

# Table of Contents

## PART I ORGANIZATION

<b>CHAPTER 1: INTRODUCTION</b> .....	<b>1-1</b>
1.1. Nature and Use of This Practice Manual .....	1-3
1.1A. ORLLCA — Overview .....	1-4
1.1A.1. Series LLCs .....	1-4
1.1A.2. Management Structure .....	1-4
1.1A.3. Transaction Business without Registration .....	1-4
1.1A.4. Failure to Maintain Statutory Agent .....	1-4
1.1A.5. Organizational Documents — General .....	1-4.1
1.1A.6. Filings with Ohio Secretary of State .....	1-4.1
1.2. The Ohio Revised Limited Liability Company Act — An Overview .....	1-4.1
1.3. Comparison of the LLC with Other Entities .....	1-4.2
1.3.1. In General .....	1-4.2
Table 1. Comparison of Limited Liability Companies, Limited Partnerships, S Corporations, and C Corporations .....	1-5
1.3.2. 2017 Tax Act’s Impact on the Choice of Entity .....	1-8
1.4. The History of the LLC .....	1-8.1
1.5. Federal Income Tax Classification of an LLC .....	1-10
1.5.1. Prior Law — Federal Tax History of the LLC .....	1-11
1.5.2. Understanding the Check-the-Box Regulations .....	1-13
1.5.3. Checking the Box .....	1-14
1.5.4. The LLC as an S Corporation .....	1-15
1.6. Ohio Pass-Through Entity Withholding Tax .....	1-17
1.6.1. Commercial Activity Tax (“CAT”) .....	1-18
1.7. Comparison of the Act with Other LLC Acts .....	1-21
1.7.1. Flexible vs. Bulletproof Statutes .....	1-21
1.7.2. Term of the LLC .....	1-21
1.7.3. Written Operating Agreement .....	1-22
1.8. Use of LLCs for Venture-Backed Companies .....	1-22
1.9. Statutory Developments, Current Topics, and Recent Case Law .....	1-24
1.9.1. Legislation .....	1-24
1.9.1.1. Chapter 1706 .....	1-28
1.9.2. Current Topics .....	1-28

1.9.3.	Case Law . . . . .	1-28.1
1.9.4.	Series Limited Liability Companies. . . . .	1-35
1.9.4.1.	Series LLC Concept. . . . .	1-35
1.9.4.2.	Tax Classification of Series LLCs . . . . .	1-37
<b>CHAPTER 2: FORMATION AND ORGANIZATION . . . . .</b>		<b>2-1</b>
2.1.	Introduction . . . . .	2-2
2.2.	Preformation Matters. . . . .	2-2
2.2.1.	Relevant Filing Fees . . . . .	2-2
	Form 2-1. Checklist for Formation of LLC . . . . .	2-3
2.3.	Articles of Organization . . . . .	2-4.24
2.3.1.	Basic Requirements . . . . .	2-4.24
2.3.2.	Optional Provisions . . . . .	2-5
	2.3.2.1. Provision Limiting Agency Authority of Members . . . . .	2-5
	Form 2-3. ARTICLE FOURTH — Restrictions on Authority . . . . .	2-6
	2.3.2.2. Provision Requiring Written Operating Agreement . . . . .	2-6
	Form 2-4. ARTICLES FOURTH AND FIFTH — Restrictions on Authority and a Requirement That the Operating Agreement Be in Writing . . . . .	2-7
	2.3.2.3. Provision Stating General Purpose . . . . .	2-7
	Form 2-5. ARTICLE SIXTH — General Purpose . . . . .	2-8
2.4.	Certificate of Amendment or Restatement of Articles of Organization . . . . .	2-8
2.5.	Manner of Approving Certificate of Amendment . . . . .	2-8
	Form 2-6. Unanimous Consent of Members to Amend Articles of Organization, Where Unanimity Is Required . . . . .	2-9
	Form 2-7. Consent of Members to Amend Articles of Organization Where Operating Agreement Does Not Require Unanimity . . . . .	2-10
2.6.	Reservation of Name . . . . .	2-10
2.7.	Statutory Agent — Subsequent Appointment, Change of Address, and Resignation . . . . .	2-11
2.8.	Other Matters to Be Considered in Connection with Formation . . . . .	2-11

**PART II  
OPERATIONS**

**CHAPTER 3: THE OPERATING AGREEMENT . . . . . 3-1**

3.1. In General . . . . . 3-2

3.2. Operating Agreement Defined. . . . . 3-2

3.3. Written Declaration Defined . . . . . 3-3

3.4. Flexibility of the LLC Form . . . . . 3-3

3.5. Form of the Operating Agreement. . . . . 3-4

3.6. Formality of Adoption. . . . . 3-4

    Form 3-1. Consent to Be Bound by Terms of Operating Agreement . . . . . 3-5

3.7. Amendment . . . . . 3-5

    3.7.1. In General. . . . . 3-5

    3.7.2. Formality Required. . . . . 3-5

3.8. Alternate Form Operating Agreements . . . . . 3-5

3.9. Operating Considerations . . . . . 3-6

**CHAPTER 4: ORGANIZATION . . . . . 4-1**

4.1. Drafting LLC Operating Agreement . . . . . 4-3

4.2. Introductory Paragraph . . . . . 4-3

    Form 4-1. Introductory Paragraph — Names Parties. . . . . 4-3

    Form 4-2. Introductory Paragraph — Does Not Name All Parties . . . . . 4-4

4.3. Background to Agreement. . . . . 4-4

    Form 4-3. Recital . . . . . 4-4

4.4. Definitions . . . . . 4-4

    4.4.1. “Interest” Compared to “Membership Rights” . . . . . 4-5

    4.4.2. “Interest Holder” Compared to “Member” . . . . . 4-5

        Form 4-4. General Definitions . . . . . 4-6

4.5. Agreement to Organize LLC. . . . . 4-7

    Form 4-5. General Agreement to Organize LLC . . . . . 4-8

    Form 4-6. Organizational Provision Confirming That Articles of Organization Have Been Filed . . . . . 4-8

