### LIST OF CHAPTERS

### **VOLUME 1**

Chapter 1 ETHICS

Walter Slatkin, Esq.

**Chapter 2 CHOICE OF ENTITY** 

Allen E.F. Rozansky, Esq.

**Chapter 3** TAX CONSIDERATIONS IN ENTITY SELECTION

James R. Walker, Esq.

**Chapter 4 CHOICE OF JURISDICTION** 

Jeffrey A. Sherman, Esq. Teresa M. Sherman, Esq.

Chapter 5 FILING ISSUES

Sarah Steinbeck Adelson, Esq.

Carla J. Hoke, Esq.

**Chapter 6 CONVERSION OF ENTITIES IN COLORADO** 

Beat U. Steiner, Esq.

Christopher Gunlikson, Esq.

**Chapter 7 FOREIGN QUALIFICATION** 

Deborah L. Bayles, Esq.

**Chapter 8 ENTITY AND TRADE NAME FILING REQUIREMENTS AND** 

**CUSTOMS IN COLORADO** 

Beat U. Steiner, Esq.

Sarah Steinbeck Adelson, Esq.

Chapter 9 LICENSING ISSUES

Russell B. Klein, Esq.

Chapter 10 RESERVED

Chapter 11 SOLE PROPRIETORSHIPS

Scott Neckers, Esq. Ryan Tamm, Esq.

**Chapter 12 CORPORATIONS** 

Mark L. Heimlich, Esq.

### **Chapter 13 PARTNERSHIPS**

Michael A. Sabian, Esq.

### **Chapter 14 LIMITED LIABILITY COMPANIES**

Herrick K. Lidstone, Jr., Esq. Andrea E. Welter, Esq.

### **VOLUME 2**

### **Chapter 15 COOPERATIVE BUSINESSES**

Linda D. Phillips, Esq. Jason R. Wiener, Esq.

### **Chapter 16** NONPROFIT ORGANIZATIONS

Merry H. Balson, Esq.

Michelle M. Rose-Hughes, Esq. (Author, § 16.4)

Sarah Radunsky, Esq. (Author, § 16.5) J. William Callison, Esq. (Author, § 16.5)

### **Chapter 17 PUBLIC BENEFIT CORPORATIONS**

Whitney Holmes, Esq.

### **Chapter 18 PROFESSIONAL SERVICE COMPANIES**

Allen Sparkman, Esq.

### Chapter 19 RESERVED

### **Chapter 20 GENERAL CORPORATE ACTIONS**

David P. Steigerwald, Esq. Ben Sparks, Esq.

### Chapter 21 CORPORATE GOVERNANCE AND FIDUCIARY DUTIES

Michael A. Maciszewski, Esq. Jordan B. Abramson, Esq. Joy M. Chung, Esq.

### **Chapter 22 PIERCING THE CORPORATE VEIL**

Hon. John W. Madden, IV

### Chapter 23 RESERVED

### **Chapter 24 INSURANCE COVERAGE**

Sarah B. Wallace, Esq. Andrew J. Petrie, Esq.

### **Chapter 25 CAPITAL FORMATION ISSUES**

Jeffrey M. Quick, Esq.

TOC-2 (10/17)

### Chapter 26 SECURITIES LAW FOR SMALL AND START-UP BUSINESS ENTITIES

Timothy R. Spiel, Esq. Darren R. Hensley, Esq.

### Chapter 27 DEBT FINANCING

Jeffrey M. Quick, Esq.

### **Chapter 28 BUY-SELL AGREEMENTS**

Deborah L. Bayles, Esq. Fay Chu Fong, Esq.

Herrick K. Lidstone, Jr., Esq. (Author, Exhibit 28A)

### Chapter 29 CORPORATE MAINTENANCE, ONGOING REVIEW, AND

**CONDUCTING BUSINESS REVIEWS** 

Stan Doida, Jr., Esq. Vaughn Marshall, Esq.

### Chapter 30 SUCCESSION PLANNING FOR BUSINESSES

Kristin Dittus, J.D., LL.M.

### Chapter 31 RESERVED

### **VOLUME 3**

### **Chapter 32 EMPLOYEE ISSUES**

Michael C. Santo, Esq. Dean H. Harris, Esq. Alicia Severn, Esq. Sam D. Starritt, Esq.

### **Chapter 33 EMPLOYEE BENEFITS**

Jan A. Steinhour, Esq.

### Chapter 34 NONCOMPETITION, NON-SOLICIT, AND CONFIDENTIALITY

AGREEMENTS

Hon. J. Eric Elliff

### Chapter 35 TRADEMARKS, COPYRIGHTS, AND DOMAIN NAMES

Charlene M. Krogh, Esq.

### **Chapter 36** TRADE SECRETS

Michael L. Drapkin, Esq. Mark B. Wiletsky, Esq. David B. Wilson, Esq.

### **Chapter 37 PATENT LAW**

William F. Vobach, Esq.

### Chapter 38 PRIVACY

Bruce L. Plotkin, Esq.

### Chapter 39 RESERVED

### Chapter 40 FRANCHISES

Kevin P. Hein, Esq. Jeffrey A. Brimer, Esq.

Michael A. Maciszewski, Esq.

### **Chapter 41 INTERNATIONAL BUSINESS TRANSACTIONS**

Howard O. Bernstein, Esq.

### **Chapter 42 SPECIAL ISSUES IN OIL AND GAS**

John R. Heronimus, Esq.

### Chapter 43 REAL ESTATE ISSUES FOR BUSINESS ORGANIZATIONS

Beat U. Steiner, Esq.

Christopher Gunlikson, Esq. J. Marcus Painter, Esq.

### Chapter 44 RESERVED

### Chapter 45 THE SALE OF BUSINESS ASSETS IN BANKRUPTCY

Jeremy D. Peck, Esq. Adam L. Hirsch, Esq.

### Chapter 46 RECLAMATION AND OTHER RIGHTS OF UNSECURED TRADE

**CREDITORS IN BANKRUPTCY** 

Stephen K. Dexter, Esq.

### Chapter 47 RIGHTS OF NON-RESIDENTIAL REAL PROPERTY LANDLORDS

IN BANKRUPTCY Stephen K. Dexter, Esq.

### **Chapter 48 MERGERS AND ACQUISITIONS**

Tara L. Dunn, Esq.

### Chapter 49 DISSOLUTION AND WINDING UP

Allen Sparkman, Esq.

### **SUBJECT INDEX**

TOC-4 (10/17)

### **TABLE OF CONTENTS**

### **VOLUME 1**

Chapter 1	ETHIC	CS
	§ 1.1	INTRODUCTION
	§ 1.2	CONFLICTS OF INTEREST
		§ 1.2.1—Introduction
		§ 1.2.2—Rules Regarding Conflicts of Interest
		§ 1.2.3—Organization as Client
		§ 1.2.4—Unintended Clients or Co-clients
		§ 1.2.5—Multiple Clients
		§ 1.2.6—Client Consent or Waiver of Conflicts
	§ 1.3	CONFIDENTIALITY
		§ 1.3.1—Ethical Obligation of Confidentiality
		§ 1.3.2—Confidentiality Distinguished from the Attorney-Client Privilege
		§ 1.3.3—Issues of Confidentiality in Connection with Organizational Clients
		§ 1.3.4—Sarbanes-Oxley Act of 2002
		§ 1.3.5—Gramm-Leach-Bliley Act of 1999
	§ 1.4	LAWYERS AS DIRECTORS
		§ 1.4.1—Introduction
		§ 1.4.2—Conflicts of Interest
		§ 1.4.3—Attorney-Client Privilege
		§ 1.4.4—Malpractice Insurance
		§ 1.4.5—Accepting the Offer to Act as Director
	§ 1.5	DOING BUSINESS WITH A CLIENT
		§ 1.5.1—Investing in or with Clients
		§ 1.5.2—Taking an Equity Interest as a Fee
		§ 1.5.3—Securing Payment of an Attorney's Fee
		§ 1.5.4—Conflicts of Interest Arising from Business Relationships
		§ 1.5.5—Minimizing Exposure

### § 1.6 OPINION LETTERS AND AUDIT RESPONSE LETTERS

- § 1.6.1—Introduction
- § 1.6.2—Potential Unintended Consequences of Legal Opinion Letters
- § 1.6.3—Federal Statutory Prohibitions
- § 1.6.4—Ethical Considerations
- § 1.6.5—Establishing a Legal Opinion and Audit Response Policy

### § 1.7 MULTIJURISDICTIONAL PRACTICE

- § 1.7.1—Introduction
- § 1.7.2—Colorado Rules Regarding Multijurisdictional Practice
- § 1.7.3—Rules in Other Jurisdictions Concerning Multijurisdictional Practice

### § 1.8 ATTORNEY-CLIENT RELATIONSHIPS

- § 1.8.1—Engagement Letters
- § 1.8.2—Client File Retention

### § 1.9 LAWYERS AND THE MARIJUANA INDUSTRY

- § 1.9.1—Ethical Background
- § 1.9.2—New Colo. RPC Comment Adopted by Supreme Court

### **Chapter 2 CHOICE OF ENTITY**

### § 2.1 INTRODUCTION

### § 2.2 ETHICS

### § 2.3 ENTITY TYPES IN COLORADO

- § 2.3.1—Corporations
- § 2.3.2—S Corporations
- § 2.3.3—General Partnerships
- § 2.3.4—Limited Liability Partnerships
- § 2.3.5—Limited Partnerships
- § 2.3.6—Limited Liability Limited Partnerships
- § 2.3.7—Limited Partnership Associations
- § 2.3.8—Limited Liability Companies

