

Contents

PART I ORGANIZATION

CHAPTER 1:	NATURE AND USE OF THIS PRACTICE MANUAL	1-1
1.1.	Nature and Use of This Practice Manual	1-3
1.2.	Summary of the Pennsylvania Uniform Limited Liability Company Act of 2016 and Comparison of the LLC with Other Entities	1-4
1.2.1.	Summary of the Pennsylvania LLC Act.	1-4
1.2.1.1.	The LLP	1-4
1.2.1.2.	The LLC	1-4.2
1.2.1.3.	The RPC	1-4.3
1.2.1.4.	Miscellaneous	1-4.5
1.2.1.5.	General	1-4.5
1.2.1.6.	Limited Liability Companies	1-4.6
1.2.1.7.	Restricted Professional Company ("RPC")	1-4.13
1.2.1.8.	Registered Limited Liability Partnerships	1-4.15
1.2.2.	Comparison of the LLC with Other Entities	1-4.17
	Table 1. Comparison of Limited Liability Companies, Limited Liability Partnerships, Limited Partnerships, S Corporations, and C Corporations	1-5
	Table 2. Comparison of State LLC Fees and Other Information	1-8
1.3.	History of the LLC	1-8.25
1.4.	Classification of the LLC as a Partnership for Federal Income Tax Purposes	1-8.25
1.4.1.	Adoption of Federal Check-the-Box Regulations	1-10
1.4.2.	Tax History of The LLC	1-10
1.4.3.	Federal Check-the-Box Regulations	1-12
1.4.3.1.	Check-the-Box Regulations in General	1-12
1.4.3.2.	Check-the-Box Classification Rules— Introduction	1-14
1.4.3.3.	Check-the-Box Classification Rules— LLC Organized on or after January 1, 1997	1-15

CONTENTS

1.4.3.4.	Check-the-Box Classification Rules— LLCs Organized before January 1, 1997, for Periods before January 1, 1997	1-16
1.4.3.5.	Check-the-Box Classification Rules— LLCs Organized before January 1, 1997, for Periods after January 1, 1997	1-17
1.4.3.6.	Elections.	1-18
1.4.4.	Number of Members	1-20
1.5.	Pennsylvania Tax Considerations.	1-20
1.5.1.	Taxation as an S Corporation	1-20
1.5.2.	Prior Law	1-22
1.6.	The Pennsylvania Uniform Limited Liability Company Act of 2016—An Overview	1-24
1.7.	The Tax Cuts and Jobs Act of 2017	1-26
1.7.1.	2017 Tax Act’s Impact on the Choice of Entity	1-27
1.7.2.	Section 199A – Deduction for Qualified Business Income.	1-28
1.7.3.	Section 1061 – Carried Interests	1-32
1.7.4.	Section 163(j) – Limitation on Interest Deduction.	1-33
1.7.5.	Section 708 – Repeal of Technical Termination of Partnership.	1-34
1.7.6.	Section 461(l) – Limitation on Excess Business Losses of Non-Corporate Taxpayers	1-35
CHAPTER 2: FORMATION AND ORGANIZATION		2-1
2.1.	Introduction	2-2
2.2.	Pre-Formation Matters.	2-2
Form 2-1.	Memorandum Attendant to the Execution and Filing of Certificate of Organization	2-3
2.2.A.	Matters to Be Considered in Connection with the Formation of an LLC	2-3
Form 2-2.	Letter Directing Execution and Filing of Certificate of Organization	2-7
2.3.	Certificate of Organization.	2-7
2.3.1.	Basic Requirements	2-7
2.3.2.	Optional Provisions	2-8
Form 2-3.	Certificate of Organization.	2-10
Form 2-4.	Optional Provisions of Certificate of Organization.	2-10.2
2.4.	Statement of Correction.	2-10.3

Form 2-5.	Exhibit to Statement of Correction of Certificate of Organization	2-11
2.5.	Certificate of Amendment	2-11
Form 2-6.	Unanimous Consent of Members to Amend Certificate of Organization	2-12
Form 2-7.	Consent of Members to Amend Certificate of Organization Where Operating Agreement Does Not Require Unanimity	2-13
Form 2-8.	Certificate of Amendment	2-15
2.6.	Reservation of Name	2-18

**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.	Flexibility of the LLC Form	3-3
3.4.	Form of the Operating Agreement	3-3
3.5.	Formality of Adoption	3-3
3.6.	Amendment	3-3
3.7.	Form Operating Agreements	3-4
CHAPTER 4:	ORGANIZATION	4-1
4.1.	Drafting LLC Organization Provisions	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 Parties	4-4
4.3.	Background to Agreement	4-4
Form 4-3.	Explanatory Statement	4-4
4.4.	Confirmation of Agreement	4-4
Form 4-4.	Confirmation of Agreement	4-5
4.5.	Definitions	4-5
4.5.1.	“Interest” Compared to “Membership Rights”	4-5
4.5.2.	“Interest Holder” Compared to “Member”	4-6
Form 4-5.	General Definitions	4-7
4.6.	Agreement to Organize LLC	4-8.1
Form 4-6.	General Agreement to Organize LLC	4-8.1
Form 4-7.	Organizational Provision Confirming That Certificate of Organization Has Been Filed	4-9
4.7.	Name	4-9

