



BREGLIO LAW
OFFICE

The Limited Liability Company Guidebook

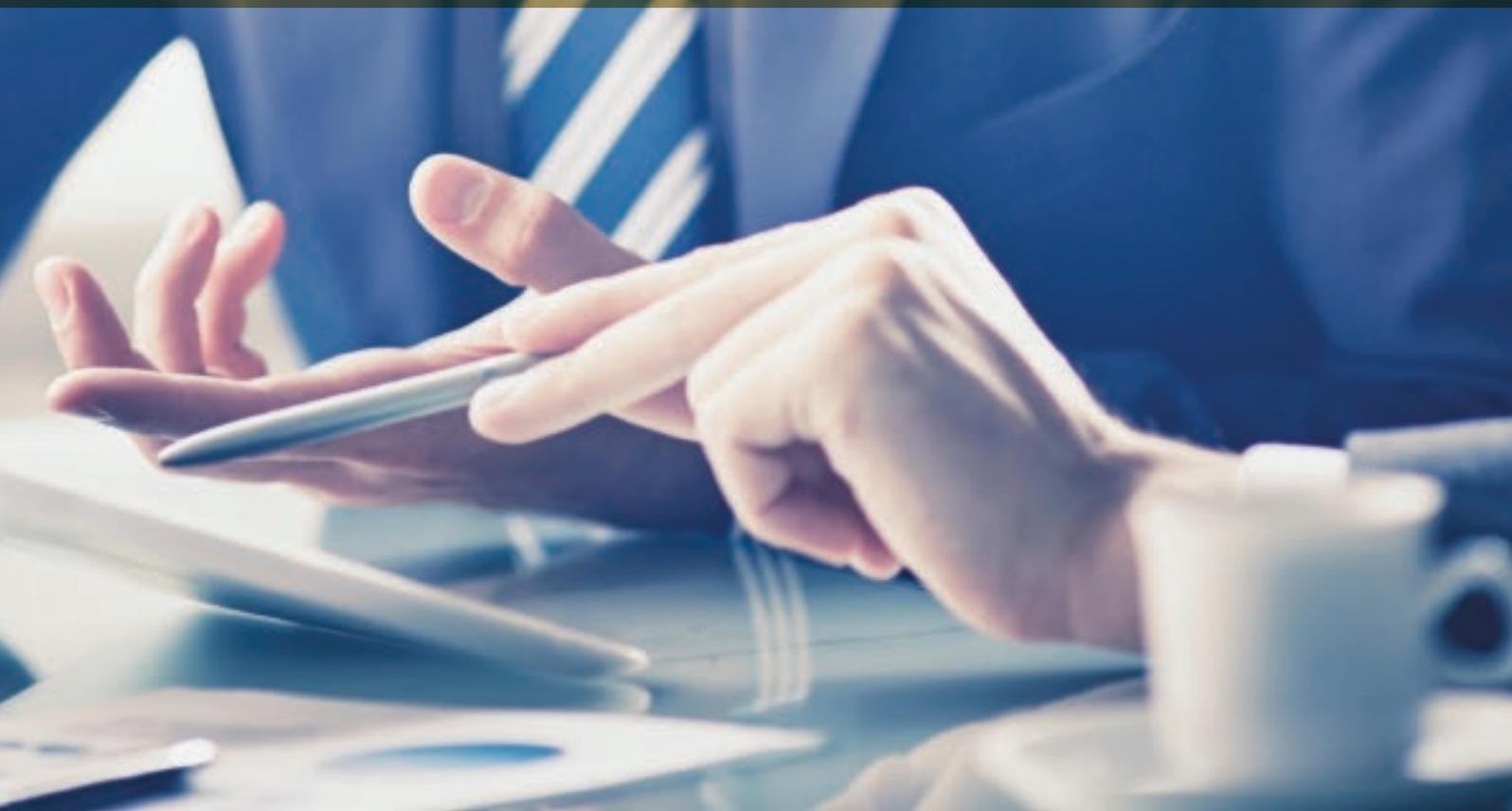
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Thanks for taking some time to read through this Guidebook before meeting with one of our attorneys. We've organized it by frequently asked questions as these are the questions we usually get in our consultations.

