

Contents

PART I ORGANIZATION

CHAPTER 1: INTRODUCTION	1-1
1.1. Nature and Use of this Practice Manual	1-2
1.2. Comparison of the LLC with Other Entities	1-2
Table 1. Comparison of Entity Characteristics	1-4
1.3. History of the LLC	1-19
1.4. Classification of the LLC as a Partnership for Federal Income Tax Purposes	1-20
1.4.1. Introduction	1-20
1.4.2. The “Check-the-Box” Rules (Post-1997)	1-21
1.5. The Tennessee Revised LLC Act — An Overview	1-25
1.6. Comparison of the Tennessee Act with Other LLC Acts	1-26
1.7. Tennessee Taxation of LLCs	1-26
1.7.1. Overview of the Excise Tax	1-28
1.7.2. Overview of the Franchise Tax	1-28.1
1.7.3. Application to LLCs	1-29
1.7.4. Specifically Excluded Entities	1-32
1.7.4.1. Farm and Residence LLCs	1-32
1.7.4.2. Venture Capital Funds/Diversified Investing Funds	1-33
1.7.4.3. LLCs, All of Whose Members Are Liable for Debts of the LLC	1-34
1.7.4.4. Family-Owned Non-Corporate Entities	1-36
1.7.4.5. Historic Properties	1-37
1.7.4.6. Low-Income Housing Entity	1-38
1.7.5. Taxation of Distributions to Members	1-38
1.8. Self-Employment Tax Consequences of Partnership Classification	1-38.2
1.9. Exceptions to Liability Protection	1-40
1.10. LLCs and Tax Treaties	1-46
1.11. Series Limited Liability Companies	1-47
CHAPTER 2: FORMATION AND ORGANIZATION	2-1
2.1. Introduction	2-2.1
2.2. Pre-Formation Matters	2-2.1

CONTENTS

Form 2-0. Checklist for Formation of LLC 2-2.2

2.3. Articles of Organization 2-3

2.3.1. Basic Requirements 2-3

Form 2-1. Articles of Organization without
Restrictions on the Authority of
Members — Optional Indemnification
Required — Signed by Organizer 2-5

2.3.2. Optional Provisions 2-6

2.3.2.1. Provisions Limiting Agency
Authority of Members 2-6

Form 2-2. Articles of Organization of
Member-Managed LLC
Limiting Agency 2-7

2.3.2.2. Provision Granting Authority to
Transfer Real Property 2-8

Form 2-3. Optional Provisions Regarding
Transfer of Real Estate 2-9

2.3.2.3. Provision Providing for Indemnification 2-9

Form 2-4. Articles of Organization
Providing for Indemnification 2-9

2.4. Articles of Correction 2-11

Form 2-5. Articles of Correction to Articles of
Organization 2-11

2.5. Articles of Amendment 2-12

2.5.1. Requirements 2-12

2.5.2. Approval of Amendments 2-13

Form 2-6. Written Consent of Members to Amend
Articles of Organization 2-13

Form 2-7. Articles of Amendment 2-15

2.6. Reservation of Name 2-15

Form 2-8. Application to Reserve Name 2-16

2.7. Change of Registered Agent, Change of Address of
Registered Agent, Change of Address of Registered Office 2-16

Form 2-9. Change of Registered Agent 2-17

Form 2-10. Change of Address of Registered Agent 2-17

**PART II
OPERATION**

CHAPTER 3: THE OPERATING AGREEMENT 3-1

3.1. General 3-2.1

3.2. Form and Required Content 3-2.2

3.3.	Formality of Adoption.	3-5
3.4.	Amendment.	3-6
3.5.	Form Operating Agreements.	3-6
3.6.	Partnership Audit Rules	3-6
3.6.1.	Default Rule.	3-8
3.6.2.	Reduction of Partnership’s Underpayment Amount	3-8
3.6.3.	Alternative to Payment of Imputed Underpayment by a Partnership — Irrevocable Election to Pass the Adjustments and Liability to the Partners	3-10
3.6.4.	Provisions When a Partnership Has Ceased to Exist Prior to the Issuance of an IRS Partnership Adjustment	3-12
3.6.5.	Small Partnership Exception	3-12
3.6.6.	Partnership Adjustment Requested by the Partnership.	3-14
3.6.7.	Partner Participation in IRS Audit Process Will Be Restricted.	3-14
3.6.8.	IRS Notices and Assessment.	3-15
3.6.9.	Period of Limitations on Making Adjustments	3-16
3.6.10.	Assessment of Tax.	3-17
3.6.11.	Interest and Penalties.	3-18
3.6.12.	Judicial Review of Partnership Adjustment.	3-18
3.6.13.	No Deduction for Any Payment Required to Be Made by a Partnership.	3-19
3.6.14.	State Tax Potential Ramifications	3-19
3.6.15.	Implications for Partnerships and Partners 2018 Returns and Partnerships That Elect in Early	3-20
3.6.16.	Attorneys Drafting Disclosure Documents	3-21
3.6.17.	Attorneys Drafting Partnership and Operating Agreements	3-21
3.6.18.	Rules and Process for Making New Audit Rule Elections	3-21
	Form 3-1. Provisions Regarding BBA Partnership Audit Rules — Inserts for Definitions Section.	3-24
3.7.	Waiver of Partition	3-26
	Form 3-2. Waiver of Right of Partition.	3-27
 CHAPTER 4: ORGANIZATION		4-1
4.1.	Drafting LLC Organization Provisions.	4-3
4.2.	Introductory Paragraph	4-3