CONTENTS

	Form 4-8.	Name Provision for Member-Managed LLC	4-9
	Form 4-9.	Name Provision for Manager-Managed LLC	4-10
4.8.	Purpose		4-10
	Form 4-10.	Any Lawful Purpose	4-10
	Form 4-11.	Specific Purpose	4-10
	Form 4-12.	Purpose Limited to Real Estate	4-11
4.9.	Term		4-11
	Form 4-13.	Term Commences on Date of Filing of Articles	4-12
	Form 4-14.	Term Commences upon Execution of Operating Agreement	4-12
4.10.	Registered Office; Principal Office		4-12
	Form 4-15.	Principal Office of LLC Managed by Members	4-12
	Form 4-16.	Principal Office of LLC Managed by Managers	4-13
4.11.	Registered Office Provider		4-13
	Form 4-17.	Registered Office Provider	4-13
4.12.	Members		4-14
	Form 4-18.	Schedule of Members Set Forth in Exhibit	4-14
	Form 4-19.	Schedule of Members Set Forth in Text of Agreement	4-15
	Form 4-20.	Schedule of Members (without Percentages)	4-16
4.13.	Miscellaneous Provisions		4-16
	Form 4-21.	Miscellaneous Provisions	4-17
4.14.	Post-Organization Communication with Clients		4-21
	Form 4-22.	Form of Post-Organization Reporting Letter to Client	4-22
	Form 4-23.	Alternate Form of Letter to New LLC Regarding Operational and Other Post-Formation Matters	4-24
CHAPTER 5: CAPITAL PROVISIONS			5-1
5.1.	Drafting Capital Provisions		5-3
5.2.	Initial Capital Contributions		5-3
	Form 5-1.	Initial Capital Contributions in Cash	5-3
	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	5-4
	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	5-5
Form 5-6.	Additional Capital Contributions at Discretion of Members—Limit on Amount	5-6
Form 5-7.	Limitation of Liability	5-6
5.4.	Default in Payment of Contributions	5-7
Form 5-8.	Remedy of Reduction of Member’s Interest in Event of Failure to Make Contribution to Manager-Managed LLC	5-7
5.5.	Interest on Capital Contribution	5-8
Form 5-9.	No Interest on Capital Contributions	5-8
Form 5-10.	Interest on Capital Contribution	5-9
5.6.	Return of Capital Contribution	5-9
Form 5-11.	Return of Capital Contribution—Unanimous Consent of Members and Compliance with Act Required	5-9
5.7.	Form of Distribution	5-10
Form 5-12.	Form of Distribution—No Right to Receive Anything but Cash	5-10
Form 5-13.	Form of Distribution—Form of Distribution Is at Discretion of Manager in Manager-Managed LLC	5-11
5.8.	Capital Accounts	5-11
Form 5-14.	Capital Accounts Maintained in Accordance with IRC Section 704	5-11
5.9.	Loans	5-11
Form 5-15.	Loans—General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future	5-12
Form 5-16.	Loans—Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed upon in Future	5-12

CHAPTER 6: ALLOCATION AND DISTRIBUTION PROVISIONS. 6-1

6.1.	Taxation of the LLC	6-3
6.2.	General Allocation and Distribution Concepts	6-3
6.3.	Distribution Restrictions under the Act	6-4
6.4.	Allocation Restrictions—IRC Section 704(b)	6-4.1
6.4.1.	Overview	6-4.1
6.4.2.	The Three Alternative Allocation Tests	6-5
6.4.2.1.	The First Test: Partners’ Interest	6-6
6.4.2.2.	The Second Test: Substantial Economic Effect and Capital Accounts	6-6

CONTENTS

- 6.4.2.3. The Third Test: Nonrecourse Debt. 6-7
- 6.4.3. Allocation to Interest Holders 6-8
- 6.5. Definitions 6-9
 - 6.5.1. Distribution-Related Definitions 6-9
 - Form 6-1. Distribution Definitions 6-10
 - 6.5.2. Allocation-Related Definitions. 6-11
 - Form 6-2. Tax Definitions. 6-11
- 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 6-15
 - 6.6.3. Distributions of Capital Proceeds. 6-15
 - Form 6-4. Distributions 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 Provision. 6-18.1
 - 6.7.1. Basic Allocations of Income and Loss 6-18.1
 - Form 6-7. Profit or Loss 6-18.1
 - 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. 6-20
 - Form 6-9. Regulatory Allocations. 6-22
 - 6.7.4. General Provisions 6-23
 - Form 6-10. General Provisions. 6-23
- 6.8. Complex and Disproportionate Distribution and Allocation Provisions. 6-25
 - 6.8.1. Distributions Preferences 6-25
 - Form 6-11. Distributions Preferences 6-25
 - 6.8.2. Disproportionate Allocation of Losses. 6-27
 - Form 6-12. Disproportionate Allocation of Loss 6-27
 - 6.8.3. Flip-Flops 6-28
 - Form 6-13. Flip-Flop on Sale 6-29
 - 6.8.4. An Alternative Approach 6-30

CHAPTER 6A: LLCS ELECTING TO BE TAXED AS S CORPORATIONS. 6A-1

- 6A.1. General Considerations 6A-2
 - 6A.1.1. Perceived Benefits of an LLC Electing S Corp Status. 6A-2
 - 6A.1.1.1. Reducing Self-Employment Taxes 6A-2