### § 2.4 LIMITATION OF LIABILITY

### § 2.5 DOUBLE TAXATION VERSUS PASS-THROUGH TAXATION

TOC-6 (10/17)

§ 2.6	SELF-EMPLOYMENT	TAXES

- § 2.7 FRANCHISE TAXES
- § 2.8 MANAGEMENT
- § 2.9 OWNERS' RIGHTS
- § 2.10 CONCLUSION

### **EXHIBITS**

Exhibit 2A—A Comparison of Colorado Business Entities Exhibit 2B—Choosing the Right Entity: A Taxing Decision

### Chapter 3 TAX CONSIDERATIONS IN ENTITY SELECTION

### § 3.1 INTRODUCTION

### § 3.2 FEDERAL INCOME TAXATION

- § 3.2.1—History
- § 3.2.2—Tax Classifications
- § 3.2.3—Taxation of Disregarded Entities (Sole Proprietorships and Single-Member LLCs)
- § 3.2.4—Taxation of Partnership Entities (Partnerships and Multiple-Member LLCs)
- § 3.2.5—Taxation of Entities Classified as C Corporations
- § 3.2.6—Taxation of Entities Classified as S Corporations

### § 3.3 COLORADO STATE AND LOCAL TAXATION

- § 3.3.1—In General
- § 3.3.2—Income Taxes
- § 3.3.3—Property Taxes
- § 3.3.4—Sales and Use Taxes
- § 3.3.5—Disregarded Entities
- § 3.3.6—Partnerships

# § 3.4 ANALYSIS OF ENTITY CHOICE AND PLANNING OPPORTUNITIES

§ 3.4.1—Analysis of Tax Entity Choice

# Chapter 4 CHOICE OF JURISDICTION § 4.1 INTRODUCTION

### § 4.2 BUSINESS CONSIDERATIONS

- § 4.2.1—Public or Private Company
- § 4.2.2—Financing Sources

### § 4.3 LEGAL CONSIDERATIONS

- § 4.3.1—Court System
- § 4.3.2—Forum for Litigation
- § 4.3.3—Charter Amendments
- § 4.3.4—Franchise Taxes
- § 4.3.5—Holders of Capital Stock
- § 4.3.6—Board of Directors
- § 4.3.7—Officers
- § 4.3.8—Dividends and Repurchases Of Shares
- § 4.3.9—Business Combination Statute (Delaware)
- § 4.3.10—Dissolution

### § 4.4 REDOMESTICATION

### § 4.5 CONCLUSION

### **Chapter 5** FILING ISSUES

#### LEGISLATIVE SUMMARY

### § 5.1 INTRODUCTION

§ 5.1.1—Purpose and Scope

### § 5.2 COLORADO SECRETARY OF STATE

- § 5.2.1—Entities
- § 5.2.2—Duties of the Secretary of State
- § 5.2.3—Responsibilities of the Practitioner and the Individual Causing Delivery of a Document for Filing Regarding Authorization, Accuracy, and Compliance
- § 5.2.4—Filing Requirements and Procedures
- § 5.2.5—Review for Compliance (Substantive or "Merit Review")

TOC-8 (10/17)

### Table of Contents

§ 5.2.6—Business Names, "Name Availability," "Distinguishable on the

Records of the Secretary of State," and "Name Protection" § 5.2.7—Corrections § 5.2.8—Changes and Conversions § 5.2.9—Filing Errors — Personally Identifying Information, Privacy, **Identity Theft** § 5.2.10—Certifications and Copies § 5.2.11—Charitable Organizations and Charitable Solicitation § 5.2.12—Notaries Public and Notary Public Commissions § 5.2.13—Lobbyists § 5.2.14—Campaign Committees and Campaign Finance § 5.2.15—Automatic Email Notification § 5.3 OTHER COLORADO DEPARTMENTS § 5.3.1—Department of Revenue § 5.3.2—Department of Labor and Employment § 5.3.3—Department of Regulatory Agencies § 5.4 FOREIGN JURISDICTIONS § 5.4.1—Other Secretary of State Offices § 5.5 **COUNTY GOVERNMENT** § 5.5.1—County Clerks and Recorders **§ 5.6** LOCAL GOVERNMENT § 5.6.1—Municipal Government § 5.6.2—Other Local Governments — Special Districts § 5.7 **COURTS** § 5.8 FEDERAL REQUIREMENTS § 5.8.1—Internal Revenue Service § 5.9 INTERNATIONAL REQUIREMENTS § 5.9.1—Authentication and Legalization of Notarized Documents —

(10/17) TOC-9

**Apostilles** 

### **Chapter 6 CONVERSION OF ENTITIES IN COLORADO**

### § 6.1 CONVERSION MECHANICS

- § 6.1.1—Types of Conversions
- § 6.1.2—Approval of Conversions
- § 6.1.3—Dissenters' Rights
- § 6.1.4—What Must Be Approved The Plan of Conversion
- § 6.1.5—Statements of Conversion and Other Filings
- § 6.1.6—Additional Mechanics for Foreign Entities
- § 6.1.7—Effective Date of a Conversion

### § 6.2 EFFECT OF CONVERSION

- § 6.2.1—No Dissolution
- § 6.2.2—Liabilities
- § 6.2.3—Unintended Effects of a Conversion

### § 6.3 TAX CONSIDERATIONS

### § 6.4 BUSINESS CONSIDERATIONS

- § 6.4.1—Change of Name
- § 6.4.2—Trade Names and Intellectual Property
- § 6.4.3—Bank Accounts
- § 6.4.4—Contracts
- § 6.4.5—Governmental Permits and Regulated Activities
- § 6.4.6—Title to Real Property
- § 6.4.7—Title Insurance
- § 6.4.8—Fairway Endorsements
- § 6.4.9—Real Property Transfer Taxes and Sales Taxes
- § 6.4.10—Deeds of Trust and Mortgages
- § 6.4.11—Leases
- § 6.4.12—UCC Filings
- § 6.4.13—Letters of Credit
- § 6.4.14—Other Business Matters

### § 6.5 CONCLUSION

### **EXHIBITS**

Exhibit 6A—Organic Statutes and Acronyms Referred to in This Chapter

Exhibit 6B—Domestic Entities Referred to in This Chapter

Exhibit 6C—Article 90 Definitions Referred to in This Chapter

TOC-10 (10/17)

### Table of Contents

N QUALIFICA	ATION
Exhibit 6F—E	ntity Conversions — Tax Treatment
Exhibit 6E—D	omestic Entity Conversions — Filing Requirements
N	Sanagement Issues
	Oomestic Entity Conversions — Ownership Liability and
E 1317 (D. D	

### Chapter 7 FOREIGN QUALIFICATION

### § 7.1 INTRODUCTION

### § 7.2 FOREIGN ENTITIES DOING BUSINESS IN COLORADO

- § 7.2.1—Application to All Entity Types
- § 7.2.2—General Prohibition Against Foreign Entities Transacting Business
- § 7.2.3—Activities That Do Not Constitute "Doing Business"
- § 7.2.4—Consequences of Not Filing
- § 7.2.5—Effect of Filing
- § 7.2.6—How to File
- § 7.2.7—How to Withdraw

### § 7.3 COLORADO ENTITIES DOING BUSINESS ELSEWHERE

- § 7.3.1—Revised Model Business Corporations Act
- § 7.3.2—Effect of Certain Activities on Possible Filing
- § 7.3.3—Subsequent Qualification

### § 7.4 OTHER ISSUES RELATING TO FOREIGN ENTITIES

- § 7.4.1—Remittance of Sales Tax
- § 7.4.2—Service of Process and *In Personam* Jurisdiction

# Chapter 8 ENTITY AND TRADE NAME FILING REQUIREMENTS AND CUSTOMS IN COLORADO

### § 8.1 TYPES OF FILINGS

- § 8.1.1—The Chart
- § 8.1.2—Constituent Filed Documents
- § 8.1.3—Statement of Trade Name
- § 8.1.4—Trade Name Affidavit
- § 8.1.5—Statement of Authority
- § 8.1.6—Statement of Partnership Authority

### § 8.2 THE NAME GAME

- § 8.2.1—What is a Name?
- § 8.2.2—Distinguishable on the Records
- § 8.2.3—Automatic Name Changes
- § 8.2.4—Real Estate Title Requirements
- § 8.2.5—Entity-Specific Requirements
- § 8.3 PENALTIES
- § 8.4 TITLE INSURANCE REQUIREMENTS
- § 8.5 CONCLUSION

### **EXHIBIT**

Exhibit 8A—Chart of Colorado Entity and Trade Name Registration Requirements and Customs

Chapter 9	LICENSING ISSUES		
	§ 9.1	RESTRICTIONS ON THE OWNERSHIP AND NATURE OF A BUSINESS	
	§ 9.2	GENERAL LICENSURE CONSIDERATIONS	
	§ 9.3	DISCIPLINARY PROCESS AND DENIAL HEARINGS	
	§ 9.4	CONCLUSION	
Chapter 10	RESER	RVED	
Chapter 11	SOLE PROPRIETORSHIPS		
	§ 11.1	INTRODUCTION AND OVERVIEW	

#### III INTRODUCTION THE OVERVI

- § 11.1.1—Advantages
- § 11.1.2—Disadvantages
- § 11.1.3—Starting a Business Generally

TOC-12 (10/17)

