

Contents

Part I Organization

CHAPTER 1: INTRODUCTION.....	1-1
1.1. Nature and Use of This Practice Manual	1-3
1.2. Comparison of the LLC with Other Entities.....	1-3
1.3. History of the LLC	1-4
1.4. Classification of the LLC as a Partnership for Federal Income Tax Purposes	1-9
1.4.1. Introduction	1-9
1.4.2. IRS Regulations on Entity Classification.....	1-9
1.4.3. Consequences of Electing Corporate Classification	1-11
1.4.4. Tax History of the LLC	1-12
1.4.5. Superseded Regulations on Categorization of LLCs for Tax Purposes	1-12
1.4.5.1. Limited Liability	1-14
1.4.5.2. Centralized Management	1-15
1.4.5.3. Continuity of Life.....	1-19
1.4.5.4. Free Transferability of Interests	1-21
1.4A. 2025 One Big Beautiful Bill Act	1-22
1.4A.1. 2017 Tax Act and OBBBA's Impact on the Choice of Entity	1-22.1
1.4A.2. Section 199A – Deduction for Qualified Business Income	1-22.3
1.4A.3. Section 1061 – Carried Interests	1-22.6
1.4A.4. Section 163(j) – Limitation on Interest Deduction	1-22.10
1.4A.5. Section 708 – Repeal of Technical Termination of Partnership	1-22.11
1.4A.6. Section 461(l) – Limitation on Excess Business Losses of Non-Corporate Taxpayers	1-22.12
1.4A.7. Qualified Opportunity Funds Organized as Partnerships	1-22.13
1.4A.8. Section 1446(f)—Withholding on Transfers by Non-U.S. Partners	1-22.14

TABLE OF CONTENTS

1.5.	An Overview of the Washington, Oregon and Alaska Acts	1-22-16
1.5.1.	Washington Act Overview	1-22-16
1.5.2.	Oregon Act Overview	1-24
1.5.3.	Alaska Act Overview	1-24
1.6.	Comparison of the Washington, Oregon and Alaska Acts with Other LLC Acts	1-26
1.6.1.	Washington Act Comparison	1-26
1.6.1.1.	Flexible Statute.	1-26
1.6.1.2.	Professional LLCs	1-26
1.6.1.3.	Single-Member LLCs.	1-27
1.6.1.4.	Oral LLC Agreement	1-27
1.6.1.5.	Mandatory Insurance	1-27
1.6.1.6.	Piercing the Veil	1-27
1.6.2.	Oregon Act Comparison.	1-30
1.6.2.1.	Flexible Statute.	1-30
1.6.2.2.	One-Member LLCs	1-31
1.6.2.3.	Oral Operating Agreement	1-31
1.6.2.4.	Professional Organizations.	1-31
1.6.3.	Alaska Act Comparison	1-31
1.6.3.1.	Flexible Statute.	1-31
1.6.3.2.	Written Operating Agreement	1-32
1.6.3.3.	Professional Organizations.	1-32
1.6.3.4.	Management of an Alaska LLC	1-32
1.7.	Treatment of LLCs for State Tax Purposes in Washington, Oregon and Alaska	1-32
1.7.1.	Washington.	1-32
1.7.2.	Oregon	1-33
1.7.3.	Alaska	1-34
1.8.	Federal Corporate Transparency Act	1-34
1.8.1.	Federal Corporate Transparency Act in General	1-34
1.8.2.	Regulations Under the CTA.	1-37
1.8.3.	Reporting Companies.	1-42
1.8.4.	Beneficial Owners	1-45
1.8.5.	Company Applicants	1-49
1.8.6.	Penalties	1-51
1.8.7.	Limited Liability Company Operating Agreement Provisions.	1-52
	Form 1-1. Operating Agreement Provisions in Connection with the CTA: Definitions Section	1-53

Form 1-2.	Operating Agreement Provisions in Connection with the CTA: Appropriate Operating Agreement Article	1-53
Form 1-3.	Certification of Exemption under Corporate Transparency Act.	1-56
Form 1-4.	Request for Beneficial Ownership Information from an Entity that Owns an Interest in a Reporting Company	1-62
CHAPTER 2:	FORMATION AND ORGANIZATION	2-1
2.1.	Introduction	2-3
2.2.	Preformation Matters	2-3
2.3.	Certificate of Formation/Articles of Organization	2-4
2.3.1.	Basic Requirements	2-4
Form 2-1.	Certificate of Formation (Washington)	2-7
Form 2-2.	Consent to Serve as Registered Agent (Washington)	2-8.4
Form 2-3.	Articles of Organization (Oregon)	2-10
Form 2-4.	Articles of Organization (Alaska)	2-12
2.3.2.	Optional Provisions	2-15
2.4.	Single-Member LLCs	2-16
Form 2-5.	Additions to Washington or Alaska Articles of Organization for Single-Member LLCs	2-18
Form 2-6.	Additions to Oregon Articles of Organization for Single-Member LLCs.	2-18.1
2.5.	Amending the Certificate of Formation or Articles of Organization	2-19
Form 2-7.	Amended Certificate of Formation (Washington).	2-20
Form 2-8.	Articles of Amendment/Dissolution (Oregon)	2-24
Form 2-9.	Articles of Amendment (Alaska)	2-26
2.6.	Reservation of Name	2-29
Form 2-10.	Application for Reservation of Washington (Domestic) Name (Washington)	2-30
Form 2-10A.	Application for Name Reservation (Oregon)	2-33
Form 2-11.	Business Name Reservation Application (Alaska)	2-35

TABLE OF CONTENTS

Form 2-11A.	New Business Name Reservation Application (Alaska)	2-38
2.7.	Change of Registered Agent, Change of Address of Registered Agent, Change of Address of Registered Office.	2-42
Form 2-12.	Statement of Change/Designation of Registered Agent (Washington)	2-42.1
Form 2-13.	Change of Address of Registered Agent and Registered Office (Washington)	2-42.5
Form 2-13A.	Designation of Address.	2-42.6
Form 2-14.	Information Change (Oregon)	2-43
Form 2-15.	Change of Address of Registered Agent and Registered Office (Oregon).	2-44
Form 2-16.	Change of Registered Agent and/or Registered Agent Address (Alaska)	2-45
Form 2-17.	Notice of Resignation of Registered Agent (Alaska)	2-49

**PART II
OPERATIONS**

CHAPTER 3:	THE LIMITED LIABILITY COMPANY AGREEMENT (WASHINGTON) OR THE OPERATING AGREEMENT (OREGON AND ALASKA).	3-1
3.1.	General	3-2
3.2.	“Limited Liability Company Agreement” and “Operating Agreement” Defined.	3-4
3.3.	Flexibility of LLC Form	3-5
3.4.	Form of Operating Agreement	3-5
3.5.	Formality of Adoption	3-6
3.6.	Amendment.	3-8
3.7.	Form LLC and Operating Agreements	3-8.2
3.8.	Form LLC and Operating Agreements for Single-Member LLCs	3-8.2
CHAPTER 4:	ORGANIZATION.	4-1
4.1.	Drafting LLC Organization Provisions.	4-3
4.2.	Introductory Paragraph of the Agreement	4-4
Form 4-1.	Introductory Paragraph — Names Parties	4-4
Form 4-2.	Introductory Paragraph — Does Not Name Parties.	4-4

