

Contents

PART I ORGANIZATION

CHAPTER 1: INTRODUCTION	1-1
1.1. Introduction	1-10.1
1.1.1. The Texas Business Organizations Code	1-10.1
1.1.1.1. New Vocabulary	1-13
1.1.2. Overview of LLCs	1-14
1.1.3. Introduction to Drafting LLC Documents	1-15
1.1.3.1. Certificate of Formation	1-15
1.1.3.2. The Company Agreement— The Roots	1-15
1.2. Comparison with Other Entities	1-19
1.2.1. Comparison to Corporations	1-19
1.2.2. Comparison to Partnerships	1-34
1.2.3. Other Differences	1-36
1.2A. Piercing the Veil, Fiduciary Duty, and Liability of Members/Managers under Agency Principles, Texas Water Code, and Texas Family Code	1-36
1.2A.1. LLC Veil Piercing	1-37
1.2A.1.1. Overview and Certain Statutory Provisions	1-38
1.2A.1.2. LLC Veil Piercing Decision Tree	1-43
1.2A.1.3. Piercing to Establish Liability; Veil Piercing Legislation Regarding LLCs	1-45
1.2A.1.4. Reverse Piercing	1-56.2
1.2A.1.5. LLC Piercing to Establish Personal Jurisdiction, Impose Statutory Liability or Defeat Bankruptcy Discharge	1-64.2
1.2A.2. Fiduciary Duty—LLCs	1-79
1.2A.2.1. Introduction and Overview	1-79
1.2A.2.2. Formal Fiduciary Duties to an LLC by its Governing Persons	1-82
1.2A.2.3. Duties of Governing Persons to Members	1-88.1
1.2A.2.4. Duties of Members to Other Members	1-96

CONTENTS

	1.2A.2.5. Duties Arising from or Impacted by Governing Documents	1-98
	1.2A.2.6. Informal Fiduciary Duties	1-112.1
	1.2A.2.7. Trends	1-116
	1.2A.2.8. Summary and Conclusions	1-125
1.2A.3.	Liability of Members/Managers under Agency Principles, Texas Water Code, and Texas Family Code.	1-126
1.3.	History of the LLC; Amendments to BOC Affecting LLC	1-136
1.3.1.	Historical Overview	1-136
	1.3.1.1. Generally	1-136
	1.3.1.2. History of LLCs in Texas Before the BOC.	1-136
1.3.2.	2019 Amendments to BOC	1-138
	1.3.2.1. HB 3603 Amendments to Business Organizations Code	1-138
	1.3.2.1.1. Definitions (BOC Section 101.451(2))	1-139
	1.3.2.1.2. Standing to Bring Proceeding (BOC Section 101.452)	1-139
	1.3.2.1.3. Demand (BOC Section 101.453(b)).	1-140
	1.3.2.1.4. Determination by Governing or Independent Persons (BOC Section 101.454)	1-140
	1.3.2.1.5. Stay of Proceedings (BOC Section 101.455)	1-141
	1.3.2.1.6. Discovery (BOC Section 101.456)	1-141
	1.3.2.1.7. Tolling of Statute of Limitations (BOC Section 101.457)	1-142
	1.3.2.1.8. Dismissal of Derivative Proceeding (BOC Section 101.458)	1-142
	1.3.2.1.9. Allegations after Demand Rejected (BOC Section 101.459)	1-143
	1.3.2.1.10. Payment of Expenses (BOC Section 101.461)	1-143
	1.3.2.1.11. Application to Foreign Limited Liability Companies (BOC Section 101.462)	1-143

1.3.2.1.12.	Closely Held Limited Liability Company (BOC Section 101.463)	1-144
1.3.2.1.12.1.	Definitions (BOC Section 101.463(b) and (c))	1-144
1.3.2.2.	SB 1859 Amendments to the Business Organizations Code	1-145
1.3.2.2.1.	Amendments Implementing Use of an Electronic Data System, Including Block Chain and Distributed Ledger Technology, for Maintenance of Books and Records of a Domestic Entity (BOC Sections 1.002, 3.151, and 3.205)	1-146
1.3.2.2.2.	Delayed Effectiveness (BOC Sections 4.052, 4.053, 4.054, 4.055, 4.056, 4.057(e) and 4.059).	1-147
1.3.2.2.3.	Reproduction or Electronic Transmission of Consent (BOC Section 6.205(b))	1-147
1.3.2.2.4.	Number & Qualifications [of Managers] (BOC Section 101.302(c)).	1-148
1.3.2.2.5.	Supplemental Records Required for Limited Liability Companies (BOC Section 101.501(d)).	1-148
1.3.2.2.6.	Penalty for Refusal to Permit Examination of Certain Records (BOC Section 101.503(a))	1-148
1.3.2.2.7.	Winding Up by Court Order [of a Series] (BOC Section 101.621)	1-148
1.3.2.3.	HB 3609 Amendments to the Business & Commerce Code	1-149
1.3.2.3.1.	Business & Commerce Code Section 71.103(a)	1-149

CONTENTS

	1.3.2.3.2. Business & Commerce Code Sections 71.103(b) and (c) and Section 71.104(b)	1-149
1.3.3.	2021 Amendments to BOC	1-149
1.3.3.1.	SB 1203 Amendments to the Business Organizations Code	1-150
1.3.3.1.1.	Definition of “Member” (BOC Section 1.002(49))	1-150
1.3.3.1.2.	Choice of Forum (BOC Section 2.115)	1-150
1.3.3.1.3.	Certificate of Formation No Longer Controls Whether the LLC Is Governed by Managers or Members (BOC Section 3.010)	1-151
1.3.3.1.4.	Restated Certificates of Formation (BOC Section 3.0611)	1-152
1.3.3.1.5.	Emergency Provisions (BOC Sections 3.251, 3.252, 3.255 and 3.2535)	1-152
1.3.3.1.6.	Delayed Effectiveness of Actions by Written Consent (BOC Sections 6.201 and 6.202)	1-153
1.3.3.1.7.	Regarding Conspicuous Indemnification and Exculpation Provisions (BOC Sections 8.002(a) and 8.005)	1-153
1.3.3.1.8.	Acting as a Governing Person Does Not Constitute Transacting Business (BOC Section 9.251)	1-153
1.3.3.1.9.	Termination and Reinstatement (BOC Sections 11.001(3), 11.153, 11.254 and 11.359)	1-154
1.3.3.1.10.	Reliance on Financial Information to Determine Solvency and New Statute of Limitations for Impermissible Distributions (BOC Section 101.206)	1-154

	1.3.3.1.11. Double Derivative Action.	1-155
1.3.3.2.	SB 1523 Amendments Registered and Protected Series LLCs	1-155
	1.3.3.2.1. Amendment of Company Agreement (BOC Section 101.601(d)).	1-156
	1.3.3.2.2. No Liability for Other Series (BOC Section 101.602(b))	1-157
	1.3.3.2.3. Protected Assets (BOC Section 101.603(b))	1-157
	1.3.3.2.4. Assets “Associated With” and “Assets Of” (BOC Section 101.602(c))	1-157
	1.3.3.2.5. Notice of Series (BOC Section 101.604)	1-157
	1.3.3.2.6. Member or Manager Liability Authorized (BOC Section 101.606(b)).	1-157
	1.3.3.2.7. Voting Rights (BOC Section 101.607)	1-158
	1.3.3.2.8. Reliance on Financial Information to Determine Solvency and New Statute of Limitations for Impermissible Distributions (BOC Section 101.613)	1-158
	1.3.3.2.9. Reinstatement (BOC Section 11.206(b))	1-158
	1.3.3.2.10. Modification by Company Agreement (BOC Section 101.054(a)).	1-158
	1.3.3.3. SB 938 Waiver of Fees for Veterans	1-158
	1.3.3.4. HB 3131 Mailing Address	1-159
1.3.4.	2023 Amendments to BOC	1-159
	1.3.4.1. SB 1514 Amendments to the Business Organizations Code and the Texas Business and Commerce Code	1-159
	1.3.4.1.1. Omission of Initial Mailing Address in Restated Certificate of Formation (BOC Section 3.059(b)).	1-159
	1.3.4.1.2. Delayed Effective Date Filings for Mergers, Conversions and Exchanges (BOC Sections	

CONTENTS

10.151(a) and 10.154(a),
10.006, 10.151(b)(3),
10.154(b)(2), 21.452-21.454,
22.251, 22.256, 22.257
and 101.356). 1-160

1.3.4.1.3. Notice of Dissent Rights;
Surrender by Dissenting
Owners of Ownership Interest
Certificates (BOC Sections
10.355(c) and 10.364(d)) 1-160