4.6. Name . . . . . 4-8

    Form 4-7. Name Provision for Member-Managed LLC . . . . . 4-9

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

4.7. Purpose . . . . . 4-9

    Form 4-9. Any Lawful Purpose . . . . . 4-10

    Form 4-10. Specific Purpose . . . . . 4-10

    Form 4-11. Purpose Limited to Real Estate . . . . . 4-10

4.8. Term. . . . . 4-10

Form 4-12.	Term — Articles of Organization Filed after Execution of Operating Agreement. . . . .	4-11
Form 4-13.	Term Commenced upon Filing of Articles of Organization . . . . .	4-11
4.9.	Principal Office . . . . .	4-12
Form 4-14.	Principal Office of LLC Managed by Members . . . . .	4-12
Form 4-15.	Principal Office of LLC Managed by Managers . . . . .	4-12
4.10.	Statutory Agent . . . . .	4-12
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 Representation . . . . .	4-13
Form 4-20.	Limitation of Representation Provision . . . . .	4-14
4.13.	Miscellaneous Provisions . . . . .	4-14
Form 4-21.	Miscellaneous Provisions . . . . .	4-15
<b>CHAPTER 5: CAPITAL PROVISIONS . . . . .</b>		<b>5-1</b>
5.1.	Drafting Operating Agreement Capital Provisions . . . . .	5-3
5.2.	Initial Capital 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 Capital 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 Payment 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 Capital 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 Capital Contributions . . . . .	5-10
	Form 5-12. Return of Capital Contribution — Unanimous Consent of Members and Compliance with Act Required . . . . .	5-11
5.7.	Form of Distribution . . . . .	5-11
	Form 5-13. Form of Distribution — No Right to Receive Anything but Cash . . . . .	5-11
	Form 5-14. Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager-Managed LLC . . . . .	5-11
5.8.	Capital Accounts . . . . .	5-12
	Form 5-15. Capital Accounts Maintained in Accordance with Code Section 704 . . . . .	5-12
5.9.	Loans . . . . .	5-12
	Form 5-16. Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future . . . . .	5-12
	Form 5-17. Loans — Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed upon in Future . . . . .	5-13

**CHAPTER 6: ALLOCATION AND DISTRIBUTION PROVISIONS. . . . . 6-1**

6.1.	Taxation of the LLC . . . . .	6-3
	6.1.1. General . . . . .	6-3
	6.1.2. Medicare Tax on Net Investment Income . . . . .	6-3
6.2.	General Allocation and Distribution Concepts . . . . .	6-4
6.3.	Distribution Restrictions under the Act . . . . .	6-4.2
6.4.	Allocation Restrictions — Code Section 704(b) . . . . .	6-4.2
	6.4.1. Overview . . . . .	6-4.2
	6.4.2. The Three Alternative Allocation Tests . . . . .	6-5
	6.4.2.1. The First Test: Partners’ Interests . . . . .	6-6
	6.4.2.2. The Second Test: Substantial Economic Effect and Capital Accounts . . . . .	6-6
	6.4.2.3. The Third Test: Nonrecourse Debt . . . . .	6-7
6.4.3.	Allocations to Interest Holders . . . . .	6-8

6.5.	Definitions . . . . .	6-9
6.5.1.	Distribution-Related Definitions . . . . .	6-9
	Form 6-1. Distribution Definitions . . . . .	6-9
6.5.2.	Allocation-Related Definitions . . . . .	6-10
	Form 6-2. Tax Definitions . . . . .	6-10
6.6.	Basic Distribution Provisions . . . . .	6-13
6.6.1.	In General . . . . .	6-13
6.6.2.	Cash Flow from Operations . . . . .	6-14
	Form 6-3. Distributions of Cash Flow . . . . .	6-14
6.6.3.	Distribution of Capital Proceeds . . . . .	6-15
	Form 6-4. Distribution of Capital Proceeds . . . . .	6-15
6.6.4.	Liquidation Proceeds . . . . .	6-16
	Form 6-5. Liquidation and Dissolution . . . . .	6-16
	Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation . . . . .	6-17
6.7.	Basic Allocation Provisions . . . . .	6-17
6.7.1.	Basic Allocations of Income and Loss . . . . .	6-17
	Form 6-7. Profit or Loss . . . . .	6-18
6.7.2.	Qualified Income Offset and Minimum Gain Chargeback . . . . .	6-19
	Form 6-8. Qualified Income Offset and Minimum Gain Chargeback . . . . .	6-20
6.7.3.	Other Regulatory Allocations . . . . .	6-21
	Form 6-9. Regulatory Allocations . . . . .	6-22
6.7.4.	General Provisions . . . . .	6-24
	Form 6-10. General Provisions . . . . .	6-24
6.8.	Complex and Disproportionate Distribution and Allocation Provisions . . . . .	6-25
6.8.1.	Distribution Preferences . . . . .	6-25
	Form 6-11. Distribution Preference . . . . .	6-26
6.8.2.	Disproportionate Allocation of Losses . . . . .	6-27
	Form 6-12. Disproportionate Allocation of Loss . . . . .	6-28
6.8.3.	Flip-Flops . . . . .	6-28
	Form 6-13. Flip-Flop on Sale . . . . .	6-29
6.8.4.	Target Allocations . . . . .	6-30
<b>CHAPTER 7: MANAGEMENT . . . . .</b>		<b>7-1</b>
7.1.	Drafting LLC Management Provisions . . . . .	7-3
7.1.1.	General Flexibility under the Act . . . . .	7-3
7.1.2.	Member Duties . . . . .	7-3

7.1.3.	Typical Approaches . . . . .	7-3
7.1.4.	Officers, Managers, and Authorized Persons . . . . .	7-3
7.1.5.	Tax Aspects. . . . .	7-4
7.2.	Member-Managed LLC Provisions. . . . .	7-4
Form 7-1.	Simple Member-Management Provision. . . . .	7-5
Form 7-2.	Member Management but with Appointment of Ministerial Manager Who Is Not a Member . . . . .	7-5
7.3.	Representative Management . . . . .	7-5
7.3.1.	Management by a “General Partner”-Like Manager . . . . .	7-6
Form 7-3.	Manager with “General Partner”- Like Authority . . . . .	7-6
Form 7-4.	Manager with “General Partner”- Like Authority — Alternate Form. . . . .	7-9
7.3.2.	Management by Management Committee . . . . .	7-10
Form 7-5.	Management Committee. . . . .	7-10
7.4.	Replacement of Managers. . . . .	7-12
Form 7-6.	Removal of Manager for Any Reason. . . . .	7-12
Form 7-7.	Removal of Manager for Only Specified Reasons . . . . .	7-12
7.5.	Meetings of Members . . . . .	7-13
Form 7-8.	Procedure for Calling and Holding Meetings . . . . .	7-13
7.6.	Informal Action of Members; Form of Member Consents . . . . .	7-14
Form 7-9.	Informal Actions . . . . .	7-14
Form 7-10.	Form of Consent of Members . . . . .	7-14
7.7.	Unanimous Consent . . . . .	7-16
Form 7-11.	Unanimous Consent (Vote of All Members) . . . . .	7-17
Form 7-12.	Consent (Vote of Less Than All Members) . . . . .	7-17
7.8.	Deadlock and Resolution . . . . .	7-17
Form 7-13.	Simple Form of Deadlock Provision. . . . .	7-18
Form 7-14.	Arbitration of Deadlock. . . . .	7-18
Form 7-15.	Russian Roulette in the Event of Deadlock. . . . .	7-19
Form 7-15a.	Alternative Dispute Resolution (ADR); Binding Arbitration . . . . .	7-22
7.9.	Compensation and Reimbursement. . . . .	7-22.3
Form 7-16.	Arrangement for Compensation (Member-Managed). . . . .	7-22.3
Form 7-17.	Compensation (Manager-Managed) . . . . .	7-22.4
Form 7-18.	Extraordinary Compensation. . . . .	7-23
7.10.	Standard of Care and Burden of Proof . . . . .	7-23
Form 7-19.	Duties . . . . .	7-24
7.11.	Indemnification . . . . .	7-25