CONTENTS

Form 4-1.	Introductory Paragraph — Names the 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.	“Financial Rights,” “Governance Rights,” “Membership Interest,” and “Holder of Financial Rights” Defined.	4-5
4.5.2.	Other Definitions.	4-6
Form 4-5.	General Definitions.	4-6
4.6.	Transfer of Financial Rights, Membership Interests, and Governance Rights	4-9
4.7.	Agreement to Form LLC	4-10
Form 4-6.	General Agreement to Form LLC	4-11
Form 4-7.	Organizational Provision Confirming that Articles of Organization Have Been Filed.	4-11
4.8.	Name.	4-11
Form 4-8.	Name Provision for LLC	4-12
4.9.	Purpose	4-12
Form 4-9.	Any Lawful Purpose	4-12
Form 4-10.	Specific Purpose.	4-13
Form 4-11.	Purpose Limited to Real Estate	4-13
4.10.	Term	4-13
Form 4-12.	Term Commences on Date of Filing of Articles	4-14
4.11.	Principal Executive Office	4-15
Form 4-13.	Principal Executive Office of LLC	4-15
4.12.	Registered Office and Agent.	4-15
Form 4-14.	Registered Office and Agent	4-16
Form 4-15.	Statement of Change of Registered Agent.	4-16
Form 4-16.	Statement of Change of Registered Agent.	4-17
4.13.	Members	4-18
Form 4-17.	Schedule of Members Set Forth in Schedule.	4-19
Form 4-18.	Schedule of Members Set Forth in Text of Agreement	4-19
4.14.	Miscellaneous Provisions	4-20
Form 4-19.	Miscellaneous Provisions	4-20

CHAPTER 5:	LIMITED LIABILITY COMPANY	
	CAPITAL	5-1
5.1.	Drafting Capital Provisions.....	5-3
5.2.	Initial Capital Contributions	5-3
	Form 5-1. Initial Capital Contributions in Cash.....	5-4
	Form 5-2. Initial Capital Contributions — Partly in Cash and Partly in Services	5-5
5.2.1.	Explanation of the Taxation of a Partnership Interest Received in Return for Services	5-5
5.2.2.	Transfer of Stock by Corporation in Return for Services	5-5
5.2.3.	Transfer of Profits Interest by Partnership in Return for Services	5-6
	Form 5-3. Issuance of Profits Interest	5-10
5.2.4.	Contribution of Property or Cash in Return for a Membership Interest.....	5-10
	Form 5-4. Initial Capital Contributions — Partly in Cash and Partly in Property	5-10
	Form 5-5. Representation in Connection with Contribution of Property.....	5-11
5.3.	Additional Capital Contributions	5-11
	Form 5-6. Additional Capital Contributions at Discretion of Directors — Limit on Amount	5-12
	Form 5-7. Additional Capital Contributions at Discretion of Members or Manager — Limit on Amount	5-12
	Form 5-8. No Liability beyond Initial Capital Contribution.....	5-13
	Form 5-9. No Liability beyond Additional Capital Contributions	5-13
5.3.1.	Preemptive Rights	5-13
	Form 5-10. Preemptive Rights Provision.....	5-14
5.4.	Default in Payment of Contributions	5-15
	Form 5-11A. Remedy of Reduction of Member or Holder’s Membership Interest in Event of Failure to Make Contribution to Board-Managed, Manager-Managed, or Member-Managed LLC	5-16
	Form 5-11B. Creditors	5-17
5.5.	Interest on Capital Accounts.....	5-17
	Form 5-12. No Interest on Capital Accounts	5-18

