

# Contents

## PART I ORGANIZATION

<b>CHAPTER 1: INTRODUCTION</b> . . . . .	<b>1-1</b>
1.1. Nature and Use of This Practice Manual . . . . .	1-2
1.2. Comparison of the LLC with Other Entities . . . . .	1-2
1.3. History of the LLC . . . . .	1-3
Table 1. Comparison of Indiana LLCs, Limited Partnerships, S Corporations, C Corporations, and LLPs . . . . .	1-5
1.4. Classification of the LLC as a Partnership for Federal Income Tax Purposes . . . . .	1-11
1.4.1. Introduction . . . . .	1-11
1.4.2. Consequences of Classification as a Corporation . . . . .	1-12
1.4.3. Entity Classification Regulations . . . . .	1-12
1.4.4. [Reserved] . . . . .	1-15
1.4.5. Single-Member LLCs . . . . .	1-15
1.4.6. Uses of Single-Member LLCs . . . . .	1-16
1.5. The Indiana Business Flexibility Act — An Overview . . . . .	1-17
1.6. [Reserved] . . . . .	1-18
1.7. 1999 Amendments to the Act . . . . .	1-18
1.7.1. LLCs as Estate Planning Vehicles . . . . .	1-19
1.7.2. Applicable Restrictions and Section 2704(b) . . . . .	1-19
1.7.3. Other 1999 Amendments . . . . .	1-21
1.7.3.1. Agency Rules: IND. CODE §§ 23-18-3-1 and 23-18-3-1.1 . . . . .	1-21
1.7.3.2. Dissolution Changes: IND. CODE §§ 23-18-5-4; 23-18-5-5; 23-18-5-5.1 . . . . .	1-22
1.7.3.3. Member’s Right to Withdraw: IND. CODE §§ 23-18-6-6 and 23-18-6-6.1 . . . . .	1-22
1.7.3.4. Voluntary Dissolution: IND. CODE §§ 23-18-9-1 and 23-16-9-1.1 . . . . .	1-22
1.8. LLCs as Closely Held Investment Vehicles . . . . .	1-23
1.9. Use of LLCs for Emerging Venture-Backed Companies . . . . .	1-23
1.10. Net Investment Income Tax . . . . .	1-25
1.11. Tax Cuts and Jobs Act: Choice of Entity Decisions . . . . .	1-27

CONTENTS

**CHAPTER 2: FORMATION AND ORGANIZATION . . . . . 2-1**

2.1. Introduction . . . . . 2-3

2.2. Preformation Matters . . . . . 2-3

    Form 2-1. Memorandum Attendant to the Execution and Filing of Articles of Organization . . . . . 2-4

    Form 2-2. Letter Directing Execution and Filing of Articles of Organization . . . . . 2-4

2.3. Articles of Organization . . . . . 2-5

    2.3.1. Basic Requirements . . . . . 2-5

        Form 2-3. Articles of Organization without Restrictions on the Authority of Members — Signed by Agent . . . . . 2-7

        Form 2-4. Articles of Organization without Restrictions on the Authority of Members — Signed by Members . . . . . 2-7

    2.3.2. Designation of Manager . . . . . 2-8

    2.3.3. Optional Provisions . . . . . 2-9

        2.3.3.1. Appointment of Manager and Agency Authority of Members . . . . . 2-9

            Form 2-5. Articles of Organization with Manager — Signed by Agent . . . . . 2-10

        2.3.3.2. Provision Requiring Written Operating Agreement . . . . . 2-11

            Form 2-6. Articles of Organization with Manager and a Requirement that the Operating Agreement be in Writing . . . . . 2-12

2.4. Reserved . . . . . 2-13

    Form 2-7. Reserved . . . . . 2-13

2.5. Articles of Amendment . . . . . 2-13

    Form 2-8. Unanimous Consent of Members to Amend Articles of Organization . . . . . 2-13

    Form 2-9. Consent of Members to Amend Articles of Organization Where Operating Agreement Does Not Require Unanimity . . . . . 2-14

