

Contents

CHAPTER 1: INTRODUCTION TO GEORGIA LLCS AND THEIR TAX

CLASSIFICATION	1-1
1.1. Nature and Use of this Practice Manual	1-3
1.2. Comparison of the LLC with Other Entities	1-4
1.3. History of the LLC as a Form of Business	1-4
Table 1. Comparison of Limited Liability Companies, Limited Partnerships, S Corporations, and C Corporations	1-6
1.4. Classification of the LLC for Federal Income Tax Purposes	1-10
1.4.1. Introduction	1-10
1.4.2. History of LLC Taxation	1-11
1.4.3. The Pre-1997 Classification Rules	1-13
1.4.3.1. Limited Liability	1-13
1.4.3.2. Centralized Management	1-13
1.4.3.3. Continuity of Life	1-14
1.4.3.4. Free Transferability of Interests	1-15
1.4.4. The Check the Box Regulations	1-16
1.4.4.1. Entities Eligible to Check the Box	1-16
1.4.4.2. Classification of Eligible Entities That Do Not Check the Box ("Default Rules")	1-18
1.4.4.3. Transition to Check the Box (Grandfather Rules)	1-19
1.4.4.4. Mechanics of Checking the Box	1-19
1.4.4.5. Employer Identification Number (EIN) and Employment Tax Classification	1-21
1.4.5. Changes in Classification	1-22
1.4.5.1. Elective Change in Classification (Form 8832)	1-22
1.4.5.1.1. Partnership to Corporation	1-23
1.4.5.1.2. Corporation to Partnership	1-25
1.4.5.1.3. Corporation to Tax Nothing	1-25
1.4.5.2. Change in Number of Members	1-26

CONTENTS

	1.4.5.2.1.	Tax Nothing to Partnership	1-26
	1.4.5.2.2.	Partnership to Tax Nothing.	1-27
1.5.		The 2017 Tax Act	1-28
1.5.1.		2017 Tax Act's Impact on the Choice of Entity.	1-28
1.5.2.		Section 199A – Deduction for Qualified Business Income	1-29
1.5.3.		Section 1061 – Carried Interests	1-34
1.5.4.		Section 163(j) – Limitation on Interest Deduction	1-37
1.5.5.		Section 708 – Repeal of Technical Termination of Partnership.	1-38
1.5.6.		Section 461(l) – Limitation on Excess Business Losses of Non-Corporate Taxpayers	1-39
1.5.7.		Qualified Opportunity Funds Organized as Partnerships	1-40
1.5.8.		Additional CARES Act Changes.	1-41

PART I
ORGANIZATION AND STRUCTURE

CHAPTER 2:	FORMATION	2-1
2.1.	Introduction.	2-3
2.2.	Pre-Formation Matters	2-3
	Form 2-1. Transmittal Information for Georgia Limited Liability Companies.	2-5
2.3.	Articles of Organization	2-8
2.3.1.	Basic Requirements.	2-8
	Form 2-2. Articles of Organization (Short Form) — Minimum Required	2-9
	Form 2-3. Articles of Organization (Short Form) — Management Vested in Managers	2-10
2.3.2.	Optional Provisions	2-10
2.3.2.1.	Provision Limiting Agency Authority of Members	2-10
	Form 2-4. Articles of Organization (Long Form).	2-12
2.3.2.2.	Indemnification Provision.	2-13
	Form 2-5. Indemnification Provision.	2-13
2.3.2.3.	Approval Rights of Members	2-13
	Form 2-6. Articles of Organization Approval Provision.	2-14

2.3.2.4.	Provision Requiring Written Operating Agreement	2-14
	Form 2-7. Articles of Organization Provision for a Requirement that the Operating Agreement Be in Writing	2-15
2.4.	Articles of Correction	2-15
	Form 2-8. Articles of Correction of Articles of Organization.	2-15
2.5.	Articles of Amendment.	2-16
	Form 2-9. Unanimous Consent of Members to Amend Articles of Organization.	2-17
	Form 2-10. Consent of Members to Amend Articles of Organization Where Operating Agreement Does Not Require Unanimity	2-18
	Form 2-11. Articles of Amendment to Articles of Organization.	2-20
2.6.	Reservation of Name.	2-22
2.7.	Change of Registered Agent, Change of Address of Registered Agent.	2-22
2.8.	Annual Registration	2-22
2.9.	Federally Required Reporting of Beneficial Ownership.	2-23
CHAPTER 3: THE OPERATING AGREEMENT		3-1
3.1.	In General	3-2
3.2.	“Operating Agreement” Defined.	3-3
3.3.	Flexibility of LLC Form	3-4
3.4.	Form of Operating Agreement	3-4
3.5.	Adoption by Members	3-5
3.6.	Amendment.	3-5
3.7.	Form Operating Agreements.	3-5
CHAPTER 4: ESTABLISHING THE LLC		4-1
4.1.	Drafting LLC Organization Provisions.	4-2
4.2.	Introductory Paragraph	4-2
	Form 4-1. Introductory Paragraph — Names Parties	4-2
	Form 4-2. Introductory Paragraph — Does Not Name Parties	4-3
	Form 4-3. Introductory Paragraph — Single-Member LLC	4-3
4.3.	Background to Agreement	4-3
	Form 4-4. Explanatory Statement.	4-4