6A.1.1.2.	Corporate Financial and Tax Accounting May be Less Expensive	6A-3
6A.1.1.3.	Ability to Revert to Partnership Tax Status	6A-3
6A.1.2.	Offsets to Perceived Benefits of an LLC	
	Electing S Corp Status	6A-4
6A.1.2.1.	Risk of Salary Being Challenged by IRS as Unreasonable	6A-5
6A.1.2.2.	Loss of Disregarded Entity Status	6A-5
6A.1.2.3.	Prohibition of Multiple Classes of Stock	6A-5
6A.1.2.4.	Restriction on Certain Types of Members	6A-6
6A.2.	Electing Out of S Corp Status	6A-6
6A.3.	Comparison of Net after Tax Results to Owners in an LLC Taxed as an S Corp, and the Same Entity Taxed as a Partnership	6A-7
6A.3.1.	Hypothetical Situation	6A-7
6A.3.2.	Chart of Employment Taxes for the Year 2017 (Federal)	6A-8
6A.3.3.	Tax on Investment Earnings	6A-9
6A.3.4.	Partner Above-the-Line Deduction for SE Tax	6A-9
6A.4.	Why Use an LLC for S Corp Treatment?	6A-9
6A.4.1.	Overview	6A-9
6A.4.2.	Advantages Associated with Using the LLC Form.	6A-9
6A.4.3.	Disadvantages Associated with Using the LLC Form.	6A-11
6A.5.	Procedures for LLC Electing S Corp Status	6A-12
6A.5.1.	Operating Agreement; Ownership Interests	6A-12
6A.5.2.	Protecting the Election	6A-12
6A.5.3.	Making the Election	6A-13
6A.5.4.	Operating Agreement	6A-13
CHAPTER 7:	MANAGEMENT	7-1
7.1.	Drafting LLC Management Provisions	7-3
7.1.1.	General Flexibility under the Act	7-3
7.1.2.	Typical Approaches	7-8
7.1.3.	Officers, Managers, and Authorized Persons	7-8
7.2.	Member-Managed Provisions	7-8
Form 7-1.	Simple Member-Management Provision.	7-9
Form 7-2.	Member-Management but with Appointment of Ministerial Manager	7-9

CONTENTS

7.3.	Representative Management	7-10
7.3.1.	Management by a Statutory Manager	7-10.1
	Form 7-3. Manager with Statutory Authority	7-10.1
	Form 7-4. Manager with Statutory Authority—Alternate Form	7-10.4
7.3.2.	Management by Committee of Managers	7-11
	Form 7-5. Committee of Managers.	7-11
7.4.	Replacement of Managers	7-13
	Form 7-6. Removal of Manager for Any Reason	7-14
	Form 7-7. Removal of Manager for Only Specified Reason	7-14
7.4A.	Classes of Interests	7-14
7.5.	Meetings of Members	7-14.1
	Form 7-8. Procedure for Calling and Holding Meetings	7-15
	Form 7-8A. Rules for the Conduct of a Meeting	7-16
7.6.	Action of Members without Meeting; Form of Member Consents	7-16.1
	Form 7-9. Actions without Meeting.	7-16.1
	Form 7-10. Consent of Members	7-17
7.7.	Unanimous Consent	7-19
	Form 7-11. Reserved	7-19
	Form 7-12. Unanimous Consent (Vote of Less than All Members).	7-19
7.8.	Deadlock and Resolution	7-19
	Form 7-13. Arbitration	7-20
	Form 7-14. Russian Roulette in the Event of Deadlock.	7-20.2
7.9.	Compensation and Reimbursement	7-23
	Form 7-15. No Arrangement for Compensation (Member-Managed).	7-23
	Form 7-16. Compensation (Manager-Managed)	7-23
	Form 7-17. Extraordinary Compensation.	7-24
7.10.	Standard of Care and Degree of Loyalty	7-24
	Form 7-18. Standard of Care and Degree of Loyalty.	7-27
7.11.	Indemnification	7-27
	Form 7-19. Liability and Indemnification of Members (Manager-Managed)	7-28
	Form 7-20. Liability and Indemnification of Members (Member-Managed).	7-28
	Form 7-20A. Liability and Indemnification of Members (Manager-Managed)	7-28.1
7.12.	Power of Attorney	7-31
	Form 7-21. Power of Attorney	7-31

CHAPTER 8:	TRANSFER AND BUY-SELL PROVISIONS . . .	8-1
8.1.	The Act's Default Rules for Transfers	8-3
8.2.	Tax Aspects of Transfer Restrictions	8-3
8.2.1.	Partnership Classification	8-3
8.3.	Drafting Operating Agreements That Modify the Act's Default Rules: Preliminary Considerations	8-4
Form 8-1.	Definitional Provisions—Transfer	8-4
Form 8-2.	Definitional Provisions—Interest and Membership Rights	8-4
8.4.	Drafting Operating Agreements That Modify the Act's Default Rules: Imposing Additional Restrictions	8-5
8.4.1.	Absolute Restrictions	8-5
Form 8-3.	Absolute Prohibition of Transfers	8-5
Form 8-4.	Prohibition of Transfers Except as Permitted by Operating Agreement	8-8
8.4.2.	Special Conditions of Transfer Restrictions	8-8
Form 8-5.	Definitional Provision—Conditions of Transfer	8-9
Form 8-6.	Transfer of Interests Subject to Specific Restrictions	8-10
8.5.	Drafting Operating Agreements That Modify the Act's Default Rules: Creating Free or Partial Transferability	8-10
8.5.1.	Free Transferability	8-10
Form 8-7.	Free Transferability of Interests and Rights	8-10
8.6.	Drafting Operating Agreements That Modify the Act's Default Rules	8-11
Form 8-8.	Permitted Transfers of Interests and Rights	8-11
Form 8-9.	Definitional Provisions—Affiliate and Family	8-11
8.7.	Drafting Operating Agreements That Modify the Act's Default Rules: Restricted Free Transferability	8-12
Forms 8-10.	Transfer of Rights Subject to Specific Restrictions	8-12
8.8.	Drafting Operating Agreements That Modify the Act's Default Rules: First Refusal Rights	8-12
Form 8-11.	Right of First Refusal; LLC Purchases; Installments Allowed	8-13
Form 8-12.	Right of First Refusal; Member's Purchase Payment Terms Matched	8-14
Form 8-13.	Right of First Option; LLC Purchases; Cash Purchase	8-16
Form 8-13A.	Right of First Refusal; Tag-Along Rights; Drag-Along Rights	8-18

