

Table of Contents

Volume 1

CHAPTER 1. INTRODUCTION

- § 1:1 Overview and structure of book
- § 1:2 The emergence and history of LLCs
- § 1:3 Defining LLCs
- § 1:4 Noncorporate elements
- § 1:5 Limited liability
- § 1:6 —Participation in control
- § 1:7 Prototype Limited Liability Company Acts
- § 1:8 Uniform Limited Liability Company Act and Harmonization
- § 1:9 Related new business organizations and other statutory developments
- § 1:10 *Loper Bright* and the transformation of the federal regulatory law
- § 1:11 Artificial Intelligence and Other New Technologies

CHAPTER 2. CHOICE OF ORGANIZATIONAL FORM AND STRUCTURE

- § 2:1 Overview
- § 2:2 LLCs are not business corporations
- § 2:3 Business law considerations—Management structure
- § 2:4 —Authority of owners
- § 2:5 —Economic structure
- § 2:6 —Exit provisions
- § 2:7 —Liability structure
- § 2:8 —Mergers and conversions
- § 2:9 —Other business issues
- § 2:10 Tax issues
- § 2:11 —Classification and qualification in formation
- § 2:12 —Type and number of owners
- § 2:13 —Classification and qualification in operation
- § 2:14 —Rates and double taxation
- § 2:15 —Taxation of formation and contribution transactions
- § 2:16 —Type and number of owners—Ability of owners to use business losses
- § 2:17 —At-risk rules
- § 2:18 —Passive losses

- § 2:19 —Accounting methods and periods
- § 2:20 —Basis and liabilities
- § 2:21 —Distributions
- § 2:22 —Allocations of income or loss from contributed property
- § 2:23 —Other allocations of income and deduction
- § 2:24 —Sales or exchanges of interests
- § 2:25 —Compensatory payments
- § 2:26 —Treatment of cancellation of indebtedness
- § 2:27 —Taxation of liquidation and dissolution
- § 2:28 —Equity compensation, employee benefits and retirement plans
- § 2:29 —Disregarded entities
- § 2:30 —Disregarded LLC or qualified S subsidiary
- § 2:31 —Disregarded LLC or consolidated corporate subsidiary
- § 2:32 —Disregarded entity or partnership audit coverage
- § 2:33 —Participation in mergers and tax-free reorganizations
- § 2:34 —State tax issues
- § 2:35 —Foreign investors
- § 2:36 —Partnership audit and reporting rules
- § 2:37 LLCs as substitutes for other forms of entity
- § 2:38 Other considerations

CHAPTER 3. OVERVIEW OF BUSINESS LAW ASPECTS

- § 3:1 Business law aspects—Introduction
- § 3:2 A note on the role of the attorney in LLC and other entity transactions and litigation
- § 3:3 Persons, entities, and other relationships
- § 3:4 Statutes as standard forms
- § 3:5 Mandatory statutory rules
- § 3:6 Third party protection
- § 3:7 Member protection
- § 3:8 Filing and formalities
- § 3:9 Other standard forms as models
- § 3:10 Uniformity and diversity of LLC statutes
- § 3:11 The entity-aggregate distinction

CHAPTER 4. FORMATION OF LIMITED LIABILITY COMPANY

- § 4:1 Introduction
- § 4:2 Creation of an LLC

TABLE OF CONTENTS

§ 4:3	Number of members required
§ 4:4	Execution of articles
§ 4:5	Contents of articles
§ 4:6	—Disclosures required by all statutes
§ 4:7	—Other required or optional disclosures
§ 4:8	—Mandatory and optional provisions
§ 4:9	—Articles as notice of disclosed facts
§ 4:10	Enhanced disclosure—Generally
§ 4:11	Additional disclosure—Federal
§ 4:12	—State & local
§ 4:13	Purposes and powers
§ 4:14	Special or social purpose statutes: The L3C, public benefit LLC and restricted LLC
§ 4:15	Low-profit LLC (“L3C”)
§ 4:16	Public benefit LLC
§ 4:17	The restricted LLC
§ 4:18	Name
§ 4:19	Registered office and agent
§ 4:20	Fees and taxes
§ 4:21	Amendment of articles
§ 4:22	Consequences of noncompliance with formalities
§ 4:23	Comparison with limited partnerships
§ 4:24	Comparison with corporations
§ 4:25	Comparison with general partnerships
Appendix 4-1.	Charts
Appendix 4-2.	Number of Organizers Required to File Document of Formation
Appendix 4-3.	How LLC is Formed
Appendix 4-4.	Minimum Number of Owners
Appendix 4-5.	Required Disclosure in Articles or Certificate
Appendix 4-6.	Effect of Articles on Third Parties
Appendix 4-7.	Acknowledgement or Verification of Execution of Articles
Appendix 4-8.	Consequences of False Execution
Appendix 4-9.	Purpose Limitations
Appendix 4-10.	Powers
Appendix 4-11.	Terms Required in Firm Name
Appendix 4-12.	Restrictions on Firm Name
Appendix 4-13.	Reservation of Name
Appendix 4-14.	Duty to Maintain Registered Agent
Appendix 4-15.	Entities That May Be Registered Agent