CONTENTS

4.4. Confirmation of Agreement 4-4
Form 4-5. Confirmation of Agreement 4-4

4.5. Definitions 4-4

4.5.1. “Economic Interest” Compared to
“Membership Interest” 4-5

4.5.2. “Economic Interest Owner” Compared to
“Member” 4-5
Form 4-6. General Definitions 4-6

4.6. Agreement to Organize LLC 4-7
Form 4-7. General Agreement to Organize LLC 4-8
Form 4-8. Organizational Provision Confirming that
Articles of Organization Have Been Filed 4-8

4.7. Name 4-8
Form 4-9. Name Provision for Member-Managed LLC 4-9
Form 4-10. Name Provision for Manager-Managed LLC 4-9

4.8. Purpose 4-9
Form 4-11. Any Lawful Purpose 4-9
Form 4-12. Specific Purpose 4-10
Form 4-13. Purpose Limited to Real Estate 4-10

4.9. Term 4-10
Form 4-14. Term 4-11

4.10. Principal Office 4-11
Form 4-15. Principal Office of LLC Managed by
Members 4-11
Form 4-16. Principal Office of LLC Managed by
Managers 4-11

4.11. Registered Agent and Registered Office 4-12
Form 4-17. Registered Agent 4-12

4.12. Members 4-12
Form 4-18. Schedule of Members Set Forth in Exhibit 4-13

4.13. Miscellaneous Provisions 4-13
Form 4-19. Miscellaneous Provisions 4-13

CHAPTER 5: GOVERNANCE 5-1

5.1. Drafting LLC Management Provisions 5-2

5.1.1. General Flexibility under the Act 5-2

5.1.2. Typical Approaches 5-3

5.1.3. Officers and Managers 5-3

5.2. Member-Managed LLC Provisions 5-4

Form 5-1. Simple Member-Management Provision 5-4

Form 5-2. Member-Management but with Appointment
of Ministerial Manager 5-5

5.3. Representative Management 5-5

5.3.1.	Management by a “General Partner”-Like Manager	5-6
	Form 5-3. Manager with “General Partner”-Like Authority	5-6
5.3.2.	Management by Management Committee	5-8
	Form 5-4. Management Committee	5-8
5.4.	Replacement of Managers	5-10
	Form 5-5. Removal of Manager for Any Reason	5-10
	Form 5-6. Removal of Manager for Only Specified Reasons	5-11
5.5.	Meetings of Members or Managers	5-11
	Form 5-7. Procedure for Calling and Holding Meetings	5-12
	Form 5-8. Notice of Meeting	5-13
5.6.	Action of Members Without a Meeting; Form of Member Consents	5-13
	Form 5-9. Action without a Meeting	5-13
	Form 5-10. Form of Consent of Members	5-14
5.7.	Deadlock and Resolution	5-15
	Form 5-11. Arbitration of Deadlock	5-16
	Form 5-12. Buy-Out Provision	5-17
5.8.	Compensation and Reimbursement	5-19
	Form 5-13. No Arrangement for Compensation (Member-Managed)	5-20
	Form 5-14. Compensation (Manager-Managed)	5-20
5.9.	Standard of Care and Degree of Loyalty; Interested Transactions	5-21
	Form 5-15. Standard of Care and Liability of Members	5-22
5.10.	Indemnification	5-23
	Form 5-16. Liability and Indemnification of Members (Member-Managed)	5-23
5.11.	Power of Attorney	5-26
	Form 5-17. Power of Attorney	5-26

CHAPTER 6: TRANSFER, BUY-SELL, AND REDEMPTION. 6-1

6.1.	The Act’s Default Rules for Transfers	6-3
6.2.	Tax Aspects of Transfer Restrictions	6-3
	6.2.1. Partnership Classification	6-3
	6.2.2. “Technical” Termination of the LLC	6-4
	6.2.3. Basis Issues	6-4
6.3.	Preliminary Drafting Considerations	6-5
	Form 6-1. Definitional Provision — Transfer	6-5
	Form 6-2. Definitional Provisions — Economic Interest and Membership Interest	6-5

CONTENTS

6.4.	Drafting Transfer Provisions that Follow the Act's Default Rules	6-6
	Form 6-3. Transfer Provision Following Act's Default Rules	6-6
6.5.	Drafting Transfer Provisions that Permit Free Transferability of Interests.	6-6
	Form 6-4. Free Transferability of Interests and Rights.	6-7
6.6.	Drafting Transfer Provisions that Absolutely Prohibit Transfers of Any Kind.	6-7
	Form 6-5. Absolute Prohibition of Transfers	6-7
6.7.	Drafting Transfer Provisions that Permit Transfers Only on Certain Conditions	6-7
	6.7.1. In General	6-7
	Form 6-6. Permitted Transfers	6-8
	Form 6-7. Prohibited Transfers	6-8
	6.7.2. First Refusal Rights.	6-10
	Form 6-8. Right of First Refusal	6-10
	Form 6-9. Right of First Offer	6-12
	6.7.3. Admission of Transferee as a Member	6-13
	Form 6-10. Transferee Admitted as Member.	6-13
	6.7.4. Transfers to Members' Affiliates and Family	6-14
	Form 6-11. Transfers to Family	6-14
6.8.	Withdrawal under the Act	6-14
	6.8.1. Voluntary Withdrawal	6-14
	Form 6-12. Voluntary Withdrawal	6-15
	Form 6-13. Voluntary Withdrawal — Not Permitted	6-15
	6.8.2. Involuntary Withdrawal	6-15
	Form 6-14. Involuntary Withdrawal Defined (Long Form)	6-16
6.9.	Consequences of Dissociation in General.	6-17
	Form 6-15. Successor of Withdrawn Member Continues as Unadmitted Assignee.	6-17
6.10.	Creating Buy-Out Rights	6-18
	Form 6-16. Optional Buy-Out; Company Buys; Installment Purchase	6-18
	Form 6-17. Mandatory Buy-Out.	6-18
6.11.	Valuation Provisions	6-19
	Form 6-18. Agreed Value	6-19
	Form 6-19. Book Value.	6-20
	Form 6-20. Appraised Value.	6-21
6.12.	Miscellaneous Transfer Provisions	6-21
	Form 6-21. Installment Buy-Outs.	6-21
	Form 6-22. Insolvency Form	6-22