Form 7-20.	Liability and Indemnification of Manager (Manager-Managed) . . . . .	7-25
Form 7-21.	Liability and Indemnification of Members (Member-Managed). . . . .	7-26
7.12.	Power of Attorney . . . . .	7-26
Form 7-22.	Power of Attorney . . . . .	7-26

**CHAPTER 8: TRANSFER AND BUY-SELL PROVISIONS . . . 8-1**

8.1.	The ORLLCA's Default Rules for Transfers. . . . .	8-3
8.2.	Tax Aspects of Transfer Restrictions. . . . .	8-3
8.2.1.	Partnership Classification. . . . .	8-3
8.2.2.	Termination of the LLC . . . . .	8-4
8.2.3.	Basis Issues . . . . .	8-4.1
8.3.	Preliminary Drafting Considerations . . . . .	8-5
Form 8-1.	Definitional Provision — Transfer . . . . .	8-5
Form 8-2.	Definitional Provisions — Membership Interest and Membership Rights . . . . .	8-5
8.4.	Transfer Provisions That Follow the ORLLCA's Default Rules. . . . .	8-6
Form 8-3.	Transfer Provision Following the ORLLCA's Default Rules. . . . .	8-6
8.5.	Transfer Provisions That Permit Free Transferability of Interests. . . . .	8-6
Form 8-4.	Free Transferability of Interests and Rights . . . . .	8-6.1
8.6.	Transfer Provisions That Absolutely Prohibit Transfers of Any Kind. . . . .	8-7
Form 8-5.	Absolute Prohibition of Transfers . . . . .	8-7
8.7.	Drafting Transfer Provisions That Permit Transfers Only on Certain Conditions . . . . .	8-8
8.7.1.	In General. . . . .	8-8
Form 8-6.	Transfer Permitted on Satisfaction of Certain Conditions . . . . .	8-8
8.7.2.	First Refusal 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 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. . . . .	8-15
Form 8-10.	Transferee Not Admitted as Member without Consent of	



	Members . . . . .	8-15
	Form 8-11. Transferee Automatically Admitted as Member. . . . .	8-16
8.7.4.	Transfers to Members' Affiliates and Family . . . . .	8-16
	Form 8-12. Definitional Provision — Family . .	8-16
	Form 8-13. Transfers to Affiliates and Family . .	8-16
8.8.	Dissociation under the ORLLCA . . . . .	8-17
8.8.1.	Voluntary Dissociation . . . . .	8-17
	Form 8-14. Voluntary Withdrawal Defined . . . .	8-17
	Form 8-15. Voluntary Withdrawal — Not Permitted. . . . .	8-17
8.8.2.	Involuntary Dissociation. . . . .	8-17
	Form 8-16. Involuntary Withdrawal Defined (Long Form) . . . . .	8-19
	Form 8-17. Involuntary Withdrawal Defined (Short Form) . . . . .	8-20
	Form 8-18. Involuntary Withdrawal. . . . .	8-20
8.9.	Consequences of Dissociation in General. . . . .	8-21
8.10.	Creating Buy-Out Rights. . . . .	8-21
	Form 8-19. Optional Buy-Out; Company Buys; Cash Purchase . . . . .	8-23
	Form 8-20. Mandatory Buy-Out; Members Buy; Installments Permitted . . . . .	8-24
8.11.	Valuation Provisions . . . . .	8-25
	Form 8-21. Agreed Value . . . . .	8-25
	Form 8-22. Book Value . . . . .	8-26
	Form 8-23. Appraised Value. . . . .	8-27
8.12.	Miscellaneous Transfer Provisions . . . . .	8-28
	Form 8-24. Installment Buy-Outs . . . . .	8-28
	Form 8-25. Insolvency Form . . . . .	8-28
	Form 8-26. Members Not Required to Assume Company's Obligation . . . . .	8-29
8.13.	Tag-Along and Drag-Along Rights . . . . .	8-29
	Form 8-27. Tag-Along Right . . . . .	8-29
	Form 8-28. Drag-Along Right . . . . .	8-30
	Form 8-29. Right of First Refusal/Co-Sale . . . . .	8-31
	Form 8-30. Drag-Along Rights . . . . .	8-34
<b>CHAPTER 9: DISSOLUTION . . . . .</b>		<b>9-1</b>
9.1.	Tax Aspects of LLC Dissolution . . . . .	9-2
9.2.	Overview of the Act's Dissolution Provisions. . . . .	9-2

9.3.	Events of Dissolution . . . . .	9-2
	Form 9-1. Dissolution — Comprehensively Describes All Events of Dissolution; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member . . . . .	9-3
	Form 9-2. Dissolution — Refers to Events of Withdrawal under Another Section; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member . . . . .	9-4
	Form 9-3. Sample Resolutions Approving Continuation of Business after Dissolution. . . . .	9-4
9.4.	Publication of Dissolution. . . . .	9-5
9.5.	Procedure for Winding Up and Distribution of Assets . . . . .	9-5
	Form 9-5. Procedure for Winding Up in Member-Managed LLC . . . . .	9-6
	Form 9-6. Procedure for Winding Up in Manager-Managed LLC . . . . .	9-6
	Form 9-7. Procedure for Winding Up in Member-Managed LLC — Alternate Form . . . . .	9-7
	Form 9-8. Procedure for Winding Up in Manager-Managed LLC — Alternate Form . . . . .	9-7
	Form 9-9. Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee. . . . .	9-8
9.6.	Filing of Certificate of Dissolution . . . . .	9-8
	Form 9-10. Filing of Certificate of Dissolution — Member-Managed LLC . . . . .	9-8
	Form 9-11. Filing of Certificate of Dissolution — Manager-Managed LLC . . . . .	9-9
<b>CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING. . . . .</b>		<b>10-1</b>
10.1.	Introduction . . . . .	10-3
10.2.	Banking . . . . .	10-3
	Form 10-1. Bank Accounts. . . . .	10-3
10.3.	Records . . . . .	10-3
	Form 10-2. Maintenance of Records — Member-Managed LLC — Short Form . . . . .	10-4
	Form 10-3. Maintenance of Records — Manager-Managed LLC — Short Form . . . . .	10-4
	Form 10-4. Maintenance of Records — Manager-Managed LLC — Long Form . . . . .	10-4
10.4.	Accounting Period . . . . .	10-5
	Form 10-5. Calendar Year Accounting Period Specified . . . . .	10-5