### § 11.2 FORMATION AND OPERATION

- § 11.2.1—Trade Names
- § 11.2.2—Sales and State Unemployment Taxes Licenses and Permits
- § 11.2.3—Federal and Interstate Requirements

### § 11.3 LIABILITY

### § 11.4 TAXATION OF THE SOLE PROPRIETORSHIP

- § 11.4.1—Reporting
- § 11.4.2—Self-Employment Taxes
- § 11.4.3—Tax Advantages and Disadvantages

### § 11.5 TRANSFERABILITY OF INTEREST

### § 11.6 TERMINATION OF THE SOLE PROPRIETORSHIP

### § 11.7 CONCLUDING COMMENT

#### **EXHIBITS**

- Exhibit 11A—Statement of Trade Name of an Individual (With Instructions)
- Exhibit 11B—Form CR 0100, Colorado Sales Tax/Wage Withholding Account Application (With Instructions)

### Chapter 12 CORPORATIONS

### § 12.1 INTRODUCTION

# § 12.2 THE CORPORATE FORM AND ITS NON-TAX ADVANTAGES AND DISADVANTAGES

- § 12.2.1—Source of Corporate Law
- § 12.2.2—The Corporate Entity
- § 12.2.3—Benefits
- § 12.2.4—Disadvantages

### § 12.3 PRE-INCORPORATION ACTIVITIES

# § 12.4 ARTICLES OF INCORPORATION (MANDATORY PROVISIONS, ELECTIVE PROVISIONS, REGISTERED OFFICE AND AGENT)

- § 12.4.1—Effect of Incorporation
- § 12.4.2—Mandatory Clauses
- § 12.4.3—Permissive Provisions
- § 12.5 **BYLAWS**

### § 12.6 ORGANIZATIONAL CONSENT AND OTHER REQUIREMENTS

### § 12.7 COMMON STOCK AND PREFERRED STOCK

- § 12.7.1—Registration of Stock
- § 12.7.2—Covenants
- § 12.7.3—Right of First Refusal and Co-Sale Agreement
- § 12.7.4—Voting Agreement
- § 12.7.5—Termination of Rights
- § 12.7.6—Terms of Preferred Stock in the Articles of Incorporation

# § 12.8 MANAGEMENT (FIDUCIARY DUTIES OF DIRECTORS AND OFFICERS)

### § 12.9 CONCLUSION

### **Chapter 13 PARTNERSHIPS**

### § 13.1 PARTNERSHIPS DEFINED AND GOVERNING STATUTES

- § 13.1.1—General Partnerships
- § 13.1.2—Limited Liability Partnerships
- § 13.1.3—Limited Partnerships
- § 13.1.4—Limited Liability Limited Partnerships
- § 13.1.5—Limited Partnership Associations
- § 13.1.6—Colorado Corporations and Associations Act

### § 13.2 FREEDOM OF CONTRACT

- § 13.2.1—General Partnerships and Limited Liability Partnerships
- § 13.2.2—Limited Partnerships and Limited Liability Limited Partnerships
- § 13.2.3—Limited Partnership Associations
- § 13.2.4—Non-Applicability of Uniform Commercial Code

TOC-14 (10/17)

### § 13.3 REQUIREMENT OF WRITTEN AGREEMENT

- § 13.3.1—General Partnerships and Limited Liability Partnerships
- § 13.3.2—Limited Partnerships and Limited Liability Limited Partnerships
- § 13.3.3—Limited Partnership Associations

### § 13.4 DISREGARD OF LIMITED LIABILITY

- § 13.4.1—Limited Liability Partnerships
- § 13.4.2—Limited Partnerships and Limited Liability Limited Partnerships
- § 13.4.3—Limited Partnership Associations
- § 13.4.4—Other Events

### § 13.5 FORMALITIES OF PARTNERSHIP FORMATION

- § 13.5.1—General Partnerships
- § 13.5.2—Limited Liability Partnerships
- § 13.5.3—Limited Partnerships
- § 13.5.4—Limited Liability Limited Partnerships

### § 13.6 PARTNERSHIP AGREEMENT PROVISIONS

- § 13.6.1—Name
- § 13.6.2—Office
- § 13.6.3—Purpose and Scope of Business
- § 13.6.4—Duration
- § 13.6.5—Contributions
- § 13.6.6—Allocation of Profits and Losses
- § 13.6.7—Distributions
- § 13.6.8—Rights and Duties of General Partners and Limited Partners
- § 13.6.9—Fiduciary Duties of General Partner
- § 13.6.10—Compensation of General Partner
- § 13.6.11—Removal of General Partner
- § 13.6.12—Safe Harbor for Limited Partner
- § 13.6.13—Voting Rights of General Partner
- § 13.6.14—Partner Rights to Information
- § 13.6.15—Actions By Partnership and Partners
- § 13.6.16—Partner Loans to Partnership
- § 13.6.17—Fiduciary Duty of Limited Partner
- § 13.6.18—Transfer of Partnership Interest
- § 13.6.19—Dissociation of Partners and Dissolution
- § 13.6.20—Conversion and Merger
- § 13.6.21—Sample Agreement

### **EXHIBIT**

### Exhibit 13A—Sample Agreement of Limited Partnership of Apartments Limited Partnership

Chapter 14	LIMITED LIABILITY COMPANIES		
	§ 14.1	INTRODUCTION	
	§ 14.2	DISCUSSION OF TERMS	
	§ 14.3	ADVANTAGES AND DISADVANTAGES OF AN LLC	
		<ul> <li>§ 14.3.1—Advantages</li> <li>§ 14.3.2—Disadvantages</li> <li>§ 14.3.3—LLC Versus LLP Versus S Corporation</li> <li>§ 14.3.4—Creditors' Rights</li> </ul>	
	§ 14.4	ORGANIZATION OF A COLORADO LLC — THE GOVERNING DOCUMENTS	
		§ 14.4.1—Articles of Organization § 14.4.2—Operating Agreement	
	§ 14.5	MEMBERS: THE OWNERS OF THE COLORADO LLC	
		<ul> <li>§ 14.5.1—How Many Members Must There Be?</li> <li>§ 14.5.2—Who Can Be a Member?</li> <li>§ 14.5.3—Classes of Membership</li> <li>§ 14.5.4—Member Rights</li> <li>§ 14.5.5—Member Obligations</li> <li>§ 14.5.6—The Tax Matters Partner and Partnership Representative</li> </ul>	
	§ 14.6	MANAGERS	
		<ul> <li>§ 14.6.1—Manager Managed Versus Member Managed</li> <li>§ 14.6.2—How Many Managers Must an LLC Have?</li> <li>§ 14.6.3—Who Can Be a Manager?</li> <li>§ 14.6.4—Managers' Rights</li> <li>§ 14.6.5—Officers and Agents</li> <li>§ 14.6.6—Appointment, Resignation, Removal, and Replacement Of Managers</li> </ul>	

TOC-16 (10/17)

### § 14.7 DISSOLUTION

- § 14.7.1—Dissolving a Colorado LLC
- § 14.7.2—Voluntary Dissolution

#### **EXHIBITS**

- Exhibit 14A—Sample Minimum Tax Distribution Clause
- Exhibit 14B—Sample I.R.C. § 704 Language
- Exhibit 14C—Sample Election Under the Bipartisan Budget Act of 2015
- Exhibit 14D—Practice Tips: How to Avoid Piercing the Veil
- Exhibit 14E—LLC Formation Checklist
- Exhibit 14F—Sample UCC Article 8 Language
- Exhibit 14G—Clarification From the Colorado Supreme Court in 2013's Weinstein v. Colborne Foodbotics

### VOLUME 2

### Chapter 15 COOPERATIVE BUSINESSES

### § 15.1 INTRODUCTION AND OVERVIEW

### § 15.2 COOPERATIVE PHILOSOPHY AND PRINCIPLES

- § 15.2.1—General Principles
- § 15.2.2—Service at Cost
- § 15.2.3—Financial Obligation Based on Use
- § 15.2.4—Limited Financial Return on Investment
- § 15.2.5—Democratic Control
- § 15.2.6—Summary Statement

### § 15.3 SELECTED COOPERATIVE TYPES AND EXAMPLES

- § 15.3.1—Health Care
- § 15.3.2—Technology Services
- § 15.3.3—Special Products Marketing
- § 15.3.4—Housing/Office Space
- § 15.3.5—Supplemental Benefits
- § 15.3.6—Day Care Centers
- § 15.3.7—Purchasing Supplies and Services
- § 15.3.8—Environmental and Safety Issues
- § 15.3.9—Business Development Areas
- § 15.3.10—Worker-Owned Cooperatives
- § 15.3.11—Transportation
- § 15.3.12—Multi-Stakeholder Cooperatives

§ 15.3.13—Cottage Foods Access Cooperatives § 15.3.14—Investment Clubs § 15.3.15—Grocery Cooperatives § 15.4 **COLORADO COOPERATIVE STATUTES** § 15.5 **ORGANIZING A COOPERATIVE** § 15.5.1—Commencing the Organizing Effort § 15.5.2—Colorado Department of Agriculture Assistance and Special Provisions for Agricultural Cooperatives § 15.5.3—Planning § 15.6 **DOCUMENTS** § 15.6.1—Documentation Generally § 15.6.2—Articles of Incorporation § 15.6.3—Bylaws § 15.6.4—Marketing and Purchasing Contracts; Membership Agreements § 15.6.5—General Comment on Cooperative Corporate Documents § 15.7 **MEMBERSHIP QUALIFICATIONS** § 15.8 **EQUITY CAPITAL** § 15.8.1—Members Provide Primary Capital — Other Capital Sources § 15.8.2—Income Tax Considerations — Internal Revenue Code Subchapter T § 15.8.3—Other Equity Approaches § 15.8.4—Worker Cooperative Tax Issues § 15.9 **EQUITY REDEMPTION** § 15.9.1—Generally § 15.9.2—Revolving Fund § 15.9.3—Base Capital § 15.9.4—Special Plans § 15.10 LOSSES § 15.11 DISSOLUTION