Form 6-23.	Cash Flow Limitation	6-22
6.13.	Buy-Sell Provisions	6-23
Form 6-24.	Buy-Sell Provision	6-23
CHAPTER 7: DISSOLUTION		7-1
7.1.	Overview of the LLC Dissolution	7-2
7.2.	The Act's Dissolution Provisions	7-2
7.3.	Events of Dissolution	7-3
Form 7-1.	Dissolution — Comprehensively Describes All Events of Dissolution; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	7-4
Form 7-2.	Dissolution — Refers to Events of Withdrawal under Another Section; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	7-5
7.4.	Continuing the LLC After Event of Dissolution	7-5
Form 7-3.	Sample Resolutions Approving Continuation of Business after Dissolution	7-6
7.4.1.	Waiving Events of Dissociation	7-7
Form 7-4.	No Dissolution Upon Any Event of Dissociation	7-7
7.5.	Statement of Commencement of Winding Up	7-7
Form 7-5.	Filing of Statement of Commencement of Winding Up — Member-Managed LLC	7-8
Form 7-6.	Filing of Statement of Commencement of Winding Up — Manager-Managed LLC	7-9
Form 7-7.	Statement of Commencement of Winding Up . . .	7-10
Form 7-8.	Written Notice of Commencement to Known Claimants	7-10.2
Form 7-9.	Published Notice of Commencement to Unknown Claimants	7-11
7.6.	Procedure for Winding Up and Distribution of Assets	7-12
Form 7-10.	Procedure for Winding Up in Member-Managed LLC	7-12
Form 7-11.	Procedure for Winding Up in Manager-Managed LLC	7-13
Form 7-12.	Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee	7-14
7.7.	Termination	7-15
Form 7-13.	Certificate of Termination	7-16

PART II
FINANCIAL, ACCOUNTING, AND
TAX CONSIDERATIONS

CHAPTER 8: LIMITED LIABILITY COMPANY	
CAPITAL.....	8-1
8.1. Drafting Capital Provisions.....	8-2
8.2. Initial Capital Contributions.....	8-2
Form 8-1. Initial Capital Contributions in Cash.....	8-2
Form 8-2. Initial Capital Contributions — Partly in Cash and Partly in Services	8-3
Form 8-3. Initial Capital Contributions — Partly in Cash and Partly in Property	8-3
Form 8-4. Representation in Connection with Contribution of Property	8-4
8.3. Additional Capital Contributions	8-4
Form 8-5. Additional Capital Contributions at Discretion of Managers — Limit on Amount	8-5
Form 8-6. Additional Capital Contributions at Discretion of Members — Limit on Amount	8-5
Form 8-7. No Liability Beyond Initial Capital Contribution.....	8-6
Form 8-8. No Liability Beyond Additional Capital Contributions	8-6
8.4. Default in Payment of Contributions	8-6
Form 8-9. Remedy of Reduction of Member’s Interest in Event of Failure to Make Contribution to Manager-Managed LLC	8-7
8.5. Return on Capital Contributions	8-7
Form 8-10. No Return on Capital Contributions	8-8
Form 8-11. Return on Capital Contributions	8-8
8.6. Return of Capital Contributions	8-8
Form 8-12. Return of Capital Contributions	8-9
8.7. Form of Distribution	8-9
Form 8-13. Form of Distribution — No Right to Receive Property Other Than Cash	8-9
Form 8-14. Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager-Managed LLC	8-10
8.8. Capital Accounts.....	8-10
Form 8-15. Capital Accounts Maintained in Accordance with Code §704	8-10
8.9. Loans.....	8-10

Form 8-16. Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future	8-11
---	------