4.3.	Background to Agreement	4-4
	Form 4-3. Preamble	4-5
4.4.	Confirmation of Agreement	4-5
	Form 4-4. Confirmation of Agreement	4-5
4.5.	Definitions.	4-5
	4.5.1. "Interest" Compared to "Membership Rights"	4-6
	4.5.2. "Interest Holder" Compared to "Member"	4-7
	Form 4-5. General Definitions	4-9
4.6.	Agreement to Organize LLC	4-10
	Form 4-6. General Agreement to Organize LLC.	4-10
	Form 4-7. Organizational Provision Confirming That Certificate of Formation or Articles of Organization Have Been Filed	4-10.1
4.7.	Name.	4-10.1
	Form 4-8. Name Provision for Member-Managed LLC	4-10.1
	Form 4-9. Name Provision for Manager-Managed LLC.	4-11
4.8.	Purpose	4-11
	Form 4-10. Any Lawful Purpose	4-11
	Form 4-11. Specific Purpose	4-11
	Form 4-12. Purpose Limited to Real Estate	4-12
	Form 4-13. Purpose Clause for Family LLC.	4-12
4.9.	Term	4-13
	Form 4-14. Term Commences on Date of Filing of Certificate of Formation or Articles of Organization	4-15
	Form 4-15. Term Commences upon Execution of LLC Agreement or Operating Agreement.	4-15
4.10.	Principal Office.	4-15
	Form 4-16. Principal Office of LLC Managed by Members	4-16
	Form 4-17. Principal Office of LLC Managed by Managers	4-16
4.11.	Registered Agent.	4-16
	Form 4-18. Registered Agent.	4-16
4.12.	Members	4-17
	Form 4-19. Schedule of Members Set Forth in Exhibit.	4-17
	Form 4-20. Schedule of Members Set Forth in Text of Agreement	4-18
	Form 4-21. Schedule of Members (Without Percentages)	4-18
4.13.	Miscellaneous Provisions	4-18
	Form 4-22. Miscellaneous Provisions	4-19

CHAPTER 5:	LIMITED LIABILITY COMPANY CAPITAL..	5-1
5.1.	Drafting Capital Provisions	5-3
5.2.	Initial Capital Contributions	5-5
5.2.1.	Tax Issues.....	5-6
5.2.1.1.	Tax Issues: General Discussion	5-6
Form 5-1.	Initial Capital Contributions in Cash	5-7
Form 5-2.	Initial Capital Contributions Partly in Cash and Partly in Services.....	5-8
Form 5-3.	Initial Capital Contributions Partly in Cash and Partly in Property.....	5-8
Form 5-4.	Representation in Connection with Contribution of Property	5-8
5.2.1.2.	Tax Issues: Deductibility of Interest Paid in Connection with a Loan Obtained to Purchase an LLC Interest.....	5-8.1
5.2.2.	New Tax Developments	5-8.2
5.2.2.1.	Issuance of a Noncompensatory Option.....	5-8.3
5.2.2.2.	Exercising a Noncompensatory Option.....	5-8.5
5.2.2.3.	Lapse of a Noncompensatory Option.....	5-8.5
5.2.2.4.	Repurchase of a Noncompensatory Partnership Option	5-8.5
5.2.2.5.	Accounting for Noncompensatory Options.....	5-8.6
5.2.2.6.	Original Issue Discount Regulations	5-8.7
5.2.2.7.	Unearned Income Medicare Tax	5-8.7
5.2.2.8.	Report of Foreign Bank and Financial Accounts (FBAR)	5-8.8
5.3.	Additional Capital Contributions	5-8.9
Form 5-5.	Additional Capital Contributions at Discretion of Manager — Limit on Amount	5-9
Form 5-6.	Additional Capital Contributions at Discretion of Members — Limit on Amount	5-9
Form 5-7.	No Liability beyond Initial Capital Contribution	5-10
Form 5-8.	No Liability beyond Additional Capital Contributions	5-10

5.4.	Default in Payment of Contributions	5-10
	Form 5-9. Remedy of Reduction of Member's Interest in Event of Failure to Make Contribution to Manager-Managed LLC	5-11
5.5.	Interest on Capital Contributions	5-12
	Form 5-10. No Interest on Capital Contributions	5-12
	Form 5-11. Interest on Capital Contributions	5-13
5.6.	Return of Capital Contributions	5-13
	Form 5-12. Return of Capital Contributions — Unanimous Consent of Members and Compliance with Act Required	5-14
5.7.	Form of Distribution	5-14
	Form 5-13. Form of Distribution — No Right to Receive Anything but Cash	5-14
	Form 5-14. Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager-Managed LLC	5-14
5.8.	Capital Accounts	5-15
	Form 5-15. Capital Accounts (Simple Definition)	5-15
5.9.	Loans	5-15
	Form 5-16. Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future (Washington and Oregon)	5-16
	Form 5-17. Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future (Alaska)	5-16
	Form 5-18. Loans — Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed upon in Future.	5-16

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 Acts	6-4
6.4.	Allocation Restrictions—Sections 704(b) of the Code	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: Member's Interests	6-5
	6.4.2.2. The Second Test: Substantial Economic Effect and Capital Accounts	6-6

TABLE OF CONTENTS

6.4.2.3.	The Third Test: Nonrecourse Deductions	6-7
6.4.3.	Allocations to Interest Holders	6-8
6.5.	Definitions.	6-9
6.5.1.	Distribution-Related Definitions	6-9
	Form 6-1. Distribution Definitions	6-9
6.5.2.	Allocation-Related Definitions	6-10
	Form 6-2. Allocation Definitions	6-10
6.6.	Basic Distribution Provisions	6-12
6.6.1.	In General.	6-12
6.6.2.	Cash Flow from Operations	6-13
	Form 6-3. Distribution of Cash Flow	6-13
6.6.3.	Distribution of Capital Proceeds	6-14
	Form 6-4. Distribution of Capital Proceeds	6-14
6.6.4.	Liquidation Proceeds	6-14
	Form 6-5. Liquidation and Dissolution.	6-15
	Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation	6-15
6.6.5.	Tax Issues Relating to Distributions	6-16
6.6.6.	Distributions Tied to a Preferred Return	6-16
	Form 6-6A. Preferred Return.	6-16.2
	Form 6-6B. Distribution Waterfall Tied to Preferred Return.	6-16.2
6.7.	Basic Allocation Provisions	6-16.3
6.7.1.	Basic Allocations of Income and Loss.	6-16.3
	Form 6-7. Profit or Loss	6-16.4
6.7.2.	Qualified Income Offset and Minimum Gain Chargeback.	6-17
	Form 6-8. Qualified Income Offset and Minimum Gain Chargeback.	6-18
6.7.3.	Other Regulatory Allocations.	6-19
	Form 6-9. Regulatory Allocations.	6-20
6.7.4.	General Provisions.	6-22
	Form 6-10. General Provisions	6-22
6.8.	Complex and Disproportionate Distribution and Allocation Provisions	6-23
6.8.1.	Distribution Preferences.	6-23
	Form 6-11. Distribution Preference and Preferred Return of Capital Contributions	6-24
6.8.2.	Disproportionate Allocation of Losses.	6-26

Form 6-12.	Disproportionate Allocation of Loss	6-27
6.8.3.	Profits Interests.	6-27
Form 6-13.	Allocations to “Capital” and “Service” Members	6-28
6.8.4.	Targeted Capital Account Method of Allocations	6-29
Form 6-14.	Targeted Capital Account Allocations	6-31
6.8.5.	Carried Interest Legislation	6-31
6.9.	Self-Employment Taxes	6-32

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

		6A-1
6A.1.	General Considerations.	6A-3
6A.1.1.	Perceived Benefits of an LLC Electing S Corporation Status	6A-3
6A.1.1.1.	Reducing Self-Employment Tax	6A-3
6A.1.1.2.	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 Corporation 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 on Multiple Classes of Stock	6A-6
6A.1.2.4.	Restriction on Certain Types of Members	6A-6
6A.2.	Electing Out of S Corporation Status	6A-7
6A.3.	Comparison of Net After-Tax Results Between Owners of an LLC Taxed as an S Corporation and the Same Entity Taxed as a Partnership.	6A-7
6A.3.1.	Hypothetical Situation	6A-7
6A.3.2.	Tax on Investment Earnings.	6A-9
6A.3.3.	Partner Above-the-Line Deduction for Self-Employment Tax	6A-9
6A.4.	Why Use an LLC for S Corporation Treatment?	6A-9
6A.4.1.	Overview	6A-9
6A.4.2.	Advantages of Using the LLC Form	6A-10
6A.4.3.	Disadvantages of Using the LLC Form	6A-10

