Table of Contents

PART I ORGANIZATION

CHAI	PTER 1:	INTRODUCTION				
1.1.	Nature a	nd Use of This Practice Manual				
1.2.	The Ohio	Limited Liability Company Act — An Overview				
1.3.		son of the LLC with Other Entities				
	1.3.1.	In General				
	Table 1.	Comparison of Limited Liability Companies,				
		Limited Partnerships, S Corporations, and				
		C Corporations				
	1.3.2.	2017 Tax Act's Impact on the Choice of Entity				
1.4.		ory of the LLC	1			
1.5.	Federal l	Income Tax Classification of an LLC				
	1.5.1.	Prior Law — Federal Tax History of the LLC				
	1.5.2.	Understanding the Check-the-Box Regulations				
	1.5.3.	Checking the Box				
	1.5.4.	The LLC as an S Corporation				
1.6.	Ohio Pas	ss-Through Entity Withholding Tax				
	1.6.1.	Commercial Activity Tax ("CAT")				
1.7.	Compari	son of the Act with Other LLC Acts				
	1.7.1.	Flexible vs. Bulletproof Statutes				
	1.7.2.	Term of the LLC				
	1.7.3.	Written Operating Agreement				
1.8.	•	Developments, Current Topics, and Recent				
		W				
	1.8.1.	Legislation				
	1.8.2.	Current Topics	1-			
	1.8.3.	Case Law				
	1.8.4.	Series Limited Liability Companies				
		1.8.4.1. Series LLC Concept				
		1.8.4.2. Tax Classification of Series LLCs				
CHAI	PTER 2:	FORMATION AND ORGANIZATION				
2.1.	Introduc	tion				
2.2.	Preforma	ation Matters				
	2.2.1.	Relevant Filing Fees				
		Form 2-1. Checklist for Formation of LLC				

X OHIO LLC FORMS AND PRACTICE MANUAL

2.3.	Articles of Organization				
	2.3.1.	Basic Red	quirements		2-4.24
	2.3.2.	Optional	Provisions		2-4.25
		2.3.2.1.	Provision I	Limiting Agency Authority	
			of Member	'S	2-5
			Form 2-3.	ARTICLE FOURTH —	
				Restrictions on Authority	2-5
		2.3.2.2.		Requiring Written Operating	
			•		2-5
			Form 2-4.	111111111111111111111111111111111111111	
				AND FIFTH — Restrictions	
				on Authority and a Requireme	
				That the Operating Agreement	
		2222	Dravisian C	Be in Writing	2-6 2-6
		2.3.2.3.	Form 2-5.	Stating General Purpose ARTICLE SIXTH — General	2-0
			FOIII 2-3.	Purpose	2-7
2.4.	Cartificat	a of Aman	dmant or Pass	tatement of Articles of	2-7
Z. 4.					2-7
2.5.	_			of Amendment	2-7
2.3.	Form 2-6		•	nt of Members to Amend	2 /
	10111120			zation, Where Unanimity Is	
					2-8
	Form 2-7			ers to Amend Articles of	
				re Operating Agreement	
		_		Unanimity	2-9
2.6.	Reservati	on of Nam	e		2-9
2.7.	Statutory	Agent — S	Subsequent A	ppointment, Change of	
	Address,	and Resign	nation		2-10
2.8.	Other Ma	atters to Be	Considerd in	Connection	
	with Forr	nation			2-10
			PART		
			OPERAT	TONS	
CHA	PTER 3:	THE OF	PERATING A	AGREEMENT	3-1
3.1.	In Genera				3-2
3.2.					3-3
3.3.					3-3
3.4.					3-4
3.5.		•		t	3-4
3.6.					3-5

	Form 3-1.	Consent to Be Bound by Terms of Operating Agreement
3.7.	Amendment	
		General
		ormality Required
3.8.		rm Operating Agreements
3.9.		onsiderations
СНАН	PTER 4: O	PRGANIZATION
4.1.	Drafting LLC	C Operating Agreement
4.2.	Introductory	Paragraph
	Form 4-1.	Introductory Paragraph — Names Parties
	Form 4-2.	Introductory Paragraph — Does Not Name All Parties
4.3.	Rackground	to Agreement.
r.J.	Form 4-3.	Recital
4.4.		
rT.		nterest" Compared to "Membership Rights"
		nterest Holder" Compared to "Member"
		orm 4-4. General Definitions
4.5.		o Organize LLC
т.Э.	Form 4-5.	General Agreement to Organize LLC
	Form 4-6.	Organizational Provision Confirming That
	1 01111 4-0.	Articles of Organization Have Been Filed
4.6.	Name	
1.0.	Form 4-7.	Name Provision for Member-Managed LLC
	Form 4-8.	Name Provision for Manager-Managed LLC
4.7.		
	Form 4-9.	Any Lawful Purpose
	Form 4-10.	Specific Purpose
	Form 4-11.	Purpose Limited to Real Estate
4.8.	Term	
	Form 4-12.	Term — Articles of Organization Filed after
	101111 1 12.	Execution of Operating Agreement
	Form 4-13.	Term Commenced upon Filing of Articles
	101111 . 10.	of Organization
4.9.	Principal Off	fice
	Form 4-14.	Principal Office of LLC Managed by
	· - · ·	Members
	Form 4-15.	Principal Office of LLC Managed by
		Managers
4.10.	Statutory Ag	ent