CHAPTER 9: ALLOCATION AND DISTRIBUTION 9-1

9.1. Taxation of the LLC	9-3
9.2. General Allocation and Distribution Concepts	9-3
9.3. Distribution Restrictions under the Act.	9-4
9.4. Allocation Restrictions — I.R.C. § 704(b).	9-4
9.4.1. Overview	9-4
9.4.2. The Three Alternative Allocation Tests	9-5
9.4.2.1. The First Test: Partners' Interests	9-5
9.4.2.2. The Second Test: Substantial Economic Effect and Capital Accounts	9-5
9.4.2.3. The Third Test: Nonrecourse Debt	9-6
9.4.3. Allocations to Interest Holders	9-8
9.5. Definitions.	9-8
9.5.1. Distribution-Related Definitions	9-9
Form 9-1. Distribution Definitions.	9-9
9.5.2. Allocation-Related Definitions	9-9
Form 9-2. Tax Definitions	9-9
9.6. Basic Distribution Provisions	9-12
9.6.1. In General	9-12
9.6.2. Cash Flow from Operations.	9-13
Form 9-3. Distributions of Cash Flow	9-13
9.6.3. Distribution of Capital Proceeds	9-14
Form 9-4. Distribution of Capital Proceeds.	9-14
9.6.4. Liquidation Proceeds.	9-15
Form 9-5. Liquidation and Dissolution	9-15
Form 9-6. Liquidation and Dissolution — Deficit Restoration Obligation	9-16
Form 9-7. Alternate Liquidation and Dissolution Provision	9-17
Form 9-8. Allocations and Distributions — Distributions Not Tied to Capital Accounts	9-17
9.7. Basic Allocation Provisions	9-18
9.7.1. Basic Allocations of Income and Loss	9-18
9.7.2. Qualified Income Offset and Minimum Gain Chargeback	9-18
Form 9-9. Qualified Income Offset and Minimum Gain Chargeback	9-19

CONTENTS

9.7.3.	Other Regulatory Allocations	9-19
	Form 9-10. Regulatory Allocations	9-20
	Form 9-11. Curative Allocations	9-21
9.7.4.	General Provisions.	9-21
	Form 9-12. General Provisions	9-21
9.8.	Complex and Disproportionate Distribution and Allocation Provisions	9-22
9.8.1.	Distribution Preferences	9-22
	Form 9-13. Distribution Preference	9-23
9.8.2.	Disproportionate Allocation of Losses	9-24
	Form 9-14. Disproportionate Allocation of Loss.	9-24
9.8.3.	Flip-Flops	9-26
	Form 9-15. Flip-Flop on Sale.	9-26

CHAPTER 10: COMPENSATION STRATEGIES

FOR THE LLC 10-1

10.1.	Introduction.	10-3
10.2.	I.R.C. § 83: Stock Grants and Options	10-4
	10.2.1. I.R.C. § 409A	10-7
	10.2.2. Proposed 83 Guidance.	10-12
10.3.	Capital and Profit Interests	10-14
	10.3.1. Tax Consequences for Transfers of Interests Prior to Effective Date under Proposed 83 Guidance	10-14
	10.3.2. Tax Consequences for Transfers of Interests if Proposed 83 Guidance is Adopted.	10-20
	10.3.3. I.R.C. § 409A	10-23
10.4.	LLC (Partnership) vs. Corporation Compensation Methods	10-25
	10.4.1. Corporation Context	10-25
	10.4.1.1. Stock Grants	10-25
	10.4.1.2. Stock Options	10-26
	10.4.1.3. Phantom Stock Plans.	10-27
	10.4.2. The LLC Context.	10-28
	10.4.2.1. “Full” Equity Interest	10-29
	10.4.2.2. Point System or Unit Compensation.	10-30
	10.4.2.2.1. I.R.C. § 409A	10-31
	10.4.2.3. The Importance of Member Involvement.	10-32
	10.4.2.4. Debt Guarantees	10-33
	10.4.2.5. Equity Interest vs. Non-equity Incentive Compensation	10-33
	10.4.2.5.1. I.R.C. § 409A	10-34
10.4.3.	Compensation Comparison Chart	10-35

10.5.	Phantom Income and Distributions.	10-38
10.5.1.	Tax Affected Distributions.	10-38
10.5.1.1.	Separate Calculations for Each Member.	10-39
10.5.1.2.	Standard Distribution Rate	10-40
10.5.1.3.	Highest Incremental Tax Rate.	10-41
10.5.2.	Self-Employment Tax	10-43
10.5.2.1.	Calculating Self-Employment Income	10-44
10.5.2.2.	Application of Self-Employment Tax to LLC Members.	10-44
10.6.	Fiduciary Duties, Inspection Rights, and Other Duties to Equity Holders	10-45
10.7.	Securities Law Issues	10-45
10.8.	Member Exit Strategies: Buyout Arrangements	10-46
10.9.	Equity and Non-Equity-Based LLC Compensation Plans and Grants.	10-47

CHAPTER 11: BOOKS, RECORDS, ACCOUNTING AND TAX MATTERS 11-1

11.1.	Introduction.	11-2
11.2.	Records	11-3
Form 11-1.	Maintenance of Records — Member-Managed LLC (Short Form)	11-3
Form 11-2.	Maintenance of Records — Manager-Managed LLC (Short Form)	11-4
Form 11-3.	Maintenance of Records — Manager-Managed LLC (Long Form)	11-4
11.3.	Banking.	11-5
Form 11-4.	Bank Accounts.	11-5
Form 11-5.	Bank Accounts (Long Form)	11-5
11.4.	Tax and Accounting Decisions	11-6
Form 11-6.	Tax and Accounting Decisions	11-6
11.5.	Accounting Periods.	11-6
Form 11-7.	Calendar Year Accounting Period Specified	11-6
Form 11-8.	Fiscal Year Accounting Period Specified.	11-7
Form 11-9.	Year to Be Determined by Members	11-7
Form 11-10.	Annual Accounting Period Established by Managers.	11-7
11.6.	Reports	11-7
Form 11-11.	Preparation of Reports (Short Form) for Member-Managed or Manager-Managed LLC	11-8
Form 11-12.	Preparation of Reports (Long Form) for Manager-Managed LLC	11-8