TABLE OF CONTENTS

6A.5. Procedures for LLC Electing S Corporation Status	6A-11
6A.5.1. Operating Agreement; Ownership Interests.	6A-11
6A.5.2. Protecting the Election.	6A-12
6A.5.3. Making the Election.	6A-12
6A.5.3.1 Eligibility for the Election Generally	6A-13
6A.5.3.2. Attribution Rules for S Corporation Stock Ownership.	6A-13
6A.5.3.3. Trusts and LLCs as S Corporation Shareholders	6A-14
6A.5.3.4. Classes of Stock	6A-14
6A.5.3.5. Subsidiary Entities	6A-14
6A.5.4. Operating Agreement.	6A-15
 CHAPTER 7: MANAGEMENT PROVISIONS.	 7-1
7.1. Overview of Management Issues	7-3
7.1.1. Introduction	7-3
7.1.2. Alternative Management Structures.	7-3
7.1.3. Tax Aspects	7-4
7.2. Management by the Members	7-4
7.2.1. General.	7-4
Form 7-1. Simple Member-Management Provision.	7-7
Form 7-2. Member-Management but with Appointment of Ministerial Manager	7-7
7.2.2. Action by the Members	7-7
7.3. Management by One or More Managers	7-10
7.3.1. General.	7-10
7.3.2. Powers of a Manager	7-10.2
Form 7-3. Manager with Broad Authority; Reservation of Certain Authority to Members.	7-10.4
Form 7-4. Manager with Broad Authority — Alternate Form; No Reservation of Authority to Members	7-13
7.3.3. Management by Management Committee	7-13
Form 7-5. Management Committee	7-14
7.4. Removal, Replacement and Resignation of Managers	7-16
Form 7-6. Removal of Manager for Any Reason	7-17
Form 7-7. Removal of Manager for Only Specified Reasons.	7-17

7.5.	Meetings of Members	7-18
	Form 7-8. Procedure for Calling and Holding Meetings . . .	7-19
7.6.	Informal Action of Members and Managers; Form of Member and Manager Consents	7-19
	Form 7-9. Informal Actions	7-20
	Form 7-10. Form of Consent of Members	7-21
7.7.	Resolution of Deadlocks	7-22
	Form 7-11. Arbitration of Deadlock	7-22.1
	Form 7-12. “Cut-and-Choose” in the Event of Deadlock . . .	7-23
	Form 7-13. Submission of Sealed Bids in the Event of Deadlock	7-24
7.8.	Compensation and Reimbursement	7-25
	Form 7-14. No Arrangement for Compensation (Member-Managed)	7-26
	Form 7-15. Compensation (Manager-Managed)	7-26
	Form 7-16. Extraordinary Compensation	7-27
7.9.	Standard of Care and Duty of Loyalty	7-27
7.9A.	Delaware and Comparison to Washington, Oregon and Alaska . .	7-33
	Form 7-17. Limitation of Liability	7-36
	Form 7-18. Independent Activities	7-37
	Form 7-19. Standard of Care and Duty of Loyalty	7-37
	Form 7-20. Standard of Care and Duty of Loyalty — Same Obligations as Imposed on Corporate Directors . .	7-39
7.10.	Indemnification	7-39
	Form 7-21. Indemnification	7-41
7.11.	Confidentiality	7-41
	Form 7-22. Confidentiality	7-42
 CHAPTER 8: ADMISSION OF NEW MEMBERS; TRANSFER AND BUY-SELL PROVISIONS . . .		
8.1.	Admission of New Members	8-5
8.1.1.	Acquisition of Interest from LLC	8-5
	8.1.1.1. Requisite Approval	8-5
	8.1.1.2. Subscription Agreement	8-5
	8.1.1.3. Effective Time of Admission	8-6
	8.1.1.4. Tax Considerations	8-6
	8.1.1.5. Securities Laws	8-7
	Form 8-1. Simple Subscription Agreement for LLC Membership Interest	8-7

TABLE OF CONTENTS

	Form 8-2.	Long Form Subscription Agreement for LLC Membership Interest	8-9
8.1.1.6.	Amendment of LLC/Operating Agreement		8-12
	Form 8-3.	First Amendment to [LLC] [Operating] Agreement Admitting Assignee of Interest as a Member	8-13
8.1.2.	Acquisition of Interest from Another Member		8-15
	8.1.2.1.	Requisite Approval	8-15
	8.1.2.2.	Assignment	8-16
	8.1.2.3.	Charging Order	8-16
	8.1.2.4.	Effective Time	8-17
	8.1.2.5.	Tax Considerations	8-18
	8.1.2.6.	Assignment Agreement	8-18.1
	Form 8-4.	Assignment of LLC Membership Right	8-18.1
	8.1.2.7.	Joinder of Assignee	8-22
	Form 8-5.	Joinder Agreement	8-22
8.2.	General Introduction to Effect of an Assignment of an LLC Interest and the Status of the Parties Involved in Such a Transfer		8-23
	8.2.1.	Status of an Assignee of an LLC Interest Who Has Not Been Admitted as a Member	8-23
	8.2.2.	Rights and Obligations of an Assignee of an LLC Interest Who Has Been Admitted as a Member	8-24
	8.2.3.	Status of the Assignor Following Assignment	8-24
8.3.	Tax Aspects of Transfer Restrictions		8-25
	8.3.1.	Partnership Classification	8-25
	8.3.2.	Termination of the LLC	8-25
	8.3.3.	Basis Issues	8-26
	8.3.4.	Publicly Traded Partnership Issues	8-26
8.4.	Preliminary Drafting Considerations		8-27
	Form 8-6.	Definitional Provision — Transfer	8-27
	Form 8-7.	Definitional Provisions — Interest and Membership Rights	8-28
8.5.	Drafting Transfer Provisions That Follow the Default Provisions of the Acts		8-28
	Form 8-8.	Transfer Provision Following Acts' Default Provisions	8-29

8.6.	Drafting Transfer Provisions That Permit Free Transferability of Interests	8-29
	Form 8-9. Free Transferability of Interests and Rights	8-29
8.7.	Drafting Transfer Provisions That Absolutely Prohibit Transfers of Any Kind	8-29
	Form 8-10. Absolute Prohibition of Transfers	8-30
8.8.	Drafting Transfer Provisions That Permit Transfers Only on Certain Conditions	8-30
8.8.1.	In General	8-30
	Form 8-11. Transfer Permitted on Satisfaction of Certain Conditions (Requires Member Vote to Admit Transferee as Member).	8-31
	Form 8-12. Transfer Permitted on Satisfaction of Certain Conditions (No Member Vote Required to Admit Transferee as Member).	8-32
8.8.2.	First Refusal Rights	8-33
	Form 8-13. Right of First Refusal; LLC Purchases; Installments Allowed	8-33
	Form 8-14. Right of First Refusal; Member's Purchase Payment Terms Matched	8-35
	Form 8-15. Right of First Offer, LLC Purchases; Cash Purchase	8-37
8.8.3.	Admission of Transferee as a Member	8-38
	Form 8-16. Transferee Not Admitted as Member Without Consent of Members	8-38
	Form 8-17. Transferee Automatically Admitted as Member	8-39
8.8.4.	Transfers to Members' Affiliates and Family.	8-39
	Form 8-18. Definitional Provision — Family	8-39
	Form 8-19. Transfers to Affiliates and Family	8-40
8.9.	Withdrawal by the Assigning Member	8-40
8.9.1.	Voluntary Withdrawal	8-40
	Form 8-20. Voluntary Withdrawal Defined.	8-40
	Form 8-21. Voluntary Withdrawal — Not Permitted	8-41
8.9.2.	Involuntary Withdrawal	8-41
	Form 8-22. Involuntary Withdrawal Defined (Long Form).	8-41