	Form 4-16.	Statutory Agent	4-12.1
4.11.	Members		4-12.1
	Form 4-17.	Schedule of Members Set Forth in Exhibit	4-13
	Form 4-18.	Schedule of Members Set Forth in	
		Text of Agreement	4-13
	Form 4-19.	Schedule of Members (without Percentages)	4-13
4.12.	Legal Repres	sentation	4-13
	Form 4-20.	Limitation of Representation Provision	4-14
4.13.	Miscellaneou	as Provisions	4-14
	Form 4-21.	Miscellaneous Provisions	4-15
СНАР	TER 5: C	APITAL PROVISIONS	5-1
5.1.	Drafting Ope	erating Agreement Capital Provisions	5-3
5.2.	Initial Capita	d Contributions	5-3
	Form 5-1.	Initial Capital Contributions in Cash	5-4
	Form 5-2.	Initial Capital Contributions — Partly in	
		Cash and Partly in Services	5-4
	Form 5-3.	Initial Capital Contributions — Partly in	
		Cash and Partly in Property	5-5
	Form 5-4.	Representation in Connection with	
		Contribution of Property	5-5
5.3.	Additional C	apital Contributions	5-5
	Form 5-5.	Additional Capital Contributions at Discretion	
		of Manager — Limit on Amount	5-6
	Form 5-6.	Additional Capital Contributions at Discretion	
		of Members — Limit on Amount	5-6
	Form 5-7.	No Liability Beyond Initial Capital	
		Contribution	5-7
	Form 5-8.	No Liability Beyond Additional Capital	
		Contribution	5-7
5.4.	Default in Pa	syment of Contributions	5-7
	Form 5-9.	Remedy of Reduction of Member's Interest	
		in Event of Failure to Make Contribution to	
		Manager-Managed LLC; Forfeiture of	
		Interest	5-8
5.5.	Interest on C	apital Contributions	5-9
	Form 5-10.	No Interest on Capital Contributions	5-9
	Form 5-11.	Interest on Capital Contributions	5-10
5.6.	Return of Ca	pital Contributions	5-10
	Form 5-12.	Return of Capital Contribution — Unanimous	
		Consent of Members and Compliance	
		with Act Required	5-11

xiii

5.7.	Form of Distribution			
	Form 5-13			
		Anything but Cash		
	Form 5-14	4. Form of Distribution — Form of Distribution		
		Is at Discretion of Manager in		
		Manager-Managed LLC		
5.8.	Capital A	ccounts		
	Form 5-15	5. Capital Accounts Maintained in Accordance		
		with Code Section 704		
5.9.	Loans			
	Form 5-16	6. Loans — General Authority of LLC to		
		Borrow Money from Members on Terms		
		to Be Agreed upon in Future		
	Form 5-17	7. Loans — Authority to Make Specific Loan with		
		General Authority to Borrow Money from		
		Members on Terms to Be Agreed upon in		
		Future		
СНАР	TER 6:	ALLOCATION AND DISTRIBUTION		
CIIIII	ILK 0.	PROVISIONS		
6.1.	Taxation of	of the LLC		
	6.1.1.	General		
	6.1.2.	Medicare Tax on Net Investment Income		
6.2.	General A	Allocation and Distribution Concepts		
6.3.		on Restrictions under the Act		
6.4.		n Restrictions — Code Section 704(b)		
••••	6.4.1.	Overview		
	6.4.2.	The Three Alternative Allocation Tests		
	0.1.2.	6.4.2.1. The First Test: Partners' Interests		
		6.4.2.2. The Second Test: Substantial Economic		
		Effect and Capital Accounts		
		6.4.2.3. The Third Test: Nonrecourse Debt		
	6.4.3.	Allocations to Interest Holders		
6.5.		18		
	6.5.1.	Distribution-Related Definitions		
	5.0.11	Form 6-1. Distribution Definitions		
	6.5.2.	Allocation-Related Definitions		
	3.5.2.	Form 6-2. Tax Definitions		
6.6.	Basic Die	tribution Provisions		
0.0.	6.6.1.	In General.		
	6.6.2.	Cash Flow from Operations		
	0.0.2.	Form 6-3 Distributions of Cash Flow		

	6.6.3.	Distribution of Ca	pital Proceeds	6-15				
		Form 6-4.	Distribution of Capital Proceeds	6-15				
	6.6.4.	Liquidation Proceed	eds	6-16				
		Form 6-5.	iquidation and Dissolution	6-16				
			iquidation and Dissolution —					
		Г	Deficit Restoration Obligation	6-17				
6.7.	Basic All	ocation Provisions.		6-17				
	6.7.1.	Basic Allocations	of Income and Loss	6-17				
		Form 6-7. P	rofit or Loss	6-18				
	6.7.2.	Qualified Income	Offset and Minimum					
		_		6-19				
		•	Qualified Income Offset and					
			Inimum Gain Chargeback	6-20				
	6.7.3.		Allocations	6-21				
			egulatory Allocations	6-22				
	6.7.4.		S	6-24				
			General Provisions	6-24				
6.8.	-	Complex and Disproportionate Distribution and Allocation						
				6-25				
	6.8.1.		rences	6-25				
			Distribution Preference	6-26				
	6.8.2.		Allocation of Losses	6-27				
			Disproportionate Allocation of					
			oss	6-28				
	6.8.3.			6-28				
		Form 6-13. F	lip-Flop on Sale	6-29				
СНА	PTER 7:	MANAGEMENT	ſ	7-1				
7.1.	Drafting 1	LLC Management F	Provisions	7-3				
	7.1.1.	General Flexibility	under the Act	7-3				
	7.1.2.	Member Duties		7-3				
	7.1.3.	Typical Approache	es	7-3				
	7.1.4.	Officers, Manager	s, and Authorized Persons	7-4				
	7.1.5.	Tax Aspects		7-4				
7.2.	Member-	Managed LLC Prov	risions	7-4				
	Form 7-1	•	er-Management Provision	7-5				
	Form 7-2		agement but with Appointment of					
			anager Who Is Not a Member	7-5				
7.3.				7-5				
	7.3.1.		"General Partner"-Like					
		Manager		7-6				

