

LIMITED LIABILITY COMPANIES IN DELAWARE AND TENNESSEE: A COMPARATIVE APPROACH

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INTRODUCTION

Over the last ten years, the limited liability company (“LLC”) has become a widely used form of business entity in the United States. A hybrid of the partnership and corporate structures, LLCs combine the management flexibility and pass-through tax treatment of a partnership with the limited liability associated with a corporation. As such, Delaware enacted the Delaware Limited Liability Company Act in 1992 (the “Delaware Act”). Tennessee followed suit and enacted the Tennessee Limited Liability Company Act in 1994 (the “Tennessee Act”). Today, all 50 states have LLC statutes.

When advising clients on the formation of an LLC that will operate in Tennessee, a business lawyer should consider organizing the entity in Delaware. “Delaware, because of its business-friendly disposition, well-developed body of corporate law, business savvy courts, and attentive legislature, is often considered the jurisdiction of choice for forming LLCs.”² The attached chart, which follows the organization of the Delaware Act, provides a side-by-side comparison of the Tennessee and Delaware LLC statutes. This statutory chart should facilitate comparisons of key provisions concerning the formation and governance of LLCs.

The Delaware Act takes a streamlined statutory approach, leaving many management and operational matters to the discretion of the organizers and members. The Tennessee Act, on the other hand, aims to provide more comprehensive and detailed statutory guidance by relying heavily on Tennessee’s corporation and partnership statutes.³ The drafters of the Tennessee Act were

² Fredric J. Bendremer, *Those Delaware LLCs – Another Look How They Could Work for You*, 10 BUS. L. TODAY, May–June 2001, at 43.

³ J. Leigh Griffith, *Limited Liability Companies: The Entity of Choice in Tennessee*, 3, 5 n.18 (1995)

The members of the Tennessee Bar Association Task Force on Limited Liability Companies determined to follow the parallel Tennessee law as much as possible. . . . Therefore, (1) the comprehensiveness of the statute...and (2) the statutory language modeled as much as possible on the parallel existing Tennessee statutory law were conscious decisions to make the Act most useful to businessmen by greatly reducing uncertainty.

particularly concerned with ensuring that Tennessee LLCs would qualify for federal partnership tax treatment.⁴

The applicability of many Tennessee LLC provisions depends on whether the LLC chooses to be “board-managed” (by a board of governors analogous to a corporate board) or “member-managed” (similar to a partnership). The Tennessee Act requires that this election, along with 15 other mandatory and optional items, be stated in the articles of organization. By contrast, the Delaware Act’s certificate of formation requires only the name of the LLC, the address of the registered office, and the name and address of the registered agent. Under the Tennessee Act, board-managed LLCs must have an operating agreement in writing to be effective; in Delaware such agreements are optional and may be either oral or written.

In Tennessee, the board of governors for a board-managed LLC retains most of the formalities of a corporate board (elections, meetings, committees, etc.). In addition, member votes are required on some matters. A board-managed LLC must also have two required managers – a Chief Manager and a Secretary – who essentially function as officers. A member-managed board operates with management and agency rights analogous to the rights of partners in a general partnership. A Delaware LLC, on the other hand, can be managed by its members, or managers designated by the members, using any structure the members devise.⁵

In general, the Delaware Act affords LLCs more contractual freedom in governance matters and limits members’ and managers’ fiduciary duties. Both Acts permit an LLC, through its operating agreement, to modify or supplement the statutory default rules, which typically functions as the LLC’s central organizational document.⁶ The statutory default rules in Tennessee are more numerous than those in Delaware and, therefore, require more effort to draft around. For example, in Tennessee member voting and profit sharing are on a per capita basis unless the

⁴ *Id.* at 9. Internal Revenue Service did not implement the “check the box” system until 1997. *See* Treas. Reg. § 301.7701-2(b) (1997).

⁵ Richard Spore, *Delaware LLCs for Tennessee Lawyers?*, 35 TENN. B. J. 27, 28 (1999) (“Despite the statutory economy, the Delaware LLC Act permits business lawyers to create LLCs that look and operate like traditional general partnerships or corporations with boards and officers. Creative lawyers and clients also have the freedom to create hybrid LLCs that include elements of both.”).

⁶ Bendremer, *supra* note 2, at 45 (“It combines the materials that would ordinarily appear in a corporation’s certificate of incorporation or charter, and the corporation’s bylaws. The operating agreement may also contain provisions that would ordinarily appear in a shareholder’s agreement as well as other corporate documents.”).

operating agreement provides otherwise, whereas the Delaware default rules provide for profit sharing based on the amount of member contributions and voting on the basis of members' current profit percentage interests. Tennessee also imposes fiduciary duties on its members, managers, and governors that can only be partially modified by an agreement. Delaware, however, imposes no stated fiduciary duties on members or managers, and it permits the parties to modify, without restriction, any common duties that may exist.

An LLC organized in Delaware can register to do business in Tennessee as a foreign LLC and still enjoy the same privileges and protections as a domestic LLC; however, this involves additional costs. The basic organization and maintenance costs for a Tennessee-based LLC organized in Delaware would include:

- Filing fees for the certificate of formation (\$90 in Delaware) and the certificate of authority (\$20 in Tennessee);
- Annual report fees in both states (\$100 in Delaware; \$50 per member in Tennessee, subject to a \$300 minimum and \$3,000 maximum);
- Fees for maintaining a registered agent in each state; and
- Additional legal fees associated with preparing the Tennessee application for a certificate of authority to do business in the state.

Given the simplicity of the Delaware filing requirements and the greater freedom in organizing and managing LLCs under the Delaware Act, these additional costs may be worth the expense.

**COMPARISON OF TENNESSEE AND DELAWARE
LIMITED LIABILITY COMPANY ACTS**

DELAWARE	TENNESSEE
Del. Code Ann. tit. 6, §§ 18-101 to 18-1109 (1999 & 2002 Supp.)	Tenn. Code Ann. §§ 48-201-101 to 48-248-606 (2002 & 2002 Supp.)
A. GENERAL PROVISIONS	
<p>§ 18-101. <i>Definitions.</i></p> <p>(2) “Certificate of formation” means the certificate referred to in §18-201.</p> <p>(6) “Limited Liability Company,” “LLC,” or “Domestic Limited Liability Company” means an LLC formed under Delaware law and having one or more members.</p> <p>(7) “Limited Liability Company Agreement” or “Company Agreement” means any oral or written agreement of the member or members as to the affairs of the LLC and the conduct of its business. An LLC is bound by its company agreement regardless of whether the company executes it. An LLC with only one member may still have an enforceable company agreement.</p> <p>(10) “Manager” means a person who is named or designated as a manager of an LLC pursuant to a company agreement or similar instrument.</p>	<p>§ 48-202-101. <i>Limited liability company definitions.</i></p> <p>(2) “Articles” or “articles of organization” means articles of organization, articles of amendment, articles of correction, certificates of merger, and similar documents required to be filed with any of the foregoing as part of the formation and continuation of an LLC.</p> <p>(4) “Board” or “board of governors” means the board of governors of an LLC electing to be board-managed.</p> <p>(5) “Board-managed” means an LLC that has elected to be governed by a board of governors.</p> <p>(7) “Class” of membership interests means a category of interests differing in one or more rights or preferences from another category of membership interests.</p> <p>(20) “Governing body” means the board of governors of a board-managed LLC, the members of a member-managed LLC, and the board of directors of a corporation.</p> <p>(22) “Limited liability company” or “LLC” means a limited liability company organized under chapters 201-248 of Title 48.</p> <p>(26) “Member-managed” means an</p>

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	<p>LLC that has elected to be governed by its members, without a board of governors.</p> <p>(29) “Operating agreement” means a written agreement described in § 48-206-101 among the members concerning the LLC.</p>
	<p>§ 48-202-102. <i>Notice.</i></p> <p>Notice, under chapters 201-248 of Title 48, must be in writing, except oral notice is effective if it is reasonable and not prohibited by the articles or operating agreement.</p>
<p>§ 18-102. <i>Name set forth in certificate.</i></p> <p>The name must contain the words “Limited Liability Company,” the abbreviation “L.L.C.,” or the designation “LLC.”</p> <p>The LLC’s name must be distinguishable from the names of other entities registered, formed, organized, or qualified to do business in Delaware (unless written consent from each entity with an indistinguishable name is filed with the Secretary of State).</p>	<p>§ 48-207-101. <i>LLC name.</i></p> <p>The name must contain the words “limited liability company,” or the abbreviation “L.L.C.” or “LLC,” or words or abbreviations of like import in another language, provided they are written in roman characters or letters. The name must not contain the word “corporation” or “incorporated” or an abbreviation of either. The name must be distinguishable from names of other registered entities.</p>
<p>§ 18-103. <i>Reservation of name.</i></p> <p>A name may be reserved for 120 days by filing an application with the Secretary of State (“Secretary”).</p>	<p>§ 48-207-102. <i>Reserved name.</i></p> <p>A name may be reserved for four months by filing an application with the Secretary of State (“Secretary”).</p>
<p>§ 18-104. <i>Registered office; registered agent.</i></p> <p>An LLC must maintain (i) a Delaware registered office (which may or may not be a place of business), and (ii) a Delaware registered agent for service of process which has a business office that is identical to the registered office.</p>	<p>§ 48-208-101. <i>Registered office and agent.</i></p> <p>An LLC must maintain (i) a Tennessee registered office (which may or may not be a place of its business), and (ii) a Tennessee registered agent that maintains a business office that is identical to the registered office.</p>

