

A Comparative and Practical Analysis of Arizona Limited Liability Companies for Asset Protection

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Introduction

Limited liability companies (LLCs) remain a relatively new and evolving legal form of entity that is remarkable for its flexibility. This paper will consider the many attributes of LLCs formed under the Arizona Limited Liability Company Act (ALLCA) and offer a comparative and practical analysis of the Arizona LLC, primarily for its role in asset protection.¹ Even though all states in the United States have enacted LLC statutes, a select few states actively promote themselves as being a more advantageous venue for formation of LLCs. This paper will compare and analyze both the statutory structure of LLCs in a sampling of those states, and will further consider the practical considerations of formation of an LLC by an Arizona resident in those states. Nevada, Delaware, and Florida are among the most prolific advertisers of the advantages of LLC formation within their state. Each touts their own perceived advantages, but a survey of the available explanatory materials provides little disclosure, let alone analysis, of the significant costs and obstacles to successful use of an LLC by a non-resident of that state. This paper will explore those touted advantages, while comparing Arizona's legal counterpart and delve into the next step of the practical considerations, including costs and potential pitfalls.

There are many attributes to LLCs, and dependent upon the options available under state law, there is flexibility as to the management structure, form of ownership, perpetual or limited duration of the entity, transferability and assignment rights, and tax treatment of the entity. These attributes may provide enhanced, or diminished as the case may be, liability limitation or asset protection. LLCs also can play a significant role in planning one's estate, succession planning for a going concern, or protection of one's progeny. In formation of an LLC, one is well advised to consider the various options available in order to maximize the value of the LLC in terms of reaching one's goals regarding the typical desire to provide liability limitation and asset protection while minimizing one's taxes.

LLCs are a valuable tool for asset protection and liability limitation. Asset protection seeks to protect valuable assets of the owner and shield them from liabilities of the owner or other entities. Nearly the mirror image of asset protection, liability limitation seeks to protect the owner from liabilities arising out of the business operations of the LLC or liabilities inherent in the nature of the assets it owns. For example, if the LLC owns real estate and a person is injured through a defective condition in the real estate, a properly structured and maintained LLC seeks to shield the owner of the LLC from liability for such claim. On the other hand, the same LLC can protect that valuable real estate from liabilities arising out of a car accident determined to be the fault of the LLC owner. This paper will focus primarily on the asset protection value of the LLC as a shield for protecting the owner's interest in valuable property.

LLCs provide asset protection pursuant to the terms of state statutes governing the LLC, as well as the concept that the LLC is a separate legal entity and is not responsible for the debts

¹ Ariz. Rev. Stat. Ann. §§ 29-601 to -857 (1992).

or actions of others. The true test of an LLC for asset protection purposes comes when the LLC's members are subject to creditor claims, and the creditors seek to collect on those claims. The creditor may choose to pursue a charging order against the LLC, which merely grants to the creditor those rights of an assignee of the member's interest, or the creditor may attempt to pierce the LLC if sufficient legal grounds exist.

Some of the principles may be best illustrated through the use of a hypothetical. Jane Doe owns residential rental property, substantial cash and marketable securities, and a retail business. She is interested in estate planning, asset protection, liability prevention, and not increasing her annual income tax obligation. Jane is 55 years old, married, and has two adult children from a prior relationship and one minor child with her current husband. Jane lives in Tucson, Arizona with her family. She has \$500,000 in life insurance and her assets are valued at approximately \$1,000,000.

Limited Liability Company Basics

Limited Liability

A significant characteristic of LLCs is that of limited liability. The LLC shares this characteristic in common with corporations and limited partnerships, at least as to the limited partners. Limited liability protects the owners from the liabilities of the entity.

The concept of limited liability in the United States is traceable from English Common Law, the Equal Protection Clause of the United States Constitution, and the 14th Amendment to the United States Constitution.² The first reported United States Supreme Court case that applied the United States Constitution's contract clause³ to a corporation is *Trustees of Dartmouth College v. Woodward*.⁴ The treatment of corporations as living persons entitled to sue and be sued in their own name was first approved by the United States Supreme Court in 1886 in the case of *Santa Clara County v. Southern Pacific Railroad Company*.⁵ Subsequently, the recognition of corporations, and ultimately LLCs, has been codified in state statutes.

Inside liabilities are liabilities which arise from operations of the LLC's business or arise out of assets owned by the LLC.⁶ The goal is to protect the owner from being held responsible for the LLC's obligations. This concept is generally known as limited liability, but is often confused with its mirror image, asset protection.

² Reuven S. Avi-Yonah, *The Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility*, 30 DEL. J. CORP. L. 767 (2005).

³ U.S. Const. art. I, § 10, cl. 1.

⁴ 17 U.S. 518 (1819).

⁵ 118 U.S. 394 (1886).

⁶ Domenick R. Lioce, *Chinks in the Armor: Current Trends in Limited Liability Company Structure After Olmstead*, 85-JAN. FLA. B.J. 36 (2011).

In each of the subject states, there is a specific statute providing that LLC members and managers are not liable for the debts and liabilities of the LLC.⁷ Arizona, Delaware, and Florida also include the term obligation, in addition to debt and liability.⁸ Arizona protects employees, officers, or agents of an LLC in addition to members and managers.⁹ Arizona goes further to list the types of liabilities the statute protects as contracts, torts, judgments, decrees, orders of a court, and otherwise as a catchall.¹⁰ Delaware also lists several liabilities it protects from, including contract, tort, and otherwise.¹¹ Florida states that it protects members and managers from judgments, decrees, orders of a court, and any other manner of liability.¹² Nevada, while still providing blanket protection, does not list the ways liabilities could arise against an LLC.¹³ While the four statutes limiting liability under consideration here go into varying degrees of specificity, the differences are immaterial. The more specific language in Arizona's, Delaware's, and Florida's statutes does not add more protection than the shorter and equally broad Nevada statute. It is also important to remember that these statutes do not protect a member or manager from liabilities resulting from that person's actions.

The use of a manager to manage an LLC helps to reduce the owner's potential liabilities. The owner of an LLC can avoid liability for personal acts by hiring a manager who will run the LLC. That way, the manager will be responsible for any liabilities created due to the manager's actions and not the owner. This scenario is especially appealing when an LLC owns real estate. Many real estate owners are elderly and cannot adequately monitor rental properties. The use of a manager-managed LLC will provide the most asset protection and limited liability for the LLC owners.

Using LLCs to limit liability is important for Jane to protect her cash and marketable securities from potential lawsuits that could arise from an accident on her rental property or through her retail business. Keeping these three categories in separate LLCs is imperative to prevent a problem with one category from affecting the other two. Jane may also want to have a manager manage the LLCs for the rental property and retail business to further separate herself from potential liabilities for personal acts.

Management

In addition to consideration of the asset protection value and cost-benefit analysis of forming an LLC in a state in which the owner does not live, it is also important to consider the management structure available for management of the LLC. In Arizona, Nevada, Delaware, and Florida, LLCs may be managed by managers or by members.¹⁴ Managers need not be

⁷ Ariz. Rev. Stat. Ann. § 29-651 (2013); Nev. Rev. Stat. Ann. § 86.371 (West 2011); Del. Code Ann. tit. 6, § 18-303 (West 2013); Fla. Stat. Ann. § 608.4227 (West 2013).

⁸ Ariz. Rev. Stat. Ann. § 29-651 (2013); Del. Code Ann. tit. 6, § 18-303 (West 2013); Fla. Stat. Ann. § 608.4227 (West 2013).

⁹ Ariz. Rev. Stat. Ann. § 29-651 (2013).

¹⁰ *Id.*

¹¹ Del. Code Ann. tit. 6, § 18-303 (West 2013).

¹² Fla. Stat. Ann. § 608.4227 (West 2013).

¹³ Nev. Rev. Stat. Ann. § 86.371 (West 2011).

¹⁴ Ariz. Rev. Stat. Ann. § 29-681 (2013); Nev. Rev. Stat. Ann. § 86.291 (West 2011); Del. Code Ann. tit. 6, §§ 18-402 (West 2013); Fla. Stat. Ann. § 608.422 (West 2013).

members, which allows for separation between management and ownership.¹⁵ The default rule in these four states vests management of an LLC in the members, but a provision in the LLC's articles of organization or LLC agreement can elect for the LLC to be manager-managed.¹⁶

With an LLC, it is possible for one member in a multi-member LLC to serve as manager and to require a supermajority vote to remove the manager through language in the articles of organization. The supermajority vote requirement secures the key member's position as a decision-maker for the LLC. This scenario is particularly useful when there are multiple members, but one member wants to maintain control of the entity. Securing one member as manager of a multi-member LLC with supermajority voting is also useful for asset protection. Any one member would not be able to take control of the LLC, thus reducing the likelihood of a creditor successfully attacking the LLC as the alter ego of any one member.

Jane can use manager-managed LLCs for her rental property and retail business to utilize the flexibility of having a manager that is not an owner of either LLC. Using manager-managed LLCs also allows Jane to decide who will manage the LLC without the requirement that every LLC owner be a manager. This is useful if Jane has an investor that is a part-owner of the retail business because Jane can maintain control of the business through the managers.

Duration

When LLCs were first being introduced in many states, it was required that LLCs have a limited life or stated termination date.¹⁷ This helped distinguish LLCs from corporations and was necessary for determining how an LLC would be taxed. Creation of the check-the-box rules by the IRS eliminated any concern or requirement to limit the duration of the LLC. Now, state statutes in Arizona, Nevada, Delaware, and Florida provide that an LLC is deemed to be of perpetual duration unless the articles of organization, operating agreement, or LLC agreement provides otherwise.¹⁸

Perpetual duration is also important for the longevity of an operating business or for use in connection with estate planning. The perpetual duration of LLCs allows multiple generations of owners to carry on a business. This provides consistency for both the LLC's owners and customers. Estate planning needs LLCs to have a perpetual duration because a person's lifespan cannot be predicted. An LLC used to protect one's assets and distribute them on the owner's death would be useless if it ended before the owner died. Therefore, the perpetual duration of LLCs saves time and money while providing LLC owners with peace of mind. Having an LLC with a fixed term of years would defeat the effectiveness of the LLC for either liability limitation or asset protection.

¹⁵ Ariz. Rev. Stat. Ann. § 29-681 (2013); Nev. Rev. Stat. Ann. § 86.291 (West 2011); Del. Code Ann. tit. 6, §§ 18-402 to 18-403 (West 2013); Fla. Stat. Ann. § 608.402(18) (West 2013).

¹⁶ Ariz. Rev. Stat. Ann. § 29-681 (2013); Nev. Rev. Stat. Ann. § 86.291 (West 2011); Del. Code Ann. tit. 6, §§ 18-402 (West 2013); Fla. Stat. Ann. § 608.422 (West 2013).

¹⁷ J. William Callison and Maureen A. Sullivan, *Stated Period of Duration*, LTD. LIAB. CO. § 3:5 (2013).

¹⁸ Ariz. Rev. Stat. Ann. § 29-781 (2013); Nev. Rev. Stat. Ann. § 86.155 (West 2011); Del. Code Ann. tit. 6, § 18-801 (West 2013); Fla. Stat. Ann. § 608.441 (West 2013).

Jane can utilize LLCs and take advantage of their perpetual duration to meet her goals. LLCs will help with her estate planning because they will survive her death and allow her to split up different assets by allocating ownership interests to her husband and children. Jane's goals of asset protection and liability prevention are also furthered by LLCs with a perpetual duration because the LLCs will continue to protect assets indefinitely. Therefore, Jane does not have to worry about renewing her LLCs if they had a stated termination date.

Transfer of Interests

Each of the subject states follow the same default rules regarding how an LLC member's interest may be transferred. Arizona allows assignment, in whole or in part, of an LLC interest.¹⁹ This default rule can be amended by a provision in the LLC's operating agreement.²⁰ An assignee does not have the rights of a member unless the LLC admits that person as a member.²¹ Therefore, an assignee in Arizona only gets those distributions that the assignor would have gotten.²² Nevada follows the same rule Arizona does on transferability and allows the default rule to be changed in the articles of organization or operating agreement.²³ Delaware also follows Arizona and Nevada's default rule by making an LLC interest personal property that is assignable in whole or in part.²⁴ An assignee may become a member if all of the current members of the LLC consent.²⁵ Florida similarly makes an LLC interest personal property.²⁶ Florida's rule on assignment also follows that of Arizona, Nevada, and Delaware.²⁷ For an assignee to become a member of an LLC in Florida, all members except the assignor must consent.²⁸

Jane may take comfort in knowing that any co-owners of her LLCs cannot transfer their management rights, unless the LLC Operating Agreement provides otherwise or the remaining LLC members consent. This is important for Jane because it is another way that she can control her rental property and retail business. The rules on transferring a membership interest are also useful for estate planning. These rules make it where the people Jane wants to make ownership decisions cannot unilaterally make someone else a member of an LLC.

