

ASSEMBLY BILL NO. 123—ASSEMBLYMAN ELLISON

PREFILED FEBRUARY 9, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing a series created by a limited-liability company. (BDR 7-531)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to business organizations; revising provisions relating to a series created by a limited-liability company; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the articles of organization or operating agreement of a limited-liability company to create one or more series of members with separate rights, powers or duties with respect to the property or obligations of the company. (NRS 86.296) **Section 1.7** of this bill authorizes a series to be created by the adoption of an operating agreement by the members of the series. **Section 1** of this bill provides that if the articles of organization or operating agreement of a limited-liability company authorizes the creation of a series, the registered agent of the limited-liability company shall be deemed to be the registered agent of any series of the company.

Under existing law, the liabilities of a series are enforceable only against the assets of that series and not against the assets of the company or any other series if: (1) the articles of organization or an amendment to those articles contain certain statements indicating that the company is to have one or more such series; and (2) separate and distinct records are maintained for each series and the assets associated with each series are held, directly or indirectly, and accounted for separately from the other assets of the company and any other series. (NRS 86.161, 86.296) Existing law further provides that property owned or purchased by a limited-liability company must be held, owned and conveyed in the name of the company. (NRS 86.311)

Section 2 of this bill clarifies that a series may purchase, own and convey property in the name of the series, as an asset of the series. **Section 2** also specifies the persons who are authorized to bind a series to an instrument or record providing for the acquisition, mortgage or disposition of property by the series. **Section 1.7** expands the powers of a series to authorize a series to sue and be sued in its own name, make contracts in its own name and purchase, own and convey property.

Existing law requires that a person doing business in this State under an assumed or fictitious name which is different from the legal name of each person



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who owns an interest in the business must file a certificate with the county clerk of each county in which the business is being conducted. (NRS 602.010) **Section 3** of this bill provides that a series shall be deemed to be doing business under an assumed name if the name of the series does not indicate: (1) that it is a series; and (2) the name of the limited-liability company which created the series. **Section 4** of this bill requires a series to provide certain information in the certificate required to be filed pursuant to **section 3**.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 86 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the articles of organization or operating agreement of a limited-liability company authorizes the creation of a series, the registered agent of the company shall be deemed to be the registered agent for each series of the limited-liability company.

2. Each series may be served with any legal process, notice or demand required or authorized by law by serving the registered agent of the limited-liability company which authorized the creation of the series.

Sec. 1.3. NRS 86.061 is hereby amended to read as follows:

86.061 "Limited-liability company" or "company" means a limited-liability company organized *by filing articles of organization with the Secretary of State* and existing under this chapter, including a restricted limited-liability company.

Sec. 1.5. NRS 86.1255 is hereby amended to read as follows:

86.1255 "Series" and "series of members" are synonymous terms and, unless the context otherwise requires, ~~mean a series of members' interests having separate rights, powers or duties with respect to property, obligations or profits and losses associated with property or obligations, which are specified in the articles of organization or operating agreement or specified by one or more members or managers or other persons as provided in the articles of organization or operating agreement.~~ *means a limited-liability company whose creation has been authorized pursuant to subsection 2 of NRS 86.296 by a limited-liability company formed by filing articles of organization with the Secretary of State pursuant to NRS 86.151.*

Sec. 1.7. NRS 86.296 is hereby amended to read as follows:

86.296 1. The articles of organization or operating agreement of a limited-liability company may create classes of members or managers, define their relative rights, powers and duties, and may authorize the creation, in the manner provided in the operating agreement, of additional classes of members or managers with the



1 relative rights, powers and duties as may from time to time be
2 established, including, without limitation, rights, powers and duties
3 senior to existing classes of members or managers. The articles of
4 organization or operating agreement may provide that any member,
5 or class or group of members, has voting rights that differ from
6 other classes or groups.