- Appendix 4-16. Service of Process
- Appendix 4-17. Obligation to Correct Erroneous Statements in Articles
- Appendix 4-18. Consequences of Acting on Behalf of an LLC without Authority to Do So

CHAPTER 4A. BENEFICIAL OWNERSHIP AND INDIVIDUAL DUE DILIGENCE REQUIREMENTS

- § 4A:1 Introduction: The balance of privacy and transparency
- § 4A:2 Federal disclosure of beneficial ownership
- § 4A:3 Bank Secrecy Act
- § 4A:4 OFAC enforcement of sanctions against designated nationals and blocked persons (SDN List)
- § 4A:5 IRS Form 5472 (foreign owned corporations engaged in us trade or business)
- § 4A:6 Geographic targeting orders
- § 4A:7 Corporate Transparency Act
- § 4A:8 Corporate Transparency Act (CTA)—CTA reporting companies
- § 4A:9 —CTA reporting companies: What is a domestic reporting company?
- § 4A:10 —CTA: reporting companies: What is a foreign reporting company?
- § 4A:11 —CTA: reporting companies: twenty-three exemptions from reporting company classification
- § 4A:12 —CTA beneficial owners
- § 4A:13 —CTA beneficial owners: The ownership test
- § 4A:14 —CTA beneficial owners: The substantial control test
- § 4A:15 —CTA beneficial owners: Special beneficial owner reporting rules
- § 4A:16 —CTA beneficial owners: Ownership by an exempt company
- § 4A:17 —CTA beneficial owners: Donative trusts and the CTA
- § 4A:18 —CTA company applicant
- § 4A:19 —CTA beneficial ownership reports (BOIRs)
- § 4A:20 —CTA beneficial ownership reports (BOIRs): Information to be reported as to the reporting company
- § 4A:21 —CTA beneficial ownership reports (BOIRs): Information to be reported with respect to each beneficial owner

TABLE OF CONTENTS

- § 4A:22 —CTA beneficial ownership reports (BOIRs):
Updating obligation
- § 4A:23 —CTA beneficial ownership reports (BOIRs):
Information to be reported with respect to each
company applicant
- § 4A:24 —CTA beneficial ownership reports (BOIRs):
Obligation to correct
- § 4A:25 —CTA beneficial ownership reports (BOIRs): FinCEN
Identifiers
- § 4A:26 —CTA beneficial ownership reports (BOIRs):
Reporting deadlines
- § 4A:27 —CTA beneficial ownership reports (BOIRs): The
BOIR filing process
- § 4A:28 —CTA: The costs of over-reporting
- § 4A:29 —CTA: Penalties
- § 4A:30 —CTA: Alternative responses to the incomplete BOIR
dilemma
- § 4A:31 —CTA: Access to the CTA beneficial ownership
database
- § 4A:32 No More Bearer Shares/Membership Interests
- § 4A:33 CTA: Bankrupt reporting companies
- § 4A:34 Challenges to the constitutionality of the CTA
- § 4A:35 Anti-money laundering regulations for residential
real estate transfers
- § 4A:36 State and local beneficial ownership laws
- § 4A:37 Other customer due diligence rules
- § 4A:38 Beneficial ownership and individual due diligence
and choice of business entity

CHAPTER 5. THE OPERATING AGREEMENT

- § 5:1 Introduction
- § 5:2 What is an operating agreement?
- § 5:3 One-Member “Agreements”
- § 5:4 Pre-Formation agreements
- § 5:5 Effect of formal noncompliance on enforcement of
operating agreement
- § 5:6 Relationship between articles and operating agreement
- § 5:7 Effect of statute on operating agreement
- § 5:8 Requirements that operating agreement be in writing
and application of statute of frauds to operating
agreements
- § 5:9 Amendment of the operating agreement
- § 5:10 Enforcing the operating agreement
- § 5:11 Terminating the operating agreement

- § 5:12 Application of contract law to the operating agreement
- § 5:13 Who is bound by the operating agreement?
- § 5:14 Effect of operating agreement on subsequently admitted members
- § 5:15 Drafting of the operating agreement
- § 5:16 Operating agreements for LLC not taxed as partnerships
- § 5:17 —Single-member LLCs
- § 5:18 —LLCs treated as C corporations
- § 5:19 —LLCs treated as S corporations
- § 5:20 —LLCs treated as exempt organizations
- § 5:21 Comparison with limited partnerships
- § 5:22 Comparison with corporations
- § 5:23 Comparison with general partnerships
- Appendix 5-1. Charts
- Appendix 5-2. Definition of Operating Agreement
- Appendix 5-3. Relationship Between the Articles of Organization and Operating Agreement
- Appendix 5-4. Explicit Limitations on the Effectiveness of the Operating Agreement Dealing with Standards of Conduct, Information, Contractual Obligation of Good Faith and Fair Dealing, and Indemnification
- Appendix 5-5. Explicit Limitations on the Effectiveness of the Operating Agreement to Eliminate Statutory Obligations of Members and Managers (Other Than Those Dealing with Standards of Conduct, Information, Contractual Obligation of Good Faith and Fair Dealing, and Indemnification)
- Appendix 5-6. Doctrine of Independent Legal Significance
- Appendix 5-7. Requirement That Operating Agreement Be in Writing
- Appendix 5-8. Adoption of Operating Agreement