CONTENTS

11.7.	Tax Returns	11-9
	Form 11-13. Tax Returns (Short Form)	11-9
11.8.	“Tax Matters Partner” and “Partnership Representative”	11-9
	Form 11-14. Tax Matters Partner and Partnership Representative (Short Form)	11-12
	Form 11-15. Tax Matters Partner and Partnership Representative (Long Form)	11-12
11.9.	Tax Classification Election	11-13
	Form 11-16. Tax Classification Election on Form 8832	11-14
11.10.	Title to Property	11-14
	Form 11-17. Title to Property — In Company Name	11-14
	Form 11-18. Title to Company Property — Use of Nominee Permitted	11-15

**CHAPTER 12: GEORGIA TAXATION OF LIMITED
LIABILITY COMPANIES 12-1**

12.1.	Introduction	12-2.1
12.2.	Conformity with Federal Treatment of LLCs	12-2.1
	12.2.1. Georgia Income Tax Treatment	12-2.1
	12.2.2. Income Tax Treatment in Other States	12-3
	12.2.3. Other Georgia Taxes	12-4
	12.2.3.1. Real Property Transfer Taxes	12-4
	12.2.3.2. Sales/Use Taxes	12-5
12.3.	Georgia Income Taxation of LLC Members	12-6
	12.3.1. Jurisdiction to Tax Members of an LLC	12-6
	12.3.1.1. Statutory Authority	12-6
	12.3.1.2. Constitutional Issues	12-8.1
	12.3.1.2.1. Due Process Clause	12-9
	12.3.1.2.2. Commerce Clause	12-14
	12.3.1.3. Exception for Investment Partnerships or LLCs	12-16
	12.3.2. Method of Taxing Members of an LLC	12-17
	12.3.2.1. Individual Members	12-17
	12.3.2.1.1. Income Allocated to Georgia	12-18
	12.3.2.1.2. Income Apportioned to Georgia	12-19
	12.3.2.2. Non-Individual Members	12-23
	12.3.3. Withholding on Distributions to Nonresident Members	12-25
	12.3.3.1. Introduction	12-25
	12.3.3.2. Withholding Procedures	12-26
	12.3.3.3. Exemptions from Withholding Requirements	12-27

12.3.3.4.	Tiered Situations	12-31
12.3.3.5.	Anti-Avoidance Rule.	12-31
12.3.3.6.	Penalties for Failure to Withhold	12-32
12.3.3.7.	Members' Liability for LLC Withholding Obligations.	12-32
12.3.4.	Withholding on Transfers of Real Property by Nonresidents.	12-33
12.3.5.	Section 1446(f) – Withholding on Transfers by Non-U.S. Partners	12-35

PART III ADDITIONAL ITEMS OF INTEREST

CHAPTER 13: REORGANIZATION OF THE LLC: ADMISSION, CONVERSION AND MERGER

13-1

13.1.	In General	13-3
13.2.	Admission of New Members	13-3
13.2.1.	Acquisition of Interest from Company	13-3
	Form 13-1. Simple Subscription Agreement for LLC Membership Interest.	13-4
	Form 13-2. Long Form Subscription Agreement for LLC Membership Interest.	13-5
	Form 13-3. First Amendment to Operating Agreement Admitting Assignee of Interest as a Member.	13-9
13.2.2.	Acquisition of Interest from a Member.	13-11
	Form 13-4. Joinder Agreement	13-11
13.3.	Conversion of an Existing Entity into an LLC	13-12
13.3.1.	In General	13-12
13.3.2.	Conversion of General Partnership into LLC	13-12
	Form 13-5. Explanatory Statement Conversion of General Partnership into LLC.	13-13
	Form 13-6. Term Is Continuation of Term of Partnership	13-14
	Form 13-7. Initial Capital Contributions — Interests in LLC's Predecessor	13-14
	Form 13-8. Assignment of General Partnership Interests to LLC	13-15
	Form 13-9. Resolutions of Partners Approving Liquidation of Partnership into LLC.	13-16
	Form 13-10. Certificate of Conversion to Become a Limited Liability Company	13-16

CONTENTS

13.3.3.	Conversion of Limited Partnership into LLC	13-18
13.3.4.	Conversion of Corporation into LLC	13-19
	Form 13-11. Plan of Conversion	13-20
13.4.	Conversion of an LLC into a Corporation	13-23
	Form 13-12. Certificate of Conversion into a Corporation	13-25
13.5.	Conversion of Domestic LLCs into Foreign Entities	13-27
	Form 13-13. Certificate of Conversion into a Foreign Entity	13-28
13.6.	Recapitalizing the LLC	13-30
	Form 13-14. Form of Amendment of Operating Agreement	13-31
13.7.	Mergers Involving a Georgia LLC	13-31
	Form 13-15. Merger of Two Georgia LLCs	13-33
13.8.	Entity Conversions under Georgia Law, in General	13-34
13.8.1.	What Is a Conversion?	13-34
13.8.2.	Prior Law	13-36
13.8.3.	Current Law	13-36
	13.8.3.1. Conversions into Georgia Entities	13-36
	13.8.3.2. Conversions into Foreign Entities	13-37