1.3.4.1.4. Changes Relating to Assumed
Name Certificates (TBCC
Section 71.002 and BOC
Section 5.051) 1-160

1.3.4.1.5. Replacement Member of LLC
After Termination of Last
Member (BOC Section
11.056) 1-161

1.3.4.1.6. Reinstatement and Continuation
of Terminated Entities (BOC
Sections 11.202 and
11.356) 1-161

1.3.4.1.7. Ratification of Void or
Voidable Acts (BOC Section
101.056) 1-162

1.3.4.1.8. Secretary of State Certificates
of Existence for Registered
Series (BOC Section 4.005) 1-162

1.3.4.1.9. Reinstatement of LLC Series
(BOC Sections 11.253(e) and
11.254(c)) 1-162

1.3.4.1.10. Inspection Rights (BOC
Sections 101.502 and
101.054(e)) 1-162

1.3.4.1.11. Contents of Company
Agreements (BOC Sections
101.001(1), 101.051 and
101.052) 1-163

1.3.4.1.12. Divisive Merger of Series of an
LLC (BOC Section 101.633) 1-164

1.3.4.1.13. Return of Distribution (BOC
Section 101.206(e)) 1-164

	1.3.4.1.14.	Direction of Management of LLC by Governing Authority (BOC Section 101.252)	1-164
	1.3.4.1.15.	Notices for Written Consents (BOC Section 101.358(b))	1-164
	1.3.4.1.16.	Amending Certificate of Registered Series if LLC Changes Name (BOC Section 101.624(d))	1-165
	1.3.4.2.	SB 2314 Amendments to the Business Organizations Code	1-165
	1.3.4.2.1.	LLC Charging Orders (BOC Section 101.112)	1-165
1.3.5.		2025 Amendments to BOC	1-165
	1.3.5.1.	SB 2411 Amendments to the Business Organization Code	1-165
	1.3.5.1.1.	References to District Court Include Business Court.	1-166
	1.3.5.1.2.	Text of BOC Controls Over Jurisprudence from Other States.	1-166
	1.3.5.1.3.	Governing Documents can Choose Exclusive Texas Forum for Internal Entity Claims.	1-166
	1.3.5.1.4.	Approval of Plan, Agreement or Document in Substantially Final Form	1-166.1
	1.3.5.1.5.	Enclosures or Attachments are Part of Notice	1-166.1
	1.3.5.1.6.	Notices to Nonconsenting Owners of Actions by Non-Unanimous Written Consent.	1-166.2
	1.3.5.1.7.	Expanding Exculpation from Monetary Liability to Officers	1-166.2
	1.3.5.1.8.	Disclosure Schedules not Deemed Part of Plan of Merger or Exchange	1-166.3
	1.3.5.1.9.	Authorizing Seller Representatives in Merger and Exchange Transactions	1-166.3

CONTENTS

	1.3.5.1.10.	Authorizing Multiple Actions through Plan of Conversion	1-166.5
	1.3.5.1.11.	LLC Subscriptions	1-166.5
	1.3.5.1.12.	Technical and Clarifying Amendments to the BOC . .	1-166.6
1.3.5.2.	SB 29 Amendments to the Business Organization Code		1-166.7
	1.3.5.2.1.	Waiver of Jury Trial in Governing Documents	1-166.7
	1.3.5.2.2.	Codification of a Business Judgement Rule for LLCs .	1-166.8
	1.3.5.2.3.	Elimination of Duties in LLCs	1-166.9
	1.3.5.2.4.	Member Inspection Rights	1-166.9
	1.3.5.2.5.	Disclosure Only Settlements of Derivative Proceedings on Behalf of LLCs	1-166.10
	1.3.5.2.6.	Overlapping Provisions with SB 2411	1-166.10
1.4.	Classification of the LLC for Federal Income and Texas State Franchise Tax Purposes		1-166.10
1.4.1.	Classification of the LLC as a Partnership for Federal Income Tax Purposes		1-166.11
1.4.2.	Federal Income Tax Consequences of Classification as a Corporation		1-167
1.4.3.	Tax History of the LLC's Classification as a Partnership		1-167
1.4.4.	Understanding the Classification Rules Applicable to Domestic LLCs		1-169
	1.4.4.1.	LLCs Organized on or after January 1, 1997	1-171
	1.4.4.2.	LLCs Organized before January 1, 1997, for Periods before January 1, 1997	1-172
	1.4.4.3.	LLCs Organized before January 1, 1997, for Periods on or after January 1, 1997	1-173
	1.4.4.4.	Elections—First-Time Elections and Changing an Election.	1-174
	1.4.4.5.	Single-Owner LLC; Benefits of and EIN for	1-177
	1.4.4.5.1.	Overview	1-177
	1.4.4.5.2.	Employment and Excise Taxes	1-179

1.4.4.5.3.	Unified Audit Rules	1-180
1.4.4.5.3.1	TEFRA Unified Audit Rules for Tax Years of an LLC Ending on or before December 31, 2017.	1-180
1.4.4.5.3.2	BBA Unified Audit Rules for Tax Years of an LLC Beginning on or after January 1, 2018.	1-180
1.4.4.5.4.	Corporate Reorganizations.	1-181
1.4.4.5.5.	Consolidated Groups	1-184
1.4.4.5.6.	Like-Kind Exchanges.	1-185
1.4.4.5.7.	Bankruptcy Remote Entity.	1-186
1.4.4.5.8.	Single-Member Requirement.	1-186
1.4.4.5.9.	Single-Member LLC in Community Property State.	1-189
1.5.	Election to Be Excluded from Subchapter K.	1-194
1.6	Election to Be Taxed as an S Corporation	1-197
1.7.	The 2017 Tax Act and One Big Beautiful Bill	1-199
1.7.1.	2017 Tax Act’s Impact on the Choice of Entity.	1-199
1.7.2.	Section 199A—Deduction for Qualified Business Income	1-202
1.7.3.	Section 1061—Applicable Partnership Interests (i.e., Carried Interests)	1-206.1
1.7.3.1.	Introduction	1-206.1
1.7.3.2.	Mechanics of Code Section 1061	1-209
1.7.3.2.1.	Applicable Partnership Interest	1-209
1.7.3.2.2.	Exceptions	1-212
1.7.3.2.2.1.	Employee of Another Entity Exception.	1-212
1.7.3.2.2.2.	C Corporation Exception.	1-213
1.7.3.2.2.3.	Capital Exception.	1-213
1.7.3.2.2.3.1.	Distributive Share	1-213
1.7.3.2.2.3.2.	Disposition of API.	1-216

CONTENTS

1.7.3.2.2.4.	Sale of API to Unrelated Party	1-218
1.7.3.2.2.5.	Code Section 1061(b)	1-218
1.7.3.2.3.	Recharacterization Amount	1-218
1.7.3.2.3.1.	Formula for Calculating the Recharacterization Amount	1-220
1.7.3.2.3.2.	Holding Period	1-221
1.7.3.2.4.	Sales to Related Parties	1-223
1.7.3.2.5.	Unrealized Gains and Losses	1-225
1.7.3.2.6.	Gain Waivers	1-225
1.7.3.2.7.	Installment Sales	1-226
1.7.3.3.	Reporting	1-226
1.7.4.	Section 163(j)—Limitation on Interest Deduction	1-226
1.7.5.	Section 708—Repeal of Technical Termination of Partnership	1-228
1.7.6.	Section 461(l)—Limitation on Excess Business Losses of Non-Corporate Taxpayers	1-229
1.7.7.	Section 1446(f)—Withholding on Transfers by Non-U.S. Partners	1-230
1.8.	Tax-Exempt Organizations as LLCs	1-232

CHAPTER 2: FORMATION AND ORGANIZATION 2-1

2.1.	Introduction	2-3
2.1.1.	Pre-formation Contracts	2-3
2.2.	Texas Secretary of State Procedures	2-3
2.2.1.	General	2-3
2.2.2.	Execution	2-4
2.2.3.	Entity Formation and Commencement of Existence	2-4
2.2.4.	Filing Procedures	2-5
2.2.5.	Filing Fees	2-6
2.2.6.	Delayed Effectiveness of Filings	2-6
2.2.6.1.	General	2-6
2.2.6.2.	Subsequent Time or Date	2-6
	Form 2-1. Delayed Effectiveness Provision: Specified Future Time and Date	2-7
2.2.6.3.	Subsequent Events or Facts	2-7

	Form 2-2.	Delayed Effectiveness Provision: Specified Future Event or Facts	2-7
	Form 2-3.	Statement Regarding Delayed Effective Condition	2-8
2.2.7.	Secretary of State Electronic Filings— SOS Direct		2-8
2.3.	Names and Name Reservations		2-8.1
2.3.1.	LLC Names		2-8.1
2.3.2.	Similarity to Names of Other Texas Entities		2-9
	Form 2-4.	Letter of Consent to Use of Name	2-10
2.3.3.	Reservation of Name		2-11
	Form 2-5.	Application for Reservation of LLC Name	2-11
	Form 2-6.	Notice of Transfer of Name Reservation	2-12
2.3.4.	Registration of Name		2-13
	Form 2-7.	Registration of LLC Name	2-13
2.3.5.	Assumed Names		2-14
2.4.	Certificate of Formation		2-14
2.4.1.	Basic Requirements		2-14
	2.4.1.1.	Formation and Existence of Filing Entities	2-14
	2.4.1.2.	Formation and Existence of an LLC	2-14
2.4.2.	Certificate of Formation: Manager-Managed LLC		2-17
	Form 2-8.	Checklist for the Formation of a New LLC	2-17
	Form 2-9.	Certificate of Formation for a Manager-Managed LLC	2-23
2.4.3.	Member-Management Provision		2-25
	Form 2-10.	Certificate of Formation: Member- Management Provision	2-25
2.4.4.	Professional LLC Provision		2-25
	Form 2-11.	Certificate of Formation: Professional LLC Provision	2-25
2.5.	Amendments and Restatements of Certificate of Formation		2-26
	Form 2-12.	Certificate of Amendment to Certificate of Formation	2-26
2.6.	Change of Registered Agent or Registered Office		2-27
	Form 2-13.	Change of Registered Office or Registered Agent	2-28

**PART II
OPERATIONS**

CHAPTER 3: COMPANY AGREEMENT	3-1
3.1. General	3-2
3.2. The BOC’s “Default” Rules	3-3
3.3. Advisability of Adopting a Company Agreement	3-8
3.4. Form and Contents of the Company Agreement	3-9
3.4.1. Written Form	3-9
3.4.2. Contents of the Company Agreement	3-10
3.5. Adoption of Company Agreement	3-11
3.5.1. Member-Managed LLC	3-11
Form 3-1. Introductory Paragraph Regarding Adoption	3-12
3.5.2. Manager-Managed LLC	3-12
3.6. Amendment	3-12
3.6.1. Member-Managed LLC	3-12
Form 3-2. Amendments of Company Agreement by All Members	3-12
Form 3-3. Amendments of Company Agreement by Less than All Members	3-13
3.6.2. Manager-Managed LLC	3-13
Form 3-4. Amendments of Company Agreement by Managers and Less than All Members (Manager- Managed LLC)	3-14
3.7. Form Company Agreement	3-14
 CHAPTER 4: ORGANIZATION	 4-1
4.1. Drafting LLC Organizations Provisions	4-3
4.2. Formation of the LLC	4-3
Form 4-1. Formation—Certificate of Formation Precedes Company Agreement	4-3
Form 4-2. Formation—Company Agreement Precedes Certificate of Formation	4-4
4.3. Name	4-4
Form 4-3. Name	4-4
4.4. Offices and Registered Agent	4-4
Form 4-4. Offices and Registered Agent	4-5
4.5. Purpose	4-6