CONTENTS

8.9.	Withdrawal under the Act.	8-19
8.9.1.	Voluntary Withdrawal.	8-19
	Form 8-14. Voluntary Dissociation—Not Permitted	8-19
8.9.2.	Involuntary Dissociation.	8-19
	Form 8-15. Involuntary Dissociation Defined (Long Form).	8-20
	Form 8-16. Involuntary Dissociation Defined (Short Form).	8-22.1
8.10.	Consequences of Dissociation in General	8-22.1
	Form 8-17. Successor of Withdrawn Member Continues as Unadmitted Assignee.	8-22.1
8.11.	Creating Redemption Rights	8-22.2
	Form 8-18. Optional Redemption; Company Buys; Cash Purchase	8-22.2
	Form 8-19. Mandatory Buy-Out; Members Buy; Installments Permitted	8-23
8.12.	Valuation Provisions.	8-24
	Form 8-20. Agreed Value	8-24
	Form 8-21. Book Value	8-25
	Form 8-22. Appraised Value.	8-26
8.13.	Miscellaneous Transfer Provisions	8-27
	Form 8-23. Installment Buy-Outs	8-27
	Form 8-24. Insolvency Form	8-27
	Form 8-25. Members Not Required to Assume Company’s Obligations	8-28
8.14.	Creating Preemptive Rights	8-28
	Form 8-26. Creating Preemptive Rights.	8-29
CHAPTER 9: DISSOLUTION		9-1
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.	9-3
	Form 9-1. Dissolution—Comprehensively Describes All Events of Dissolution; Requires Unanimity of Members to Continue if Dissolution is Due to Dissolution of Member	9-4
	Form 9-2. Dissolution When Less than All Events of Withdrawal Result in Dissolution; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	9-5
	Form 9-3. Dissolution—Refers to Events of Withdrawal under Another Section; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	9-5

9.4.	Vote Required in Order to Continue after Event of Dissolution	9-6
	Form 9-4. Less than Unanimous Vote Required to Continue after Dissolution	9-6
	Form 9-5. Sample Resolutions Approving Continuation of Business after Dissolution.	9-7
9.5.	Procedure for Winding Up and Distribution of Assets.	9-8
	Form 9-6. Procedure for Winding Up in Member- Managed LLC	9-11
	Form 9-7. Procedure for Winding Up in Manager- Managed LLC	9-11
	Form 9-8. Procedure for Winding Up in Member-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-11
	Form 9-9. Procedure for Winding Up in Manager-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-12
9.6.	Certificate of Termination	9-12
	Form 9-10. Certificate of Dissolution	9-14
	Form 9-11. Certificate of Termination	9-16
9.7.	Termination; Effect of Filing of Certificate of Termination	9-18
CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING.		10-1
10.1.	Introduction	10-2
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	10-6
	Form 10-8. Annual Accounting Period Established by Managers	10-6
10.5.	Reports	10-6
	Form 10-9. Preparation of Reports—Short Form for Member-Managed or Manager-Managed LLC	10-7

CONTENTS

	Form 10-10. Preparation of Reports—Long Form for Manager-Managed LLC	10-7
10.6.	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
10.7.	Tax Elections	10-9
	Form 10-13. Tax Elections	10-9
	Form 10-14. Tax Elections—Applies to IRC Section 754 Only—For Use in Either Member-Managed or Managed-Managed LLC	10-9
10.8.	Title to Property	10-10
	Form 10-15. Title to Property—In Company Name	10-10
	Form 10-16. Title to Company Property—Use of Nominee Permitted	10-10

**PART III
MISCELLANEOUS**

CHAPTER 11:	REORGANIZATION OF THE LLC	11-1
11.1.	In General	11-3
11.2.	Admission of New Members	11-3
	11.2.1. Acquisition of Interest from Company	11-3
	Form 11-1. Simple Subscription Agreement for LLC Membership Interest	11-6
	Form 11-2. Long-Form Subscription Agreement for LLC Membership Interest	11-7
	Form 11-3. First Amendment to Operating Agreement Admitting New Member	11-12
	11.2.2. Acquisition of Interest from Another Member	11-14
	Form 11-4. Joinder Agreement	11-15
11.3.	Conversion of an Existing Entity into an LLC	11-15
	11.3.1. In General	11-15
	11.3.2. Conversion of General Partnership to LLC	11-16
	Form 11-5. Plan of Conversion	11-17
	11.3.3. Conversion of Limited Partnership into LLC	11-19
	Form 11-6. Plan of Conversion	11-20
	11.3.4. Conversion of Corporation into LLC	11-22
11.4.	Conversion of LLC into Corporation	11-23
11.5.	Recapitalizing the LLC	11-24
	Form 11-7. Form of Amendment of Operating Agreement	11-25
11.6.	Mergers and Consolidations Involving a Pennsylvania LLC	11-26
	Form 11-8. Merger of Three Pennsylvania LLCs	11-29
	Form 11-9. Notice of Special Meeting of Members	11-30