Form 10-6.	Fiscal Year Accounting Period Specified. . . . .	10-5
Form 10-7.	Year to Be Determined by Members. . . . .	10-5
Form 10-8.	Annual Accounting Period Established by Managers. . . . .	10-6
10.5.	Reports . . . . .	10-6
Form 10-9.	Preparation of Reports — Form for Member- Managed or Manager-Managed LLC . . . . .	10-6
Form 10-10.	Preparation of Reports — Alternative Form for Manager-Managed LLC . . . . .	10-7
10.6.	LLC Federal Tax Audit . . . . .	10-7
10.6.1.	Introduction . . . . .	10-7
10.6.2.	TEFRA and the Tax Matters Partner . . . . .	10-8
Form 10-11.	Tax Matters Partner (Short Form) . . . . .	10-9
Form 10-12.	Tax Matters Partner (Long Form) . . . . .	10-9
10.6.3.	The CPAR and the Partnership Representative . . . . .	10-9
10.6.3.1.	2015 Legislation . . . . .	10-9
10.6.3.2.	The Partnership Representative . . . . .	10-10
10.6.3.3.	Substantive Changes . . . . .	10-10
10.6.3.4.	What to Do — And When to Do It . . . . .	10-12
	Form 10-13. Partnership Representative. . . . .	10-13
10.7.	Tax Elections. . . . .	10-15
Form 10-14.	Tax Elections. . . . .	10-15
Form 10-15.	Tax Elections — Applies to Code Section 754 Only — For Use in Either Member-Managed or Manager-Managed LLC . . . . .	10-16

**PART III  
MISCELLANEOUS**

<b>CHAPTER 11:</b>	<b>REORGANIZATION OF THE LLC . . . . .</b>	<b>11-1</b>
11.1.	In General . . . . .	11-3
11.2.	Merger or Conversion of an Existing Entity into an LLC . . . . .	11-3
11.2.1.	In General. . . . .	11-3
Form 11-1.	Conversion Resolutions. . . . .	11-5
Form 11-1A.	Declaration of Conversion. . . . .	11-8.1
Form 11-1B.	Certificate for Conversion for Entities Converting Within or Off the Records of the Ohio Secretary of State. . . . .	11-8.5
11.2.2.	Conversion of General Partnership to LLC . . . . .	11-8.13

Form 11-1C.	Recitals — Conversion of General Partnership into LLC . . . . .	11-8.13
Form 11-2.	Term Is Continuation of Term of 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 Limited Partnership into LLC . . . . .	11-14
11.2.4.	Conversion of Corporation into LLC . . . . .	11-15
11.2.5.	Tax Aspects of Conversion of Partnerships to LLCs. . . . .	11-17
11.3.	Conversion of LLC into Corporation . . . . .	11-17
11.3.1.	Conversion of LLC into a Corporation . . . . .	11-17
11.4.	Dealing with Lenders and Other Third Parties . . . . .	11-18
Form 11-7.	Letter to Bank Requesting Consent to Conversion. . . . .	11-19
Form 11-8.	Conversion Consent Agreement . . . . .	11-20
11.5.	Real Estate Considerations . . . . .	11-22
Form 11-9.	Fairways Endorsement . . . . .	11-23
11.6.	Recapitalizing the LLC . . . . .	11-24
Form 11-10.	Form of Amendment of Operating Agreement. . . . .	11-25
11.7.	Approval and Dissenters’ Rights in Mergers and Conversions. . . . .	11-26
<b>CHAPTER 12: INTERSTATE BUSINESS . . . . .</b>		<b>12-1</b>
12.1.	Foreign LLCs Doing Business in Ohio . . . . .	12-2
12.1.1.	Registration Requirement. . . . .	12-2
12.1.2.	Filing Fee . . . . .	12-2
12.1.3.	Issuance and Cancellation of Registration . . . . .	12-2
12.2.	Ohio LLCs Doing Business Outside of Ohio . . . . .	12-3
12.2.1.	Doing Business in States That Lack Qualification Procedures or LLC Registration . . . . .	12-3
<b>CHAPTER 13: PROFESSIONAL ORGANIZATIONS . . . . .</b>		<b>13-1</b>
13.1.	Limited Liability Companies and Limited Liability	

Partnerships . . . . . 13-1

13.2. Operating Agreement for Professional LLC . . . . . 13-6

**CHAPTER 14: COMPENSATION STRATEGIES FOR THE LLC . . . . . 14-1**

14.1. Introduction . . . . . 14-3

14.2. Factors in Equity-Based Compensation . . . . . 14-3

    14.2.1. Section 409A and Nonqualified Deferred Compensation Arrangements . . . . . 14-6.1

    14.2.2. “Carried Interest” Legislation . . . . . 14-6.2

    14.2.3. Section 1061 — Carried Interests . . . . . 14-6.3

14.3. Hypothetical Examples — Equity Models . . . . . 14-7

14.4. LLC (Partnership) vs. Corporation Equity Methods . . . . . 14-9

    14.4.1. Corporation Context. . . . . 14-10

        14.4.1.1. Stock Grants. . . . . 14-10

        14.4.1.2. Stock Options. . . . . 14-11

        14.4.1.3. Phantom Stock Plans . . . . . 14-12

    14.4.2. The LLC Context . . . . . 14-12

        14.4.2.1. Equity Interests . . . . . 14-13

            14.4.2.1.1. “Full Equity Interest” . . . . . 14-13

            14.4.2.1.2. Profits Interests . . . . . 14-14

        14.4.2.2. Point System Compensation . . . . . 14-14.3

        14.4.2.3. The Importance of Member Involvement . . . . . 14-15

        14.4.2.4. Loss Allocation and Debt Guarantees . . . . . 14-15

        14.4.2.5. Equity Interest vs. Non-Equity Incentive Compensation. . . . . 14-16

14.5. Alternatives to Equity 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 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 . . . . . 14-18.13