CHAPTER 6. CAPITAL STRUCTURE AND CAPITAL CONTRIBUTIONS

- § 6:1 Introduction
- § 6:2 Accounts and sharing rules
- § 6:3 Capacity in which contribution is made and amount of contribution
- § 6:4 Form of contributions
- § 6:5 Enforcement of oral contribution obligations; statute of frauds

TABLE OF CONTENTS

- § 6:6 Records of contributions
- § 6:7 Enforcing contribution obligations
- § 6:8 Compromise of contribution obligations
- § 6:9 Failed Contributions
- § 6:10 Recharacterization of debt as equity
- § 6:11 Comparison with limited partnerships
- § 6:12 Comparison with corporations
- § 6:13 Comparison with general partnerships
- Appendix 6-1. Charts
- Appendix 6-2. Default Allocation of Profits, Losses and Distributions
- Appendix 6-3. Restrictions on Form of Contributions
- Appendix 6-4. Requirement for Written Contribution and Record of Contribution
- Appendix 6-5. Compromise of Contributions

CHAPTER 7. DISTRIBUTIONS

- § 7:1 Introduction
- § 7:2 Right to receive distributions
- § 7:3 Share of distributions
- § 7:4 Form of distributions
- § 7:5 Authority to declare a distribution
- § 7:6 Tax distributions
- § 7:7 Proper and improper distributions
- § 7:8 Recovery of improper distributions
- § 7:9 Direct Liability
- § 7:10 Secondary liability
- § 7:11 Standing
- § 7:12 Emoluments Clause
- § 7:13 Comparison with limited partnerships
- § 7:14 Comparison with corporations
- § 7:15 Comparison with general partnerships
- Appendix 7-1. Charts
- Appendix 7-2. Non-Cash Distributions
- Appendix 7-3. Liability for Wrongful Distributions
- Appendix 7-4. Definition of Wrongful Distribution
- Appendix 7-5. Definition of Distribution

CHAPTER 8. OWNERSHIP AND TRANSFER OF LLC PROPERTY

- § 8:1 Introduction

- § 8:2 Property of the firm
- § 8:3 Issues incident to the receipt of property as a member contribution
- § 8:4 Transfer of LLC property
- Appendix 8-1. Charts
- Appendix 8-2. Ownership of Property by LLC

CHAPTER 9. INTERESTS IN THE LIMITED LIABILITY COMPANY

- § 9:1 Introduction
- § 9:2 Member's interest in the LLC
- § 9:3 Admission of member and assignment of management rights
- § 9:4 Assignment of financial interest—Rights and obligations of assignee
- § 9:5 —Assignors' rights and obligations
- § 9:6 Certification of interests
- § 9:7 Inheritance
- § 9:8 *Kellogg* as a prototypical case on the rights of a surviving spouse
- § 9:9 Rights of divorced spouse
- § 9:10 Comparison with limited partnerships
- § 9:11 Comparison with corporations
- § 9:12 Comparison with general partnerships
- Appendix 9-1. Charts
- Appendix 9-2. Definition of Membership Interest in LLC
- Appendix 9-3. Persons Who May Be Members and Definition of "Person"
- Appendix 9-4. How a Person Becomes a Member
- Appendix 9-5. When Assignee or Transferee Assumes Membership Obligations
- Appendix 9-6. Assignor's Membership Status
- Appendix 9-7. Assignor's Liabilities
- Appendix 9-8. Admission of Transferee to Management Rights
- Appendix 9-9. Certification of Interests
- Appendix 9-10. Deceased or Incompetent Member's Interest