TABLE OF CONTENTS

Form 8-23.	Involuntary Withdrawal Defined (Short Form)	8-43
8.10.	Consequences of Termination in General	8-43
8.10.1.	Dissolution of the LLC	8-43
8.10.2.	Redemption of the Dissociating/Terminating Member's Interest upon Continuation of the LLC after a Dissolution	8-43
Form 8-24.	Successor of Withdrawn Member Continues as Unadmitted Assignee	8-45
Form 8-25.	Successor of Withdrawn Member Continues as Substitute Member	8-45
8.11.	Creating Buy-Out Rights	8-46
Form 8-26.	Optional Buy-Out; Company Buys; Cash Purchase	8-46
Form 8-27.	Mandatory Buy-Out; Members Buy; Installments Permitted	8-47
8.12.	Valuation Provisions	8-48
Form 8-28.	Agreed Value	8-49
Form 8-29.	Book Value	8-49
Form 8-30.	Appraised Value	8-50
Form 8-31.	"Baseball Arbitration" Method of Determining Fair Market Value	8-51
8.13.	Miscellaneous Transfer Provisions	8-52
Form 8-32.	Installment Buy-Outs	8-52
Form 8-33.	Insolvency Form	8-53
Form 8-34.	Members Not Required to Assume Company's Obligation	8-54
CHAPTER 9:	DISSOLUTION	9-1
9.1.	Introduction	9-3
9.2.	Overview of the Dissolution Provisions	9-3
9.3.	Events of Dissolution	9-5
Form 9-1.	Dissolution — Overrides Provisions of the Act Mandating Dissolution on an Event of Dissolution.	9-8
Form 9-2.	Dissolution — Comprehensively Describes All Events of Dissolution; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	9-8

Form 9-3.	Dissolution — When Less Than All Events of Withdrawal Result in Dissolution; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	9-9
Form 9-4.	Dissolution — Refers to Events of Withdrawal under Another Section; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	9-10
9.4.	Vote Required in Order to Continue after Event of Dissolution. . .	9-10
Form 9-5.	Less Than Unanimous Vote Required to Continue after Dissolution	9-11
Form 9-6.	Sample Resolutions Approving Continuation of Business after Dissolution	9-11
9.5.	Procedure for Winding Up and Distribution of Assets	9-13
Form 9-7.	Procedure for Winding Up in Member-Managed LLC.	9-15
Form 9-8.	Procedure for Winding Up in Manager-Managed LLC.	9-15
Form 9-9.	Procedure for Winding Up in Member-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-15
Form 9-10.	Procedure for Winding Up in Manager-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-16
Form 9-11.	Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee	9-16
9.6.	Termination of the LLC; Known and Unknown Claims	9-17
Form 9-12.	Certificate of Dissolution (Washington)	9-22
Form 9-13.	Articles of Amendment/Dissolution (Oregon)	9-24
Form 9-14.	Articles of Dissolution (Alaska)	9-25
Form 9-15.	Sample Resolution Approving Dissolution of Manager-Managed or Member-Managed Limited Liability Company (Washington, Oregon, Alaska)	9-29
CHAPTER 10:	BOOKS, RECORDS, AND ACCOUNTING	10-1
10.1.	Introduction	10-3
10.2.	Banking	10-3
Form 10-1.	Bank Accounts	10-3

TABLE OF CONTENTS

10.3. Records	10-3
Form 10-2. Maintenance of Records — Member-Managed LLC (Short Form).	10-6
Form 10-3. Maintenance of Records — Manager-Managed LLC (Short Form).	10-6
Form 10-4. Maintenance of Records — Manager-Managed LLC (Long Form).	10-7
10.4. Accounting Period	10-7
Form 10-5. Calendar Year Accounting Period Specified.	10-8
Form 10-6. Fiscal Year Accounting Period Specified	10-8
Form 10-7. Year to Be Determined by Members	10-8
Form 10-8. Annual Accounting Period Established by Manager	10-8
10.5. Reports	10-8
Form 10-9. Preparation of Reports to be Filed with the State	10-9
Form 10-10. Preparation of Reports to Members (Short Form) for Member-Managed or Manager-Managed LLC	10-10
Form 10-11. Preparation of Reports to Members (Long Form) for Manager-Managed LLC	10-10
Form 10-12. Preparation of Indemnification Report for Manager-Managed LLC (Oregon Only).	10-11
10.6. Tax Matters Member.	10-11
Form 10-13. Tax Matters Member (Short Form).	10-12
Form 10-14. Tax Matters Member (Long Form).	10-12
10.7. Tax Elections.	10-13
Form 10-15. Tax Elections — Manager-Managed LLC	10-13
Form 10-16. Tax Elections — Applies to Code Section 754 Only — For Use in Either Member-Managed or Manager-Managed LLC	10-13
10.8. Title to Property	10-13
Form 10-17. Title to Property — In Company Name	10-14
Form 10-18. Title to Company Property — Use of Nominee Permitted (Washington and Oregon Only).	10-14

PART III
MISCELLANEOUS

CHAPTER 11: REORGANIZATION OF THE LLC	11-1
11.1. In General	11-3
11.2. Conversion of an Existing Entity into an LLC	11-3
11.2.1. In General	11-3

11.2.1.1.	Special Oregon and Alaska Rules on Statutory Conversions	11-3
Form 11-1.	Form of Certificate of Conversion into [Oregon LLC] [Alaska LLC]	11-5
11.2.1.2.	Special Washington Rules on Statutory Conversions	11-6
11.2.1.3.	General Note on Conversions and Bankruptcy	11-6.1
11.2.2.	Conversion of a General Partnership to an LLC	11-6.2
11.2.2.1.	Advantages	11-6.2
11.2.2.2.	Methods of Conversion	11-6.2
11.2.2.3.	Tax Considerations	11-6.2
11.2.2.3.1.	Will LLC Be Treated as a Partnership for Purposes of Federal Income Taxation?	11-7
11.2.2.3.2.	Will the Conversion Be a Taxable Event?	11-7
11.2.2.3.3.	Other Considerations	11-9
Form 11-1A.	Agreement to Change General Partnership to LLC	11-10
Form 11-2.	Preamble – Conversion of General Partnership into LLC	11-12
Form 11-3.	Term Is Continuation of Term of Partnership	11-12
Form 11-4.	Initial Capital Contri- butions – In Property Consisting of Partner- ship Interests in LLC's Predecessor	11-13
Form 11-5.	Assignment of General Partnership Interests to LLC	11-13
Form 11-6.	Resolutions of Members Approving Liquidation of Partnership into LLC	11-14

TABLE OF CONTENTS

11.2.3.	Changing a Limited Partnership into an LLC	11-14
11.2.3.1.	Method of Conversion	11-14
11.2.3.2.	Tax Considerations.	11-14
11.2.4.	Changing a Corporation into an LLC	11-15
11.2.4.1.	Advantages and Disadvantages	11-15
11.2.4.2.	Methods of Conversion	11-16
11.2.4.3.	Tax Considerations.	11-16
11.3.	Conversion of an LLC into a Corporation or Partnership.	11-18
11.3.1.	Advantages and Disadvantages	11-18
11.3.2.	Methods of Conversion	11-18
11.3.3.	Tax Considerations.	11-19
11.4.	Recapitalizing the LLC.	11-19
11.4.1.	Advantages and Disadvantages	11-19
11.4.2.	Practical Considerations.	11-20
	Form 11-7. Form of Amendment of [LLC Agreement] [Operating Agreement].	11-20
11.4.3.	Tax Considerations.	11-21
11.5.	Mergers Involving a Washington, Oregon or Alaska LLC	11-22
11.5.1.	Types of Entities with which LLC May Merge; Requirements.	11-22
11.5.1.1.	Approval by Members	11-23
11.5.1.2.	Rights of Dissenters from Merger	11-24
11.5.1.3.	Execution and Filing of Articles of Merger	11-26
11.5.1.4.	Effective Date of Merger	11-27
11.5.1.5.	Abandonment of Merger	11-27
11.5.1.6.	Tax Effects	11-28
11.5.1.6.1.	Mergers of LLC into LLCs or Partnerships	11-28.1
11.5.1.6.2.	Merger of an LLC into a Corporation	11-29
11.5.1.6.3.	Merger of a Corporation into an LLC	11-30
	Form 11-8. Merger of Two [Washington] [Oregon] [Alaska] LLCs.	11-30
	Form 11-9. Merger of Three [Washington] [Oregon]	