§ 15.12 ESCHEAT

TOC-18 (10/17)

### § 15.13 SECURITIES LAWS

- § 15.13.1—General Comment
- § 15.13.2—Colorado Exemption
- § 15.13.3—Federal Laws

### § 15.14 ANTITRUST LAWS

### § 15.15 LIMITED COOPERATIVE ASSOCIATIONS

### § 15.16 CONCLUDING COMMENT

### **EXHIBITS**

- Exhibit 15A—Statement of Cooperative Principles
- Exhibit 15B—Cover Sheets for Articles of Incorporation or Articles of Organization
- Exhibit 15C—Sample Colorado Cooperative Articles of Incorporation Attachment
- Exhibit 15D—Sample Cooperative Bylaws
- Exhibit 15E—Sample Simple Cooperative Membership Application
- Exhibit 15F—IRS Form 1099-PATR (Patronage Refunds)
- Exhibit 15G—IRS Form 1120-C (Cooperative Tax Return)

### **Chapter 16** NONPROFIT ORGANIZATIONS

### § 16.1 INTRODUCTION

### § 16.2 SELECTING THE ORGANIZATIONAL FORM

- § 16.2.1—Options
- § 16.2.2—Factors to Consider

### § 16.3 THE NONPROFIT CORPORATION

- § 16.3.1—Definition/Concepts/Powers
- § 16.3.2—Advantages/Disadvantages of Nonprofit Corporation Form
- § 16.3.3—Overview of Structure
- § 16.3.4—Drafting and Filing Articles of Incorporation
- § 16.3.5—Drafting Bylaws
- § 16.3.6—Holding the Initial Meeting
- § 16.3.7—Holding Subsequent Meetings
- § 16.3.8—Amending Organizational Documents
- § 16.3.9—Filing the Periodic Report

- § 16.3.10—Filing Other Documents
- § 16.3.11—Keeping Records

### § 16.4 THE CHARITABLE TRUST

- § 16.4.1—Definition/Concepts/Powers
- § 16.4.2—Advantages/Disadvantages of Trust Form
- § 16.4.3—Drafting the Trust Agreement
- § 16.4.4—Additional Governing Documents
- § 16.4.5—Administering the Trust
- § 16.4.6—Keeping Records

### § 16.5 THE LIMITED LIABILITY COMPANY

- § 16.5.1—Definition/Concepts/Powers
- § 16.5.2—Advantages/Disadvantages of Limited Liability Company Form
- § 16.5.3—Overview of Structure
- § 16.5.4—Drafting and Filing Articles of Organization
- § 16.5.5—Drafting the Operating Agreement
- § 16.5.6—Holding the Initial Meeting
- § 16.5.7—Holding Subsequent Meetings
- § 16.5.8—Amending Organizational Documents
- § 16.5.9—Filing the Annual Report
- § 16.5.10—Filing Other Documents
- § 16.5.11—Keeping Records

### § 16.6 THE UNINCORPORATED NONPROFIT ASSOCIATION

- § 16.6.1—Definition/Concepts/Powers
- § 16.6.2—Advantages/Disadvantages of Unincorporated Nonprofit Association Form
- § 16.6.3—Overview of Structure
- § 16.6.4—Drafting Organizational Documents
- § 16.6.5—Filing Organizational and Other Documents
- § 16.6.6—Holding the Initial Meeting
- § 16.6.7—Holding Subsequent Meetings
- § 16.6.8—Amending Organizational Documents
- § 16.6.9—Keeping Records

### § 16.7 REGISTRATIONS AND FILINGS COMMON TO ALL FORMS OF NONPROFIT ORGANIZATIONS

- § 16.7.1—Trademarks and Trade Names
- § 16.7.2—State Registrations and Filings
- § 16.7.3—Other Filings

TOC-20 (10/17)

#### **EXHIBITS**

Exhibit 16A—Checklist of Considerations in Selecting Organizational	
Form	
Exhibit 16B—Checklist of Procedures for Incorporation	
Exhibit 16C—Suggested Form of Attachment to Articles of Incorporation	n
for Nonprofit Corporation Expected to Apply for Tax-	
Exempt Status (With Alternative Clauses)	
Exhibit 16D—Sample Alternative Drop-In Language for Articles of	
Incorporation for Nonprofit Corporation Satisfying IRS	
Organizational and Operational Requirements	
Exhibit 16E—Sample Form of Bylaws for Nonprofit Corporation (With	
Alternative Provisions)	
Exhibit 16F—Sample Form of Organizational Action Without a Meeting	g of
Directors	
Exhibit 16G—Trust Registration Statement	

### **Chapter 17 PUBLIC BENEFIT CORPORATIONS**

### § 17.1 INTRODUCTION

Exhibit 16H—Statement of Authority

### § 17.2 BACKGROUND

§ 17.2.1—Corporate Profit Motives and Social Responsibility
§ 17.2.2—Two Conflicting Theories of Corporate Purpose
§ 17.2.3—The Ascendency of Socially Conscious Investing
§ 17.2.4—The Public Benefit Corporations Solution
§ 17.2.5—What's in a Name?

### § 17.3 LAW APPLICABLE TO PUBLIC BENEFIT CORPORATIONS

```
§ 17.3.1—The Foundation — Business Corporation Law
§ 17.3.2—Public Benefit Corporation Defined
§ 17.3.3—Public Benefit Defined
§ 17.3.4—Special Considerations — Articles of Incorporation
§ 17.3.5—Special Considerations — Naming the Public Benefit Corporation
§ 17.3.6—Special Considerations — Share Certificates
```

# § 17.4 FIDUCIARY DUTIES OF PUBLIC BENEFIT CORPORATION DIRECTORS

§ 17.4.1—Fiduciary Duties in General § 17.4.2—Balancing Different Interests

- § 17.4.3—Standards and Protections
- § 17.4.4—Derivative Actions
- § 17.4.5—Private Ordering and Fiduciary Duties in Other Entity Forms

### § 17.5 ANNUAL BENEFIT REPORT

- § 17.5.1—Annual Benefit Report to Shareholders
- § 17.5.2—Required Disclosure
- § 17.5.3—Third-Party Standards

### § 17.6 FORMING A NEW PUBLIC BENEFIT CORPORATION

- § 17.6.1—Election of Colorado PBC Status Upon Formation
- § 17.6.2—No Shareholder Approval Requirement

# § 17.7 ELECTING INTO OR OUT OF PUBLIC BENEFIT CORPORATION STATUS

- § 17.7.1—Converting an Existing Corporation into a Public Benefit Corporation
- § 17.7.2—Supermajority Voting Requirements
- § 17.7.3—Other Applicable Requirements
- § 17.7.4—Dissenters' Rights
- § 17.7.5—Converting Other Entities into Colorado PBCs
- § 17.7.6—Election Out of Public Benefit Corporation Status

### § 17.8 PRACTICAL AND LEGAL ISSUES

- § 17.8.1—General
- § 17.8.2—"Balancing" or "Considering" Other Interests
- § 17.8.3—Impact on Equity Investment
- § 17.8.4—Lenders' Concerns
- § 17.8.5—Conflicts Among Constituencies
- § 17.8.6—Litigation and Remedies
- § 17.8.7—Charitable Fundraising

### § 17.9 SELECTING A JURISDICTION — OTHER STATE MODELS

- § 17.9.1—Choice of Jurisdiction Generally
- § 17.9.2—Significant Variations Among States

### § 17.10 CONCLUSION

TOC-22 (10/17)

### **Chapter 18 PROFESSIONAL SERVICE COMPANIES**

### § 18.1 INTRODUCTION

### § 18.2 COMMON PROVISIONS

- § 18.2.1—No Diminution of Individual Responsibility
- § 18.2.2—Retirement and Other Plans Permitted
- § 18.2.3—Insurance Requirements
- § 18.2.4—Document Provisions
- § 18.2.5—Restrictions on Ownership and Management

### § 18.3 VICARIOUS LIABILITY

### § 18.4 ACCOUNTANTS

- § 18.4.1—Entities Permitted for the Practice of Accountancy
- § 18.4.2—Registration of Entities With State Board of Accountancy
- § 18.4.3—Permitted Ownership
- § 18.4.4—Management of the Entity
- § 18.4.5—Document Requirements if Entity Practices Solely in Colorado
- § 18.4.6—Document Requirements if Entity Also Practices Outside Colorado
- § 18.4.7—Name Requirements

### § 18.5 ARCHITECTURE

- § 18.5.1—Entities Permitted for the Practice of Architecture
- § 18.5.2—Requirements for Entities to Practice Architecture
- § 18.5.3—Operational Requirements
- § 18.5.4—[Reserved]
- § 18.5.5—Permitted Ownership
- § 18.5.6—Management of the Entity
- § 18.5.7—Combined Entities of Architects and Professional Engineers
- § 18.5.8—Name Requirements