CHAPTER 10. CHARGING ORDERS WITH RESPECT TO LLC MEMBERS

- § 10:1 Introduction

TABLE OF CONTENTS

§ 10:2	Charging orders generally
§ 10:3	Appointment of a receiver
§ 10:4	Other orders
§ 10:5	The charging order's reach
§ 10:6	Exclusivity of the charging order
§ 10:7	Turn-over order as an alternative to the charging order
§ 10:8	Piercing exception to exclusivity
§ 10:9	Olmstead: turn-over of a single-member LLC's entire interest
§ 10:10	Bankruptcy
§ 10:11	Exemption laws
§ 10:12	Implications for the judgment-debtor of the issuance of a charging order
§ 10:13	Implications for the LLC of the issuance of a charging order
§ 10:14	Implications for the judgment-creditor of the issuance of a charging order
§ 10:15	Redemption of the charging order
§ 10:16	Implications of redemption for the LLC
§ 10:17	Implications of redemption for the judgment-creditor
§ 10:18	Foreclosing on the charging order
§ 10:19	Implications of foreclosure for the LLC
§ 10:20	Implications of foreclosure for the judgment-creditor
§ 10:21	Implications of foreclosure for the judgment-debtor
§ 10:22	Gaining control of the multiple member LLC's underlying assets to satisfy the judgment-creditor
§ 10:23	Gaining control of the single-member's LLCs assets to satisfy the judgment-creditor of the member
§ 10:24	Tax treatment of judgment-debtor and judgment-creditor
§ 10:25	The IRS factor
§ 10:26	Tax treatment upon foreclosure
§ 10:27	Recording concerns
§ 10:28	Bankruptcy concerns
§ 10:29	Is either the judgment lien or the charging order subject to discharge in bankruptcy?
§ 10:30	Is either the judgment lien or the charging order subject to characterization as a preference subject to Bankruptcy Code § 547?
§ 10:31	Are payments made pursuant to a charging order subject to characterization as preferences subject to Bankruptcy Code § 547?
§ 10:32	Priority of the charging order lien
§ 10:33	Conflicts of law concerns

- Appendix 10-1. Charts
- Appendix 10-2. Rights of Members' Creditors/Charging Orders

CHAPTER 11. MANAGEMENT AND CONTROL OF THE LIMITED LIABILITY COMPANY

- § 11:1 Introduction
 - § 11:2 Statutory default: centralized or decentralized management
 - § 11:3 Voting by members
 - § 11:4 Management by managers
 - § 11:5 Agency power of members in member-managed firms
 - § 11:6 Restricting members' agency power
 - § 11:7 Agency power of managers
 - § 11:8 Restrictions on managers' agency power
 - § 11:9 Members' agency power in centrally managed LLC
 - § 11:10 Transfers of property
 - § 11:11 Admissions by members and managers
 - § 11:12 Notice to and knowledge of member or manager
 - § 11:13 Wrongful acts of member or manager
 - § 11:14 Comparisons with limited partnerships
 - § 11:15 Comparisons with corporations
 - § 11:16 Comparisons with general partnerships
- Appendix 11-1. Charts
 - Appendix 11-2. Default Method of Management
 - Appendix 11-3. Method of Varying Default Management
 - Appendix 11-4. Allocation of Member Votes
 - Appendix 11-5. Member Agency Power
 - Appendix 11-6. Manager Agency Power
 - Appendix 11-7. Limits on Member Agency Power to Bind in Manager-Managed Firms
 - Appendix 11-8. Admissions or Representations by Members of Managers Binding on LLC
 - Appendix 11-9. Notice to LLC

Volume 2

CHAPTER 12. DUTIES OF MEMBERS AND MANAGERS

- § 12:1 Introduction

TABLE OF CONTENTS

§ 12:2	—Overview of fiduciary duties
§ 12:3	Duty of care
§ 12:4	Duty of loyalty
§ 12:5	—Self-dealing
§ 12:6	—Acquisition or use of firm assets and compensation
§ 12:7	—Manager’s and member’s activities outside LLC— Business opportunities and competition
§ 12:8	—Fairness
§ 12:9	Consent, waiver, and freedom of contract
§ 12:10	Information rights and the duty to disclose
§ 12:11	—Ongoing disclosure to members about operations
§ 12:12	—Misleading and incomplete statements
§ 12:13	—Demand by members
§ 12:14	—Duty to keep and allow access to records
§ 12:15	—Disclosures to voting members
§ 12:16	—Disclosures concerning manager’s transactions
§ 12:17	—Disclosures to withdrawing or selling members
§ 12:18	—Disclosure to new members and in forming LLC
§ 12:19	—Disclosure to employees
§ 12:20	—Materiality
§ 12:21	—Scienter
§ 12:22	—Waiver in operating agreement
§ 12:23	—Enforcing the right to inspect books and records
§ 12:24	Duties of members
§ 12:25	Concept of good faith
§ 12:26	Transactions with LLC
§ 12:27	Remedies for breach of fiduciary duty
§ 12:28	Comparisons with limited partnerships
§ 12:29	Comparisons with corporations\
§ 12:30	Comparisons with general partnerships
Appendix 12-1.	Charts
Appendix 12-2.	Duty to Keep Records
Appendix 12-3.	Members’ Information Rights
Appendix 12-4.	Duty of Care of Managers and Managing Members
Appendix 12-5.	Authorization of Conflict of Interest Transactions
Appendix 12-6.	Managers’ and Managing Members’ Duties of Loyalty and Good Faith
Appendix 12-7.	Non-Managing Members’ Duties of Loyalty and Good Faith
Appendix 12-8.	Modification or Elimination of Duties of Members and Managers

- Appendix 12-9. Modification or Elimination of Liability for
Breach of Duties by Members or Managers
- Appendix 12-10. Express Provision Giving Effect to the
Principle of Freedom of Contract