Form 4-5.	Purpose—Cross-Reference to Certificate of Formation	4-6
Form 4-6.	Purpose—Equivalent Limited-Purpose Provisions in Certificate of Formation and Company Agreement	4-7
Form 4-7.	Purpose—Equivalent Limited-Purpose Provisions in Certificate of Formation and Company Agreement (with “Catch-All” Language)	4-7
Form 4-8.	Purpose—Limited-Purpose Provision in Company Agreement, Notwithstanding Broad-Purpose Provision in Certificate of Formation	4-8
4.6.	Term	4-8
Form 4-9.	Term	4-9
4.7.	Foreign Qualification	4-9
Form 4-10.	Foreign Qualification	4-9
4.8.	Limited Liability of Members and Managers	4-9
Form 4-11.	Disclaimers of State-Law Partnership Status and Personal Liability	4-10
4.9.	Definitions	4-11
4.9.1.	General	4-11
4.9.2.	Definitions of “Interest” or “Membership Interest,” “Membership Rights,” and “Member”	4-11
Form 4-12.	Definitions of “Interest,” “Membership Rights,” and “Member”	4-14
4.9.2.1.	Certain Limitations on Definitions of “Interest,” “Membership Rights,” and “Member”	4-15
4.9.3.	Other General Definitions	4-16
Form 4-13.	General Definitions	4-16
4.10.	General Provisions	4-18
Form 4-14.	General Provisions—Long Form	4-18
Form 4-15.	General Provisions—Short Form	4-21
4.11.	Post-Organization Communication with Clients	4-23
Form 4-16.	Form of Post-Organization Reporting Letter to Client	4-23
Form 4-17.	Alternate Form of Letter to New LLC Regarding Operational and Other Post-Formation Matters	4-25

CONTENTS

4.12. Members without Financial Obligations and Members without Interests and Springing Interests of Members 4-38
Form 4-18. Springing Interest (Continuation of LLC upon Termination of Last Member) 4-38

CHAPTER 5: LIMITED LIABILITY COMPANY CAPITAL 5-1

5.1. Drafting Capital Provisions 5-2
5.2. Initial Capital Contributions 5-3
Form 5-1. Initial Capital Contributions 5-3
Form 5-2. Initial Capital Contributions—Services 5-4
5.3. Subsequent Capital Contributions 5-4
Form 5-3. No Obligation to Make Subsequent Capital Contributions 5-5
Form 5-4. Specified Subsequent Capital Contributions 5-5
Form 5-5. Definition of “Commitment” (Maximum Contribution Obligation) 5-6
Form 5-6. Subsequent Capital Contributions at Discretion of Managers (with Limit). 5-6
Form 5-7. Subsequent Capital Contributions at Discretion of Managers (with Limit) (Short Form) 5-7
5.4. Penalties for Failure to Make Contributions 5-8
Form 5-8. Comprehensive Penalties for Failure to Make Contributions 5-8.1
Form 5-9. Comprehensive Penalties for Failure to Make Contributions (Short Form) 5-10
5.5. Interest on, and Return of, Capital Contributions 5-11
Form 5-10. No Interest on, or Right to Require Return of, Capital Contributions 5-12
5.6. Capital Accounts 5-12
Form 5-11. Capital Accounts to Be Maintained 5-13
5.7. Loans by Members 5-13
Form 5-12. Loans—Terms to Be Agreed upon by Members and Managers 5-13
Form 5-13. Loans—General Terms Set Forth in Advance 5-13

CHAPTER 6: ALLOCATION AND DISTRIBUTION PROVISIONS 6-1

6.1. Taxation of the LLC 6-4
6.2. General Allocation and Distribution Concepts 6-4

6.3.	Allocation Requirements—Code Section 704(b)	6-5
6.3.1.	Overview	6-5
6.3.2.	The Three Alternative Allocation Tests	6-6
6.3.2.1.	The First Test: Substantial Economic Effect and Capital Accounts	6-6
6.3.2.2.	The Second Test: Partners’ Interests	6-8
6.3.2.3.	The Third Test: Nonrecourse Debt	6-9
6.3.2.4.	Economic Effect Equivalence	6-10.1
6.3.3.	Allocations to Members.	6-10.1
6.4.	Definitions	6-11
6.4.1.	Distribution-Related Definitions	6-11
	Form 6-1. Distribution Definitions.	6-11
6.4.2.	Allocation-Related Definitions	6-12
	Form 6-2. Allocation Definitions.	6-13
6.5.	Basic Distribution Provisions	6-17
6.5.1.	In General	6-17
6.5.2.	Net Cash Flow from Operations	6-18
	Form 6-3. Distributions of Net Cash Flow.	6-18
	Form 6-4. Distributions of Net Cash Flow to Pay Tax Liability of Members.	6-21
	Form 6-4A. Distributions of Available Cash to Pay Estimated Tax Liabilities of Members	6-22
6.5.3.	Distribution of Capital Proceeds	6-23
	Form 6-5. Distribution of Capital Proceeds	6-23
6.5.4.	Liquidation Proceeds	6-24
	Form 6-6. Liquidation and Distribution (Capital Accounts Control)	6-25
	Form 6-7. Liquidation and Distribution— Deficit Restoration Obligation.	6-25
	Form 6-8. Liquidation and Distribution (Cash Controls)	6-26
6.6.	Basic Allocation Provisions	6-27
6.6.1.	Basic Allocations of Profit and Loss	6-27
	Form 6-9. Profit or Loss.	6-27
6.6.2.	Alternate Test for Economic Effect.	6-28
	Form 6-10. Alternate Test for Economic Effect.	6-30.2
6.6.3.	Minimum Gain Chargeback— Nonrecourse Debt	6-30.4

CONTENTS

	Form 6-11. Minimum Gain Chargeback	6-30.5
6.6.4.	Minimum Gain Chargeback—Member Nonrecourse Debt	6-30.6
	Form 6-12. Minimum Gain Chargeback— Member Nonrecourse Debt	6-30.6
6.6.5.	Other Regulatory Allocations	6-30.7
	6.6.5.1. Book Capital Accounts	6-30.7
	Form 6-13. Adjustment of Book Value	6-31
	Form 6-14. Tax Allocations— Tax Allocations for Assets with Book Value Different than Adjusted Tax Basis	6-32
	6.6.5.1.1. Code Section 704(c) Allocations	6-32
	6.6.5.2. Adjustment of Books as Required for Code Section 754 Election	6-32.6
	Form 6-15. Code Section 754 Adjustment	6-33
	6.6.5.3. Federal or State Withholding	6-33
	Form 6-16. Withholding	6-33
	Form 6-16A. Withholding	6-34
	6.6.5.4. Varying Interests of the Members	6-34
	Form 6-17. Varying Interests	6-36.4
	6.6.5.5. Amendment to Allocation Provisions	6-36.5
	Form 6-18. Amendment to Allocation Provisions	6-36.5
	6.6.5.6. Prior Law: Restrictions on Transfer of Interests to Avoid Constructive Termination of LLC under Code Section 708(b)(1)(B)	6-36.5
	Form 6-19. Reserved	6-36.6
6.7.	Complex and Disproportionate Distribution and Allocation Provisions	6-37
	6.7.1. Distribution Preferences	6-37
	Form 6-20. Distribution Preference	6-37
	6.7.2. Disproportionate Allocation of Losses	6-39
	Form 6-21. Disproportionate Allocation of Loss	6-39

6.7.3.	Flips	6-40
	Form 6-22. Flips on Sale (Capital Accounts Control)	6-41
	Form 6-23. Flips on Sale (Cash Controls)	6-43
6.7.4.	Targeted Allocations	6-43
	Form 6-24. Targeted Allocations (Capital Accounts Control) Added Definitions to Either Appendix A or B	6-45
6.7.5.	Distributions Tied to Internal Rate of Return	6-47
	Form 6-25. Internal Rate of Return	6-48
	Form 6-26. Internal Rate of Return	6-49
	Form 6-27. Distribution Tied to Internal Rate of Return	6-50
CHAPTER 7: MANAGEMENT PROVISIONS		7-1
7.1.	Management Models	7-3
7.2.	Tax Aspects	7-4
7.3.	Manager-Management	7-5
7.3.1.	General Provisions Regarding Manager-Management	7-5
	Form 7-1. Manager-Management— Certificate of Formation	7-5
	Form 7-2. Manager-Management— Company Agreement	7-6
7.3.2.	Approval of Major Actions by Members	7-6
	Form 7-3. Major Actions	7-7
	Form 7-4. Major Actions—Examples	7-8
7.3.3.	Selection, Tenure, and Removal of Managers	7-10
	Form 7-5. Selection, Tenure, and Removal of Managers	7-11
7.3.4.	Delegation to Committees and Individual Managers	7-11
	Form 7-6. Delegation to Committees and Individual Managers	7-12
7.3.5.	Officers	7-12
	Form 7-7. Officers	7-13
	Form 7-8. Officers (Short Form)	7-14
7.3.6.	Actual and Apparent Authority	7-14
7.3.7.	Limitations of Duties and Liabilities	7-15
	7.3.7.1. Examples of Disclaimers of Duties and Liabilities	7-16