### § 18.6 ATTORNEYS

- § 18.6.1—Attorneys May Practice Through Professional Companies
- § 18.6.2—Permitted Ownership and Management
- § 18.6.3—Document Requirements
- § 18.6.4—Insurance Requirements
- § 18.6.5—Name Requirements

### § 18.7 CHIROPRACTIC

- § 18.7.1—Entities Permitted for the Practice of Chiropractic
- § 18.7.2—Document Requirements
- § 18.7.3—Ownership and Management

### § 18.8 DENTISTS

### § 18.9 ENGINEERS AND SURVEYORS

- § 18.9.1—Entities May Not Be Licensed
- § 18.9.2—When Partnerships, Corporations, Limited Liability Companies, or Joint Stock Associations Permitted
- § 18.9.3—Limitations on Use of "Engineer" in Entity Name

### § 18.10 MEDICAL PRACTICE

- § 18.10.1—Corporate Practice of Medicine Prohibited
- § 18.10.2—Document Requirements
- § 18.10.3—Ownership and Management

### § 18.11 OPTOMETRY

- § 18.11.1—Entities Permitted
- § 18.11.2—Document Requirements
- § 18.11.3—Ownership and Management

### § 18.12 PHYSICAL THERAPISTS

- § 18.12.1—Entities Permitted
- § 18.12.2—Document Requirements
- § 18.12.3—Ownership and Management

### § 18.13 PODIATRY

- § 18.13.1—Entities Permitted
- § 18.13.2—Document Requirements
- § 18.13.3—Ownership and Management

# § 18.14 PSYCHOLOGISTS, SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS, PROFESSIONAL COUNSELORS, AND ADDICTION COUNSELORS

- § 18.14.1—Entities Permitted
- § 18.14.2—Document Requirements
- § 18.14.3—Ownership and Management

TOC-24 (10/17)

### § 18.15 VETERINARIANS

§ 18.15.1—Entities Permitted

### § 18.16 MEDICAL MARIJUANA PROVIDERS

- § 18.16.1—General
- § 18.16.2—Medical Marijuana Business Operator License
- § 18.16.3—Classes of Licenses

### Chapter 19 RESERVED

### **Chapter 20 GENERAL CORPORATE ACTIONS**

- § 20.1 INTRODUCTION
- § 20.2 ACTION OF INCORPORATOR
- § 20.3 MEETINGS OF SHAREHOLDERS AND DIRECTORS
  - § 20.3.1—Notice
  - § 20.3.2—Annual, Regular, and Special Meetings
  - § 20.3.3—Quorum and Voting; Voting Trusts
  - § 20.3.4—Committees
  - § 20.3.5—Voting Methods
  - § 20.3.6—Voting Groups
- § 20.4 PARTICIPATION
- § 20.5 ACTIONS BY CONSENT
  - § 20.5.1—Board
  - § 20.5.2—Shareholders
  - § 20.5.3—Exhibits
- § 20.6 ISSUANCE OF STOCK OR OTHER EQUITY INTERESTS
- § 20.7 MERGERS, SALES, DISSOLUTIONS, AND OTHER SIGNIFICANT ACTIONS
- § 20.8 CONVERSION
- § 20.9 DISSENTERS' RIGHTS

### § 20.10 MAINTENANCE OF BOOKS AND RECORDS

- § 20.11 TRANSITION PROVISIONS
- § 20.12 REINSTATEMENT OF DISSOLVED CORPORATIONS; DELINQUENCY
- § 20.13 PUBLIC BENEFIT CORPORATIONS

### **EXHIBITS**

- Exhibit 20A—Sample Action of Incorporator of [Corporation] Form
- Exhibit 20B—Sample Action by Unanimous Written Consent of the Directors of [Corporation] Form
- Exhibit 20C—Sample Notice of Regular Meeting of the Board of Directors of [Corporation] Form
- Exhibit 20D—Sample Notice of Annual Meeting of Shareholders of [Corporation] Form
- Exhibit 20E—Sample Joint Action by Written Consent of the Directors and Shareholders in Lieu of Annual Meeting
- Exhibit 20F—Sample Minutes of Annual Shareholder Meeting

### **Chapter 21 CORPORATE GOVERNANCE AND FIDUCIARY DUTIES**

### § 21.1 INTRODUCTION

### § 21.2 CORPORATE DIRECTORS

- § 21.2.1—Role and Responsibilities
- § 21.2.2—Liability for Directors and Limitations on Liability
- § 21.2.3—Indemnification

### § 21.3 FIDUCIARY DUTIES

- § 21.3.1—General Fiduciary Duties
- § 21.3.2—Duty of Care
- § 21.3.3—Duty of Loyalty
- § 21.3.4—Duties Involving Sale of Control

### § 21.4 BREACHES OF FIDUCIARY DUTIES

- § 21.4.1—Common Breaches by Directors
- § 21.4.2—Defenses
- § 21.4.3—Damages and Remedies

TOC-26 (10/17)

### § 21.5 CORPORATE GOVERNANCE § 21.5.1—Conflicts of Interest § 21.5.2—Special Committees § 21.5.3—Standards of Judicial Review § 21.6 CONCLUSION PIERCING THE CORPORATE VEIL **INTRODUCTION** § 22.1 § 22.2 HISTORY OF THE DOCTRINE IN COLORADO § 22.3 PIERCING THE CORPORATE VEIL § 22.3.1—Three-Part Test for Piercing the Corporate Veil § 22.3.2—Burden of Proof § 22.3.3—Equitable Nature of the Remedy/Right to a Jury Trial § 22.3.4—Availability of Other Remedies LIABILITY OF NON-SHAREHOLDERS § 22.4 § 22.5 **REVERSE PIERCING** § 22.5.1—Inside Versus Outside Claims § 22.5.2—Application of Outside Reverse Piercing § 22.6 APPLICATION TO OTHER CORPORATE FORMS APPLICATION IN UNUSUAL CIRCUMSTANCES § 22.7 § 22.7.1—Garnishment Proceedings § 22.7.2—Divorce Proceedings § 22.8 **ATTORNEY FEES**

INDIVIDUAL LIABILITY IN TORT WHILE ACTING ON BEHALF

### Chapter 23 RESERVED

§ 22.9

Chapter 22

(10/17) TOC-27

**OF A CORPORATION** 

Chapter 24	INSURANCE COVERAGE		
	§ 24.1	INTRODUCTION	
	§ 24.2	CATEGORIES OF INSURANCE POLICIES	
	§ 24.3	COMMONLY ENCOUNTERED TYPES OF BUSINESS INSURANCE POLICIES	
		§ 24.3.1—First-Party Coverage § 24.3.2—Third-Party Coverage § 24.3.3—Hybrid-Coverage	
	§ 24.4	GOVERNING LAW	
	§ 24.5	BENEFITS OF INSURANCE	
		§ 24.5.1—Property § 24.5.2—Liability Policies	
	§ 24.6	THE DUTY OF GOOD FAITH AND FAIR DEALING	
	§ 24.7	TRIGGERS OF COVERAGE/ALLOCATION	
		§ 24.7.1—Claims-Made § 24.7.2—Occurrence	
	§ 24.8	CLAIMS AGAINST INSURANCE COMPANIES	
Chapter 25	CAPITAL FORMATION ISSUES		
	§ 25.1	FOUNDERS' ISSUES	
		§ 25.1.1—In General § 25.1.2—Consideration for Shares § 25.1.3—Vesting — Restrictions on Transfer	
	§ 25.2	VENTURE CAPITAL/PRIVATE EQUITY FINANCING	
		<ul> <li>§ 25.2.1—Positioning of the Company for a Possible Financing</li> <li>§ 25.2.2—Bridge Financings</li> <li>§ 25.2.3—Venture Capital Financings — Economics</li> <li>§ 25.2.4—Venture Capital Financings — Governance</li> <li>§ 25.2.5—Venture Capital Financings — Operative Documents</li> <li>§ 25.2.6—Special Issues in "Down-Round" Financings</li> <li>§ 25.2.7—Miscellaneous Issues</li> </ul>	

TOC-28 (10/17)

### Chapter 26 SECURITIES LAW FOR SMALL AND START-UP BUSINESS ENTITIES

### § 26.1 REGULATORY SYSTEM

- § 26.1.1—General
- § 26.1.2—Federal Law
- § 26.1.3—Securities and Exchange Commission
- § 26.1.4—State Law

### § 26.2 FEDERAL REGISTRATION AND EXEMPTIONS

- § 26.2.1—"Security" Defined
- § 26.2.2—Exemptions in General
- § 26.2.3—Exemptions for Certain Securities and Issuers
- § 26.2.4—Transaction Exemptions
- § 26.2.5—Regulation A Exemption
- § 26.2.6—Regulation D Exemptions
- § 26.2.7—Filing Requirements
- § 26.2.8—Regulation Crowdfunding
- § 26.2.9—Restrictions on Transfer

### § 26.3 COLORADO REGISTRATION AND EXEMPTIONS

- § 26.3.1—Exemptions for Certain Securities and Issuers
- § 26.3.2—Transaction Exemptions
- § 26.3.3—Trading Exemptions

#### § 26.4 CONCLUSION

### Chapter 27 DEBT FINANCING

### § 27.1 THE SMALL BUSINESS ADMINISTRATION (SBA)

- § 27.1.1—Brief History of the SBA
- § 27.1.2—How the SBA Works

### § 27.2 CREDIT FACTORS

- § 27.2.1—Equity
- § 27.2.2—Earnings Requirements
- § 27.2.3—Working Capital
- § 27.2.4—Collateral
- § 27.2.5—Resource Management