CONTENTS

Form 5-13.	Interest on Capital Accounts	5-18
5.6.	Return of Capital Contributions	5-18
Form 5-14.	Distributions — Compliance with Revised LLC Act Required	5-19
5.7.	Form of Distribution	5-19
Form 5-15.	Form of Distribution — No Right to Receive Anything but Cash	5-20
Form 5-16.	Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager-Managed LLC	5-20
5.8.	Capital Accounts	5-20
Form 5-17A.	Capital Accounts — Simple Definition	5-21
Form 5-17B.	Capital Accounts — Long Form Definition	5-21
5.9.	Loans	5-23
5.9.1.	Loans from Members or Holders	5-23
Form 5-18.	Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future	5-23
Form 5-19.	Loans — Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed upon in Future	5-24
5.9.2.	Other Loans, Including Loans to Members, Managers, and Directors	5-24
5.10.	Convertible Loan from a Person Not Already a Member	5-25
Form 5-20.	Convertible Promissory Note	5-25
5.11.	Noncompensatory Options	5-29
5.11.1.	Noncompensatory Options Defined	5-30
5.11.2.	Noncompensatory Options Treated as a Partnership Interest	5-30
5.11.2.1.	Rights Substantially Similar to Rights Afforded a Partner	5-30.1
5.11.2.2.	Substantial Tax Reduction Requirement	5-30.2
5.11.3.	Noncompensatory Option Not Treated as a Partnership Interest	5-30.2
5.11.3.1.	Treatment of Grant of Noncompensatory Options	5-30.2
5.11.3.2.	Treatment of Lapse of Noncompensatory Options	5-30.3
5.11.3.3.	Treatment of Exercise of Noncompensatory Options	5-30.3
Form 5-21.	Option Agreement	5-30.4

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 Revised LLC Act	6-4
6.4.	Allocation Restrictions — Code 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' Interests	6-5
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
6.4.2.4.	Noncompensatory Options	6-8
6.4.3.	Allocations to Holders of Financial Rights	6-10
6.5.	Definitions	6-10.1
6.5.1.	Distribution-Related Definitions	6-10.1
	Form 6-1. Distribution Definitions	6-10.1
6.5.2.	Allocation-Related Definitions	6-10.2
	Form 6-2. Tax Definitions	6-10.2
6.6.	Basic Distribution Provisions	6-14
6.6.1.	In General	6-14
6.6.2.	Cash Flow from Operations	6-15
	Form 6-3. Distributions of Cash Flow	6-15
6.6.3.	Distribution of Capital Proceeds	6-17
	Form 6-4. Distribution of Capital Proceeds	6-17
6.6.4.	Liquidation Proceeds	6-17
	Form 6-5. Liquidation and Dissolution	6-18
	Form 6-6. Liquidation and Termination — Deficit Restoration Obligation	6-19
6.7.	Basic Allocation Provisions	6-20
6.7.1.	Basic Allocations of Income and Loss	6-20
	Form 6-7. Net Profit or Net Loss	6-21
6.7.2.	Qualified Income Offset and Minimum Gain Chargeback	6-22
	Form 6-8. Minimum Gain Chargeback and Qualified Income Offset	6-23
6.7.3.	Other Regulatory Allocations	6-24
	Form 6-9. Regulatory Allocations	6-25
6.8.	Complex and Disproportionate Distribution and Allocation Provisions	6-30

CONTENTS

6.8.1.	Distribution Preferences	6-30
	Form 6-10. Distribution Preference	6-31
6.8.2.	Disproportionate Allocation of Losses	6-32
	Form 6-11. Disproportionate Allocation of Loss.	6-33
6.8.3.	Shifting Allocations.	6-33
6.8.4.	Non-Safe Harbor Agreements	6-34
	Form 6-12. Allocation of Profits and Losses	6-35

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

6A.1.	General Considerations	6A-3
6A.1.1.	Perceived Benefits of an LLC Electing S Corp Status	6A-3
6A.1.1.1.	Reducing Self-Employment Taxes	6A-3
6A.1.1.2.	Corporate Financial and Tax Accounting May Be Less Expensive	6A-4
6A.1.1.3.	Ability to Revert to Partnership Tax Status	6A-4
6A.1.2.	Offsets to Perceived Benefits of an LLC Electing S Corp Status	6A-5
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-6
6A.1.2.3.	Prohibition of Multiple Classes of Stock.	6A-6
6A.1.2.4.	Restriction on Certain Types of Members.	6A-7
6A.2.	Electing Out of S Corp Status.	6A-7
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-8
6A.3.1.	Hypothetical Situation.	6A-8
6A.3.2.	Chart of Employment Taxes for the Year 2017 (Federal)	6A-9
6A.3.3.	Tax on Investment Earnings	6A-9
6A.3.4.	Partner Above-the-Line Deduction for SE Tax	6A-10
6A.4.	Why Use an LLC for S Corp Treatment?	6A-10
6A.4.1.	Overview	6A-10
6A.4.2.	Advantages Associated with Using the LLC Form	6A-10
6A.4.3.	Disadvantages Associated with Using the LLC Form	6A-12

