

Alabama's New LLC Act



March 2016

Today's Topics

- Brief History of LLC Law
- Code § 10A-5A
- Affect on Choice of Entity Decisions



Code § 10A-5A

History

LLC History

1892 – German Gesellschaft mit beschränkter Haftung (GmbH)

1977 – Wyoming adopts LLC law

1988 – IRS decides to treat LLCs as partnerships

1993 – Alabama adopts first LLC act

2011 – Alabama amends LLC act

2015 – Alabama adopts most recent LLC law



Limited Liability Companies

- Limited Liability
- Partnership Foundations
- Less Paperwork
- Pass-Through Tax Treatment

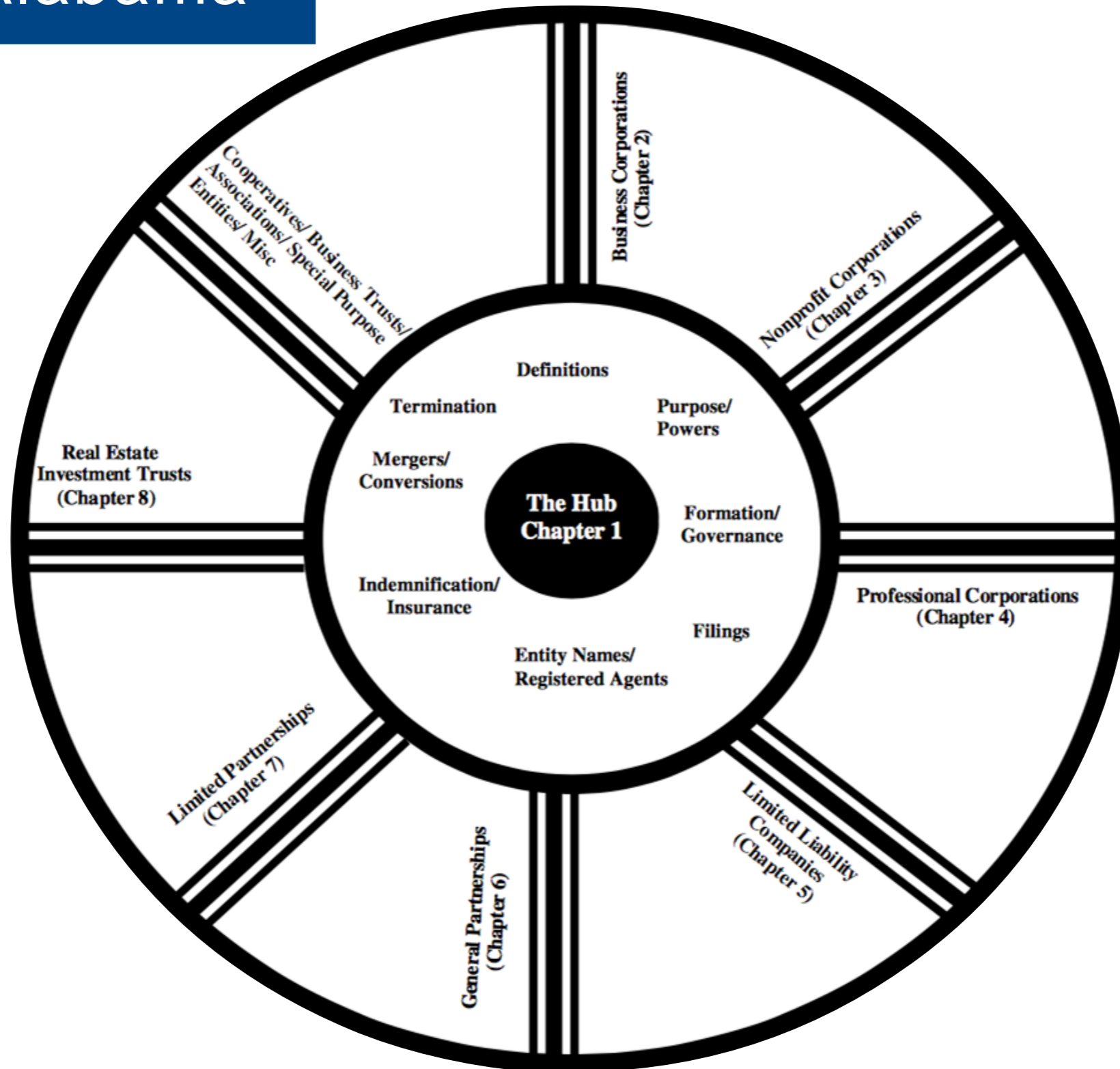


Famous LLCs

CHRYSLER



LLCs in Alabama



Code § 10A-5A

Overview

Code § 10A-5A

- “Alabama Limited Liability Company Law of 2014”
- Effective January 1, 2015
- Existing law is repealed effective January 1, 2017
- Legislative Intent
 - Preserve right to contract
 - Legitimize existing business practices



Code § 10A-5A



Major Changes

- Series LLCs
 - Section 10A-5A-11.01, et seq.
- Operating Agreement now takes precedence, then law
- Fiduciary duties to LLC can now be eliminated
- Addition of “Bad Faith” actions
 - Section 10A-5A-1.08



Other Changes

- Operating Agreement can now be “oral” or “implied”
 - Section 10A-5A-1.02(k)
- Liability for breach of contract may be eliminated
- Penalties against non-performing Members
 - Section 10A-5A-1.08
- Option to make confidential certain information from Members
 - Section 10A-5A-4.09(g)



Code § 10A-5A

Let's Get Technical

Terminology

◆ Old Terminology

- Member →
- Manager →
- Articles of Organization →
- Operating Agreement →
- Financial Rights →
- Governance Rights →