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<p>§ 18-105. <i>Service of process on domestic limited liability companies.</i> Service may be made on any manager in Delaware, or the registered agent in Delaware, or at the registered office or place of business in Delaware. The Secretary is the default agent.</p> <p>§ 18-109. <i>Service of process on managers and liquidating trustees.</i> Serving as a manager or liquidating trustee of an LLC constitutes consent to the appointment of the LLC's registered agent as the manager or trustee's agent for service of process.</p>	<p>§ 48-208-104. <i>Service on LLC.</i> The registered agent is the LLC's agent for service of process, and the Secretary is the default agent. These are not the only means, or necessarily the required means, of service on an LLC.</p>
<p>§ 18-106. <i>Nature of business permitted; powers.</i> An LLC may carry on any lawful business, purpose, or activity, whether or not for profit, with the exception of the business of insurance or banking. It shall have the powers and privileges granted by this chapter, by law, and by its company agreement together with any powers incidental thereto. These include the power to make contracts of guaranty and suretyship and to enter into various financial agreements.</p>	<p>§ 48-203-101. <i>Purposes.</i> Every LLC has the purpose of engaging in any lawful business unless a more limited purpose is set forth in its articles. If the LLC is engaged in a business regulated under another TN statute, then it may organize as an LLC only if permitted by the other statute.</p>
<p>§ 18-107. <i>Business transactions of member or manager with the limited liability company.</i> Except as provided in a company agreement, a member or manager can transact business with the LLC (including lending money to or borrowing money from the LLC) with the same rights and obligations with respect to such transactions as a person who is not a member or manager.</p>	<p>§ 48-242-101. <i>Loans, guarantees, and suretyship.</i> Unless otherwise provided in the statutes, articles, or operating agreement, an LLC may lend money to, guarantee obligations of, or become a surety for a person (including LLC members, managers, employees, and governors) – subject to certain restrictions, and provided that requisite approval is obtained. Such financial arrangements may be with or without</p>

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	interest or security. This section does not grant any banking authority to the LLC.
<p>§ 18-108. <i>Indemnification.</i> Subject to the provisions of the company agreement, the LLC may indemnify any member, manager, or other person.</p>	<p>§ 48-243-101. <i>Indemnification.</i> An LLC may indemnify “responsible persons” who satisfy certain standards of conduct. Unless the articles provide otherwise, certain other persons may also be indemnified.</p>
<p>§ 18-110. <i>Contested matters relating to managers; contested votes.</i> The Court of Chancery has jurisdiction in connection with certain matters relating to LLC management, membership, and voting.</p>	
<p>§ 18-111. <i>Interpretation and enforcement of limited liability company agreement.</i> Actions to interpret, apply, or enforce a company agreement, or the duties, obligations, or liabilities between an LLC and/or its members and managers, may be brought in the Court of Chancery.</p>	
B. FORMATION	
<p>§ 18-201. <i>Certificate of Formation.</i> An LLC is formed when an authorized person executes a certificate of formation and files it with the Secretary. Once formed, an LLC is a separate legal entity. The certificate is required to contain the name of the LLC, the address of the registered office, and the name and address of the registered agent. It may also include other matters determined by the members. A company agreement is not required, but one may be entered into before,</p>	<p>§ 48-203-102. <i>Organizers and formation.</i> One or more individuals, acting as organizers, may form an LLC by filing articles with the Secretary. The LLC’s existence begins when the articles are filed unless a delayed effective date is specified in the articles. § 48-205-101. <i>Articles of organization.</i> The statute contains a list of 16 items that must be included in the articles, including a statement as to whether the LLC will be board-managed or member-managed.</p>

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<p>after, or at the time of the filing of a certificate of formation. Regardless of when it is entered into, a company agreement may be made effective as of the formation of the LLC or such other date as provided in the agreement.</p>	
	<p>§ 48-206-101. <i>Operating agreement.</i> An operating agreement is required for a board-managed LLC, but optional for a member-managed LLC. The agreement must be in writing and must contain certain items noted in § 48-205-101 and in this section. It may contain any rules, regulations, or provisions regarding the LLC's management, affairs, business, governance, and members.</p> <p>§ 48-206-102. <i>Adoption and amendment of operating agreement.</i> An operating agreement must be initially agreed to by all of the members or organizers, unless the articles provide otherwise. Members who join later are deemed to have agreed to the operating agreement. A vote of members necessary to amend the articles is required to amend the operating agreement, unless provided otherwise in the articles or agreement. A court of equity may enforce the operating agreement by injunction or other equitable relief.</p>
<p>§ 18-202. <i>Amendment to certificate of formation.</i> A certificate of formation may be amended at any time by filing a certificate of amendment with the Secretary. Any false statements in the certificate of formation must be</p>	<p>§ 48-209-101. <i>Authority to amend;</i> § 48-209-104. <i>Articles of amendment.</i> An LLC may amend its articles at any time by filing articles of amendment with the Secretary. § 48-209-102. <i>Amendment by board of governors.</i></p>

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promptly amended.	<p>Unless the articles provide otherwise, the board can adopt specified minor changes to the articles without member action.</p> <p>§ 48-209-103. <i>Amendment by board of governors and members.</i></p> <p>This section provides procedures for member approval of amendments that have been proposed by the board.</p>
<p>§ 18-203. <i>Cancellation of certificate.</i></p> <p>A certificate of cancellation must be filed with the Secretary to accomplish the cancellation of a certificate of formation upon the dissolution and completion of winding up of an LLC. The statute lists information that must be included in the certificate.</p>	<p>§ 48-245-503. <i>Articles of Termination.</i></p> <p>Articles of termination must be filed with the Secretary upon the dissolution and completion of winding up of an LLC.</p>
<p>§ 18-204. <i>Execution.</i></p> <p>Each certificate filed with the Secretary must be executed by one or more authorized persons. Execution constitutes an oath as to the truth of the facts stated therein.</p>	
<p>§18-206. <i>Filing.</i></p> <p>The original signed copy of all certificates must be delivered to the Secretary, who will endorse it with the date and hour of filing, file and index it, and return a certified copy to the person who filed it.</p> <p>Signatures may be a facsimile, a conformed signature, or an electronically transmitted signature.</p> <p>Filing fees must be paid at the time of filing. Fees are listed at § 18-1105(a) (<i>e.g.</i>, the fee for a certificate of formation is \$50).</p>	<p>§ 48-247-101. <i>Filing Requirements.</i></p> <p>This section contains a long list of requirements for various filings with the Secretary.</p>

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<p>§ 18-207. <i>Notice.</i> The fact that a certificate of formation is on file with the Secretary is notice of the fact that the entity is an LLC, as well as notice of certain other facts contained in the certificate.</p>	
<p>§ 18-208. <i>Restated Certificate.</i> An LLC can integrate into a single instrument (a “Restated Certificate of Formation”) all of the provisions of its certificate of formation or other instruments that have been filed with the Secretary. At the same time, it can adopt further amendments to the certificate (“Amended and Restated Certificate of Formation”).</p>	<p>§ 48-209-105. <i>Restated articles.</i> An LLC’s board of governors may restate its articles with or without member action; however, if the restatement includes an amendment, the procedures for member approval must be followed.</p>
<p>§ 18-209. <i>Merger and Consolidation.</i> Pursuant to an agreement of merger or consolidation, one or more domestic LLCs may merge, or be consolidated with or into, one or more LLCs or other business entities. A certificate of merger or consolidation must be filed with the Secretary.</p>	<p>§ 48-244-101. <i>Merger</i>; § 48-244-102. <i>Approval of merger</i>; § 48-244-103. <i>Certificate of Merger</i>; § 48-244-104. <i>Filing and effect of certificate of merger.</i> Pursuant to a plan of merger, a domestic LLC may merge with or into one or more other entities. Unless the articles or operating agreement provide otherwise, a merger plan for a domestic LLC must be approved by a majority of the board (if board-managed) and members holding more than 66-2/3% voting interests. The articles or operating agreement cannot reduce the required percentage of member voting interests to less than 50%. The surviving business entity must file a certificate of merger with the Secretary, which shall be effective upon filing unless a future effective date is provided in the certificate.</p>

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	<p>§ 48-244-201. <i>Transfer of assets and when permitted.</i> This section provides requirements for board and member voting on transfers of all or substantially all of the LLC's property and assets.</p>
<p>§ 18-212. <i>Domestication of non-United States entities.</i> Any non-U.S. entity may become domesticated as a Delaware LLC by complying with the provisions of this section and making the required filings with the Secretary.</p>	
<p>§ 18-213. <i>Transfer or continuance of domestic limited liability companies.</i> An LLC may transfer to or domesticate in a non-U.S. jurisdiction and elect to continue its existence as an LLC in Delaware. Depending upon its election, a certificate of transfer or a certificate of transfer and continuance must be filed with the Secretary. Even if the transferring LLC ceases to exist as a Delaware LLC, it is not required to wind up its affairs or pay its liabilities and distribute its assets.</p>	
<p>§ 18-214. <i>Conversion of certain entities to a limited liability company.</i> Certain other entities (including corporations, foreign LLCs, partnerships, trusts, or other unincorporated businesses) may convert to a domestic LLC by complying with the requirements of this section, including filing a certificate of conversion and a certificate of formation with the Secretary. Generally, the converting entity will not</p>	<p>§ 48-204-101. <i>Conversion of a general partnership or limited partnership to an LLC.</i> A general or limited partnership organized in TN may be converted to an LLC subject to the approval and filing requirements of this section. The converting partnership must file articles of conversion with the Secretary containing the information specified in this section. A partnership that has been converted to an LLC shall be deemed to be the same entity that</p>