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-13
6A.5.3.	Making the Election	6A-13
6A.5.4.	Operating Agreement	6A-14
CHAPTER 7: MANAGEMENT PROVISIONS		7-1
7.1.	Drafting LLC Management Provisions.	7-2
7.1.1.	Managers and Directors.	7-4
7.1.2.	Standards of Conduct	7-5
	Form 7-1. Conflict of Interest Provisions	7-11
7.2.	Meetings	7-12
7.2.1.	Meetings of Members	7-12
	Form 7-2. Meetings of Members	7-13
7.2.2.	Meetings of Managers.	7-14
7.2.3.	Meetings of Directors	7-14
	Form 7-3. Meetings of Directors	7-15
7.2.4.	Actions on Written Consent	7-16
	Form 7-4. Actions on Written Consent	7-16
	Form 7-5. Another Form for Actions on Written Consent	7-17
CHAPTER 8: TRANSFER AND BUY-SELL PROVISIONS.		8-1
8.1.	Introduction.	8-4
8.2.	Difference between Transfer Governance Rights, Financial Rights, Holders, and Members	8-4
8.2.1.	Involuntary Transfer Provisions	8-5
8.2.2.	Statutory Transfer Provisions	8-5
	8.2.2.1. Transfer of Financial Rights.	8-5
	8.2.2.2. Transfer of Membership Interest or Governance Rights	8-6
8.2.3.	Statutory Termination Provisions	8-6.1
8.3.	Tax Aspects of Transfer Restrictions	8-12
	Form 8-1. [Reserved]	8-13
	Form 8-2. [Reserved]	8-13
8.4.	Preliminary Drafting Considerations	8-14
	Form 8-3. Definitional Provision — Transfer.	8-15
	Form 8-4. Definitional Provisions — Financial Rights, Governance Rights and Membership Interests	8-15

CONTENTS

8.5. Drafting Transfer Provisions That Permit Free Transferability of Interests 8-16
Form 8-5. Free Transferability of Membership Interests 8-16

8.6. Drafting Transfer Provisions That Absolutely Prohibit Transfers of Any Kind. 8-16
Form 8-6. Absolute Prohibition of Transfers 8-16

8.7. Drafting Transfer Provisions That Permit Transfers Only on Certain Conditions 8-17

8.7.1. In General 8-17
Form 8-7. Transfer Permitted on Satisfaction of Certain Conditions 8-17

8.7.2. First Refusal Rights. 8-19
Form 8-8. Right of First Refusal to LLC Rather than Members or Holders 8-20
Form 8-9. Right of First Refusal to Members [and/or Holders] 8-21

8.7.3. Right of First Offer 8-22
Form 8-10. Right of First Offer to the LLC 8-23
Form 8-11. Right of First Offer to the Other Members or Holders 8-24

8.7.4. Admission of Transferee as a Member or Holder 8-25
Form 8-12. Admission of Substituted Member 8-26
Form 8-13. Transferee Automatically Admitted as Member. 8-26

8.7.5. Transfers to Members’ Affiliates and Family 8-27
Form 8-14. Definitional Provisions — Affiliate and Immediate Family Member or Holder 8-27
Form 8-15. Transfers to Affiliates, Immediate Family Members, and Others 8-28

8.8. Withdrawal (Termination of Interest) 8-28.1
Form 8-16. Short Form Version on Resignation or Withdrawal of a Member. 8-29
Form 8-17. Long Form Version on Resignation or Withdrawal of a Member 8-30
Form 8-18. Another Short Form Version on Resignation or Withdrawal of a Member 8-32