	8.2.1.	Partnershin Cl	assification	8-3			
	8.2.2.		f the LLC	8-4			
	8.2.3.			8-4.1			
8.3.			nsiderations	8-5			
0.5.	Form 8-		al Provision — Transfer	8-5			
	Form 8-	 Definition 	al Provisions — Membership Interest	0.5			
	1 OIIII O		bership Rights	8-5			
8.4.	Transfer		Follow the Act's Default Rules	8-6			
	Form 8-		Provision Following the Act's	0 0			
			ules	8-6			
8.5.	Transfer		Permit Free Transferability				
	of Intere	ests		8-6			
	Form 8-	4. Free Trans	sferability of Interests and Rights	8-6.1			
8.6.	Transfer	Provisions That	Absolutely Prohibit Transfers of				
	Any Kir	nd		8-7			
	Form 8-	5. Absolute	Prohibition of Transfers	8-7			
8.7.	_	•	ons That Permit Transfers Only				
	on Certa	on Certain Conditions					
	8.7.1.	In General					
		Form 8-6.	Transfer Permitted on Satisfaction				
			of Certain Conditions	8-8			
	8.7.2.		Rights	8-9			
		Form 8-7.	Right of First Refusal; LLC				
			Purchases; Installments Allowed	8-10			
		Form 8-8.	Right of First Refusal; Member's				
			Purchase Payment Terms	0 11			
		F 0 0	Matched	8-11			
		Form 8-9.	Right of First Offer; LLC Purchases; Cash Purchase	8-14			
	8.7.3.	Admission of	Transferee as a Member	8-14			
	0.7.3.	Form 8-10.	Transferee Not Admitted as	8-13			
		F0III 8-10.	Member without Consent of				
			Members	8-15			
		Form 8-11.	Transferee Automatically Admitted	0 13			
		101111 0-111.	as Member	8-16			
	8.7.4.	Transfers to M	Iembers' Affiliates and Family	8-16			
	0.7.1.	Form 8-12.	Definitional Provision — Family	8-16			
		Form 8-13.	Transfers to Affiliates and Family	8-16			
8.8.	Withdra		t	8-17			
	8.8.1.		hdrawal	8-17			
		Form 8-14.	Voluntary Withdrawal Defined	8-18			

	I	Form 8-15.	Voluntary Withdrawal — Not	
			Permitted	8-18
	8.8.2.	nvoluntary Wit	hdrawal	8-18
	I	Form 8-16.	Involuntary Withdrawal Defined	
			(Long Form)	8-19
	I	Form 8-17.	Involuntary Withdrawal Defined	
			(Short Form)	8-20
		Form 8-18.	Involuntary Withdrawal	8-20
8.9.	_		tion in General	8-21
8.10.	Creating B			8-21
	Form 8-19.		uy-Out; Company Buys;	
			ase	8-23
	Form 8-20.		Buy-Out; Members Buy; Installments	
				8-24
8.11.				8-25
	Form 8-21.	\mathcal{C}	ue	8-25
	Form 8-22.			8-26
	Form 8-23.		Value	8-27
8.12.	Miscellane	ous Transfer Pro	ovisions	8-28
	Form 8-24.		Buy-Outs	8-28
	Form 8-25.		Form	8-28
	Form 8-26.	Members N	lot Required to Assume Company's	
		_		8-29
8.13.	Tag-Along		g Rights	8-29
	Form 8-27.	Tag-Along	Right	8-29
	Form 8-28.	Drag-Along	g Right	8-30
	Form 8-29.	Right of Fir	rst Refusal/Co-Sale	8-31
	Form 8-30.	Drag-Along	g Rights	8-34
CITAI	OTED A.	DICCOLUTIO	N.T	0.1
С на 9.1.			N	9-1 9-2
9.1. 9.2.	_		lutionsolution Provisions	9-2 9-2
9.3.			Company of all Describes All	9-3
	Form 9-1.		— Comprehensively Describes All	
			Dissolution; Requires Unanimity of Continue if Dissolution Is Due	
			tion of Member	9-3
	Form 9-2.		— Refers to Events of Withdrawal	7-3
	1.01111 2-2.		her Section; Requires Unanimity	
			s to Continue if Dissolution Is Due to	
			n of Member	0.4

	Form 9-3.	Sample Resolutions Approving Continuation of Business after Dissolution.	9.
9.4.	Certificate of	Dissolution	9.
9.5.		r Winding Up and Distribution of Assets	9
	Form 9-5.	Procedure for Winding Up in Member-Managed LLC	9
	Form 9-6.	Procedure for Winding Up in Manager-Managed LLC	9
	Form 9-7.	Procedure for Winding Up in Member-Managed LLC — Alternate Form	9
	Form 9-8.	Procedure for Winding Up in Manager-Managed LLC — Alternate Form	9
	Form 9-9.	Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee	9
9.6.	Filing of Cer	tificate of Dissolution	9
	Form 9-10.	Filing of Certificate of Dissolution — Member-Managed LLC	9
	Form 9-11.	Filing of Certificate of Dissolution — Manager-Managed LLC	9
		Managed BBe	
CHAI	PTER 10: BO	OOKS, RECORDS, AND ACCOUNTING	10
10.1.	Introduction .		10
10.2.	Banking		10
	_	Bank Accounts	10
10.3.	Records		10
	Form 10-2.	Maintenance of Records — Member-Managed LLC — Short Form	10
	Form 10-3.	Maintenance of Records — Manager-Managed LLC — Short Form	10
	Form 10-4.	Maintenance of Records — Manager-Managed LLC — Long Form	10
10.4.	Accounting I	Period	10
	Form 10-5.	Calendar Year Accounting Period Specified	10
	Form 10-6.	Fiscal Year Accounting Period Specified	10
	Form 10-7.	Year to Be Determined by Members	10
	Form 10-7.	Annual Accounting Period Established by	10
	101111 10-0.	Managers	10
10.5.	Reports	·····	10
10.5.	Form 10-9.	Preparation of Reports — Form for Member-	10
	Form 10-10.	Managed or Manager-Managed LLC Preparation of Reports — Alternative Form	
		for Manager-Managed LLC	10