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<p>be required to wind up its affairs, and the conversion will not be deemed a dissolution of the converting entity.</p>	<p>existed before the conversion. <i>§ 48-204-103. Conversion to a professional LLC.</i> A partnership that converts to a domestic LLC may become a professional LLC (“PLLC”) if the requirements of chapter 248 are met.</p>
<p><i>§ 18-215. Series of members, managers or limited liability company interests.</i> A company agreement may provide for designated series of members, managers, or LLC interests having separate rights, powers, or duties with respect to specified property or obligations of the LLC, or profits and losses associated with specified property or obligations. The company agreement may provide for the taking of an action (including amendment of the company agreement) without a vote or approval of any member or manager or class or groups of members or managers. It may also provide that any member or class or group of members associated with a series shall have no voting rights. The company agreement may also provide for rights to vote separately on any matter. This statute also provides guidelines for the management and termination of a series. If a company agreement so provides, and certain separate record keeping requirements are met, the liabilities of a designated series may be satisfied only from the assets of such series (“limitation on liabilities of a series”). A member or manager may agree to be</p>	

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personally obligated for liabilities of one or more series.	
<p>§ 18-216. <i>Approval of conversion of a limited liability company.</i> A domestic LLC may convert to another specified business form (<i>e.g.</i>, corporation or partnership) as authorized in a company agreement or in accordance with this statute. Unless otherwise agreed, such conversion does not require the LLC to wind up its affairs.</p>	
	<p>§ 48-212-101. <i>General Powers.</i> The LLC has the same powers as an individual to do all things necessary or convenient to carry out its business. This section provides a non-exclusive list of such powers.</p> <p>§ 48-213-101. <i>Ultra Vires Actions.</i> Except in three specified circumstances, the validity of an LLC's actions may not be challenged on the ground that it lacks or lacked the power to act.</p>
	<p>§ 48-214-101. <i>Transaction of business outside Tennessee.</i> In recognition of the importance of the LLC form of business organization, the general assembly desires that other states recognize the legal existence of Tennessee LLCs and the legal status of their members.</p> <p>§ 48-214-102. <i>Governing law.</i> The liability of an LLC's members, holders of financial interests, governors, employees, and agents shall be governed by Tennessee law.</p>

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C. MEMBERS	
<p>§ 18-301. <i>Admission of members.</i> A person can be admitted as a member in connection with the formation of an LLC. After formation, a person can be admitted as a member as provided in the company agreement; and if not so provided, then upon consent of all members. Persons may also become members as a result of assignments, mergers, and consolidations. A person can become a member and receive an interest in an LLC without making a contribution or being obligated to make a contribution to the LLC. Unless provided otherwise in the company agreement, a person may be admitted as a member (including as the sole member) without acquiring an interest in the LLC. Unless otherwise provided in an agreement, a member has no preemptive right to subscribe to additional interests.</p>	<p>§ 48-232-102. <i>Admission of members.</i> After an LLC is formed, all members must approve the admission of new members, unless the articles or the operating agreement provide otherwise. The authority to approve new members may be delegated to the board. Neither the articles nor the operating agreement may reduce the vote of members required to approve a new member to less than either (i) a per capita majority or (ii) a majority of the profits interests or capital interests of non-transferring members. Similarly, if the board approves new members, the required vote may not be reduced to less than a majority of the non-transferring governors who are members. Consents under this section are in the sole discretion of the member or governor and may be unreasonably withheld.</p>
	<p>§ 48-221-101. <i>Preemptive rights.</i> Unless otherwise provided in the articles, members shall not have preemptive rights. If the articles provide for such rights, they must be granted on the terms and conditions prescribed in the articles or operating agreement to provide a fair and reasonable opportunity to exercise the rights to acquire additional proportional interests. The statute lists several types of contributions that would not give rise to preemptive rights.</p>

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<p>§ 18-302. <i>Classes and voting.</i></p> <p>(a) A company agreement may provide for classes or groups of members having the relative rights, powers, and duties set forth in the agreement. A company agreement may provide that certain actions may be taken without the vote or approval of any member or class or group of members. It may also provide that any member or class or group of members shall have no voting rights.</p> <p>(b) A company agreement may provide that certain members or classes or groups have the right to vote separately or with a class or group on any matter. Voting may be on any basis including per capita, number, financial interest, class, or group.</p> <p>(c) A company agreement may include provisions relating to meeting notices, actions by consent, and other voting matters.</p> <p>(d) Unless otherwise provided in the company agreement, actions requiring member approval may be taken by written consent. When voting is required, members may vote in person or by proxy. Written consents and proxies may be transmitted electronically.</p>	<p>§ 48-235-101. <i>Special provisions.</i></p> <p>All membership interests must: 1) be of one class (without series) unless the articles or operating agreement establish or authorize more than one class or series within classes, and 2) share profits and losses and distributions as provided in applicable statutes.</p> <p>Rights and preferences may vary by class or series, and may include the following terms: 1) redemption at a fixed price; 2) entitlement to distributions; 3) preferences for distributions; 4) conversion rights; or 5) full, partial, or limited voting rights.</p> <p>§ 48-224-101. <i>Members vote.</i></p> <p>Unless otherwise provided in the articles or operating agreement, each member will have equal per capita voting power with other members. Voting procedures are addressed in §§ 48-224-102 to -105.</p> <p>§ 48-225-101. <i>Proxies.</i></p> <p>The articles or operating agreement may provide for voting by proxy, with terms and conditions consistent with those provided in §48-17-203 (relating to corporation shareholders).</p> <p>§ 48-226-101. <i>Voting agreements.</i></p> <p>Generally, members may enter into agreements with other members to provide for the exercise of voting rights. Such voting agreements must be subject to the terms and conditions set forth in § 48-17-302 (relating to voting agreements between corporate shareholders).</p>

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	<p>§ 48-222-101. <i>Meetings of members.</i> Member meetings are not required for member-managed LLCs unless required by the articles, operating agreement, or other statutory provisions. Board-managed LLCs must hold an annual meeting at which governors are elected. Certain persons may also demand a member meeting, unless otherwise provide by the article or operating agreement. Notice requirements are provided in § 48-222-102. Electronically conducted meetings are acceptable per § 48-222-103.</p>
	<p>§ 48-223-101. <i>Actions without a meeting.</i> Generally, actions required to be taken at a meeting may be taken on written consent or on recommendation of the board or chief manager, provided that the statutory requirements are satisfied.</p>
<p>§ 18-303. <i>Liability to third parties.</i> No member or manager of an LLC shall be personally obligated for any of the debts, liabilities, or other obligation of the LLC solely by reason of being a member or manager of the LLC. Under a company agreement or another agreement, a member may agree to be personally obligated for any or all of the debts, liabilities, or obligations of the LLC.</p>	<p>§ 48-217-101. <i>Personal liability.</i> A member, holder of a financial interest, governor, manager, employee, or other agent of an LLC does not have any personal obligation for the acts, debts, liabilities, or obligations of the LLC. Neither are such persons personally liable for the acts or omissions of other LLC agents; however, they may become personally liable in contract, tort, or otherwise by reason of their own acts or conduct. Persons responsible for collecting and remitting state sales taxes may be held personally liable for such taxes in the same manner as responsible persons at corporations. The articles may provide that</p>

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	specifically named members will be personally liable for all of the debts of the LLC. If a member so identified signs the articles, then that person would be liable to the same extent as a general partner in a general partnership.
<p>§ 18-304. <i>Events of bankruptcy.</i> Unless otherwise provided in the company agreement or with the written consent of all members, a person ceases to be a member of an LLC upon the occurrence of specified bankruptcy proceedings involving the member.</p>	
	<p>§ 48-228-101. <i>Required records and information.</i> Board-managed LLCs must keep specified records at their principal office or elsewhere designated by the board. The statute lists 12 categories of records that must be maintained (<i>e.g.</i>, tax returns, financial statements, board minutes). A member-managed LLC has similar record-keeping obligations, and in addition must maintain true and full information regarding the LLC's business and financial condition.</p> <p>§48-228-201. <i>Financial statements for members.</i> A board-managed LLC must prepare annual financial statements and provide a copy to each member requesting one in writing. The statements must include the auditor's opinion, if it was audited. If unaudited, the statements must be accompanied by a statement of the chief manager or financial officer concerning the basis on which the</p>