8.9. Creating Buy-Out Rights 8-33
Form 8-19. “Cut-Throat” Buy-Sell Provision. 8-33

Form 8-20.	Mandatory Purchase in the Event of Death, Disability or Divorce Provision	8-34
Form 8-21.	Option to Purchase upon Death or Disability of Member, Dissolution in the Event of Disagreement if a Sale Cannot Be Agreed upon	8-36
8.10.	Valuation Provisions	8-38
Form 8-22.	Agreed Value Prior to Event with a Back-Up Method of Valuation.	8-39
Form 8-23.	Agreed Purchase Price at the Time of the Event with Appraised Value if No Agreement	8-40
Form 8-24.	Agreed Price at the Time of the Event with “Baseball Arbitration” if No Agreement	8-40
Form 8-25.	Book Value.	8-42
Form 8-26.	Appraised Value.	8-43
8.11.	Miscellaneous Transfer Provisions	8-44
Form 8-27.	Form to Set Date of Closing and Deferred Payout.	8-44
8.12.	Charging Orders	8-45
8.12.1.	Charging Orders and the Single-Member LLC.	8-46
8.12.1.1.	<i>Olmstead v. Federal Trade Commission</i> , --- So. 3d ---, 2010 WL 2518106 (Fla. Jun 24, 2010).	8-47
8.12.1.2.	The Bankruptcy Cases	8-48
8.12.1.3.	Tennessee Statutory Provisions	8-50
8.13.	Determination of a Member’s Distributive Share on Transfer	8-52
CHAPTER 9: DISSOLUTION		9-1
9.1.	Dissolution Generally	9-3
9.2.	Termination upon Dissolution or Continuation by Substitution upon Termination of the Membership Interest of the Last Remaining Member	9-4
Form 9-1.	Dissolution and Termination upon the Occurrence of Certain Events	9-4
Form 9-2.	Designation of Successor to Last Remaining Member	9-5
9.3.	Methods of Dissolution.	9-5
9.3.1.	Dissolution upon the Consent of the Members	9-5
Form 9-3.	Vote Required for Dissolution and Termination by Members	9-6

CONTENTS

Form 9-4.	Written Consent of the Members to Dissolve the LLC	9-6
Form 9-5.	Written Consent of the [Board of Director(s)] [Manager(s)] to Dissolve the LLC	9-8
9.3.2.	Non-Judicial Termination by the Organizer(s)	9-8.1
Form 9-6.	Articles of Termination by Organizer	9-9
9.3.3.	Administrative Dissolution	9-10
Form 9-7.	Articles of Termination following Administrative Dissolution	9-11
Form 9-8.	Application for Reinstatement following Administrative Dissolution	9-13
9.3.4.	Judicial Dissolution	9-14
9.4.	Procedure for Dissolution	9-15
9.4.1.	Notice of Dissolution	9-15
Form 9-9.	Notice of Dissolution	9-16
9.4.2.	Revocation of Dissolution	9-17
Form 9-10.	Articles of Revocation of Dissolution	9-18
9.4.3.	Notice to Known and Unknown Creditors	9-19
Form 9-11.	Notice to Known Creditors	9-21
Form 9-12.	Notice to Unknown Creditors	9-22
9.4.4.	Winding Up Process of the LLC	9-23
9.4.5.	Articles of Termination	9-24
Form 9-13.	Articles of Termination	9-25
9.5.	Distribution of the Assets	9-25
9.6.	Cancellation of Certificate of Authority for a Foreign LLC	9-27
9.6.1.	Cancellation of Certificate of Authority Generally	9-27
Form 9-14.	Certificate of Cancellation of Certificate of Authority	9-28
9.6.2.	Revocation of Certificate of Authority by Administrative Proceeding	9-30
Form 9-15.	Certificate of Cancellation of Certificate of Authority following Administrative Revocation	9-31
CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING . . .		10-1
10.1.	Introduction	10-2
10.2.	Banking	10-2

Form 10-1.	Bank Accounts — Member-Managed LLC	10-2
Form 10-2.	Bank Accounts — Director-Managed LLC	10-3
Form 10-3.	Bank Accounts — Manager-Managed LLC	10-3
10.3.	Records	10-3
Form 10-4.	Maintenance of Records — Member-Managed LLC	10-5
Form 10-5.	Maintenance of Records — Director-Managed LLC	10-6
Form 10-6.	Maintenance of Records — Manager-Managed LLC	10-7
10.4.	Accounting Period	10-7
Form 10-7.	Calendar Year Accounting Period Specified	10-8
10.5.	Information to Members	10-8
10.5.1.	Without Demand	10-8
10.5.2.	Upon Written Demand	10-8
	Form 10-8. Reports for Member-Managed LLC	10-9
	Form 10-9. Reports for Director-Managed LLC	10-9
	Form 10-10. Reports for Manager-Managed LLC	10-10
10.6.	“Tax Matters Partner”	10-11
Form 10-11.	Tax Matters Member	10-11
10.7.	Tax Elections	10-12
Form 10-12.	Tax Status: Elections — For Use in Director-Managed LLC	10-12
Form 10-13.	Tax Status: Elections — For Use in Member-Managed LLC	10-13
Form 10-14.	Tax Status: Elections — For Use in Manager-Managed LLC	10-14

**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 a Membership Interest from the LLC	11-3
11.2.2.	Terms of Membership Interests, Procedure for Fixing Terms, and Specific Terms	11-4
11.2.3.	Subscription Agreements/Contribution Agreements	11-5