Form 11-10.	Statement of Merger—Limited Liability Company	11-32
Form 11-11.	Plan of Merger	11-39
11.7.	Statutory Division	11-45
Form 11-12.	Plan of Division of a Pennsylvania LLC	11-47
Form 11-13.	Statement of Division—Limited Liability Company	11-49
Form 11-14.	Statement and Plan of Division to Create a Holding Company	11-55
11.8.	Classes of Interests	11-62
Form 11-15.	Multi-Vote Interests	11-62
Form 11-16.	Classes of Managers	11-62
Form 11-17.	Non-Voting Interests	11-63
CHAPTER 12: DOING INTERSTATE BUSINESS		12-1
12.1.	Foreign LLCs Doing Business in Pennsylvania	12-2
12.1.1.	Governing Law	12-2
12.1.2.	Definitions	12-2
12.1.2.1.	Doing Business	12-2
12.1.3.	Procedure for Registration	12-3
Form 12-1.	Foreign Registration Statement	12-5
12.1.4.	Filing Fee and Docketing Statement	12-10
12.1.5.	Issuance and Cancellation of Registration	12-10
12.1.6.	Domestication of a Foreign LLC	12-10
Form 12-2.	Statement of Domestication of a Foreign Limited Liability Company	12-11
12.2.	Pennsylvania LLCs Doing Business Outside of Pennsylvania	12-16
12.2.1.	Doing Business in Other States	12-17
CHAPTER 13: RESTRICTED PROFESSIONAL COMPANIES		13-1
13.1.	Definition of Restricted Professional Companies (“RPC”)	13-2
13.2.	Qualification and Creation of a Restricted Professional Company	13-3
Form 13-1.	Provision for Certificate of Organization of a Restricted Professional Company	13-3
Form 13-2.	Limitations on Restricted Professional Company Practicing Law	13-5
13.3.	Annual Registration	13-6
13.4.	Election of Restricted Professional Company Status by Domestic and Foreign Limited Liability Companies	13-6
13.5.	Termination of Restricted Professional Company Status	13-7

CONTENTS

13.6. Taxation of Restricted Professional Companies. 13-8
13.7. Qualified Foreign Restricted Professional Companies 13-8

CHAPTER 14: REGISTERED LIMITED LIABILITY PARTNERSHIPS. 14-1

14.1. Origin of Registered Limited Liability Partnership 14-2
14.2. Nature of a Registered Limited Liability Partnership 14-2
14.3. Qualification of a Registered Limited Liability Partnership—Registration 14-4
 Form 14-1. Statement of Registration—Domestic Registered Limited Liability Partnership 14-5
14.4. Insurance Requirement. 14-8
14.5. Name 14-8
14.6. Termination of Status of Partner and of Registered Limited Liability Partnership 14-9
14.7. Foreign Registered Limited Liability Partnerships 14-10
14.8. Extraterritorial Application of Pennsylvania Law 14-10
14.9. Taxation of Registered Limited Liability Partnerships 14-12

CHAPTER 14A: EQUITY-BASED COMPENSATION STRATEGIES 14A-1

14A.1. Introduction 14A-3
14A.2. IRC Section 83 14A-4
14A.3. Profits Interest vs. Capital Interest 14A-5
14A.4. LLC (Partnership) vs. Corporate Compensation Methods. 14A-9
 14A.4.1. Corporate Context 14A-9
 14A.4.1.1. Stock Grants. 14A-10
 14A.4.1.2. Stock Options. 14A-10
 14A.4.1.3. Phantom Stock Plans 14A-11
 14A.4.2. The LLC Context 14A-12
 14A.4.2.1. Equity Interests 14A-12
 14A.4.2.1.1 “Full Equity Interest” 14A-12
 14A.4.2.2. Point System Compensation 14A-14
 14A.4.2.3. The Importance of Member Involvement 14A-15
 14A.4.2.4. Loss Allocation and Debt Guarantees 14A-16
 14A.4.2.5. Equity Interest vs. Non-Equity Incentive Compensation. 14A-16
 14A.4.3. Compensation Comparison Chart 14A-18
14A.5. Phantom Income and Distributions 14A-20
 14A.5.1. Tax Effected Distributions 14A-20
 14A.5.1.1. Separate Calculations for Each Member. 14A-21

14A.5.1.2.	Standard Distribution Rate	14A-21
14A.5.1.3.	Highest Incremental Tax Rate	14A-22
14A.5.2.	Self-Employment Tax	14A-22
14A.5.2.1.	Calculating Self-Employment Income	14A-23
14A.5.2.2.	Application of Self-Employment Tax to LLC Members	14A-24
14A.6.	Fiduciary Duties, Inspection Rights and Other Duties to Equity Holders	14A-24
14A.7.	Securities Law Issues	14A-24
14A.8.	Employee/Member Exit Strategies: Buy-Out Arrangements	14A-25
14A.9.	Forms: Equity- and Non-Equity-Based LLC Compensation Plans and Other Related Documents	14A-25
	Form 14A-1. Unit Grant Agreement	14A-26
	Form 14A-2. Employee Incentive Compensation Plan	14A-33
	Form 14A-3. Interest Appreciation Rights Agreements	14A-41

**CHAPTER 14B: OPTIONS AND CONVERTIBLE INTERESTS
FOR LLCs TAXED AS PARTNERSHIPS 14B-1**

14B.1.	Introduction: Noncompensatory Call Options and Convertible Preferred Interests	14B-3
14B.2.	Noncompensatory Call Options: Defined and Example	14B-3
14B.2.1.	Tax Consequences of Issuance and Exercise of Call Option	14B-4
14B.2.1.1.	Partnership	14B-8
14B.2.1.2.	Option Holder	14B-10
14B.2.2.	Tax Consequences of Lapse of Call Option	14B-11
14B.2.2.1.	Partnership	14B-11
14B.2.2.2.	Option Holder	14B-12
14B.2.3.	Tax Consequences of Exercise of Option	14B-13
14B.2.3.1.	Option Holder	14B-13
14B.2.3.2.	Partnership	14B-14
14B.2.4.	Drafting Considerations in the Partnership Agreement	14B-25
14B.2.4.1.	Capital Account Maintenance under Code Section 704(b)	14B-26
14B.2.4.1.1.	Book-Up	14B-30
14B.2.4.1.2.	No Book-Up	14B-33
14B.2.4.2.	Code Section 704(c)	14B-35
14B.2.4.3.	Tax Distributions	14B-35
14B.2.5.	Ancillary Tax Considerations	14B-36
14B.2.5.1.	Code Section 704(c)	14B-36
14B.2.5.2.	Code Section 752	14B-37