This will give you a greater understanding of the LLC and the Series LLC, making our meeting more productive so we can focus on your specific needs. You should also keep this Guidebook readily available for future reference. We look forward to meeting with you.



Part 1

The Limited Liability Company

In addition to these FAQs, you may want to watch the following video on our website describing the different types of LLCs we set up: [Video Link](#)



1. What is a Limited Liability Company?

A limited liability company is a type of business entity that is a cross between a partnership and a corporation. It has the flexibility of partnerships with the great protection of corporations. It also doesn't require a lot of the corporate governance of a corporation so it's easier to run and maintain. The LLC comes with "corporate veil" protection and, if there are 2 or more members, "charging order" protection. They can also be "S" elected for tax savings for small business owners. Therefore, the LLC is the recommended business entity for almost all small businesses in any industry.

2. Do you also set up other business entities?

Yes. But not very often. The LLC is the recommended vehicle for most small business and asset holding companies. We can also create corporations, family limited partnerships, other types of partnerships and joint ventures, depending on your business or specific needs. We are happy discuss those options with you.

3. Can you create entitles for non-Utah clients?

Yes. Please contact us if you are out of state for how that is handled.

4. I've heard about the Family Limited Partnership, what's that?

The family limited partnership, or FLP, is a great asset protection tool as it's an additional layer of protection to the LLC. We generally reserve that for clients whose asset protection needs are advanced enough to justify the extra cost and maintenance. That's because if your asset protection structure is too complicated, you won't run it correctly and you'll lose any protection it afforded. We work with our clients for the long term and don't sell them things they don't need now. We're happy to discuss this option with you if you think it would be advantageous.

5. What types of LLCs do you create?

There are two main types of LLCs that we create: 1) The Tax Savings LLC and 2) The Asset Protection LLC.

1) The Tax Savings LLC is a standard limited liability company with a special “S” tax election. This means that the LLC is taxed “like” an S-Corp. You may have heard about the S-Corp for tax savings. So, you get the ease and flexibility of the LLC with the tax savings of the S-Corp. It’s a great mix. **This is the type of entity we will set up for independent contractors (like real estate agents!) and most small businesses, including real estate investors engaged in active income pursuits like wholesaling, flipping and contracting.** If you’re in that kind of business but don’t think you’ll need the tax savings right away, we will still create this LLC and do the “S-election” later when you think you’ll be making enough money to get the savings. A simple rule of thumb is when your business is netting \$15,000 - \$20,000 or more a year, you’ll save substantial money in taxes and want that S-election. You can file this S-election at any time but at the beginning of a year is preferred. See below on how you save money.

2) The Asset Protection LLC is a specially designed LLC to hold and protect assets; it’s usually real estate assets but can be anything. We structure this LLC specifically for asset protection and it’s NOT what you’d get from an online form generator. Normally, this is also a Series LLC. Please see Part 2, Series LLC FAQs below for more information. **This is the preferred type of entity to hold a portfolio of rental properties for our real estate investor clients. For more on liability protection, see below.**

3) We do create other variations of the LLC, like a Partnering LLC, Holding LLCs, IRA, LLCs as well as other types of business entities like the family limited partnership. Because we are real human beings, we have actual conversations with our clients to make sure they get the right entity for the business they are in. This is something you will not get online.

6. I'm a real estate investor, what kind of LLC do I need?

Typically, real estate investors (at least at some point) will have two LLCs: 1) the Tax Savings LLC for flips, bird dogging, wholesaling, real estate commissions, and the like. These incomes are considered "ordinary" and so you can save taxes through the Tax Savings LLC. And then you'll need 2) the Asset Holding (Series) LLC for rentals. There are no tax savings to be had on rental income so no need to run that money through the Tax Savings LLC. And, more importantly, as a long-term asset you **never want to put a rental in any corporation or LLC taxed like a corporation, including S-elected LLCs!!** This can have severe negative tax consequences! So, you'll need one entity for flips and a second for holds. This is very common for investors doing both kinds of real estate investing.