	[Alaska] LLCs with Different Classes of Interests	11-32
11.5.1.6.4.	Tax-Free Merger of a Corporation into a Single-Member LLC	11-35
CHAPTER 12:	DOING INTERSTATE BUSINESS	12-1
12.1.	Foreign LLCs Doing Business in Washington, Oregon and Alaska	12-2
12.1.1.	Governing Law	12-2
12.1.2.	Doing Business	12-2
12.1.3.	Procedure for Registration	12-4
Form 12-1.	Foreign Registration Statement — Limited Liability Company (Washington)	12-7
Form 12-2.	Application for Authority to Transact Business — Foreign Limited Liability Company (Oregon)	12-10.3
Form 12-3.	Application for Registration of a Foreign Limited Liability Company (Alaska)	12-11
12.1.4.	Filing Fee	12-16
12.1.5.	Cancellation of Registration/Withdrawal	12-16
Form 12-4.	Statement of Withdrawal of Foreign Registration (Washington)	12-18
Form 12-5.	Withdrawal of Authority to Transact Business (Oregon)	12-20
Form 12-6.	Cancellation of Authority to Transact Business (Alaska)	12-20.1
12.1.6.	Doing Business without Registration	12-21
12.1.7.	Merger	12-22
Form 12-7.	Articles of Merger of Washington LLC and Foreign LLC	12-23
Form 12-8A.	Articles of Merger — Multi-Entity Merger (Oregon)	12-25
Form 12-8B.	Articles of Merger — 90% Owned Subsidiary (Oregon)	12-26
Form 12-9.	Articles of Merger of Alaska LLC	12-27
12.2.	Issues Arising in Doing Business as a Foreign LLC	12-31

TABLE OF CONTENTS

CHAPTER 13: PROFESSIONAL LIMITED LIABILITY COMPANIES 13-1

13.1. Introduction 13-2

13.2. Washington 13-2

 13.2.1. Formation 13-2

 13.2.2. Insurance 13-3

 13.2.3. Liability 13-3

 13.2.4. Comparison of PLLCs, Corporations and Professional Service Corporations 13-4

 13.2.5. Comparison of PLLCs and General Partnerships 13-5

 13.2.6. Comparisons of PLLCs and Limited Liability Partnerships 13-5

13.3. Oregon 13-6

 13.3.1. Comparison of LLCs and Professional Corporations 13-7

 13.3.2. Comparison of LLCs and Partnerships 13-7

 13.3.3. Comparison of LLCs and Limited Liability Partnerships 13-7

13.4. Alaska 13-8

 13.4.1. Comparison of LLCs and Professional Corporations 13-9

 13.4.2. Comparison of LLCs and Partnerships 13-9

 13.4.3. Comparison of LLCs and Limited Liability Partnerships 13-9

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 14-5

 Form 14-2. Indemnity and Contribution Agreement — Obligation Guaranteed Only by Members 14-6

 Form 14-3. Unconditional Personal Guaranty 14-9

14.3. Pledges of LLC Interests 14-11

 Form 14-4. Collateral Assignment of Membership Interest and Security Agreement 14-12

 Form 14-5. Financing Statement 14-22

CHAPTER 15: LIMITED LIABILITY PARTNERSHIPS	15-1
15.1. History of the LLP	15-5
15.2. Treatment of General Partnerships and Partners.	15-5
15.3. Tax Status and Effect of Conversion.	15-7
15.4. Limitation of Liability and Insurance Requirements	15-7
15.4.1. Washington.	15-8
15.4.1.1. Nature of LLP Statutes.	15-8
15.4.1.2. History of LLP Statutes	15-8
15.4.1.3. Limitations of Liability	15-8
15.4.1.4. Governing Law.	15-9
15.4.1.5. Insurance Requirements.	15-9
15.4.2. Oregon	15-10
15.4.2.1. Nature of LLP Statutes.	15-10
15.4.2.2. History of LLP Statutes	15-10
15.4.2.3. Governing Law.	15-10
15.4.2.4. Limitations of Liability	15-11
15.4.2.5. Insurance Requirements.	15-11
15.4.3. Alaska	15-11
15.4.3.1. Nature of LLP Statutes.	15-11
15.4.3.2. History of LLP Statutes	15-12
15.4.3.3. Governing Law.	15-12
15.4.3.4. Limitations of Liability	15-12
15.4.3.5. Insurance Requirements.	15-12
15.5. Fiduciary Duties of Partners	15-13
15.5.1. Washington	15-13
15.5.2. Oregon	15-13
15.5.3. Alaska	15-14
15.6. Maintenance of Records and Rights of Partners to Information	15-15
15.6.1. Washington	15-15
15.6.2. Oregon	15-16
15.6.3. Alaska	15-16
15.7. Formation and Registration of an LLP	15-17
15.7.1. Washington	15-17
15.7.1.1. General Contact and Filing Information	15-17
15.7.1.2. Application for Registration by a Domestic LLP	15-18
15.7.1.3. Registered Agent and Registered Office	15-18

TABLE OF CONTENTS

	Form 15-1. Certificate of Limited Liability Partnership (Washington)	15-19
15.7.2.	Oregon	15-22.2
15.7.2.1.	General Contact and Filing Information	15-22.2
15.7.2.2.	Application for Registration by a Domestic LLP	15-23
15.7.2.3.	Registered Agent and Registered Office	15-23
	Form 15-2. Application for Registration — Limited Liability Partnership (Oregon)	15-24
	Form 15-3. Amendment/Cancellation — Limited Liability Partnership (Oregon).	15-24.1
15.7.3.	Alaska	15-25
15.7.3.1.	General Contact and Filing Information	15-25
15.7.3.2.	Application for Registration by a Domestic LLP	15-25
	Form 15-4. Statement of Qualification (Alaska).	15-27
	Form 15-5. Amended Limited Liability Partnership Statement (Alaska).	15-32
15.7.3.3.	Registered Agent and Registered Office	15-35
15.8.	Name of the LLP	15-35
15.8.1.	Washington	15-35
	Form 15-6. Application for Reservation of Washington (Domestic) Name	15-36
15.8.2.	Oregon	15-38
	Form 15-7. Assumed Business Name — New Registration (Oregon)	15-39
15.8.3.	Alaska	15-40
	Form 15-8. Business or Corporation Name Reservation Application (Alaska)	15-40.1
	Form 15-8A. New Business Name Registration (Alaska)	15-40.4

15.9. Annual Filing Requirements	15-40.8
15.9.1. Washington	15-40.8
Form 15-9. Annual Report (Washington)	15-40.9
15.9.2. Oregon	15-40.13
Form 15-10. Limited Liability Partnership — Information Change (Oregon)	15-40.14
15.9.3. Alaska	15-41
15.10. LLP Partner Dissociation	15-41
15.10.1. Washington	15-41
15.10.2. Oregon	15-42
15.10.3. Alaska	15-43
Form 15-11. Certificate of Cancellation (Alaska).	15-45
15.11. Transfer of LLP Interests	15-46.3
15.11.1. Washington	15-46.3
15.11.2. Oregon	15-46.3
15.11.3. Alaska	15-47
15.12. Dissolution of an LLP	15-48
15.12.1. Washington	15-48
15.12.1.1. Voluntary Withdrawal of Registration of a Domestic LLP	15-48
15.12.1.2. Administrative Revocation of Registration of a Domestic LLP	15-49
15.12.1.3. Effects of Merger	15-49
15.12.2. Oregon	15-49
15.12.2.1. Voluntary Cancellation of Registration by a Domestic LLP	15-50
15.12.2.2. Administrative Revocation of Registration of a Domestic LLP	15-50
15.12.2.3. Effects of Merger	15-51
15.12.3. Alaska	15-51
15.12.3.1. Voluntary Cancellation of Registration by a Domestic LLP	15-51
15.12.3.2. Administrative Revocation of Registration of a Domestic LLP	15-52
15.12.3.3. Effects of Merger	15-52
15.13. Treatment of Foreign LLPs	15-53
15.13.1. Transacting Business Definition	15-53
15.13.2. Limitation of Liability and Insurance Requirements	15-54
15.13.3. Formation and Registration of Foreign LLPs	15-55

TABLE OF CONTENTS

Form 15-12. Application for Authorization — Foreign Limited Liability Partnership (Oregon) 15-57

Form 15-13. Amendment/Withdrawal — Foreign Limited Liability Partnership (Oregon) 15-58