CONTENTS

14B.2.5.3.	Code Section 751	14B-38
14B.2.5.4.	Holding Period.	14B-38
14B.2.5.5.	Original Issue Discount	14B-39
14B.2.5.6.	Code Section 708.	14B-39
14B.2.5.7.	Disregarded Entities.	14B-39
14B.3.	Convertible Preferred Membership Interests	14B-39
14B.3.1.	Description of Convertible Preferred Interests.	14B-39
14B.3.2.	Example: Convertible Preferred Interests	14B-40
14B.3.3.	Real Deals	14B-41
14B.3.4.	Tax Consequences of Issuance and Exercise of Convertible Preferred Interests	14B-42
14B.3.4.1.	Tax Consequences of Issuance of Convertible Preferred Interests	14B-42
14B.3.4.1.1.	Preferred Holder as a Partner.	14B-42
14B.3.4.1.2.	Partnership, A and B.	14B-43
14B.3.4.1.3.	Tax Consequences of Partnership Operations Prior to Conversion.	14B-44
14B.3.4.2.	Tax Consequences for the Exercise of the Conversion Right of the Preferred Convertible Interest	14B-45
14B.3.4.2.1.	Capital Accounts	14B-45
14B.3.4.2.2.	Tax Consequences of Capital Account Adjustments	14B-48
14B.3.4.2.3.	Code Section 752	14B-50
14B.3.4.2.4.	Code Section 704(c).	14B-52
14B.3.4.2.5.	Code Section 708	14B-54
14B.3.4.2.6.	Code Section 705	14B-55
14B.3.4.2.7.	Nonrecourse Deductions	14B-55
14B.3.4.2.8.	Excess Nonrecourse Liabilities	14B-56
14B.3.5.	Drafting Issues for Convertible Interests	14B-57
14B.3.5.1.	Form 14B-1 Revaluation	14B-63
14B.3.5.2.	Tax Distributions	14B-64
	Form 14B-1. Selected Provisions Applicable to Allocations and Distributions	14B-64
CHAPTER 15:	RESERVED	15-1
CHAPTER 16:	RESERVED	16-1

CHAPTER 17: SINGLE MEMBER LLCs	17-1
17.1. Introduction	17-2
17.2. What Is a Single Member LLC?	17-2
17.3. Some Uses for Single Member LLCs	17-4
17.3.1. Firewalls	17-4
17.3.2. Creation of Single Purpose Bankruptcy Remote Entities	17-6
17.3.3. Avoidance of Sales and Transfer Taxes	17-9
17.3.4. Like-Kind Exchanges	17-9
17.3.5. Avoidance of Ancillary Probate	17-10
17.3.6. Use as Entity of Choice for Corporate Subsidiaries	17-10
17.3.7. Mergers Involving Single Member LLCs	17-11
Form 17-1. Plan of Merger of Target Corporation into Single-Member LLC	17-12
Form 17-2. Plan of Merger of Target Corporation into Single Corporate Member LLC	17-15
17.4. Income Tax Conversion Issues	17-18
17.4.1. Conversion of a One Member LLC into a Multi-Member LLC	17-19
17.4.2. Conversion of a Multi-Member LLC into a One Member LLC	17-19
17.5. Payment of Employment Taxes with Respect to Disregarded Entities	17-20
 CHAPTER 18: BANKRUPTCY ISSUES CONCERNING LLCs	 18-1
18.1. Overview	18-3
18.2. Eligibility of LLCs for Voluntary Relief under the Bankruptcy Code	18-3
18.3. Property of the LLC's Estate	18-4
Form 18-1. Operating Agreement Provision — Limitation on Obligation to Make Additional Capital Contributions	18-5
18.4. May a Member Commence an Involuntary Case Against an LLC?	18-5
18.5. What Approval Is Needed to Approve the Filing of a Voluntary Case by an LLC?	18-6
Form 18-2. Operating Agreement Provision — Unanimous Consent of Members to Filing Voluntary Case	18-7
Form 18-3. Operating Agreement Provision — Consent of Majority of Members to Filing a Voluntary Case	18-8

CONTENTS

Form 18-4. Operating Agreement Provision —
 Manager Vote Required for Filing a
 Voluntary Case 18-8

Form 18-5. Operating Agreement Provision —
 Member and Manager Vote Required for
 Filing a Voluntary Case 18-9

Form 18-6. Resolutions of Members in
 Member-Managed LLC — Consenting
 to Filing a Voluntary Case under
 Chapter 7 18-10

Form 18-7. Resolutions of Board of Directors in
 Manager-Managed LLC — Consenting
 to Filing a Voluntary Case under
 Chapter 11 18-11

18.6. Creating Limitations on the Ability of an
 LLC to Commence a Voluntary Case —
 Single-Purpose Bankruptcy Remote LLCs 18-12

Form 18-8. Operating Agreement Provision —
 Purpose Clause for an SPBR LLC 18-14

Form 18-9. Operating Agreement Provision —
 Management of Business and Affairs
 of the Company 18-15

Form 18-10. Operating Agreement Provision —
 Transfers 18-19

Form 18-11. Operating Agreement Provision —
 Dissolution of the Company 18-20

Form 18-12. Operating Agreement Provision —
 Special Amendment Provision 18-21

18.7. LLC Interest as Property of a Bankrupt Member’s
 Estate 18-21

18.8. Right of the LLC or Remaining Members to
 Terminate Management Rights of a Bankrupt
 Member 18-22

18.9. Member’s Bankruptcy as an Event of Dissolution. 18-24

18.10. Buy-Out of a Member’s Interest in the Event of the
 Member’s Bankruptcy 18-25

CHAPTER 19: USE OF LLCs BY EXEMPT ORGANIZATIONS 19-1

19.1. Introduction 19-1

19.2. Uses of LLC by Exempt Organizations 19-1

19.2.1. Use of a Pennsylvania LLC as a Wholly-Owned
 Subsidiary of an Exempt Organization to Carry
 Out a “Business” Purpose 19-1