    Form 2-10. Articles of Amendment . . . . . 2-15

2.6. Name Selection, Protection, and Use . . . . . 2-16

    2.6.1. Selecting a Distinguishable Name . . . . . 2-16

    2.6.2. Names, Infringement, and Unfair Competition . . . . . 2-17

2.6.3.	Federal and State Protection of a Name as a Trademark or Service Mark . . . . .	2-17
2.6.3.1.	How a Trademark Differs from a Name or DBA . . . . .	2-17
2.6.3.2.	Benefits of Trademark Registration . . . . .	2-18
2.6.3.3.	Benefits of Indiana State Trademark Registration . . . . .	2-19
2.6.3.4.	Indiana State Trademark Registration Process . . . . .	2-19
2.6.3.5.	Federal Trademark Application Process . . . . .	2-20
2.6.3.6.	Benefits Specific to Federal Trademark Registration . . . . .	2-21
2.6.3.7.	Cost of Federal Trademark Registration . . . . .	2-22
2.6.3.8.	Name and Trademark Searches . . . . .	2-23
2.7.	Entrepreneur’s Guide . . . . .	2-24

**PART II  
OPERATIONS**

<b>CHAPTER 3:</b>	<b>THE OPERATING AGREEMENT . . . . .</b>	<b>3-1</b>
3.1.	In General . . . . .	3-2
3.2.	“Operating Agreement” Defined . . . . .	3-3
3.3.	Flexibility of LLC Form . . . . .	3-4
3.4.	Form of Operating Agreement . . . . .	3-4
3.5.	Formality of Adoption . . . . .	3-5
3.6.	Amendments to Operating Agreement . . . . .	3-5
3.6.1.	In General . . . . .	3-5
3.6.2.	Formality Required . . . . .	3-6
3.7.	Form Operating Agreements . . . . .	3-6
3.8.	Ethical Considerations in Drafting Operating Agreements . . . . .	3-6
	Form 3-1. Separate Counsel . . . . .	3-9
	Form 3-2. Separate Counsel (Alternative) . . . . .	3-10
	Form 3-3. Joint Representation Waiver . . . . .	3-10
3.9.	Guide to the Operating Agreements in the Appendices . . . . .	3-11
<b>CHAPTER 4:</b>	<b>ORGANIZATION . . . . .</b>	<b>4-1</b>
4.1.	Drafting LLC Organization Provisions . . . . .	4-3
4.2.	Introductory Paragraph . . . . .	4-3
	Form 4-1. Introductory Paragraph — Names Parties . . . . .	4-3
	Form 4-2. Introductory Paragraph — Does Not Name Parties . . . . .	4-4

CONTENTS

4.3.	Background to Agreement . . . . .	4-4
	Form 4-3. Explanatory Statement . . . . .	4-4
4.4.	Confirmation of Agreement . . . . .	4-4
	Form 4-4. Confirmation of Agreement . . . . .	4-4
4.5.	Definitions. . . . .	4-5
	4.5.1. “Interest” Compared to “Membership Rights” . . . . .	4-5
	4.5.2. “Interest Holder” Compared to “Member” . . . . .	4-5
	Form 4-5. General Definitions. . . . .	4-6
4.6.	Agreement to Organize LLC. . . . .	4-8
	Form 4-6. General Agreement to Organize LLC. . . . .	4-8
	Form 4-7. Organizational Provision Confirming That Articles of Organization Have Been Filed . . .	4-8
4.7.	Name. . . . .	4-8
	Form 4-8. Name Provision for Member-Managed LLC . . . . .	4-9
	Form 4-9. Name Provision for Manager-Managed LLC. . . . .	4-9
4.8.	Purpose . . . . .	4-9
	Form 4-10. Any Business Purpose. . . . .	4-10
	Form 4-11. Specific Purpose . . . . .	4-10
	Form 4-12. Purpose Limited to Real Estate. . . . .	4-10
4.9.	Term . . . . .	4-11
	Form 4-13. Term Commences on Date of Filing of Articles . . . . .	4-11
	Form 4-14. Term Commences on Date Subsequent to Filing of Articles . . . . .	4-12
4.10.	Principal Office . . . . .	4-12
	Form 4-15. Principal Office of LLC Managed by Members . . .	4-12
	Form 4-16. Principal Office of LLC Managed by Managers. . .	4-12
4.11.	Registered Agent. . . . .	4-13
	Form 4-17. Registered Agent. . . . .	4-13
4.12.	Members . . . . .	4-13
	Form 4-18. Schedule of Members Set Forth in Exhibit. . . . .	4-14
	Form 4-19. Schedule of Members Set Forth in Text of Agreement. . . . .	4-14
	Form 4-20. Schedule of Members (without Percentages) . . . . .	4-14.1
4.13.	Miscellaneous Provisions . . . . .	4-15
	Form 4-21. Miscellaneous Provisions . . . . .	4-15
4.14.	Post-Organization Communication with Clients . . . . .	4-17
	Form 4-22. Form of Post-Organization Reporting Letter to Client . . . . .	4-18

