

# Contents

## PART I ORGANIZATION

<b>CHAPTER 1: INTRODUCTION</b> . . . . .	<b>1-1</b>
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
1.8. Self-Employment Tax Consequences of Partnership Classification. . . . .	1-38
1.9. Exceptions to Liability Protection . . . . .	1-40
1.10. LLCs and Tax Treaties . . . . .	1-46
1.11. Series Limited Liability Companies . . . . .	1-47
<b>CHAPTER 2: FORMATION AND ORGANIZATION</b> . . . . .	<b>2-1</b>
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 . . . . .	2-10
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
2.8.	Federal Corporate Transparency Act . . . . .	2-18
2.8.1.	Overview . . . . .	2-18
2.8.2.	Reporting Companies . . . . .	2-19
2.8.3.	Information Required to be Reported . . . . .	2-20
2.8.4.	FinCEN Identifier . . . . .	2-21
2.8.5.	Beneficial Owners . . . . .	2-22
2.8.6.	Who Must File . . . . .	2-23

2.8.7.	When Must an Initial Report Be Filed With FinCEN . . .	2-23
2.8.8.	Company Applicants . . . . .	2-24
2.8.9.	Availability of Reported Information . . . . .	2-25
2.8.10.	Penalties. . . . .	2-25
2.8.11.	Form . . . . .	2-25
2.9.	Compliance-related obligations in the Operating Agreement and in the Subscription Agreement and Joinder Agreement. . . .	2-25
2.10.	Guide for Company CTA Reporting Officer. . . . .	2-26
Form 2-11.	Corporate Transparency Act Operating Agreement Provisions . . . . .	2-28
Form 2-12.	Letter to Currently Existing Clients. . . . .	2-31

**PART II  
OPERATION**

<b>CHAPTER 3:</b>	<b>THE OPERATING AGREEMENT . . . . .</b>	<b>3-1</b>
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 . . . . .	3-6.1
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

CONTENTS

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.	Attorneys Drafting Disclosure Documents . . . . .	3-20
3.6.16.	Attorneys Drafting Partnership and Operating Agreements . . . . .	3-20
3.6.17.	Rules and Process for Making New Audit Rule Elections . . . . .	3-21
Form 3-1.	Provisions Regarding BBA Partnership Audit Rules — Inserts for Definitions Section. . . . .	3-23
3.7.	Waiver of Partition . . . . .	3-26
Form 3-2.	Waiver of Right of Partition. . . . .	3-26
<b>CHAPTER 4:</b>	<b>ORGANIZATION . . . . .</b>	<b>4-1</b>
4.1.	Drafting LLC Organization Provisions. . . . .	4-3
4.2.	Introductory Paragraph . . . . .	4-3
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.	[Reserved] . . . . .	5-9
5.2.4.	Contribution of Property or Cash in Return for a Membership Interest. . . . .	5-9
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	

CONTENTS

	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
	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
	6.4.1. Overview . . . . .	6-4
	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

CONTENTS

	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
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-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-4
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.	Why Use an LLC for S Corp Treatment? . . . . .	6A-7
6A.3.1.	Overview . . . . .	6A-7
6A.3.2.	Advantages Associated with Using the LLC Form . . . . .	6A-7
6A.3.3.	Disadvantages Associated with Using the LLC Form . . . . .	6A-8
6A.4.	Procedures for LLC Electing S Corp Status . . . . .	6A-8
6A.4.1.	Operating Agreement; Ownership Interests . . . . .	6A-8
6A.4.2.	Protecting the Election . . . . .	6A-9
6A.4.3.	Making the Election . . . . .	6A-9
6A.4.4.	Operating Agreement . . . . .	6A-10

**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
Form 7-2A.	Meetings of Managers. . . . .	7-14
7.2.3.	Meetings of Directors . . . . .	7-15
Form 7-3.	Meetings of Directors . . . . .	7-16
7.2.4.	Actions on Written Consent . . . . .	7-17
Form 7-4.	Actions on Written Consent . . . . .	7-17
Form 7-5.	Another Form for Actions on Written Consent . . . . .	7-18

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

8.1.	Introduction. . . . .	8-4
------	-----------------------	-----

CONTENTS

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 . . . . .	8-13
Form 8-1.	Provisions Regarding Section 754 Election . . . . .	8-14
Form 8-2.	[Reserved] . . . . .	8-14.1
8.4.	Preliminary Drafting Considerations . . . . .	8-14.1
Form 8-3.	Definitional Provision — Transfer . . . . .	8-15
Form 8-4.	Definitional Provisions — Financial Rights, Governance Rights and Membership Interests . . . . .	8-15
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

<b>CHAPTER 9: DISSOLUTION</b> .....	<b>9-1</b>
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
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
<b>CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING . . .</b>		<b>10-1</b>
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. [Reserved] . . . . .	10-11
10.7.	Tax Elections . . . . .	10-11
	Form 10-12. Tax Status: Elections — For Use in Director-Managed LLC . . . . .	10-11
	Form 10-13. Tax Status: Elections — For Use in Member-Managed LLC . . . . .	10-12
	Form 10-14. Tax Status: Elections — For Use in Manager-Managed LLC . . . . .	10-13