7. I'm a real estate agent, what kind of LLC do I need?

As a real estate agent, you are an independent contractor for tax purposes. That means you are paid on 1099. You need our Tax Savings LLC to save on taxes for the commissions you make as an agent.

8. What documents are required to form an LLC?

You must have a Certificate of Organization (previously called "Articles" in Utah, and still called that in some states). This "creates" the LLC and secures the name. But it does NOT provide anything else, like tax savings or asset protection. So, you also must have the operating agreement. This is like the "constitution" of the company. It defines the roles and relationships of members and managers, percentage ownership, voting, asset protection, as well as other rights and duties. This is the most critical document. Without this, you do not have a complete LLC and most likely, in a lawsuit or IRS audit, you will not be considered a LLC and lose your protections or your tax savings. You should get an EIN and open a bank account dedicated to the LLC. For the tax savings, you need the IRS "S" Election form. We do all of that for you. Then you must run your LLC according to good corporate governance principals and keep all documents and receipts. For all our clients, we provide a guide on this after we create your LLC, or can provide consulting services to help.

9. Can't I do this online myself?

You don't want to do that. You won't get the guidance of setting the LLC up correctly, you won't understand the difference between tax savings and asset protection entities, won't know how to make certain choices in the process, and it'll end up costing you more when we make changes if you set it up incorrectly—and people always do. Our documents have 20 years of experience behind them and are specifically written for specific purposes—most importantly: asset protection. **Online form generators DO NOT provide the same protection our LLCs do!** Trust us, we've seen them all.

10. Can't I just be a sole proprietor?

While it may seem cheaper to just run your business without an entity, you will get no protection and no tax savings by being a sole proprietor. Trust us, it's much more expensive when things go wrong when you don't do it right in the first place.

11. What information is public and what is private?

The Certificate is filed with the state. This is a public document. We put as little information as possible to maintain your privacy. Most of the important information is in the operating agreement, which is a private document, and does not need to be filed with the state. The name of the company, its address, the name & address of the registered agent, and the name & address of a member or manager are included on the Certificate. There are ways to keep your name completely off the public record, you can ask us more about this.

12. What state do I register my LLC in?

Most likely your home state in which you do business. If you do business in multiple states, you can register your LLC to “do business” in other states. Please talk to us about this in our consultation.

13. What if I have rentals in a lot of different states?

Again, most likely in your home state for registration. But, it can get cumbersome and expensive to register your LLC in a bunch of different states. We often recommend the use of the “asset holding trust” to hold title to your out-of-state property to avoid registering your LLC there. The trust is then owned by your LLC for protection. We’re happy to tell you more about the asset holding trust.

14. What is a registered agent?

The registered agent is the state’s contact with the company. It must be someone who resides, with a physical address, in the state of organization. It does NOT mean a member or manager. The registered agent has no authority to run the company. The state just wants to know that there is some contact “in state” for things like service of process (serving papers for a lawsuit). The registered agent also receives notice of renewal and is responsible to renew the company each year. Anyone can be the registered agent as long as they live in Utah. However, most of our clients have our office be the registered agent. This provides some privacy and assurance that you won’t forget to renew (failure to renew will dissolve your company!). Our office does charge a small yearly fee for this service that includes the renewal fee at the state.

15. Who are the “Members” of the LLC?

Owners. Very simply, those who own the LLC are called members. Nomenclature is important here. So, the words we use are important. If you are the owner of the company, then you are its member and you should use that title when appropriate. (If you’re also a manager of the company, then you wear that hat, too!)

16. What if I have partners in the LLC?

When there are unmarried partners, we will typically recommend our “Partnering LLC”. This LLC comes with some additional documents that cover situations such as death, disability and buy-out if a member wants to leave the company. You definitely want this extra protection in partnering situations.