CHAPTER 14: SINGLE-MEMBER LLCS 14-1

14.1.	Background on Georgia Single-Member LLCs	14-2
14.2.	Forming the SMLLC and Adopting the Operating Agreement	14-3
	14.2.1. Formation	14-3
	14.2.2. The SMLLC Operating Agreement in General	14-3
	14.2.3. Why Adopt a Written Operating Agreement?	14-4
14.3.	Liability Protection with an SMLLC	14-7
	14.3.1. General	14-7
	14.3.2. Series LLCs	14-8
	14.3.3. Reverse Piercing and Charging Orders	14-8
14.4.	Tax Treatment of the SMLLC	14-8.2
	14.4.1. Classification as “Disregarded Entity”	14-8.2
	14.4.2. Counting the Number of Members	14-9
	14.4.3. A Disregarded Entity May be “Regarded” for Some Tax Purposes	14-10
	14.4.3.1. Georgia Tax (Other than Income Tax)	14-10
	14.4.3.2. Federal Employment and Excise Tax	14-10
	14.4.3.3. Other Federal Tax Purposes	14-12
	14.4.4. Taxpayer Identification Number	14-13
	14.4.5. Change in Number of Members	14-14
	14.4.5.1. SMLLC Becomes Multi-Member LLC	14-14

14.4.5.2. Multi-Member LLC Becomes SMLLC	14-14
14.4.6. Treatment of SMLLC as Corporation	14-15
14.5. Conclusion	14-16

CHAPTER 15: PROFESSIONAL LLCs, LIMITED LIABILITY PARTNERSHIPS (LLPs) AND LIMITED LIABILITY LIMITED PARTNERSHIPS (LLLPs)..... 15-1

15.1. Introduction.....	15-2
15.2. Professional LLCs.....	15-3
15.3. Limited Liability Partnerships (LLPs)	15-3
15.3.1. Georgia LLPs in General.....	15-3
15.3.2. Procedure for Electing LLP Status	15-4
Form 15-1. Election to Become a Limited Liability Partnership	15-5
15.4. Comparison of LLPs and LLCs	15-6
15.4.1. Authority to Practice	15-6
15.4.2. Income Tax	15-7
15.4.3. Self-Employment Tax	15-9
15.4.4. Liability Protection	15-10
15.4.5. Power to Bind the Entity	15-11
15.4.6. Penalties for Wrongful Withdrawal.....	15-12
15.4.7. Continuity and Ease of Conversion.....	15-12
15.5. Limited Liability Limited Partnerships (LLLPs)	15-14
15.5.1. Georgia LLLPs in General	15-14
15.5.2. Procedure for Electing LLLP Status	15-15
Form 15-2. Amendment to Certificate of Limited Partnership.....	15-16
Form 15-3. Election to Become a Limited Liability Limited Partnership	15-17

CHAPTER 16: DOING INTERSTATE BUSINESS 16-1

16.1. Foreign LLCs Doing Business in Georgia	16-2
16.1.1. In General	16-2
16.1.2. Definition of “Doing Business”.....	16-2
16.1.3. Procedure for Registration.....	16-4
Form 16-1. Application for Certificate of Authority for Foreign Limited Liability Company	16-4.1
16.1.4. Filing Fee.....	16-5
16.1.5. Issuance and Cancellation of Registration	16-5

16.1.6. Doing Business without Registration	16-5
16.1.7. Change of Name and Conversion of Entity Type	16-6
16.2. Georgia LLCs Doing Business Outside of Georgia	16-6

**CHAPTER 17: BANKRUPTCY ISSUES CONCERNING
LLCS 17-1**

17.1. Overview	17-3
17.2. Eligibility of LLCs for Voluntary Relief under the Bankruptcy Code	17-4
17.3. Property of the Estate	17-5
17.4. May a Member Commence an Involuntary Case Against an LLC?	17-6
17.5. What Approval Is Needed for an LLC to File a Voluntary Bankruptcy Petition?	17-7
Form 17-1. Operating Agreement Provision — Unanimous Consent of Members to Filing a Voluntary Case	17-9
Form 17-2. Operating Agreement Provision — Consent of Majority of Members to Filing a Voluntary Case	17-9
Form 17-3. Operating Agreement Provision — Member Vote Required for Filing a Voluntary Case	17-10
Form 17-4. Operating Agreement Provision — Member and Manager Vote Required for Filing of Voluntary Case	17-11
Form 17-5. Resolutions of Members in Member-Managed LLC Consenting to Filing a Voluntary Case under Chapter 7	17-12
17.6. Creating Limitations on the Ability of an LLC to Commence a Voluntary Case — Single-Purpose Bankruptcy Remote LLCs	17-13
Form 17-6. Operating Agreement Provision — Purpose Clause for an SPBR LLC	17-15
Form 17-7. Operating Agreement Provision — Management of Business and Affairs of the Company	17-16
17.7. Other Bankruptcy Issues from the LLC’s Perspective	17-22
Form 17-8. Operating Agreement Provision — Transfers	17-23
Form 17-9. Operating Agreement Provision — Dissolution of the Company	17-23
Form 17-10. Operating Agreement Provision — Special Amendment Provision	17-25
17.8. Right of the LLC or Remaining Members to Terminate Management Rights of a Bankrupt Member	17-25

Form 17-11. Operating Agreement Provision — Economic Interests Versus Other Rights and Interests	17-30
17.9. Member's Bankruptcy as an Event of Dissolution	17-30
17.10. Buyout of a Member's Interest in the Event of the Member's Bankruptcy	17-32
17.11. Another Application of Corporate-Like Characteristics	17-33