19.2.2.	Use of a Pennsylvania LLC as the Wholly-Owned Subsidiary of an Exempt Organization to Carry Out an Exempt Purpose	19-4
	Form 19-1. Certificate of Organization of Single-Member LLC Organized to Carry Out an Exempt Purpose of a Tax-Exempt Parent XYZ Charity LLC	19-4
CHAPTER 20: LLCs FORMED FOR SPECIFIC PURPOSES		20-1
20.1.	Introduction	20-2
20.2.	Special Purpose Entity LLCs (“SPE”)	20-2
20.3.	Special Purpose LLC Example	20-2
CHAPTER 21: ASSET PURCHASE OF AN LLC		21-1
21.1.	Introduction	21-2
21.2.	Form of Asset Purchase Agreement	21-2
21.3.	Form of Representations and Warranties for Inclusion in the Asset Purchase Agreement	21-2
21.4.	Form of Definitions from the ABA Model Stock Purchase Agreement	21-2
21.5.	Form of Miscellaneous, Formal and Final Clauses for an Asset Purchase Agreement	21-2
21.6.	Buyer’s Acquisition Checklist	21-2
21.7.	Letters of Intent and Confidentiality Agreement	21-3
21.7.1.	Introduction	21-3
21.7.2.	Reasons to Use a Letter of Intent	21-3
21.7.3.	Reasons Not to Use a Letter of Intent	21-5
	Form 21-1. Letter of Intent	21-6
21.7.4.	Confidentiality Agreement	21-11
	Form 21-2. Confidentiality Agreement	21-11
CHAPTER 22: MEMBERS’ AGREEMENTS		22-1
22.1.	Introduction	22-2
22.2.	Form of Members’ Agreement	22-2
22.3.	Identifying the Client	22-2
22.4.	Purposes of a Members’ Agreement	22-3
22.5.	Parties to the Agreement	22-4
22.6.	Buy/Sell Arrangements — Purposes	22-5
22.7.	Buy/Sell Agreements — Triggering Events	22-6
22.8.	Rights of First Refusal and First Offer Compared	22-8
22.9.	Exceptions to Triggering Events	22-10
22.10.	Buy/Sell Arrangements — Purchase Price	22-10

CONTENTS

22.11. Buy/Sell Arrangements — Identity of Purchasers and their Obligations. 22-13

22.12. Buy/Sell Arrangements — Obligations of Sellers 22-14

22.13. Buy/Sell Arrangements — Payment, Notes and Related Terms 22-15

22.14. Use of Insurance. 22-16

22.15. Buy/Sell Obligation — Sequential Triggering Events 22-16

22.16. Buy/Sell Arrangements — Tag-Along and Drag-Along Rights 22-17

22.17. Restrictions on Transfer 22-17

22.18. Termination of Members’ Agreements. 22-18

22.19. Dispute Resolution Mechanisms 22-19

22.20. Shoot-Out Provisions 22-19

22.21. Voting Rights 22-19

22.22. Management 22-20

22.23. Assuring Distributions 22-20

22.24. Provisions Need Not Be Reciprocal or Symmetrical. 22-21

22.25. Tax Consequences 22-22

22.26. Provisions in Governing Documents and Other Agreements 22-22

22.27. Important Note with Respect to Domestic Relations Consideration 22-22

 Form 22-1. Letter to Client on Domestic Relations Issues 22-24

CHAPTER 23: PURCHASE OF INTERESTS OF AN LLC 23-1

23.1. Introduction 23-2

23.2. Form of Agreement to Purchase LLC Interests 23-2

23.3. Form of Representations and Warranties for Inclusion in the Agreement to Purchase LLC Interests 23-2

23.4. Form of Definitions from the ABA Model Stock Purchase Agreement. 23-2

23.5. Form of Miscellaneous, Formal and Final Clauses for an Agreement to Purchase LLC Interests. 23-2

23.6. Buyer’s Acquisition Checklist. 23-2

23.7. Form of Assignment and Assumption of Membership Interests 23-3

23.8. Letter of Intent and Confidentiality Agreement 23-3

CHAPTER 24: LENDING TO AN LLC 24-1

24.1. Opinion Letters 24-2

Form 24-1.	Form of Opinion Letter in Connection with a Bank Loan to an LLC	24-2
24.2.	Guarantees of LLC Debt	24-12
Form 24-2.	Guaranty and Suretyship Agreement	24-12
24.3.	Pledges of LLC Interests	24-20
Form 24-3.	Collateral Assignment of Membership Interest and Security Agreement.	24-20
Form 24-4.	Amendment to “Opt-In” to Article 8.	24-31
Form 24-5.	LLC’s Acknowledgement and Consent to Be Governed by Article 8 of UCC	24-33
Form 24-6.	Operating Agreement Provision that LLC Will Not “Opt-Out” of Article 8	24-34
Form 24-7.	Operating Agreement Provision that LLC Interests Will Be General Intangibles	24-34
Form 24-8.	Form of Control Agreement	24-35
Form 24-9.	Financing Statement	24-38
24.4.	Alternative Dispute Resolution	24-40
Form 24-10.	Alternative Dispute Resolution	24-40
 CHAPTER 25: ASSOCIATION TRANSACTIONS ACT		25-1
25.1.	Introduction	25-2
25.2.	New Definitions	25-2
25.3.	The Entity Transactions Law (Chapter 3)	25-5
25.4.	Names (Chapter 2)	25-5
25.5.	Foreign Associations (Chapter 4)	25-5
25.6.	Other Provisions of the Act	25-6
 CHAPTER 26: BENEFIT COMPANIES.		26-1
26.1.	Introduction	26-2
26.2.	Applicable Law	26-2
26.3.	New Definitions	26-2
26.4.	Benefit Company Status	26-5
26.5.	Purposes	26-6
26.6.	Standards of Conduct	26-6
26.7.	Right of Action	26-6
26.8.	Annual Report	26-6
 CHAPTER 27: DEVELOPMENTS CONCERNING TAX MATTERS PARTNERS AND IRS AUDITS.		27-1
27.1.	Letter to Clients	27-2
27.2.	Operating Agreement Provisions	27-2