Form 4-23.	Alternate Form of Letter to New LLC Regarding Operational and Other Post-Formation Matters . . .	4-20
<b>CHAPTER 5:</b>	<b>LIMITED LIABILITY COMPANY CAPITAL . . .</b>	<b>5-1</b>
5.1.	Drafting Capital Provisions. . . . .	5-3
5.2.	Initial Capital Contributions . . . . .	5-3
Form 5-1.	Initial Capital Contributions in Cash . . . . .	5-3
Form 5-2.	Initial Capital Contributions — Partly in Cash and Partly in Services . . . . .	5-4
Form 5-3.	Initial Capital Contributions — Partly in Cash and Partly in Property . . . . .	5-5
Form 5-4.	Representation in Connection with Contribution of Property . . . . .	5-5
5.3.	Additional Capital Contributions . . . . .	5-6
Form 5-5.	Additional Capital Contributions at Discretion of Manager — Limit on Amount . . . . .	5-6
Form 5-6.	Additional Capital Contributions at Discretion of Members — Limit on Amount . . . . .	5-6.1
Form 5-7.	No Liability beyond Initial Capital Contribution . . . . .	5-7
Form 5-8.	No Liability beyond Additional Capital Contributions. . . . .	5-7
5.4.	Default in Payment of Contributions . . . . .	5-7
Form 5-9.	Remedy of Reduction of Member’s Interest in Event of Failure to Make Contribution to Manager-Managed LLC . . . . .	5-8
5.5.	Interest on Capital Contributions . . . . .	5-9
Form 5-10.	No Interest on Capital Contributions . . . . .	5-9
Form 5-11.	Interest on Capital Contributions . . . . .	5-9
5.6.	Return of Capital Contributions . . . . .	5-9
Form 5-12.	Return of Capital Contributions — Unanimous Consent of Members and Compliance with Act Required . . . . .	5-10
5.7.	Form of Distribution . . . . .	5-10
Form 5-13.	Form of Distribution — No Right to Receive Anything but Cash . . . . .	5-10
Form 5-14.	Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager-Managed LLC . . . . .	5-11

CONTENTS

5.8. Capital Accounts . . . . . 5-11  
Form 5-15. Capital Accounts (Simple Definition). . . . . 5-11

5.9. Loans. . . . . 5-11  
Form 5-16. Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed Upon in Future . . . . . 5-12  
Form 5-17. Loans — Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed Upon in Future . . . . . 5-12