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	<p>statements were prepared.</p> <p>§48-228-202. <i>Financial statements for member-managed LLCs.</i></p> <p>Members of member-managed LLCs must have access to true and full information regarding the LLC's business and financial condition.</p>
<p>§ 18-305. <i>Access to and confidentiality of information; records.</i></p> <p>(a) Members have the right, subject to reasonable standards set forth in the company agreement, to obtain certain LLC information (including financial, tax, and other business information and documents) for any purpose reasonably related to the member's interest in the LLC.</p> <p>(b) Each manager shall have the right to examine the same information for a purpose reasonably related to the position of manager.</p> <p>(c) The manager of an LLC may keep certain information confidential from the members for a reasonable period of time if it is believed to be in the best interest of the company.</p> <p>(d) Records may be kept in other than written form if conversion into written form can be accomplished within a reasonable time.</p> <p>(e) A member's demand for information must be in writing and must state the purpose of the demand.</p> <p>(f) Actions to enforce rights under this section must be brought in the Court of Chancery. Procedures are provided for such actions.</p> <p>(g) The rights provided in this section may be restricted by an original or</p>	<p>§48-228-102. <i>Inspection of records by members;</i> §48-228-103. <i>Scope of inspection right;</i> §48-228-104. <i>Court-ordered inspection</i></p> <p>A member is entitled to inspect and copy the required records upon five days written notice. The articles or operating agreement cannot limit this right of inspection. The right to inspect extends to the member's agents. The LLC can impose reasonable costs related to copying records. If the LLC does not comply with a member's inspection request, a court may order inspection and charge the LLC with the member's costs to obtain the order.</p>

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validly amended company agreement.	
<p>§ 18-406. <i>Remedies for breach of limited liability company agreement by member.</i></p> <p>A company agreement may provide that penalties and specified consequences be imposed on a member who breaches the agreement or upon the happening of specified events.</p> <p><i>Note: LLC members do not have any stated statutory fiduciary duties. Section 18-1101 provides that to the extent members and managers have fiduciary duties, those duties can be modified by the company agreement.</i></p>	<p>§ 48-240-102. <i>Standard of conduct [for members].</i></p> <p>Members have a fiduciary duty to the LLC with respect to profits, property, and confidential or propriety information of the LLC. A member shall discharge his duties in good faith, in a manner reasonably believed to be in the best interests of the LLC, and with the care of an ordinarily prudent person in a like position.</p> <p>A member is entitled to rely on information provided by managers or employees of the LLC, or other persons as to matters within those persons' areas of professional or expert competence, or a member committee. A member is not liable for any action taken in compliance with this section. The articles or operating agreement may define the standard of conduct as the parties may agree, provided that such definition is not "manifestly unreasonable under the circumstances."</p>
	<p>§ 48-240-10. <i>Member conflicts of interest.</i></p> <p>This section prescribes standards for disclosure and approval of transactions that may involve a conflict of interest (e.g., transactions between an LLC and a member or the affiliate of a member).</p>
D. MANAGERS	
<p>§ 18-401. <i>Admission of Managers</i></p> <p>A person may be named or designated as a manager of an LLC pursuant to a company agreement or similar instrument.</p>	<p>§ 48-241-101. <i>Managers required.</i></p> <p>An LLC must have individuals serving as chief manager and secretary ("required managers").</p> <p>§ 48-241-102. <i>Duties of required managers.</i></p> <p>Unless the articles, operating</p>

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	<p>agreement, or resolutions provide otherwise, the required managers have certain duties.</p> <p>The Chief manager 1) sees that all orders and resolutions of the board or members are put into effect, 2) signs documents in the name of the LLC (<i>e.g.</i>, deeds, mortgages, contracts) except where such signing authority is expressly delegated to another person, 3) performs other duties prescribed by the board or members, and 4) accepts delivery of notices and documents in the absence of the secretary.</p> <p>The Secretary 1) keeps membership records; 2) maintains records of board, member, and committee meetings; 3) receives and records notices; and 4) performs other duties prescribed by the board, the members, or the chief manager.</p> <p>§ 48-241-103. <i>Election or appointment of managers.</i></p> <p>In a board-managed LLC, the board elects or appoints the chief manager, the secretary, and any other managers or agents it deems necessary or desirable for the business. These managers and agents have the powers and duties provided for in the articles, the operating agreement, or as otherwise determined by the board.</p> <p>In a member-managed LLC, the members elect or appoint the chief manager, the secretary, and any other managers or agents it deems necessary or desirable for the business. These managers and agents have the powers and duties provided for in the articles,</p>

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	<p>the operating agreement, or as set forth in the resolution establishing other manager positions.</p> <p>§ 48-241-104. <i>Qualifications of managers.</i> Managers do not have to be Tennessee residents or members of the LLC unless the article or operating agreement requires it. The articles or operating agreement may include other qualifications.</p> <p>§ 48-241-107. <i>Removal of a manager.</i> A manager may be removed by the board (if a board-managed LLC) or the members (if a member-managed LLC) at any time with or without cause. Such removal is without prejudice to any contractual rights of the manager. The board or members may also eliminate any non-required manager position.</p>
<p>§ 18-402. <i>Management of limited liability company.</i> An LLC may be managed either by its members or by managers designated by its members. Unless the company agreement provides otherwise, the members will manage the LLC, with voting in proportion to current profits percentage interests. An LLC can have one or more managers. The extent of the manager's authority is provided in the company agreement. A manager may also be a member of the LLC. Unless otherwise provided in the company agreement, each member and manager has the authority to bind the LLC.</p>	<p>§ 48-238-101. <i>Management – Authorized signature.</i> An LLC may either be “member-managed” or “board-managed.” If member-managed, all powers shall be exercised by the members and the affairs of the LLC shall be managed by or under the direction of the members. If board-managed, all powers shall be exercised by the board and the affairs of the LLC shall be managed by or under the direction of a board of governors, subject to any limitations in the articles or operating agreement. Unless otherwise provided in the articles or operating agreement, each governor shall have equal voting power. The articles may designate one or more managers, members, or governors who</p>

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	are authorized to execute real estate transfer documents.
	<p>§ 48-238-103. <i>Agency of members in a member-managed LLC.</i></p> <p>Unless the articles provide otherwise, every member of a member-managed LLC is an agent of the LLC and members' acts in the usual course of business bind the LLC, subject to certain limitations stated in this section.</p>
	<p>§ 48-238-104. <i>Agency of members in a board-managed LLC.</i></p> <p>Unless the articles provide otherwise, no member of a board-managed LLC is an agent of the LLC for purposes of its business unless designated by the board of governors.</p> <p>Unless the articles provide otherwise, agents of the LLC include:</p> <p>1) the chief manager, 2) a person so designated in the articles or operating agreement, and 3) a person designated in writing by action of the governors.</p>
<p>§ 18-403. <i>Contributions by a manager.</i></p> <p>A manager may make contributions to an LLC and share in profits, losses, and distributions as a member.</p>	
<p>§ 18-404. <i>Classes and voting.</i></p> <p>The company agreement may provide for classes or groups of managers with disparate rights and duties, including the right to vote. Voting by managers can be on any basis set forth in the company agreement (<i>e.g.</i>, per capita, class, or financial interest basis). The managers may act on matters at meetings or by written consent.</p> <p>A company agreement may include provisions relating to meeting notices,</p>	

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<p>actions by consent, and other voting matters involving managers. Unless otherwise provided in the company agreement, actions requiring voting by managers may be taken by written consent. When voting is required, managers may vote in person or by proxy. Written consents and proxies may be transmitted electronically.</p>	
<p><i>§ 18-405. Remedies for breach of limited liability company agreement by manager.</i> A company agreement may provide that penalties and specified consequences be imposed on a manager who breaches the agreement, or upon the happening of specified events. <i>Note: LLC managers do not have any stated statutory fiduciary duties. Section 18-1101 provides that to the extent members and managers have fiduciary duties, those duties can be modified by the company agreement.</i></p>	<p><i>§ 48-241-111. Standard of conduct [for managers].</i> A manager shall discharge his duties in good faith, in a manner reasonably believed to be in the best interests of the LLC, and with the care of an ordinarily prudent person in a like position. The articles or operating agreement may define the standard of conduct as the parties may agree, provided that such definition is not “manifestly unreasonable under the circumstances.” A manager is entitled to rely on information provided by other managers or employees of the LLC or other persons as to matters within those persons’ areas of professional or expert competence. A manager is not liable for any action taken in compliance with this section.</p>
<p><i>§ 18-406. Reliance on reports and information by member or manager.</i> Members and managers are fully protected in relying in good faith upon the records of the LLC and upon information provided by other members, managers, officers,</p>	

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employees, or committees as to matters that are reasonably believed within those persons' areas of competence.	
<p>§ 18-407. <i>Delegation of rights and powers to manage.</i></p> <p>Managers and members have the right to delegate their powers and rights to manage the business to one or more other persons, unless otherwise provided in the company agreement.</p>	<p>§ 48-241-110. <i>Delegation.</i></p> <p>Unless prohibited by the articles, the operating agreement, or a resolution, a manager may, without further approval, delegate some or all of the duties and powers of an office to other persons; however, the manager remains subject to the required standard of conduct for a manager with respect to the discharge of all delegated duties and powers.</p>
	<p>§ 48-240-101. <i>Member-managed.</i></p> <p>If the LLC elects to be member-managed, the members shall take any actions that would require action by a board.</p>
	<p>§ 48-239-101. <i>Board of governors.</i></p> <p>If the LLC is board-managed, the initial board may be named in the articles or elected by the members. The size of the board, which may be fixed or variable, is determined by the articles or operating agreement. The board must consist of one or more entities, either members or individuals.</p> <p>§ 48-239-102. <i>Qualifications and election.</i></p> <p>Except for members, all governors must be natural persons. The method of election and other qualifications, such as residency, may be provided in the articles or operating agreement. If a governor is an entity, it must designate an officer or agent to exercise its duties. An entity that dissolves or bankrupts will be deemed to have resigned as a governor.</p>