Tax Treatment

LLCs enjoy flexibility in selection of their tax treatment for both federal and state income tax purposes. After formation of an LLC, the LLC may file an IRS Form 8832 in order to elect its tax treatment.²⁹ This form represents the check-the-box rules that the IRS implemented in

¹⁹ Ariz. Rev. Stat. Ann. § 29-732 (2013).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Nev. Rev. Stat. Ann. § 86.351 (West 2011).

²⁴ Del. Code Ann. tit. 6, §§ 18-701 to -702 (West 2013).

²⁵ §§ 18-702(a), -704(a)(2).

²⁶ Fla. Stat. Ann. § 608.431 (West 2013).

²⁷ § 608.432.

²⁸ § 608.433(1).

²⁹ I.R.S. Form 8832 Instructions (Jan. 2012).

1997.³⁰ Generally, LLCs, dependent upon the number of owners, may choose between being treated as a disregarded entity, partnership, C corporation, or S corporation.³¹ In order to be treated as a disregarded entity, which is reported for income tax purposes the same as a sole proprietorship, there must only be one member.³² In community property states, one has the option of treating a husband and wife as one member or as two members.³³ To be treated as a partnership, there must be at least two members.³⁴ C corporation tax treatment is available to an LLC with any number of members, but to be treated as a subchapter S corporation, the LLC must have no more than 100 members who are required to be U.S. citizens or residents.³⁵ Other forms of members may also qualify under the S corporation rules, but those are beyond the scope of this paper.³⁶

If the LLC will be utilizing the default rules regarding its tax treatment, it need not file Form 8832.³⁷ The default rules provide that an LLC with one member will be treated as a disregarded entity, and if there are two or more members, it will be treated as a partnership.³⁸ If Form 8832 is to be filed, it must be filed within 75 days after the date for which the tax treatment is desired, or no more than 12 months prior to a future date upon which the tax treatment will take effect.³⁹ However, there are liberal provisions which allow the IRS to accept late filed tax elections if one meets the requirements for late election relief.⁴⁰

Prior to the much anticipated check-the-box rules, the IRS used a balancing test to determine how an LLC would be taxed.⁴¹ Looking at the four corporate characteristics of continuous life, centralized managed, limited liability, and free transferability of interests, an LLC that more resembled a corporation than a partnership based on these characteristics would be taxed as a corporation.⁴² This was essentially the same test used by the IRS for taxation of limited partnerships.⁴³ Accordingly, as all LLCs had a goal of limiting liability and minimizing taxes, one had to exercise care to avoid having enough of the corporate characteristics to resemble a corporation. Most practitioners drafted their LLCs to be of limited duration and non-transferable in order to avoid the generally adverse tax treatment of being taxed as a C-corporation.

The default rules regarding taxation in Arizona, Nevada, Delaware, and Florida are comparable, depending on if a state income tax is used. Arizona LLCs are to be taxed as a disregarded entity, a partnership, or a corporation, as determined by the provisions of the United

³⁰ Simplification of Entity Classification Rules, 61 FED. REG. 66584-01 (Dec. 18, 1996).

³¹ I.R.S. Form 8832 Instructions, *supra* note 29.

³² *Id.*

³³ Rev. Proc. 2002-69, 2002-2 C.B. 831.

³⁴ I.R.S. Form 8832 Instructions, *supra* note 29.

³⁵ I.R.C. § 1361 (West 2013).

³⁶ *Id.*

³⁷ I.R.S. Form 8832 (Jan. 2012).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Simplification of Entity Classification Rules, *supra* note 30.

⁴² Republication, 32 Fed. Reg. 15371- 15376 (Nov. 3, 1967).

⁴³ *Id.*

States Internal Revenue Code of 1986 in effect on January 1, 2012.⁴⁴ Nevada does not have a provision setting forth a tax treatment because it does not charge a state income tax.⁴⁵ However, Nevada LLCs will still have a tax designation for federal income taxes. In Delaware, all LLCs are classified as partnerships, unless a different classification is elected or used for federal income tax purposes.⁴⁶ If an LLC uses a classification other than a partnership for federal income tax purposes, Delaware will recognize that tax classification.⁴⁷ In Florida, LLCs have the same choice of tax treatment as in all other states; however, Florida has no individual income tax.⁴⁸ However, if an LLC is taxed as a corporation in Florida, it is subject to either a 5.5% tax or an alternative minimum tax on its income for the privilege of conducting business in the state of Florida.⁴⁹

Jane has the flexibility to choose the best tax treatment for her LLCs in each of the comparison states. If Jane lived in Nevada, she would not pay state taxes, but would still need to choose a tax treatment for her LLCs for federal taxes. Arizona, Delaware, and Florida will use the tax treatment Jane chooses for federal taxes to apply to state taxes.

Dissolution

It is not difficult to dissolve an LLC. In fact, an LLC can be inadvertently dissolved by simply failing to file an annual report in some states. Not paying annual fees will also result in an LLC being dissolved. Therefore, it is important to know the statutes regarding dissolution in an LLC's formation state.

In Arizona, an LLC can be easily dissolved through the occurrence of any of the following events: 1) an event listed in the articles of organization or operating agreement; 2) the written consent of over one-half of the members and of a member or members who own over one-half of the value of the LLC's assets; 3) judicial or administrative dissolution; or 4) the withdrawal of the last LLC member unless all assignees appoint a member in writing.⁵⁰ Note that it only takes the agreement of a majority of members to dissolve an Arizona LLC.⁵¹ Once a dissolution event occurs, the LLC must be terminated through filing articles of termination, a court decree, or administrative dissolution.⁵² The articles of termination cannot be filed until "all of the known property and assets of an LLC have been applied and distributed."⁵³ A court may only dissolve an LLC when a member asks it to and when one of the following circumstances exists: 1) it is not reasonably practicable for the LLC to continue operating; 2) the LLC management team is deadlocked and the LLC, the LLC's business, or the members are suffering or will possibly suffer irreparable injury; 3) the LLC members or managers are engaged in illegal

⁴⁴ Ariz. Rev. Stat. Ann. §§ 29-857, 43-105(A) (2013).

⁴⁵ *About Taxes and FAQ's*, NEV. DEP'T OF TAX'N, <http://tax.state.nv.us/About%20taxes%20and%20FAQs.html#nrsnac> (last visited July 30, 2013).

⁴⁶ Del. Code Ann. tit. 6, § 18-1107(a) (West 2013).

⁴⁷ *Id.*

⁴⁸ Fla. Stat. Ann. §§ 608.471(2), 220.02 (West 2013).

⁴⁹ Fla. Stat. Ann. §§ 608.471(1), 220.02 (West 2013); Fla. Admin. Code r. 12C-1.011 (2013).

⁵⁰ Ariz. Rev. Stat. Ann. § 29-781 (2013).

⁵¹ *Id.*

⁵² § 29-782.

⁵³ § 29-783.

or fraudulent behavior that is connected to the LLC's business; or 4) LLC assets are not being used to further the LLC's business.⁵⁴ An Arizona LLC can be administratively dissolved if an LLC: 1) does not amend its articles of organization; 2) does not comply with required publications; 3) does not have a statutory agent or known place of business for sixty days or more; 4) does not update its statutory agent or known place of business with the commission within sixty days of a change or does not notify the commission within sixty days of a statutory agent resigning; 5) does not respond to interrogatories; or 6) does not pay required fees or penalties within sixty days of the due date.⁵⁵ Arizona allows an LLC that was administratively dissolved to apply for reinstatement within six years of the dissolution.⁵⁶ Arizona also makes a reinstatement relate back to the date of the administrative dissolution, thus making it as if the LLC was never dissolved.⁵⁷ This is an extremely important section because it provides Arizona LLC owners with an opportunity to avoid having a lapse in the LLC protection.

A Nevada LLC will be dissolved when a time specified in the articles of organization occurs, when an event described in the operating agreement happens, when all of the members agree or when a court enters a decree of judicial dissolution.⁵⁸ Unless the articles of organization or operating agreement provide otherwise, a member's status does not terminate and the LLC is not dissolved if a member dies, retires, resigns, is expelled, or goes bankrupt.⁵⁹ When the sole member of an LLC dies, that member's interest passes to the member's heirs, successors, and assigns.⁶⁰ A Nevada district court can dissolve an LLC "whenever it is not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement."⁶¹ Nevada's requirements for the articles of dissolution are slightly longer, but essentially the same as Arizona's. Nevada requires the articles of dissolution to state the LLC name; that the LLC's debts, obligations, and liabilities have been paid or taken care of; that the LLC's property and assets have been correctly distributed; and that the LLC has no suits pending against it.⁶²

A Delaware LLC will be dissolved when one of the following events occurs: 1) the dissolution date in the LLC agreement transpires; 2) an event listed in the LLC agreement comes about; 3) LLC members owning over two-thirds of the LLC's profits vote in favor of dissolution; 4) the LLC has no members and a personal representative of the last remaining member does not continue the LLC; or 5) a court enters a decree of judicial dissolution.⁶³ A Delaware court can dissolve an LLC when it is no longer reasonably practicable for the LLC to continue operating.⁶⁴

A Florida LLC must be dissolved when one of the following events occurs: 1) the articles of organization or operating agreement set a date of dissolution; 2) an event listed in the articles

⁵⁴ § 29-785.

⁵⁵ § 29-786.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Nev. Rev. Stat. Ann. § 86.491(1) (West 2011).

⁵⁹ § 86.491(4).

⁶⁰ § 86.491(5).

⁶¹ § 86.495.

⁶² § 86.531.

⁶³ Del. Code Ann. tit. 6, § 18-801 (West 2013).

⁶⁴ § 18-802.

of organization or operating agreement; 3) the LLC members unanimously consent; 4) the LLC has no members, unless the personal representative of the last remaining member continues the LLC; or 5) a court enters an order of dissolution.⁶⁵ A Florida circuit court also has the ability to dissolve an LLC if a preponderance of the evidence shows “that it is not reasonably practicable to carry on the business of the [LLC] in conformity with the articles of organization or the operating agreement.”⁶⁶ A Florida LLC may be administratively dissolved if: 1) the LLC does not file its annual report or pay the annual report filing fee; 2) the LLC does not have a registered agent or registered office for at least 30 days; 3) the LLC does not update its registered agent or registered office with the Department of State within 30 days of a change or resignation; 4) the LLC does not respond to interrogatories from the Department of State within thirty days; or 5) the LLC’s stated duration has concluded.⁶⁷ Florida lists grounds for judicial dissolution of an LLC as follows: 1) the LLC used fraud to get its articles of organization or abused its authority; 2) the LLC management is unable to resolve a dispute and the LLC is suffering or is threatened to suffer irreparable injury or there is misappropriation or waste of the LLC’s assets; 3) the LLC is insolvent and has returned an unsatisfied judgment to a creditor or the LLC is insolvent and has acknowledged a creditor’s claim in writing; or 4) the LLC asks the court to oversee its voluntary dissolution.⁶⁸

An Arizona LLC will be easier for Jane because she will not have to worry about her LLCs being dissolved due to a failure to comply with annual requirements or fees. While Jane could reinstate her LLCs after dissolution, this creates extra work that is unnecessary in Arizona. In addition to extra work, Jane would have to pay to have each LLC reinstated.

Identity Theft Protection

An additional, but little known, benefit of using an LLC is to assist in combating identity theft. Because an LLC can be disregarded for tax purposes, yet have its own taxpayer identification number, one may utilize an LLC to own assets, investments, or bank accounts.⁶⁹ Through using the LLC name and taxpayer identification number instead of an individual’s name and social security number, one can reduce the instances in which one’s name and social security number are given to financial institutions or other third parties. According to a McAfee study based on data breaches, the second worst place to disclose a social security number is banking and financial institutions, with state and local governments also in the top five.⁷⁰

Due to IRS Form 1099-S filing requirements, an individual owning real estate is required to provide their social security number in connection with any real estate sales transaction.⁷¹ A person who owns real estate in his or her individual name is therefore required by law to give out his or her name, address, and social security number. However, if that person owns real estate

⁶⁵ Fla. Stat. Ann. § 608.441 (West 2013).

⁶⁶ *Id.*

⁶⁷ § 608.448.

⁶⁸ § 608.449.

