



REI Mastery U



GETTING STARTED

THE REAL ESTATE
LLCs

A GUIDE TO
REAL ESTATE
BUSINESS ENTITIES

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GETTING STARTED

In

REAL ESTATE LLCS

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PRELIMINARY NOTES

Thanks for taking some time to read through this Getting Started eBook. We've organized it in FAQ format as these are the questions I typically get from clients. You should also keep this eBook readily available for future reference. Part 1 discusses LLCs in general and the two types of LLCs we normally set up for real estate investors—the asset protection LLC and the tax savings LLC. Part 2 discusses the Series LLC specifically—not all states have this option.

If you need additional information on LLCs, please watch “The 3 LLCs Used in Real Estate” video on our website. You should also consider joining our Professional Investor online program for even more asset protection and tax savings video content.

Happy Investing! Jeff

PART 1

THE LIMITED LIABILITY COMPANY

In addition to these FAQs, you may want to watch some of our videos in the Public Library on our Website or become a member for even more.

1. What is a Limit 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 if your business earns ordinary income. Therefore, the LLC is the recommended business entity for almost all small businesses in just about any industry.

2. 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. Another option to the FLP that is one of the most protective vehicles in the country is the Utah Asset Protection Trust. Our Family Legacy Guidebook discusses that type of trust and how it works.

3. What types of LLCs do you create?

While LLCs are flexible enough to fit almost any business venture, in real estate 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.** We typically do not set up Corporations with an S-election as the LLC is an easier business vehicle. 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 \$25,000 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. By that we mean it contains numerous clauses that create special protective measures for both the assets owned by the LLC and for the members (owners). While typically our clients use this LLC for real property, it can be anything, like stocks & bonds, precious metals, antique automobiles and etc. We structure this LLC specifically for asset protection and it's NOT what you'd get from an online form generator. Trust us! We've seen them all. Normally, this is also a Series LLC. Please see Part 2, Series LLC FAQs below for more information. **This is the preferred entity to hold a portfolio of rental properties.** For more on liability protection, see below.

3) We do create other variations of the LLC, like a Partnering LLCs, Holding LLCs and 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.

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

Typically, real estate investors (at least at some point) will have at least two LLCs: 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 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!!** Experience does matter. That's why you should always talk to an experienced attorney about the best type of LLC for your business. Doing 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.

5. 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. Remember, that any self-employment income, as a real estate agent or street hot dog vendor, should be run through the Tax Savings LLC.

6. 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 also get an EIN and open a bank account dedicated to the LLC's

business. For the tax savings, you need the IRS “S” Election form. Then you must run your LLC according to good corporate governance principals and keep all documents and receipts. Please download and read our Corporate Governance Guidebook, which you can find on the Client Info Page of our website.

7. 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!** Again, trust us, we’ve seen them all.

8. 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. We can assure you that it’s much more expensive when things go wrong when you don’t do it right in the first place.

9. 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. So, 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.

10. 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 if needed. Please talk to us about this in our consultation.

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

Again, most likely you will create the LLC in your home state for registration purposes. But, it can get cumbersome and expensive to register your LLC to do business 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 or you can download and read our Asset Holding Trust Guidebook on the Client Info Page of our website. **REMEMBER:** for more information on this, also read Part 2 of this Guidebook on the Series LLC as that is the type of LLC we set up for holding rental properties!

12. 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 or bind 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 1) some privacy (keeps you off the public part of the state website), 2) protection from people trying to hunt you down or sue you, and 3) 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.

If we are your registered agent, each year at renewal time you will get an email with the following options:

Renew my LLC: This will renew your LLC and we will stay on as registered agent for another year.

Renew and appoint a new registered agent: This will renew your LLC and WE WILL CHANGE the registered agent to the person of your choosing. There is a place on the renewal to name this person. It must be a human with a Utah street address. That new registered agent will then be responsible for renewing your LLC the following year.

Registered Agent Scams: Because your LLC name and address are public information, you may receive spam and junk mail. This includes letters from companies telling you to pay them a fee to do your minutes and renew your LLC. ONLY THE LISTED REGISTERED AGENT is responsible for this. So that should be us, you or whoever you hired for that position. If the letter comes from anyone else, it's just a scam to get your money!