CONTENTS

Form 11-1.	Simple Contribution Agreement for LLC Membership Interest.	11-7
Form 11-2.	Long Form Contribution Agreement for LLC Membership Interest.	11-9
Form 11-3.	First Amendment to Operating Agreement Admitting Subscriber of a Membership Interest as a Member.	11-14
11.2.4.	Assignment of Full Membership Interest	11-16
Form 11-4.	Assignment of Membership Interest.	11-16
Form 11-5.	First Amendment to Operating Agreement Admitting Assignee of Membership Interest as a Member.	11-22
11.2.5.	Assignment of Financial Rights	11-23
11.2.6.	Assignment of Governance Rights	11-24
11.2.6.1.	Assignment to Another Member	11-24
11.2.6.2.	Assignment to Non-Member	11-25
11.2.6.3.	Effect of Assignment of Governance Rights	11-25
11.3.	Conversion of an Existing Entity into an LLC	11-26
11.3.1.	In General	11-26
11.3.2.	Conversion of a General or Limited Partnership into an LLC	11-26
Form 11-6.	Certificate of Conversion of a General Partnership into an LLC	11-29
Form 11-7.	[Reserved].	11-30
11.3.3.	Conversion of a Limited Partnership into an LLC	11-31
11.3.4.	Merger of a General Partnership or a Limited Partnership into an LLC	11-31
Form 11-8.	Certificate of Merger for a Tennessee Limited Partnership into a Tennessee Limited Liability Company.	11-35
11.3.5.	Conversion of a Corporation into an LLC.	11-37
11.4.	Conversion of an LLC into a Corporation	11-46
11.5.	Recapitalizing the LLC	11-46.3
Form 11-9.	Form of Amendment of Operating Agreement	11-47
11.6.	Mergers Involving a Tennessee LLC	11-48
11.6.1.	Tax Aspects of Partnership Mergers	11-48
11.6.2.	State Law Aspects of LLC Mergers	11-52

Form 11-10. Merger of Two Tennessee Member-Managed LLCs	11-53
Form 11-11. Certificate of Merger of Two Tennessee Member-Managed LLCs	11-55
11.7. Conversion of an LLC to Another Form of Entity	11-57
11.8. Contractual Appraisal Rights	11-57
CHAPTER 12: DOING INTERSTATE BUSINESS.	12-1
12.1. Foreign LLCs Transacting Business in Tennessee	12-2
12.1.1. Governing Law	12-2
12.1.2. Definitions	12-2
12.1.2.1. Transacting Business.	12-3
12.1.2.2. Interstate Commerce	12-4
12.1.3. Procedure for Registration.	12-4
Form 12-1. Application for Certificate of Authority for a Foreign Limited Liability Company	12-6
Form 12-2. Application for Amended Certificate of Authority for a Foreign Limited Liability Company	12-8
12.1.4. Filing Fee.	12-9
12.1.5. Issuance of Certificate of Authority and Cancellation of Certificate of Authority	12-10
Form 12-3. Application for Cancellation of Certificate of Authority for a Foreign Limited Liability Company.	12-10
12.1.6. Transacting Business without a Certificate of Authority	12-12
12.1.7. Revocation and Reinstatement	12-13
Form 12-4. Application for Reinstatement following Administrative Dissolution/Revocation.	12-15
12.1.8. Merger.	12-16
12.2. Tennessee LLCs Doing Business Outside of Tennessee.	12-16
12.2.1. Alabama.	12-17
12.2.2. Arkansas	12-18
12.2.3. Georgia	12-19
12.2.4. Kentucky	12-21
12.2.5. Mississippi.	12-22

CONTENTS

12.2.6. North Carolina 12-24
12.2.7. Virginia 12-26

CHAPTER 13: PROFESSIONAL LIMITED LIABILITY COMPANIES 13-1

13.1. Overview 13-2
13.2. Comparison of PLLCs and Professional Corporations 13-4
13.3. Comparison of LLCs and Limited Liability Partnerships 13-7
13.4. Mechanics of Registering as and Remaining an LLP 13-10
 Form 13-1. Application for Registration of Limited Liability Partnership — Domestic 13-12
13.5. Issues Pertaining to the Use of PLLCs by Attorneys 13-13
13.6. Foreign Professional Limited Liability Companies 13-14
 Form 13-2. Application for Certificate of Authority for a Foreign Professional Limited Liability Company 13-15
13.7. Form of Operating Agreement for PLLC Conducting a Professional Practice 13-17

