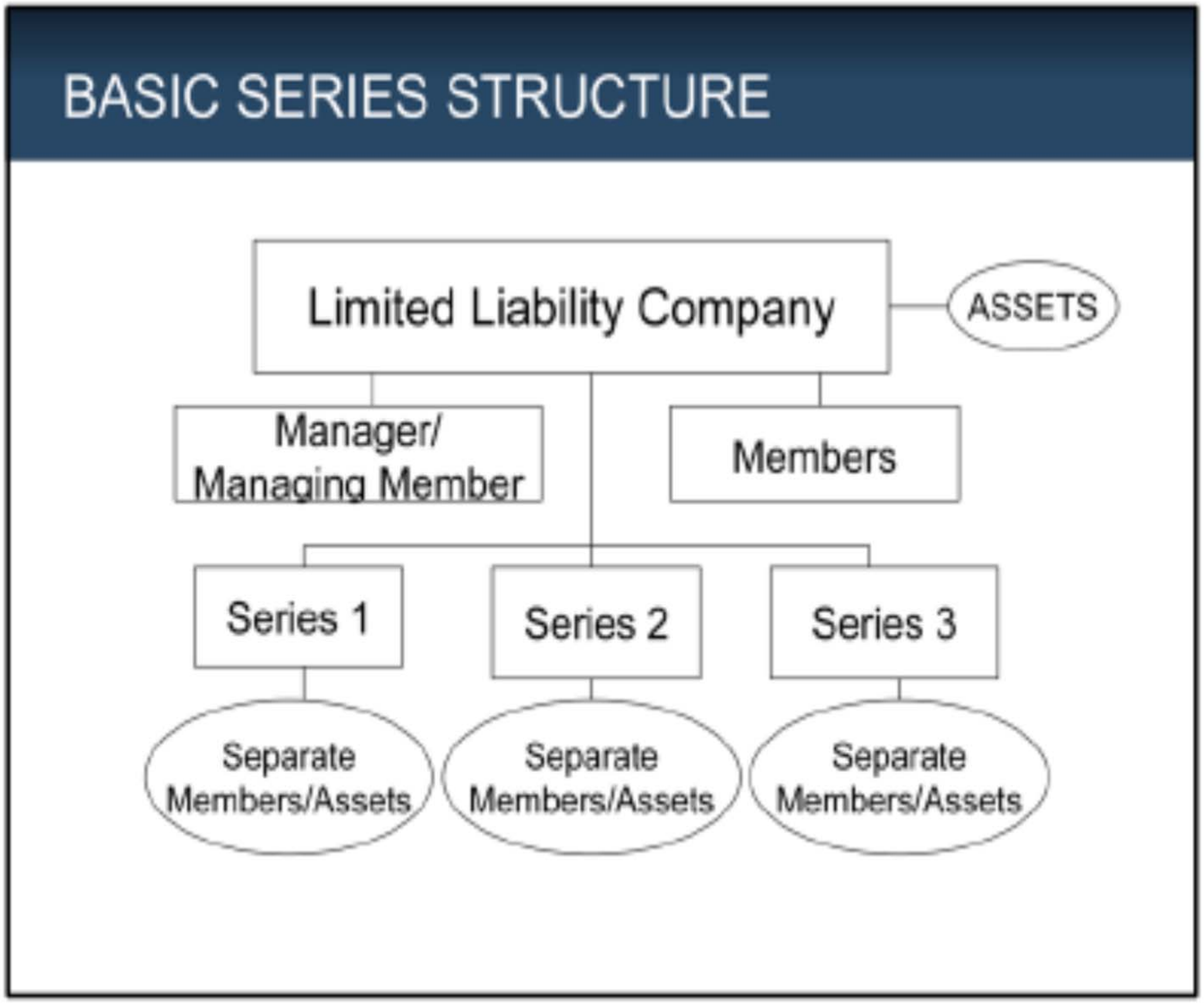
Texas New Entity Formations

	2014	2013
Limited liability companies	126,091	110,882
For-profit corporations	23,750	22,555
Limited partnerships	5,888	5,650
Professional corporations	814	844
Professional associations	707	833
Limited liability partnerships	758	754

Active Texas Entities as of June 1, 2015

Limited liability companies	676,626
For-profit corporations	364,826
Limited partnerships	132,514
Professional corporations	17,700
Professional associations	19,482
Limited liability partnerships	3,651

What is a Series LLC?