5.10. Options and Convertible Interests. . . . . 5-13

**CHAPTER 6: ALLOCATION AND DISTRIBUTION PROVISIONS. . . . . 6-1**

6.1. Taxation of the LLC . . . . . 6-3

6.2. General Allocation and Distribution Concepts . . . . . 6-3

6.3. Distribution Restrictions under the Act. . . . . 6-4

6.4. Allocation Restrictions — Code Section 704(b) . . . . . 6-4.1  
6.4.1. Overview . . . . . 6-4.1  
6.4.2. The Three Alternative Allocation Tests . . . . . 6-5  
6.4.2.1. The First Test: Partners’ Interests . . . . . 6-6  
6.4.2.2. The Second Test: Substantial Economic Effect and Capital Accounts . . . . . 6-6  
6.4.2.3. The Third Test: Nonrecourse Debt . . . . . 6-7  
6.4.3. Allocations to Interest Holders . . . . . 6-8

6.5. Definitions. . . . . 6-9  
6.5.1. Distribution-Related Definitions . . . . . 6-9  
Form 6-1. Distribution Definitions. . . . . 6-9  
6.5.2. Allocation-Related Definitions . . . . . 6-10  
Form 6-2. Tax Definitions . . . . . 6-10

6.6. Basic Distribution Provisions . . . . . 6-13  
6.6.1. In General . . . . . 6-13  
6.6.2. Cash Flow from Operations. . . . . 6-14  
Form 6-3. Distributions of Cash Flow . . . . . 6-14  
6.6.3. Distribution of Capital Proceeds . . . . . 6-14  
Form 6-4. Distribution of Capital Proceeds. . . . . 6-14  
6.6.4. Liquidation Proceeds. . . . . 6-15  
Form 6-5. Liquidation and Dissolution . . . . . 6-15  
Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation . . . . . 6-16

6.7.	Basic Allocation Provisions . . . . .	6-16
6.7.1.	Basic Allocations of Income and Loss . . . . .	6-16
	Form 6-7. Profit or Loss. . . . .	6-17
6.7.2.	Qualified Income Offset and Minimum Gain Chargeback . . . . .	6-18
	Form 6-8. Qualified Income Offset and Minimum Gain Chargeback. . . . .	6-18
6.7.3.	Other Regulatory Allocations . . . . .	6-19
	Form 6-9. Regulatory Allocations . . . . .	6-20
6.7.4.	General Provisions. . . . .	6-21
	Form 6-10. General Provisions . . . . .	6-22
6.8.	Complex and Disproportionate Distribution and Allocation Provisions . . . . .	6-23
6.8.1.	Distribution Preferences . . . . .	6-23
	Form 6-11. Distribution Preference. . . . .	6-23
6.8.2.	Disproportionate Allocation of Losses . . . . .	6-24
	Form 6-12. Disproportionate Allocation of Loss. . . . .	6-25
6.8.3.	Flip-Flops . . . . .	6-25
	Form 6-13. Flip-Flop on Sale. . . . .	6-26
6.8.4.	Carried Interests . . . . .	6-27
6.8.5.	Universal Gain and Loss Allocation Provisions . . . . .	6-28
	Form 6-14. Targeted Capital Account Gain or Loss Allocation Provision . . . . .	6-28
6.9.	Distributions and Allocations for LLCs Taxed as S Corporations . . . . .	6-31
<b>CHAPTER 7: MANAGEMENT PROVISIONS . . . . .</b>		<b>7-1</b>
7.1.	Drafting LLC Management Provisions. . . . .	7-3
7.1.1.	General Flexibility under the Act . . . . .	7-3
7.1.2.	Typical Approaches . . . . .	7-4
7.1.3.	Officers, Managers, and Authorized Agents . . . . .	7-4
7.2.	Member-Managed LLC Provisions . . . . .	7-5
	Form 7-1. Simple Member-Management Provision . . . . .	7-5
	Form 7-2. Member-Management but with Appointment of Ministerial Manager . . . . .	7-6
7.3.	Representative Management . . . . .	7-6
7.3.1.	Management by a “General Partner”-like Manager . . . . .	7-7
	Form 7-3. Manager with “General Partner”-like Authority. . . . .	7-7