⁶⁹ I.R.S. Pub. 1635 (Rev. 4-2012).

⁷⁰ *Social Security Number, IDENTITY THEFT 911*, <http://www.idt911.com/KnowledgeCenter/ProtectYourself/TipDetail.aspx?a=%7B7FE75FF5-3B33-4E0D-BD2D-38B44AA24A46%7D> (last visited Aug. 6, 2013).

⁷¹ I.R.S. Form 1099-S Instructions (Dec. 18, 2012).

through an LLC, only the LLC's name, address, and taxpayer identification number will be disclosed. Other problematic situations occur when completing IRS Form 1099-MISC for independent contractors, IRS Form W-9 for customers or individuals, and IRS Form W-2 for employees.⁷² Through the careful use of LLCs, it is possible for one to substantially limit the number of instances where one's name, address, and social security number are provided to third parties. And, because the Internal Revenue Service connects an LLC that is taxed as a disregarded entity to the owner's social security number, the use of the LLC for these purposes creates no additional paperwork and no additional taxes.⁷³

It is additionally possible in Arizona to use an LLC to own real estate and completely obscure from the public the underlying or beneficial owner.⁷⁴ This result was made possible by a 2010 change in the Arizona Corporation Commission rules that permit an LLC to be owned by a trust without disclosure of the trustees.⁷⁵ Accordingly, in Arizona, one may create a special trust and have it taxed as a grantor trust for income tax purposes, thus making the trust disregarded from the owner for tax purposes.⁷⁶ Such a grantor trust may properly use the grantor's social security number, which allows the LLC solely owned by that trust to file a tax election as a disregarded entity, if that is the best tax treatment for the situation.⁷⁷ If the grantor trust is the sole member of the LLC, and if there is no manager, then the only person disclosed in the public record to be associated with the LLC is the organizer.⁷⁸ Many attorneys serve as organizers and as statutory agent for a client's LLC, thus making it possible to create an LLC where the beneficial owner does not appear in the public record.⁷⁹ Further, if the LLC has acquired a mailing address through use of a mail service, it is possible for the LLC to have no direct tie to the actual underlying owner.⁸⁰ In Arizona, LLCs are required to have a street address, which prevents the use of a post office box.⁸¹ However, there are many businesses that provide mailbox services, such as The UPS Store, that give a street address and suite number to what is ostensibly a post office box.⁸² Florida requires a physical and mailing address for LLCs, while Nevada and Delaware do not require an address for the LLC in the Articles of Organization or Certificate of Formation.⁸³

⁷² I.R.S. Form 1099-MISC Instructions (Feb. 14, 2013); I.R.S. Form W-9 (Dec. 2011); I.R.S. Form W-2 Instructions (Mar. 8, 2013).

⁷³ *Single Member Limited Liability Companies*, IRS, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Single-Member-Limited-Liability-Companies> (last updated Aug. 6, 2013).

⁷⁴ Interview with Charles R. Smith, Attorney at Law, Charles R. Smith, P.L.L.C., in Tucson, Ariz. (July 6, 2013).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Articles of Organization*, ARIZ. CORP. COMM'N, <http://www.azcc.gov/Divisions/Corporations/forms/starpas/formsSTPS/L010-Articles-of-Organization.pdf> (last updated 2010).

⁸² *Mailbox Services*, THE UPS STORE, <http://www.theupsstore.com/mailboxes/Pages/index.aspx> (last visited Aug. 12, 2013).

⁸³ *Articles of Organization for Florida LLC*, FLA. DIV. OF CORPS., <http://form.sunbiz.org/pdf/cr2e047.pdf> (last updated Sept. 2010); *Articles of Organization*, NEV. SECRETARY OF ST., <http://nvsos.gov/Modules/ShowDocument.aspx?documentid=1004> (last updated Aug. 31, 2011); *LLC Certificate of Formation*, DEL. DIV. OF CORPS., <http://corp.delaware.gov/llcform09.pdf> (last updated July 2004).

If one wishes to purchase real estate and have no public record of the true owner of the real estate, one may utilize the LLC as described above for this purpose. One could even go to the additional step of having a third party serve as the trustee of the grantor trust, which would eliminate the need for identification of the true beneficial owner for execution of purchase documentation.⁸⁴ In Arizona, ownership of real estate without disclosing the underlying beneficial owner is not possible through the direct ownership by a trust due to the trust disclosure laws.⁸⁵ Specifically, Ariz. Rev. Stat. Ann. § 33-404 provides that when a trust acquires or conveys an interest in real estate, the current beneficiary of the trust must be disclosed.⁸⁶ However, there is no such requirement for when an LLC acquires real estate, even if the LLC is owned by a trust.⁸⁷ Similar to Arizona, Florida requires the current beneficiary of a trust to be disclosed, otherwise the trustee, and not the trust, is deemed to own the property.⁸⁸ Nevada and Delaware do not appear to have comparable requirements about disclosing the beneficiary of a trust.

Another important aspect of identity theft protection is the amount of privacy an LLC provides its managers and members when it is not owned by another entity or trust. The Articles of Organization or Certificate of Registration in Arizona must state the name and address of each manager and 20% or more owner of the LLC if the LLC is manager-managed.⁸⁹ For a member-managed LLC in Arizona, the name and address of each member must be disclosed.⁹⁰ Arizona also requires a domestic or foreign LLC to amend the Articles of Organization or Certificate of Registration within 30 days of a change in managers or 20% or more owners for a manager-managed LLC, or in members for a member-managed LLC.⁹¹ Nevada requires LLCs to include the name and address of each manager for manager-managed LLCs or the name and address of each member for member-managed LLCs in the Articles of Organization.⁹² Nevada domestic and foreign LLCs also must file an initial and annual list containing the names, titles, and addresses of all managers or managing members.⁹³ Delaware does not require disclosure of the names or addresses of a domestic or foreign LLC's managers or members.⁹⁴ Florida does not require an LLC to include the names or address of managers or members in the Articles of Organization.⁹⁵ The annual report, on the other hand, must have the names and addresses of managing members or managers for both domestic and foreign LLCs.⁹⁶ LLCs in Florida are required to keep records of the name and address of each member, manager, and managing member for use by members, their agents and attorneys, and managers.⁹⁷ The Certificate of Authority for a foreign LLC in Florida must include the business address of each managing

⁸⁴ Interview with Charles R. Smith, *supra* note 74.

⁸⁵ Ariz. Rev. Stat. Ann. § 33-404 (West 2013).

⁸⁶ *Id.*

⁸⁷ Interview with Charles R. Smith, *supra* note 74.

⁸⁸ Fla. Stat. Ann. § 689.07 (West 2013).

⁸⁹ Ariz. Rev. Stat. Ann. §§ 29-632, -802 (West 2013).

⁹⁰ *Id.*

⁹¹ §§ 29-633, -805.

⁹² Nev. Rev. Stat. Ann. § 86.161 (West 2011).

⁹³ §§ 86.263, .269, .5461, .5464.

⁹⁴ Del. Code Ann. tit. 6, §§ 18-201, -902 (West 2013).

⁹⁵ Fla. Stat. Ann. § 608.407 (West 2013).

⁹⁶ § 608.4511.

⁹⁷ § 608.4101.

member or manager if the LLC is manager-managed.⁹⁸ Also, a foreign LLC must amend its Certificate of Authority within 30 days if any of the information in it changes.⁹⁹

Jane can use LLCs to protect her identity. This is important for Jane so that any renters from her rental property or customers from her retail business do not know where her family lives. Protecting Jane's home address from public view will only be necessary in the event of a disgruntled renter or customer, but should that situation arise, the protection is vital. Jane will also gain protection from identity theft through the use of LLCs. To obtain this identity theft protection, Jane should create different grantor trusts to own each LLC, and Jane can be the trustee and beneficiary of the trusts. This way, the only information disclosed will be regarding the LLC or the trust.

Asset Protection Overview

LLCs are increasingly being used for purposes of asset protection. Asset protection relates to the ability of the LLC to preserve assets and to keep them from being used to satisfy debts of the owner.¹⁰⁰ A creditor attacking an LLC owned by a judgment debtor may seek a charging order, foreclosure of the LLC interest, or dissolution of the LLC, depending on the remedies allowed by state law.¹⁰¹ The success of these attacks has turned largely upon whether the LLC has multiple members and whether the use of a charging order is the exclusive remedy in that state for collection of a creditor claim.

During the recent economic downturn that commenced in December 2007, many people with leveraged real estate discovered that they were facing substantial deficiencies from foreclosure of commercial real estate.¹⁰² Many of these individuals, as well as other individuals with assets to protect, turned to using LLCs in order to protect their remaining assets. Many states, such as Nevada and Delaware, took this as an opportunity to advertise as good states within which to form LLCs in order to protect one's assets. However, as with a lot of advertised goods or services, caveat emptor. While each state provides certain shields for the LLC's assets against the owner's liabilities, the value of that shield depends upon the proper formation and good standing of the entity. A prospective LLC owner may not learn of the cost and annual requirements for maintenance of an LLC until after formation. However, Arizona, unlike the comparative states, quietly has no annual maintenance or filing requirements and no annual fees for an LLC.¹⁰³ The reason states with annual requirements provide less asset protection is because an LLC may be administratively dissolved for failure to file an annual report or to pay

⁹⁸ § 608.503.

⁹⁹ § 608.504.

¹⁰⁰ Mario A. Mata, *Use of FLPS and LLCs in Asset Protection Planning*, 18 NO. 2 PRAC. TAX LAW. 15 (2004).

¹⁰¹ Elizabeth M. Schurig, *Asset Protection Planning for the Family Business Owner*, SP001 A.L.I.-A.B.A. 641 (July 9-11, 2008).

¹⁰² *The Recession of 2007-2009*, U.S. BUREAU OF LAB. STATS. (Feb. 2012), http://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf.

¹⁰³ *Corporations Division Frequently Asked Questions*, ARIZ. CORP. COMM'N, <http://www.azcc.gov/Divisions/Corporations/faq.asp> (last visited Aug. 8, 2013); Nev. Rev. Stat. Ann. § 86.263 (West 2011); Del. Code Ann. tit. 6, § 18-1107 (West 2013); Fla. Stat. Ann. § 608.4511 (West 2013).

an annual fee.¹⁰⁴ When an LLC is dissolved, the owner loses the protection from creditor attacks that is provided by the separate legal existence of the entity. Some states do provide procedures to reinstate an LLC and to make the reinstatement effective on the dissolution date, but this is more costly and time consuming than forming an LLC in a state without annual requirements.¹⁰⁵

For purposes of asset protection, it generally does not make much sense to use an LLC that was formed in a state where you do not reside. This is because there are additional costs and complications that only arise when the LLC owner does not live in the state where the LLC was formed. If the state you reside in does not make a charging order the exclusive remedy for creditors, then the additional costs and complications may be outweighed by the additional protection such a charging order would give. All states require an LLC to have a registered agent with a physical address in the LLC formation state.¹⁰⁶ One can obtain an in-state statutory agent for a fee, which is normally annual.

Asset protection is the most important reason for Jane to form LLCs for her rental property, money, and retail business. The LLC assets will be protected from personal creditors of Jane or her family and from creditors of the other LLCs. Conversely, the LLCs will also protect Jane's personal assets, and those of her family, from debts of the LLCs. This two-way asset protection is incredibly valuable, but the strength of the protection depends on the laws of each state. In deciding which state to form Jane's LLCs in, she must consider whether the laws of that state are favorable and whether that state charges high fees or has additional requirements.

Creditor Attacks

Charging Orders

A charging order is an order that is issued by a court allowing a creditor to receive any distributions from an LLC to the debtor member.¹⁰⁷ A charging order does not give the creditor power to force the LLC to make a distribution.¹⁰⁸ The creditor is not given any of the rights of a member of the LLC, except the right to collect distributions made to the debtor member.¹⁰⁹ In this way, a charging order protects the debtor member's role in the LLC. The LLC's members or managers are also free to decide whether or not to make any distributions.¹¹⁰ Thus, a creditor could be stuck without relief when a charging order is the creditor's only remedy.

¹⁰⁴ Nev. Rev. Stat. Ann. § 86.272, .274 (West 2011); Del. Code Ann. tit. 6, § 18-1108 (West 2013); Fla. Stat. Ann. § 608.4511, .512 (West 2013).

¹⁰⁵ Nev. Rev. Stat. Ann. § 86.276 (West 2011); Del. Code Ann. tit. 6, § 18-1109 (West 2013); Fla. Stat. Ann. § 608.5135 (West 2013).