17. What if I need something more custom?

No worries! We do custom LLCs all the time for a wide range of clients and industries.

18. How is the LLC managed?

All LLCs must be defined as either “Member-managed” or “Manager-managed”. This is a state requirement in all 50 states. We almost always recommend “Manager-managed” for a variety of reasons. After we set up your LLC, you will receive another eBook with more information on this topic.

19. What other information do I need to form a LLC?

A) Name. You’ll need to name the company. Using initials is difficult because everyone wants to and most are taken. You can use your name, but this is only recommended if the business is you and you want to market your name. We recommend something creative. Note, the name you choose will have to be available at the state, and even if it’s available at the state someone in another state may be using it leading to trademark issues. If you’re going to be doing a lot of marketing under the name, you may want to search the name online and possibly ask us to do a trademark search on it. You’d hate to start branding it and then have to change it later.

B) Address. This will be public, so if you want more privacy think about getting a PO Box address that does NOT look like a PO Box. The state will not allow “PO Box #” as an address. But there are other commercial mail box options (like UPS® stores) that do not use “PO Box” as part of the address; they look like street addresses with a suite number.

C) Purpose. This is simply what business the company will be engaged in. We’ll discuss this in our consultation.

D) Members. This means who is going to own the company. It can be just one person or multiple. In our Asset Protection LLC, we always recommend at least two members for better asset protection (see below). On the Tax Savings LLC, it depends on who you want to own the business. If there will be more than one member, we will need to know the percentage ownership (called “membership interest”) of each member.

E) Managers: Since we recommend manager-managed LLCs, you should think about who you want to run the daily operations. We prefer just one manager as that will make your life easier. But, we can tell you more about having multiple managers in our consultation.

F) Your Social Security Number. This is so we can get the employer identification number (EIN) for the LLC. You want a separate tax ID for the company.

20. How long does it take to set up my LLC?

Typically, we can create the LLC and mail you the binder of documents within one week. Note, however, that the state can take a few weeks to post your LLC online. This can be an issue if you're trying to get a bank account right away. If you are in a hurry, let us know and we can have it rushed at the state for a small expedite fee.

21. Can I have it rushed?

Yes. If you need “proof” of your LLC’s “existence” done quickly—like to get a bank account or do a real estate closing—we can hand file your certificate and get a stamped copy, or we can have the state rush getting it on the state’s website. Both require an additional fee. If you need to rush the creation of your full set of documents, we can also do that. Depending on work load and how fast you need it, there may be an additional fee.

22. What is the investment to create my LLC?

Our prices are fixed for most LLCs and extremely reasonable for the experience that you're getting, but do occasionally go up over time. If, after discussing your needs, we decide a more custom LLC is needed, there may be an additional charge. While you may find something less expensive, it won't be the quality we provide. Give the office a call for current pricing.

23. Do you offer discounts?

Typically, we do not. We keep our fees as low as possible and they are very reasonable for the experience and quality of our documents. However, consulting clients always receive discounts off legal work our office performs. And, sometimes, when we are doing a lot of different entities or legal work at the same time where we can be efficient in our processing, we can offer a small “bulk rate” discount.

24. What is included in that investment?

Your initial consultation with an attorney is included. We then create, file and pay the state filing fee for the Certificate of Organization. This gets you established with the state. We also get your EIN (you’ll need this for a bank account), create your operating agreement (the true legal document of the LLC), provide some additional needed documents (like the First Organization Meeting Minutes—these depend on the kind of LLC you are setting up) all printed and bound, as well as our “Corporate Governance Guidebook” in PDF format. We also do the “S” election with the IRS if you are getting the Tax Savings LLC. Our fees are always “all-inclusive” so there is nothing else regarding your LLC.

Note, if you need follow-up consultation, changes to the LLC, reprinting lost documents or other such items, there may be a fee associated with that. Also, guidance or consultation on how to run or manage a LLC is not included as we try to keep our setup fees as reasonable as possible.