Formation of a Texas Series LLC.

Texas Business Organizations Code 101.602(a)(1)-(2)
Certificate of Formation - must contain a statement to the effect of the limitations on liability provided for in Section 101.602(a).

Company Agreement – must also contain a statement to the effect of the limitations on liability provided for in Section 101.602(a).

Assumed Name Certificate – Suggested but not required.

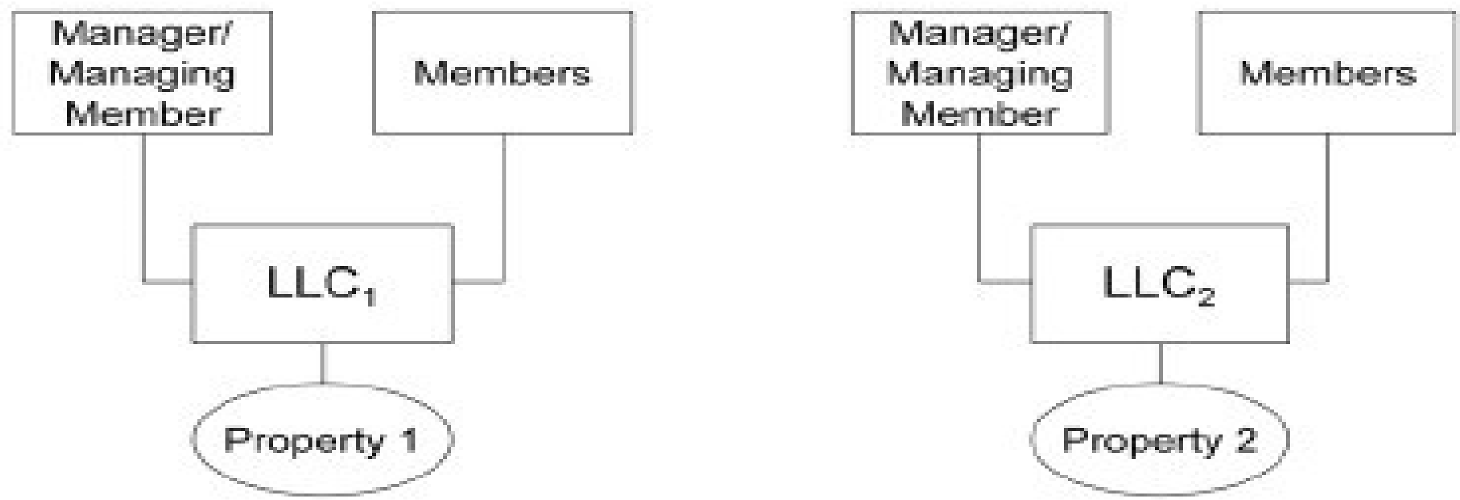
An existing LLC may convert to a Series LLC by filing a Certificate of Amendment to its Certificate of Formation