CONTENTS

	Form 7-9.	Limitation of Managers’ Duties and Liabilities (Gross Negligence Standard)	7-17
	Form 7-9A.	Limitation of Officers’ Duties and Liabilities (Gross Negligence Standard)	7-17
	Form 7-10.	Limitation of Members’ Duties and Liabilities (Gross Negligence Standard)	7-18
	Form 7-10A.	Presumptions for Managers and Officers	7-18
7.3.8.	Conflicts of Interest		7-20
	Form 7-11.	Conflicts of Interest—Negation of Company Opportunity Doctrine	7-20
	Form 7-12.	Conflicts of Interest— Affirmation of Company Opportunity Doctrine	7-20.1
7.3.9.	Indemnification		7-20.1
	7.3.9.1.	Examples of Indemnification Provisions.	7-20.2
	Form 7-13.	Indemnification	7-20.2
	Form 7-14.	Indemnification (Short Form).	7-22
7.3.10.	Compensation and Reimbursement		7-22.1
	Form 7-15.	No Advance Agreement as to Compensation; Reimbursement Rights	7-23
7.3.11.	Meetings and Voting		7-23
	Form 7-16.	Meetings of Managers.	7-26
	Form 7-17.	Voting Ratio Linked to Sharing Ratios	7-27
	Form 7-18.	Voting Ratio Not Linked to Sharing Ratios	7-27
	Form 7-19.	Definitions of “Majority,” “Supermajority,” and “Unanimous Interests”	7-27

	Form 7-20. Definition of “Sole Discretion”	7-28
	Form 7-21. Meetings of Members	7-29
7.3.12.	Meetings and Voting: General	7-29
	Form 7-22. General Provisions Regarding All Meetings.	7-30
7.3.13.	Emergency Governance	7-31
	Form 7-22A. Emergency Governance	7-31
7.4.	Member-Management	7-32
	Form 7-23. Member-Management—Certificate of Formation	7-32
	Form 7-24. Member-Management—Company Agreement	7-32
7.5.	Derivative Lawsuits	7-33
CHAPTER 8: TRANSFER AND BUYOUT PROVISIONS		8-1
8.1.	The BOC’s Default Rules for Transfers	8-4
8.2.	Tax Aspects of Transfer Restrictions	8-5
	8.2.1. Partnership Classification	8-5
	8.2.2. Prior Law: Termination of the LLC	8-5
	8.2.3. Basis Issues	8-6
	8.2.4. Tax Consequences to Selling Partner.	8-8
8.3.	Definitions Relating to Dispositions of Interests	8-8
	8.3.1. Definitions of “Disposition” and “Encumbrance”	8-8
	Form 8-1. Separate Definitions of “Disposition” and “Encumbrance”	8-8.1
	Form 8-2. Definition of “Disposition” (Includes “Encumbrance”)	8-9
	8.3.2. Definitions of “Interest” and “Membership Rights”	8-9
	8.3.3. Definition of “Assignee”	8-10
	Form 8-3. Definition of “Assignee”	8-10
	Form 8-4. Definition of “Assignee” (Expanded Version)	8-10
	8.3.4. Definitions of “Affiliate,” “Family,” and “Control”	8-11
	Form 8-5. Definitions of “Affiliate,” “Control,” and “Family”	8-11
8.4.	Disposition and Encumbrance Provisions	8-12
	8.4.1. General Considerations	8-12
	8.4.2. General Provision Regarding Dispositions and Encumbrances	8-13

CONTENTS

	Form 8-6. General Provision Regarding Dispositions and Encumbrances	8-13
8.4.3.	Prohibition on Any Dispositions or Admissions without Consent	8-14
	Form 8-7. Prohibition on Any Dispositions or Admissions without Consent	8-14
8.4.4.	Prohibition on Any Dispositions or Admissions without Consent; Involuntary Dispositions Addressed in Buyout Provisions	8-15
	Form 8-8. Prohibition on Voluntary Dispositions or Admissions without Consent—Involuntary Dispositions Subject to Buyout Right	8-15
8.4.5.	Right to Dispose of Membership Rights to Affiliates (and for Such Assignees to Be Admitted) without Consent; Prohibition on Other Dispositions and Admissions without Consent	8-16
	Form 8-9. Right to Dispose of Membership Rights to Affiliates (and for such Assignees to Be Admitted) without Consent; Prohibition on Other Dispositions and Admissions without Consent	8-16
8.4.6.	Right to Dispose of Interest without Consent; Prohibition on Dispositions of Other Membership Rights and Admissions without Consent	8-17
	Form 8-10. Right to Dispose of Interest; Prohibition on Other Dispositions and Admissions without Consent	8-17
8.4.7.	Right to Dispose of Membership Rights (and for Assignees to Be Admitted) without Consent, Subject to a Preferential Purchase Right of Other Members	8-18
	Form 8-11. Right to Dispose of Membership Rights (and for Assignees to Be Admitted), Subject to a Preferential	

	Purchase Right of Other Members	8-18
8.4.8.	Right to Dispose of Membership Rights (and for Assignees to Be Admitted) without Consent, Subject to a Preferential Purchase Right of Company	8-21
	Form 8-12. Right to Dispose of Membership Rights (and the Assignees to Be Admitted), Subject to a Preferential Purchase Right of Company	8-21
8.4.9.	Other Types of Disposition Restrictions	8-24
8.4.10.	Free Transferability of Interests	8-24
	Form 8-13. Right to Dispose of Membership Rights without Consent	8-24
8.4.11.	Additional Conditions to Approval of Dispositions and Admissions	8-25
	Form 8-14. Additional Conditions to Approval of Dispositions and Admissions	8-25
	Form 8-15. Additional Conditions to Approval of Dispositions and Admissions (Short Form)	8-27
8.4.12.	Restrictions on Encumbrances	8-28
	Form 8-16. Restrictions on Encumbrances of Membership Rights	8-28
8.5.	Withdrawal of a Member	8-29
8.5.1.	General Considerations	8-29
8.5.2.	Definition of “Withdrawal”	8-29
	Form 8-17. Definition of “Withdrawal”	8-29
8.5.3.	Right to Withdraw	8-29
	Form 8-18. Right to Withdraw; Payment on Installment Basis	8-30
8.5.4.	No Right to Withdraw	8-31
	Form 8-19. No Right or Power to Withdraw	8-31
8.6.	Buyout Provisions	8-31
	Form 8-20. Buyout Rights: Relevant Definitions	8-32
	Form 8-21. Buyout Rights	8-34
CHAPTER 9: WINDING UP AND TERMINATION		9-1
9.1.	Tax Aspects of Winding Up and Termination	9-3
9.2.	Overview of BOC Provisions Requiring Winding Up and	

CONTENTS

- Termination. 9-3
- 9.3. Events Requiring Winding Up and a Member’s Departure 9-3
 - 9.3.1. Events Requiring a Winding Up 9-3
 - 9.3.2. A Member’s Departure 9-5
 - Form 9-1. Winding Up—Member’s Departure Does Not Trigger Winding Up 9-6
 - Form 9-2. Winding Up—Member’s Departure Triggers Winding Up 9-6
- 9.4. Continuation of Business after Event Requiring Winding Up and Termination 9-7
 - 9.4.1. Revocation of Voluntary Decision to Wind Up 9-7
 - 9.4.2. Expiration of Period of Duration or Event Specified in Governing Documents Requiring Winding Up 9-7
 - 9.4.3. Reinstatement of Terminated LLC 9-8
 - 9.4.4. Effect on Creditors and on Contracts. 9-8
 - 9.4.5. Possible Modification of Events Requiring Winding Up 9-8
 - Form 9-3. Continuation Vote after Winding Up. 9-8.1
- 9.5. Designation of Liquidators 9-8.2
 - Form 9-4. Designation of Liquidator—Manager-Managed LLC 9-8.2
 - Form 9-5. Designation of Liquidator—Member-Managed LLC 9-9
 - Form 9-6. Designation of Liquidator—Excludes Departing Member 9-9
- 9.6. Winding Up and Distribution of Assets 9-9
 - Form 9-7. Winding Up and Distribution of Assets (Reference to Distribution Provisions) 9-12
 - Form 9-8. Winding Up and Distribution of Assets (Positive Capital Account Balances) (Short Form) 9-14
 - Form 9-9. Winding Up and Distribution of Assets (Sharing Ratios) (Short Form) 9-14
- 9.7. Certificate of Termination. 9-15
 - Form 9-10. Obligation to File Certificate of Termination 9-15
 - Form 9-11. Certificate of Termination 9-16
- 9.8. Claims Resolution on Termination; Limited Survival after Termination. 9-17

CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING 10-1

10.1.	Introduction	10-3
10.2.	Banking.....	10-3
	Form 10-1. Bank Accounts—Manager-Managed	10-3
10.3.	Records and Inspections.....	10-4
	10.3.1. Books and Records	10-4
	Form 10-2. Maintenance of Records— Member-Managed LLC (Short Form)	10-4
	Form 10-3. Maintenance of Records— Manager-Managed LLC (Short Form)	10-5
	Form 10-4. Maintenance of Records— Manager-Managed LLC (Long Form)	10-5
	10.3.2. Inspection of Records and Confidentiality	10-6
	Form 10-5. Inspection of Records and Confidentiality.....	10-7
10.4.	Tax Returns.....	10-8
	Form 10-6. Tax Returns—Member-Managed	10-8.1
	Form 10-7. Tax Returns—Manager-Managed	10-9
10.5.	Accounting Period	10-9
	Form 10-8. Calendar Year Accounting Period Specified	10-9
	Form 10-9. Fiscal Year Accounting Period Specified.....	10-10
	Form 10-10. Year to Be Determined by Members.....	10-10
	Form 10-11. Annual Accounting Period Established by Managers	10-10
10.6.	Method of Accounting	10-10
	Form 10-12. Method of Accounting—Manager-Managed ...	10-11
	Form 10-13. Method of Accounting—Member-Managed....	10-11
10.7.	Federal Income Tax Audit Rules for LLCs.....	10-11
	10.7.1. Audit Rules for Tax Years of an LLC Ending on or before December 31, 2017.....	10-12
	10.7.1.1. LLCs Subject to TEFRA Unified Audit Rules	10-12
	10.7.1.2. General.....	10-12
	10.7.1.3. Revenue Ruling 2004-88 and Disregarded Entities.....	10-14
	10.7.1.4. Tax Matters Member	10-15
	10.7.1.5. Informational Reporting to Partners	10-15
	10.7.1.6. Settlement Agreements	10-16