¹⁰⁶ *E.g.*, *What is a Registered Agent?*, MYCORPORATION, <http://www.mycorporation.com/learningcenter/what-is-a-registered-agent.jsp> (last visited Aug. 13, 2013); *Accord Registered Agent: What You Need to Know*, STARTUPNATION, <http://www.startupnation.com/series/99/9066/registered-agent-information.htm> (last visited Aug. 13, 2013).

¹⁰⁷ Schurig, *supra* note 101.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

Arizona makes a charging order the exclusive remedy for judgment creditors when trying to satisfy a judgment from an LLC interest.¹¹¹ The exclusive remedy language was added to the charging order statute in 1997.¹¹² The charging order entitles judgment creditors to the remaining amount of the judgment plus interest.¹¹³ However, judgment creditors only have the right of an assignee of the member's LLC interest, meaning the judgment creditor can only receive payments the LLC would have distributed to the member.¹¹⁴ An assignee can appoint an agent if there are no members or managers of an LLC on dissolution.¹¹⁵

Nevada also makes a charging order the exclusive remedy of a judgment creditor against a debtor's LLC interest.¹¹⁶ Nevada goes further to prohibit the debtor's LLC interest that is subject to the charging order from being foreclosed and to prohibit a court from ordering any remedy other than a charging order.¹¹⁷ In this way, Nevada's charging order statute provides the same protections as Arizona's, but it also prevents the Nevada courts from interpreting the statute favorably for creditors.

Delaware makes a charging order the exclusive remedy, but also makes a charging order a lien against the debtor's LLC interest.¹¹⁸ While the Delaware law was changed in 2005 to not mention foreclosure, it is still possible for Delaware courts to decide that foreclosure is a remedy because a charging order is a lien.¹¹⁹ Due to a charging order being a lien in Delaware, the protection for debtors is not as strong in Delaware as it is in the other comparison states.

Florida also makes a charging order the exclusive remedy, except for single-member LLCs.¹²⁰ A charging order may be for the unsatisfied amount of a judgment and constitutes a lien on the judgment debtor's LLC interest.¹²¹ Florida also states that the charging order statute shall not limit equitable principles, including fraudulent transfers, alter ego, equitable lien, and constructive trust.¹²²

Jane is concerned about what a creditor could do in terms of intercepting any of her income or assets held by her LLCs if she incurs a personal creditor obligation she is otherwise unable to pay. State statutes making a charging order the exclusive remedy for personal creditors of Jane addresses these concerns. Through a charging order, Jane's creditors will obtain the right to receive any LLC distributions made to Jane, but the creditors will not have any management authority. If Jane forms her LLCs in Arizona or Nevada, a charging order will be the only remedy that Jane's creditors can obtain. If Jane's LLCs are formed in Delaware, a charging order is the exclusive remedy, but Delaware courts could foreclose on Jane's LLC interest

¹¹¹ Ariz. Rev. Stat. Ann. § 29-655 (2013).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ § 29-781.01.

¹¹⁶ Nev. Rev. Stat. Ann. § 86.401 (West 2011).

¹¹⁷ *Id.*

¹¹⁸ Del. Code. Ann. tit. 6, § 18-703 (West 2013).

¹¹⁹ Carter G. Bishop & Daniel S. Kleinberger, *Members, LTD. LIAB. CO.* ¶ 5.04 (2013).

¹²⁰ Fla. Stat. Ann. § 608.433 (West 2013).

¹²¹ *Id.*

¹²² *Id.*

because the Delaware statute makes a charging order a lien. If Jane formed her LLCs in Florida, a charging order would be the exclusive remedy, but would also be a lien on Jane's LLC interest. The main problem with Florida for Jane is that the statute does not make a charging order the only creditor remedy for single-member LLCs. This issue will be discussed in more detail in the next section.

Single- v. Multi-Member LLCs

The policy reasons behind the charging order focus on protecting the non-debtor members.¹²³ The reasoning is that these members have the freedom to do business with the people they choose, so the charging order protects them from a creditor getting management rights in an LLC.¹²⁴ Because of this, some states, including Florida, make a distinction between single- and multi-member LLCs in the charging order statute.¹²⁵ Other states, including Arizona, Nevada, and Delaware, choose to not mention the issue or to apply the charging order statute to both single- and multi-member LLCs.¹²⁶ When a charging order statute is silent as to single-member LLCs, a court can apply the reasoning behind making a charging order the exclusive remedy and can decide to not protect a single-member LLC.¹²⁷

Arizona makes a charging order the exclusive remedy without a distinction between single- and multi-member LLCs, so an Arizona court could make that distinction and apply a different rule for single-member LLCs.¹²⁸ To avoid this uncertainty, an LLC should have at least two members, which can be spouses or relatives as long as both members are legitimate co-owners.¹²⁹ Nevada specifically makes a charging order the exclusive remedy for judgment creditors and applies it to both single- and multi-member LLCs.¹³⁰ Delaware is similar to Arizona in that it does not distinguish between single- and multi-member LLCs, thus leaving the courts with an opportunity to treat single-member LLCs differently than multi-member LLCs.¹³¹ Florida does not protect single member LLCs as much as multi-member LLCs.¹³² If a judgment creditor convinces a court that a charging order will not satisfy the judgment within a reasonable amount of time, then a court may order foreclosure of a single-member LLC interest.¹³³ When a judgment debtor's LLC interest is sold at a foreclosure sale, the purchaser becomes a member and is entitled to all the rights of a member.¹³⁴ Florida's statute definitively prohibits foreclosure as a remedy against a multi-member LLC.¹³⁵

¹²³ Gerald V. Niesar, *Charging Orders and the Single Member LLC*, 65 CONSUMER FIN. L.Q. REP. 278 (Fall/Winter 2011).

¹²⁴ *Id.*

¹²⁵ Fla. Stat. Ann. § 608.433 (West 2013).

¹²⁶ Ariz. Rev. Stat. Ann. § 29-655 (2013); Nev. Rev. Stat. Ann. § 86.401 (West 2011); Del. Code. Ann. tit. 6, § 18-703 (West 2013).

¹²⁷ Niesar, *supra* note 123.

¹²⁸ *LLC Protection for Members' Personal Debt in Arizona*, NOLO (Oct. 2012), <http://www.nolo.com/legal-encyclopedia/llc-protection-members-personal-debt-arizona.html>.

¹²⁹ *Id.*

¹³⁰ Nev. Rev. Stat. Ann. § 86.401 (West 2011).

¹³¹ Del. Code. Ann. tit. 6, § 18-703 (West 2013).

¹³² Fla. Stat. Ann. § 608.433 (West 2013).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

Jane has to decide whether she wants to be the sole member in any or all of her LLCs or whether she wants to have other people also be members of any of the LLCs. For example, Jane could want herself and her husband to be the members of an LLC owning the cash and marketable securities. If Jane chooses to have one or more single-member LLCs, then she risks having a charging order not be the exclusive remedy of judgment creditors. This would put the LLC assets at risk more than if Jane chooses to utilize multi-member LLCs. Arizona and Delaware should abide by their respective statute that makes a charging order the exclusive remedy because the statutes do not differentiate between single- and multi-member LLCs. If Jane creates single-member LLCs in Nevada, there will be no concern that a charging order is not the exclusive remedy because Nevada's statute specifically applies to single-member LLCs. While this is appealing, Jane must weigh this positive aspect of Nevada with the additional requirements and costs of forming LLCs in Nevada, namely the extremely high initial and annual fees. Jane should not form single-member LLCs in Florida because that statute allows a court to foreclose on Jane's LLC interest if a creditor shows that the debt will not be satisfied within a reasonable amount of time.

Bankruptcy of Member

There are several types of bankruptcy. Chapters 11 and 13 are reorganizational bankruptcies where the member chooses whether to retain his or her ownership interest in the LLC.¹³⁶ Chapter 7, on the other hand, is a liquidating bankruptcy.¹³⁷ When an LLC member files a Chapter 7 bankruptcy, the bankruptcy trustee gets the LLC membership interest as a transferee, unless federal bankruptcy law overrides certain protections from state law or the LLC Operating Agreement.¹³⁸ This means that the bankruptcy trustee does not have the right to participate in the management of the LLC, but only has the right to receive distributions that the LLC member would have received.¹³⁹ This result comes about either from statutory transfer restrictions or from statutes dissociating the bankrupt LLC member.¹⁴⁰ Another complication for a bankruptcy trustee is that when an LLC Operating Agreement is an executory contract, the bankruptcy trustee cannot assume or assign the bankrupt member's full LLC interest without the consent of the other LLC members.¹⁴¹ An executory contract exists when both parties have not satisfied their obligations and failure to complete performance by one party will result in a material breach that allows the non-breaching party to withhold performance.¹⁴² In general, protective measures from state laws or an Operating Agreement will be respected as long as they apply regardless of whether an LLC member has filed bankruptcy.¹⁴³ For a single-member LLC, the member's bankruptcy serves as a dissociation event, which removes that member's right to vote.¹⁴⁴ Therefore, the bankruptcy trustee will not have a right to vote that membership

¹³⁶ Carter G. Bishop & Daniel S Kleinberger, *LLC Bankruptcy Concerns*, LTD. LIAB. CO. ¶ 1.04 (2013).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

interest.¹⁴⁵ In this situation where no person can vote to terminate the LLC, courts must apply equitable principles to arrive at a solution for the bankruptcy trustee, such as judicially dissolving the LLC.¹⁴⁶

The courts in each of the comparison states seem to follow the general analysis explained above. The United States Bankruptcy Court for the District of Arizona reasoned that Bankruptcy Code § 541 supersedes limitations in an LLC Operating Agreement or in state laws, thus giving the bankruptcy trustee all the rights and powers of the bankrupt member's interest.¹⁴⁷ The United States Bankruptcy Appellate Panel of the Ninth Circuit determined that there cannot be an executory contract when the only LLC members are the debtors, such as a husband and wife that filed bankruptcy.¹⁴⁸ The court reasoned that executory contract law is intended to protect non-debtor LLC members, so it should not prevent a bankruptcy trustee from getting the membership interests of the debtors.¹⁴⁹ A Delaware court decided that federal bankruptcy law preempts an LLC agreement's ipso facto clause to the extent the clause removes economic rights from the bankrupt member.¹⁵⁰ However, the clause is not preempted as to eliminating the bankrupt member's management rights.¹⁵¹ The Florida Supreme Court states that an LLC member who files bankruptcy stops being a member of the LLC and transfers the membership interest to the bankruptcy trustee.¹⁵²

If Jane files for bankruptcy, there is a difference in treatment depending on whether she owns a single-member LLC or whether she is a part-owner in a multi-member LLC. If Jane is a member of a multi-member LLC and files Chapter 7 bankruptcy, the bankruptcy trustee will automatically become a transferee of Jane's LLC interest. This means the bankruptcy trustee gets any distributions made to the LLC interest, but cannot participate in the LLC's management. Further, the bankruptcy trustee cannot assign Jane's LLC interest without the consent of the other LLC members if the Operating Agreement is an executory contract, which is fairly likely to be the case. If Jane files Chapter 7 bankruptcy and owns a single-member LLC, then Jane ceases to have voting power in the LLC and the bankruptcy trustee gets the LLC interest with Jane's rights. Since no one has the power to vote to dissolve the LLC, the courts must solve the predicament, probably through judicially dissolving the LLC. In Arizona and Florida, it is possible that a bankruptcy trustee would receive Jane's entire LLC interest when she files for bankruptcy.

Veil Piercing

There are several factors to consider when analyzing the viability of any state's LLC laws in connection with asset protection, and the treatment of veil piercing is one of the factors. The corporate doctrine of piercing the corporate veil has been applied by many courts to LLCs. Some courts even use veil piercing when there is no LLC statute on point due to the equitable

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *In re Ehmann*, 319 B.R. 200, 206 (Bankr. D. Ariz. 2005).

¹⁴⁸ *In re First Prot., Inc.*, 440 B.R. 821, 831 (B.A.P. 9th Cir. 2010).

¹⁴⁹ *Id.*

¹⁵⁰ *Milford Power Co., LLC v. PDC Milford Power, LLC*, 866 A.2d 738, 740 (Del. Ch. 2004).