CHAPTER 13. LITIGATION

- § 13:1 Introduction
- § 13:2 Suits by firm in firm's name
- § 13:3 Derivative suits
- § 13:4 Suits by members individually
- § 13:5 Enforcement of firm's obligations
- § 13:6 Federal suits
- § 13:7 Federal Diversity Jurisdiction
- § 13:8 Representation of LLCs by Attorneys and Pro Se
Representation
- § 13:9 Comparison with limited partnerships
- § 13:10 Comparison with corporations
- § 13:11 Comparison with general partnerships
- Appendix 13-1. Charts
- Appendix 13-2. Derivative Suits
- Appendix 13-3. Indemnification
- Appendix 13-4. Suits Against LLC

CHAPTER 14. DISSOCIATION, DISSOLUTION, MERGER, AND OTHER FUNDAMENTAL CHANGES

- § 14:1 Introduction
- § 14:2 Dissociation
- § 14:3 Events causing member dissociation
- § 14:4 —Voluntary withdrawal
- § 14:5 —Expulsion of a member
- § 14:6 —Other events of dissociation
- § 14:7 Consequences of dissociation
- § 14:8 Payment on dissociation
- § 14:9 Valuation of member's interest and goodwill on
dissociation
- § 14:10 Form and time of payment
- § 14:11 Effect of agreement
- § 14:12 Apparent authority of ex-member to bind firm
- § 14:13 Dissolution
- § 14:14 Events causing dissolution
- § 14:15 Member's dissociation

TABLE OF CONTENTS

§ 14:16	Provision in operating agreement or consent of the members
§ 14:17	Member vote
§ 14:18	Judicial dissolution
§ 14:19	Administrative dissolution
§ 14:20	Reinstatement
§ 14:21	Filing and notice
§ 14:22	Consent or agreement to continue
§ 14:23	Winding up and accounting
§ 14:24	Members' and managers' duties after dissolution or dissociation
§ 14:25	Effect of dissolution and liquidation on existing debts and contracts
§ 14:26	Effect of agreement
§ 14:27	Post-dissolution power to bind firm
§ 14:28	Actual authority in winding up transactions
§ 14:29	Apparent authority
§ 14:30	Distribution of assets
§ 14:31	Merger, conversion, and divisional merger
§ 14:32	Merger, conversion, and divisional mergers—In general
§ 14:33	Merger, conversion, and divisional merger—Procedure for merger
§ 14:34	—Foreign LLCs
§ 14:35	—Corporations
§ 14:36	—Partnerships
§ 14:37	—Conversion
§ 14:38	—Divisional merger
§ 14:39	—“Junction-box” and model entity transactions act provisions
§ 14:40	Comparisons with limited partnerships
§ 14:41	Comparisons with corporations
§ 14:42	Comparisons with general partnerships
Appendix 14-1.	Charts
Appendix 14-2.	Member's Power to Withdraw
Appendix 14-3.	Statutory Events Causing Member Dissociation
Appendix 14-4.	Consequences of Dissociation
Appendix 14-5.	Penalty for Wrongful Withdrawal
Appendix 14-6.	Events Causing Dissolution
Appendix 14-7.	Judicial Dissolution and Expulsion
Appendix 14-8.	Administrative Dissolution or Termination
Appendix 14-9.	Continuation After Member Dissociation

- Appendix 14-10. Participation in Winding Up
- Appendix 14-11. Filings Required or Permitted on Dissolution or Termination
- Appendix 14-12. Ability of LLC to Reinstate after Dissolution or Termination
- Appendix 14-13. Priority of Distribution of Assets
- Appendix 14-14. Creditors' Post-Dissolution Rights
- Appendix 14-15. Types of Mergers Authorized
- Appendix 14-16. Conversion into or from LLC
- Appendix 14-17. Formalities Required for Merger
- Appendix 14-18. Approval Required for Merger or Conversion

CHAPTER 15. LIABILITY OF MEMBERS AND MANAGERS TO THIRD PARTIES

- § 15:1 Introduction
- § 15:2 Statutory limited liability of members and managers
- § 15:3 Veil-piercing
- § 15:4 Other bases for member and manager liability
- § 15:5 Contractual liability
- § 15:6 Statutory exceptions to the rule of limited liability
- § 15:7 Comparison with limited partnerships
- § 15:8 Comparison with corporations
- § 15:9 Comparison with general partnerships
- Appendix 15-1. Charts
- Appendix 15-2. Liability of LLC Members to Third Parties
- Appendix 15-3. Liability of LLC Managers and Other Non-Members to Third Parties

CHAPTER 16. LIMITED LIABILITY COMPANIES DOING BUSINESS OUTSIDE THE JURISDICTION OF FORMATION

- § 16:1 Introduction
- § 16:2 Formation state provisions
- § 16:3 Foreign LLC provisions
- § 16:4 Conflict of laws
- § 16:5 Constitutional limits on choice of law
- § 16:6 Comparisons with limited partnerships
- § 16:7 Comparisons with corporations
- § 16:8 Comparisons with general partnerships
- Appendix 16-1. Charts