14.6. Compensation Comparison Chart . . . . . 14-18.16

14.7. Phantom Income and Distributions. . . . . 14-20

    14.7.1. Tax Based Distributions . . . . . 14-20

    14.7.2. Separate Calculations for Each Member . . . . . 14-20

    14.7.3. Standard Distribution Rate. . . . . 14-21

    14.7.4. Highest Incremental Tax Rate . . . . . 14-23

14.7.5.	Self-Employment Tax . . . . .	14-24
14.7.6.	Calculating Self-Employment Income . . . . .	14-25
14.7.6.1.	Application of Self-Employment Tax to LLC Members . . . . .	14-25
14.8.	Fiduciary Duties, Inspection Rights, and Other Duties of Members . . . . .	14-26
14.8.1.	Rights of (Soon-to-Be-Former) Shareholders: <i>Stephenson v. Drever</i> . . . . .	14-26
14.9.	Fiduciary Duties Enforced Even Though Little Is at Stake: <i>Hughes v. St. David Support Corp</i> . . . . .	14-28
14.10.	Fiduciary Duties of Minority Shareholders Who Look to the Court Like Partners: <i>Rexford Rand Corporation v. Gregory Ancel</i> . . . . .	14-28
14.11.	Securities Law Issues . . . . .	14-30
14.12.	Member Exit Strategies: Buy-Out Arrangements . . . . .	14-30
14.13.	Forms: Equity and Non-Equity-Based LLC Compensation Plans . . . . .	14-31
14.13.1.	Equity-Based Plan . . . . .	14-31
Form 14-1.	Stock Grant Agreement . . . . .	14-31
14.13.2.	Non-Equity-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 Compensation Plan . . . . .	14-66
Form 14-7.	Acme Partners, LLC: Incentive Compensation Plan Agreement . . . . .	14-79
<b>CHAPTER 15: COMMERCIAL LAW ASPECTS OF LLCs . . .</b>		<b>15-1</b>
15.1.	Credit Agreement Consideration for LLC Borrowings . . . . .	15-2
15.1.1.	Due Diligence . . . . .	15-2
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.	Documentation . . . . .	15-9
15.1.2.1.	Recourse . . . . .	15-10
15.1.2.2.	Representations and Warranties . . . . .	15-10
15.1.2.3.	Covenants . . . . .	15-10

15.1.3.	Remedies/Bankruptcy . . . . .	15-11
15.1.4.	Conversions of Existing Entities . . . . .	15-11
15.1.5.	Tax Consideration . . . . .	15-12
15.2.	Opinion Letters . . . . .	15-12
	Form 15-4. Excerpts for Borrower's Counsel Opinion for an LLC. . . . .	15-13
	Form 15-4A. Excerpts for LLC's Counsel Opinion to Investors in the LLC When LLC Is a Venture Capital Fund . . . . .	15-14
15.3.	Pledge of Membership Interest . . . . .	15-16
	15.3.1. Pledge of Membership Interest . . . . .	15-16
	15.3.1A. Taking a Security Interest in a Membership Interest . . . . .	15-16
	Form 15-5. UCC-1 Description for Collateral Assignment of Membership Interest . . . . .	15-16.3
	15.3.2. Pledge of Membership Notes . . . . .	15-17
15.4.	Applicability of the Pre-Merger Notification Requirement of the Hart-Scott-Rodino Act to LLCs . . . . .	15-18
	15.4.1. Background . . . . .	15-18
	15.4.2. Qualifying Transactions . . . . .	15-19
	15.4.3. Prior Interpretations . . . . .	15-20
	15.4.4. Treatment of LLCs under the Interpretation . . . . .	15-21
<b>CHAPTER 16: SINGLE-MEMBER LLCS . . . . .</b>		<b>16-1</b>
16.1.	Introduction . . . . .	16-2
16.2.	What Is a Single-Member LLC? . . . . .	16-2
16.3.	Form of Written Declaration . . . . .	16-4
16.4.	Operating Considerations . . . . .	16-4
	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 Single-Member LLCs . . . . .	16-6.3
	16.4.5. Single-Member LLCs in Lieu of Consolidated Returns . . . . .	16-6.6
16.5.	Some Uses for Single-Member LLCs . . . . .	16-6.7
	16.5.1. Firewalls . . . . .	16-6.7
	16.5.2. Creation of Single-Purpose Bankruptcy Remote Entities . . . . .	16-7
	Form 16-1. Purpose for Single-Asset Entity . . . . .	16-8.1

	Form 16-2. Further Restriction Provision . . . . .	16-8.2
16.5.3.	Use in Connection with Asset Sales. . . . .	16-10.2
16.5.4.	Like-Kind Exchanges. . . . .	16-10.2
16.5.5.	Avoidance of Ancillary Probate . . . . .	16-11
16.5.6.	Use as Entity of Choice for Corporate Subsidiaries . . . . .	16-11
16.5.7.	Use of LLCs to Hold Vacation Homes. . . . .	16-12
16.5.8.	LLCs as a Buy-Sell Life Insurance Holding Company Tool . . . . .	16-14
16.5.9.	Holding S Corporation Stock. . . . .	16-15
16.6.	Income Tax Conversion Issues . . . . .	16-17
16.6.1.	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.	Payment of Employment Taxes with Respect to Disregarded Entities. . . . .	16-18
<b>CHAPTER 17: GENERAL PARTNERSHIPS . . . . .</b>		<b>17-1</b>
17.1.	Introduction . . . . .	17-2
17.2.	General Partnerships and the New Partnership Act . . . . .	17-2
17.3.	Limited Liability Partnerships . . . . .	17-4
17.4.	Name Requirement . . . . .	17-5
17.5.	Biennial Report . . . . .	17-6
17.6.	Status of Limited Liability Partnership . . . . .	17-6
17.7.	Foreign Limited Liability Partnerships . . . . .	17-7
<b>CHAPTER 18: BANKRUPTCY ISSUES CONCERNING LLCS. . . . .</b>		<b>18-1</b>
18.1.	Overview . . . . .	18-3
18.2.	Eligibility of LLCs for Voluntary Relief under the Bankruptcy Code. . . . .	18-4
18.3.	Property of the Estate . . . . .	18-5
	Form 18-1. Operating Agreement Provision — Limitation on Obligation to Make Additional Capital Contributions. . . . .	18-6
18.4.	May a Member Commence an Involuntary Case Against an LLC?. . . . .	18-6
18.5.	What Approval Is Needed to Approve the Filing of a Voluntary Case by an LLC? . . . . .	18-8
	Form 18-2. Operating Agreement Provision — Unanimous Consent of Members to Filing Voluntary Case. . . . .	18-9