Dissolve my LLC: With this option, we will officially dissolve your LLC with the state. We always recommend this if you no longer need your LLC.

WARNING: DO NOT MAKE ANY CHANGES TO THE REGISTERED AGENT OR ATTEMPT TO RENEW AN LLC IF WE ARE THE LISTED AGENT! THERE ARE SERIOUS LIABILITY ISSUES IF YOU DO. ALWAYS CONTACT OUR OFFICE TO MAKE ANY CHANGES!! WE WILL BE FORCED TO CHARGE FEES IF YOU DO THIS YOURSELF! PLEASE USE ONE OF THE THREE OPTIONS OR WORK WITH US ON MAKING CHANGES!

13. 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!)

14. What if I have partners in the LLC?

When there are unmarried partners, we consider that more of true partnership. Partnering with others is a great way to develop businesses. But, they come with a lot of additional complications and issues. First, we recommend reading our Partnering Guidebook found on the Client Info page of our website. That covers the additional issues you should think about and discuss with your partner before going into business together. Then, most likely we will create a custom operating agreement to match exactly how you want to partner. This does add on to the cost but it will save you far more by preventing disputes down the road.

If you need to make changes to any member or partner in an LLC, we recommend you do that through our office. You should have a written document evidencing the change that complies with your LLC operating agreement. That agreement has restrictions on member changes (an asset protection feature). So, these changes must be in compliance. As we typically do not list members on the state website, there should be no need to change anything there.

15. What if I need something more custom?

No worries! We do custom LLCs all the time for a wide range of clients and industries, not just partnering in real estate.

16. How is the LLC managed?

All LLCs must be defined as either "Member-managed" or "Manager-managed". This is a requirement in all 50 states. We always recommend "Manager-managed" for a variety of reasons: privacy, protection, ease & convenience of transactions, just to name a few.

NOTE: How an LLC is managed is a critical feature because it determines "signing authority" or who is legally authorized to sign and bind the company. Title companies are very particular about this when you sign closing documents. So you need to know how your LLC is set up and then sign in the correct capacity. If we set up your LLC, it's almost certainly manager-managed so the named manager(s) will always sign most documents (not the members!).

17. 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 use them and most are taken. They are also very difficult to confirm before we file, and if there are name issues it will delay your LLC. You can use your name, but this is only recommended if the business is you and you want to market & brand 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. You can also search the Utah Division of Corporations website to see if a name is available, but remember, checking initials and acronyms is difficult.

b) Company Address. This will be public, so if you want more privacy think about getting a postal box address that does NOT look like a "PO Box." The state will not allow a "PO Box #" as an address. But there are other commercial mailbox 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) Changes to Company Address: You should always keep the LLC's company address up to date! Many third parties, including lawsuits, will send information to that address. You may miss many things. We recommend simply changing the address online with the State Department of Commerce. There is no need to update your documents. But you will need to inform those that receive those documents of the new address—like title companies!

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

e) 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.

f) 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. By default, if there is more than one manager, our documents allow either to sign for the company individually.

g) Your Social Security Number. This is so we can get the employer identification number (EIN) for the LLC. You always want a separate tax ID for the company as it helps with protection. It's our policy to get the EIN with just one of the member's SSN (the client we are talking to), even if there are multiple members. This is standard procedure so do not be alarmed that only your name appears on the EIN document. If there are other members of the LLC, your accountant will name them on the tax return.

18. What if I need to make changes to the Company name, address, members or managers?

To change the company name, we need to file an amendment with the state. That is all that is legally required. You do not need a new set of documents. However, it might be most convenient and advisable to get what is called an "amended and restated" operating agreement that matches the new name. We can do this for a small fee. This can prevent the hassle of others getting confused. A name change does NOT require a new EIN. You keep the same one. You can even keep the same bank account, but you should provide the amendment to your bank so

that they can change the name on the account.

