

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	1-29
1.7.3. Application to LLCs	1-29
1.7.4. Specifically Excluded Entities.	1-32
1.7.4.1. Farm and Residence LLCs	1-33
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.	1-35
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
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	2-10
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	2-19
2.8.2.	Reporting Companies	2-20
2.8.3.	Information Required to be Reported	2-21
2.8.4.	FinCEN Identifier	2-22
2.8.5.	Beneficial Owners	2-22

2.8.6.	Who Must File.	2-24
2.8.7.	When Must an Initial Report Be Filed With FinCEN.	2-24
2.8.8.	Company Applicants	2-25
2.8.9.	Availability of Reported Information	2-25
2.8.10.	Penalties.	2-26
2.9.	Compliance-related obligations in the Operating Agreement and in the Subscription Agreement and Joinder Agreement.	2-26
2.10.	Guide for Company CTA Reporting Officer.	2-27
	Form 2-11. Corporate Transparency Act Operating Agreement Provisions	2-28

**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.	3-6.1
3.4.	Amendment.	3-6.2
3.5.	Form Operating Agreements.	3-6.2
3.6.	Partnership Audit Rules	3-6.2
	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
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 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 of Directors — Limit on Amount	5-12

CONTENTS

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
	Form 6-2. Tax Definitions	6-10.2

CONTENTS

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.2. Why Use an LLC for S Corp Treatment? 6A-2

6A.2.1. Advantages Associated with Using the LLC Form. 6A-2

6A.2.2. Disadvantages Associated with Using the LLC Form. 6A-2

6A.3. Procedures for LLC Electing S Corp Status. 6A-4

6A.3.1. Operating Agreement; Ownership Interests 6A-4

6A.3.2. Protecting the Election 6A-4

6A.3.3. Making the Election 6A-5

6A.3.4. Obtaining Relief for Inadvertent Termination of
S Elections due to Multiple Classes of Stock 6A-5

6A.3.5. Operating Agreement 6A-7

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
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

CONTENTS

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
	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

CONTENTS

9.3.2.	Non-Judicial Termination by the Organizer(s)	9-8.1
	Form 9-6. Articles of Termination by Organizer . . .	9-9
	Form 9-7. Request for Certificate of Existence/ Authorization (Good Standing).	9-11
9.3.3.	Administrative Dissolution	9-12
	Form 9-8. Articles of Termination following Administrative Dissolution	9-13
9.3.4.	Judicial Dissolution	9-14
9.4.	Procedure for Dissolution	9-17
9.4.1.	Notice of Dissolution.	9-17
	Form 9-9. Notice of Dissolution	9-18
9.4.2.	Revocation of Dissolution	9-19
	Form 9-10. Articles of Revocation of Dissolution	9-20.1
9.4.3.	Notice to Known and Unknown Creditors	9-20.2
	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	9-26
9.6.	Cancellation of Certificate of Authority for a Foreign LLC	9-27
9.6.1.	Cancellation of Certificate of Authority Generally	9-28
	Form 9-14. Certificate of Cancellation of Certificate of Authority	9-28.1
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.	[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

CONTENTS

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

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
 12.1.4. Filing Fee. 12-6
 12.1.5. Issuance of Certificate of Authority and Cancellation
 of Certificate of Authority 12-6
 Form 12-1. Application for Cancellation of
 Certificate of Authority for a Foreign
 Limited Liability Company. 12-7
 12.1.6. Transacting Business without a Certificate of
 Authority 12-8
 12.1.7. Revocation and Reinstatement 12-10
 Form 12-2. Application for Reinstatement
 following Administrative
 Dissolution/Revocation. 12-12
 12.1.8. Merger 12-15
 12.2. Tennessee LLCs Doing Business Outside of Tennessee. 12-15
 12.2.1. Alabama. 12-15
 12.2.2. Arkansas 12-16
 12.2.3. Georgia 12-18
 12.2.4. Kentucky 12-19
 12.2.5. Mississippi. 12-21
 12.2.6. North Carolina. 12-23
 12.2.7. Virginia 12-25

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 PLLCs and Limited Liability Partnerships.....	13-7
13.4. Mechanics of Registering as and Remaining an LLP.....	13-10.1
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
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	16-16.1
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 H8 BANKRUPTCY REMOTE SPECIAL OR SINGLE PURPOSE ENTITY USING A SINGLE MEMBER LLC APP H8-1

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

APPENDIX O PROPOSED FORM LETTER TO NEW (POST 2023) CLIENTS APP O-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

CONTENTS

Cumulative Table of Revenue Rulings and Revenue Procedures INDEX-10
Cumulative Table of Tennessee Code Annotated Sections INDEX-12
Subject Index INDEX-25
Forms Index INDEX-41