xix

10.6.	LLC Fee	deral Tax Audit		10-7
	10.6.1.	"Tax Matters	Partner"	10-7
		Form 10-11.	Tax Matters Partner (Short Form)	10-8
		Form 10-12.	Tax Matters Partner (Long Form)	10-8
	10.6.2.	"Partnership I	Representative"	10-9
		10.6.2.1. 20	015 Legislation	10-9
		10.6.2.2. Th	he Partnership Representative	10-9
		10.6.2.3. Su	ubstantive Changes	10-10
		10.6.2.4. W	That to Do—And When to Do It	10-12
		Fo	orm 10-13. Partnership	
			Representative	10-13
10.7.	Tax Elec	tions		10-15
	Form 10		tions	10-15
	Form 10		tions — Applies to Code Section 754	
		-	For Use in Either Member-Managed or	
			-Managed LLC	10-16
10.8.	Title to I	Property		10-16
			PART III	
		MI	SCELLANEOUS	
СНАЕ	TER 11:	REORGANI	IZATION OF THE LLC	11-1
11.1.				11-2
11.2.			f an Existing Entity into an LLC	11-2
11.2.	11.2.1.			11-2
	11.2.1.		f General Partnership to LLC	11-7
	11.2.2.	Form 11-1.	Recitals — Conversion of General	11 /
		1 OIIII 11-1.	Partnership into LLC	11-8
		Form 11-2.	Term Is Continuation of Term of	11 0
		1 01111 11 2.	Partnership	11-9
		Form 11-3.	Initial Capital Contributions — In	
			Property Consisting of Partnership	
			Interests in LLC's Predecessor	11-9
		Form 11-4.	Assignment of General Partnership	
			Interests to LLC	11-9
		Form 11-5.	Contribution Agreement	11-10
		Form 11-6.	Resolutions of Members Approving	
			Liquidation of Partnership into	
			LLC	11-14
	11.2.3.	Conversion of	f Limited Partnership into LLC	11-14
	11.2.4.	Conversion of	f Corporation into LLC	11-15

LLC (Partnership) vs. Corporation Equity Methods.....

14-9

14-10

14.4.1.

14.4.

		14.4.1.1. S	tock Grants	14-10
		14.4.1.2. S	tock Options	14-11
		14.4.1.3. P	Phantom Stock Plans	14-12
	14.4.2.	The LLC Co	ntext	14-12
		14.4.2.1. E	Equity Interests	14-13
		1.	4.4.2.1.1. "Full Equity Interest"	14-13
		1.	4.4.2.1.2. Profits Interests	14-14
		14.4.2.2. P	Point System Compensation	14-14.3
		14.4.2.3. T	The Importance of Member	
		Iı	nvolvement	14-15
		14.4.2.4. L	Loss Allocation and Debt Guarantees	14-15
		14.4.2.5. E	Equity Interest vs. Non-Equity	
		Iı	ncentive Compensation	14-16
14.5.	Alternati	ves to Equity N	Methods	14-16
	14.5.1.	General		14-16
	14.5.2.	U.S. Income	Tax Consequences of Membership	
		Option Plan	and Purchase of Membership	
		Interests by I	Issuing LLC Optionees Under	
		Such a Plan.		14-18
		Form 14-1A.	ABC LLC 2008 Unit	
			Option Plan	14-18.4
		Form 14-1B.	Award Agreement 14	4-18.13
14.6.	Compens	sation Compari	ison Chart	4-18.16
14.7.	Phantom	Income and D	bistributions	14-20
	14.7.1.	Tax Based D	istributions	14-20
	14.7.2.	Separate Cal	culations for Each Member	14-20
	14.7.3.	Standard Dis	stribution Rate	14-21
	14.7.4.	Highest Incre	emental Tax Rate	14-23
	14.7.5.	Self-Employ	ment Tax	14-24
	14.7.6.		Self-Employment Income	14-25
		_	Application of Self-Employment	
			ax to LLC Members	14-25
14.8.	Fiduciary		ction Rights, and Other Duties of	
				14-26
	14.8.1.		oon-to-Be-Former) Shareholders:	
		-	o. Drever	14-26
14.9.	Fiduciary	_	ced Even Though Little Is at Stake:	
	-		pport Corp	14-28
14.10.	_	_	nority Shareholders Who Look to the	
			exford Rand Corporation v. Gregory	
				14-28
14.11.	Securitie	s Law Issues .		14-30

xxii OHIO LLC FORMS AND PRACTICE MANUAL

14.12.	Member Exit Strategies: Buy-Out Arrangements		14-30	
14.13.	Forms: Equity and Non-Equity-Based LLC			
	Compens	sation Plans		14-31
	14.13.1.	Equity-Based	Plan	14-31
		Form 14-1.	Stock Grant Agreement	14-31
	14.13.2.	Non-Equity-E	Based Plan	14-37
		Form 14-2.	Communications, LLC: Employee	
			Incentive Compensation Plan	14-37
		Form 14-3.	Communications, LLC: Employee Incentive Compensation Plan	
			(Corporate Format)	14-47
		Form 14-4.	Award Agreement	14-55
		Form 14-5.	Unit Option Plan	14-58
		Form 14-6.	Acme Partners, LLC: Incentive	14-30
		101111 14-0.	Compensation Plan	14-66
		Form 14-7.	Acme Partners, LLC: Incentive	11.00
		10111117.	Compensation Plan Agreement	14-79
СНАР	TER 15:	COMMERC	TIAL LAW ASPECTS OF LLCS	15-1
15.1.	Credit Agreement Consideration for LLC Borrowings			15-2
10.11	15.1.1. Due Diligence		_	15-2
	10.11.11	Form 15-1.	Manager's Certificate	15-4
		Form 15-2.	Member's Certificate	15-6
		Form 15-3.	Majority Member's Certificate	15-7
	15.1.2.		on	15-9
	13.11.2.		ecourse	15-10
			epresentations and Warranties	15-10
			ovenants	15-10
	15.1.3.		nkruptcy	15-11
	15.1.4.		of Existing Entities	15-11
	15.1.5.		ation	15-12
15.2.				15-12
10.2.	Form 15-		for Borrower's Counsel Opinion for	
				15-13
	Form 15-		for LLC's Counsel Opinion to	
			in the LLC When LLC Is a Venture	
		-	und	15-14
15.3.	_	_	nterest	15-16
	15.3.1.	_	mbership Interest	15-16
	15.3.1A.	Taking a Secu	rity Interest in a Membership	
		Interest		15-16