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	<p>§ 48-239-103. <i>Terms.</i> The articles or operating agreement may provide for fixed terms (including staggered terms) of up to three years; otherwise a governor has an indefinite term that expires at the next regular meeting.</p> <p>§ 48-239-106. <i>Classification of governors.</i> The articles or operating agreement may divide the governors into classes.</p> <p>§ 48-239-107. <i>Voting for governors.</i> Governors are elected by a plurality of the voting power exercised, unless the articles or operating agreement provide otherwise. Voting is noncumulative unless otherwise provided in the articles or operating agreement.</p> <p>§ 48-239-109. <i>Removal of governors.</i> Members may remove a member with or without cause unless the articles or operating agreement provide otherwise. A vote to remove a governor must follow the procedures set forth in this section.</p> <p>§ 48-239-111. <i>Board of governors meetings.</i> The board may meet from time to time as provided in the articles or operating agreement. Governors may participate in meetings electronically unless otherwise provided. This section provides procedures for called meetings and notices of meetings.</p> <p>§ 48-239-112. <i>Quorum and voting of board of governors.</i> Unless provided otherwise in the articles or operating agreement, a quorum is a majority of the governors (as calculated under this section). In no</p>

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	<p>event can a quorum consist of less than one-third of the fixed or prescribed number of governors.</p> <p>§ 48-239-113. <i>Action without a meeting.</i> An action required or permitted to be taken at a board meeting may be taken by written consent of the governors, unless the articles or operating agreement provide otherwise. This section provides procedures for obtaining written consents.</p> <p>§ 48-239-114. <i>Committees established by the board of governors.</i> The board may establish, via resolution, committees that have the authority of the board in the management of the LLC. This section provides procedures for the establishment and operation of such committees.</p> <p>§ 48-239-115. <i>Standard of conduct [for governors].</i> A governor shall discharge his duties in good faith, in a manner reasonably believed to be in the best interests of the LLC, and with the care of an ordinarily prudent person in a like position.</p> <p>A governor is entitled to rely on information provided by managers or employees of the LLC or other persons as to matters within those persons' areas of professional or expert competence. A governor is not liable for any action taken in compliance with this section.</p> <p>The articles or operating agreement may define the standard of conduct for governors as the parties may agree, provided that such definition is not</p>

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	<p>“manifestly unreasonable under the circumstances.”</p> <p>A governor’s personal liability to the LLC or to its members for monetary damages for breach of fiduciary duty may be eliminated or limited in the articles or operating agreement, except for breach of the duty of loyalty, intentional misconduct, knowing violations of the law, or actions and omissions not in good faith.</p> <p>§ 48-239-116. <i>Governor and manager conflict of interest.</i></p> <p>This section defines a conflict of interest transaction involving a governor or manager. Such transactions are not voidable if at least one of several mitigating circumstances exists (<i>e.g.</i>, full disclosure). Procedures for approval of such transactions are provided in this section.</p>
E. FINANCE	
<p>§ 18-501. <i>Form of contribution.</i></p> <p>Permissible forms of contributions are cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.</p>	<p>§ 48-232-101. <i>Authorization, form and acceptance of contribution.</i></p> <p>Permissible forms of contributions are cash, property, or services rendered or a promissory note.</p>
<p>§ 18-502. <i>Liability for contribution.</i></p> <p>Unless the company agreement provides otherwise, a member is obligated to perform any promise to make a contribution, even if the member is unable to perform due to death, disability, or any other reason. In addition to other remedies, the LLC is entitled to receive cash for any unperformed obligation to contribute</p>	<p>§ 48-232-101. <i>Authorization, form and acceptance of contribution.</i></p> <p>Except as provided in the articles or operating agreement, a member or a party to a contribution agreement is obligated to perform any enforceable promise to make a contribution, even if the member or party is unable to perform due to death, disability, or any other reason. At the option of the</p>

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<p>property or services. Unless the company agreement provides otherwise, the financial obligations of a member to the LLC may only be compromised by consent of all of the members. Notwithstanding a compromise, a creditor of the LLC may be able to enforce the original contribution to the extent the creditor relied on it. A company agreement may provide for penalties to be placed on the interest of any member who fails to make a required contribution (<i>e.g.</i>, forfeiture or proportionate reduction of the defaulting member's interest).</p>	<p>LLC, a person may be required to contribute cash equal to the portion of the value of the contribution that has not been made. Except as provided in the articles or operating agreement, contribution obligations to the LLC may only be compromised by consent of all of the members or the board of governors (if the LLC is board-managed). Notwithstanding a compromise, a creditor of the LLC may be able to enforce the original contribution to the extent the creditor relied on it. The articles or operating agreement may provide for penalties to be placed on the interest of any member who fails to make a required contribution (<i>e.g.</i>, reducing or eliminating the defaulting member's proportional interest in the LLC).</p>
	<p>§ 48-234-101. <i>Contribution allowance agreements.</i> Subject to any restrictions in the articles, an LLC may enter into contribution allowance agreements in connection with the admission of a new member.</p>
	<p>§ 48-235-101. <i>Special provisions.</i> Contributions must be accepted on behalf of the LLC and recorded in the required records. Determinations of amount, value, and fairness of contributions made by the board or members are valid and binding if made in good faith and based on reasonable methods.</p>

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<p>§ 18-503. <i>Allocation of profits and losses.</i> Profits and losses shall be allocated among the members (and among classes or groups of members) as provided in the company agreement. If the agreement does not provide for such allocations, then profits and losses shall be allocated based on the agreed value of the members' contributions.</p>	<p>§48-220-101. <i>Sharing of profits and losses.</i> Profits and losses must be allocated equally among the members, unless provided otherwise in the articles or operating agreement.</p>
<p>§ 18-505. <i>Defense of usury not available.</i> Obligations of members or managers to the LLC shall not be subject to the defense of usury in any action with respect to such obligations.</p>	
F. DISTRIBUTIONS AND RESIGNATION	
<p>§ 18-504. <i>Allocation of distributions.</i> Distributions shall be allocated among the members (and among classes or groups of members) as provided in the company agreement. If the agreement does not provide for such allocations, then distributions shall be made based on the agreed value of the members' contributions.</p>	<p>§ 48-236-101. <i>Sharing of distributions.</i> Distributions, other than liquidating distributions, must be allocated equally among the members, unless otherwise provided in the articles or operating agreement.</p>
<p>§ 18-601. <i>Interim distribution.</i> Except as otherwise provided in Subchapter VI (§§ 18-601 to -607), a member is entitled to receive distributions before his resignation from the LLC and before the dissolution and winding up of the LLC.</p>	<p>§ 48-236-102. <i>Interim distributions.</i> Except as provided by the articles, the operating agreement, or by a majority vote of the members, a member is entitled to distributions before the LLC's termination only as specified in the articles or operating agreement.</p>
<p>§ 18-602. <i>Resignation of manager.</i> A manager may resign in accordance with the terms of the company agreement. If a company agreement prohibits a manager from resigning, a manager may still resign by giving written notice to the other managers</p>	<p>§ 48-241-109. <i>Resignation and vacancy.</i> Unless otherwise provided in an agreement with the LLC, a manager may resign at any time by giving written notice. Vacancies in the offices of the required managers must be filled for the unexpired term.</p>

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and members; however, the LLC may offset damages for the breach of the company agreement against the amount otherwise distributable to such manager.	
<p>§ 18-603. <i>Resignation of member.</i> A member may resign only as specified in the company agreement. Unless the agreement provides otherwise, a member may not resign prior to a dissolution and winding up of the LLC. A company agreement may prohibit assignments prior to dissolution and winding up of the LLC.</p> <p><i>Note: Any LLC whose original certificate of formation was filed and effective on or before July 31, 1996, is subject to an earlier version of this section.</i></p>	<p>§ 48-216-101. <i>Termination of membership interest.</i> Generally, a member has the power, but not necessarily the right, to terminate membership by withdrawal at anytime. Expulsion of a member is not permitted unless provided in the articles.</p> <p>Upon a permitted withdrawal from a continuing LLC, the withdrawing member is entitled to receive the lesser of the fair market value of the interest determined on a going concern or liquidation basis.</p> <p><i>Note: LLCs formed prior to July 1, 1999, may elect alternative treatment with respect to certain withdrawal and/or dissolution events (see this section and § 48-245-101).</i></p>
<p>§ 18-604. <i>Distribution upon resignation.</i> Except as otherwise provided in Subchapter VI (§§ 18-601 to -607), a resigning member is entitled to receive any distribution to which the member is entitled to under the company agreement. Unless provided otherwise in the company agreement, a resigning member is entitled to receive the fair value of his interest as of the date of resignation based upon such member's distribution sharing percentage.</p>	
<p>§ 18-605. <i>Distribution in kind.</i> Except as provided in the company agreement: (i) a member may not demand a distribution in any form</p>	<p>§ 48-236-10. <i>Distributions in kind.</i> Except as provided in the articles or company agreement, a member may not demand a distribution in any form</p>