TABLE OF CONTENTS

- Appendix 16-2. Authorizing Business Outside State
- Appendix 16-3. Definition of Foreign LLC
- Appendix 16-4. Registration Requirement
- Appendix 16-5. Law Governing Foreign LLC
- Appendix 16-6. Rights of Foreign LLC
- Appendix 16-7. Penalty for Failure to Register
- Appendix 16-8. Transacting Business

**CHAPTER 17. EFFECT OF SECURITIES,
BANKRUPTCY AND OTHER BUSINESS
LAWS ON LIMITED LIABILITY COMPANIES**

- § 17:1 Introduction
- § 17:2 Federal securities laws—Interests in LLCs as Securities Under Federal Securities Laws
- § 17:3 —Exemptions from Registration Requirements
- § 17:4 —Application of Antifraud and Other Provisions of Securities Laws
- § 17:5 —Limited Liability Companies as Rule 501 “Accredited Investors”
- § 17:6 Blue sky laws
- § 17:7 —Application to LLCs
- § 17:8 Bankruptcy Code—Eligibility of an LLC to Be a Debtor
- § 17:9 —Effect of Member’s or Firm’s Bankruptcy on an LLC
- § 17:10 —Application of Automatic Stay
- § 17:11 —Commencement of an LLC Bankruptcy Proceeding
- § 17:12 —The LLC as a “Bankruptcy Remote” Structure
- § 17:13 —Bankruptcy of a Member as a Cause of Dissolution and Dissociation
- § 17:14 —The LLC’s Bankruptcy Estate
- § 17:15 —LLC Interest as Property of the Member’s Bankruptcy Estate
- § 17:16 —The Small Business Reorganization Act
- § 17:17 LLC members as employees under employment statutes
- § 17:18 —Employment Discrimination Laws
- § 17:19 —Worker Compensation Laws
- § 17:20 —Other Employment Law
- § 17:21 Effect of “check-the-box” regulations on the treatment of LLCs under business laws

CHAPTER 18. USE OF LIMITED LIABILITY COMPANIES IN PARTICULAR TRANSACTIONS

- § 18:1 Introduction
- § 18:2 Investments in general
- § 18:3 —Limitations on liability
- § 18:4 —Ability to control liquidation
- § 18:5 —Income and employment tax treatment
- § 18:6 Authority of members and managers and ownership of property
- § 18:7 Particular types of business
- § 18:8 —Real estate
- § 18:9 Need for pass-through taxation and deferral
- § 18:10 —Extractive industry
- § 18:11 —Agriculture
- § 18:12 Other investments
- § 18:13 Personal service business
- § 18:14 —Attorneys
- § 18:15 —Accountants
- § 18:16 —Health care
- § 18:17 —Other professionals
- § 18:18 Financial products and technology
- § 18:19 Venture capital firms and joint ventures generally
- § 18:20 —Venture capital firms
- § 18:21 —Leveraged buy-outs
- § 18:22 —Insurance
- § 18:23 High technology
- § 18:24 Corporate joint ventures
- § 18:25 Family controlled business
- § 18:26 The unincorporation
- § 18:27 International transactions
- § 18:28 DAOs and DeFi

CHAPTER 19. TAX CLASSIFICATION

- § 19:1 Introduction
- § 19:2 What is the status of an LLC for federal tax purposes?
- § 19:3 Cost-Sharing or Expense-Sharing Arrangements and other contractual arrangements
- § 19:4 Trade or Business
- § 19:5 Taxation of entities
- § 19:6 Classification of limited liability companies—
Historical background
- § 19:7 The “check-the-box” regulations

TABLE OF CONTENTS

§ 19:8	Eligible entity
§ 19:9	The check-the-box election
§ 19:10	Foreign entities
§ 19:11	Single-member organizations
§ 19:12	Transition rules
§ 19:13	Classification for state tax purposes
§ 19:14	Planning opportunities under the simplification rules
§ 19:15	LLC as a corporation
§ 19:16	LLC as an S corporation
§ 19:17	Integration proposals

CHAPTER 20. FEDERAL INCOME TAXATION OF LIMITED LIABILITY COMPANIES TAXED AS PARTNERSHIPS AND THEIR MEMBERS

§ 20:1	Introduction
§ 20:2	Overview of partnership taxation and the deduction for qualified business income
§ 20:3	Partnership anti-abuse regulation
§ 20:4	Operating agreement as partnership agreement
§ 20:5	The existence of a tax partnership, presence of tax partners, and members as general and limited partners
§ 20:6	Treatment of assignees and transferees as members
§ 20:7	Property contributions to LLC
§ 20:8	Noncompensatory options to acquire membership interests
§ 20:9	Determination of members' basis in LLC and the LLC's basis in its property
§ 20:10	Allocation of gains and losses and capital accounts
§ 20:11	I.R.C. § 704(c) and basis-book value differences— Terminology
§ 20:12	I.R.C. §§ 704(c)(1)(B) and 737
§ 20:13	Partnership liabilities and cancellation of indebtedness
§ 20:14	At-risk rules
§ 20:15	Passive loss rules
§ 20:16	Other tax accounting rules
§ 20:17	Distributions, guaranteed payments and dispositions of interests in an LLC
§ 20:18	Publicly Traded Partnerships
§ 20:19	Partnership audit rules
§ 20:20	Election out of subchapter K
§ 20:21	Limited liability partnerships