		Form 15-5. UCC-1 Description for Collateral Assignment of	160
	15.2.2	Membership Interest 15-	
15.4	15.3.2.		5-17
15.4.		bility of the Pre-Merger Notification Requirement	5 10
			5-18
	15.4.1.	E .	5-18
	15.4.2.		5-19
	15.4.3.	1	5-20
	15.4.4.	Treatment of LLCs under the Interpretation 1	5-21
CHAI	PTER 16:	SINGLE-MEMBER LLCS	16-1
16.1.	Introduct	tion	16-2
16.2.	What Is a	a Single-Member LLC?	16-2
16.3.	Form of	Written Declaration	16-4
16.4.	Operatin	g Considerations	16-5
	16.4.1.	LLC Employer Identification Number	16-5
	16.4.2.	Member Liability for Single-Member LLC	
		Employment Tax	16-6
	16.4.3.	LLC Liability for Member Personal Debt	16-6
	16.4.4.	Corporate Reorganizations Involving	
		E	6-6.2
	16.4.5.	Single-Member LLCs in Lieu of Consolidated	
			6-6.4
16.5.		ε	6-6.5
	16.5.1.		6-6.5
	16.5.2.	Creation of Single-Purpose Bankruptcy Remote	
			16-7
		Form 16-1. Purpose for Single-Asset	C O 1
		,	6-8.1
	1650		5-8.2
	16.5.3.	Use in Connection with Asset Sales	
	16.5.4.	Like-Kind Exchanges	
	16.5.5.	· ·	6-11
	16.5.6.	Use as Entity of Choice for Corporate Subsidiaries	6-11
	16.5.7.		6-12
	16.5.8.	LLCs as a Buy Sell Life Insurance Holding	0-12
	10.5.6.	· · · · · · · · · · · · · · · · · · ·	6-14
	16.5.9.		6-15
16.6.			6-17
10.0.	111001110	14/1	U 1/

		Conversion of a One-Member LLC into a Multi-Member LLC	16-17
	16.6.2.	Conversion of a Multi-Member LLC into a Single-Member LLC	16-18
16.7.	Doymant o	of Employment Taxes with Respect to Disregarded	10-16
10.7.	•	Employment Taxes with Respect to Dislegarded	16-18
CHAI	PTER 17:	GENERAL PARTNERSHIPS	17-1
17.1.	Introduction	on	17-2
17.2.		artnerships and the New Partnership Act	17-2
17.3.		iability Partnerships	17-4
17.4.	Name Req	uirement	17-5
17.5.	Biennial R	Report	17-6
17.6.		Limited Liability Partnership	17-6
17.7.		imited Liability Partnerships	17-7
CHAI	PTER 18:	BANKRUPTCY ISSUES CONCERNING	
		LLCS	18-1
18.1.			18-3
18.2.		of LLCs for Voluntary Relief under the	
	-	y Code	18-4
18.3.	Property o	of the Estate	18-5
	Form 18-1	on Obligation to Make Additional Capital	
		Contributions	18-6
18.4.		mber Commence an Involuntary Case Against	18-6
18.5.		roval Is Needed to Approve the Filing of a	10 0
10.5.		Case by an LLC?	18-8
	Form 18-2		10 0
		Case	18-9
	Form 18-3		
		Case	18-10
	Form 18-4		
	10111110	Vote Required for Filing of Voluntary	10.10
		Case	18-10
	Form 18-5	Manager Vote Required for Filing a	10.11
		Voluntary Case	18-11
	Form 18-6	LLC — Consenting to Filing a Voluntary Case	
		under Chapter 7	18-12

	Form 18-	-7. Resolutions of Board of Directors in Director-Managed LLC — Consent to Filing a Voluntary Case under Chapter 11	18-13			
10 6	Craatina	Limitations on the Ability of an LLC to	16-13			
18.6.	_	ice a Voluntary Case — Single Purpose Bankruptcy				
		LLCs	18-14			
	Form 18-		10-14			
	FOIII 10-	Clause for a SPBR LLC	18-15			
	Form 18-		10-13			
	101111 10-	Management of Business and Affairs				
		of the Company	18-16			
18.7.	Other Ba	unkruptcy Issues from the LLC's Perspective	18-22			
18.8.		the LLC or Remaining Members to Terminate	10 22			
10.0.	-	ment Rights of a Bankrupt Member	18-23			
	Form 18-		10 20			
	1 01111 10	Interests Versus Other Rights and				
		Interests	18-28			
18.9.	Member'	's Bankruptcy as an Event of Dissolution	18-29			
18.10.		of a Member's Interest in the Event of the Member's				
10.10.	•	Bankruptcy				
18.11.	-	Another Application of Corporate-Like Characteristics 18-32				
18.12.		LC	18-32			
10.12.	Series Er		10 52			
CHAP	TER 19:	USE OF LLCS BY EXEMPT				
		ORGANIZATIONS	19-1			
19.1.	Introduct	tion	19-2			
19.2.	Uses of I	LLCs by Exempt Organizations	19-2			
	19.2.1.	Use of an Ohio LLC as a Wholly-Owned				
		Subsidiary of an Exempt Organization to Carry				
		Out a "Business" Purpose	19-2			
	19.2.2.	Use of an Ohio LLC as an Enterprise Jointly Owned				
		by Two or More Tax-Exempt Organizations to Carry				
		Out a Business Purpose	19-4			
	19.2.3.	Use of an Ohio LLC as the Wholly-Owned				
		Subsidiary of an Exempt Organization to				
		Carry Out an Exempt Purpose	19-4			
		Form 19-1. Article of Organization of				
		Single-Member LLC Organized to Ca	•			
		Out an Exempt Purpose of a Tax-Exe	mpt			
		Parent XYZ Charitable	10.0			
	10.2.4	Gifts LLC	19-9			
	19.2.4.	Use of an Ohio LLC as an Enterprise Jointly				
		Owned by Two or More Tax-Exempt	10.10			
		Organizations to Carry Out an Exempt Purpose	19-10			