We can change the company address at the state's online website. That is usually sufficient. There is no need to recreate the documents just for an address change. If you'd like a new set of documents, we can accommodate that as well.

To change the members requires an amendment to the operating agreement (that's a protection thing!). So, please contact our office to make member changes. This type of change may also bring up tax issues so we always recommend speaking with your tax advisor before making this change.

Managers can be changed pretty easily with the correct form. Please contact our office if you need to add, remove or replace a manager of your LLC.

We recommend working through our office for ALL CHANGES to your LLC to ensure it's done correctly!

19. 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 as most banks want to see that the LLC is an active entity on the state website before giving you a bank account. If you are in a hurry, let us know and we can have it rushed for a small expedite fee.

20. 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 provide you with a stamped copy within a business day. Or we can have the state rush getting it posted on the state's website, which takes 2-4 business days. Both require an additional fee.

21. What is the investment to create my LLC?

Our prices are fixed for our Standard LLC, Series LLC and IRA, LLC at an extremely reasonable investment for the protection, experience and quality that you're getting. If, after discussing your needs, we decide a more custom LLC is needed, there may be an additional charge to customize your operating agreement. This is often the case when partnering with others. If you are planning on partnering, you should also read our Partnering Guidebook. While you may find something less expensive online or at less experienced firms, it won't be the quality we provide. Our documents represent over 20 years of experience in asset protection and real estate. Give the office a call for current pricing.

22. 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. 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. We will discuss this with you in our consultation.

23. 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. If your entity needs an S-election for the tax savings, we provide the form for you to send to the IRS or to your CPA who will handle that election. You then will receive the election confirmation letter directly from the IRS.

NOTE: if you need follow-up consultations or have questions, changes to the LLC, reprinting lost documents or other such items, there may be fees associated with those services. 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. We offer numerous guidebooks and online resources to help answer most questions. Please refer to these whenever possible.

24. What if I need more help?

For a small fee, we can hold official company meetings (part of your governance requirements) in which we can discuss any matter, issue or question you might have. We then put the notes into a meeting minutes form with our signature on it and send to you for your records. This is a great way to get your questions answered and comply with the rules on running your company. We also provide this guidebook and others, a cover letter in your binder and online resources to help as much as we can. For other questions, our legal assistants might be able to help. Or if necessary, you can schedule a consult with an attorney. There may be fees associated with the attorney consults.

25. How to I put money in and take money out of my LLC?

Putting money in is called a contribution. Taking money out is called a distribution (or sometimes a “draw” by your accountant). You really can do either at any time. Just make sure to record it in your bookkeeping. However, all LLCs should be properly funded so as to not make the LLC’s bank account like your personal account. In other words, you shouldn’t be constantly putting money in and taking money out for every little thing. This is bad corporate governance. We generally recommend keeping enough money in to cover 3-4 months of cash flow. See our Corporate Governance Guidebook 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 (IRS Form 1120S). 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 (IRS Form 1065) and issue K1 statements to each owner. Yes, we still recommend two or more owners on our Asset Protection LLCs 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. See our Corporate Governance Guidebook for more information.

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" on the Client Info page of our website 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 hold regular meetings with one of our attorneys for help and greater protection.

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 of the non-guilty members. That's why we always encourage two or more members for all our Asset Protection LLCs.

NOTE: There are other asset protection tools, even for single people, like the Utah Asset Protection Trust for even greater protection. Please ask us about these options.

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 as to what constitutes a reasonable salary.

31. Are there more advanced asset protection structures?

Of course. There are many other tools of asset protection, like the Utah Asset Protection Trust. 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. Again, we work with clients where they are and grow with them. We don’t sell them something they don’t need.

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. You can also download our Family Legacy Guidebook from the Client Info page on our website.

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 check out 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 video and other educational materials in the Education Center on our website.

1. What is a “Series LLC”?

We will use the words “Series LLC” and “series” differently. A “Series LLC” is a specially designed type of Limited Liability Company. It is formed differently and has a different operating agreement than standard 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” companies 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 would) 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.