What are some of the attributes of a Series LLC

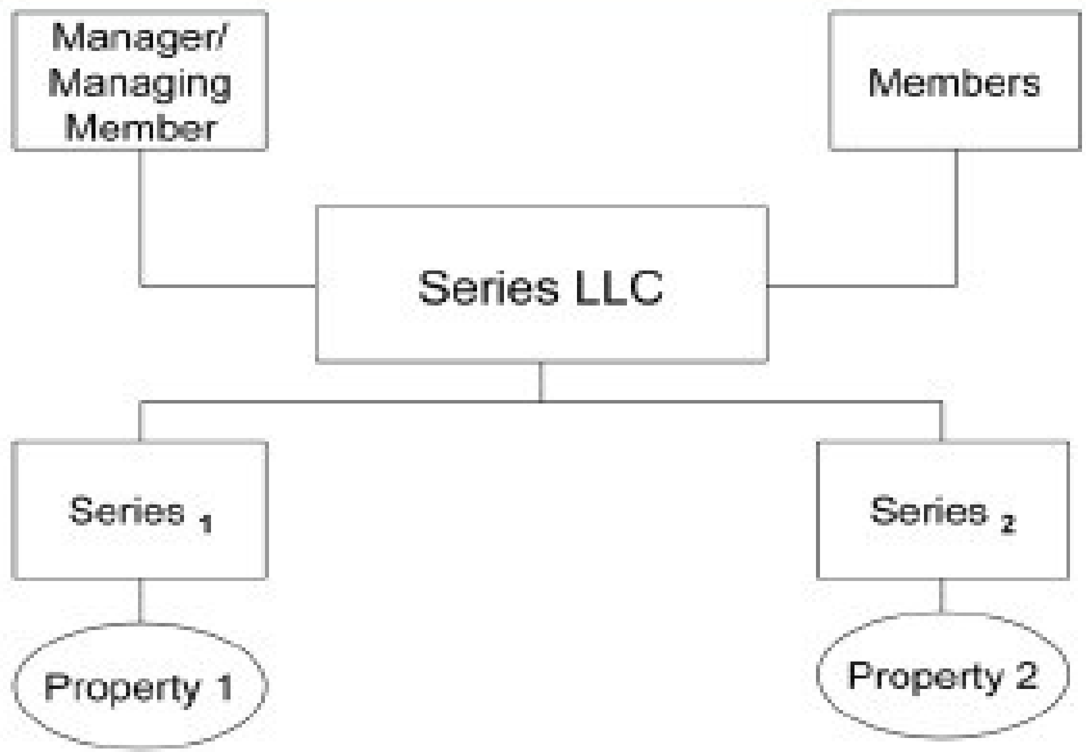
Sec. 101.605. GENERAL POWERS OF SERIES. A series established under this subchapter has the power and capacity, in the series' own name, to:
(1) sue and be sued;
(2) contract;
(3) acquire, sell, and hold title to assets of the series, including real property, personal property, and intangible property;
(4) grant liens and security interests in assets of the series; and
(5) exercise any power or privilege as necessary or appropriate to the conduct, promotion, or attainment of the business, purposes, or activities of the series.
Sec. 101.622. SERIES NOT A SEPARATE DOMESTIC ENTITY OR ORGANIZATION. For purposes of this chapter and Title 1, a series has the rights, powers, and duties provided by this subchapter to the series but is not a separate domestic entity or organization.

However, Treas Reg section 301.7701-1(a)(1) provides that the determination of whether an entity is separate from its owners for Federal tax purposes is a matter of Federal tax law and does not depend on whether the organization is recognized as an entity under local law

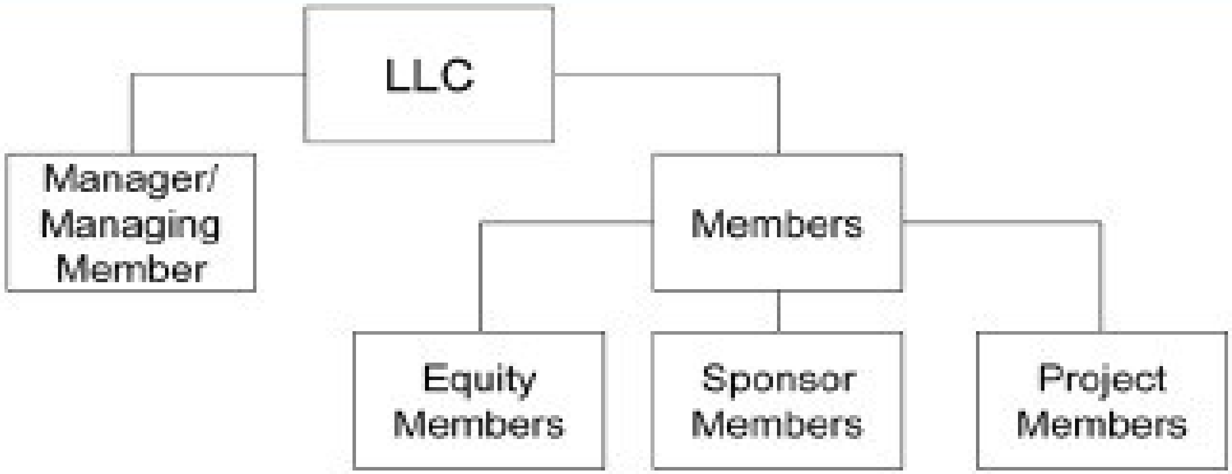
Property Ownership – Traditional Structure