7 2. The articles of organization or operating agreement of a
8 limited-liability company may ~~create~~ *authorize the creation of*
9 one or more series of members, or vest authority in one or more
10 members or managers of the company or in other persons to create
11 one or more series of members, including, without limitation, rights,
12 powers and duties senior to existing series of members. *A series*
13 *may be created as a limited-liability company, without the filing of*
14 *articles of organization with the Secretary of State, by the adoption*
15 *of an operating agreement by the members of the series.* The
16 ~~articles of organization or~~ operating agreement *of the series* may
17 provide that any member associated with ~~it~~ *the* series has voting
18 rights that differ from other members or series, or no voting rights at
19 all. A series may ~~have~~ *:*

20 (a) *Have* separate powers, rights or duties with respect to
21 specified property or obligations of the company or profits and
22 losses associated with specified property or obligations ~~it, and any~~
23 ~~series may have~~ *;*

24 (b) *Have* a separate business purpose or investment objective ~~it~~
25 *;*

26 (c) *Sue and be sued, complain and defend, in its own name;*

27 (d) *Make contracts in its own name;*

28 (e) *Purchase, take, receive, lease or otherwise acquire, own,*
29 *hold, improve, use and otherwise deal in and with real or personal*
30 *property, or an interest in it, wherever situated; and*

31 (f) *Sell, convey, mortgage, pledge, lease, exchange, transfer*
32 *and otherwise dispose of all or any part of its property and assets.*

33 3. The debts, liabilities, obligations and expenses incurred,
34 contracted for or otherwise existing with respect to a particular
35 series are enforceable against the assets of that series only, and not
36 against the assets of the company generally or any other series, if:

37 (a) Separate and distinct records are maintained for the series
38 and the assets associated with the series are held, directly or
39 indirectly, including through a nominee or otherwise, and accounted
40 for separately from the other assets of the company and any other
41 series; and

42 (b) The articles of organization comply, or an amendment to the
43 articles complies, with the provisions of paragraph (e) of subsection
44 1 of NRS 86.161.



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1 ↪ Unless otherwise provided in the articles of organization or
2 operating agreement, no debts, liabilities, obligations and expenses
3 incurred, contracted for or otherwise existing with respect to the
4 company generally or any other series are enforceable against the
5 assets of the series.

6 4. The articles of organization or operating agreement may
7 provide that the debts, liabilities, obligations and expenses incurred,
8 contracted for or otherwise existing with respect to a particular
9 series are enforceable against the assets of that series only, and not
10 against the assets of the company generally or any other series.

11 5. Unless otherwise provided in the articles of organization or
12 operating agreement, any event described in this chapter or in the
13 articles of organization or operating agreement that causes a
14 manager to cease to be a manager with respect to a series does not,
15 in itself, cause the manager to cease to be a manager with respect to
16 the company or with respect to any other series. Unless otherwise
17 provided in the articles of organization or operating agreement, any
18 event described in this chapter or in the articles of organization or
19 operating agreement that causes a manager to cease to be associated
20 with a series does not, in itself, cause the member to cease to be
21 associated with any other series, terminate the continued
22 membership of a member in the company or cause the termination
23 of the series, regardless of whether the member was the last
24 remaining member associated with the series.

25 **Sec. 2.** NRS 86.311 is hereby amended to read as follows:

26 86.311 ~~{Real}~~

27 *1. Except as otherwise provided in subsection 2, real* and
28 personal property owned or purchased by a company must be held
29 and owned, and conveyance made, in the name of the company.
30 Except as otherwise provided in the company's articles of
31 organization or operating agreement, instruments and records
32 providing for the acquisition, mortgage or disposition of property of
33 the company are valid and binding upon the company if signed by:

34 ~~{1-}~~ *(a)* One or more managers of a company which is managed
35 by a manager or managers;

36 ~~{2-}~~ *(b)* Any member of a company which is managed by its
37 members;

38 ~~{3-}~~ *(c)* Any agent, officer, employee or other representative of
39 the company authorized in the operating agreement or in another
40 writing by a manager or managers, if the company is managed by a
41 manager or managers; or

42 ~~{4-}~~ *(d)* Any agent, officer, employee or other representative of
43 the company authorized in the operating agreement or in another
44 writing by a member, if the company is managed by its members.



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2. *Real and personal property may be purchased, owned and conveyed by a series separately in the name of the series, as the asset of the series only. Except as otherwise provided in the articles of organization or operating agreement of the series, instruments and records providing for the acquisition, mortgage or disposition of property by a series are valid and binding upon the series if signed by:*

(a) *One or more managers of the series, if the series is managed by a manager or managers;*

(b) *Any member associated with the series, if the series is managed by the members associated with the series;*

(c) *Any agent, officer, employee or other representative of the series authorized in the operating agreement or in another writing by a manager or managers of the series, if the series is managed by a manager or managers; or*

(d) *Any agent, officer, employee or other representative of the series authorized in the operating agreement or in another writing by a member associated with the series, if the series is managed by its members.*

Sec. 3. NRS 602.010 is hereby amended to read as follows:

602.010 1. Every person doing business in this state under an assumed or fictitious name that is in any way different from the legal name of each person who owns an interest in the business must file with the county clerk of each county in which the business is being conducted a certificate containing the information required by NRS 602.020.