¹⁵¹ *Id.*

¹⁵² *Olmstead v. F.T.C.*, 44 So.3d 76, 95 (Fla. 2010).

nature of piercing a company's liability protection.¹⁵³ In general, a company's protective veil is pierced when the company's debts are not being paid.¹⁵⁴ However, a company's owners will not be held personally liable for the company's debts through veil piercing unless certain conditions are met.¹⁵⁵ The characteristics used when determining whether to pierce a company's veil include: 1) failing to follow corporate or LLC formalities; 2) disregarding the corporate governance structure or LLC management structure; 3) ignoring the entity's separate existence; 4) providing insufficient capitalization; and 5) taking funds out of the entity.¹⁵⁶ Some of the circumstances that are considered when piercing the corporate veil must be given less weight when contemplating piercing the LLC veil.¹⁵⁷

The four comparison states apply the corporate veil piercing principles to LLCs. Different courts serving Arizona and Nevada both discussed veil piercing and alter ego theories in relation to an LLC, determining that corporate doctrines should apply to LLCs.¹⁵⁸ Two courts that are binding in Delaware have seamlessly applied corporate doctrines, such as piercing the corporate veil, to LLCs.¹⁵⁹ Florida expressly applies the doctrine of piercing the corporate veil to LLCs and instructs courts to use corporate case law as a guide.¹⁶⁰

Jane needs to be aware that an LLC's liability protection can be pierced, making Jane personally liable for the debts of her LLCs. However, Jane can take steps to prevent veil piercing, such as always holding required annual meetings or paying any required fees. Also, Jane can keep records showing that she is managing her LLCs at arm's length. Jane must also make sure that each of her LLCs has sufficient capital to cover the needs of that LLC. These steps will show that Jane is not simply utilizing LLCs to cheat creditors, so the possibility of one of Jane's LLC veils being pierced is reduced.

Other Attacks

LLC membership interests, assets held by an LLC, and LLC members are subject to attack in several other situations. These attacks include allegations of fraudulent conveyance and resulting transferee liability in connection with assets transferred into an LLC in violation of the Uniform Fraudulent Transfer Act (UFTA). The existence of tax liens, or past due taxes, can also prove problematic for the transferee recipient of cash or property. An LLC member may also find themselves subject to personal liability for negligent acts personally performed by the member. Additionally, the sanctity of an LLC is often challenged in connection with divorce proceedings.

¹⁵³ See, e.g., *Netjets Aviation, Inc. v. LHC Comms., LLC*, 537 F.3d 168, 178 (2d Cir. 2008).

¹⁵⁴ Carter G. Bishop & Daniel S. Kleinberger, *Limits of the Shield: Piercing the Veil*, LTD. LIAB. CO. ¶ 6.03 (2013).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *In re Giampietro*, 317 B.R. 841, 848 n.10 (Bankr. D. Nev. 2004).

¹⁵⁸ *Five Points Hotel P'ship v. Pinsonneault*, 835 F.Supp.2d 753, 759 (D. Ariz. 2011); *In re Giampietro*, 317 B.R. at 846-847.

¹⁵⁹ *NetJets Aviation, Inc. v. LHC Comms., LLC*, 537 F.3d 168, 178 (2d Cir. 2008); *Wellman v. DuPont Dow Elastomers, LLC*, 739 F.Supp.2d 665, 669 (D. Del. 2011).

¹⁶⁰ Fla. Stat. Ann. § 608.701 (West 2013).

In connection with formation of an LLC, members typically transfer money or property into the LLC in exchange for their membership interest. Problems can arise if the transferring member is subject to present or potential creditor claims, including tax liabilities arising out of a predecessor business. The UFTA has been adopted in most states, including Arizona, Nevada, Delaware, and Florida, in substantially the same verbiage as the UFTA.¹⁶¹ The remedies available for a transfer that violates the UFTA are that the transfer be avoided or that liability is imposed on the transferee equal to the value of the asset transferred.¹⁶² Under the UFTA, there are three types of transfers that are actionable: 1) actually fraudulent transfers; 2) constructively fraudulent transfers; 3) insider preference transfers.¹⁶³

The requirements to establish a case under the UFTA change depending on the type of transfer. A prima facie case of an actual fraudulent transfer involves several elements, the first of which is that a transfer occurred.¹⁶⁴ The creditor must additionally prove that the transfer was made with actual intent to hinder, delay, or defraud any creditor.¹⁶⁵ A constructively fraudulent transfer occurs when the debtor makes a transfer without receiving a reasonably equivalent value in exchange for the money or property that was transferred.¹⁶⁶ Additionally, the plaintiff must prove that the transfer occurred immediately before the debtor engaged in a business or transaction for which the debtor had an unreasonably small amount of remaining assets after the transfer.¹⁶⁷ Transfers which are preferential to insiders require a creditor to prove that a transfer of money or property occurred to an insider in repayment of preexisting debt at a time that the transferor was already insolvent, but only if the insider had reasonable cause to know the debtor was insolvent.¹⁶⁸

If a person or entity is subject to existing federal or state tax liens, the liens will follow the assets in any subsequent transfer, unless property is sold and the purchaser records the deed before the tax lien is recorded.¹⁶⁹ Accordingly, it is not possible to defeat governmental tax liens by merely forming a new LLC and transferring operating assets of a previously failed business, personal assets, or real estate. In addition to potential liability of an asset for payment of an existing tax lien, the IRS may pursue successor liability under state law.¹⁷⁰

An additional source of liability for an LLC member occurs when the member is responsible for a negligent act personally performed.¹⁷¹ As a general principle of law, everyone is liable for their own negligent acts, even if the act occurred during the scope of employment.¹⁷² While the employer LLC may also be liable for the acts of its employees under the doctrine of

¹⁶¹ Ryan M. McCabe, Esq., *Cause of Action to Set Aside or Recover for Fraudulent Transfer or Obligation Under Uniform Fraudulent Transfer Act*, 55 CAUSES OF ACTION 2D 467 (July 2013).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Unif. Fraudulent Transfer Act 1984 § 4(a) (2012).

¹⁶⁵ § 4(a)(1).

¹⁶⁶ § 4(a)(2).

¹⁶⁷ § 4(a)(2)(i).

¹⁶⁸ § 5(b).

¹⁶⁹ Michael I. Saltzman & Leslie Book, *Effect of the General Tax Lien*, I.R.S. PRAC. & PROC. ¶ 14.04 (2013).

¹⁷⁰ I.R.M. 5.17.14.5 (Jan. 24, 2012).

¹⁷¹ J. William Callison & Maureen A. Sullivan, *Exceptions to Liability Protection*, LTD. LIAB. CO. § 5:2 (2013).

¹⁷² *Id.*

respondeat superior, the negligent employee is additionally personally responsible.¹⁷³ A typical scenario would be where a person forms an LLC to operate a trucking company. If the member is personally driving a company truck, and negligently causes an accident, the member may be personally held liable for the accident.

The issue of LLC ownership also arises in nearly every divorce where either spouse owns an interest in an LLC. Unless the LLC interest is premarital property and subject to a prenuptial agreement, in community property states, such as Arizona and Nevada, the LLC interest is deemed to be community property and is subject to equitable division by the divorce court, unless the spouse signed a disclaimer of interest.¹⁷⁴ Even in the event that an LLC interest is awarded solely to one spouse, if that spouse also has an obligation to either transfer money or make payments to the other spouse, subsequent problems may arise if the first spouse defaults in payment to the other.¹⁷⁵ The divorce court may reopen a property settlement agreement and reallocate assets based upon subsequent events, so it may be prudent for a recently divorced member of an LLC to consider options to prevent a subsequent reallocation of assets in the event the LLC member later is unable to perform under all obligations to the former spouse.¹⁷⁶

In order for Jane to better protect her assets, she must understand the other types of attacks that could be made against one of her LLCs. In regards to UFTA, Jane should make sure that she transfers enough assets into her LLCs for the rental property and retail business to cover the needs of that LLC. Also, if Jane transfers the retail business into a newly formed LLC, then any existing or future creditor claims on that business will likely be able to utilize the UFTA to resolve the debt. Jane's LLCs will not be protected from any prior tax liens. Further, Jane will be responsible for her own negligence. For example, if Jane negligently fails to repair a defect in the rental property and an accident occurs, she could be held personally responsible. Also, if Jane negligently fails to keep her retail store safe, then she could be personally responsible for injuries suffered by a customer. Finally, Jane's LLCs will be considered community property because she formed them while she was married in Arizona. This means that if she and her husband get a divorce, the LLCs will be included in the community assets that are split between the spouses.

Practical Considerations

Formation & Costs

One advantage of LLCs over corporations or other forms of organization is the relative ease of LLC formation. Forming an LLC is similar in each of the four states being compared. The basic steps needed to form an LLC in any state generally include filing Articles of Organization (or a comparable Certificate of Formation), appointing a registered agent, and

¹⁷³ Mary Babb Morris, J.D., *Liability of Employer Under Respondeat Superior*, 27 AM. JUR. 2D EMP'T RELATIONSHIP § 373 (2013).

¹⁷⁴ Bishop & Kleinberger, *Members*, *supra* note 119.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

paying the required filing fees.¹⁷⁷ As discussed below, certain states have additional requirements.

Once the Articles of Organization or Certificate of Formation has been filed and approved by the appropriate state agency, the legal existence of the LLC has begun.¹⁷⁸ Preparation of an operating agreement is optional in Arizona, Nevada, and Florida.¹⁷⁹ Delaware requires an operating agreement, or LLC agreement, to be entered into, but allows it to be created before, after, or at the time the certificate of formation is filed.¹⁸⁰ For states that do not require an operating agreement, creating an operating agreement is generally recommended in order to set forth the relative rights of the members or managers of the LLC.

There are some differences in the information that must be included in the Articles of Organization or Certificate of Formation to form an LLC. Arizona, Nevada, Delaware, and Florida all require the LLC's name and the name and address of the registered agent.¹⁸¹ Arizona, Nevada, and Florida require a signature from the registered agent.¹⁸² Arizona and Nevada require the names and addresses of managers, managing-members, or members.¹⁸³ Arizona and Florida require the LLC's address.¹⁸⁴ Arizona requires the LLC's duration.¹⁸⁵ Nevada requires a designation of whether the LLC will be manager-managed or member-managed and the name and address of each organizer signing the Articles.¹⁸⁶

Upon formation of an LLC, it should be determined whether a tax election will be filed or whether the LLC will simply utilize the default provisions for determination of its tax status. Additionally, there is no requirement that a newly formed LLC obtain a federal taxpayer identification number.¹⁸⁷ Nonetheless, it is advisable to obtain a federal taxpayer identification number upon formation for if the LLC wishes to open a bank account.¹⁸⁸

Not every state uses the same department to control formation and management of LLCs. The Arizona Corporation Commission regulates Arizona LLCs.¹⁸⁹ The Secretary of State

¹⁷⁷ Nicholas G. Karambelas, *Formation*, 1 LTD. LIAB. CO.: L., PRAC. & FORMS § 6:4 (2013).

¹⁷⁸ *Id.*

¹⁷⁹ Ariz. Rev. Stat. Ann. § 29-682 (2013); Nev. Rev. Stat. Ann. § 86.286 (West 2011); Fla. Stat. Ann. § 608.423 (West 2013).

¹⁸⁰ Del. Code Ann. tit. 6, § 18-201(d) (West 2013).

¹⁸¹ Ariz. Rev. Stat. Ann. § 29-632 (2013); Nev. Rev. Stat. Ann. § 86.161 (West 2011); Del. Code Ann. tit. 6, § 18-201 (West 2013); Fla. Stat. Ann. § 608.407 (West 2013).

¹⁸² Ariz. Rev. Stat. Ann. § 29-632 (2013); Nev. Rev. Stat. Ann. § 86.161 (West 2011); Fla. Stat. Ann. § 608.407 (West 2013).

¹⁸³ Ariz. Rev. Stat. Ann. § 29-632 (2013); Nev. Rev. Stat. Ann. § 86.161 (West 2011); *Articles of Organization for Florida LLC*, *supra* note 83. Florida does not require the names and address of managers or managing-members by statute, but the Florida Articles of Organization form states that most financial institutions require those names and addresses to be recorded in Florida.

¹⁸⁴ Ariz. Rev. Stat. Ann. § 29-632 (2013); Fla. Stat. Ann. § 608.407 (West 2013).

¹⁸⁵ Ariz. Rev. Stat. Ann. § 29-632 (2013).

¹⁸⁶ Nev. Rev. Stat. Ann. § 86.161 (West 2011).

¹⁸⁷ *Do You Need an EIN?*, IRS, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Do-You-Need-an-EIN%3F> (last updated Jun. 6, 2013).

¹⁸⁸ *Lost or Misplaced Your EIN?*, IRS, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Lost-or-Misplaced-Your-EIN> (last updated Aug. 9, 2013).