CHAPTER 14: MISCELLANEOUS FORMS 14-1

14.1. Opinion Letters 14-2
 Form 14-1. Form of Opinion Letter in Connection with a Bank Loan to an LLC 14-2
14.2. Responsibility for Losses Derived from Guarantees of LLC Obligations 14-9
 Form 14-2. Indemnity and Contribution Agreement — Obligation Guaranteed Only by Members 14-11
14.3. Pledges of LLC Interests 14-14
 Form 14-3. Membership Interests Pledge Agreement 14-17
 Form 14-4. Exhibit to Financing Statement 14-31
14.4. Engagement Letter 14-31
 Form 14-5. Engagement Letter 14-31
14.5. Series LLCs 14-37
 14.5.1. General 14-37
 14.5.2. What is a Series LLC? 14-38
 14.5.3. Observations 14-40
 14.5.4. Potential Benefits vs. Multiple LLCs 14-41
 14.5.5. Potential Uses of Series LLCs 14-43
 14.5.6. Potential Risks and Open Issues 14-44

14.5.7. Practical Considerations and Drafting Series LLC Agreements	14-47
CHAPTER 15: FAMILY LIMITED LIABILITY COMPANY AGREEMENTS	15-1
15.1. Introduction	15-2
15.2. Overview of a Family LLC	15-2
15.2.1. Code Section 704(e), Code Chapter 14, and Annual Gift Tax Exclusion	15-2
15.3. Special Rules Regarding Taxation of Family LLCs	15-3
15.3.1. Code Section 704(e)	15-3
15.3.2. Gift Tax Annual Exclusion Issues	15-6
15.3.3. Code Chapter 14 and Other Estate Tax Issues	15-7
15.4. Form of Family LLC	15-10
CHAPTER 16: TENNESSEE SINGLE-MEMBER LLCs AND NONPROFIT SINGLE-MEMBER LLCs	16-1
16.1. Introduction	16-2
16.2. Tennessee Single-Member LLCs	16-2
16.2.1. Tennessee Single-Member LLC	16-2
16.2.2. Tennessee Nonprofit Single-Member LLC	16-2
16.3. Federal Income Taxation of Single-Member LLCs	16-4
16.4. Tennessee Taxation of Single-Member LLCs	16-6
16.5. Operating Agreement for Single-Member LLC	16-16
16.6. Employment Agreement for Single-Member LLC	16-17
Form 16-1. Employment Agreement	16-17
16.7. Form of Articles and Operating Agreement for Single-Member LLCs and Contract to Transfer Real Estate Owned by a Single-Member LLC	16-23
CHAPTER 17: BANKRUPTCY ISSUES CONCERNING LLCs	17-1
17.1. Overview	17-3
17.2. Eligibility of LLCs for Voluntary Relief under the Bankruptcy Code	17-4
17.3. Property of the Estate	17-5
Form 17-1. Operating Agreement Provision — Limitation on Obligation to Make Additional Capital Contributions	17-6

CONTENTS

17.4. May a Member Commence an Involuntary Case Against an LLC? 17-6

17.5. What Approval Is Needed to Approve the Filing of a Voluntary Case by an LLC? 17-8

Form 17-2. Operating Agreement Provision — Unanimous Consent of Members to Filing a Voluntary Case 17-9

Form 17-3. Operating Agreement Provision — Consent of Majority of Members to Filing a Voluntary Case 17-10

Form 17-4. Operating Agreement Provision — [Manager][Director] Vote Required for Filing a Voluntary Case 17-10

Form 17-5. Operating Agreement Provision — Member and Manager Vote Required for Filing a Voluntary Case 17-11

Form 17-6. Resolutions of Members in Member-Managed LLC — Consenting to Filing a Voluntary Case under Chapter 7. 17-12

Form 17-7. Resolutions of [Board of Directors in Director-Managed LLC][Managers in a Manager-Managed LLC] — Consent to Filing a Voluntary Case under Chapter 11 17-13

17.6. Creating Limitations on the Ability of an LLC to Commence a Voluntary Case — Single-Purpose Bankruptcy Remote LLCs. 17-14

Form 17-8. Operating Agreement Provision — Purpose Clause for a SPBR LLC. 17-16

Form 17-9. Operating Agreement Provision — Management of Business and Affairs of the Company 17-16

Form 17-10. Operating Agreement Provision — Special Amendment Provision 17-21

17.7. Other Bankruptcy Issues from the LLC’s Perspective 17-23

17.8. Right of LLC or Remaining Members to Terminate Management Rights of a Bankrupt Member. 17-24

17.9. Member’s Bankruptcy as an Event of Dissolution 17-29

17.10. Buy-Out of a Member’s Interest in the Event of the Member’s Bankruptcy. 17-31

17.11. Another Application of Corporate-Like Characteristics. 17-32

**PART IV
APPENDICES**

APPENDIX A [MEMBER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY WITH DISTRIBUTIONS IN ACCORDANCE WITH CAPITAL ACCOUNT BALANCES ... APP A-1