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<p>other than cash; (ii) a member cannot be compelled to accept a disproportionate distribution of any asset in kind; and (iii) a member may be compelled to accept a distribution of a percentage of an asset in kind that is equal to the member's distribution sharing percentage.</p>	<p>other than cash, nor can a member be compelled to accept a disproportionate distribution of any asset in kind.</p>
<p>§ 18-606. <i>Right to distribution.</i> Subject to §§ 18-607 and 18-804, and unless otherwise provided in a company agreement, a member entitled to a distribution from an LLC has the status of a creditor of the LLC.</p>	<p>§ 48-236-104. <i>Status as a creditor.</i> A member that is entitled to a distribution from an LLC has the status of a general unsecured creditor of the LLC with respect to the distribution.</p>
<p>§ 18-607. <i>Limitations on distribution.</i> An LLC may not make a distribution to a member if, after giving effect to the distribution, the LLC's liabilities (as adjusted) exceed the fair value of its assets. For purposes of this section, "distribution" does not include reasonable compensation, payments made in the ordinary course of business, and bona fide retirement and benefits payments. A member who knowingly receives a distribution in violation of this section is liable to the LLC for the amount of the distribution. There is a three-year statute of limitation from the date of the distribution to bring actions to recover such distributions.</p>	<p>§ 48-236-105. <i>Limitations on distribution.</i> An LLC may not make a distribution to a member if, after giving effect to the distribution, 1) the LLC would not be able to pay its debts when due, or 2) the LLC's total assets would be less than its total liabilities (as adjusted). § 48-237-101. <i>Liability upon wrongful distribution.</i> A member who knowingly receives a distribution in violation of this section is liable to the LLC for the amount of the distribution. There is a three-year statute of limitation from the date of the distribution to bring actions to recover such distributions.</p>
G. ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS	
<p>§ 18-701. <i>Nature of limited liability company interest.</i> An LLC interest is personal property, and a member has no interest in specific LLC property.</p>	<p>§ 48-215-101. <i>Nature of a membership interest and statement of interest owned.</i> A membership interest in an LLC is personal property, and a member has no interest in specific property owned</p>

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	by the LLC. Upon request, the LLC shall provide a member with a statement of his membership interest. Such statement shall include a description of the member's rights to vote and to share in profits, losses, and distributions.
<p data-bbox="298 653 748 716"><i>§ 18-702. Assignment of limited liability company interest.</i></p> <p data-bbox="298 724 797 932">Except as provided in a company agreement, an LLC interest is assignable in whole or in part. Except as provided in a company agreement, the assignee shall have no right to participate in the management of the LLC.</p>	<p data-bbox="821 653 1321 684"><i>§48-218-101. Assignment of financial rights.</i></p> <p data-bbox="821 688 1312 1073">Subject to restrictions in the articles, operating agreement, or other written agreements among the members, a member's financial rights are transferable in whole or in part. An assignee is entitled to receive the share of profits and losses and distributions to which the assignor would otherwise have been entitled. The assignee is not allowed to control the member's governance rights.</p>
<p data-bbox="298 1083 786 1146"><i>§ 18-703. Member's limited liability interest subject to charging order.</i></p> <p data-bbox="298 1155 792 1470">A court may place a charging order, which constitutes a lien, on a member's LLC interest to satisfy a judgment. The court may order a foreclosure sale. The foreclosure sale purchaser has only the rights of an assignee. Prior to foreclosure, the judgment debtor, other members, and the LLC have redemption rights in the interest.</p>	<p data-bbox="821 1083 1289 1115"><i>§48-218-105. Rights of judgment creditor.</i></p> <p data-bbox="821 1119 1300 1434">A court may charge a member's financial rights in its LLC interest with payment to a judgment creditor. The judgment creditor will have only the rights of an assignee of the member's financial rights under § 48-218-101. This is the sole remedy of a judgment creditor against the judgment debtors' membership interest.</p>
<p data-bbox="298 1482 711 1545"><i>§ 18-704. Right of assignee to become member.</i></p> <p data-bbox="298 1549 781 1757">An assignee may become a member, as provided in the company agreement with the approval of all the members (other than the assigning member) and upon compliance with any other required procedures.</p>	<p data-bbox="821 1482 1305 1545"><i>§48-218-102. Assignment of a membership interest or governance rights.</i></p> <p data-bbox="821 1549 1317 1793">A full membership interest in an LLC may be assigned only by assigning all of a member's governance rights and financial rights to the same assignee. Except as provided in the articles or operating agreement, a member may assign governance rights to another</p>

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	<p>member without consent. Assignment of governance rights to a non-member generally requires unanimous consent of the other members. This approval right may be delegated to the board of governors.</p> <p>When an assignment is effective under this section, the assignee becomes a member.</p> <p>Pledging or granting a security interest in a membership interest is not an assignment, unless provided otherwise in the articles or operating agreement.</p>
<p>§ 18-705. <i>Powers of estate of deceased or incompetent member.</i></p> <p>The personal representative of a dead or incompetent member may exercise all of the member's rights for the purpose of settling the estate or managing the member's property. If a member is an entity that is dissolved or terminated, the personal representative of such member may exercise the member's powers.</p>	<p>§ 48-219-101. <i>Powers of a deceased or incompetent member.</i></p> <p>The legal representative of a dead, incompetent, or bankrupt member may exercise all of the member's rights, except voting rights, for the purpose of settling the estate or managing the member's property. If a member is an entity that is dissolved or terminated, the legal representative of such member may exercise each of the member's powers except voting.</p> <p>If such an event causes the member's interest to terminate, then the terminating member's interest will be considered to be merely that of an assignee of the financial rights of the member, and the rights exercised by the legal representative or successor will be limited accordingly.</p>
H. DISSOLUTION	
<p>§ 18-801. <i>Dissolution.</i></p> <p>An LLC is dissolved, and its affairs shall be wound up, upon the earliest of the following:</p>	<p>§ 48-245-101. <i>Dissolution.</i></p> <p>Events that trigger dissolution vary based on when the LLC was formed. LLCs formed before July 1, 1999, are</p>

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<p>1) a time specified by the company agreement; 2) the occurrence of an event specified in a company agreement; 3) upon an affirmative vote to dissolve by a two-thirds majority of the members; 4) when there are no members (subject to some exceptions); and 5) entry of a judicial decree. The termination of the membership of any member will not cause the LLC to be dissolved unless otherwise provided in the company agreement.</p>	<p>subject to dissolution upon the occurrence of any of several events listed in (a)(1)-(5) of this section, including events that terminate any member's interest (<i>e.g.</i>, death or withdrawal); however, the LCC can elect to be treated as if it had been formed after July 1, 1999, with respect to dissolution. For LLCs formed on or after July 1, 1999, (and those electing to be treated as such) the following events will cause the LLC to dissolve: 1) non-judicial dissolution by members in accordance with § 48-245-202; 2) an event specified in the articles or operating agreement; or 3) a merger in which the LLC is not the surviving entity. An LLC that is dissolved must be wound up and terminated. § 48-245-401. <i>Filing notice of dissolution and effect.</i> The dissolving LLC must file a notice of dissolution with the Secretary, after which it must cease carrying on its business except as necessary to wind up its affairs.</p>
<p>§ 18-802. <i>Judicial dissolution.</i> On application by a member or manager, the Chancery Court may decree dissolution when it is not reasonably practicable for the LLC to continue operating in conformity with its company agreement.</p>	<p>§ 48-245-901. <i>Judicial intervention and dissolution.</i> A court may grant equitable relief or dissolve an LLC, and/or direct that the LLC be merged into another entity. § 48-245-901. <i>Judicial dissolution.</i> On application by the attorney general or a member of the LLC, a court may decree dissolution of an LLC when it is not reasonably practicable for it to continue operating in conformity with</p>

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	its articles or operating agreement.
	<p>§ 48-245-301. <i>Grounds for administrative dissolution.</i></p> <p>The Secretary may commence dissolution proceedings against an LLC that fails to comply with certain statutory requirements, (e.g., failure to file an annual report). Several sections of this chapter cover procedures and effects of an administrative dissolution.</p>
<p>§ 18-803. <i>Winding up.</i></p> <p>Unless otherwise provided in the company agreement, a manager, the members or a person approved by the members, may wind up the affairs of the LLC.</p> <p>From the time of dissolution until the filing of the certificate of cancellation, the persons winding up the affairs of the LLC have broad authority to settle and close the business, dispose of property, settle liabilities, and distribute the remaining assets to the members.</p>	<p>§ 48-245-501. <i>Procedure in winding up.</i></p> <p>To effect the winding up, the board of governors of a board-managed LLC or the members of a member-managed LLC or their respective managers must collect debts due to the LLC, pay or provide for the payment of the LLC's obligations, dispose of property, and distribute any remaining assets to the members in accordance with §§ 48-236-103 and 48-245-1101.</p> <p><i>Note: The procedures in §§ 48-244-101 to 48-244-104 apply where the winding up is to be accomplished by merger.</i></p>
	<p>§ 48-245-503. <i>Articles of termination.</i></p> <p>§ 48-245-701. <i>Effective date of articles of termination.</i></p> <p>Articles of termination must be filed with the Secretary upon the dissolution and completion of winding up. The termination is effective when the articles are filed.</p>
	<p>§ 48-245-502. <i>Known and unknown claims against LLC.</i></p> <p>In connection with winding up, the LLC may provide notice to known and unknown creditors as provided in this section. If the LLC chooses not to</p>