Form 18-3.	Operating Agreement Provision — Consent of Majority of Members to Filing a Voluntary Case . . . . .	18-10
Form 18-4.	Operating Agreement Provision — Manager Vote Required for Filing of Voluntary Case . . . . .	18-10
Form 18-5.	Operating Agreement Provision — Member and Manager Vote Required for Filing a Voluntary Case . . . . .	18-11
Form 18-6.	Resolutions of Members in Member-Managed 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
18.6.	Creating Limitations on the Ability of an LLC to Commence a Voluntary Case — Single Purpose Bankruptcy Remote LLCs . . . . .	18-14
Form 18-8.	Operating Agreement Provision — Purpose Clause for a SPBR LLC . . . . .	18-15
Form 18-9.	Operating Agreement Provision — Management of Business and Affairs of the Company . . . . .	18-16
18.7.	Other Bankruptcy Issues from the LLC’s Perspective . . . . .	18-22
18.8.	Right of the LLC or Remaining Members to Terminate Management Rights of a Bankrupt Member . . . . .	18-23
Form 18-10.	Operating Agreement Provision — Economic Interests versus Other Rights and Interests . . . . .	18-28
18.9.	Member’s Bankruptcy as an Event of Dissolution . . . . .	18-29
18.10.	Buy-Out of a Member’s Interest in the Event of the Member’s Bankruptcy . . . . .	18-30
18.11.	Another Application of Corporate-Like Characteristics . . . . .	18-32
18.12.	Series LLC . . . . .	18-32
 <b>CHAPTER 19: USE OF LLCs BY EXEMPT ORGANIZATIONS . . . . . 19-1</b>		
19.1.	Introduction . . . . .	19-2
19.2.	Uses of 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 Carry Out an Exempt Purpose of a Tax-Exempt Parent XYZ Charitable Gifts LLC . . . . .	19-9
19.2.4.	Use of an Ohio LLC as an Enterprise Jointly-Owned by Two or More Tax-Exempt Organizations to Carry Out an Exempt Purpose . . . . .	19-10
19.3.	Use of the LLC as “Freestanding” Exempt Organization . . . . .	19-10

**CHAPTER 20: LIMITED LIABILITY AND THE CORPORATE VEIL . . . . . 20-1**

20.1.	Introduction . . . . .	20-2
20.2.	General Tests . . . . .	20-2
20.3.	Ohio Specifics . . . . .	20-3
20.3.1.	Expansion of the Second Prong of the Belvedere Test; Application to LLCs . . . . .	20-4.1
20.4.	Delaware Comparison . . . . .	20-5
20.5.	Scholarly Overviews . . . . .	20-7

**CHAPTER 21: OPTIONS AND CONVERTIBLE INTERESTS FOR LLCs TAXED AS PARTNERSHIP . . . . . 21-1**

21.1.	Introduction: Noncompensatory Call Options and Convertible Preferred Interests . . . . .	21-2
21.2.	Noncompensatory Call Options: Defined . . . . .	21-2
21.2.1.	Tax Consequences of Issuance and Exercise of Call Option . . . . .	21-3
	21.2.1.1. Partnership . . . . .	21-7
	21.2.1.2. Option Holder . . . . .	21-7
21.2.2.	Tax Consequences of Lapse of Call Option . . . . .	21-8
	21.2.2.1. Partnership . . . . .	21-8
	21.2.2.2. Option Holder . . . . .	21-10
21.2.3.	Tax Consequences of Exercise of Option . . . . .	21-10
	21.2.3.1. Option Holder . . . . .	21-11
	21.2.3.2. Partnership . . . . .	21-11
21.2.4.	Drafting Considerations in the Partnership Agreement . . . . .	21-12

21.2.4.1.	Capital Account Maintenance under Code Section 704(b) . . . . .	21-12
21.2.4.2.	Code Section 704(c) . . . . .	21-14
21.2.4.3.	Tax Distributions . . . . .	21-15
21.2.5.	Ancillary Tax Considerations . . . . .	21-15
21.2.5.1.	Code Section 704(c) . . . . .	21-15
21.2.5.2.	Code Section 752 . . . . .	21-15
21.2.5.3.	Code Section 751 . . . . .	21-16
21.2.5.4.	Holding Period . . . . .	21-16
21.2.5.5.	Original Issue Discount . . . . .	21-16
21.2.5.6.	Disregarded Entities . . . . .	21-17
21.3.	Convertible Preferred Interests . . . . .	21-17
21.3.1.	Description of Convertible Preferred Interests . . . . .	21-17
21.3.2.	Example: Convertible Preferred Interests . . . . .	21-18
21.3.3.	Real Deals . . . . .	21-19
21.3.4.	Drafting Issues for Convertible Interests . . . . .	21-19
<b>CHAPTER 22:</b>	<b>LEGAL OPINIONS . . . . .</b>	<b>22-1</b>
22.1.	Introduction . . . . .	22-3
22.2.	Model Opinion 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 Diligence 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
	22.3.6.	Remedies Opinion . . . . .	22-41
	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

**CHAPTER 23: ADMISSION OF NEW MEMBERS AND APPLICATION OF SECURITIES LAW . . . . . 23-1**

23.1.		In General . . . . .	23-2
23.2.		Admission of New Members . . . . .	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 of Interest as a Member . . . . .	23-6
	23.2.2.	Acquisition of Interest from Another Member . . . . .	23-9
	Form 23-3.	Assignment of Membership Interest . . . . .	23-9
	Form 23-4.	Joinder Agreement . . . . .	23-14
	Form 23-5.	Member Consent Admitting Transferee as Member . . . . .	23-15
	23.2.3.	Applying the Securities Laws to LLCs . . . . .	23-16
	23.2.3.1.	General Rules . . . . .	23-16
	23.2.3.2.	LLC Interests as Securities . . . . .	23-19
23.3.		LLCs and Outside or Angel Investors . . . . .	23-22