¹⁸⁹ Ariz. Rev. Stat. Ann. § 29-634 (2013).

oversees LLCs in Nevada.¹⁹⁰ Delaware also uses the Secretary of State to regulate LLCs.¹⁹¹ Florida's Department of State supervises Florida LLCs.¹⁹²

Other than the basic steps set forth above for formation of an LLC, certain states have additional requirements. An additional requirement in Arizona is that the Articles of Organization be published in a newspaper of general circulation in the county in which the LLC will conduct business for three consecutive publications.¹⁹³ On the other hand, Nevada, Delaware, and Florida do not require publication. The cost of publication in Arizona varies greatly between various publications. In general, the Ajo Copper News is the least costly of the Arizona Corporation Commission's approved publications in Pima County, as shown in Appendix 1. Nevada LLCs must file an initial list with the Secretary of State that sets forth the managers or managing members, provides an address for each manager or managing member, and provides the name of the LLC's registered agent.¹⁹⁴ Effective July 1, 2013, Nevada also requires all persons or entities that file an initial list, file an annual list, or conduct business in the state to obtain a business license from the Secretary of State.¹⁹⁵ Delaware requires a courthouse municipality fee to be paid with each filing.¹⁹⁶

In Arizona, all documents submitted to the Arizona Corporation Commission must be submitted with a cover sheet.¹⁹⁷ Arizona also requires a Statutory Agent Acceptance Form to accompany the Articles of Organization.¹⁹⁸ Another form required to accompany the Articles of Organization in Arizona is a Manager Structure Attachment or Member Structure Attachment.¹⁹⁹ Similarly, Nevada requires a form from the Secretary of State to accompany filings.²⁰⁰ A cover memo must be submitted with all filings in Delaware, but the use of Delaware's filing cover memo is not required.²⁰¹ Delaware also requires that documents use margins of 1" on the sides, 2" at the top, and 1.5" at the bottom.²⁰² Florida requires a cover letter and Designation of Registered Agent to be included when filing the Articles of Organization.²⁰³

The methods of payment accepted in each state are especially important for formation of foreign LLCs. Arizona accepts cash in-person, checks with a preprinted name or address, money orders, credit cards in-person, and credit cards online.²⁰⁴ Arizona also has a money-on-deposit

¹⁹⁰ Nev. Rev. Stat. Ann. § 86.151 (West 2011).

¹⁹¹ Del. Code Ann. tit. 6, § 18-206 (West 2013).

¹⁹² Fla. Stat. Ann. § 608.4081 (West 2013).

¹⁹³ Ariz. Rev. Stat. Ann. § 29-635 (2013).

¹⁹⁴ Nev. Rev. Stat. Ann. § 86.263 (West 2011).

¹⁹⁵ § 76.100.

¹⁹⁶ Del. Code Ann. tit. 6, § 18-206 (West 2013).

¹⁹⁷ *Corporations Division Forms*, ARIZ. CORP. COMM'N,

<http://www.azcc.gov/Divisions/Corporations/forms/formsindex.asp> (last visited Aug. 6, 2013).

¹⁹⁸ Ariz. Rev. Stat. Ann. §§ 29-604, -632 (2013).

¹⁹⁹ *Corporations Division – Where Do I Start?*, ARIZ. CORP. COMM'N,

<http://www.azcc.gov/Divisions/Corporations/where-do-i-start.asp#Amendment> (last visited Aug. 6, 2013).

²⁰⁰ Nev. Rev. Stat. Ann. § 86.557 (West 2011).

²⁰¹ *Submitting a Request*, DEL. DIV. OF CORPS., <http://corp.delaware.gov/reqguide.shtml> (last visited Aug. 8, 2013).

²⁰² *Id.*

²⁰³ *Florida LLC Forms*, FLA. DIV. OF CORPS., <http://form.sunbiz.org/pdf/cr2e047.pdf> (last visited Aug. 8, 2013).

²⁰⁴ *Corporations Division Payment Information*, ARIZ. CORP. COMM'N,

<http://www.azcc.gov/Divisions/Corporations/Fee-and-payment-info.asp> (last visited Aug. 6, 2013).

(MOD) account, where registered users can place money on deposit with the Corporation Commission out of which filing fees may be paid.²⁰⁵ Nevada accepts cash in-person, checks, money orders, debit cards, credit cards, and trust accounts.²⁰⁶ Delaware accepts ACH debits (online payment through a checking or savings account), credit cards, and checks.²⁰⁷ Florida accepts checks, money orders, debit cards, credit cards, and pre-paid accounts.²⁰⁸

Another important aspect of forming a foreign LLC is the acceptable methods to file in each state. Arizona allows documents to be filed in person and by mail.²⁰⁹ Arizona also accepts fax filing for people with a MOD account.²¹⁰ Nevada allows the Articles of Organization to be filed online for Nevada LLCs and allows the Initial and Annual List of Managers or Members to be filed online for Nevada and foreign LLCs.²¹¹ In Nevada, the Articles of Organization may also be filed by mail or in person, with expedited copy and certification services available by fax.²¹² A Nevada State Business License may be obtained online, by mail, by fax, or in person.²¹³ Delaware allows filing by fax and by mail.²¹⁴ Florida accepts filing in person, by mail, by fax, and online.²¹⁵

Many states allow someone to reserve an LLC name before the required paperwork is filed, thus providing peace of mind while the prospective LLC owner creates the necessary formation documents. In Arizona, an application to reserve an LLC name, if filed and approved, will reserve a name for 120 days.²¹⁶ A Nevada LLC name can be reserved for 90 days.²¹⁷ In Delaware, you can reserve an LLC name for 120 days.²¹⁸ Florida, on the other hand, does not allow an LLC name to be reserved.²¹⁹ Reservation of an LLC name is generally not necessary because it does not take long to prepare the documents required for filing.

Each state has special requirements before a foreign LLC may do business in that state. Arizona requires an LLC organized outside of Arizona to file an Application for Registration of a Foreign LLC, to appoint a registered agent for service of process that is located in Arizona, and

²⁰⁵ Ariz. Rev. Stat. Ann. § 10-122.01 (2013).

²⁰⁶ *LLC Articles of Organization Packet*, NEV. SECRETARY OF ST., <http://nvsos.gov/Modules/ShowDocument.aspx?documentid=1004> (last updated July 9, 2013); *State Business License – FAQ*, NEV. SECRETARY OF ST., <http://nvsos.gov/index.aspx?page=273> (last visited Aug. 8, 2013).

²⁰⁷ *Submitting a Request*, *supra* note 201.

²⁰⁸ *Electronic Filing & Certification*, FLA. DIV. OF CORPS., <https://efile.sunbiz.org/onlmenu.html> (last visited Aug. 8, 2013).

²⁰⁹ *Corporations Division Frequently Asked Questions*, *supra* note 103.

²¹⁰ Ariz. Rev. Stat. Ann. § 29-855 (2013); *Corporations Division Frequently Asked Questions*, *supra* note 103.

²¹¹ Nev. Rev. Stat. Ann. § 86.557 (West 2011); *Form a Nevada or Register a Foreign Limited-Liability Company*, NEV. SECRETARY OF ST., <http://nvsos.gov/index.aspx?page=428> (last visited Aug. 8, 2013).

²¹² *LLC Articles of Organization Packet*, *supra* note 206.

²¹³ *State Business License Only*, NEV. SECRETARY OF ST., <http://nvsos.gov/index.aspx?page=419> (last visited Aug. 8, 2013).

²¹⁴ Del. Code Ann. tit. 6, § 18-206 (West 2013); *Submitting a Request*, *supra* note 201.

²¹⁵ *Electronic Filing & Certification*, *supra* note 208; *Frequently Asked Questions*, FLA. DIV. OF CORPS., <http://www.sunbiz.org/faqcor.html#forty> (last visited Aug. 8, 2013).

²¹⁶ Ariz. Rev. Stat. Ann. § 29-603 (2013).

²¹⁷ Nev. Rev. Stat. Ann. § 86.176 (West 2011).

²¹⁸ Del. Code Ann. tit. 6, § 18-103 (West 2013).

²¹⁹ *Frequently Asked Questions*, *supra* note 215.

to file a certificate of existence from the LLC's home state.²²⁰ Also, the foreign LLC's name must be available in Arizona.²²¹ If the name is not available, the foreign LLC must use a fictitious name in Arizona.²²² Nevada requires an LLC organized outside of Nevada to register with the Nevada Secretary of State and to have a registered agent located in Nevada.²²³ A foreign LLC must use a name that is available in Nevada.²²⁴ Delaware requires foreign LLCs to register with the Delaware Secretary of State and to appoint a registered agent that is located in Delaware.²²⁵ The LLC's name must also be available in Delaware.²²⁶ If it is not, then the foreign LLC must use a designated name in Delaware.²²⁷ Florida requires foreign LLCs to register with the Florida Secretary of State and to appoint a registered agent that is located in Florida.²²⁸ A Certificate of Existence from the LLC's home state must also be filed in Florida.²²⁹ The LLC's name must be available in Florida; otherwise, the foreign LLC must use a different name in Florida.²³⁰

Each of the four comparison states charge different fees for previously mentioned formation requirements and options. A detailed breakdown of the fees charged by each state appears in Appendix 2. To form a domestic LLC, Nevada is the most expensive of the comparison states, followed by Florida, then Delaware, and finally Arizona is the least expensive. For registering a foreign LLC, the most expensive state is Nevada, followed by Delaware, then Arizona, and Florida is the least expensive.

For forming each of Jane's LLCs, she will need to file Articles of Organization and pay the required filing fees. Jane will also need a registered agent for each LLC, which can be the lawyer who helps Jane form the LLCs. An operating agreement will be important for Jane's LLCs, especially in the rental property and retail business LLCs to alter the default rules to Jane's liking. Depending on the LLC formation state Jane chooses, the information required to be in the Articles of Organization differs. Delaware requires the least information, which is preferable because it is more difficult to amend the Articles of Organization as opposed to the operating agreement. Jane will also need to obtain federal taxpayer identification numbers so that her LLCs can open bank accounts. Some tradeoffs for Jane when choosing a formation state include Arizona's publication requirement, Nevada's initial list and business license, and Delaware's courthouse municipality fee. Each state also has its own requirements and procedures for forming an LLC that Jane must follow, such as using provided cover letters and specific page margins. If Jane chooses to form her LLCs in a state other than Arizona, she will likely have to register at least the retail business in Arizona as a foreign LLC. This creates additional costs and paperwork. Arizona is the least expensive of the subject states for forming a domestic LLC, making Arizona extremely attractive to Jane because it is also her domicile.

²²⁰ Ariz. Rev. Stat. Ann. §§ 29-802, -806 (2013).

²²¹ § 29-804.

²²² *Id.*

²²³ Nev. Rev. Stat. Ann. § 86.544 (West 2011).

²²⁴ § 86.546.

²²⁵ Del. Code Ann. tit. 6, §§ 18-902, -904 (West 2013).

²²⁶ § 18-904.

²²⁷ *Id.*

²²⁸ Fla. Stat. Ann. §§ 608.501, .503, .507 (West 2013).

²²⁹ Fla. Stat. Ann. § 608.503 (West 2013).

²³⁰ Fla. Stat. Ann. § 608.506 (West 2013).

Annual Requirements & Costs

While some states require annual reports, lists, or taxes, there are many other possible sources of annual costs for LLCs. One of these other sources is the requirement to have a statutory or registered agent. In Arizona, it is customary for an attorney to serve as statutory agent without charging.²³¹ However, in other states it is customary for statutory agents to charge a fee.²³² Further, as discussed above, it is typical for states to require that a statutory or registered agent be obtained in the LLC formation state and in any foreign state where the LLC is registered, which will result in increased annual costs for ownership and operation of that LLC.²³³

If an Arizona resident forms an LLC in another state, he or she will be required to obtain a known place of business within that state, which is typically available for a fee.²³⁴ Accordingly, this results in an increased cost to an Arizona resident to utilize an LLC that is domestic to another state. Another complication is that the LLC may need to be registered in Arizona as a foreign LLC. A separate issue arises when an LLC formed in Arizona needs to register as a foreign LLC in another state. In this situation, the Arizona LLC will need a statutory agent in both Arizona and the other state, resulting in added annual costs.²³⁵

Whether a state has annual requirements for LLCs is an important consideration when choosing an LLC's formation state. Arizona does not require an annual report to be filed and does not charge any annual fees.²³⁶ Nevada requires LLCs to file an Annual List of Managers or Members with an associated annual fee.²³⁷ Delaware charges all LLCs an annual tax, but does not require LLCs to file an annual report.²³⁸ Florida requires LLCs to file an annual report with an associated annual fee.²³⁹ If an LLC fails to meet the annual requirements or pay the annual fees in Nevada, Delaware, and Florida, then the LLC's charter, certificate of formation, or authority to transact business will be revoked.²⁴⁰ Once this happens, the LLC no longer provides liability protection for its owners.