CHAPTER 18: SECTION 199A 18-1

18.1. Introduction to the Section 199A Deduction	18-5
18.2. Ancillary Consequences of Section 199A Deduction	18-9
18.2.1. Items Impacted by Section 199A Deduction	18-9
18.2.2. Items Not Impacted by the Section 199A Deduction	18-10
18.3. Steps In Computing Section 199A Deduction	18-11
18.4. Taxable Income Ceiling on Section 199A Deduction	18-15
18.4.1. 20% of Taxable Income Limitation	18-16
18.5. Calculating Amount of the Section 199A Deduction	18-17
18.5.1. Section 199A Deduction: Taxable Income Equal to or Less than Threshold Amount	18-17
18.5.1.1. Total QBI Amount	18-18
18.5.1.2. Qualified REIT Dividends and Qualified PTP Income	18-18
18.5.2. Section 199A Deduction: Taxable Income Exceeds Threshold Amount	18-20
18.5.2.1. Taxable Income Exceeds Ceiling Amount	18-20
18.5.2.1.1. Determining the QBI Component	18-20
18.5.2.2. Taxable Income Within Phase-In Range	18-23
18.5.2.2.1. Determining the QBI Component	18-23
18.5.2.2.2. Adjustment to QBI Component For Taxable Income within the Phase-In Range	18-24
18.5.2.2.3. Adjustment to QBI Component For Taxable Income within Phase-In Range and One or More of the Trades or Businesses Is an SSTB	18-25

CONTENTS

	18.5.2.2.3.1. Individual Engaged Only in an SSTB	18-25
	18.5.2.2.3.2. Individual Engaged in Multiple Trades or Businesses One of which Is an SSTB	18-27
18.6.	QBI – Defined	18-27
18.6.1.	Qualified Items	18-28
18.6.2.	Items Not Taken into Account as Qualified Items	18-29
	18.6.2.1. Qualified REIT Dividends and Qualified PTP Income	18-29
	18.6.2.2. Section 1231	18-29
	18.6.2.3. Dividends	18-31
	18.6.2.4. Interest	18-31
	18.6.2.5. Annuities	18-31
	18.6.2.6. CFC Income	18-31
	18.6.2.7. Notional Principal Contracts	18-32
	18.6.2.8. Compensation	18-32
	18.6.2.9. Guaranteed Payments for Services	18-33
	18.6.2.10. Section 707(a) Payments for Compensation	18-34
18.6.3.	Adjustments in Computing QBI	18-34
	18.6.3.1. Wage Expense	18-34
	18.6.3.2. Allocation of Items among Multiple Businesses	18-35
	18.6.3.3. Section 751(a) and (b) Gain or Loss	18-35
	18.6.3.4. Guaranteed Payments for Capital	18-35
	18.6.3.5. Section 481 Adjustment	18-36
	18.6.3.6. Suspended Losses	18-36
	18.6.3.7. NOLs and Section 461(l)	18-37
	18.6.3.7.1. NOLs	18-38
	18.6.3.7.2. Section 461(l)	18-38
	18.6.3.8. Treatment of Deductions	18-39
18.6.4.	Effective Date	18-40
18.7.	Trade or Business	18-40
18.7.1.	Trade or Business Defined	18-41
18.7.2.	Aggregation of Multiple Trades or Businesses	18-43
	18.7.2.1. Requirements for Aggregation	18-44
	18.7.2.2. Items Aggregated	18-48
	18.7.2.3. Reporting Requirements	18-48
	18.7.2.4. Effective Dates	18-50

18.8.	Trades or Businesses that Do Not Qualify for the Section	
199A	Deduction	18-50
18.8.1.	SSTB	18-50
18.8.1.1.	SSTB Includes Trade or Business	
	Defined in Section 1202(e)(3)(A)	18-51
18.8.1.1.1.	Performance of Services	
	in the Field of Health	18-53
18.8.1.1.2.	Performance of Services	
	in the Field of Law	18-54
18.8.1.1.3.	Performance of Services in	
	the Field of Accountancy	18-55
18.8.1.1.4.	Performance of Services in	
	the Field of Actuarial	
	Science	18-55
18.8.1.1.5.	Performance of Services in	
	the Field of Performing	
	Arts	18-56
18.8.1.1.6.	Performance of Services in	
	the Field of Consulting	18-56
18.8.1.1.7.	Performance of Services in	
	the Field of Financial	
	Services	18-58
18.8.1.1.8.	Performance of Services	
	in the Field of Athletics	18-59
18.8.1.1.9.	Performance of Services in	
	the Field of Brokerage	
	Services	18-59
18.8.1.1.10.	Any Trade or Business in	
	which the Principal Asset is	
	Reputation or Skill of an	
	Employee or Owner	18-60
18.8.1.2.	Services in Investing, Investment	
	Management, Trading, or Dealing	
	in Securities, Partnership Interests	
	or Commodities	18-61
18.8.1.3.	<i>De Minimis</i> Exception	18-65
18.8.1.4.	Anti-Avoidance Rules	18-67
18.8.2.	Trade or Business of Performing Services	
	as an Employee	18-68
18.8.2.1.	Misclassified Employees	18-69
18.8.2.2.	Officers as Employees	18-69
18.8.2.3.	Anti-Avoidance Rule	18-70
18.8.3.	Effective Date	18-71