CONTENTS

	Form 7-4. Manager with “General Partner”-like Authority — Alternate Form. . . . .	7-10
7.3.2.	Management by Management Committee . . . . .	7-10
	Form 7-5. Management Committee. . . . .	7-11
7.3.3.	Management by One Class of Members . . . . .	7-12
	Form 7-6. Definition of Class A and Class B Members . . . . .	7-13
	Form 7-7. Management by Class A Members (Class B Members Not Agents) . . . . .	7-13
	Form 7-8. Management by Class A Members (Class B Members Remain Agents) . . . . .	7-14
7.3.4.	Corporate-Like Management by “Board of Directors,” with Committees Appointed and Officers Elected by the Board . . . . .	7-14
	Form 7-8.1. Corporate-Like Management by “Board of Directors,” with Committees Appointed and Officers Elected by the Board . . . . .	7-14.1
7.3.5	Management by “Board of Managers” Appointed by the Members — Weighted Voting by the Board . . . . .	7-14.7
7.4.	Replacement of Managers. . . . .	7-14.7
	Form 7-9. Removal of Manager without Cause. . . . .	7-15
	Form 7-10. Removal of Manager for Only Specified Reasons . . . . .	7-15
7.5.	Meetings of Members . . . . .	7-16
	Form 7-11. Procedure for Calling and Holding Meetings. . . . .	7-17
	Form 7-12. Procedure for Calling and Holding Meetings — Only Class A Members Vote . . . . .	7-18
7.6.	Informal Action of Members; Form of Member Consents . . . . .	7-19
	Form 7-13. Consents and Informal Actions. . . . .	7-19
	Form 7-14. Form of Consent of Members . . . . .	7-20
7.7.	Unanimous Consent . . . . .	7-22
	Form 7-15. Unanimous Consent (Vote of All Members). . . . .	7-22.1
	Form 7-16. Written Consent (Vote of Less Than All Members) . . . . .	7-23
7.8.	Deadlock and Resolution . . . . .	7-23
	Form 7-17. Arbitration of Deadlock . . . . .	7-23
	Form 7-18. Russian Roulette in the Event of Deadlock . . . . .	7-24



Form 7-19.	Submission of Sealed Bids in the Event of Deadlock . . . . .	7-27
7.9.	Compensation and Reimbursement . . . . .	7-28
Form 7-20.	No Arrangement for Compensation (Member-Managed) . . . . .	7-29
Form 7-21.	Compensation (Manager-Managed) . . . . .	7-29
Form 7-22.	Extraordinary Compensation . . . . .	7-30
Form 7-22.1.	Guaranteed Payment . . . . .	7-30
7.10.	Standard of Care and Degree of Loyalty . . . . .	7-30.1
Form 7-23.	Standard of Care and Degree of Loyalty . . . . .	7-31
Form 7-24.	Standard of Care and Degree of Loyalty — Same Obligations as Imposed on Corporate Directors . . . . .	7-32
7.11.	Indemnification . . . . .	7-33
Form 7-25.	Liability and Indemnification of General Manager (Manager-Managed) . . . . .	7-33
Form 7-26.	Liability and Indemnification of Members (Member-Managed) . . . . .	7-34
Form 7-27.	Liability and Indemnification of Managers — Follows Business Corporation Law . . . . .	7-34
7.12.	Confidentiality . . . . .	7-35
7.13.	Power of Attorney . . . . .	7-36
Form 7-28.	Power of Attorney . . . . .	7-36
7.14.	Bankruptcy Remote Entities — Giving Management Rights to Another Party . . . . .	7-37
7.14.1.	SPEs . . . . .	7-37
7.14.2.	Giving Lenders LLC Control and Noneconomic Interests . . . . .	7-38
7.14.3.	Challenges to Lender LLC Control in Bankruptcy . . . . .	7-40
Form 7-29.	Operating Agreement Provision — Purpose Clause for an SPE LLC . . . . .	7-40
Form 7-30.	Operating Agreement Provision — SPE Management Provisions . . . . .	7-41
Form 7-31.	Operating Agreement Provision — Limit on Dissolution . . . . .	7-42
Form 7-32.	Operating Agreement Provision — Limits on Bankruptcy . . . . .	7-42
Form 7-33.	Operating Agreement Provision — Special Amendment Provision . . . . .	7-43