25. What if I need more help?

We offer “consulting packages” where you can get access to your own “general counsel” at very affordable rates. You can have your own attorney! This allows us to help you run your company, hold meetings, and provide legal guidance in a very cost effective way. Just ask us for more information.

26. Will I need to file a tax return on my LLC?

Well, that depends. If it's a Tax Savings LLC with the "S" election, then it's taxed like an S-corporation and you must file a S-Corp tax return. If you haven't done that election, then it depends on the number of members. If there is only one member, then it's considered a "pass-through" entity and taxed as a sole proprietorship on your personal tax return—no other tax return required. If there is more than one member, then the LLC is taxed like a partnership and you must file a partnership tax return and issue K1 statements to each owner. Yes, we still recommend two or more owners on our Asset Protection LLC even though this requires a tax return. It's worth it!

27. Do I need to hold meetings?

Yes. For liability protection purposes you should hold regular meetings, take minutes and keep them in your records.

28. What do I do after my LLC is set up?

You must follow basic corporate governance. Basically, it means running your company according to the legal guidelines and the company's operating agreement. It is CRITICAL for liability protection. Comingling funds, not signing documents correctly, taxation and tax deductions, and many other things can provide arguments to "pierce the corporate veil" and lose your protection. Because we believe in helping you in every stage of your business, [please see our "Corporate Governance Guidebook" in PDF format that we email you after setting up your LLC.](#) We also have numerous videos in our education center on our website that cover this topic. And finally, you could become a consulting client and we'll help you with this.

29. What protections does the LLC provide?

Great question. There are two types of liability and two kinds of protection. To keep it short...

Corporate Veil Protection protects you and your personal assets from **Professional Liability**—debts and liability of the business. This comes with all LLCs. If the company has a debt it cannot pay or is sued (let's say for a slip and fall in a rental property), then the LLC itself is sued, not you, and your personal assets are protected. Every business owner and independent contractor should have an LLC for this protection.

Charging Order Protection protects assets held inside the LLC from **Personal Liability**—your personal debt and liability. This only comes (in Utah) with LLCs that have two or more members. For example, if you get in a car accident and kill a family, you personally are going to be sued because you caused the accident. The court can go after any asset you own, including LLCs and assets in LLCs. But if you have another member of the LLC, it would be unfair to that partner to lose an asset because you killed someone. After all, they didn't do anything wrong and shouldn't be punished. So, the court can only get a "charging order" against your share of proceeds from the LLC. You will lose any income stream or equity that you had in the LLC. However, the assets held INSIDE the LLC cannot be liquidated; they remain protected for the benefit on the non-guilty members. That's why we always encourage two or more members for all our Asset Protection LLCs. If the assets justify it, there are ways even a single person can have another member on their LLC; just ask us how.

30. How does an S-elected entity (S-Corp) save me money?

First, please consult your CPA or accountant for all tax matters as the below is meant as general tax information and not tax advice.

To keep it short, without an "S" elected entity, every dime you make as a 1099 independent contractor or self-employed business owner is taxed at three levels: Federal Income Tax, State Income Tax and Self-Employment (SE) Tax. There's nothing we can do about the income taxes. But the S-election can lower the SE taxes!

The SE tax covers your social security and Medicaid & Medicare deductions. Remember those boxes of deductions on your pay stub where you paid half and your employer paid half? That's what we're talking about here; only now you pay BOTH halves! This tax rate currently is 15.3%. That's on every dime of net income you make.

By doing an “S” election, you can call some of that money “salary” (subject to the 15.3%) and some of it “dividend” (NOT subject to the 15.3%). So you will save 15.3% on part of the income you make simply by creating an entity and doing the “S” election. It can result in thousands of dollars in savings!

Now, if you’re thinking you’ll call all of your income “dividend” to avoid the SE tax altogether, don’t. You can’t do that. The IRS requires that you pay yourself a reasonable “salary” and pay some SE taxes. Talk to your accountant for more information.