Form 15-14. Statement of Foreign Qualification (Alaska) 15-60

15.13.4. Name of Foreign LLPs 15-64.1

Form 15-15. Application for Registration of Foreign Name (Washington) 15-64.2

15.13.5. Annual Filing Requirements 15-65

15.13.6. Dissolution of Foreign LLPs 15-67

15.13.6.1. Withdrawal of Registration by a Foreign LLP (Washington). 15-67

15.13.6.2. Administrative Revocation of Registration of a Foreign LLP (Washington) 15-67

15.13.6.3. Withdrawal of Authorization by a Foreign LLP (Oregon) 15-67

15.13.6.4. Administrative Revocation of Authorization by Secretary of State (Oregon) 15-67

15.13.6.5. Voluntary Cancellation of Foreign LLP’s Statement of Qualification (Alaska) 15-68

15.13.6.6. Administrative Revocation of Foreign LLP’s Statement of Qualification (Alaska) 15-69

CHAPTER 15A: LIMITED LIABILITY LIMITED

PARTNERSHIPS 15A-1

15A.1. History of the LLLP. 15A-3

15A.2. Nature and History of LLLP Statutes 15A-3

15A.2.1. Washington 15A-3

15A.2.1.1. Nature of LLLP Statutes 15A-3

15A.2.1.2. History of LLLP Statutes. 15A-4

15A.3. Limitation of Liability and Governing. 15A-4

15A.3.1. Washington 15A-4

15A.3.1.1. Limitations of Liability 15A-4

15A.3.1.2. Governing Law 15A-5

15A.4. Fiduciary Duties of Partners 15A-6

15A.4.1.	Washington	15A-6
15A.4.1.1.	Fiduciary Duties of Limited Partners	15A-6
15A.4.1.2.	Fiduciary Duties of General Partners	15A-6
15A.5.	Records Required to Be Maintained and Rights of Partners to Information	15A-7
15A.5.1.	Washington	15A-7
15A.5.1.1.	Records Required to Be Maintained	15A-7
15A.5.1.2.	Rights of Partners to Information	15A-8
15A.5.1.3.	Limited Partners' Right to Information	15A-8
15A.5.1.4.	General Partners' Right to Information	15A-9
15A.6.	Formation of an LLLP	15A-10
15A.6.1.	Washington	15A-10
15A.6.1.1.	Formation of an LLLP	15A-10
15A.6.1.2.	Agent for Service of Process and Registered Office	15A-10
15A.6.1.3.	Certificate of Existence	15A-11
15A.7.	Name of the LLLP	15A-11
15A.7.1.	Washington	15A-11
15A.8.	Annual and Electronic Filing Requirements	15A-12
15A.8.1.	Washington	15A-12
15A.8.1.1.	Annual Filing Requirements	15A-12
15A.8.1.2.	Electronic Filing	15A-13
15A.9.	Contributions and Distributions	15A-13
15A.9.1.	Washington	15A-13
15A.9.1.1.	Contributions	15A-13
15A.9.1.2.	Distributions	15A-13
15A.9.1.3.	Allocations	15A-15
15A.10.	Dissociation of Members	15A-15
15A.10.1.	Washington	15A-15
15A.10.1.1.	Dissociation as Limited Partner	15A-15
15A.10.1.2.	Dissociation as General Partner	15A-17
15A.11.	Transfer of LLLP Interests	15A-18
15A.11.1.	Washington	15A-18
15A.12.	Dissolution of an LLLP	15A-19
15A.12.1.	Washington	15A-19

TABLE OF CONTENTS

15A.12.1.1. Nonjudicial & Judicial Dissolution/ Winding Up	15A-19
15A.12.1.2. Administrative Dissolution	15A-20
15A.12.1.3. Statement of Termination	15A-21
15A.13. Merger or Conversion in Respect of an LLLP.	15A-21
15A.13.1. Washington	15A-21
15A.13.1.1. Conversion	15A-21
15A.13.1.2. Merger	15A-23
15A.14. Treatment of Foreign LLLPs	15A-25
15A.14.1. Washington	15A-25
15A.14.1.1. Authority to Transact Business	15A-25
15A.14.1.2. Registered Agent	15A-27
15A.14.1.3. Annual Filing Requirements	15A-27
15A.14.1.4. Cancellation of Certificate of Authority	15A-28

CHAPTER 16: COMPENSATION STRATEGIES FOR THE LLC.

	16-1
16.1. Introduction	16-2
16.2. Taxation of Equity Compensation — Section 83 of the Code	16-3
16.3. Equity-Based Compensation in Corporations	16-3
16.4. Incentive Stock Options	16-5
16.5. Capital Interests	16-5
16.6. Profits Interests	16-7
16.6.1. Current Law	16-7
16.6.2. Proposed Regulations.	16-8.1
16.6.2.1. Description of Proposed Regulations and Proposed Revenue Procedure	16-8.1
16.6.2.2. Language to Include in LLC Agreements — Ability to Amend	16-8.3
16.6.2.2.1. Example of Language to Include in LLC Agreement	16-8.3
16.7. Member Involvement.	16-9
16.8. Loss Allocation and Debt Guarantees	16-9
16.9. Equity vs. Non-Equity Incentive Compensation	16-10
16.10. Self-Employment Tax	16-11
16.11. Voting, Fiduciary Duties, Inspection Rights, and Other Duties to Equity Holders	16-12
16.12. Securities Law Issues.	16-13

CHAPTER 17:	STRUCTURING ISSUES FOR INTERNATIONAL PRIVATE INVESTMENT FUNDS: GOVERNANCE AND TAX HURDLES TO CLEAR	17-1
17.1.	Introduction	17-3
17.2.	Governance Hurdles	17-3
17.2.1.	What Do We Mean by Governance Issues?	17-3
17.2.2.	What to Do When Things Go Wrong.	17-5
17.2.2.1.	Practical Remedies in Case of Adverse Events — Suspension vs. Termination.	17-5
17.2.2.2.	Departure of Key Personnel	17-6
17.2.2.3.	Bad Acts by the Manager or Its Principals	17-7
17.2.3.	Standard of Care	17-8
17.2.4.	Administrative Governance Issues.	17-9
17.2.5.	Enforceability Issues	17-10
17.3.	Taxation Hurdles.	17-10
17.3.1.	In General	17-10
17.3.2.	Hurdles with Respect to Foreign Investors	17-12
17.3.2.1.	United States Taxation of Foreign Investors in Funds Investing in the United States	17-12
17.3.2.2.	United States Taxation of Foreign Investors in Funds Investing Outside the United States.	17-15
17.3.3.	Hurdles with Respect to Tax-Exempt United States Investors.	17-16
17.3.3.1.	Tax-Exempt Investors Face Taxation on Certain Types of UBTI	17-16
17.3.3.2.	Structuring Options to Minimize Accrual of UBTI	17-17
17.3.4.	Hurdles with Respect to Taxable United States Investors.	17-18
17.3.4.1.	Foreign Funds Treated as Corporations for Purposes of United States Taxation	17-18
17.3.4.2.	Foreign Funds Recognized as Partnerships for Purposes of United States Taxation	17-20
17.4.	Summary of Structuring Considerations	17-20

CHAPTER 18: LLCS AS TAX-EXEMPT 501(C)(3) ORGANIZATIONS.....	18-1
18.1. Introduction	18-2
18.2. Formation Documents	18-3
18.2.1. Organizational Documents	18-3
18.2.2. Certificate of Formation.....	18-3
Form 18-1. Form of Certificate of Formation [Washington] — Single-Member LLC Owned by a 501(c)(3) Organization	18-4
Form 18-2. Articles of Organization [Oregon and Alaska] — Single-Member LLC Owned by a 501(c)(3) Organization.....	18-5
18.2.3. Operating Agreement.....	18-7
Form 18-3. Form of LLC or Operating Agreement — Single-Member LLC Owned by a 501(c)(3) Organization	18-8
18.3. Tax Consequences	18-24
18.3.1. Reporting	18-24
18.3.2. Charitable Deductions	18-25
18.3.3. Unrelated Business Taxable Income	18-25
18.4. Miscellaneous.....	18-26
18.4.1. Limited Liability Companies with Multiple Members	18-26
CHAPTER 19: SERIES LLC.....	19-1
19.1. Introduction	19-2
19.2. Formation	19-2
19.2.1. Establishment of Series	19-3
19.2.1.1. Generally	19-3
19.2.1.2. Liability Shield.....	19-3
19.2.1.3. Significant Variations in Other States.....	19-4
19.2.2. Members	19-4
19.2.2.1. Creation of Interest.....	19-4
19.2.2.2. Rights	19-5
19.2.2.3. Voting.....	19-5
19.2.2.4. Ceasing to Be a Member	19-5
19.2.3. Management.....	19-6
19.2.4. Distributions.....	19-6
19.2.5. Termination/Winding Up.....	19-6