Jane will need to consider any additional annual requirements or costs depending on which state Jane chooses as her LLC formation state. If Arizona is Jane's LLC formation state, then she will not have to worry about foreign registration (unless her rental property or retail business has ties to another state), multiple statutory agents, or multiple known places of business. Further, Jane will not have to worry about annual lists, reports, or fees in Arizona.

²³¹ Interview with Charles R. Smith, *supra* note 74.

²³² *Id.*

²³³ Ariz. Rev. Stat. Ann. §§ 29-806 (2013); Nev. Rev. Stat. Ann. § 86.544 (West 2011); Del. Code Ann. tit. 6, §§ 18-904 (West 2013); Fla. Stat. Ann. § 608.507 (West 2013).

²³⁴ Nev. Rev. Stat. Ann. § 86.241 (West 2011); Fla. Stat. Ann. § 608.407 (West 2013).

²³⁵ Nev. Rev. Stat. Ann. § 86.54615 (West 2011); Del. Code Ann. tit. 6, § 18-904 (West 2013); Fla. Stat. Ann. § 608.507 (West 2013).

²³⁶ *Corporations Division Frequently Asked Questions*, *supra* note 103.

²³⁷ Nev. Rev. Stat. Ann. § 86.263 (West 2011).

²³⁸ Del. Code Ann. tit. 6, § 18-1107 (West 2013).

²³⁹ Fla. Stat. Ann. § 608.4511 (West 2013).

²⁴⁰ Nev. Rev. Stat. Ann. § 86.272, .274 (West 2011); Del. Code Ann. tit. 6, § 18-1108 (West 2013); Fla. Stat. Ann. § 608.4511, .512 (West 2013).

Use of LLCs for Estate Planning

Among the many uses for LLCs are their assistance in connection with one's estate planning. As an entity having a legal existence separate from that of its members, an LLC of perpetual duration will legally survive its members, provided any annual or other periodic filing requirements are satisfied. This creates an advantage for using an LLC in connection with succession planning for a business or with continuity of ownership of real estate.

As the LLC membership interest itself may be held by a trust, it is possible for a decedent to use the LLC to transfer assets to heirs or devisees upon death, but to also shield the decedent's estate, heirs, or devisees from liabilities inherent with ownership of businesses or assets.²⁴¹ The LLC may also have multiple owners, so there is an advantage to a decedent who wishes to give a fractional interest in real estate to multiple persons by giving a share in an LLC, while maintaining ownership of the real estate in a single entity that may be controlled by a manager who does not have to be one of the members.²⁴² In this way, the decedent may continue to exert control over real estate and other assets for years beyond the decedent's death through carefully setting up an LLC owned by a trust.

In Arizona, it is also possible to own LLC interests in joint tenancy with right of survivorship, community property with right of survivorship, as well as to be payable on death to a person or persons.²⁴³ The Arizona legislature has recently codified the use of rights of survivorship in connection with LLC membership interests, but that has been an established practice for many years.²⁴⁴ Through these various estate planning techniques, the LLC is very useful in assisting one to avoid probate.

An LLC can also be used in connection with a long-time estate planning technique called an estate or asset freeze.²⁴⁵ Under current federal law for the year 2013, an individual may gift up to \$14,000 in cash or in kind to another individual within a calendar year without the requirement of filing a gift tax return and without affecting the unified credit.²⁴⁶ Additionally, for the year 2013, a person may transfer up to \$5,250,000 either during their lifetime or at their death without incurring any federal estate tax.²⁴⁷ Accordingly, if one wishes to make a \$5,250,000 gift during their lifetime, but still retain control of the property, one may use an LLC to transfer the membership interest, while still retaining control as manager of that LLC through implementation of restrictions on the ability of the members to remove the manager.²⁴⁸ More sophisticated techniques would also involve ownership of the LLC member interest by a trust, utilizing a crummey power to gift an interest in the trust to another person, and then the owner

²⁴¹ Interview with Charles R. Smith, *supra* note 74.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Frequently Asked Questions on Gift Taxes*, IRS, <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Frequently-Asked-Questions-on-Gift-Taxes> (last updated May 30, 2013).

²⁴⁷ *Estate Tax*, IRS, <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Estate-Tax> (last updated July 5, 2013).

²⁴⁸ Interview with Charles R. Smith, *supra* note 74.

controls the membership interest through acting as trustee of the trust.²⁴⁹ Although a gift tax return is required to be filed for any gift greater than \$14,000 during any calendar year, the benefit is that any increase in value of the assets gifted will generally escape taxation in the original member's estate.²⁵⁰

Jane would like to structure her business and personal assets in such a way as to avoid the necessity of a probate filing upon her death. In connection with this, Jane can use LLCs to own her business and properties in order to provide for perpetual duration of ownership of those assets. Jane will also need to consider how to own her membership interests. She could use a trust as the member, create a buy-sell arrangement, or establish ownership with a right of survivorship. Because she has a minor child with her current husband and two children from a prior relationship, Jane would be well advised to choose a trust to own her LLCs in order to provide for her children while avoiding the necessity of a conservatorship for the minor. As Jane's taxable estate is significantly below the present unified credit amount, Jane is not concerned about any estate tax issues.

State Promotion of LLC Benefits

There is a huge difference in how much each state promotes itself as a good place to form LLCs. Arizona promotes itself the least, followed by Florida, then Delaware, and finally Nevada.

Arizona's Secretary of State and Corporation Commission websites do not promote forming entities in Arizona.²⁵¹ While the Arizona Secretary of State does not oversee corporations and LLCs, it does have a link to a "Business Filings" page that provides information and points to the Arizona Corporation Commission website.²⁵² The Arizona Corporation Commission website has a strictly informational layout.²⁵³ It does not tout the advantages of forming an LLC in Arizona, but it does provide all the information and forms needed to form an LLC.²⁵⁴

The main page of Nevada's Secretary of State website links to "The Nevada Advantage" and WhyNevada.com.²⁵⁵ The Nevada Advantage page is part of the Secretary of State's website, thus showing that Nevada officials heavily promote forming businesses in Nevada.²⁵⁶

²⁴⁹ *Id.*

²⁵⁰ *Filing Estate & Gift Tax Returns*, IRS, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Filing-Estate-and-Gift-Tax>Returns> (last updated May 30, 2013); Interview with Charles R. Smith, *supra* note 74.

²⁵¹ See *Arizona Secretary of State Home Page*, ARIZ. DEP'T OF ST., <http://www.azsos.gov/> (last visited Aug. 12, 2013); *Arizona Corporation Commission Home Page*, ARIZ. CORP. COMM'N, <http://www.azcc.gov/> (last visited Aug. 12, 2013).

²⁵² See *Business Registrations and Filings*, ARIZ. DEP'T OF ST., http://www.azsos.gov/business_services/filings.htm (last visited Aug. 12, 2013).

²⁵³ See *Arizona Corporation Commission Home Page*, *supra* note 251.

²⁵⁴ *Id.*

²⁵⁵ *Nevada Secretary of State Home Page*, NEV. SECRETARY OF ST., <http://nvsos.gov/> (last visited Aug. 12, 2013).

²⁵⁶ *The Nevada Advantage*, NEV. SECRETARY OF ST., <http://nvsos.gov/index.aspx?page=422> (last visited Aug. 12, 2013).

WhyNevada.com also has ties to Nevada’s government because it is on the SilverFlume website, which is Nevada’s business portal for forming and managing businesses.²⁵⁷ In addition to heavy promotions from the state of Nevada, an article from Entrepreneur.com says that “[a]dvertisements touting Nevada’s advantages appear everywhere, from airline magazines to e-mail spam.”²⁵⁸

The Nevada Advantage page has a long list of “Top Reasons to Incorporate in Nevada.”²⁵⁹ The first several reasons relate to Nevada’s favorable tax structure, but that does not help non-Nevada residents because most states, including Arizona, tax residents on their worldwide income.²⁶⁰ For residents of Nevada, having no personal state income tax makes forming a Nevada LLC appealing. If you are not a resident of Nevada, you will still have to pay income tax in states that use worldwide income. Also, corporations and individuals in the United States are subject to the federal income tax.²⁶¹ Other states, such as Texas and Florida, have no personal income taxes, thus there is no advantage of Nevada over those states relating to state taxation.²⁶² Most of the remaining items on the list are about specific taxes or are misleading. For example, the “nominal annual fees” bullet is misleading because Nevada’s annual fees are higher than the other comparison states’ fees.²⁶³

The Why Nevada page on SilverFlume’s website has five sections that provide a lot of information.²⁶⁴ The information also includes links to other websites and to the Nevada Revised Statutes, when applicable.²⁶⁵ The five sections are commercial recordings, business courts, low tax climate, SilverFlume business portal, and other resources.²⁶⁶ Within each section, there are sub-topics that have either bullets or a short paragraph.²⁶⁷ This provides a more informational feel to the Why Nevada page while still trying to induce people to form an entity in Nevada.

Delaware has a reputation as a good state to form businesses in and the Delaware Secretary of State website does not disappoint.²⁶⁸ The Delaware Secretary of State website’s homepage has six revolving advertisements, with the first and fifth being about forming an entity in Delaware.²⁶⁹ The homepage also has a lot of links that provide an abundance of information

²⁵⁷ *Why Nevada?*, SILVERFLUME – NEV.’S BUS. PORTAL, <https://www.nvsilverflume.gov/whyNevada> (last visited Aug. 12, 2013).

²⁵⁸ Michael Spadaccini, *Forming an LLC in Nevada*, ENTREPRENEUR.COM (Feb. 29, 2008), <http://www.entrepreneur.com/article/191790>.

²⁵⁹ *The Nevada Advantage*, *supra* note 256.

²⁶⁰ *Id.*; Lisa C. Thompson, *Selection of Arizona as Governing Jurisdiction*, 10 ARIZ. LEGAL FORMS, BUS. ORG. LLC & PART. § 1:4 (Nov. 2012).

²⁶¹ *Business Taxes*, IRS, <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Business-Taxes> (last updated June 28, 2013); *Publication 501*, IRS, http://www.irs.gov/publications/p501/ar02.html#en_US_2012_publink1000220687 (last visited Aug. 12, 2013).

²⁶² *Texas Personal Income Tax*, 13 Tex. Forms Legal & Bus. § 25:19 (Aug. 2013); *Tax Information for New Residents*, FLA. DEP’T OF REVENUE, <http://dor.myflorida.com/dor/forms/2013/gt800025.pdf> (last updated Jan. 2013).

²⁶³ *The Nevada Advantage*, *supra* note 256. See Appendix 2 for a breakdown of annual fees.

²⁶⁴ *Why Nevada?*, *supra* note 257.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ See *State of Delaware Home Page*, ST. OF DEL., <http://www.delaware.gov/> (last visited Aug. 12, 2013).

²⁶⁹ *Id.*

about forming businesses in Delaware.²⁷⁰ The homepage for the Delaware Division of Corporations is easy to navigate with links to commonly used forms, fees, and services.²⁷¹ The Delaware Division of Corporations homepage also has a section entitled “Why Choose Delaware as Your Corporate Home?” that links to a fourteen page document about why to incorporate in Delaware.²⁷²

Florida very modestly promotes forming entities on the Department of State website.²⁷³ There is a link to the Corporations Division, which is very practical and informative.²⁷⁴ Sunbiz.org, the Florida Corporations Division website, provides links for a variety of services.²⁷⁵ There is also a help section that goes through the steps to complete various business forms, such as corporate filings, annual report filing, LLC filing, fictitious name registration, service of process, and more.²⁷⁶ There is a page on the Florida Division of Corporations website, hidden amongst other links, promoting Florida. This page has one paragraph touting Florida and then four external links to pages that go in depth on the benefit of forming a business in Florida.²⁷⁷ While the links are external websites, Florida is still promoting itself by putting the links on an official page.

The amount of advertising Jane sees relating LLCs in a particular state may affect her choice of where to form her LLCs. Without the above information, especially relating to fees and annual requirements, Jane may be persuaded that Nevada or Delaware is the best place to form an LLC. Further, Jane may read websites promoting Florida without realizing that Florida will not protect the assets of single-member LLCs as much as multi-member LLCs. With all of the information bombarding Jane about Nevada, Delaware, and Florida, Jane may overlook her home state of Arizona due to a lack of knowledge. This would prove to be a costly mistake for Jane, especially because Arizona provides LLCs with a great overall package of favorable laws, low fees, and no annual requirements.