CONTENTS

**CHAPTER 8: TRANSFER AND BUY-SELL PROVISIONS . . . 8-1**

- 8.1. The Act’s Default Rules for Transfers . . . . . 8-4
- 8.2. Tax Aspects of Transfer Restrictions . . . . . 8-4
  - 8.2.1. Partnership Classification . . . . . 8-4
  - 8.2.2. Reserved . . . . . 8-5
  - 8.2.3. Basis Issues . . . . . 8-5
- 8.3. Preliminary Drafting Considerations . . . . . 8-5
  - Form 8-1. Definitional Provision — Transfer . . . . . 8-6
  - Form 8-1.1. Expanded Definition — Transfer . . . . . 8-6
  - Form 8-2. Definitional Provisions — Interest and Membership Rights . . . . . 8-6.1
- 8.4. Drafting Transfer Provisions That Follow the Act’s Default Rules . . . . . 8-6.1
  - Form 8-3. Transfer Provision Following Act’s Default Rules . . . . . 8-6.2
- 8.5. Drafting Transfer Provisions That Permit Free Transferability of Interests . . . . . 8-6.2
  - Form 8-4. Free Transferability of Interests and Rights . . . . . 8-6.2
- 8.6. Drafting Transfer Provisions That Absolutely Prohibit Transfers of Any Kind . . . . . 8-7
  - Form 8-5. Absolute Prohibition of Transfers . . . . . 8-7
- 8.7. Drafting Transfer Provisions That Permit Transfers Only on Certain Conditions . . . . . 8-7
  - 8.7.1. In General . . . . . 8-7
    - Form 8-6. Transfer Permitted on Satisfaction of Certain Conditions . . . . . 8-8
  - 8.7.2. First Refusal Rights . . . . . 8-9
    - Form 8-7. Right of First Refusal; LLC Purchases; Installments Allowed . . . . . 8-9
    - Form 8-8. Right of First Refusal; Member’s Purchase Payment Terms Matched . . . . . 8-11
    - Form 8-9. Right of First Offer; LLC Purchases; Cash Purchase . . . . . 8-13
  - 8.7.3. Admission of Transferee as a Member . . . . . 8-14
    - Form 8-10. Transferee Not Admitted as Member without Consent of Members . . . . . 8-14
    - Form 8-11. Transferee Automatically Admitted as Member . . . . . 8-14
  - 8.7.4. Transfers to Members’ Affiliates and Family . . . . . 8-15
    - Form 8-12. Definitional Provision — Family . . . . . 8-15

	Form 8-13. Transfers to Affiliates and Family . . . . .	8-15
8.8.	Withdrawal under the Act . . . . .	8-16
8.8.1.	Voluntary Withdrawal . . . . .	8-16
8.8.1.1.	Pre-July 1, 1999, LLCs . . . . .	8-16
	Form 8-14. Voluntary Withdrawal Defined . . . . .	8-16
	Form 8-15. Voluntary Withdrawal — Not Permitted. . . . .	8-16
8.8.1.2.	Post-June 30, 1999, LLCs . . . . .	8-16
8.8.2.	Involuntary Withdrawal . . . . .	8-17
	Form 8-16. Involuntary Withdrawal Defined (Long Form) . . . . .	8-17
	Form 8-17. Involuntary Withdrawal Defined (Short Form). . . . .	8-18.1
8.8.3.	Removal of Member . . . . .	8-18.1
8.8.3.1.	Removal Following Assignment of Entire Interest . . . . .	8-18.1
8.8.3.2.	Removal for Other Causes . . . . .	8-18.2
8.8.3.3.	Derivative Actions. . . . .	8-18.4
8.9.	Consequences of Disassociation in General . . . . .	8-19
8.9.1.	Pre-July 1, 1999, LLCs . . . . .	8-19
	Form 8-18. Successor of Withdrawn Member Continues as Unadmitted Assignee . . . . .	8-20
	Form 8-19. Successor of Withdrawn Member Continues as Substitute Member . . . . .	8-20
8.9.2.	Post-June 30, 1999, LLCs . . . . .	8-21
8.10.	Creating Buy-out Rights . . . . .	8-22
	Form 8-20. Optional Buy-out; Company Buys; Cash Purchase . . . . .	8-22
	Form 8-21. Mandatory Buy-out; Members Buy; Installments Permitted. . . . .	8-23
8.11.	Valuation Provisions . . . . .	8-24
	Form 8-22. Agreed Value . . . . .	8-24.1
	Form 8-23. Book Value . . . . .	8-24.1
	Form 8-24. Appraised Value . . . . .	8-25
8.12.	Miscellaneous Transfer Provisions . . . . .	8-27
	Form 8-25. Installment Buy-outs . . . . .	8-27
	Form 8-26. Insolvency Form . . . . .	8-28
	Form 8-27. Drag Along Rights . . . . .	8-29