**PART IV
APPENDICES**

APPENDIX A: MEMBER-MANAGED OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY APP A-1

APPENDIX A1: ALTERNATIVE MEMBER-MANAGED OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY APP A1-1

APPENDIX A2: ALTERNATIVE PROVISIONS FOR THE OPERATING AGREEMENT IN APPENDIX A1 PROVIDING FOR PRIORITY CASH DISTRIBUTIONS TO “CLASS A” MEMBERS APP A2-1

APPENDIX B: MANAGER-MANAGED OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY APP B-1

APPENDIX B1: MANAGER-MANAGED OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY APP B1-1

APPENDIX B2: MANAGER-MANAGED OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY APP B2-1

APPENDIX B3: MANAGER-MANAGED OPERATING AGREEMENT OF _____ LLC APP B3-1

APPENDIX B4: VACATION HOME LLC OPERATING AGREEMENT OF _____ APP B4-1

APPENDIX B5: PROFESSIONAL SERVICES LLC APP B5-1

APPENDIX B6: _____ LIMITED LIABILITY COMPANY OPERATING AGREEMENT WITH CLASSES OF MEMBERS APP B6-1

APPENDIX C: THE PENNSYLVANIA UNIFORM LIMITED LIABILITY COMPANY ACT OF 2016: PENNSYLVANIA CONSOLIDATED STATUTES TITLE 15—CORPORATIONS AND UNINCORPORATED ASSOCIATIONS, CHAPTERS 81, 82, 88 AND 89. APP C-1

APPENDIX D: OPERATING AGREEMENT (FOR USE IF S CORPORATION TAX TREATMENT IS TO BE ELECTED) APP D-1

APPENDIX E:	RELEVANT PENNSYLVANIA DEPARTMENT OF STATE FORMS IN USE	APP E-1
APPENDIX F:	SINGLE-MEMBER LIMITED LIABILITY COMPANY OPERATING AGREEMENT ...	APP F-1
APPENDIX G:	ALTERNATIVE SINGLE-MEMBER LIMITED LIABILITY COMPANY OPERATING AGREEMENT	APP G-1
APPENDIX H:	OPERATING AGREEMENT OF A LIMITED LIABILITY COMPANY WHICH IS A SUBSIDIARY OF A TAX-EXEMPT ENTITY AND IS USED FOR TAX-EXEMPT PURPOSES	APP H-1
APPENDIX I:	OPERATING AGREEMENT FOR A BANKRUPTCY-REMOTE ENTITY	APP I-1
APPENDIX J:	DEED OF TRUST FOR SPECIAL PURPOSE ENTITY	APP J-1
APPENDIX K:	ASSET PURCHASE AGREEMENT	APP K-1
APPENDIX L:	REPRESENTATIONS AND WARRANTIES FOR INCLUSION IN ASSET PURCHASE AGREEMENT AND IN AGREEMENT TO PURCHASE LLC INTERESTS	APP L-1
APPENDIX M:	DEFINITIONS FROM ABA MODEL STOCK PURCHASE AGREEMENT	APP M-1
APPENDIX N:	MISCELLANEOUS, FORMAL AND FINAL CLAUSES	APP N-1
APPENDIX O:	MEMBERS' AGREEMENT OF MEMBER-MANAGED LIMITED LIABILITY COMPANY	APP O-1
APPENDIX O1:	MEMBERS' AGREEMENT OF MEMBER-MANAGED LIMITED LIABILITY COMPANY WITH CROSS-PURCHASE BUY-OUT	APP O1-1
APPENDIX P:	AGREEMENT TO PURCHASE LLC INTERESTS	APP P-1
APPENDIX P1:	FORM OF ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST	APP P1-1

CONTENTS

APPENDIX Q: BUYER’S ACQUISITION CHECKLIST APP Q-1

APPENDIX Q1: TARGET’S ACQUISITION CHECKLIST . . . APP Q1-1

APPENDIX R: LIMITED LIABILITY COMPANY FORMATION WORKSHEET APP R-1

APPENDIX R1: CHECKLIST FOR FORMATION OF LLC . . APP R1-1

APPENDIX S: ASSOCIATION TRANSACTIONS ACT APP S-1

APPENDIX T: WHAT’S NEW IN THE PENNSYLVANIA UNIFORM LIMITED LIABILITY COMPANY ACT OF 2016 (“ULLCA”). APP T-1

APPENDIX U: LETTER RELATING TO TAX MATTERS PARTNER AND IRS AUDITS APP U-1

APPENDIX U1: OPERATING AGREEMENT PROVISIONS RELATING TO TAX MATTERS PARTNERS AND IRS AUDITS APP U1-1

APPENDIX V: _____, LLC SUBSCRIPTION AGREEMENT FOR PURCHASE OF LLC INTEREST. APP V-1

**PART V
INDICES**

Cumulative Table of Internal Revenue Code Citations INDEX-1

Cumulative Table of Treasury Regulations INDEX-4

Cumulative Table of Revenue Rulings and Revenue Procedures INDEX-7

Cumulative Table of Pennsylvania Limited Liability Company Act Sections INDEX-9

Table of Cases INDEX-16

References INDEX-18

Subject Index INDEX-20

Forms Index INDEX-38