19.2.6. Foreign LLCs	19-7
19.3. Advantages of the Series LLC	19-7
19.3.1. Liability Shield.	19-7
19.3.2. Administrative Simplification	19-8
19.4. Federal Tax Implications.	19-8
19.4.1. Generally	19-8
19.4.2. Separate vs. Single Entity	19-9
19.4.2.1. Entity Classification.	19-9
19.4.2.2. Business Entity.	19-10
19.4.2.3. Private Letter Ruling 200803004.	19-10
19.4.2.4. Proposed Regulations (September 2010).	19-11
19.4.3. Various Other Tax Aspects.	19-12
19.5. State and Local Tax Implications	19-12

CHAPTER 20: SALE OF LIMITED LIABILITY COMPANY INTERESTS 20-1

20.1. Introduction	20-2
20.2. Form of Unit Purchase Agreement	20-2
20.3. Purchase Price; Holdback; Transfer of Units	20-2
20.4. Representations and Warranties	20-3
20.5. Closing	20-5
20.6. Indemnification.	20-5
20.7. Other Provisions	20-7
20.8. Federal Income Tax Considerations	20-7

CHAPTER 21: BANKRUPTCY. 21-1

21.1. Overview.	21-3
21.2. Applying Bankruptcy Law to LLCs	21-4
21.2.1. Eligibility of an LLC to File a Bankruptcy Petition.	21-4
21.2.2. Authority to File a Bankruptcy Petition – Voluntary and Involuntary Cases	21-4
21.2.2.1. Statutory Power to File.	21-6
21.2.2.2. Contractual Power to File.	21-7
21.2.2.3. Effect of Non-Bankruptcy Law	21-9
21.2.2.4. Using Bankruptcy-Remote Techniques	21-10
21.2.2.5. Involuntary Bankruptcy Petitions Filed by Members	21-11

TABLE OF CONTENTS

21.2.3.	Venue	21-12
21.2.4.	Effects of an LLC Bankruptcy Filing.	21-12
21.2.4.1.	LLC Bankruptcy Filing as a Dissolution Event	21-12
21.2.4.2.	Composition of the Bankruptcy Estate	21-13
21.2.4.3.	Preferences	21-13
21.2.4.4.	Member or Creditor?	21-14
21.2.4.5.	Applicability of Stay to Members	21-15
21.2.4.6.	Agreement to Issue LLC Interest as an Executory Contract.	21-16
21.2.4.7.	Substantive Consolidation	21-16
21.3.	Bankruptcy of a Member	21-18
21.3.1.	Nature of a Bankrupt Member's Bankruptcy Estate	21-18
21.3.2.	Scope of Estate.	21-19
21.3.2.1.	Pre-Bankruptcy Restrictive Contracts	21-19
21.3.2.2.	Debtor's Interest in the LLC	21-19
21.3.2.3.	Winding Up an LLC In Which a Bankrupt Member Owns an Interest	21-21
21.3.3.	Provisions of State Law and Operating Agreements that Apply in Bankruptcy	21-22
21.3.3.1.	Forfeiture of an Interest May Be Treated as a Preference in Favor of Non-Debtor Members.	21-22
21.3.3.2.	Exercise of Rights as Member or Manager	21-23
21.3.4.	Enforceability of Statutory and Operating Agreement Provisions in the Bankruptcy Context	21-24
21.3.4.1.	Operating Agreement as an Executory Contract.	21-24
21.3.4.2.	Applicable Bankruptcy Law Provisions.	21-28
21.3.4.3.	The Right of a Debtor Member to Assume an Operating Agreement.	21-30
21.3.4.4.	Enforcement of Membership Interest Purchase Options in Bankruptcy	21-32
21.3.4.5.	Other Cases Addressing Assumption and Ipso Facto Issues	21-32
21.3.5.	LLC as Insider of Member Debtor.	21-34

CHAPTER 22: COMPONENTS OF AN LLC MEMBERSHIP INTEREST PURCHASE AGREEMENT.....	22-1
22.1. Introduction.....	22-2
22.2. Recitals.....	22-4
22.3. Definitions.....	22-4
22.4. Purchase and Sale Provisions.....	22-4
22.4.1. Purchase Price Consideration.....	22-4
22.4.2. Price Adjustments.....	22-4
22.4.3. Closing Terms.....	22-5
22.5. Admission of Members and Voting Rights.....	22-6
22.6. Representations and Warranties.....	22-6
22.6.1. Seller's Representations and Warranties.....	22-7
22.6.2. Buyer's Representations and Warranties.....	22-8
22.7. Covenants.....	22-8
22.8. Tax Matters.....	22-9
22.9. Conditions to Closing.....	22-10
22.10. Indemnification.....	22-10
22.11. Termination Provision.....	22-11
22.12. Break-Up Fees.....	22-11
22.13. Miscellaneous Provisions.....	22-12
CHAPTER 23: USE OF LLCs IN ESTATE PLANNING.....	23-1
23.1. Centralized Management.....	23-2
23.2. Wealth Transfer.....	23-3
23.2.1. Minority Interest Discount.....	23-3
23.2.2. Marketability Discount.....	23-4
23.2.3. Limitations.....	23-4
23.3. Out-of-State Real Property.....	23-5
23.3.1. How It Works.....	23-5
23.3.1. Other Considerations.....	23-5
23.4. Other Benefits.....	23-6
23.5. Conclusion.....	23-7
CHAPTER 24: SECTION 199A.....	24-1
24.1. Introduction to the Section 199A Deduction.....	24-5
24.2. Ancillary Consequences of Section 199A Deduction.....	24-9
24.2.1. Items Impacted by Section 199A Deduction.....	24-9
24.2.2. Items Not Impacted by the Section 199A Deduction ...	24-10
24.3. Steps In Computing Section 199A Deduction.....	24-11
24.4. Taxable Income Ceiling on Section 199A Deduction.....	24-15

TABLE OF CONTENTS

24.4.1.	20% of Taxable Income Limitation	24-16
24.5.	Calculating Amount of the Section 199A Deduction	24-17
24.5.1.	Section 199A Deduction: Taxable Income Equal to or Less than Threshold Amount	24-17
24.5.1.1.	Total QBI Amount	24-18
24.5.1.2.	Qualified REIT Dividends and Qualified PTP Income	24-18
24.5.2.	Section 199A Deduction: Taxable Income Exceeds Threshold Amount	24-20
24.5.2.1.	Taxable Income Exceeds Ceiling Amount	24-20
24.5.2.1.1.	Determining the QBI Component	24-20
24.5.2.2.	Taxable Income Within Phase-In Range	24-23
24.5.2.2.1.	Determining the QBI Component	24-23
24.5.2.2.2.	Adjustment to QBI Component For Taxable Income within the Phase-In Range	24-24
24.5.2.2.3.	Adjustment to QBI Component For Taxable Income within Phase-In Range and One or More of the Trades or Businesses Is an SSTB	24-25
24.5.2.2.3.1.	Individual Engaged Only in an SSTB	24-25
24.5.2.2.3.2.	Individual Engaged in Multiple Trades or Businesses One of which Is an SSTB	24-27
24.6.	QBI – Defined	24-27
24.6.1.	Qualified Items	24-28
24.6.2.	Items Not Taken into Account as Qualified Items	24-29
24.6.2.1.	Qualified REIT Dividends and Qualified PTP Income	24-29
24.6.2.2.	Section 1231	24-29
24.6.2.3.	Dividends	24-31
24.6.2.4.	Interest	24-31
24.6.2.5.	Annuities	24-31
24.6.2.6.	CFC Income	24-31
24.6.2.7.	Notional Principal Contracts	24-32