CONTENTS

Form 8-28. Members Not Required to Assume Company’s  
Obligation . . . . . 8-31

8.13. Transfer on Death and Joint Tenancy Rules . . . . . 8-31

**CHAPTER 9: DISSOLUTION . . . . . 9-1**

9.1. Cessation of Membership . . . . . 9-3

9.1.1. Events That May Trigger Cessation of Membership. . . . . 9-3

9.1.2. Transfer of a Member’s Entire Interest . . . . . 9-4

9.1.3. Voluntary Withdrawal . . . . . 9-4

9.1.4. Expulsion. . . . . 9-4.1

9.1.5. Consequences of a Member’s Cessation of  
Membership. . . . . 9-4.1

9.1.5.1. Pre-June 30, 1999, LLCs . . . . . 9-4.2

9.1.5.2. Post-June 30, 1999, LLCs. . . . . 9-4.2

9.1.6. Considerations in Negotiating Exit Provisions . . . . . 9-4.2

9.1.6.1. Identity of the Client. . . . . 9-4.3

Form 9-1A. I Am Not Your Lawyer  
Letter. . . . . 9-4.4

9.1.6.2. Types and Uses of Exit Provisions . . . . . 9-4.5

9.2. Overview of the Act’s Dissolution Provisions . . . . . 9-4.6

9.2.1. Pre-July 1, 1999, LLCs . . . . . 9-4.6

9.2.2. Post-June 30, 1999, LLCs . . . . . 9-4.8

9.2.3. Post-June 30, 2013, LLCs . . . . . 9-4.8

9.3. Events of Dissolution . . . . . 9-5

Form 9-1. Dissolution — Comprehensively Describes All  
Events of Dissolution; Requires Unanimity of  
Members to Continue if Dissolution Is Due to  
Disassociation of Member . . . . . 9-5

Form 9-2. Dissolution When Less Than All Events of  
Withdrawal Result in Dissolution; Requires  
Unanimity of Members to Continue if Dissolution  
Is Due to Disassociation of Member. . . . . 9-6

Form 9-3. Dissolution — Refers to Events of Withdrawal  
under Another Section; Requires Unanimity of  
Members to Continue if Dissolution Is Due to  
Disassociation of Member . . . . . 9-6

9.4. Vote Required in Order to Continue after Event of  
Dissolution . . . . . 9-7

Form 9-4. Less Than Unanimous Vote Required to  
Continue after Dissolution . . . . . 9-7