CONTENTS

18.9.	Cap For Section 199A Deduction	18-71
18.9.1.	W-2 Wages	18-71
18.9.1.1.	W-2 Wages Allocable to QBI	18-72
18.9.1.1.1.	First Step	18-72
18.9.1.1.1.1.	Calendar Year Requirement	18-72
18.9.1.1.1.2.	Wages Defined	18-73
18.9.1.1.2.	Second Step	18-75
18.9.1.1.3.	Third Step	18-76
18.9.1.2.	Allocations of W-2 Wages by an RPE to Its Owners	18-76
18.9.1.3.	Effective Date	18-76
18.9.2.	UBIA of Qualified Property	18-77
18.9.2.1.	Qualified Property Defined	18-77
18.9.2.2.	UBIA Defined	18-77
18.9.2.2.1.	UBIA Not Adjusted for Depreciation or Amortization	18-78
18.9.2.2.2.	Basis Adjustments under Section 734(b) or Section 743(b)	18-78
18.9.2.2.3.	Additions to Basis	18-79
18.9.2.3.	UBIA for Qualified Property Transferred in Non-Recognition Transactions	18-79
18.9.2.4.	Anti-Avoidance Rules	18-80
18.9.3.	Depreciable Period Defined	18-80
18.9.3.1.	Additional Depreciation	18-81
18.9.3.2.	Non-Recognition Transfers of Qualified Property	18-81
18.9.4.	Section 1031 Like-Kind Exchanges	18-82
18.9.5.	Partnerships and S Corporations	18-83
18.9.6.	UBIA of Qualified Property Acquired from a Decedent	18-84
18.9.7.	Effective Date	18-84
18.10.	Reporting Under Section 199A for RPEs and PTPs	18-85
18.10.1.	Computational and Reporting Rules for RPEs	18-85
18.10.1.1.	Computational Steps	18-85
18.10.1.2.	Reporting Steps	18-86
18.10.2.	Computational and Reporting Rules for PTPs	18-87
18.10.2.1.	Computation Rules	18-87
18.10.2.2.	Reporting Rules	18-87
18.10.3.	Computational and Reporting Rules for Trusts, Estates and Beneficiaries	18-87

18.10.3.1. Computation Rules	18-87
18.10.3.2. Tax-Exempt Trusts with UBTI	18-89
18.10.3.3. Charitable Remainder Trusts.	18-89
18.10.3.4. Split-Interest Trusts.	18-90
18.10.4. Effective Date	18-90

PART IV APPENDICES

APPENDIX A0: FILING PROCEDURES FOR FORMING A GEORGIA LIMITED LIABILITY COMPANY	APP A0-1
APPENDIX A1: GEORGIA COMPANY, LLC LIMITED LIABILITY COMPANY OPERATING AGREEMENT — MEMBER-MANAGED (LONG FORM)	APP A1-1
APPENDIX A2: GEORGIA COMPANY, LLC LIMITED LIABILITY COMPANY OPERATING AGREEMENT — MEMBER-MANAGED (SHORT FORM)	APP A2-1
APPENDIX B: GEORGIA COMPANY, LLC LIMITED LIABILITY COMPANY OPERATING AGREEMENT — MANAGER-MANAGED ..	APP B-1
APPENDIX C: GEORGIA COMPANY, LLC LIMITED LIABILITY COMPANY OPERATING AGREEMENT — SINGLE-MEMBER	APP C-1
APPENDIX D: ENTITY CLASSIFICATION ELECTION.	APP D-1
APPENDIX E: IS THERE ANY SUCH THING AS AN LLC UNIT?	APP E-1
APPENDIX F: GEORGIA LIMITED LIABILITY COMPANY ACT	APP F-1
APPENDIX G: OUTLINE OF LIMITED LIABILITY COMPANY OPERATING AGREEMENT ISSUES	APP G-1
APPENDIX H: GEORGIA LLC FORMATION CHECKLIST	APP H-1

CONTENTS

APPENDIX I: UNIT GRANT AGREEMENT..... APP I-1

**APPENDIX J: NON-EQUITY OWNERSHIP INTEREST
GRANT AGREEMENT APP J-1**

**APPENDIX K: 565 THE GEORGIA LLC ACT: RECENT
DEVELOPMENTS AND FUTURE
POSSIBILITIES APP K-1**

APPENDIX L: ARTICLE ARCHIVE APP L-1

APPENDIX M: STATES WITH SERIES LLC STATUTES... APP M-1

APPENDIX N: CHECK-THE-BOX REGULATIONS..... APP N-1

**APPENDIX O: COMPARISON OF STATE LLC FEES
AND OTHER INFORMATION..... APP O-1**

**APPENDIX P: EXAMPLES CONTAINED IN FINAL
TREASURY REGULATIONS UNDER
SECTION 199A..... APP P-1**

**PART V
LLP AND LLC CASES**

LLP and LLC Cases LLC CASES-1

**PART VI
INDICES**

Cumulative Table of Internal Revenue Code Citations. INDEX-1

Cumulative Table of Bankruptcy Code Sections INDEX-7

**Cumulative Table of Revenue Rulings, Revenue Procedures,
Notices and Public Letter Rulings INDEX-8**

Table of Cases INDEX-10

Cumulative Table of Treasury Regulations..... INDEX-12

Cumulative Table of Georgia LLC Act Sections. INDEX-20

Subject Index INDEX-26

Forms Index INDEX-40