◆ New Terminology

- Member
- Manager
- Certificate of Formation
- Limited Liability Company Agreement
- Transferrable Interest
- ★ • Distribution



Formation

1. Register the Name with Secretary of State
2. File Articles of Organization with County
 - i. LLC's Name, ~~Initial Member(s), Business Purpose~~
 - ii. Simple statement that there is at least one Member
 - iii. Identification of Series, if applicable
 - iv. No requirement of Business Purpose
3. Must name an Initial Registered Agent with a physical address in the State
4. Pay Business Privilege Tax to AL Dep't of Revenue within 2.5 months of formation



Maintenance

◆ No Significant Changes

- Must maintain a Registered Agent with a physical address in the State
- Pay Business Privilege Tax to AL Dep't of Revenue annually by April 15
- Internally maintain membership listing, official documents, financial records
 - i.e. no filing requirements



Dissolution

- File Articles of Dissolution with County
- Notice to Creditors
- Dissolved LLCs can now be **reinstated**

Changes to Liability

◆ 3rd Parties

- Removes explicit right to guaranteed future payments

◆ To LLC

- Explicit duty of loyalty and care
- Duty of “good faith and fair dealing”
- Increased indemnification rights
- Identification of “Direct” and “Derivative” actions and procedures therefor



Code § 10A-5A

Series LLCs

Series LLC

§ 10A-5A-11.01. Series of assets. (Effective January 1, 2015)

(a) If a limited liability company complies with [Section 10A-5A-11.02](#), a limited liability company agreement may establish or provide for the establishment of one or more designated series of assets that:

(1) has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations; or

(2) has a separate purpose or investment objective.

(b) A series established in accordance with subsection (a) may carry on any activity, whether or not for profit.

(c) After a person is admitted as a member of a limited liability company in accordance with [Section 10A-5A-4.01](#), a member is associated with a series of the limited liability company:

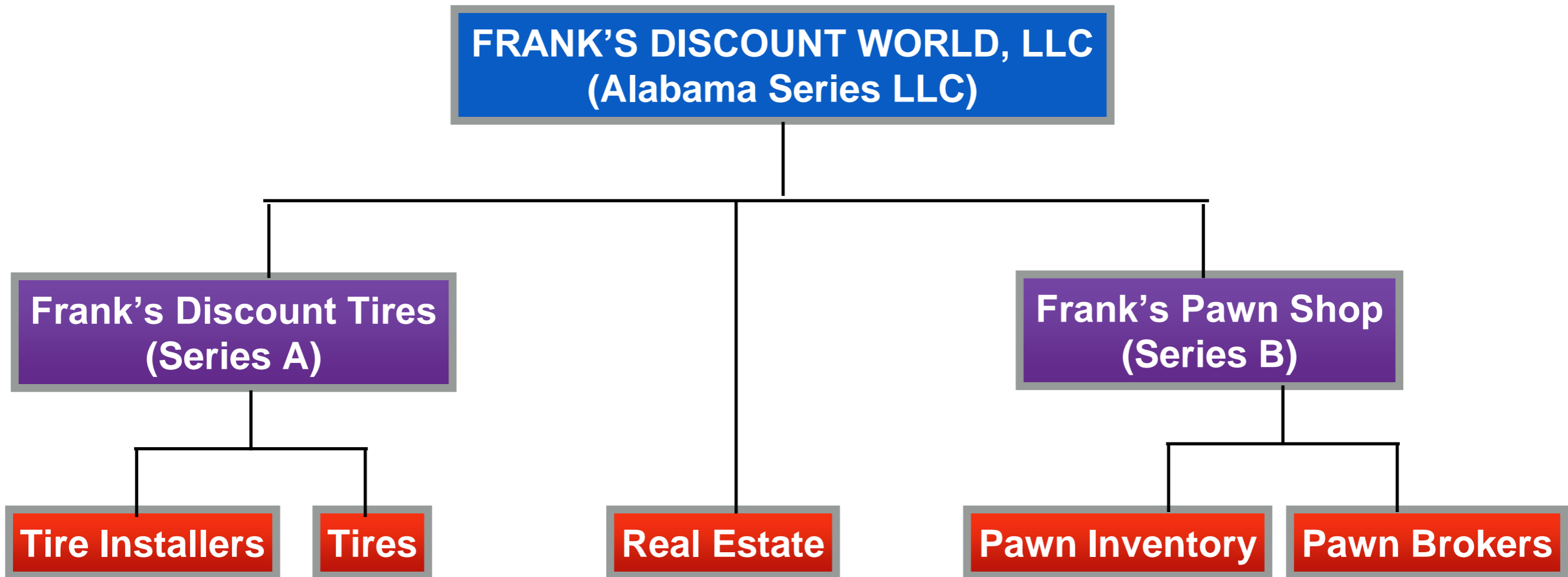
(1) as provided in the limited liability agreement;

(2) as the result of a transaction effective under Article 10; or

(3) with the consent of all members associated with that series.



Series LLC



Code § 10A-5A

Choice of Entity

Possibilities

Corporations



LLCs



Practicalities

Corporations



LLCs



Choice of Entity

Advantages

- Choice of tax regime
- Classes of ownership
- Limited liability
- Lower maintenance
- Option for pass-through taxation (i.e., no double taxation)
- Profits taxed to the individual by default
- Treated as entities separate from their members
- Single-Member minimums
- Limitations on 3rd party sale of interests
- Flexibility

Disadvantages

- No statutory requirement for Operating Agreement
- Difficulty in equity capital raising
- Business Privilege Tax (Alabama)
- Non-traditional management structures
- Taxing jurisdictions outside the US are likely to treat a US LLC as a corporation
- Non-standardized titles create difficulty in determining who's authorized
- Few default rule provisions
- Few minority owner protections
- Flexibility



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