§ 20:22 Interest Deduction

CHAPTER 21. FAMILY CONTROLLED LLCs

- § 21:1 Introduction
- § 21:2 Business structure
- § 21:3 —Control
- § 21:4 —Duties and management among members
- § 21:5 —Assignees
- § 21:6 Federal income taxation
- § 21:7 Federal transfer taxation
- § 21:8 General transfer taxation issues (I.R.C. §§ 2036, 2038, and 2503)
- § 21:9 Chapter 14
- § 21:10 —I.R.C. § 2701
- § 21:11 —I.R.C. § 2703
- § 21:12 —I.R.C. § 2704(a)
- § 21:13 —I.R.C. § 2704(b)
- § 21:14 Gift on formation

CHAPTER 22. SINGLE-MEMBER LLCs

- § 22:1 Introduction
- § 22:2 What is a single-member LLC
- § 22:3 Dissolution on the dissociation of the last remaining member
- § 22:4 Charging orders and single-member LLCs
- § 22:5 Operating agreements
- § 22:6 Bankruptcy of the member of a single-member LLC or the single-member LLC
- § 22:7 Piercing the veil
- § 22:8 Other nontax issues
- § 22:9 Single-member LLC as a disregarded entity for tax purposes
- § 22:10 —S corporation shareholder
- § 22:11 —Tax deferred exchanges
- § 22:12 —Nonprofit organizations
- § 22:13 —Principal residence
- § 22:14 —Real estate assets in REIT's
- § 22:15 Circumstances in which the single-member LLC is recognized or has an impact
- § 22:16 —Use of single-member LLCs owned in corporate reorganizations
- § 22:17 Change in classification
- § 22:18 LLCs entirely owned by spouses
- § 22:19 Single-member LLCs and federal taxes other than employment taxes and excise taxes

TABLE OF CONTENTS

- § 22:20 Single-member LLCs and employment and excise taxes
- § 22:21 Single-member LLCs in the international context

CHAPTER 23. TAX TREATMENT OF TERMINATIONS, MERGERS, CONVERSIONS, AND DIVISIONS OF PARTNERSHIPS

- § 23:1 Introduction
- § 23:2 Termination
- § 23:3 Taxation of mergers of partnerships in general
- § 23:4 Tax paradigms for dealing with mergers, conversions, and divisions of LLCs
- § 23:5 —Assets-over form
- § 23:6 —Assets-up form
- § 23:7 —Interest-over and other forms
- § 23:8 —Conversions of LLCs and partnerships
- § 23:9 Buyout of partner or member
- § 23:10 Divisions of partnerships and LLCs
- § 23:11 Mergers involving corporations and partnerships
- § 23:12 Incorporation of a partnership and merger of partnership into a corporation
- § 23:13 Recognition of gain on incorporation of a partnership or merger of a partnership with a corporation
- § 23:14 —I.R.C. §§ 704(c)(1)(B), 737
- § 23:15 —Requirement under I.R.C. § 351
- § 23:16 —Liabilities of the partnership assumed by the corporation
- § 23:17 Paradigms for incorporation of a partnership
- § 23:18 —The assets-over form (situation 1)
- § 23:19 —The assets-up form (situation 2)
- § 23:20 —The interest-over form (situation 3)
- § 23:21 —Other methods
- § 23:22 Conversion of corporation to partnership
- § 23:23 Paradigms for incorporation of a partnership—
Merger of corporate subsidiary with partnership or LLC
- § 23:24 —Conversion of a corporation to a limited partnership
- § 23:25 —Transformations under the check-the-box Regulations
- § 23:26 Mergers, transmogrifications and conversions involving disregarded entities
- § 23:27 —Addition of a member to an LLC treated as corporation

- § 23:28 —Acquisition by a third party of all of the interests in an LLC
- § 23:29 —Redemption by the LLC of the interests of all but one of the members
- § 23:30 —Merger of corporation into disregarded entity
- § 23:31 —Merger of disregarded entity into a tax partnership
- § 23:32 —Merger or conversion of tax partnership into a disregarded entity
- § 23:33 —Elective changes in classification
- § 23:34 Taxpayer identification numbers and employer identification numbers
- § 23:35 Taxpayer Identification Numbers—TIN of disregarded entity
- § 23:36 —Elective change in classification (“checking the box”)
- § 23:37 —Technical terminations of partnerships
- § 23:38 —State law merger or conversion
- § 23:39 —EIN/TIN Chart