<b>CHAPTER 24:</b>	<b>SALE OF LIMITED LIABILITY COMPANY INTERESTS.....</b>	<b>24-1</b>
24.1.	Introduction.....	24-2
24.2.	Form of Unit Purchase Agreement.....	24-2
24.3.	Federal Income Tax Considerations.....	24-2
24.4.	Federal Income Tax Withholding Obligations upon Sale of a Partnership 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.	Aggregate vs. Entity.....	24-5
24.4.3.2.	Rev. Rul. 91-32.....	24-5
24.4.3.3.	<i>Grecian Magnesite Mining v. Commissioner</i> .....	24-6
24.4.3.4.	Tax Cuts and 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 and Final Regulations.....	24-9
<b>CHAPTER 25:</b>	<b>SECTION 199A.....</b>	<b>25-1</b>
25.1.	Introduction to the Section 199A Deduction.....	25-5
25.2.	Ancillary Consequences of Section 199A Deduction.....	25-9
25.2.1.	Items Impacted by Section 199A Deduction.....	25-9
25.2.2.	Items Not Impacted by the Section 199A Deduction.....	25-10
25.3.	Steps In Computing Section 199A Deduction.....	25-11
25.4.	Taxable Income Ceiling on Section 199A Deduction.....	25-15
25.4.1.	20% of Taxable Income Limitation.....	25-16
25.5.	Calculating Amount of the Section 199A Deduction.....	25-17
25.5.1.	Section 199A Deduction: Taxable Income Equal to or Less than Threshold Amount.....	25-17
25.5.1.1.	Total QBI Amount.....	25-18
25.5.1.2.	Qualified REIT Dividends and Qualified PTP Income.....	25-18
25.5.2.	Section 199A Deduction: Taxable Income Exceeds Threshold Amount.....	25-20
25.5.2.1.	Taxable Income Exceeds Ceiling Amount.....	25-20
25.5.2.1.1.	Determining the QBI Component.....	25-20

25.5.2.2.	Taxable Income within Phase-In Range . . . . .	25-23
25.5.2.2.1.	Determining the QBI Component . . . . .	25-23
25.5.2.2.2.	Adjustment to QBI Component For Taxable Income within the Phase-In Range . . . . .	25-24
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 . . . . .	25-25
	25.5.2.2.3.1. Individual Engaged Only in an SSTB . . . . .	25-25
	25.5.2.2.3.2. Individual Engaged in Multiple Trades or Businesses One of which Is an SSTB . . . . .	25-27
25.6.	QBI — Defined . . . . .	25-27
25.6.1.	Qualified Items . . . . .	25-28
25.6.2.	Items Not Taken into Account as Qualified Items . . . . .	25-29
	25.6.2.1. Qualified REIT Dividends and Qualified PTP Income . . . . .	25-29
	25.6.2.2. Section 1231 . . . . .	25-29
	25.6.2.3. Dividends . . . . .	25-31
	25.6.2.4. Interest . . . . .	25-31
	25.6.2.5. Annuities . . . . .	25-31
	25.6.2.6. CFC Income . . . . .	25-31
	25.6.2.7. Notional Principal Contracts . . . . .	25-32
	25.6.2.8. Compensation . . . . .	25-32
	25.6.2.9. Guaranteed Payments for Services . . . . .	25-33
	25.6.2.10. Section 707(a) Payments for Compensation . . . . .	25-34
25.6.3.	Adjustments in Computing QBI . . . . .	25-34
	25.6.3.1. Wage Expense . . . . .	25-34
	25.6.3.2. Allocation of Items among Multiple Businesses . . . . .	25-35

25.6.3.3.	Section 751(a) and (b) Gain or Loss . . . .	25-35
25.6.3.4.	Guaranteed Payments for Capital . . . . .	25-35
25.6.3.5.	Section 481 Adjustment . . . . .	25-36
25.6.3.6.	Suspended Losses . . . . .	25-36
25.6.3.7.	NOLs and Section 461(l) . . . . .	25-37
	25.6.3.7.1. NOLs . . . . .	25-38
	25.6.3.7.2. Section 461(l) . . . . .	25-38
25.6.3.8.	Treatment of Deductions . . . . .	25-39
25.6.4.	Effective Date . . . . .	25-40
25.7.	Trade or Business . . . . .	25-40
25.7.1.	Trade or Business Defined . . . . .	25-41
25.7.2.	Aggregation of Multiple Trades or Businesses . . . .	25-43
	25.7.2.1. Requirements for Aggregation . . . . .	25-44
	25.7.2.2. Items Aggregated . . . . .	25-48
	25.7.2.3. Reporting Requirements . . . . .	25-48
	25.7.2.4. Effective Dates . . . . .	25-50
25.8.	Trades or Businesses that Do Not Qualify for the Section 199A Deduction . . . . .	25-50
25.8.1.	SSTB . . . . .	25-50
	25.8.1.1. SSTB Includes Trade or Business Defined in Section 1202(e)(3)(A) . . . . .	25-51
	25.8.1.1.1. Performance of Services in the Field of Health . . . . .	25-53
	25.8.1.1.2. Performance of Services in the Field of Law . . . . .	25-54
	25.8.1.1.3. Performance of Services in the Field of Accountancy . . . . .	25-55
	25.8.1.1.4. Performance of Services in the Field of Actuarial Science . . . . .	25-55
	25.8.1.1.5. Performance of Services in the Field of Performing Arts . . . . .	25-56
	25.8.1.1.6. Performance of Services in the Field of Consulting . . . . .	25-56
	25.8.1.1.7. Performance of Services in the Field of Financial Services . . . . .	25-58
	25.8.1.1.8. Performance of Services in the Field of Athletics . . . . .	25-59

	25.8.1.1.9. Performance of Services in the Field of Brokerage Services . . . . .	25-59
	25.8.1.1.10. Any Trade or Business in which the Principal Asset is Reputation or Skill of an Employee or Owner. . . . .	25-60
	25.8.1.2. Services in Investing, Investment Management, Trading, or Dealing in Securities, Partnership Interests or Commodities . . . . .	25-61
	25.8.1.3. <i>De Minimis</i> Exception . . . . .	25-65
	25.8.1.4. Anti-Avoidance Rules . . . . .	25-67
25.8.2.	Trade or Business of Performing Services as an Employee. . . . .	25-68
	25.8.2.1. Misclassified Employees . . . . .	25-69
	25.8.2.2. Officers as Employees . . . . .	25-69
	25.8.2.3. Anti-Avoidance Rule . . . . .	25-70
25.8.3.	Effective Date . . . . .	25-71
25.9.	Cap For Section 199A Deduction . . . . .	25-71
25.9.1.	W-2 Wages . . . . .	25-71
	25.9.1.1. W-2 Wages Allocable to QBI. . . . .	25-72
	25.9.1.1.1. First Step . . . . .	25-72
	25.9.1.1.1.1. Calendar Year Requirement. . . . .	25-72
	25.9.1.1.1.2. Wages Defined. . . . .	25-73
	25.9.1.1.2. Second Step . . . . .	25-75
	25.9.1.1.3. Third Step . . . . .	25-76
	25.9.1.2. Allocations of W-2 Wages by an RPE to Its Owners . . . . .	25-76
	25.9.1.3. Effective Date . . . . .	25-76
25.9.2.	UBIA of Qualified Property . . . . .	25-77
	25.9.2.1. Qualified Property Defined . . . . .	25-77
	25.9.2.2. UBIA Defined . . . . .	25-77
	25.9.2.2.1. UBIA Not Adjusted for Depreciation or Amortization . . . . .	25-78
	25.9.2.2.2. Basis Adjustments under Section 734(b) or Section 743(b) . . . . .	25-78