Another way to explain it is that in the “old days” we would set up a holding LLC with multiple members and then set up a new wholly owned sub-LLC for each rental property our clients acquired. This was great for us because we set up a lot of LLCs! But it was expensive and cumbersome for our clients. The Series LLC accomplishes the same thing with just a single entity. Also, there’s only a one-time fee for the Series LLC and that’s it!

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. If we do a conversion on your existing company, the EIN stays the same and there is no difference in how the LLC is taxed. You can even keep your current bank account. However, if that LLC currently owns property, then you will need to change over title and property management agreements & leases so that the properties are owned by the individual series (the reason you converted to a Series LLC).

4. How do I create a “series”?

We provide you with 10 prepared “Series Creation Minutes” forms in your binder of documents. Now, you are NOT limited to just 10 series. If you need more than that, simply make a copy of one of the forms. On the form you 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 in 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. Please work with a knowledgeable title company or contact us to prepare any warranty deeds.

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 unique name of each series.

7. Can I have different managers or members of the series?

The legal answer is yes. However, if you make the members of a given series different than the Series LLC, then that series will need to be registered with the state, get its own EIN and file its own tax return. But that defeats the purpose and efficiencies of the Series LLC. So we always recommend a new LLC when you want to have different members or partners.

You can name a different manager of a series, but for convenience it’s not recommended. Many third parties (banks and title companies) will look up the manager of an LLC online to confirm they have signing authority. Since each series is not registered with the state, the series manager won’t show up and it might cause confusion. Our recommendation is to keep it simple!

8. 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.

NOTE: In Paragraphs 2.12, 2.13 and 5.6 (in our most current version) of the Series LLC operating agreement, it authorizes the creation of series and authorizes either the members or the managers to create them. The included minutes (in our most current version) are designed so that the managers create the series! In older versions it was the members. Double-check your documents to make sure who is authorized to create them. Title companies may ask for this authorization.

Also, on the Series Creation Minutes form included in your binder, it lists the members and managers of the Series LLC and therefore of the series. This should be enough to show signing authority on behalf of each series.

9. 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 the for EIN of a series, just give them the EIN for the Series LLC.

10. 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(s). 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

11. 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.

12. 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!

13. How do contribution and distributions work for each series?

These work the same as for all LLCs. See above in Part 1 for more info on contributions and distributions. Remember that each series acts like its own LLC. While you can keep everything in one bank account, your bookkeeping must keep everything separate. So, just record contributions to a specific series and for distributions (assuming you just take out a chunk of cash from the bank account) just attribute a portion of that distribution to as many series as have the cash to cover it. We always recommend working with an experience bookkeeper on this! You can contact us for help with this.

14. What about the mortgage that is in my personal name and the due on sale clause?

While real estate investor chat rooms and discussion boards always seem to argue about this, we have always recommended putting rental properties in an LLC. We have never (really, never!) run into any due on sale issues since you still own the property with the mortgage in your name. Most banks understand this. The series can also pay the mortgage, along with utilities and insurance bills, even though they come in your personal name. This is an exception to the no commingling rule. Please read our Corporate Governance Guidebook for more information.

NOTE: Remember that changing title to properties can cause "seasoning" issues for potential buyers and getting a loan. So, if you are planning on selling a property within a few months, we recommend NOT transferring title.

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

YES! You must deed the property into the full unique name of the series by warranty deed. 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), but rather always in the name of one of the series you created! We also recommend using a knowledgeable title company or our office to help you create the warranty deeds to make sure they are done correctly!

16. Do I get property insurance on the Series LLC or each series?

We first recommend working with an experienced insurance agent with a lot of real estate investor clients, and preferably experienced with Series LLCs! The agent will know what to do as each underwriter may want it done slightly differently. But typically, the Series LLC (the umbrella) is the named insured and you (the individual) are named as an additional insured. Then all the series underneath it are automatically covered. But, again, PLEASE CHECK WITH YOUR INSURANCE AGENT!

17. Can I do a 1031 Exchange in a Series?

Yes! You should work with a 1031 qualified intermediary (QI) that is familiar with doing 1031s in a series. While you can change the name of the series for your replacement property, please follow the guidance of the QI to ensure tax compliance.