CHAPTER 24. NON-TAX AND FEDERAL TAX TREATMENT OF SERVICE PROVIDERS IN LLCs

- § 24:1 Introduction: Taxation of individual compensatory and non-compensatory income
- § 24:2 Partners, employees and transformations
- § 24:3 Liability of a disregarded entity for employment taxes
- § 24:4 Compensatory distributions and allocations to owners—Corporations—Non-cash benefit plans
- § 24:5 —S corporation
- § 24:6 — —Non-qualified deferred compensation arrangements
- § 24:7 —Tax partnerships—Net earnings from self-employment—General partners
- § 24:8 — —Net Earnings from self-employment—Members of LLCs (before 1994)
- § 24:9 — — —1994 Proposed Regulations
- § 24:10 — — —1997 Proposed Regulations
- § 24:11 — — —The moratorium, the NII, and the Sweet Spot (1998 – Present)
- § 24:12 — —Health insurance and other fringe benefits
- § 24:13 — —Non-qualified deferred compensation
- § 24:14 Use of interests as compensation—Application of I.R.C. § 83
- § 24:15 —Issuance of capital interests for services
- § 24:16 Net investment income (formerly unearned Medicare contribution) tax

TABLE OF CONTENTS

- § 24:17 Use of interests as compensation—Profits interest
- § 24:18 — —Rev Procs 93-27 and 2001-43
- § 24:19 — —Proposed carried interest legislation and I.R.C.
§ 1061
- § 24:20 —Compensatory partnership options
- § 24:21 —Proposed rules on the issuance of compensatory
partnership interests

CHAPTER 25. NONPROFIT LIMITED LIABILITY COMPANIES

- § 25:1 Introduction
- § 25:2 Tax-exempt organizations as members of LLCs
- § 25:3 —Loss of exemption
- § 25:4 —Private inurement and excess benefit transactions
- § 25:5 —Unrelated Business Taxable Income
- § 25:6 —Consequences to Donors on Contribution of an
Interest in an LLC to a Charitable Organization
- § 25:7 Tax-exempt organizations as LLCs
- § 25:8 Use of Hybrid LLCs for Program-Related Investments

CHAPTER 26. PROTECTED SERIES

- § 26:1 Introduction
 - § 26:2 Nature of a protected series
 - § 26:3 Establishment of a protected series
 - § 26:4 Foreign protected series
 - § 26:5 Powers and purposes of a protected series
 - § 26:6 Dissolution and reorganization of a protected series
 - § 26:7 Uniform Protected Series Act and Revised Prototype
Limited Liability Company Act
 - § 26:8 Agreement governing the Series LLC
 - § 26:9 Taxation of protected series
 - § 26:10 Uses of Protected Series
 - § 26:11 Protected Series Compared with Disregarded Entity
- Appendix 26-1. Charts
 - Appendix 26-2. Provisions for Protected Series
 - Appendix 26-3. Establishment of a Series
 - Appendix 26-4. Registered Agent and Name of Protected
Series
 - Appendix 26-5. Powers and Purposes of Protected Series
 - Appendix 26-6. Protected Series as a Separate Person or
Entity
 - Appendix 26-7. Members and Managers Associated with
Protected Series

- Appendix 26-8. Dissolution, Winding Up and Termination of Protected Series
- Appendix 26-9. Merger and Conversion of Protected Series or Series LLCs

Volume 3

TABLE OF STATE LIMITED LIABILITY COMPANY ACTS

APPENDIX A. Table of State Limited Liability Company Acts

OPERATING AGREEMENTS

- APPENDIX B-1. Operating Agreements Manager-Managed [Operating/Limited Liability Company] Agreement of _____, LLC a [State] Limited Liability Company Effective as of _____, 20__
- APPENDIX B-2. Family Limited Liability Company Operating Agreement (Manager-Managed)
- APPENDIX B-3. Professional Limited Liability Company Operating Agreement (Member-Managed)
- APPENDIX B-4. Limited Liability Company Agreement for an Unincorporation (Based on the Delaware Limited Liability Company Act)
- APPENDIX B-5. Single Member Limited Liability Company Operating Agreement (Manager-Managed)
- APPENDIX B-6. Investment Limited Liability Company Operating Agreement (Manager-Managed)
- APPENDIX B-7. LLC Formation Checklist
- APPENDIX B-8. Unit-Based Manager-Managed Operating Agreement—Long Form
- APPENDIX B-9. S Corporation LLC Operating Agreement
- Appendix B-10. CTA Rider

PROTOTYPE LLCA

APPENDIX C. Prototype Limited Liability Company Act

Uniform Limited Liability Company Act

APPENDIX D-1. Amendments to Uniform Limited Liability Act (1996)

TABLE OF CONTENTS

- APPENDIX D-2. Uniform Limited Liability Company Act
(Uniform Limited Liability Act (1996))
- APPENDIX D-3. Comments on ULLCA
- APPENDIX E-1. Revised Uniform Limited Liability Company
Act (Uniform Limited Liability Company
Act (2006))
- APPENDIX E-2. Analysis of Revised Uniform Limited
Liability Company Act
- APPENDIX F. Uniform Limited Liability Company Act
(2006) (last amended 2013)
- APPENDIX G. Revised Prototype Limited Liability
Company Act

Table of Laws and Rules

Table of Cases

Index