	25.9.2.2.3. Additions to Basis . . . . .	25-79
	25.9.2.3. UBIA for Qualified Property Transferred in Non-Recognition Transactions . . . . .	25-79
	25.9.2.4. Anti-Avoidance Rules . . . . .	25-80
25.9.3.	Depreciable Period Defined . . . . .	25-80
	25.9.3.1. Additional Depreciation. . . . .	25-81
	25.9.3.2. Non-Recognition Transfers of Qualified Property . . . . .	25-81
25.9.4.	Section 1031 Like-Kind Exchanges. . . . .	25-82
25.9.5.	Partnerships and S Corporations . . . . .	25-83
25.9.6.	UBIA of Qualified Property Acquired from a Decedent. . . . .	25-84
25.9.7.	Effective Date. . . . .	25-84
25.10.	Reporting Under Section 199A for RPEs and PTPs . . . . .	25-85
	25.10.1. Computational and Reporting Rules for RPEs. . . . .	25-85
	25.10.1.1. Computational Steps. . . . .	25-85
	25.10.1.2. Reporting Steps . . . . .	25-86
	25.10.2. Computational and Reporting Rules for PTPs. . . . .	25-87
	25.10.2.1. Computation Rules. . . . .	25-87
	25.10.2.2. Reporting Rules . . . . .	25-87
	25.10.3. Computational and Reporting Rules for Trusts, Estates and Beneficiaries . . . . .	25-87
	25.10.3.1. Computation Rules. . . . .	25-87
	25.10.3.2. Tax-Exempt Trusts with UBTI . . . . .	25-89
	25.10.3.3. Charitable Remainder Trusts . . . . .	25-89
	25.10.3.4. Split-Interest Trusts . . . . .	25-90
25.10.4.	Effective Date. . . . .	25-90

**PART IV  
APPENDICES**

<b>APPENDIX A:</b>	<b>[MEMBER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY . . . . .</b>	<b>APP A-1</b>
<b>APPENDIX B:</b>	<b>[MANAGER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY . . . . .</b>	<b>APP B-1</b>
<b>APPENDIX C:</b>	<b>OPERATING AGREEMENT — CORPORATE FORMAT . . . . .</b>	<b>APP C-1</b>

**APPENDIX D: OPERATING AGREEMENT — CORPORATE FORMAT — WITH OFFICERS . . . . . APP D-1**

**APPENDIX E: WRITTEN DECLARATION — SINGLE-MEMBER LLC . . . . . APP E-1**

**APPENDIX F: CHECKLIST OF DEFAULT PROVISIONS IN ACT . . . . . APP F-1**

**APPENDIX G: CHECK-THE-BOX REGULATIONS . . . . . APP G-1**

**APPENDIX H: IRS FORM 8832 . . . . . APP H-1**

**APPENDIX I: OHIO DEPARTMENT OF TAXATION GUIDANCE REGARDING PASS-THROUGH ENTITY WITHHOLDING . . . . . APP I-1**

**APPENDIX J: PRE- “CHECK-THE-BOX” CLASSIFICATION RULES . . . . . APP J-1**

**APPENDIX K: COLLATERAL ASSIGNMENT OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT . . . . . APP K-1**

**APPENDIX L: PLEDGE OF LIMITED LIABILITY COMPANY INTERESTS IN ABC, LLC . . . . . APP L-1**

**APPENDIX L2: PLEDGE AGREEMENT . . . . . APP L2-1**

**APPENDIX L3: ASSIGNMENT OF LLC INTEREST AND AMENDMENT TO OPERATING AGREEMENT OF LLC . . . . . APP L3-1**

**APPENDIX M: CREDIT ENHANCEMENT AGREEMENT . . . . . APP M-1**

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

**APPENDIX O: MEMBERSHIP INTEREST REDEMPTION AGREEMENT . . . . . APP O-1**

**APPENDIX P: LEGAL AND TITLE-INSURANCE ISSUES IN LIMITED LIABILITY COMPANY REAL ESTATE TRANSACTIONS . . . . . APP P-1**

**APPENDIX Q: OPERATING AGREEMENT WITH MULTIPLE CLASS INTERESTS . . . . . APP Q-1**

**APPENDIX R: OPERATING AGREEMENT WITH MULTIPLE CLASSES AND CREDIT ENHANCEMENT INTERESTS . . . . . APP R-1**

**APPENDIX S: UNIT PURCHASE AGREEMENT . . . . . APP S-1**

**APPENDIX T: OPERATING AGREEMENT OF THE  
XYZ LIMITED LIABILITY COMPANY  
AN OHIO LIMITED LIABILITY  
COMPANY . . . . . APP T-1**

**APPENDIX U: OPERATING AGREEMENT FOR A  
PROFESSIONAL LIMITED  
LIABILITY COMPANY . . . . . APP U-1**

**APPENDIX V: SUBSCRIPTION AGREEMENT . . . . . APP V-1**

**APPENDIX W: VACATION HOME LLC OPERATING  
AGREEMENT OF \_\_\_\_\_ . . APP W-1**

**APPENDIX X: FORM W-9: REQUEST FOR  
TAXPAYER IDENTIFICATION  
NUMBER AND CERTIFICATION . . . . . APP X-1**

**APPENDIX Y: MANAGER-MANAGED OPERATING  
AGREEMENT OF \_\_\_\_\_ LIMITED  
LIABILITY COMPANY WITH TARGET  
CAPITAL ACCOUNT ALLOCATIONS . . . . . APP Y-1**

**PART V  
INDICES**

Cumulative Table of Internal Revenue Code Citations . . . . . INDEX-1

Cumulative Table of Treasury Regulations . . . . . INDEX-7

Cumulative Table of Revenue Rulings and  
Revenue Procedures . . . . . INDEX-14

Cumulative Table of Ohio Limited Liability  
Act Sections . . . . . INDEX-15

Subject Index . . . . . INDEX-20

Forms Index . . . . . INDEX-37