Property Ownership – Potential Series Structure



Sharing Promoted Interests - Traditional



-Cash Flow Distributions (Representative)

First: preferential return on equity

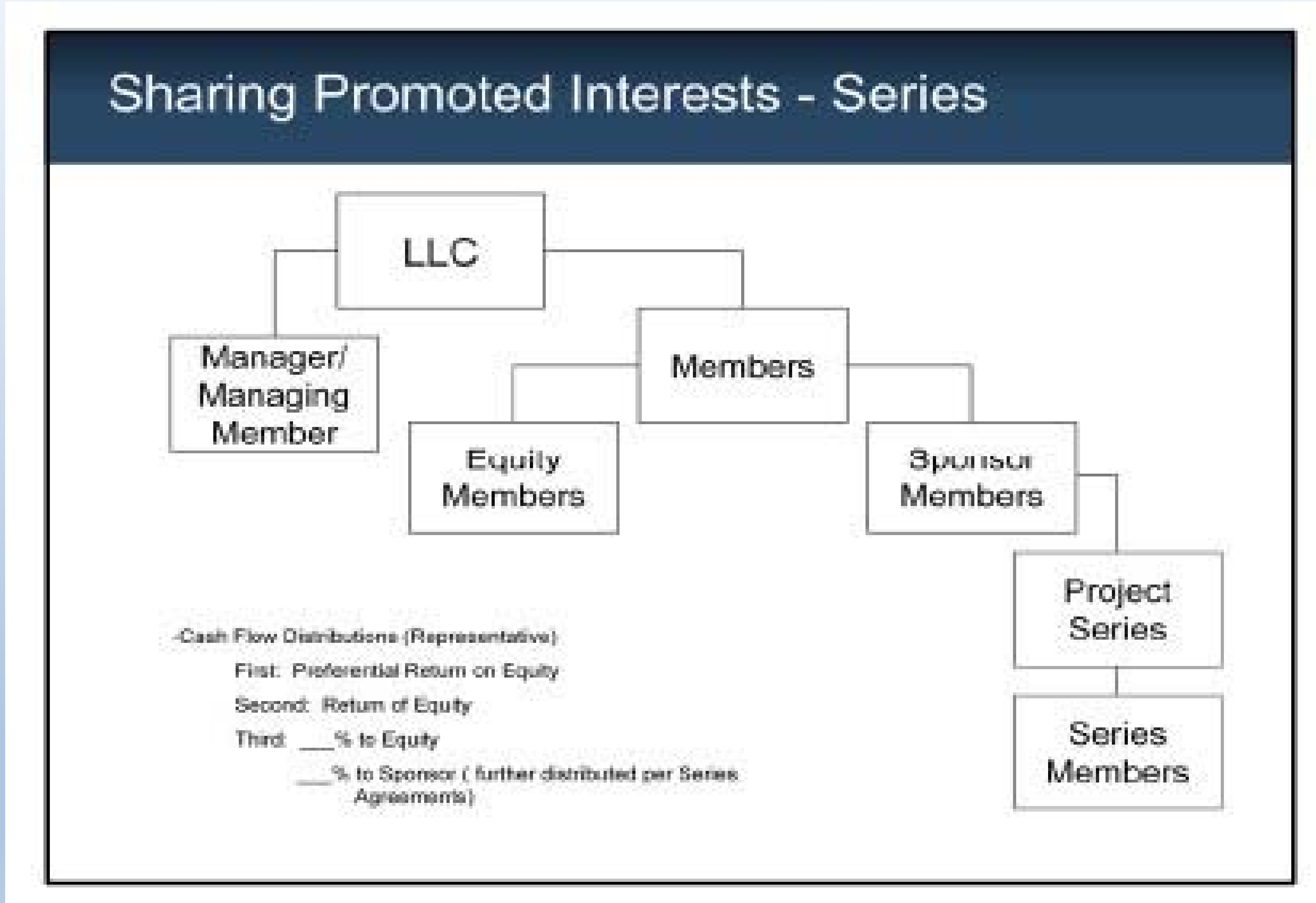
Second: return of equity

Third: ___% to Equity

___% to Sponsor Member

___% to Project Members

- Note that all are members of the LLC



Sharing Promoted Interests - Series
LLC
Manager/ Managing Member
Members
Equity Members
Sponsor Members
Project Series
Series Members
-Cash Flow Distributions (Representative)
First: Preferential Return on Equity
Second: Return of Equity
Third: ___% to Equity
___% to Sponsor (further distributed per Series Agreements)

Federal Tax Treatment

Example 1. Domestic Series LLC. (i) Facts. Series LLC is a series organization (within the meaning of paragraph (a)(5)(viii)(A) of this section). Series LLC has three members (1, 2, and 3). Series LLC establishes two series (A and B) pursuant to the LLC statute of state Y, a series statute within the meaning of paragraph (a)(5)(viii)(B) of this section. Under general tax principles, Members 1 and 2 are the owners of Series A, and Member 3 is the owner of Series B. Series A and B are not described in §301.7701-2(b) or paragraph (a)(3) of this section and are not trusts within the meaning of §301.7701-4.

(ii) Analysis. Under paragraph (a)(5)(i) of this section, Series A and Series B are each treated as an entity formed under local law. The classification of Series A and Series B is determined under paragraph (b) of this section. The default classification under §301.7701-3 of Series A is a partnership and of Series B is a disregarded entity.

State Tax Treatment

- File a combined state franchise tax return for the series LLC and include proceeds from all of the separate series (cells) in the parent series LLC only one of the three deduction methods can be used each calendar year.