**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

        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

11.3.4.1.	The Old Act . . . . .	11-32
	Form 11-8. Certificate of Merger for a Tennessee Limited Partnership into a Tennessee Limited Liability Company (Old Act). . . . .	11-37
11.3.4.2.	The New Act. . . . .	11-38
	Form 11-8A. Certificate of Merger for a Tennessee Limited Partnership into a Tennessee Limited Liability Company (New Act) . . . . .	11-38.1
11.3.5.	Conversion of a Corporation into an LLC. . . . .	11-38.3
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
<b>CHAPTER 12: DOING INTERSTATE BUSINESS. . . . .</b>		<b>12-1</b>
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

CONTENTS

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

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
14.5.8. Employment of a Member by an LLC . . . . .	14-49
Form 14-6. Employment Agreement Provision for Member who is an Employee . . . . .	14-50
<b>CHAPTER 15: FAMILY LIMITED LIABILITY COMPANY AGREEMENTS. . . . .</b>	<b>15-1</b>
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
<b>CHAPTER 16: TENNESSEE SINGLE-MEMBER LLCs AND NONPROFIT SINGLE-MEMBER LLCs . . . . .</b>	<b>16-1</b>
16.1. Introduction. . . . .	16-2
16.2. Tennessee Single-Member LLCs . . . . .	16-2
16.2.1. Tennessee Single-Member LLC . . . . .	16-2

CONTENTS

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

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**

<b>APPENDIX A</b>	<b>[MEMBER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY WITH DISTRIBUTIONS IN ACCORDANCE WITH CAPITAL ACCOUNT BALANCES . . . . .</b>	<b>APP A-1</b>
<b>APPENDIX A2</b>	<b>[MEMBER-MANAGED] OPERATING AGREEMENT WITH DISTRIBUTIONS USING TARGETED CAPITAL ACCOUNTS . . . . .</b>	<b>APP A2-1</b>
<b>APPENDIX B</b>	<b>[MANAGER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY . . . . .</b>	<b>APP B-1</b>
<b>APPENDIX B2</b>	<b>[MANAGER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY WITH TARGETED CAPITAL ACCOUNT ALLOCATIONS. . . . .</b>	<b>APP B2-1</b>

CONTENTS

**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**

**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**

<b>APPENDIX H1</b>	<b>ARTICLES OF ORGANIZATION OF [SINGLE-MEMBER], LLC.....</b>	<b>APP H1-1</b>
<b>APPENDIX H2</b>	<b>OPERATING AGREEMENT OF [SINGLE- MEMBER], LLC [DIRECTOR-MANAGED SINGLE-MEMBER LLC] .....</b>	<b>APP H2-1</b>
<b>APPENDIX H3</b>	<b>OPERATING AGREEMENT OF [SINGLE- MEMBER], LLC [MEMBER-MANAGED SINGLE-MEMBER LLC] .....</b>	<b>APP H3-1</b>
<b>APPENDIX H4</b>	<b>OPERATING AGREEMENT OF [SINGLE- MEMBER], LLC [MANAGER-MANAGED SINGLE-MEMBER LLC] .....</b>	<b>APP H4-1</b>
<b>APPENDIX H5</b>	<b>ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT OF CHARITABLE ENTITY, LLC [MEMBER-MANAGED, SINGLE-MEMBER, NONPROFIT LLC].....</b>	<b>APP H5-1</b>
<b>APPENDIX H6</b>	<b>CONTRACT OF SALE OF THE MEMBERSHIP INTERESTS OF A SINGLE-MEMBER LLC OWNING REAL ESTATE .....</b>	<b>APP H6-1</b>
<b>APPENDIX H7</b>	<b>TENANCY IN COMMON AGREEMENT OF SINGLE-MEMBER LLCs .....</b>	<b>APP H7-1</b>
<b>APPENDIX H8</b>	<b>BANKRUPTCY REMOTE SPECIAL OR SINGLE PURPOSE ENTITY USING A SINGLE MEMBER LLC.....</b>	<b>APP H8-1</b>
<b>APPENDIX I</b>	<b>INTERNAL REVENUE SERVICE REGULATIONS ON THE NONCOMPENSATORY PARTNERSHIP OPTIONS .....</b>	<b>APP I-1</b>
<b>APPENDIX J</b>	<b>OPERATING AGREEMENT OF _____, PLLC .....</b>	<b>APP J-1</b>
<b>APPENDIX K</b>	<b>“CHECK-THE-BOX” REGULATIONS.....</b>	<b>APP K-1</b>
<b>APPENDIX L</b>	<b>IRS FORM 8832 .....</b>	<b>APP L-1</b>
<b>APPENDIX M</b>	<b>COMPARISON OF STATE LLC FEES AND OTHER INFORMATION .....</b>	<b>APP M-1</b>

CONTENTS

**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