APPENDIX A2 [MEMBER-MANAGED] OPERATING AGREEMENT WITH DISTRIBUTIONS USING TARGETED CAPITAL ACCOUNTS . APP A2-1

APPENDIX B [MANAGER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY APP B-1

APPENDIX B2 [MANAGER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY WITH TARGETED CAPITAL ACCOUNT ALLOCATIONS..... APP B2-1

APPENDIX C [DIRECTOR-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY APP C-1

APPENDIX D SERIES LIMITED LIABILITY COMPANY ARTICLES AND OPERATING AGREEMENT..... APP D-1

APPENDIX E OPERATING AGREEMENT OF _____ FAMILY INVESTMENT, LLC APP E-1

APPENDIX F1 TENNESSEE NONPROFIT LIMITED LIABILITY COMPANY ACT AND PROVISIONS OF THE TENNESSEE NONPROFIT CORPORATION ACT..... APP F1-1

APPENDIX F2 TENNESSEE LIMITED LIABILITY COMPANY ACT APP F2-1

APPENDIX F3 PROVISIONS OF TENNESSEE FRANCHISE AND EXCISE TAX LAW..... APP F3-1

APPENDIX F4 PROVISIONS OF THE TENNESSEE BUSINESS CORPORATION ACT APP F4-1

CONTENTS

APPENDIX F5 PROVISIONS OF THE TENNESSEE LIMITED LIABILITY PARTNERSHIP ACT..... APP F5-1

APPENDIX F6 PROVISIONS OF THE TENNESSEE PROFESSIONAL CORPORATION ACT..... APP F6-1

APPENDIX F7 PROVISIONS FOR QUALIFICATION AS A FOREIGN LIMITED LIABILITY COMPANY IN ALABAMA, ARKANSAS, GEORGIA, KENTUCKY, MISSISSIPPI, NORTH CAROLINA, AND VIRGINIA APP F7-1

APPENDIX F8 PROVISIONS OF THE TENNESSEE CODE OF PROFESSIONAL RESPONSIBILITY APP F8-1

APPENDIX G LLC OPERATING AGREEMENT..... APP G-1

APPENDIX G1 SHORT FORM SYNDICATED LLC OPERATING AGREEMENT APP G1-1

APPENDIX H1 ARTICLES OF ORGANIZATION OF [SINGLE-MEMBER], LLC..... APP H1-1

APPENDIX H2 OPERATING AGREEMENT OF [SINGLE-MEMBER], LLC [DIRECTOR-MANAGED SINGLE-MEMBER LLC] APP H2-1

APPENDIX H3 OPERATING AGREEMENT OF [SINGLE-MEMBER], LLC [MEMBER-MANAGED SINGLE-MEMBER LLC] APP H3-1

APPENDIX H4 OPERATING AGREEMENT OF [SINGLE-MEMBER], LLC [MANAGER-MANAGED SINGLE-MEMBER LLC] APP H4-1

APPENDIX H5 ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT OF CHARITABLE ENTITY, LLC [MEMBER-MANAGED, SINGLE-MEMBER, NONPROFIT LLC]..... APP H5-1

APPENDIX H6 CONTRACT OF SALE OF THE MEMBERSHIP INTERESTS OF A SINGLE-MEMBER LLC OWNING REAL ESTATE APP H6-1

APPENDIX H7 TENANCY IN COMMON AGREEMENT OF SINGLE-MEMBER LLCS APP H7-1

APPENDIX I INTERNAL REVENUE SERVICE REGULATIONS ON THE NONCOMPENSATORY PARTNERSHIP OPTIONS APP I-1

APPENDIX J OPERATING AGREEMENT OF _____, PLLC APP J-1

APPENDIX K “CHECK-THE-BOX” REGULATIONS. APP K-1

APPENDIX L IRS FORM 8832 APP L-1

APPENDIX M COMPARISON OF STATE LLC FEES AND OTHER INFORMATION APP M-1

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

**PART V
LLP AND LLC CASES**

LLP and LLC Cases LLC Cases-1

**PART VI
INDICES**

Cumulative Table of Internal Revenue Code Citations. INDEX-1

Cumulative Table of Bankruptcy Code Citations INDEX-5

Cumulative Table of Treasury Regulations. INDEX-6

Cumulative Table of Revenue Rulings and Revenue Procedures INDEX-10

Cumulative Table of Tennessee Code Annotated Sections INDEX-12

Subject Index INDEX-24

Forms Index INDEX-40