Risks associated with the Series LLC.

- Do Series LLCs work in non-series LLC states?
- Treatment of Series LLCs by Bankruptcy Courts.
- Disregarding the Liability Shield

Take-aways

Disclose the risks to clients

- Use the word "series" as part of the name of the parent series LLC and use a d/b/a that is the address of the property.
- You must use statutory language in the certificate of formation and company agreement.
- Include an amendment to the company agreement to add each new series. Utilize a separate company agreement for each series as well as the LLC.
- Have as part of the company agreement separate provisions that identify the members, managers, assets, and that govern each separate series.
- Make certain good accounting practices clearly identify assets, liabilities, income and expenses of each separate series and the series LLC. Consider requiring each separate series/cell have its own bank account.
- Add contractual language to any contract of a separate series making it clear that only the assets of the separate series will be liable for the contractual liabilities

(continued)

Take-aways *(continued)*

- When buying, borrowing, or contracting, identify the separate series after the name of the series LLC, i.e., Example Holdings series LLC - Series A.
- Avoid cross-collateralization among series, if possible.
- The records maintained for a particular series must account for the assets associated with that series separately from the other assets of the series LLC or any other series and can be reasonably identified by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any assets, or by any other method in which the identity of the assets can be objectively determined.
- Only use a Texas series LLC to hold property in Texas and don't use a Texas series LLC to operate a business that is doing business in another state.
- Consider obtaining separate TINs for each separate series.