19.3.	Use of th	ne LLC as "I	Freestanding" Exempt Organization	19-10
CHAI	PTER 20:	LIMITE	D LIABILITY AND THE	
		CORPO	RATE VEIL	20-1
20.1.	Introduct	tion		20-2
20.2.	General '	Tests		20-2
20.3.	Ohio Spe	ecifics		20-3
	20.3.1.	Expansion	n of the Second Prong of the	
		Belvedere	Test; Application to LLCs	20-4.1
20.4.	Delaware	e Compariso	on	20-5
20.5.	Scholarly	y Overviews	8	20-7
CHAI	PTER 21:		S AND CONVERTIBLE INTERESTS	
			CS TAXED AS PARTNERSHIP	21-1
21.1.			mpensatory Call Options and	
			d Interests	21-2
21.2		-	all Options: Defined	21-2
	21.2.1.		equences of Issuance and	21.2
			of Call Option	21-3
		21.2.1.1.	Partnership	21-7
	01.00	21.2.1.2.	Option Holder	21-7
	21.2.2.		equences of Lapse of Call Option	21-8
		21.2.2.1.	Partnership	21-8
	21.2.2	21.2.2.2.	Option Holder	21-10
	21.2.3.		equences of Exercise of Option	21-10
		21.2.3.1.	Option Holder	21-11
	01.0.4	21.2.3.2.	Partnership	21-11
	21.2.4.	_	Considerations in the Partnership	21 12
			Conital Apparent Maintenance and an	21-12
		21.2.4.1.	Capital Account Maintenance under	21-12
		21.2.4.2.	Code Section 704(b)	21-12
		21.2.4.2.	Tax Distributions	21-14
	21.2.5.		Tax Considerations	21-13
	21.2.3.	21.2.5.1.	Code Section 704(c)	21-13
		21.2.5.1.	Code Section 752	21-15
		21.2.5.2.	Code Section 751	21-13
		21.2.5.3.		21-16
		21.2.5.4.	Holding Period	21-16
			Original Issue Discount	
21.2	Comment!	21.2.5.6.	Disregarded Entities	21-17
21.3.			d Interests	21-17
	21.3.1.	Description	on of Convertible Preferred Interests	21-17

	21.3.2. 21.3.3.	Example: Convertible Preferred Interests	21-18 21-19
	21.3.4.	Drafting Issues for Convertible Interests	21-19
CHAP	TER 22:	LEGAL OPINIONS	22-1
22.1.	Introduct	tion	22-3
22.2.	Model O	pinion Letter	22-3
	Form 22-	-1. Model Opinion Letter	22-3
	22.2.1.	Status Opinion	22-9
		22.2.1.1. Background and Meaning	22-9
		22.2.1.2. Due Diligence Procedures	22-9
	22.2.2.	Power Opinion	22-11
		22.2.2.1. Background and Meaning	22-11
		22.2.2.2. Due Diligence Procedures	22-12
	22.2.3.	Acts Opinion	22-12
		22.2.3.1. Background and Meaning	22-12
		22.2.3.2. Due Diligence Procedures	22-14
	22.2.4.	No Violation Opinion	22-15
		22.2.4.1. Background and Meaning	22-15
		22.2.4.2. Due Diligence Procedures	22-20
	22.2.5.	No Consent Opinion	22-22
		22.2.5.1. Background and Meaning	22-22
		22.2.5.2. Due Diligence Procedures	22-23
	22.2.6.	Remedies Opinion	22-24
		22.2.6.1. Background and Meaning	22-24
		22.2.6.2. Due Diligence Procedures	22-29
	22.2.7.	No Litigation Opinion	22-31
		22.2.7.1. Background and Meaning	22-31
		22.2.7.2. Due Diligence Procedures	22-33
22.3.	Due Dili	gence Checklists	22-34
	22.3.1.	Status Opinion	22-34
		Form 22-2. Status Opinion Checklist	22-34
	22.3.2.	Power Opinion	22-35
		Form 22-3. Power Opinion Checklist	22-35
	22.3.3.	Acts Opinion	22-36
		Form 22-4. Acts Opinion Checklist	22-36
	22.3.4.	No Violation Opinion	22-38
		Form 22-5. No Violation Opinion Checklist	22-38
	22.3.5.	No Consent Opinion	22-40
		Form 22-6. No Consent Opinion Checklist	22-40
	2236	Remedies Oninion	22-41