31. Are there more advanced asset protection structures?

Of course. There are many other tools of asset protection. But the more advanced you get, the more expensive and complicated you get. We have many clients with highly complex structures, but their assets justify it. We work with clients with all levels of asset protection needs. Please ask about our “Advanced Asset Protection Guidebook” for more information. Again, we work with clients where they are and grow with them. We don’t sell them something they don’t need now.

32. Where does my family trust come in?

EVERYONE with a home or small business should have a family living trust! We can help create that for you if you don’t have one. The family trust does NOT provide any asset protection. It’s designed to control and allocate assets. We structure our trusts very differently than most estate planning attorneys. If you already have a family trust, you can chat with us to see if yours is done correctly. Ask about our “Family Legacy Guidebook”.

33. I’ve heard about “checkbook control”. Do you create the IRA, LLC?

Yes, we do! We help many clients with self-direction and setting up the IRA, LLC for their IRAs. We also create the Solo 401K Trust plan so clients can self-direct their 401Ks. Please ask about our “Self-Direction Guidebook” for more information.

Part 2

The Series LLC

First, you should read through our FAQs on LLCs above, as all of those also apply to the Series LLC. You can also watch a video on the Series LLC with this link: [Video Link](#)



1. What is a “Series LLC”?

We will use the words “Series LLC” and “series” differently. A “Series LLC” is a specially created type of Limited Liability Company. It is formed differently and has a different operating agreement than regular LLCs. It’s a single entity that is authorized to create “series” within it. That means that it can create what might be termed “sub” companies underneath its umbrella. Except, however, these “series” are NOT LLCs or sub LLCs. They are “series” of the Series LLC. The Series LLC mimics the structure of a “holding” company and “sub” company in a single entity.

2. What is a “series”?

A series of a Series LLC is exactly that—a series. Yes, it’s a bit of a weird name and a little confusing. But this “series” acts like a sub company of the LLC. So, it has its own unique name and conducts business on its own. It also keeps all its liability contained within it (like a sub LLC) so it won’t attach to the other “series” of that Series LLC. It is a way to separate liability without having to set up an entirely new LLC. Note, however, the “series” is NOT recorded with the state or elsewhere. It’s created by an internal corporate document that we provide to you. See below.

3. Can I take my current LLC and turn it into a Series LLC?

YES. It’s called a conversion and we can do that for you. You will get all new documents as they are very different from a regular LLC.

4. How do I create a “series”?

We provide you with a “Series Creation Minutes” form in your binder of documents. You simply make a copy of this 2-page form, fill in a few blanks, and sign it. That’s it! You’ve just created a series. Just keep for you records and start using the name of the series to conduct business of that series. You do not need to file this with the state! You will probably need to provide this to a title company when titling property in its name.

5. What do I name the series?

Each series has a distinct name that follows this format: “[Distinct Name], a Series of {LLC Full Name}, LLC”. For example: New Rental, a Series of My Properties, LLC. Most people create a “distinct name” that helps them remember what that particular series relates to. Here are other examples of series names for a Series LLC called Happy Properties, LLC:

300 West, a Series of Happy Properties, LLC
Blue Bungalow, a Series of Happy Properties, LLC
Series 4, a Series of Happy Properties, LLC
Flips, a Series of Happy Properties, LLC

6. Who are the members and managers of the series?

They are EXACTLY the same as the Series LLC! This is important. Every series you create has the exact same members, percentage ownership and management as the Series LLC that created it. The main Series LLC’s operating agreement is the operating agreement for each new series. So, everything is exactly the same, except for the name of each series.

7. Does each series get an operating agreement?

No. They “piggy-back” off the main Series LLC operating agreement. So, the main operating agreement is the series’ operating agreement. Again, remember that everything is the same. They are just different in name and liability protection.

8. Does each series get an Employer Identification Number?

No. For tax purposes they are “pass through” to the main Series LLC and its EIN. While it’s possible to get an EIN for a series, it’s not necessary and not recommended. If someone asks for the EIN of a series, just give them the EIN for the Series LLC.