### § 27.3 APPLICATION PROCESS

- § 27.3.1—Initial Proposal
- § 27.3.2—Prequalification Loan Program

### § 27.4 LOAN TYPES

- § 27.4.1—7(a) Loan Program
- § 27.4.2—CDC/504 Loan Program
- § 27.4.3—Microloan Program

### § 27.5 ELIGIBILITY INFORMATION

- § 27.5.1—Wholesale Business
- § 27.5.2—Retail or Service Business
- § 27.5.3—Manufacturing Business
- § 27.5.4—Construction Business

### § 27.6 COLLATERAL FOR SECURING DEBT FINANCING

- § 27.6.1—Real Property
- § 27.6.2—Fixtures, As-Extracted Collateral
- § 27.6.3—Personal Property Collateral

### § 27.7 COMMON LOAN DOCUMENTATION PROVISIONS AND ISSUES

- § 27.7.1—Covenants, Warranties, and Representations
- § 27.7.2—Insurance and Environmental Requirements
- § 27.7.3—Default Provisions
- § 27.7.4—Deal Mechanics
- § 27.7.5—Disposition of Collateral

### **Chapter 28 BUY-SELL AGREEMENTS**

### § 28.1 FUNDAMENTAL ELEMENTS

- § 28.1.1—Types of Buy-Sell Agreements
- § 28.1.2—Items to Be Considered in a Buy-Sell Agreement

### § 28.2 OTHER ENTITY CONSIDERATIONS

- § 28.2.1—Types of Business Entities
- § 28.2.2—Buy-Sell Considerations When Choosing a Business Entity

### **EXHIBIT**

Exhibit 28A—Sample Stock Redemption and Cross Purchase Agreement

TOC-30 (10/17)

### Chapter 29 CORPORATE MAINTENANCE, ONGOING REVIEW, AND **CONDUCTING BUSINESS REVIEWS § 29.1** INTRODUCTION **§ 29.2 CONDUCTING A BUSINESS REVIEW** § 29.2.1—Benefits of Conducting a Review § 29.2.2—Scope of Review § 29.2.3—Statutory Maintenance — Annual Reports § 29.2.4—Statutory Obligations for Corporations to Hold Annual Shareholder Meetings § 29.2.5—Preparedness for Shareholder Inspections for Corporations § 29.2.6—Considerations for LLCs § 29.3 ISSUES COMMONLY REVEALED BY A BUSINESS REVIEW § 29.3.1—Problems with Entity Status and Filings in Colorado § 29.3.2—Filings for Other Jurisdictions § 29.3.3—Insufficient Records of Corporate Actions § 29.3.4—Capitalization and Securityholder Issues § 29.3.5—Default Under Material Contracts and Problematic Restrictive Covenants § 29.3.6—Employee Matters § 29.3.7—Veil-Piercing Issues STRATEGIC PLANNING AND ONGOING REVIEW § 29.4 Chapter 30 SUCCESSION PLANNING FOR BUSINESSES § 30.1 **SUCCESSION PLANNING** § 30.1.1—What Is Succession Planning? § 30.1.2—Why Have a Succession Plan? § 30.1.3—Common Succession Planning Techniques § 30.2 PLANS GONE AWRY: ILL-FATED BUSINESS SUCCESSION **SCHEMES**

§ 30.3 EMPLOYEE STOCK OWNERSHIP PLANS

§ 30.2.2—Waiting Too Long to Make a Gift

§ 30.2.1—The "Common Business Organization Trust"

§ 30.2.3—Intra-Family Transfers of Business Interests

§ 30.2.4—Intra-Family Transfers Using Different Business Entities

### Chapter 31 RESERVED

### **VOLUME 3**

Chapter 32	EMPLOYEE ISSUES		
	§ 32.1	INTRODUCTION	
	§ 32.2	INDEPENDENT CONTRACTOR VERSUS EMPLOYEE	
		§ 32.2.1—Pros and Cons of Using Independent Contractors	
		§ 32.2.2—Workers' Compensation Factors	
		§ 32.2.3—Unemployment Insurance Factors	
		§ 32.2.4—IRS Factors	
		§ 32.2.5—Fair Labor Standards Act Factors	
		§ 32.2.6—Title VII, ADEA, and ADA Factors	
		§ 32.2.7—The Written Contract	
		§ 32.2.8—Claims Under the Colorado Wage Act	
		§ 32.2.9—United States Department of Labor	
	§ 32.3	PRESERVING EMPLOYMENT-AT-WILL RIGHTS	
		§ 32.3.1—The Importance of Preserving Employment-at-Will Rights	
		§ 32.3.2—Offer Letters and Contracts of Employment	
		§ 32.3.3—Handbooks	
Chapter 33	EMPLO	DYEE BENEFITS	
	§ 33.1	INTRODUCTION	
	§ 33.2	CHARACTERISTICS	
		§ 33.2.1—ERISA Coverage	
		§ 33.2.2—Employee	
		§ 33.2.3—Plan and Plan Document	
	§ 33.3	CLASSIFICATION	
		§ 33.3.1—Deferred and Not Deferred	
		§ 33.3.2—Qualified and Non-Qualified	
		§ 33.3.3—Equity-Based	
	8 33.4	GLOSSARY OF TAX-FAVORED EMPLOYEE BENEFIT PLANS	

TOC-32 (10/17)

### Chapter 34 NONCOMPETITION, NON-SOLICIT, AND CONFIDENTIALITY **AGREEMENTS** § 34.1 THE LAW OF RESTRICTIVE EMPLOYMENT AGREEMENTS IN **COLORADO** § 34.1.1—Statutory Exceptions § 34.1.2—Law Specific to Non-solicit Agreements § 34.1.3—Law Specific to Confidentiality Agreements § 34.1.4—Transactional Context § 34.1.5—Remedies § 34.2 **DRAFTING TIPS** § 34.3 BEST PRACTICES FOR A CONTINUOUSLY ENFORCEABLE **AGREEMENT** Chapter 35 TRADEMARKS, COPYRIGHTS, AND DOMAIN NAMES § 35.1 INTRODUCTION § 35.2 TYPES OF INTELLECTUAL PROPERTY § 35.3 CHOOSING AND PROTECTING THE NAME OF THE COMPANY (AND ITS PRODUCTS) § 35.3.1—Choosing a Name § 35.3.2—"Clearing" the Name § 35.3.3—Registering Trademarks and Copyrights § 35.3.4—Registering the Company Name as a Legal Entity Name or Trade Name § 35.3.5—Proper Use of and Notice for Trademarks and Copyrights Moving Forward § 35.4 OWNERSHIP OF INTELLECTUAL PROPERTY § 35.4.1—Existing Intellectual Property Contributed or Licensed to the

(10/17) TOC-33

Company

§ 35.4.2—Ownership of Future Intellectual Property § 35.4.3—Protecting Company Intellectual Property

### § 35.5 DOMAIN NAMES

- § 35.5.1—What Is a Domain Name?
- § 35.5.2—The Relationship Between Domain Names and Trademarks
- § 35.5.3—The Benefits of Obtaining and Registering a Domain Name
- § 35.5.4—Domain Name Dispute Resolution

### **Chapter 36** TRADE SECRETS

### § 36.1 INTRODUCTION

### § 36.2 SUBJECT MATTER OF TRADE SECRETS

- § 36.2.1—Types of Eligible Information
- § 36.2.2—Secrecy Requirements
- § 36.2.3—Value and Investment Requirements
- § 36.2.4—Non-Disclosure and Confidentiality Agreements

### § 36.3 MISAPPROPRIATION AND ITS REMEDIES

§ 36.3.1—Injunctive and Monetary Remedies

# § 36.4 TRANSFERRING RIGHTS AND OTHER PRACTICAL CONSIDERATIONS

- § 36.4.1—Transferring Rights to Third Parties
- § 36.4.2—Screening of New Hires
- § 36.4.3—Existing Employees
- § 36.4.4—Departing Employees

### § 36.5 AGREEMENTS NOT TO COMPETE

- § 36.5.1—Colorado Statute on Agreements Not to Compete
- § 36.5.2—The Trade Secret Exception
- § 36.5.3—Executive and Management Personnel Exception
- § 36.5.4—Sale of Business Exception
- § 36.5.5—Scope, Duration, and Geography

TOC-34 (10/17)

### Chapter 37 **PATENT LAW** § 37.1 **INTRODUCTION** § 37.2 TYPES OF U.S. PATENTS § 37.2.1—Utility Patents § 37.2.2—Design Patents § 37.2.3—Plant Patents PATENTABLE SUBJECT MATTER § 37.3 § 37.3.1—Novelty § 37.3.2—Non-obviousness § 37.3.3—Changes Implemented by the America Invents Act § 37.4 TYPES OF U.S. PATENT APPLICATIONS § 37.4.1—Provisional Patent Applications § 37.4.2—Non-provisional Patent Applications § 37.5 FOREIGN PATENT APPLICATIONS § 37.5.1—Patent Cooperation Treaty (PCT) Patent Applications § 37.5.2—Direct Filing in a Foreign Country § 37.5.3—Taiwan § 37.6 OVERVIEW OF U.S. PATENT PROCEDURE § 37.6.1—Patentability Searches § 37.6.2—Filing of the U.S. Patent Application § 37.6.3—Office Actions § 37.6.4—"Patent Pending" Status § 37.6.5—Patent Term/Patent Maintenance Fees § 37.7 **OWNERSHIP** § 37.7.1—Joint Inventorship § 37.7.2—Assignments § 37.8 **SECURITY INTERESTS** § 37.9 CLEARANCE SEARCHES AND PATENT OPINIONS § 37.9.1—Freedom to Operate/Clearance Searches § 37.9.2—Non-infringement/Invalidity Opinions