xxviii OHIO LLC FORMS AND PRACTICE MANUAL

		Form 22-7.	Remedies Opinion Checklist	22-41
	22.3.7.	No Litigation (Opinion	22-42
		Form 22-8.	No Litigation Opinion Checklist	22-42
		Form 22-9.	Manager's Certificate	22-42
22.4.	Glossary			22-44
CHAF	PTER 23:	ADMISSION	OF NEW MEMBERS AND	
		APPLICATION APPLIC	ON OF SECURITIES LAW	23-1
23.1.	In Gener	al		23-2
23.2.	Admissio	on of New Memb	pers	23-2
	23.2.1.	Acquisition of	Membership from Company	23-2
		Form 23-1.	Subscription Agreement for LLC Membership	23-3
		Form 23-2.	First Amendment to Operating Agreement Admitting Purchaser	23-3
			of Interest as a Member	23-6
	23.2.2.	•	Interest from Another Member	23-9
		Form 23-3.	Assignment of Membership	22.0
		E 22.4	Interest	23-9
		Form 23-4.	Joinder Agreement	23-14
		Form 23-5.	Member Consent Admitting	22 15
	22.2.2	A1	Transferee as Member	23-15
	23.2.3.		Securities Laws to LLCs	23-16
			neral Rules	23-16
22.2			C Interests as Securities	23-19
23.3.	LLCs and	d Outside or Ang	gel Investors	23-22
CHAF	PTER 24:		MITED LIABILITY COMPANY	
				24-1
24.1.				24-2
24.2.			greement	24-2
24.3.	Federal I	ncome Tax Cons	siderations	24-2
24.4.	Federal I	ncome Tax With	holding Obligations upon Sale of a	
	Partnersh	ip Interest		24-3
	24.4.1.	General		24-3
	24.4.2.	Summary		24-3
	24.4.3.	Background .		24-5
		24.4.3.1 Ag	gregate vs. Entity	24-5
		24.4.3.2. Rev	v. Rul. 91-32	24-5
		24.4.3.3. Gra	ecian Magnesite Mining v.	
		Co	mmissioner	24-6

				CONTENTS	S xxix
		24.4.3.4.	Tax Cuts and	d Jobs Act	24-6
			24.4.3.4.1.	Code Section 864(c)(8)	24-6
			24.4.3.4.2.	Code Section 1446(f)	24-6
			24.4.3.4.3.	Proposed Regulations	
				(REG-105476-18, 84	
				FR 21198, May 13,	
				2019)	24-9
СНАР	TER 25:	SECTIO	N 199A		25-1
25.1.	Introduct			Deduction	25-5
25.2.				199A Deduction	25-8
	25.2.1.			ed by Section 199A	-0 0
	23.2.1.				25-8
	25.2.2.			the Section 199A	-0 0
	23.2.2.				25-9
25.3.	Steps in 0			Deduction	25-10
25.4.	_			199A Deduction	25-14
20.11	25.4.1.		-	Limitation	25-15
	25.4.2.			ion	25-16
25.5.				199A Deduction	25-16
23.3.	25.5.1.	-		n: Taxable Income Equal to	23 10
	23.3.1.			Amount	25-17
		25.5.1.1.		mount	25-17
		25.5.1.2.		EIT Dividends and Qualified	23 17
		23.3.1.2.			25-18
	25.5.2.	Section 19		n: Taxable Income Exceeds	20 10
	23.3.2.				25-19
		25.5.2.1.		ome Exceeds Ceiling	
		201012111			25-19
			25.5.2.1.1.		
				Component	25-19
		25.5.2.2.	Taxable Inco	ome Within Phase-In	
		201012121			25-22
			-	Determining the QBI	
				Component	25-22
			25.5.2.2.2.	Adjustment to QBI	
				Component for	
				Taxable Income within	
				the Phase-In Range	25-23
			25.5.2.2.3.	Adjustment to QBI	
				Component for Taxable	
				Income within Phase-In	

			Range and One or	
			More of the Trades or	
			Businesses is	
			an SSTB	25-24
			25.5.2.2.3.1. Individual	
			Engaged only	
			in an SSTB	25-24
			25.5.2.2.3.2. Individual	
			Engaged in	
			Multiple	
			Trades or Businesses	
			one of Which	
			is an SSTB	25-26
25.6.	OBI – D	efined		25-26
	25.6.1.	Qualified l	tems	25-26
	25.6.2.	_	Taken into Account as Qualified Items	25-27
		25.6.2.1.	Qualified REIT Dividends and	
			Qualified PTP Income	25-27
		25.6.2.2.	Section 1231	25-28
		25.6.2.3.	Dividends	25-29
		25.6.2.4.	Interest	25-29
		25.6.2.5.	Annuities	25-29
		25.6.2.6.	CFC Income	25-30
		25.6.2.7.	Notional Principal Contracts	25-30
		25.6.2.8.	Compensation	25-30
		25.6.2.9.	Guaranteed Payments for Services	25-31
		25.6.2.10.	Section 707(a) Payments for	
			Compensation	25-32
	25.6.3.	Adjustmer	ats in Computing QBI	25-32
		25.6.3.1.	Wage Expense	25-32
		25.6.3.2.	Allocation of Items Among Multiple	
			Businesses	25-32
		25.6.3.3.	Section 751(a) and (b) Gain or Loss	25-33
		25.6.3.4.	Guaranteed Payments for Capital	25-33
		25.6.3.5.	Section 481 Adjustments	25-34
		25.6.3.6.	Suspended Losses	25-34
		25.6.3.7.	NOLs and Section 461(l)	25-34
			25.6.3.7.1. NOLs	25-34
			25.6.3.7.2. Section 461(l)	25-35
25.7.				25-36
	25.7.1.	Trade or B	usiness Defined	25-37