18. Can I use a series for another business or with different partners?

We recommend no! While possible to use a series for a different business, you may not get some tax advantages or bring in unnecessary liabilities, depending on the business. You can use a series to own an investment into another LLC if that LLC holds similar assets. For example, if you are using the series LLC for your rentals, you could buy into a syndication for an apartment building. And while it's possible to have different members of a series, you would at that point have to create a whole new operating agreement and file a separate tax return. So we recommend setting up a new LLC for those different partners.

19. How do I write my lease agreements?

If you self-manage your properties, the named "Landlord" on your lease agreement should be the full unique name of the series, since the "series" owns the property and is the landlord. You will sign that lease as the manager of the series. See below for third party property managers.

20. Can I use a series for a commercial property?

Yes. However, we don't recommend it. Typically commercial properties and apartments come with a lot more liability so we recommend a special purpose entity (SPE) for all commercial deals. This will also help facilitate your financing. Commercial lender will lend to the name of the LLC itself but they aren't totally up to speed on series LLCs and probably won't allow you to use it. So, you're safest doing all commercial properties in their own,, stand-alone LLC designed for that specific property.

21. 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 have separate accounts for each series at your bank, then they can make payments directly to the name of the series.

22. 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 any). 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.

23. 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! Most property management companies do this as standard procedure anyway. Remember that each and every transaction for that account must be attributed to a particular series.

24. Can I use my own separate property management company?

Yes! Many clients do it this way for convenience. Others do it because it can deflect a lot of liability away from the series that owns the asset to the property management company that doesn't own anything. You will simply create a standard LLC (our tax savings one without the S-election) that will be the property manager. Then each of your series will sign a property management agreement with the property management LLC (we can provide you this form as well). Then all management (rent collection, repairs, etc.) is handled by the property management company that simply sends net any rents to the series.

25. What if I have rentals in other states?

Many of our clients set up a Utah Series LLC and hold rentals in other states. You can own the property directly in the name of the series (like your Utah properties). However, this can bring up the issue of whether the LLC needs to be registered in those states as well, increasing your costs and hassle.

If your Series LLC (you!) is going to also manage the property (in addition to owning it), then you must register that LLC in that state because it is conducting business there. In this situation you could own the property in an Asset Holding Trust to avoid registering your LLC. The Asset Holding Trust is then owned by a series of your Series LLC for protection purposes. The trust is not registered with any state, so you don't have to worry about registration! For more information, see our Asset Holding Trust Guidebook.

If you plan on using a third-party property manager, then your Series LLC is just holding an asset and typically that is not considered "conducting business" there and you do not need to register it. States can differ in their interpretation, so it can still be a good recommendation to either register it or use an Asset Holding Trust.

Also, some clients ask about the legality of the Series LLC in states that don't have them. While we don't exactly know for sure if those states will honor the "separation of liability" that Utah other states that recognize the Series LLC do, we still recommend using a Series LLC for multiple properties, including those out of state. There are legal reasons why you could still get the separation of liability outside of Utah, more and more states are adopting the Series LLC, and you would still get all the other protections the LLC affords (see, above). And again, holding title

by way of the Asset Holding Trust is still our general recommendation.

As a side note, when LLCs first came into being, everyone was scared to use them because they were “untested” in the courts and didn’t know if they would provide the protection they claimed. Well, now the LLC is almost the exclusive type of entity that businesses across the United State use.

26. 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 and put those assets at risk. Remember that the Series LLC (the main company) is like the mother ship, (that doesn’t do or own anything) and the series are like the children (each owning/managing the asset). All business should be conducted by the series.

27. 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.

28. Does each series file a tax return?

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

29. What do I do when my series sells the rental?

You do not need to do anything. After the property is sold and the series no longer owns anything, it really becomes null and void. There is no reason to do anything further. It doesn’t file a tax return or anything else. Just keep all your records for possible future reference.

Thanks for taking the time to read our Limited Liability Company Guidebook. Please also checkout our “Education Center” and other guidebooks on our website for more information.

If you need any further information, please contact us through www.REImasteryU.com.