### § 37.10 ONLINE RESOURCES

### **EXHIBITS**

Exhibit 37A—Sample Utility Patent

Exhibit 37B—Sample Design Patent

Exhibit 37C—Sample Plant Patent

Exhibit 37D—Initial Inventor Meeting Checklist

Exhibit 37E—Invention Disclosure Form

### Chapter 38 PRIVACY

### § 38.1 INTRODUCTION

# § 38.2 PROTECTION OF CERTAIN PERSONAL INFORMATION UNDER COLORADO LAW

- § 38.2.1—Confidentiality of Social Security Numbers
- § 38.2.2—Disposal of Documents Containing Personal Identifying Information

### § 38.3 ONLINE COLLECTION OF PERSONAL INFORMATION

- § 38.3.1—Fair Information Practice Principles
- § 38.3.2—Privacy Policies
- § 38.3.3—Behavioral Advertising

# § 38.4 NOTIFICATION OF SECURITY BREACH INVOLVING PERSONAL INFORMATION

- § 38.4.1—Colorado Security Breach Notification Law
- § 38.4.2—Other State Security Breach Notification Laws
- § 38.4.3—Developing Federal Security Breach Notification Requirements

# § 38.5 FEDERAL TRADE COMMISSION IDENTITY THEFT "RED FLAGS" RULES

- § 38.5.1—Red Flags Rules Apply to Many Businesses
- § 38.5.2—Development of Identity Theft Prevention Program

### § 38.6 STATE, SECTOR, AND INTERNATIONAL PRIVACY LAWS

- § 38.6.1—State and Sector Privacy Laws
- § 38.6.2—International Privacy Laws

TOC-36 (10/17)

### Chapter 39 RESERVED Chapter 40 **FRANCHISES** § 40.1 INTRODUCTION § 40.2 FEDERAL DISCLOSURE LAW § 40.2.1—FTC Rule Definition of a Franchise § 40.2.2—FTC Rule Disclosure Requirement § 40.2.3—The Content of the Franchise Disclosure Document § 40.2.4—Consequences of Non-Compliance § 40.3 STATE REGISTRATION AND DISCLOSURE LAWS § 40.3.1—Definition of a Franchise § 40.3.2—State Registration Requirements § 40.3.3—Consequences of Non-Compliance § 40.4 **BUSINESS OPPORTUNITIES LAWS** § 40.4.1—State Business Opportunities Laws § 40.4.2—Federal Business Opportunity Rule § 40.5 STATE RELATIONSHIP LAWS § 40.5.1—Termination § 40.5.2—Non-Renewal § 40.5.3—Consequences of Non-Compliance **§ 40.6 DISCLOSURE PROCEDURES** § 40.6.1—Who Must Disclose § 40.6.2—When Disclosure Must Take Place § 40.6.3—Multi-State Disclosure § 40.6.4—Electronic Disclosure **§ 40.7** TYPES OF FRANCHISE ARRANGEMENTS § 40.7.1—Single-Unit Franchises § 40.7.2—Area Development Franchises § 40.7.3—Regional Development Franchises § 40.7.4—Sub-Franchises

### § 40.8 EXEMPTIONS AND EXCLUSIONS TO FRANCHISING

- § 40.8.1—Bona Fide Wholesale Price of Goods
- § 40.8.2—Fractional Franchise
- § 40.8.3—Sophisticated Purchaser
- § 40.8.4—Large Franchisor
- § 40.8.5—Single License, Isolated, or Limited Sales
- § 40.8.6—Sophisticated Investor Exemptions

### § 40.9 INTERNATIONAL FRANCHISES

- § 40.9.1—Introduction
- § 40.9.2—Application of the FTC Rule and State Franchise Laws to International Franchising
- § 40.9.3—International Franchise Registration, Disclosure, and Relationship Laws
- § 40.9.4—Other Laws Affecting International Franchising

### **EXHIBITS**

- Exhibit 40A—Uniform Franchise Registration Application
- Exhibit 40B—Franchisor's Costs and Sources of Funds
- Exhibit 40C—Uniform Franchise Consent to Service of Process
- Exhibit 40D—Franchise Seller Disclosure Form
- Exhibit 40E—Guarantee of Performance
- Exhibit 40F—Consent of Accountant
- Exhibit 40G—State Advertising Filing Requirements
- Exhibit 40H—Franchise Registration, Renewal, and Amendment Filing Fees
- Exhibit 40I—International Franchise Compliance Requirements
- Exhibit 40J—FTC Form of Disclosure Document for Business Opportunities

### **Chapter 41 INTERNATIONAL BUSINESS TRANSACTIONS**

# § 41.1 WHAT A COLORADO BUSINESS NEEDS TO KNOW TO DO BUSINESS INTERNATIONALLY

- § 41.1.1—International Sale of Goods
- § 41.1.2—United Nations Convention on Contracts for the International Sale of Goods
- § 41.1.3—Trade Terms
- § 41.1.4—Letters of Credit
- § 41.1.5—Laws of Other Countries
- § 41.1.6—Trade Agreements and Export Controls

TOC-38 (10/17)

### Table of Contents

- § 41.1.7—Difference Between Common Law and Civil Law Traditions
- § 41.1.8—Dispute Resolution
- § 41.1.9—Whose Law Governs?
- § 41.1.10—Tax Considerations
- § 41.1.11—Tax Treaties
- § 41.1.12—U.S. Taxation of Foreign Income
- § 41.1.13—Hybrid Entities
- § 41.1.14—Foreign Corrupt Practices Act
- § 41.1.15—Transfer of Technology
- § 41.1.16—Distribution Agreements
- § 41.1.17—Licensing Agreements
- § 41.1.18—Joint Ventures
- § 41.1.19—Mergers and Acquisitions

### § 41.2 DIFFERENT TYPES OF ENTITIES WORLDWIDE

- § 41.2.1—Corporations
- § 41.2.2—Partnerships
- § 41.2.3—*Limitadas*/Limited Liability Companies
- § 41.2.4—Doing Business Without a Foreign Location
- § 41.2.5—Foreign Branch
- § 41.2.6—Foreign Trust

### Chapter 42 SPECIAL ISSUES IN OIL AND GAS

### § 42.1 INTRODUCTION

### § 42.2 OIL AND GAS LAW: KEY TERMINOLOGY

### § 42.3 OIL AND GAS LAW: UNDERSTANDING THE MINERAL ESTATE

- § 42.3.1—The Split Estate Doctrine
- § 42.3.2—Accommodation and Reasonable Use
- § 42.3.3—The Right to Lease
- § 42.3.4—Mineral Interests and Royalty Interests

### § 42.4 OIL AND GAS DEVELOPMENT: A CASE STUDY

- § 42.4.1—Introduction to Oil and Gas Development
- § 42.4.2—Sample Fact Pattern
- § 42.4.3—The Rule of Capture
- § 42.4.4—Pooling and Drilling Units
- § 42.4.5—Acquisition of Mineral Estate Directly
- § 42.4.6—Acquiring the Right to Produce Through Leasing or Voluntary Pooling

- § 42.4.7—Nonconsenting Mineral Owners: The Involuntary Pooling Process in Colorado
- § 42.4.8—Drilling a Well: Complying With COGCC Rules

#### **EXHIBITS**

- Exhibit 42A—Form of Bargain and Sale Deed for Mineral Conveyance
- Exhibit 42B—Example of Oil and Gas Lease
- Exhibit 42C—Sample Notice Letter to a Nonconsenting Owner
- Exhibit 42D—Sample COGCC Form 1
- Exhibit 42E—Sample COGCC Form 1A
- Exhibit 42F—Sample COGCC Form 2
- Exhibit 42G—Sample COGCC Form 2A

### Chapter 43 REAL ESTATE ISSUES FOR BUSINESS ORGANIZATIONS

### § 43.1 INTERESTS IN REAL PROPERTY

- § 43.1.1—Property
- § 43.1.2—Real Property, Personal Property, and Fixtures
- § 43.1.3—Estates in Real Property
- § 43.1.4—The "Bundle of Sticks"
- § 43.1.5—Mineral Rights
- § 43.1.6—Water Rights
- § 43.1.7—Leases
- § 43.1.8—Easements and Licenses
- § 43.1.9—Wind and Solar Energy
- § 43.1.10—Estates Above the Surface (Air Rights)

### § 43.2 CHOICE OF ENTITY AND POWER TO OWN REAL PROPERTY

- § 43.2.1—General
- § 43.2.2—Limited Liability Company
- § 43.2.3—Partnership
- § 43.2.4—Corporation
- § 43.2.5—Trust
- § 43.2.6—Joint Venture
- § 43.2.7—Nonprofit Corporation
- § 43.2.8—Unincorporated Nonprofit Association
- § 43.2.9—Cooperative
- § 43.2.10—Special Purpose Corporations
- § 43.2.11—Special Districts
- § 43.2.12—Tenancy in Common

TOC-40 (10/17)

### § 43.3 DUE DILIGENCE FOR REAL ESTATE ACQUISITIONS

- § 43.3.1—Process
- § 43.3.2—Due Diligence Versus Representations and Warranties
- § 43.3.3—Title and Survey Review
- § 43.3.4—Environmental Review
- § 43.3.5—Other Due Diligence