	25.7.2.	Aggregation	on of Multiple	Trades or Businesses	25-37
		25.7.2.1.	Requirement	ts for Aggregation	25-38
		25.7.2.2.	_	gated	25-41
		25.7.2.3.	Reporting Re	equirements	25-41
		25.7.2.4.		tes	25-42
25.8.	Trades or	r Businesses	that Do Not (Qualify for the Section 199A	
					25-43
	25.8.1.	SSTB			25-43
		25.8.1.1.	SSTB Includ	les Trade or Business Defined	
			in Section 12	202(e)(3)(A)	25-44
			25.8.1.1.1.	Performance of Services in	
				the Field of Health	25-45
			25.8.1.1.2.	Performance of Services in	
				the Field of Law	25-45
			25.8.1.1.3.	Performance of Services	
				in the Field of	
				Accountancy	25-46
			25.8.1.1.4.	Performance of Services in	
				the Field of Actuarial	25-46
			25 9 1 1 5	Science	23-40
			25.8.1.1.5.	the Field of Performing	
				Arts	25-46
			25.8.1.1.6.	Performance of Services in	23-40
			23.0.1.1.0.	the Field of Consulting	25-47
			25.8.1.1.7.	Performance of Services in	23 17
			20.0.1.1.7.	the Field of Financial	
				Services	25-48
			25.8.1.1.8.	Performance of Services in	
				the Field of Athletics	25-48
			25.8.1.1.9.	Performance of Services in	
				the Field of Brokerage	
				Services	25-49
			25.8.1.1.10.	Any Trade or Business in	
				which the Principal Asset	
				is Reputation or Skill of an	25.40
		25012		Employee or Owner	25-49
		25.8.1.2.		nvesting, Investment	
				t, Trading, or Dealing in artnership Interests or	
				s	25-50
		25.8.1.3.		Exception	25-53
		43.0.1.3.	De minints .	ьлеерион	25-55

xxxii OHIO LLC FORMS AND PRACTICE MANUAL

		25.8.1.4.				25-54
	25.8.2.			erforming Serv		25.56
						25-56
		25.8.2.1.				25-56
		25.8.2.2.				25-57
	25.0.2	25.8.2.3.				25-57
25.0	25.8.3.					25-58
25.9.	-					25-58
	25.9.1.	_				25-58
		25.9.1.1.	C		QBI	25-59
			25.9.1.1.1.	_		25-59
				25.9.1.1.1.1.		
					Year Re-	25.50
				25.0.1.1.1.2	quirement	25-59
				25.9.1.1.1.2.	_	25.60
			25 0 1 1 2	Carand Ctar	Defined	25-60
			25.9.1.1.2.	_	p	25-62
		25.0.1.2	25.9.1.1.3.	_	1 DDE	25-62
		25.9.1.2.		_	by an RPE to	25 62
		25 0 1 2				25-63
	25.0.2	25.9.1.3.				25-63
	25.9.2.					25-63
		25.9.2.1.	_		d	25-64
		25.9.2.2.				25-64
			25.9.2.2.1.		Adjusted for	
				Depreciation		25.64
			250222		on	25-64
			25.9.2.2.2.	•	stments under	
				Section 734	н(в) 743(b)	25-65
			25 0 2 2 2		o Basis	25-65
		25.0.2.2	25.9.2.2.3.			23-03
		25.9.2.3.			rty Transferred	25-65
		25.9.2.4.		-	sactions	
	25.0.2					25-66
	25.9.3.					25-66
		25.9.3.1.		-		25-67
		25.9.3.2.	_		rs of Qualified	25 67
	25.0.4	041 17				25-67
	25.9.4.					25-68
	25.9.5.		-			25-68
	25.9.6.	Effective 1	Date			25-69

		CONTENTS	xxxiii
25.10.	Reporting	g Under Section 199A for RPEs and PTPs	25-69
		Computational and Reporting Rules for RPEs	25-70
		25.10.1.1. Computational Steps	25-70
		25.10.1.2. Reporting Steps	25-70
	25.10.2.	Computational and Reporting Rules for PTPs	25-71
		25.10.2.1. Computation Rules	25-71
		25.10.2.2. Reporting Rules	25-71
		PART IV APPENDICES	
APPE	NDIX A:	[MEMBER-MANAGED] OPERATING AGREEMENT OF	
		LIMITED LIABILITY COMPANY AF	PP A-1
APPE	NDIX B:	[MANAGER-MANAGED] OPERATING AGREEMENT OF	
		LIMITED LIABILITY COMPANY AI	PP B-1
APPE	NDIX C:	OPERATING AGREEMENT — CORPORATE FORMAT AF	PP C-1
APPE	NDIX D:	OPERATING AGREEMENT — CORPORATE FORMAT—WITH OFFICERS	PP D-1
APPE	NDIX E:	WRITTEN DECLARATION — SINGLE-MEMBER LLC AI	PP E-1
APPE	NDIX F:	CHECKLIST OF DEFAULT PROVISIONS	
		IN ACT	
APPE	NDIX G:	CHECK-THE-BOX REGULATIONS AF	
APPE	NDIX H:	IRS FORM 8832 AF	PP H-1
APPE	NDIX I:	OHIO DEPARTMENT OF TAXATION GUIDANCE REGARDING PASS-THROUGH ENTITY WITHHOLDING A	PP I-1
APPE	NDIX J:	PRE- "CHECK-THE-BOX" CLASSIFICATION RULES Al	PP J-1
APPE	NDIX K:	COLLATERAL ASSIGNMENT OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT AF	PP K-1
APPE	NDIX L:	PLEDGE OF LIMITED LIABILITY COMPANY INTERESTS IN ABC, LLC	PP L-1

PART V INDICES

Cumulative Table of Internal Revenue Code Citations	INDEX-1
Cumulative Table of Treasury Regulations	INDEX-6

Cumulative Table of Revenue Rulings and	
Revenue Procedures	INDEX-12
Cumulative Table of Ohio Limited Liability	
Act Sections	INDEX-13
Subject Index	INDEX-18
Forms Index	INDEX-35