CONTENTS

	10.7.1.7. Statute of Limitation	10-16
	10.7.1.8. Collection.	10-16
10.7.2.	Summary	10-16.1
	Form 10-14. Tax Matters Member (Member-Managed)	10-16.1
	Form 10-15. Tax Matters Member (Manager-Managed) for Tax Years on or before December 31, 2017	10-16.2
10.7.3.	BBA Unified Audit Rules for Tax Years of an LLC Beginning on or after January 1, 2018	10-16.4
	10.7.3.1. LLCs Electing Out of the BBA Unified Audit Rules	10-16.5
	10.7.3.2. Partnership Representative.	10-16.6
	10.7.3.3. Information Reporting	10-16.9
	10.7.3.4. Settlement Agreements	10-16.9
	10.7.3.5. Statute of Limitation	10-16.10
	10.7.3.6. Collection of Tax	10-16.10
	10.7.3.6.1. Push-Out Election.	10-16.11
	10.7.3.6.2. LLC Pays the Increased Tax Liability from Imputed Underpayment	10-16.13
	10.7.3.6.3. Grouping.	10-16.14
	10.7.3.6.4. Amount of Imputed Underpayment Adjusted by Member Amended Returns	10-16.16
	10.7.3.6.5. Member Pull In Election in Lieu of Member Amended Returns	10-16.17
	10.7.3.6.6. Drafting Company Agreements For Tax Years Subject to BBA	10-16.17
	10.7.3.6.6.1. Selecting the Partnership Representative	10-16.17
	10.7.3.6.6.2. Duties of Partnership Representative	10-16.17
	10.7.3.6.6.3. Indemnification/ Exculpation of Partnership Representative	10-16.18

10.7.3.6.6.4.	List of Additional Items to Consider under the BBA Unified Audit Rules	10-16.19
10.7.3.6.6.5.	Election for Early Application of LLC Audit Rules under the BBA	10-16.20
	Form 10-15A. Tax Matters Member (Manager- Managed)	10-16.21
	Form 10-15B. Tax Matters Member (Manager- Managed)	10-16.24
	Form 10-15C. Tax Matters Member (Manager- Managed)	10-16.28
10.8.	Tax Elections	10-16.32
	Form 10-16. Tax Elections (Short Form)	10-16.33
	Form 10-17. Tax Elections (Long Form)	10-16.34
	Form 10-18. Tax Elections—Applies to Code Section 754 Only—For Use in Either Member-Managed or Manager-Managed LLC	10-17
10.9.	Title to Property	10-19
	Form 10-19. Title to Property—In Company Name	10-20
	Form 10-20. Title to Company Property—Use of Nominee Permitted	10-20
10.10.	Reportable Transactions	10-20
10.11.	Tax Basis Capital Account Reporting	10-26

**PART III
MISCELLANEOUS**

CHAPTER 11:	MERGERS AND OTHER REORGANIZATIONS.	11-1
11.1.	Introduction	11-4
	11.1.1. History of Non-Corporate Mergers	11-4
	11.1.2. History of TLLCA Merger Provisions	11-4
11.2.	Entities with Which Texas LLCs May Merge	11-5
	11.2.1. Domestic Entities and Non-Code Texas Entities	11-6
	11.2.2. Foreign Entities	11-8
11.3.	Dissenters Rights and Mergers with Multiple Survivors	11-8

CONTENTS

11.3.1.	Dissenters Rights	11-8
11.3.2.	Mergers with Multiple Survivors.	11-8
11.4.	Merger Procedures	11-9
11.4.1.	General Requirements	11-9
11.4.2.	Plan of Merger	11-10
11.4.3.	Certificate of Merger	11-11
11.4.4.	Sample Forms	11-11
11.4.4.1.	Merger with One Surviving Entity	11-11
	Form 11-1. Plan of Merger—One Surviving Entity	11-12
	Form 11-2. Certificate of Merger— One Surviving Entity	11-13
11.4.4.2.	Merger with Multiple Surviving Entities	11-14
	Form 11-3. Plan of Merger— Multiple Surviving Entities	11-14
	Form 11-4. Certificate of Merger— Multiple Surviving Entities	11-16
11.5.	Effectiveness and Effect of Merger	11-17
11.6.	Related Transactions.	11-19
11.6.1.	Parent-Subsidiary Mergers or “Short-Form” Mergers	11-19
11.6.2.	Interest Exchange.	11-20
11.6.3.	Conversions	11-21
11.7.	Tax Consequences of Mergers and Other Reorganizations	11-25
11.7.1.	Merger or Other Conversion of an Existing Entity into an LLC Taxed as a Partnership	11-25
11.7.1.1.	In General	11-25
11.7.1.2.	Merger or Other Conversion of General Partnership to LLC	11-26
11.7.1.3.	Merger or Other Conversion of Limited Partnership into LLC	11-29
11.7.1.4.	Merger or Other Conversion of Corporation into LLC	11-30
11.7.1.5.	Division and Acquisitive Mergers	11-38
	11.7.1.5.1. Acquisitive Partnership Mergers	11-39
	11.7.1.5.1.1. Determining Which LLC Continues and Which LLC Terminates	

	for Federal Tax Purposes	11-39
11.7.1.5.1.2.	Tax Filing Requirements.	11-40
11.7.1.5.1.3.	Determining the Form of the Merger.	11-40
11.7.1.5.2.	Partnership Division	11-44
11.7.1.5.2.1.	Basic Rules for a Division	11-44
11.7.1.5.2.2.	Determining Which, if Any, LLC Continues as the Prior Partnership and Which, if Any, Terminates	11-47
11.7.1.5.2.3.	Tax Filing Requirements.	11-47
11.7.1.5.2.4.	Determining the Form of the Division.	11-48
11.7.2.	Conversion of LLC into Corporation.	11-51
11.7.3.	Admission of New Members	11-56
11.7.3.1.	Acquisition of Interest from LLC	11-56
11.7.3.1.1.	Economic Consideration	11-56
11.7.3.1.2.	Federal Income Tax Considerations	11-56
11.7.3.2.	Acquisition of Interest from Another Member	11-58
11.7.3.2.1.	Federal Income Tax Consequences	11-58
11.7.4.	Recapitalizing the LLC	11-59
11.7.5.	Electing to Change an LLC's Classification under the Check-the-Box Regulations.	11-60
11.7.5.1.	Corporation to Partnership.	11-61
11.7.5.2.	Partnership to Corporation.	11-61
11.7.5.3.	Corporation to Disregarded Entity.	11-61
11.7.5.4.	Disregarded Entity to Corporation.	11-62
11.7.6.	Change in Entity Classification as a Result of Change in Number of Members	11-64
11.7.6.1.	Converting a Disregarded Entity to a Partnership	11-64
11.7.6.2.	Converting from a Partnership to a Disregarded Entity	11-66
11.7.8.	Taxpayer Identification Number after Change	

in Classification 11-67

CHAPTER 12: FOREIGN LIMITED LIABILITY COMPANIES 12-1

12.1. Foreign LLCs Doing Business in Texas 12-2

 12.1.1. General. 12-2

 12.1.2. Elimination of Definition of “Foreign Limited Liability Company” 12-2

 12.1.3. Obligation to Register 12-3

 12.1.4. Registration Procedure. 12-3

 Form 12-1. Application for Registration to Do Business for Foreign LLC 12-4

 12.1.5. Registration Procedure for Foreign Professional LLCs 12-6

 12.1.6. Failure to Register 12-6

 12.1.6.1. Penalties. 12-6

 12.1.6.2. Protections for Foreign LLCs That Fail to Register. 12-7

 12.1.7. Choice of Law Applicable to Foreign LLCs 12-7

 12.1.7.1. Texas Law 12-7

 12.1.7.2. Law of Jurisdiction of Organization. 12-8

 12.1.8. Amended Application for Registration 12-8

 Form 12-2. Application for Amended Registration for Foreign LLC 12-8

 12.1.9. Withdrawal of Foreign LLC from Texas 12-11

 Form 12-3. Application for Certificate of Withdrawal of Foreign LLC 12-11

 12.1.10. Revocation of Certificate of Authority. 12-12

12.2. Texas LLCs Doing Business Outside of Texas. 12-13

CHAPTER 13: PROFESSIONAL LIMITED LIABILITY COMPANIES 13-1

13.1. General 13-2

 13.1.1. History 13-2

 13.1.2. BOC 13-2

13.2. Name. 13-2

13.3. Formation 13-3

13.4. Professional Services 13-3

 13.4.1. Definition. 13-3

 13.4.2. Joint Practice by Certain Professionals 13-4

13.5. Authorized Person 13-4

13.6. Restrictions on Managers, Officers, Employees, and Agents . . . 13-5
 13.7. Professional Relationships Not Affected by Use of the LLC . . . 13-5
 13.8. Exemption from Securities Laws 13-5
 13.9. Foreign Professional LLCs 13-6

CHAPTER 14: TEXAS FRANCHISE TAX 14-1

14.1. Introduction 14-2
 14.2. Former Franchise Tax 14-2
 14.2.1. LLCs Subject to Franchise Tax 14-2
 14.2.2. Exemption for Certain Small LLCs 14-2
 14.2.3. Rate of Tax 14-3
 14.2.4. Net Taxable Capital 14-3
 14.2.5. Net Taxable Earned Surplus 14-4
 14.2.6. Texas Franchise Tax Applicable to Members
 of the LLC 14-6
 14.3. Franchise (Margin) Tax 14-7
 14.3.1. LLCs Subject to Franchise Tax 14-7
 14.3.2. Special Treatment of Certain Small LLCs 14-8
 14.3.3. Rate and Computation of Tax 14-9
 14.3.4. Revenue 14-10
 14.3.5. Cost of Goods Sold Deduction 14-11
 14.3.6. Compensation Deduction 14-12
 14.3.7. Combined Group Reporting 14-13
 14.3.8. Tiered Partnerships 14-14
 14.4. Tax Treatment of LLCs by States Other than Texas 14-15

