

# MISSOURI'S NEW SERIES LLC LAW

*Posted on November 21, 2013 by Laura E. Krebs Al-Shathir*



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Series LLC Law

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Late this past summer, the State of Missouri enacted legislation permitting the formation of a new type of entity called a "Series LLC" in Missouri. By way of background, in 1996, Delaware was the first state to enact a Series LLC statute, and since that time, at least eleven states, including Illinois and Kansas, have enacted statutes permitting the formation of Series LLCs.

Each state's Series LLC statute is different, but many features are common to Series LLCs in any state that recognizes them.

## Missouri Series LLCs

**In Missouri, a Series LLC consists of a limited liability company (referred to as a "master LLC") and any number of "series."**

- Each series within a Series LLC is, in many ways, treated as if it were a separate LLC in that each series may have separate members, rights, powers and duties. Importantly, the assets, debts, liabilities and obligations of each series may remain separate from those of the other series, the master LLC and the Series LLC as a whole.
- Each series may have a unique business purpose or investment objective, and each series

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may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business as a separate LLC.

- Each series must maintain its own separate books and records in order to ensure isolation of the assets and liabilities of each series.
- For federal income tax purposes, each series is treated as an entity formed under local law, and thus, each series potentially may be classified for federal income tax purposes as a disregarded entity or as a separate entity treated as a partnership or corporation, filing its own separate tax return.

Most states, including Missouri, follow the federal income tax treatment of classifying each series as a separate entity.

## Potential Risks of Using a Series LLC

Due in large part to the fact that Series LLCs are a new type of entity, there is much uncertainty regarding the legal treatment of Series LLCs, including lack of clarity in the following areas:

<b>Bankruptcy</b>	It is not clear whether a separate series may file a separate bankruptcy petition.
<b>Real Estate</b>	HUD does not recognize Series LLCs, and title companies have expressed great hesitation, when the issue arises, to issue a title policy for a Series LLC that owns property in a state that does not recognize Series LLCs.
<b>Secured Transactions</b>	The identity of the debtor is uncertain. (UCC Revised Article 9)
<b>Tax Treatment of Series LLCs</b>	There are many unanswered questions, including federal employment tax liability, the entity status of the master LLC and the Series LLC as a whole, and state sales and use tax.

## Potential Benefits of Using a Series LLC

When first introduced, series companies primarily benefitted the mutual fund industry by permitting a series mutual fund to file a single investment company registration with the SEC, with each series (and each mutual fund) operating as a separate investment company without separate registration.

**Outside the mutual fund industry, the potential benefits of Series LLCs appear to be limited:**

- In some states (not including Missouri), the state registration fees for each series may be lower than the fees for separate LLCs.
  - In Missouri, state registration fees will continue to be the same for both separate LLCs and Series LLCs.

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- Another potential benefit of a Series LLC may be the ability to protect assets of one series from claims of creditors of another series.
  - However, in states that do not recognize Series LLCs, there may be even less liability protection, and even in states that do recognize Series LLCs, in order to ensure such asset protection, the Series LLC must follow all statutory formalities.

## **Conclusion on Series LLCs**

In light of the overall uncertainty in the legal aspects of Series LLCs, an overall lack of clear benefits of using Series LLCs and the fact that each series generally functions as a separate LLC, outside the mutual fund industry, forming a Series LLC rather than several separate LLCs merits careful consideration.

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