9. How is a series managed?

Just like any other LLC! Most likely your Series LLC is manager-managed (that's how we prefer to create them). That means that the authority to conduct day-to-day operations is vested in the named manager. So, whoever is listed as the manager of the Series LLC is also the manager of the series. Always sign documents as the "manager" of the series. For example:

By: Jeffrey S. Breglio, Manager
For: 300 West, a Series of Happy Properties, LLC

10. Do I get a bank account for each series?

No. The Series LLC gets one bank account in its name. It acts like an escrow account for all the series that are created underneath it. So all deposits and withdrawals come out of that one account. Some banks will allow you to create a separate account for your series if you want. This all depends on your bank. Remember that the bookkeeping is an important part of running a Series LLC. But bookkeeping is different than the bank account.

11. How do I do the bookkeeping for a Series LLC?

Keep the bookkeeping for ALL SERIES SEPARATE! This is the single most important part of running a Series LLC. Every transaction in your bookkeeping must be "tagged" to a particular series. This isn't very difficult. You can ask your CPA or bookkeeper how to do this. Using software (like QuickBooks) makes it easy as well. You just have to remember that all the money sitting in the one bank account doesn't necessarily belong to one of the series. If a series needs money, let's say for a new roof on the rental property, then you need to know that that series has enough money to cover it. Don't take money from one series to pay for something on another series. That's comingling. **So, while all the money for all the series can go into one bank account, the bookkeeping for each series is kept separate.** Think of that bank account as an escrow account for multiple clients (being the series). You don't want to steal from one client to pay for another one, right?!

12. Do I need to title my rental in the name of a series?

YES! You must deed the property into the full name of the series. Your title company can help with this, or we can. To keep the liability for that property separate from your other rentals, it must be titled in the name of the series. Do not title any property in the name of the Series LLC itself (the umbrella)!

13. How do I write my lease agreements?

If you self-manage your properties, the named “Landlord” on your lease agreement should be the full name of the series, since the “series” owns the property and is the landlord.

14. How do I collect rent for each series?

If you have one bank account for the overall Series LLC, then on your payment instructions line write in that your tenants should write the check in the name of the overall Series LLC (not the unique name of the series) or that they can make deposits directly to the Series LLC’s bank account. This is fine. If you’re lucky to have separate accounts for each series at your bank, then they can make payments directly to the name of the series.

15. Do I have to change over current lease agreements to the series?

We usually recommend that you “assign” an old lease to the new landlord, which is the series you just created for the property. For this you will use a lease assignment document that is included with your Series LLC documents. This officially makes the series the new landlord, and then you can give your tenants notice of the new landlord and new payment instructions. If you only have a couple of months left on your lease, you can wait until you create a new lease to make the change. An assignment is included with your corporate documents.

16. What about **my property manager agreements**?

If you hire a third-party property manager, then your property management agreement with them should either be with each series (1 agreement for each series), or at least specifically call out that there are numerous series that are part of the LLC. They can cut one check to you for all the series if you use one bank account. But you will also want a separate invoice for each series (that is, each property)! That is for your bookkeeping! Remember that each and every transaction for that account must be attributed to a particular series.

17. Is there **anything that the Series LLC can do on its own**?

Typically, no. Remember that the Series LLC is kind of like a “holding” company, and as such it should not do anything that might incur liability—because that liability would then flow down to ALL the series underneath it.

18. **But how do I do tax write-offs for things not specific to a series?**

We recommend that you either use your tax savings (S-elected) entity for those businesses expenses if possible (that’s where you really want to have business deductions!), or attribute them to one of the series. If you can’t do either of those, then put some money tagged to the Series LLC itself in the account, and then use that to pay those expenses.

19. **Does each series file a tax return?**

No! Each series flows through to the Series LLC tax return. So, while for bookkeeping purposes they are separate and distinct, for tax accounting purposes they are all one and the same. The Series LLC files the tax return and issues K1s etc.

Thanks for taking the time to read our Limited Liability
Company Guidebook.

Please also checkout our “Education Center” on our
website for more information.

WWW.BREGLIOLAW.COM/EDUCATION



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