24.6.2.8.	Compensation.	24-32
24.6.2.9.	Guaranteed Payments for Services.	24-33
24.6.2.10.	Section 707(a) Payments for Compensation . .	24-34
24.6.3.	Adjustments in Computing QBI	24-34
24.6.3.1.	Wage Expense	24-34
24.6.3.2.	Allocation of Items among Multiple Businesses	24-35
24.6.3.3.	Section 751(a) and (b) Gain or Loss	24-35
24.6.3.4.	Guaranteed Payments for Capital.	24-35
24.6.3.5.	Section 481 Adjustment	24-36
24.6.3.6.	Suspended Losses.	24-36
24.6.3.7.	NOLs and Section 461(l)	24-37
24.6.3.7.1.	NOLs	24-38
24.6.3.7.2.	Section 461(l)	24-38
24.6.3.8.	Treatment of Deductions	24-39
24.6.4.	Effective Date.	24-40
24.7.	Trade or Business	24-40
24.7.1.	Trade or Business Defined	24-41
24.7.2.	Aggregation of Multiple Trades or Businesses	24-43
24.7.2.1.	Requirements for Aggregation	24-44
24.7.2.2.	Items Aggregated	24-48
24.7.2.3.	Reporting Requirements.	24-48
24.7.2.4.	Effective Dates	24-50
24.8.	Trades or Businesses that do not qualify for the Section 199A Deduction	24-50
24.8.1.	SSTB	24-50
24.8.1.1.	SSTB Includes Trade or Business Defined in Section 1202(e)(3)(A)	24-51
24.8.1.1.1.	Performance of Services in the Field of Health	24-53
24.8.1.1.2.	Performance of Services in the Field of Law	24-54
24.8.1.1.3.	Performance of Services in the Field of Accountancy	24-55
24.8.1.1.4.	Performance of Services in the Field of Actuarial Science . .	24-55
24.8.1.1.5.	Performance of Services in the Field of Performing Arts . .	24-56
24.8.1.1.6.	Performance of Services in the Field of Consulting.	24-56

TABLE OF CONTENTS

24.8.1.1.7.	Performance of Services in the Field of Financial Services . .	24-58
24.8.1.1.8.	Performance of Services in the Field of Athletics	24-59
24.8.1.1.9.	Performance of Services in the Field of Brokerage Services . . .	24-59
24.8.1.1.10.	Any Trade or Business in which the Principal Asset is Reputation or Skill of an Employee or Owner	24-60
24.8.1.2.	Services in Investing, Investment Management, Trading, or Dealing in Securities, Partnership Interests or Commodities	24-61
24.8.1.3.	<i>De Minimis</i> Exception	24-65
24.8.1.4.	Anti-Avoidance Rules	24-67
24.8.2.	Trade or Business of Performing Services as an Employee	24-68
24.8.2.1.	Misclassified Employees	24-69
24.8.2.2.	Officers as Employees	24-69
24.8.2.3.	Anti-Avoidance Rule	24-70
24.8.3.	Effective Date.	24-71
24.9.	Cap For Section 199A Deduction.	24-71
24.9.1.	W-2 Wages	24-71
24.9.1.1.	W-2 Wages Allocable to QBI.	24-72
24.9.1.1.1.	First Step	24-72
24.9.1.1.1.1.	Calendar Year Requirement . . .	24-72
24.9.1.1.1.2.	Wages Defined . .	24-73
24.9.1.1.2.	Second Step	24-75
24.9.1.1.3.	Third Step.	24-76
24.9.1.2.	Allocations of W-2 Wages by an RPE to Its Owners	24-76
24.9.1.3.	Effective Date.	24-76
24.9.2.	UBIA of Qualified Property.	24-77
24.9.2.1.	Qualified Property Defined	24-77
24.9.2.2.	UBIA Defined	24-77
24.9.2.2.1.	UBIA Not Adjusted for Depreciation or Amortization. . .	24-78
24.9.2.2.2.	Basis Adjustments under Section 734(b) or Section 743(b)	24-78

24.9.2.2.3.	Additions to Basis	24-79
24.9.2.3.	UBIA for Qualified Property Transferred in Non-Recognition Transactions.	24-79
24.9.2.4.	Anti-Avoidance Rules	24-80
24.9.3.	Depreciable Period Defined	24-80
24.9.3.1.	Additional Depreciation.	24-81
24.9.3.2.	Non-Recognition Transfers of Qualified Property	24-81
24.9.4.	Section 1031 Like-Kind Exchanges.	24-82
24.9.5.	Partnerships and S Corporations	24-83
24.9.6.	UBIA of Qualified Property Acquired from a Decedent	24-84
24.9.7.	Effective Date.	24-84
24.10.	Reporting Under Section 199A for RPEs and PTPs.	24-85
24.10.1.	Computational and Reporting Rules for RPEs	24-85
24.10.1.1.	Computational Steps.	24-85
24.10.1.2.	Reporting Steps.	24-86
24.10.2.	Computational and Reporting Rules for PTPs.	24-87
24.10.2.1.	Computation Rules	24-87
24.10.2.2.	Reporting Rules	24-87
24.10.3.	Computational and Reporting Rules for Trusts, Estates and Beneficiaries	24-87
24.10.3.1.	Computation Rules	24-87
24.10.3.2.	Tax-Exempt Trusts with UBTI	24-89
24.10.3.3.	Charitable Remainder Trusts.	24-89
24.10.3.4.	Split-Interest Trusts.	24-90
24.10.4.	Effective Date.	24-90

PART IV APPENDICES

APPENDIX A:	[MEMBER-MANAGED] OPERATING/ LLC AGREEMENT	APP A-1
APPENDIX B:	[MANAGER-MANAGED] OPERATING/ LLC AGREEMENT	APP B-1
APPENDIX C:	[MANAGER-MANAGED] OPERATING/ LLC AGREEMENT (ELECTED MANAGER).	APP C-1
APPENDIX C1:	[MEMBER-MANAGED SINGLE- MEMBER LLC] OPERATING/LLC AGREEMENT	APP C1-1

TABLE OF CONTENTS

APPENDIX C2: [MANAGER-MANAGED SINGLE-MEMBER LLC] OPERATING/LLC AGREEMENT APP C2-1

APPENDIX D: REVISED CODE OF WASHINGTON — LLC ACT APP D-1

APPENDIX E: 1997 OREGON REVISED STATUTES — LLC ACT APP E-1

APPENDIX F: ALASKA STATUTES — LLC ACT APP F-1

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

APPENDIX H: IRS FORM 8832 APP H-1

APPENDIX I: UNIT GRANT PLAN AND AGREEMENT .. APP I-1

APPENDIX J: FORM OF OPERATING/LLC AGREEMENT APP J-1

APPENDIX K: NEW TAX SHELTER DISCLOSURE REGULATIONS (TREAS. REG. § 1.6011-4). APP K-1
Form K-1. Reportable Transaction Disclosure Statement. APP K-5

APPENDIX L1: PROPOSED REGULATIONS: TRANSFERS OF PARTNERSHIP EQUITY/ PERFORMANCE OF SERVICES APP L1-1

APPENDIX L2: NOTICE 2005-43 APP L2-1

APPENDIX M: FORM OF SERIES LLC AGREEMENT (DELAWARE) APP M-1

APPENDIX N: FORM OF LIMITED LIABILITY COMPANY AGREEMENT FOR CLOSED-END PRIVATE EQUITY VEHICLE [WASHINGTON/ OREGON/ALASKA] APP N-1

APPENDIX O: IRS SERIES REGULATIONS. APP O-1

APPENDIX P: UNIT PURCHASE AGREEMENT APP P-1

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

PART V
INDICES

Cumulative Table of Internal Revenue Code Citations	INDEX-1
Cumulative Table of Treasury Regulations	INDEX-7
Cumulative Table of Revenue Rulings and Revenue Procedures . . .	INDEX-15
Cumulative Table of Alaska Limited Liability Company Act Sections	INDEX-17
Cumulative Table of Oregon Limited Liability Company Act Sections	INDEX-23
Cumulative Table of Washington Limited Liability Company Act Sections	INDEX-29
Subject Index	INDEX-39
Forms Index	INDEX-53