**CHAPTER 15: COMPENSATION STRATEGIES FOR THE
 LLC 15-1**

15.1. Introduction 15-3
 15.2. IRC Section 83: Stock Grants and Options 15-5
 15.2.1. Code Section 409A 15-8
 15.2.2. Proposed 83 Guidance 15-12.1
 15.3. Capital and Profit Interests 15-12.3
 15.3.1. Tax Consequences for Transfers of Interests
 Prior to Date Effective Date under
 Proposed 83 Regulations 15-12.3
 15.3.2. Tax Consequences For Transfers of Interests
 If Proposed 83 Guidance Adopted 15-18
 15.3.3. Code Section 409A 15-21
 15.3.4. Recent Legislative Attempts to Treat Carried
 Interest Allocations as Ordinary Income 15-23
 15.4. LLC (Partnership) vs. Corporation Compensation

CONTENTS

Methods	15-26
15.4.1. Corporation Context	15-26
15.4.1.1. Stock Grants.....	15-26
15.4.1.2. Stock Options.....	15-26.1
15.4.1.3. Phantom Stock Plans	15-26.2
15.4.2. The LLC Context.....	15-26.3
15.4.2.1. Equity Interests	15-27
15.4.2.1.1. “Full Equity Interest”	15-27
15.4.2.1.1.1. Code Section 409A	15-28
15.4.2.1.1.2. Proposed 83 Guidance	15-29
15.4.2.2. Point System or Unit Compensation	15-29
15.4.2.2.1. Code Section 409A.....	15-30
15.4.2.3. The Importance of Member Involvement	15-31
15.4.2.4. Debt Guarantees.....	15-32
15.4.2.5. Equity Interest vs. Non-equity Incentive Compensation.....	15-32
15.4.2.5.1. Code Section 409A.....	15-33
15.4.3. Compensation Comparison Chart	15-34
15.5. Phantom Income and Distributions	15-38
15.5.1. Tax Affected Distributions	15-38
15.5.1.1. Separate Calculations for Each Member.....	15-38
15.5.1.2. Standard Distribution Rate.....	15-39
15.5.1.3. Highest Incremental Tax Rate	15-41
15.5.2. Self-Employment Tax	15-43
15.5.2.1. Calculating Self-Employment Income	15-44
15.5.2.2. Application of Self-Employment Tax to LLC Members.....	15-44.7
15.6. Fiduciary Duties, Inspection Rights, and Other Duties to Equity Holders	15-44.11
15.6.1. <i>Five Star Concrete, L.L.C. v. Klink</i>	15-45
15.7. Securities Law Issues	15-46
15.8. Member Exit Strategies: Buyout Arrangements.....	15-46
15.9. Covenants Not to Compete.....	15-47
15.10. Forms: Equity and Non-Equity-Based LLC Compensation Plan.....	15-48

15.10.1.	Equity Incentive Plan	15-48
	Form 15-1. Equity Incentive Plan	15-49
15.10.2.	Unit Grant Agreement	15-54.14
	Form 15-2. Unit Grant Agreement	15-54.14
15.10.3.	Employee Incentive Compensation Plan	15-54.22
	Form 15-3. Communications, LLC: Employee Incentive Compensation Plan	15-54.22

**CHAPTER 16: OPTIONS AND CONVERTIBLE INTEREST
FOR LLCs TAXED AS PARTNERSHIPS 16-1**

16.1.	Introduction: Noncompensatory Call Options and Convertible Preferred Interests	16-3
16.2.	Noncompensatory Call Options: Defined and Example	16-4
	Form 16-1. Noncompensatory Option Agreement	16-5
16.2.1.	Tax Consequences of Issuance and Exercise of Call Option	16-8.3
	16.2.1.1. Partnership	16-15
	16.2.1.2. Option Holder	16-17
16.2.2.	Tax Consequences of Lapse of Call Option	16-18
	16.2.2.1. Partnership	16-18
	16.2.2.2. Option Holder	16-19
16.2.3.	Tax Consequences of Exercise of Option	16-20
	16.2.3.1. Option Holder	16-21
	16.2.3.2. Partnership	16-22
	16.2.3.3. Cash Settled Options	16-37
16.2.4.	Drafting Considerations in the Partnership Agreement	16-38
	16.2.4.1. Capital Account Maintenance under Code Section 704(b)	16-39
	16.2.4.1.1. Book-Up	16-43
	16.2.4.1.2. No Book-Up	16-46
	16.2.4.2. Code Section 704(c)	16-48
	16.2.4.3. Tax Distributions	16-49
16.2.5.	Ancillary Tax Considerations	16-49
	16.2.5.1. Code Section 704(c)	16-50
	16.2.5.2. Code Section 752	16-51
	16.2.5.3. Code Section 751	16-52
	16.2.5.4. Holding Period	16-52
	16.2.5.5. Original Issue Discount	16-53
	16.2.5.6. Code Section 708	16-53

CONTENTS

	16.2.5.7. Disregarded Entities	16-53
16.3.	Convertible Preferred Membership Interests	16-54
	16.3.1. Description of Convertible Preferred Interests	16-54
	16.3.2. Example: Convertible Preferred Interests	16-55
	16.3.3. Real Deals	16-56
	16.3.4. Tax Consequences of Issuance and Exercise of Convertible Preferred Interests	16-56
	16.3.4.1. Tax Consequences of Issuance of Convertible Preferred Interests	16-57
	16.3.4.1.1. Preferred Holder as a Partner	16-57
	16.3.4.1.2. Partnership, A and B	16-58
	16.3.4.1.3. Tax Consequences of Partnership Operations Prior to Conversion.	16-59
	16.3.4.2. Tax Consequences at Exercise of the Conversion Right of the Preferred Convertible Interest	16-60
	16.3.4.2.1. Capital Accounts.	16-60
	16.3.4.2.2. Tax Consequences of Capital Account Adjustments	16-65
	16.3.4.2.3. Code Section 752	16-67
	16.3.4.2.4. Code Section 704(c)	16-69
	16.3.4.2.5. Code Section 708	16-72
	16.3.4.2.6. Code Section 705	16-72
	16.3.4.2.7. Nonrecourse Deductions	16-73
	16.3.4.2.8. Excess Nonrecourse Liabilities	16-73
	16.3.4.2.9. Convertible Debt.	16-74.1
	16.3.5. Drafting Issues for Convertible Interests.	16-75
	16.3.5.1. Form 16-2 Revaluation	16-81
	16.3.5.2. Tax Distributions	16-82
	Form 16-2. Selected Provisions Applicable to Allocations and Distributions	16-82
16.4.	Examples from Final Regulations	16-97
CHAPTER 17: SERIES LLCs.		17-1
17.1.	Series Limited Liability Company	17-5

17.1.1.	Statutory Provisions	17-5
17.1.2.	The Basic Concept of Series	17-6
17.1.2.1.	The Fundamental Concept	17-6
17.1.2.2.	The Entity Issue	17-6
17.1.2.3.	The Second Fundamental Concept	17-7
17.1.2.4.	Interface between Chapter 101 and Subchapter M	17-8
17.1.2.5.	Members Associated with a Series	17-9
17.1.2.6.	Drafting Notes	17-10
17.2.	Establishment of Series, Limitations of Liabilities, and Powers	17-10
17.2.1.	Establishment of Series	17-10
17.2.2.	Limitation on Liability	17-11
17.2.3.	General Powers	17-13
17.2.4.	Name of Series	17-14
17.3.	Liability of Members and Managers, Classes, Governing Authority, and Applicability of Other Chapters	17-14.1
17.3.1.	Liability of Members or Managers for Obligations and Duties	17-14.1
17.3.1.1.	Liability of Members or Managers for Obligations	17-14.1
17.3.1.2.	Duties of Members or Managers	17-14.1
17.3.2.	Classes or Groups of Members or Managers	17-15
17.3.2.1.	Classes or Groups of Members or Managers	17-15
17.3.2.2.	Additional Classes or Groups of Members or Managers	17-15
17.3.2.3.	Permissible Additional Series of Membership Interests without Vote	17-15
17.3.2.4.	Grant of Special Voting Rights	17-15
17.3.2.5.	Drafting Notes	17-16
17.3.3.	Governing Authority	17-16
17.3.3.1.	Series Company Agreement Controls	17-16
17.3.3.2.	Default Governing Authority for a Series	17-16
17.3.3.3.	Drafting Notes	17-17
17.3.4.	Applicability of Other Provisions of LLC Chapter to Series	17-17

CONTENTS

- 17.3.5. Effect of Ceasing to be Series Manager or Series Member 17-17
 - 17.3.5.1. Effect of Ceasing to be a Series Manager 17-17
 - 17.3.5.2. Effect of Ceasing to be a Series Member 17-17
 - 17.3.5.3. Drafting Notes 17-18
- 17.4. Distributions and Allocations 17-18
 - 17.4.1. Member Status with Respect to Distributions. 17-18
 - 17.4.2. Record Date for Allocations and Distributions. 17-18.1
 - 17.4.3. Distributions. 17-18.1
 - 17.4.3.1. Distributions are Permissible. 17-18.1
 - 17.4.3.2. Prohibited Distributions. 17-18.1
 - 17.4.3.3. Liabilities Excluded from Calculation of Permitted Distribution 17-18.1
 - 17.4.3.4. Inclusion in Calculation Fair Value of Property Subject to Nonrecourse Debt 17-18.2
 - 17.4.3.5. Liability of Series Member for Distributions Made in Violation of Sec. 101.613(b) 17-18.2
 - 17.4.3.6. Compensation Not Included in Distribution Definition. 17-18.2
- 17.5. Winding Up and Termination 17-18.3
 - 17.5.1. Authority to Wind Up; Effect of Winding Up and Termination 17-18.3
 - 17.5.2. Termination of Series; Notice of Termination and Effect of Termination 17-18.3
 - 17.5.3. Events Requiring a Winding Up 17-18.4
 - 17.5.4. Procedure for Winding Up and Termination of a Series; Rationalization of Terms. 17-18.4
 - 17.5.4.1. Applicability of Other BOC Chapters to Winding Up and Termination of a Series 17-18.4
 - 17.5.4.2. Persons Responsible for Winding Up and Terminating a Series 17-18.5
 - 17.5.4.3. Winding Up Taken in Accordance with BOC Sec. 101.617 Does Not Affect Limitation on Liability 17-18.5