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	<p>comply with these procedures, then claimants may enforce their claims against undistributed assets of the LLC or against assets that have been distributed to members (to the extent of the lesser of a member's pro rata share of the claim or the assets received in liquidation). Claims against a member's distribution must be brought within three years of the liquidating distribution.</p>
<p>§ 18-804. <i>Distribution of assets.</i> Upon winding up, the LLC's assets are to be distributed in the following order: 1) to creditors, including members; 2) unless otherwise provided in the company agreement, to members owed certain interim and resignation-related distributions; and 3) unless otherwise provided in the company agreement, to members for return of their contributions and then in proportion to their distribution sharing percentage. A dissolved LLC shall make provisions for the payment of all claims and obligations, including those that are contingent or unmatured. If the assets are insufficient to provide for the payment of all claims, then the claims should be paid based on priority. A liquidating trustee who complies with this section will have no personal liability for unpaid claims of the LLC. A member who knowingly receives a distribution in violation of this section shall be liable to the LLC for the amount of the distribution for a three-year period following the date of the distribution.</p>	<p>§ 48-245-1101. <i>Disposition upon liquidation.</i> Upon winding up, the LLC's assets are to be distributed in the following order: 1) to creditors, including members; 2) unless otherwise provided in the operating agreement, to members owed interim distributions; and 3) unless otherwise provided in the operating agreement, to members for return of their contributions and then in proportion to their distribution sharing percentage. A dissolved LLC shall make provisions for the payment of all claims and obligations, including those that are contingent or unmatured. If the assets are insufficient to provide for the payment of all claims, then they should be paid based on priority. A liquidating trustee who complies with this section will have no personal liability for unpaid claims of the LLC.</p>

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	<p>§ 48-245-601. <i>Revocation of dissolution.</i> Under certain circumstances, an LLC may revoke its dissolution prior to filing the articles of termination.</p>
I. FOREIGN LIMITED LIABILITY COMPANIES	
<p>§ 18-901. <i>Law governing.</i> The laws of the jurisdiction in which the foreign LLC was formed govern the formation, organization, and internal affairs of the entity, as well as liability of its members and representatives. Registration will not be denied because of differences between those laws and the laws of Delaware. A foreign LLC is subject to §18-106 concerning permitted business activities and powers.</p>	<p>§ 48-246-101. <i>Governing law.</i> The laws of the jurisdiction in which the foreign LLC was formed govern the formation, organization, internal affairs of the entity, and liability of its members and representatives, regardless of whether the LLC obtains a certificate of authority in Tennessee. A certificate will not be denied because of differences between those laws and those of Tennessee.</p>
<p>§ 18-902. <i>Registration required; application.</i> A foreign LLC must register with the Secretary before doing business in the state. An application for registration must be filed by the LLC along with the filing fee (\$50 under §18-1105(a)(6)). A person is not deemed to be doing business in the state solely because of being a member or manager of a domestic or foreign LLC.</p>	<p>§ 48-246-102. <i>Transactions not constituting transacting business.</i> For purposes of obtaining a certificate of authority, certain enumerated transactions do not constitute transacting business in the state (e.g., maintaining legal actions, holding meetings of members, maintaining bank accounts, etc).</p>
<p>§ 18-903. <i>Issuance of registration.</i> If the application for registration conforms to the statutory requirements and all fees have been paid, the Secretary will endorse and file it. The Secretary will return a certified copy of the original application.</p>	<p>§ 48-246-301. <i>Application for certificate of authority.</i> A foreign LLC must obtain a certificate of authority before doing business in Tennessee. An application must be filed with the Secretary, along with a certificate of existence from the jurisdiction of its organization. § 48-246-302. <i>Certificate of authority.</i> If the application is complete and all fees are paid, the Secretary will return</p>

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	the original application, which will constitute the certificate of authority. The certificate is effective from the date the application is filed.
<p>§ 18-904. <i>Name; registered office; registered agent.</i> A foreign LLC may register under any name that includes the words “Limited Liability Company” or the abbreviation “L.L.C.” or the designation LLC and that could have been registered by a domestic LLC.</p> <p>A foreign LLC must maintain a registered office in Delaware and a registered agent who is either an individual resident of the state or a domestic business entity.</p>	<p>§ 48-246-201. <i>Name.</i> A foreign LLC must meet the name requirements in § 48-207-101. It may obtain a registered name by complying with § 48-207-101.</p>
<p>§ 18-905. <i>Amendments to application.</i> The foreign LLC must file a certificate with the Secretary to correct any inaccurate statements in the application for registration.</p>	<p>§ 48-246-303. <i>Amendments to the certificate of authority.</i> The foreign LLC must amend the certificate of authority to correct any inaccuracies.</p>
<p>§ 18-906. <i>Cancellation of registration.</i> Registration may be cancelled by filing a certificate of cancellation with the Secretary, along with the required fee.</p>	<p>§ 48-246-401. <i>Cancellation of certificate of authority.</i> A certificate of authority may be cancelled by filing a certificate of cancellation with the Secretary.</p> <p>§ 48-246-501. <i>Revocation of certificate of authority.</i> The Secretary may commence proceedings to revoke the certificate of authority if the foreign LLC fails to comply with certain statutory requirements, such as filing an annual report and maintaining a registered agent (§§ 48-246-502 to -505 contain procedures related to revocation and reinstatement).</p>

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<p>§ 18-907. <i>Doing business without registration.</i> A foreign LLC doing business in Delaware may not maintain any legal action in the state until it has registered and paid all fees and penalties for the years it did business without being registered. The failure to register does not impair the validity of the LLC's contracts, the ability of other parties to such contracts to maintain an action on the contract, or the ability of the LLC to defend itself in any action in any Delaware court. A member or manager of a foreign LLC does not become liable for the LLC's debts solely because the LLC has done business in the state without registration.</p>	<p>§ 48-246-601. <i>Transaction of business without certificate of authority.</i> A foreign LLC that transacts business in the state cannot maintain a court proceeding without obtaining a certificate of authority. The fine for transacting business in the state without a certificate of authority is three times the annual filing fee for each year for which the certificate was required. The failure to obtain a certificate of authority does not impair the foreign LLC's ability to enter contracts or defend itself in the state's courts. A member of a foreign LLC does not become liable for the LLC's debts solely because the LLC failed to obtain a certificate of authority.</p>
<p>§ 18-908. <i>Foreign limited liability companies doing business without having qualified; injunctions.</i> Upon the filing of a complaint by the Attorney General, the Court of Chancery may enjoin a foreign LLC from doing business in the state if it has failed to register.</p>	<p>§ 48-246-602. <i>Enjoined from doing business.</i> The attorney general may petition a county chancery court for an injunction to enjoin a foreign LLC from transacting business in the state due to its failure to obtain a certificate of authority.</p>
<p>§ 18-909. <i>Execution; liability.</i> Section 18-204(c) applies as if the foreign LLC were a domestic LLC (<i>i.e.</i>, execution of a certificate by an authorized person constitutes an affirmation that the facts are true, to the person's knowledge and belief).</p>	
<p>§ 18-910. <i>Service of process on registered foreign limited liability companies.</i> Service is to be made personally on any managing or general agent or manager</p>	

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<p>in the state of Delaware or on the LLC's registered agent. If personal service cannot be accomplished, then service can be made on the Secretary, who will notify the LLC by mail.</p>	
<p><i>§ 18-911. Service of process on unregistered foreign limited liability companies.</i> Any unregistered foreign LLC doing business in the state shall be deemed to have appointed the Secretary its agent for the acceptance of legal process. For purposes of this section, "doing business" means carrying on any business activities in the state, including without limitation the solicitation of business or orders in the state.</p>	
J. DERIVATIVE ACTIONS	
<p><i>§ 18-1001. Right to bring action.</i> A member or assignee of an LLC interest may bring an action on behalf of the LLC if managers or members with the authority to do so have refused to bring the action (or if efforts to have them bring an action are not likely to succeed).</p>	
<p><i>§ 18-1002. Proper plaintiff.</i> The plaintiff in a derivative action must be a member or an assignee of an interest at the time the action is commenced and at the time the wrongful action took place (or the plaintiff must have obtained its interest by operation of law from someone who was a member or assignee at the time of the transaction).</p>	<p><i>§ 48-230-101. Board-managed action.</i> In order to bring an action, a member of a board-managed LLC must have been a member when the transaction complained of occurred or have become a member through transfer by operation of law from one who was a member at the time. If the articles or operating agreement of a member-managed LLC permit derivative actions, a member may commence an action to the same extent as a member of a board-managed LLC.</p>

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<p>§ 18-1003. <i>Complaint.</i> The complaint must state with particularity the effort made by the plaintiff to get a member or manager to initiate the action or the reasons for not making the effort.</p>	<p>§ 48-230-102. <i>Complaint.</i> The complaint must allege with particularity the demand made to obtain action by the board or managers and either that the demand was refused or ignored or why the demand was not made.</p>
<p>§ 18-1004. <i>Expenses.</i> The court may award the plaintiff reasonable expenses, including attorney's fees, from any recovery in the action or from the LLC.</p>	<p>§ 48-230-104. <i>Award of expenses.</i> The court may require the plaintiff to pay the defendant's reasonable expenses if the suit was commenced without reasonable cause. If the plaintiff recovers anything through a judgment or settlement, the court may award the plaintiff reasonable expenses.</p>
	<p>§ 48-230-103. <i>Discontinuance.</i> A derivative suit may not be discontinued or settled without court approval. The court may require that notice of such proposed actions be given to members and holders of financial rights affected.</p>
	<p>§ 48-230-105. <i>Equitable remedies.</i> A court may grant equitable relief in actions brought by a member because of violations of the LLC statutes by an LLC or a manager or governor.</p>
K. DISSENTERS' RIGHTS	
	<p>§ 48-231-201. <i>Right to dissent.</i> A member of an LLC may dissent from specified LLC actions (<i>e.g.</i>, consummation of a plan merger) and obtain payment of the fair value of the member's LLC interest. Other sections in this chapter address procedures related to the exercise of dissent rights.</p>