2. A person intending to conduct a business under an assumed or fictitious name may, before initiating the conduct of the business, file a certificate with the county clerk of each county in which the business is intended to be conducted.

3. *A series created pursuant to NRS 86.296 and doing business in this State shall be deemed to be doing business in this State under an assumed or fictitious name that is different from the legal name of each person who owns an interest in the business, if the name of the series does not indicate:*

(a) *That it is a series; and*

(b) *The name of the limited-liability company which authorized the creation of the series pursuant to NRS 86.296.*

Sec. 4. NRS 602.020 is hereby amended to read as follows:

602.020 1. A certificate filed pursuant to NRS 602.010 or a renewal certificate filed pursuant to NRS 602.035 must state the assumed or fictitious name under which the business is being conducted or is intended to be conducted, and if conducted by:

(a) A natural person:

(1) His or her full name;



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(2) The street address of his or her residence or business; and
(3) If the mailing address is different from the street address,
the mailing address of his or her residence or business;

(b) An artificial person:

- (1) Its name; and
- (2) Its mailing address;

(c) A general partnership:

- (1) The full name of each partner who is a natural person;
- (2) The street address of the residence or business of each

partner who is a natural person;

(3) If the mailing address is different from the street address,
the mailing address of the residence or business of each partner who
is a natural person; and

(4) If one or more of the partners is an artificial person
described in paragraph (b), the information required by paragraph
(b) for each such partner; ~~for~~

(d) A trust:

(1) The full name of each trustee of the trust;

(2) The street address of the residence or business of each
trustee of the trust; and

(3) If the mailing address is different from the street address,
the mailing address of the residence or business of each trustee of
the trust ~~for~~ ; or

(e) A series created pursuant to NRS 86.296:

*(1) The name of the limited-liability company which
authorized the creation of the series;*

*(2) The street address of the limited-liability company
which authorized the creation of the series; and*

*(3) If the mailing address is different from the street
address, the mailing address of the limited-liability company
which authorized the creation of the series.*

2. The certificate must be:

(a) Signed:

(1) In the case of a natural person, by that natural person;

(2) In the case of an artificial person, by an officer, director,
manager, general partner, trustee or other natural person having the
authority to bind the artificial person to a contract;

(3) In the case of a general partnership, by each of the
partners who is a natural person and, if one or more of the partners
is an artificial person described in subparagraph (2), by the person
described in subparagraph (2); ~~for~~

(4) In the case of a trust, by each of the trustees; ~~and~~ or

(5) In the case of a series created pursuant to NRS 86.296,

by:



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(I) One or more managers of the series, if the series is managed by a manager or managers;

(II) Any member associated with the series, if the series is managed by the members associated with the series;

(III) Any agent, officer, employee or other representative of the series authorized in the operating agreement or in another writing by a manager or managers of the series, if the series is managed by a manager or managers; or

(IV) Any agent, officer, employee or other representative of the series authorized in the operating agreement or in another writing by a member associated with the series, if the series is managed by its members; and

(b) Notarized, unless the board of county commissioners of the county adopts an ordinance providing that the certificate may be filed without being notarized.

3. As used in this section:

(a) "Artificial person" means any organization organized under the law of the United States, any foreign country, or a state, province, territory, possession, commonwealth or dependency of the United States or any foreign country, and as to which the government, state, province, territory, possession, commonwealth or dependency must maintain a record showing the organization to have been organized.

(b) "Record" means information which is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 5. The amendatory provisions of sections 1 to 2, inclusive, of this act:

1. Apply to any transfer or conveyance of property occurring before, on or after October 1, 2017; and

2. Apply to any administrative or judicial proceedings:

(a) Commenced on or after October 1, 2017; or

(b) Commenced before October 1, 2017, if the proceedings are pending or otherwise unresolved on October 1, 2017.