17.5.5.	Procedure for Revoking a Voluntary Decision to Wind Up a Series	17-18.5
17.5.6.	Procedure for Cancellation of an Event Requiring a Winding Up of a Series	17-18.6
17.5.7.	Continuation of Business upon Revocation or Cancellation.	17-18.6
17.5.8.	Winding Up by Court Order	17-18.6
17.6.	Open Issues with Respect to the Series LLCs	17-18.7
17.7.	Drafting Notes	17-18.11
17.8.	Forms for Series LLCs	17-18.12
Form 17-1.	Certificate of Formation Provision Setting Forth Authorizing Series and Limitations on Liabilities of Series	17-18.13
Form 17-2.	Provision Authorizing Manager of Manager-Managed Limited Liability Company to Designate Separate Series and Classes of Members and Interests.	17-19
Form 17-3.	Provision Designating Separate Series of Members and Interests.	17-21
17.9.	Federal Tax Consequences of Series Limited Liability Companies	17-25
17.9.1.	Federal Tax Significance of Classification.	17-26
17.9.2.	Important Definitions.	17-27
17.9.3.	Overview of Proposed Regulations	17-28
17.9.4.	Proposed Regulations' Treatment of a Series as a Juridical Entity	17-30
17.9.5.	Proposed Regulations' Treatment of Series Organization.	17-32
17.9.6.	Status of Members and Managers Associated with a Series.	17-34
17.9.7.	Classification of the Series under the Check-the-Box Regulations.	17-34
17.9.8.	Issues Not Addressed in Proposed Regulations	17-35
17.9.8.1.	Foreign Series	17-35
17.9.8.2.	Employment Taxes.	17-35
17.9.8.3.	Employee Benefits	17-36
17.9.8.4.	Tax Matters Partner and Return Signatory	17-36
17.9.9.	Planning Possibilities.	17-36

CONTENTS

17.9.10.	Effective Date	17-37
17.9.11.	Lack of Other Guidance.	17-38
17.10.	Texas Franchise Tax Consequences of Series Limited Liability Companies	17-40

**CHAPTER 18: CONTRIBUTED BUILT-IN-LOSS PROPERTY
AND BASIS ADJUSTMENTS. 18-1**

18.1.	Introduction: Special Tax Rules Applicable to Partnerships with Property with Built-In Losses and Basis Adjustments	18-4
18.2.	Contribution of Built-In Loss Property	18-6
18.2.1.	General Rule	18-6
18.2.2.	Impact	18-6
18.2.2.1.	Repeal of Ceiling Rule.	18-6
18.2.2.2.	Prohibition on Transfer of Built-In Loss	18-8
18.2.3.	Proposed Regulations—General Explanation	18-8
18.2.3.1.	Tax Basis Effects	18-8
18.2.3.2.	Computation Allocation of Partnership Items	18-9
18.2.4.	Proposed Regulations—Specifics	18-9
18.2.4.1.	Section 704(c)(1)(C) Property	18-9
18.2.4.2.	Section 704(c)(1)(C) Partner	18-10
18.2.4.3.	Section 704(c)(1)(C) Basis Adjustment.	18-10
18.2.4.4.	Operations Rules	18-10
18.2.4.4.1.	Basis Adjustment Unique to Section 704(c)(1)(C) Partner.	18-10
18.2.4.4.2.	Accounting for Section 704(c)(1)(C) Basis Adjustment	18-10
18.2.4.4.3.	Code Sec. 704(c)(1)(C) Partner’s Distributive Share.	18-10
18.2.4.4.4.	Basis Adjustment for Depreciable or Amortizable Property	18-11
18.2.4.4.5.	Transfers of Code Sec. 704(c)(1)(C)	

	Property by the Partnership	18-12
18.2.4.4.5.1.	Distribution to Contributing Partner	18-12
18.2.4.4.5.2.	Distribution to Non-Contributing Partner	18-13
18.2.4.4.5.3.	Distribution in Liquidation of Contributing Partner	18-14
18.2.4.4.6.	Transfers of Section 704(c)(1)(C) Partner's Partnership Interest.	18-15
18.2.4.4.7.	Transfer of Section 704(c)(1)(C) Property by the Partnership	18-17
	18.2.4.5. Reporting	18-22
	18.2.4.6. Effective Date	18-22
18.3.	Section 704(c) Layers.	18-22
18.3.1.	Introduction	18-22
18.3.2.	Section 704(c) Layers	18-23
18.3.3.	Proposed Regulations	18-23
	18.3.3.1. No Netting of Layers	18-23
	18.3.3.2. Separately Account for Each Layer	18-24
	18.3.3.3. Use of Any Reasonable Methods	18-24
18.3.4.	Effective Date	18-24
18.4.	Mixing Bowl Rules.	18-24
18.4.1.	Conform Regulations for Seven-Year Period	18-24
18.4.2.	Computation of Period	18-24
18.4.3.	Constructive Tax Termination	18-25
18.5.	Special Basis Adjustment Rules under Section 732.	18-25
18.5.1.	Accounting for Section 743 Adjustment	18-25
18.5.2.	Accounting for Section 704(c)(1)(C) Basis Adjustment.	18-25
18.5.3.	Special Basis Adjustments and Substantial Built-In Loss	18-25

CONTENTS

18.6.	Special Basis Adjustment Rules under Code Sec. 734(b)	18-26
18.6.1.	General.	18-26
18.6.1.1.	Substantial Basis Reduction Defined.	18-26
18.6.1.2.	Test Applied Separately for Each Distribution.	18-26
18.6.1.3.	Code Sec. 734(b) Adjustment from Substantial Basis Reduction Limited to Distribution	18-27
18.6.2.	Section 704(c)(1)(C) Basis Adjustment.	18-27
18.6.3.	Tiered Partnerships	18-28
18.6.4.	Securitization Partnerships	18-29
18.7.	Special Basis Adjustments under Code Sec. 743	18-29
18.7.1.	General.	18-29
18.7.2.	Substantial Built-In Loss	18-29
18.7.2.1.	Mandatory Adjustment	18-29
18.7.2.2.	Substantial Built-In Loss Defined.	18-30
18.7.2.3.	Impact of Section 704(c)(1)(C) Basis Adjustment on Code Sec. 743 Adjustment.	18-30
18.7.2.4.	Tiered Partnerships	18-30
18.7.3.	Subsequent Transfers	18-30
18.7.4.	Treas. Reg. Sec. 1.743-1(j)(3)	18-33
18.7.5.	Return Filing Requirements.	18-35
18.7.6.	Transferee Special Rules	18-35
18.7.7.	Tiered Partnerships	18-35
18.7.8.	Anti-Abuse Rule	18-36
18.7.9.	Electing Investment Partnerships.	18-36
18.7.9.1.	Definition of Electing Investment Partnership	18-36
18.7.9.2.	Trade or Business.	18-37
18.8.	Section 755 for Substituted Basis Transfers.	18-37
18.8.1.	Allocation between Classes of Assets	18-37
18.8.2.	Proposed Regulations Alter the Basis Allocation Rules in Substituted Basis Transactions	18-38
18.8.2.1.	Positive Basis Adjustments Permitted Even if Overall Net Loss	18-38
18.8.2.2.	Negative Basis Adjustment	

	Permitted Even if Overall Net Gain	18-38
18.8.3.	Allocations Within a Class	18-40
	18.8.3.1. Special Rules for Increase	18-40
	18.8.3.2. Special Rules for Decrease	18-41
18.8.4.	No Basis Decrease to Stock of a Corporate Partner or Stock of a Corporation Related to a Partner	18-41
18.8.5.	Effective Date	18-42
18.9.	Examples from Proposed Regulations	18-42
CHAPTER 19 SECTION 199A		19-1
19.1.	Introduction to the Section 199A Deduction	19-6
19.2.	Ancillary Consequences of Section 199A Deduction	19-11
	19.2.1. Items Impacted by Section 199A Deduction	19-11
	19.2.2. Items Not Impacted by the Section 199A Deduction	19-12
19.3.	Steps In Computing Section 199A Deduction	19-13
19.4.	Taxable Income Ceiling on Section 199A Deduction	19-17
	19.4.1. 20% of Taxable Income Limitation	19-17
19.5.	Calculating Amount of the Section 199A Deduction	19-19
	19.5.1. Section 199A Deduction: Taxable Income Equal to or Less than Threshold Amount	19-19
	19.5.1.1. Total QBI Amount	19-19
	19.5.1.2. Qualified REIT Dividends and Qualified PTP Income	19-20
	19.5.2. Section 199A Deduction: Taxable Income Exceeds Threshold Amount	19-21
	19.5.2.1. Taxable Income Exceeds Ceiling Amount	19-21
	19.5.2.1.1. Determining the QBI Component	19-22
	19.5.2.2. Taxable Income within Phase-In Range	19-24.1
	19.5.2.2.1. Determining the QBI Component	19-24.1
	19.5.2.2.2. Adjustment to QBI Component For Taxable Income Within The Phase-In Range	19-25
	19.5.2.2.3. Adjustment to QBI Component For Taxable	