### § 43.4 PURCHASE AND SALE AGREEMENTS AND CLOSINGS

- § 43.4.1—The Need for a Contract
- § 43.4.2—Real Estate Commission Forms
- § 43.4.3—Other Form Contracts
- § 43.4.4—Post-Closing Escrows
- § 43.4.5—"As Is" Disclaimers and Other Risk Shifting
- § 43.4.6—Real Estate Closings

### § 43.5 CONVEYING REAL PROPERTY

- § 43.5.1—Power to Own Real Property
- § 43.5.2—Vesting of Title in Entity Not Yet Formed
- § 43.5.3—Entity Name Issues
- § 43.5.4—Authority Issues
- § 43.5.5—Statement of Authority
- § 43.5.6—Conveyances After Dissolution
- § 43.5.7—Powers of Attorney
- § 43.5.8—Types of Deeds
- § 43.5.9—Contents of a Deed
- § 43.5.10—Acknowledgments
- § 43.5.11—Recording of Documents
- § 43.5.12—Transfer Declaration and Documentary Fee
- § 43.5.13—Transfer Taxes
- § 43.5.14—Title Insurance
- § 43.5.15—Subrogation and "Owner's Policies"

### § 43.6 ENCUMBERING REAL PROPERTY

- § 43.6.1—Real Estate Financing Generally
- § 43.6.2—Basic Loan Documents
- § 43.6.3—Authority Issues in Encumbrancing
- § 43.6.4—Special Purpose Entities (SPEs) and Bankruptcy Remote Entities (BREs)
- § 43.6.5—Foreclosure of a Deed of Trust
- § 43.6.6—Releases of Deeds of Trust and Mortgages

# § 43.7 REAL PROPERTY IN CONVERSIONS, MERGERS, AND SHARE EXCHANGES

- § 43.7.1—Conversions
- § 43.7.2—Mergers and Share Exchanges
- § 43.7.3—Name Change Issues

### § 43.8 LIENS ON REAL PROPERTY

- § 43.8.1—General
- § 43.8.2—Consensual Liens
- § 43.8.3—Judgment Liens
- § 43.8.4—Mechanics' Liens
- § 43.8.5—Statutory Tax Liens

### § 43.9 RESTRICTIONS ON REAL PROPERTY

- § 43.9.1—CC&Rs and Other Recorded Restrictions
- § 43.9.2—Colorado Common Interest Ownership Act (CCIOA)

# § 43.10 REAL PROPERTY TAXATION — ASSESSMENT AND EXEMPTIONS

- § 43.10.1—Real Property Taxation
- § 43.10.2—Exemptions from Real Property Taxation
- § 43.10.3—Real Property Tax Prorations

### § 43.11 LANDOWNER LIABILITY

- § 43.11.1—A Short History
- § 43.11.2—The Landowner Liability Statute

### § 43.12 LAND USE AND SUBDIVISION LAWS

- § 43.12.1—Land Use Laws
- § 43.12.2—Subdivision Laws

# § 43.13 COLORADO REAL ESTATE BROKERAGE AND BROKERAGE RELATIONSHIP

- § 43.13.1—Real Estate Brokerage License Requirements
- § 43.13.2—Brokerage Relationships
- § 43.13.3—Modifications to Common Law Agency Liability Concepts

### § 43.14 BIBLIOGRAPHY: COLORADO REAL PROPERTY LAW SOURCES

TOC-42 (10/17)

### **EXHIBITS**

Exhibit 43A—Due Diligence Checklist — Commercial Real Property
Exhibit 43B—Form of Statement of Authority
Exhibit 43C—Form of General Warranty Deed
Exhibit 43D—Form of Special Warranty Deed
Exhibit 43E—Form of Bargain and Sale Deed
Exhibit 43F—Form of Quitclaim Deed
Exhibit 43G—Form of Closing Instruction Letter
Exhibit 43H—Real Estate Contract Checklist

Chapter 44	RESERVED		
Chapter 45	THE SALE OF BUSINESS ASSETS IN BANKRUPTCY		
	§ 45.1	INTRODUCTION TO THE SALE OF ASSETS IN BANKRUPTCY	
	§ 45.2	ASSET SALES IN A CHAPTER 11 BANKRUPTCY CASE PURSUANT TO § 363	
	§ 45.3	GOOD FAITH PURCHASER STATUS — § 363(m)	
	§ 45.4	IS IT A SUB ROSA PLAN?	
Chapter 46	RECLAMATION AND OTHER RIGHTS OF UNSECURED TRADE CREDITORS IN BANKRUPTCY		
	§ 46.1	INTRODUCTION	
	§ 46.2	SIGNS THAT A CUSTOMER IS IN FINANCIAL TROUBLE	
	§ 46.3	INITIAL CONSIDERATIONS UPON LEARNING THE CUSTOMER HAS FILED FOR BANKRUPTCY	
	§ 46.4	MAKING THE DEMAND FOR RECLAMATION	
	§ 46.5	ENFORCING THE RIGHT OF RECLAMATION	
	§ 46.6	20-DAY CLAIMS	

Chapter 47	RIGHTS OF NON-RESIDENTIAL REAL PROPERTY LANDLORDS IN BANKRUPTCY		
	§ 47.1	INTRODUCTION	
	§ 47.2	PRE-BANKRUPTCY CONSIDERATIONS	
	§ 47.3	TREATMENT OF LEASE DURING BANKRUPTCY PROCESS	
	§ 47.4	ASSUMPTION (AND ASSIGNMENT) OF THE LEASE	
	§ 47.5	REJECTION OF LEASE/CALCULATION OF LANDLORD'S CLAIM	
Chapter 48	MERGERS AND ACQUISITIONS		
	§ 48.1	CHOOSING A STRUCTURE: MERGERS, STOCK SALES, AND ASSET SALES	
		§ 48.1.1—Tax Considerations	
		§ 48.1.2—Portion of Business Acquired	
		§ 48.1.3—Legal Effects	
		§ 48.1.4—Corporate Approval Requirements	
	§ 48.2	MERGERS	
		§ 48.2.1—Merger Documentation and Filing Requirements	
		§ 48.2.2—Dissenters' Rights in Mergers	
		§ 48.2.3—Legal Effects of Mergers § 48.2.4—Short Form Parent-Subsidiary Mergers	
	§ 48.3	STOCK SALES	
		§ 48.3.1—Holdouts	
		§ 48.3.2—Drafting Issues	
	§ 48.4	ASSET SALES	
		§ 48.4.1—Dissenters' Rights in Asset Sales	
		§ 48.4.2—Successor Liability in Asset Sales	

TOC-44 (10/17)

### § 48.5 DUE DILIGENCE; DRAFTING TIPS

- § 48.5.1—Due Diligence Checklist
- § 48.5.2—Potential Problem Areas
- § 48.5.3—Review of Books, Records, and Contracts
- § 48.5.4—Practice Tips for Drafting Agreements
- § 48.5.5—Earn-Out Provisions
- § 48.5.6—Caps and Baskets
- § 48.5.7—Recourse, Hold-Backs, and Escrow

### § 48.6 REQUIREMENTS FOR INSIDER TRANSACTIONS

### § 48.7 CONCLUSION

#### **EXHIBIT**

Exhibit 48A—Legal Due Diligence Checklist

### Chapter 49 DISSOLUTION AND WINDING UP

### § 49.1 INTRODUCTION

- § 49.1.1—Scope of Chapter
- § 49.1.2—Dissolution Defined
- § 49.1.3—Change of Name
- § 49.1.4—Required Filings with Colorado Secretary of State
- § 49.1.5—Other Filings That May Be Required
- § 49.1.6—Reinstatement of Dissolved Colorado Entities

### § 49.2 VOLUNTARY DISSOLUTION

- § 49.2.1—Corporations
- § 49.2.2—Nonprofit Corporations
- § 49.2.3—Cooperatives
- § 49.2.4—Unincorporated Entities

### § 49.3 ADMINISTRATIVE DISSOLUTION — DELINQUENCY

- § 49.3.1—When Applicable
- § 49.3.2—Effect of Administrative Dissolution
- § 49.3.3—Repeal Effective October 1, 2005, and Replacement with Delinquency
- § 49.3.4—Effect of Delinquency
- § 49.3.5—Curing Delinquency
- § 49.3.6—Dissolution of Delinquent Entities
- § 49.3.7—Name of Delinquent Entities Name After Curing Delinquency

### § 49.4 JUDICIAL DISSOLUTION

- § 49.4.1—Corporations
- § 49.4.2—Nonprofit Corporations
- § 49.4.3—Cooperatives
- § 49.4.4—Limited Liability Companies
- § 49.4.5—Procedure for Judicial Dissolution of Corporations, Nonprofit Corporations, Cooperatives, and Limited Liability Companies
- § 49.4.6—Unincorporated Entities Other Than Limited Liability Companies
- § 49.4.7—Effect of Judicial Dissolution

# § 49.5 NOTICE TO CREDITORS BY CERTAIN DISSOLVED ENTITIES — ENFORCEMENT OF CLAIMS AGAINST CERTAIN DISSOLVED ENTITIES

- § 49.5.1—Notice and Payments to Persons Having Claims Against a
  Dissolved Corporation, Nonprofit Corporation, Limited Liability
  Company, or Cooperative Formed Under Article 56 of Title 7
- § 49.5.2—Written Notice to Persons Having Claims
- § 49.5.3—Notice by Publication
- § 49.5.4—Enforcement of Claims Against a Dissolved Entity

### **SUBJECT INDEX**

TOC-46 (10/17)