State Comparison

There is a discrepancy in treatment within each of the subject states in the formation and operation of an LLC between residents of each state and non-residents of that state. For the subject states, each state offers essentially identical options in using an LLC to limit liability, to be either member- or manager-managed, and to have a perpetual duration. Moreover, each of the subject states have relevant statutes governing transferability of interests, as well as do not impede the ability of an LLC to make a proper federal tax election. All of the subject states delineate a process for dissolution of an LLC that is not overly burdensome. Further, an LLC may be used for identity theft protection in any of the subject jurisdictions.

²⁷⁰ *Id.*

²⁷¹ See *Delaware Division of Corporations*, ST. OF DEL., <http://corp.delaware.gov/> (last visited Aug. 12, 2013).

²⁷² *Id.*

²⁷³ See *Florida Department of State Home Page*, FLA. DEP’T OF ST., <http://www.dos.state.fl.us/> (last visited Aug. 12, 2013).

²⁷⁴ *Division of Corporations*, FLA. DEP’T OF ST., <http://sunbiz.org/> (last visited Aug. 12, 2013).

²⁷⁵ *Id.*

²⁷⁶ *Division of Corporations Help*, FLA. DEP’T OF ST., <http://sunbiz.org/dochelp.html> (last visited Aug. 12, 2013).

²⁷⁷ See *Business Advantages*, FLA. DIV. OF CORPS., <http://www.sunbiz.org/advant.html> (last visited Aug. 14, 2013).

Additional small variations exist between the subject jurisdictions in connection with creditor attacks. All of the subject states make a charging order the exclusive remedy, but Delaware and Florida makes a charging order a lien. Florida also does not make a charging order the exclusive remedy for single-member LLCs. Arizona does not mention single-member LLCs in its charging order statute, but Nevada specifically protects single-member LLCs by making a charging order the exclusive remedy. The subject states are similar in treating the bankruptcy of an LLC member and applying veil piercing to LLCs. Also, the laws relating to fraudulent transfers, tax liens, negligence, and divorce are comparable.

The most significant differences in LLC formation and operation between the subject states fall in the realm of practical considerations. In general, it is impractical for an Arizona resident to form an entity in another state due to paying higher filing fees and needing an address and registered agent in the state. Another practical consideration with a stark contrast between the subject states occurs with respect to annual filing requirements. In Arizona, there are no annual or subsequent filing requirements unless an actual change occurs. Nevada, Delaware, and Florida each have annual requirements, such as renewing a business license, paying an annual tax, and filing an annual report. An LLC can be used for estate planning purposes in all of the subject states.

Many of the subject states self-promote or hype the benefits of having an LLC in that state. Most of the claims are found to be unsubstantiated and/or negated by increased costs or other practical considerations. Therefore, it is typically best to form an LLC in one's home state. However, considerations such as the high cost of forming a Nevada LLC, and the annual costs required in Nevada, Delaware, and Florida may point toward Arizona being a better formation state. While Arizona does have a publication requirement that the other states lack, it charges lower fees and provides protection that is similar to the other states.

Another difference between the comparison states is that Nevada and Delaware allow the use of a series LLC.²⁷⁸ A series LLC is one LLC that has multiple LLC membership interests.²⁷⁹ Each LLC membership interest is its own series with its own assets that are protected from the liabilities of any other series.²⁸⁰ The series LLC is attractive because it is one LLC, meaning less cost and administrative burden than forming several LLCs to keep assets separate.²⁸¹ On the other hand, there is significant controversy over series LLCs, partly because only eleven states and Puerto Rico have allowed the use of series LLCs.²⁸² Some of the problems with using a series LLC include: 1) a lack of guidance on the requirement to account for each series separately; 2) a lack of experience in applying limited liability to separate series within an LLC; 3) a question of whether the series or the LLC is the debtor for bankruptcy purposes; 4) a question of if states that do not allow a series LLC will honor the series LLC statutes; and 5) an uncertainty about whether each series of an LLC is a separate taxpayer.²⁸³

²⁷⁸ Nev. Rev. Stat. Ann. § 86.296 (West 2011); Del. Code Ann. tit. 6, § 18-215 (West 2013).

²⁷⁹ William L. Horton, Jr., *Series LLCs – Current Questions, Future Promise*, 36 WGL-RETAX 4 (Fourth Quarter, 2008).

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Nicholas G. Karambelas, *Series of Membership Interests*, 1 LTD. LIAB. CO.: L., PRAC. & FORMS § 7:4 (2013).

²⁸³ *Id.*

Conclusion

Determination of the jurisdiction within which to form an LLC involves consideration of many factors, both based on each state's law, the costs associated with formation, as well as other practical considerations. Based on these factors, it is overwhelmingly clear that an Arizona resident is better off using a domestic Arizona LLC. There is no significant disadvantage to using an Arizona LLC and no obvious advantage of other states' laws. While Florida comes in close second in many areas, the lack of the charging order being the exclusive remedy for single-member LLCs imposes additional obstacles and challenges using a Florida LLC for asset protection purposes. Without consideration of the impact of state income tax laws, it is also apparent that residents of other states may find an economic advantage in forming LLCs in Arizona. Nevada and Delaware do not live up to their hype as premier states for entity formation due to the increased costs and complexities of utilizing entities within those states. Nevada's filing fees and annual costs are extremely high, which greatly diminish its appeal as an LLC formation state. While Delaware's filing fees and annual costs are reasonable, it is extremely expensive to defend a lawsuit if a problem arises. Accordingly, whether you are an Arizona resident or not, Arizona LLCs present significant advantages.

Jane should use three separate LLCs formed in Arizona to meet her goals. Separate LLCs should be formed for her rental property, her money, and her business. Since Jane is an Arizona resident, her filing fees and costs for formation will be significantly less than if she considered formation in any other state. Additionally, she will have no annual expenses for the Arizona LLCs. Each of the LLCs should be manager-managed, and one member should be her personal trust. The rental property and money LLCs should be taxed as disregarded entities, while the business LLC should be taxed as a subchapter S corporation.

APPENDIX 1 – Arizona Corporation Commission Approved Publication Costs

	Price Per Column Inch	Estimated Price Range for Publication of Articles of Organization
Ajo Copper News¹	\$4.50	\$35 to \$50
Arizona Daily Star²	\$31 to \$149.10	\$182.60 to \$251.61
The Record Reporter³	\$4.05	\$35.18 (minimum)
The Daily Territorial⁴	\$5.50	\$40 to \$50
Green Valley News & Sun⁵	\$5.45 + 2% Sales Tax	\$60 (average)

¹ Public Notice Advertising, AJO COPPER NEWS, <http://www.cunews.info/noticeinfo.html> (last visited Aug. 8, 2013).

² 2013 Retail Rates, ARIZ. DAILY STAR,

<http://bloximages.chicago2.vip.townnews.com/azstarnet.com/content/tncms/assets/v3/editorial/1/44/14480a8c-6b36-11e2-ad8f-001a4bcf887a/51fad46f48db9.pdf.pdf> (last updated Jan. 1, 2013).

³ Public Notice Advertising, THE REC. REP., <http://www.recordreporter.com/rrhome.cfm?ref=publicnotices> (last visited Aug. 8, 2013).

⁴ Telephone Interview with Mary Lopez, Public Notice Clerk, The Daily Territorial (Aug. 14, 2013).

⁵ Telephone Interview with Terry Motycka, Public Notices Manager, Green Valley News & Sun (Aug. 14, 2013).

APPENDIX 2 - Filing Fees and Other Costs

	Arizona	Nevada	Delaware	Florida
Initial Filing Fees Combined (Domestic)	\$85 ¹	\$400 ²	\$90 ³	\$125 ⁴
Initial Filing Fees Combined (Foreign)	\$185 ⁵	\$400 ⁶	\$200 ⁷	\$125 ⁸
Filing Articles of Organization	\$50 ⁹	\$75+ ¹⁰	\$70 ¹¹	\$100 ¹²
Foreign LLC Registration	\$150 ¹³	\$75+ ¹⁴	\$200 ¹⁵	\$100 ¹⁶
Articles of Organization Amendment	\$25 ¹⁷	\$175 ¹⁸	\$180 ¹⁹	\$25 ²⁰
Expedited Services Fee	\$35 ²¹	\$1,000 for 1 hour \$500 for 2 hours \$125 for 24 hours ²²	\$7,500 for 30 min \$1,000 for 1 hour \$500 for 2 hours \$300 for same day \$150 for 24 hours ²³	N/A ²⁴
Reservation of LLC Name	\$10 ²⁵	\$25 ²⁶	\$75 ²⁷	N/A
Municipality Fee for Filing Documents	N/A	N/A	\$20 ²⁸	N/A
Certificate Designating Registered Agent	N/A	N/A	N/A	\$25 ²⁹
Initial & Annual List of Managers/Members	N/A	\$125 ³⁰	N/A	N/A
State Business License (renew annually)	N/A	\$200 ³¹	N/A	N/A
Annual Report or Tax	N/A	N/A	\$250 ³²	\$50 ³³

¹ Articles of Organization + Expedited Services Fee. There is also the cost of publication, which is about \$35 for Articles of Organization containing the statutory requirements.

² Articles of Organization + Initial List of Managers + Initial State Business License.

³ Certificate of Formation + Municipality Fee (no municipality fee for name reservations).

⁴ Articles of Organization + Certificate Designating Registered Agent.

⁵ Foreign LLC Registration + Expedited Services Fee.

⁶ Foreign LLC Registration + Initial List of Managers + Initial State Business License.

⁷ Foreign LLC Registration (no municipality fee for foreign LLCs).

⁸ Foreign LLC Registration + Certificate Designating Registered Agent.

⁹ Ariz. Rev. Stat. Ann. § 29-851 (2013).

¹⁰ Nev. Rev. Stat. Ann. § 86.561 (West 2011). The filing fee of \$75 increases according to the fee schedule for corporations, found in Nev. Rev. Stat. Ann. § 78.760. The fee increases when over \$75,000 is put into the LLC for membership interests.

¹¹ Del. Code Ann. tit. 6, § 18-1105 (West 2013).

¹² Fla. Stat. Ann. § 608.452 (West 2013).

¹³ Ariz. Rev. Stat. Ann. § 29-851 (2013).

¹⁴ Nev. Rev. Stat. Ann. § 86.561 (West 2011).

¹⁵ Del. Code Ann. tit. 6, § 18-1105 (West 2013).

¹⁶ Fla. Stat. Ann. § 608.452 (West 2013).

¹⁷ Ariz. Rev. Stat. Ann. § 29-851 (2013).

¹⁸ Nev. Rev. Stat. Ann. § 86.561 (West 2011).

¹⁹ Del. Code Ann. tit. 6, § 18-1105 (West 2013).

²⁰ Fla. Stat. Ann. § 608.452 (West 2013).

²¹ Continuation of Existing Corporations Division Expedite Fee, Ariz. Corp. Comm'n Dec. 68008 (July 22, 2005).

²² *Limited Liability Company Fee Schedule*, NEV. SECRETARY OF ST. LLC PACKET (Feb. 14, 2011),

<http://nvsos.gov/Modules/ShowDocument.aspx?documentid=1004>.

²³ Del. Code Ann. tit. 6, § 18-1105 (West 2013).

²⁴ *Frequently Asked Questions*, FLA. DIV. OF CORPS., <http://www.sunbiz.org/faqcor.html#forty> (last visited Aug. 8, 2013). Documents can be hand delivered for same-day processing.

²⁵ Ariz. Rev. Stat. Ann. § 29-851 (2013).

²⁶ Nev. Rev. Stat. Ann. § 86.561 (West 2011). Name reservations can be completed within 24 hours for \$50. *Limited Liability Company Fee Schedule*, *supra* note 22.

²⁷ Del. Code Ann. tit. 6, § 18-1105 (West 2013).

²⁸ § 18-206(e). No municipality fee is charged for foreign LLCs.

²⁹ Fla. Stat. Ann. § 608.452 (West 2013).

³⁰ Nev. Rev. Stat. Ann. § 86.263 (West 2011).

³¹ §§ 76.100, .130. Effective July 1, 2015, the state business license fee will be \$100.

³² Del. Code Ann. tit. 6, § 18-1107 (West 2013). This fee is for an annual tax on LLCs.

³³ Fla. Stat. Ann. § 608.452 (West 2013). This fee is associated with the annual report that LLCs must file.