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L. MISCELLANEOUS	
<p>§ 18-1101. <i>Construction and application of chapter and limited liability company agreement.</i></p> <p>The policy of the LLC statutes is to give the maximum effect to the principle of freedom of contract and to the enforceability of company agreements.</p> <p>The company agreement may expand or restrict duties (including fiduciary duties) that a person has at law or in equity relating to the LLC, its managers, members, or other persons who are parties to or bound by a company agreement.</p> <p>A person acting under a company agreement shall not be liable for good faith reliance on the provisions of the agreement.</p>	<p>§ 48-201-103. <i>Applicability.</i></p> <p>The provisions of chapters 201-248 apply to every for-profit LLC; however, any other statutory provisions that apply to special categories of LLCs shall prevail over the provisions in these chapters.</p>
<p>§ 18-1102. <i>Short title.</i></p> <p>This chapter may be cited as “Delaware Limited Liability Company Act.”</p>	<p>§ 48-201-101. <i>Short title.</i></p> <p>This chapter may be cited as “Tennessee Limited Liability Company Act.”</p>
<p>§ 18-1105. <i>Fees.</i></p> <p>A schedule of filing and other fees is provided. Expedited services are offered for an additional fee (<i>e.g.</i>, \$500 for two-hour processing).</p>	<p>§ 48-247-103. <i>Filing, service and copying fees.</i></p> <p>A schedule of filing fees and other fees is provided in this section.</p> <p>An LLC must pay an annual fee equal to \$50 times the number of members, with a minimum fee of \$300 and a maximum fee of \$3,000.</p>
<p>§ 18-1107. <i>Taxation of limited liability companies.</i></p> <p>For state tax purposes, an LLC will be treated as a partnership unless it is classified otherwise for federal income tax purposes, in which case it will be taxed in the same manner as for federal</p>	<p>§ 48-211-101. <i>LLC Classification.</i></p> <p>For purposes of state and local Tennessee taxes, an LLC shall be treated as a partnership or an association taxable as a corporation as such classification is determined for federal income tax purposes. Members</p>

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<p>purposes. Similarly, members will be treated as partners, unless they are treated otherwise for federal income tax purposes, in which case they will have the same status as for federal tax purposes.</p> <p>Every domestic and registered foreign LLC must pay an annual tax of \$100, which is due on June 1. A penalty of \$100 is assessed for late payment of the tax.</p> <p>An LLC that fails to pay the annual tax shall cease to be in good standing as a domestic LLC or cease to be a registered foreign LLC. An LLC may have its status or registration restored by paying all taxes, interest, and penalties that are due. The Secretary will not accept any certificates filed by an LLC that is not in good standing, nor can the LLC maintain any legal actions in the state.</p> <p>A member or manager does not become liable for the LLC's debts solely because the LLC fails to pay its annual tax or loses its good standing or registration.</p>	<p>of an LLC are subject to Tennessee taxes in the same manner as partners in a partnership.</p> <p><i>Note: The LLC may elect its federal tax status by "checking the box" on IRS Form 9932. Generally, partnership tax treatment is the default classification for an LLC with two or more members.</i></p> <p><i>Effective for tax years beginning after July 1, 1999, an LLC's treatment as a partnership for federal tax purposes are generally subject to these state taxes:</i></p> <p>(i) <i>excise tax (6.5% of net earnings; based on federal ordinary income and capital gains, increased/ decreased by income/ expense allocations to members plus other required adjustments); and</i></p> <p>(ii) <i>franchise tax (\$.25 per \$100 of the greater of the LLC's net worth or the value of its property; \$100 minimum tax).</i></p> <p><i>Tenn. Code Ann. §§ 67-4-2006, 67-4-2119.</i></p> <p><i>Several exemptions from these taxes may apply (e.g., when all members are fully liable for the debts, obligations, and liabilities of the entity).</i></p> <p><i>Tenn. Code Ann. §67-4-2008.</i></p>
<p>§ 18-1108. <i>Cancellation of certificate of formation for failure to pay taxes.</i></p> <p>If an LLC fails to pay its annual tax for a period of three years, its certificate of formation will be deemed to be canceled.</p>	
<p>§ 18-1109. <i>Revival of domestic limited liability company.</i></p> <p>A domestic LLC whose certificate of formation has been canceled may apply for a certificate of revival in accordance</p>	

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with the requirements of this section, including the payment of all past due amounts.	
	<p>§48-228-203. <i>Annual report of secretary of state.</i></p> <p>An annual report must be filed by every LLC by the first day of the fourth month following the end of its fiscal year.</p>
M. PROFESSIONAL LIMITED LIABILITY COMPANIES	
<p><i>Note: Delaware does not have separate provisions for LLCs that provide professional services.</i></p> <p><i>Note: Delaware's Professional Services Corporation Act is embodied in 8 Del. C. §§ 601-619. A "professional corporation" is a corporation organized for the sole and specific purpose of rendering professional services, and which has as shareholders only individuals who are legally authorized to render the same professional service as the corporation. Delaware's general corporation laws (chapter 1 of title 8) apply to professional corporations unless they conflict with specific provisions of this chapter 6.</i></p>	<p>§ 48-248-101. <i>Applicability.</i></p> <p>The provisions of chapters 201 to 248 of this title apply to domestic and foreign professional limited liability companies ("PLLC") to the extent they do not conflict with this chapter.</p> <p><i>Note: The Tennessee Professional Corporation Act is embodied in Tenn. Code Ann. §§ 48-101-601 to -635.</i></p>
	<p>§ 48-248-102. <i>Chapter definitions.</i></p> <p>(3) "Foreign professional LLC" is a foreign LLC formed for the purpose of rendering professional services under the law of a state other than Tennessee.</p> <p>(5) "Licensing authority" means the Tennessee authority (e.g., board, agency) empowered to license or otherwise authorize the rendering of a professional service.</p> <p>(6) "Professional LLC" or "PLLC" means a domestic LLC that has elected to become subject to the provisions of this chapter.</p>

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	<p>(7) “Professional service” means a service that may be lawfully rendered only by a person that is licensed or authorized by a Tennessee licensing authority and may not be lawfully rendered by a corporation under title 48 chapters 11-27 or by and a LLC under chapters 201-248.</p> <p>(8) “Qualified person” is an individual or specified entity that is eligible to be a member under §48-248-401.</p>
	<p>§ 48-248-103. <i>Formation.</i> A PLLC may be formed by filing articles that state that the entity is a PLLC, that its purpose is to render specified professional services, and that its members include one or more qualified persons and no disqualified persons. An existing LLC can elect PLLC status by amending its articles to comply with the above requirements.</p>
	<p>§ 48-248-104. <i>Purposes.</i> A PLLC may only engage in rendering professional services in a single profession, unless it provides professional services within two or more professions if the combination is specifically authorized by the Tennessee licensing laws applicable to each profession in the combination.</p>
	<p>§ 48-248-202. <i>Rendering professional services.</i> A PLLC may render professional services only through individuals licensed or otherwise authorized in Tennessee to render the services.</p> <p>§ 48-248-203. <i>Professions and other business allowed to be rendered.</i></p>

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	A PLLC may only provide the services and engage in the business authorized by its articles.
	<p>§ 48-248-301. <i>Name.</i> The name must contain one of the following: “professional limited company,” “professional limited liability company,” “professional LLC,” “limited liability professional company,” “P.L.C.,” “PLC,” “P.L.L.C.,” “PLLC,” or “L.L.P.C.” However, a foreign PLLC may use the designations allowed by the jurisdiction in which it was formed. A PLLC’s name may not indicate that it is an incorporated entity.</p>
	<p>§ 48-248-401. <i>Eligible members.</i> Persons who are not licensed in the profession described in the PLLC’s articles may not be members unless the relevant licensing authority specifically so authorizes and the requirements of this section are met.</p>
	<p>§ 48-248-404. <i>Managers.</i> Specified percentages of the governors and managers must be qualified persons.</p>
	<p>§ 48-248-406. <i>Liability.</i> Each individual who renders professional services on behalf of the PLLC is liable for his own negligent or wrongful acts or omissions to the same extent as if the person had rendered the services as a sole practitioner. Members and other agents are not liable for the conduct of other persons affiliated with the PLLC unless such person is also at fault.</p>

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	<p>§ 48-248-601. <i>Delivery of articles to licensing authority.</i></p> <p>A PLLC must deliver a certified copy of its articles to the appropriate licensing authority prior to providing professional services in the state.</p>
N. NONPROFIT LIMITED LIABILITY COMPANIES	
	<p>§§ 48-101-701 to –708. <i>Nonprofit Limited Liability Companies Act of 2001.</i></p> <p>This act permits a nonprofit corporation to organize a nonprofit LLC (by filing articles of organization) or to convert a subsidiary nonprofit corporation to a nonprofit LLC by filing articles of conversion.</p> <p>A “nonprofit LLC” means an LLC:</p> <ol style="list-style-type: none"> (1) that is disregarded as an entity for federal income tax purposes; and (2) whose sole member is a nonprofit corporation incorporated under chapters 51-68 of title 48 and who is exempt from Tennessee franchise and excise tax. <p>The Tennessee Limited Liability Company Act applies to nonprofit LLCs to the extent not inconsistent with this Act.</p>