	Income Within Phase-In Range And One or more of the Trades or Businesses Is an SSTB.....	19-26
	19.5.2.2.3.1. Individual Engaged Only In An SSTB	19-26
	19.5.2.2.3.2. Individual Engaged in Multiple Trades or Businesses One of Which Is an SSTB	19-28
19.6.	QBI – Defined.....	19-28
19.6.1.	Qualified Items.....	19-29
19.6.2.	Items Not Taken Into Account as Qualified Items . . .	19-30
	19.6.2.1. Qualified REIT Dividends and Qualified PTP Income	19-30
	19.6.2.2. Code Section 1231.....	19-30
	19.6.2.3. Dividends.....	19-32
	19.6.2.4. Interest	19-32
	19.6.2.5. Annuities	19-32
	19.6.2.6. CFC Income.....	19-32
	19.6.2.7. Notional Principal Contracts	19-39
	19.6.2.8. Compensation	19-39
	19.6.2.9. Guaranteed Payments for Services	19-34
	19.6.2.10. Code Section 707(a) Payments for Compensation	19-35
19.6.3.	Adjustments in Computing QBI	19-35
	19.6.3.1. Wage Expense	19-35
	19.6.3.2. Allocation of Item among Multiple Businesses	19-36
	19.6.3.3. Code Section 751(a) and (b) Gain or Loss	19-36
	19.6.3.4. Guaranteed Payments for Capital	19-36
	19.6.3.5. Code Section 481 Adjustment	19-37
	19.6.3.6. Suspended Losses	19-37
	19.6.3.7. NOLs and Code Section 461(l)	19-39
	19.6.3.7.1. NOLs	19-39
	19.6.3.7.2. Code Section 461(l). . .	19-40
	19.6.3.8. Treatment of Deductions	19-41
19.6.4.	Effective Date	19-41

19.7.	Trade or Business	19-42
19.7.1.	Trade or Business Defined	19-42
19.7.2.	Aggregation of Multiple Trades or Businesses	19-45
19.7.2.1.	Requirements for Aggregation	19-46
19.7.2.2.	Items Aggregated	19-49
19.7.2.3.	Reporting Requirements	19-50
19.7.2.4.	Effective Dates	19-51
19.8.	Trades or Businesses that Do Not Qualify for the Section 199A Deduction	19-51
19.8.1.	SSTB	19-51
19.8.1.1.	SSTB Includes Trade or Business Defined in Section 1202(e)(3)(A)	19-52
19.8.1.1.1.	Performance of Services in the Field of Health	19-54
19.8.1.1.2.	Performance of Services in the Field of Law	19-56
19.8.1.1.3.	Performance of Services in the Field of Accountancy	19-56
19.8.1.1.4.	Performance of Services in the Field of Actuarial Science	19-56
19.8.1.1.5.	Performance of Services in the Field of Performing Arts	19-57
19.8.1.1.6.	Performance of Services in the Field of Consulting	19-57
19.8.1.1.7.	Performance of Services in the Field of Financial Services	19-59
19.8.1.1.8.	Performance of Services in the Field of Athletics	19-60
19.8.1.1.9.	Performance of Services in the Field of Brokerage Services	19-61
19.8.1.1.10.	Any Trade or Business in which the Principal Asset is Reputation or Skill of an Employee or Owner	19-61
19.8.1.2.	Services in Investing, Investment Management, Trading, or Dealing in Securities, Partnership Interests or Commodities	19-63

CONTENTS

	19.8.1.3. <i>De Minimis</i> Exception	19-66
	19.8.1.4. Anti-Avoidance Rules	19-68
19.8.2.	Trade or Business of Performing Services as an Employee	19-69
	19.8.2.1. Misclassified Employees	19-70
	19.8.2.2. Officers as Employees	19-70
	19.8.2.3. Anti-Avoidance Rule	19-70
19.8.3.	Effective Date	19-71
19.9.	Cap For Section 199A Deduction.	19-72
19.9.1.	W-2 Wages	19-72
	19.9.1.1. W-2 Wages Allocable to QBI.	19-72
	19.9.1.1.1. First Step.	19-73
	19.9.1.1.1.1. Calendar Year Requirement.	19-73
	19.9.1.1.1.2. Wages Defined.	19-74
	19.9.1.1.2. Second Step	19-76
	19.9.1.1.3. Third Step	19-76
	19.9.1.2. Allocations of W-2 Wages by an RPE to Its Owners	19-76
	19.9.1.3. Effective Date	19-77
19.9.2.	UBIA of Qualified Property.	19-77
	19.9.2.1. Qualified Property Defined	19-77
	19.9.2.2. UBIA Defined	19-78
	19.9.2.2.1. UBIA Not Adjusted for Depreciation or Amortization.	19-78
	19.9.2.2.2. Basis Adjustments under Code Section 734(b) or Code Section 743(b).	19-78
	19.9.2.2.3. Additions to Basis.	19-79
	19.9.2.3. UBIA for Qualified Property Transferred in Non-Recognition Transactions	19-80
	19.9.2.4. Anti-Avoidance Rules	19-81
19.9.3.	Depreciable Period Defined.	19-81
	19.9.3.1. Additional Depreciation.	19-82
	19.9.3.2. Non-Recognition Transfers of Qualified Property	19-82
19.9.4.	Section 1031 Like-Kind Exchanges	19-83
19.9.5.	Partnerships and S Corporations	19-84
19.9.6.	UBIA of Qualified Property Acquired from a Decedent	19-85

19.9.7. Effective Date 19-85

19.10. Reporting Under Section 199A for RPEs and PTPs 19-85

19.10.1. Computational and Reporting Rules for RPEs 19-86

19.10.1.1. Computational Steps 19-86

19.10.1.2. Reporting Steps 19-87

19.10.2. Computational and Reporting Rules for PTPs. 19-88

19.10.2.1. Computation Rules 19-88

19.10.2.2. Reporting Rules 19-88

19.10.3. Computational and Reporting Rules for Trusts,
Estates and Beneficiaries 19-88

19.10.3.1. Computation Rules 19-88

19.10.3.2. Tax-Exempt Trusts with UBTI 19-90

19.10.3.3. Charitable Remainder Trusts 19-90

19.10.4. Effective Date 19-91

**PART IV
APPENDICES**

**APPENDIX A: COMPANY AGREEMENT OF A
MANAGER-MANAGED TEXAS LIMITED
LIABILITY COMPANY (LONG FORM) APP A-1**

**APPENDIX B: COMPANY AGREEMENT OF A MEMBER-
MANAGED TEXAS LIMITED LIABILITY
COMPANY (LONG FORM) APP B-1**

**APPENDIX C: COMPANY AGREEMENT OF A
MANAGER-MANAGED TEXAS LIMITED
LIABILITY COMPANY (SHORT FORM). . . . APP C-1**

**APPENDIX D: COMPANY AGREEMENT OF A MEMBER-
MANAGED TEXAS LIMITED LIABILITY
COMPANY (SHORT FORM) APP D-1**

**APPENDIX E: COMPANY AGREEMENT OF A SINGLE-
MEMBER TEXAS LIMITED LIABILITY
COMPANY APP E-1**

**APPENDIX F: IRS FORM SS4: APPLICATION FOR
EMPLOYER IDENTIFICATION
NUMBER APP F-1**

**APPENDIX G: COMPARISON OF STATE LLC FEES AND
OTHER INFORMATION APP G-1**

**APPENDIX H: TEXAS SECRETARY OF STATE FILING FEES
APPLICABLE TO LIMITED LIABILITY**

CONTENTS

COMPANIES UNDER THE BUSINESS ORGANIZATIONS CODE APP H-1

APPENDIX I: IRS REVENUE PROCEDURE 95-10 APP I-1

APPENDIX J: PRIOR LAW ON FEDERAL TAX CLASSIFICATION APP J-1

APPENDIX K: CHECK-THE-BOX REGULATIONS APP K-1

APPENDIX L: IRS FORM 8832 APP L-1

APPENDIX M: LEGAL OPINIONS REGARDING TEXAS LLCs APP M-1

APPENDIX N: AGREEMENT AND PLAN OF LIQUIDATION SOLELY FOR FEDERAL INCOME TAX PURPOSES APP N-1

APPENDIX O: TREASURY REGULATIONS NONCOMPENSATORY PARTNERSHIP OPTIONS APP O-1

APPENDIX P: PROPOSED TREASURY REGULATIONS COMPENSATORY PARTNERSHIP OPTIONS APP P-1

APPENDIX Q: PROPOSED REGULATIONS FOR SERIES LLCs APP Q-1

APPENDIX R: REVENUE PROCEDURE 2012-29, 2012-28 IRB, 06/26/12 APP R-1

APPENDIX S: VEIL PIERCING CASES: EXTENDED DISCUSSION APP S-1

APPENDIX T: FIDUCIARY DUTY CASES: EXTENDED DISCUSSION APP T-1

APPENDIX U: AMENDMENT TO LLC PROVISIONS OF BOC PRIOR TO 2017 APP U-1

APPENDIX V: EXAMPLES CONTAINED IN FINAL TREASURY REGULATIONS UNDER SECTION 199A APP V-1

APPENDIX W: PROVISIONS FOR LLC OPERATING AGREEMENT WHEN S CORPORATION ELECTION MADE FOR COMPANY APP W-1

**PART V
LLP AND LLC CASES**

LLP and LLC Cases LLC Cases-1

**PART VI
INDICES**

Cumulative Table of Texas Business Organizations Codes INDEX-1
 Cumulative Table of Internal Revenue Code Citations. INDEX-12
 Miscellaneous Codes INDEX-23
 Cumulative Table of Treasury Regulations INDEX-29
 Cumulative Table of Revenue Rulings and Revenue Procedures INDEX-47
 Table of Cases INDEX-51
 References INDEX-61
 Subject Index INDEX-68
 Forms Index INDEX-87