



Alerts

Ruling Concerning Series LLCs in Illinois Highlights Importance of Differentiating and Following Statutory Procedures

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Hinshaw Alert

While the [Illinois Limited Liability Company Act](#) (IL LLC Act) has provided a statutory mechanism for establishing Series LLCs since 2005, the Illinois Fourth District Appellate Court only issued its first ruling concerning Series LLCs in March 2020.

In [City of Urbana v. Platinum Group Properties, LLC](#), the court held that a Series LLC, Platinum Group Properties, LLC – Sunnycrest Series, failed to prove it was a separate legal entity from its parent company, Platinum Group Properties, LLC. The case dates back to June 2014 when the City of Urbana (City) filed a complaint against Platinum Group Properties, LLC, for property maintenance code violations in three separate buildings on adjacent properties in the City. After a lengthy trial, it was found that the buildings did, in fact, violate numerous ordinances and Platinum Group was fined accordingly. Platinum Group appealed, and the court affirmed the ordinance violations. At the same time, however, the court vacated the criminal surcharge assessment, reversed the fine, and then remanded the cause for the circuit court to "reconsider its imposition of the fine."

In 2018, as part of the ongoing litigation, the City of Urbana filed a misnomer motion to amend the record and identify the entity by its full name, Platinum Group Properties, LLC – Sunnycrest Series. Platinum Group filed a memorandum opposing the City's motion and argued that the City had not only sued the wrong entity, but that this was not a simple case of misnomer. Citing § 37-40 of the IL LLC Act, Sunnycrest also asserted that it was a Series LLC, and thus a separate corporate entity from Platinum Group.

As the court explained, § 37-40 of the IL LLC Act allows an LLC to create one or more series, the purpose of which is to protect the assets of one series from the liabilities of another. It also acknowledged that "the facts of this case highlight the complexity the provision creates for litigation involving series LLCs." Unfortunately for Sunnycrest, in its opposition memorandum, they failed to submit a file-stamped certificate of designation from the Illinois Secretary of State, which is an Illinois statutory filing requirement. According to the court, this would have demonstrated that the Series LLC was properly organized under the IL LLC Act.

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However, as the court noted, even if the statutory requirements had been met, Sunnycrest would have been estopped from asserting that this was a case of mistaken identity instead of misnomer. This is because throughout the course of litigation, Sunnycrest and Platinum Group had the same manager and agent for service. The manager specifically testified that the properties in question were part of Platinum Group, thus failing to differentiate Sunnycrest as a separate legal entity. In the end, the court granted the City's motion to amend the record and held that previous rulings against Platinum Group would apply to Sunnycrest.

The recently lowered filing and annual report fees in Illinois may generally reduce the appeal of the Series LLC structure as opposed to individual LLC formations. However, for those interested in maintaining this corporate structure, *Platinum Group* highlights the importance of differentiating each LLC in the series and carefully following the Illinois Secretary of State statutory procedures.