Form 9-5.	Sample Resolutions Approving Continuation of Business after Dissolution. . . . .	9-8
9.5.	Articles of Dissolution . . . . .	9-8
Form 9-6.	Articles of Dissolution Signed by Remaining Members . . . . .	9-9
9.6.	Procedure for Winding Up and Distribution of Assets . . . . .	9-10
Form 9-7.	Procedure for Winding Up in Member-Managed LLC . . . . .	9-10
Form 9-8.	Procedure for Winding Up in Manager-Managed LLC . . . . .	9-11
Form 9-9.	Procedure for Winding Up in Member-Managed LLC; References to Another Section of Operating Agreement for Manner of Distribution to Members . . . . .	9-11
Form 9-10.	Procedure for Winding Up in Manager-Managed LLC; References to Another Section of Operating Agreement for Manner of Distribution to Members . . . . .	9-11
Form 9-11.	Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee . . . . .	9-12
9.7.	Administrative Dissolution . . . . .	9-12
<b>CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING. . . . .</b>		<b>10-1</b>
10.1.	Introduction. . . . .	10-2
10.2.	Banking. . . . .	10-3
Form 10-1.	Bank Accounts . . . . .	10-3
10.3.	Records . . . . .	10-4
Form 10-2.	Maintenance of Records — Member-Managed LLC (Short Form). . . . .	10-4
Form 10-3.	Maintenance of Records — Manager-Managed LLC (Short Form). . . . .	10-4
Form 10-4.	Maintenance of Records — Manager-Managed LLC (Long Form). . . . .	10-5
10.4.	Accounting Period . . . . .	10-5
Form 10-5.	Calendar Year Accounting Period Specified . . . . .	10-6
Form 10-6.	Fiscal Year Accounting Period Specified . . . . .	10-6
Form 10-7.	Year to Be Determined by Members. . . . .	10-6
Form 10-8.	Annual Accounting Period Established by Managers. . . . .	10-6
10.5.	Reports . . . . .	10-7

CONTENTS

Form 10-9. Preparation of Reports (Short Form) for Member-Managed or Manager-Managed LLC. . . . 10-7

Form 10-10. Preparation of Reports (Long Form) for Manager-Managed LLC . . . . . 10-7

10.6. Tax Audit Procedures . . . . . 10-8

10.6.1. Introduction . . . . . 10-8

10.6.2. Tax Matters Partner . . . . . 10-9

Form 10-11. Tax Matters Member (Short Form) . . . . . 10-10

Form 10-12. Tax Matters Member (Long Form) . . . . . 10-10

10.6.3. BBA Partnership Audit Procedures . . . . . 10-11

Form 10-12A. Partnership Audit Procedures . . . . . 10-15

10.7. Tax Elections . . . . . 10-18

Form 10-13. Tax Elections . . . . . 10-18

Form 10-14. Tax Elections — Applies to Code Section 754 Only — For Use in Either Member-Managed or Manager-Managed LLC . . . . . 10-18

**PART III  
MISCELLANEOUS**

**CHAPTER 11: REORGANIZATION OF THE LLC . . . . . 11-1**

11.1. In General . . . . . 11-3

11.2. Admission of New Members . . . . . 11-3

11.2.1. Acquisition of Interest from Company . . . . . 11-3

Form 11-1. Simple Subscription Agreement for LLC Membership Interest . . . . . 11-4

Form 11-2. First Amendment to Operating Agreement Admitting Assignee of Interest as a Member . . . . . 11-5

11.2.2. Acquisition of Interest from a Member . . . . . 11-8

Form 11-3. Assignment of LLC Membership Right . . . . . 11-9

Form 11-4. Joinder Agreement . . . . . 11-14

11.2.3. Non-foreign Affidavit . . . . . 11-14

Form 11-5. Certificate of Non-foreign Status . . . . . 11-15

11.3. Conversion of an Existing Entity . . . . . 11-16

11.3.1. In General . . . . . 11-16

11.3.2. Conversion of General Partnership to LLC . . . . . 11-16

Form 11-6.	Agreement to Convert General Partnership to Limited Liability Company . . . . .	11-19
Form 11-7.	Explanatory Statement — Conversion of General Partnership into LLC . . . . .	11-21
Form 11-8.	Term Is Continuation of Term of Partnership . . . . .	11-22
Form 11-9.	Initial Capital Contributions — In Property Consisting of Partnership Interests in LLC’s Predecessor . . . . .	11-22
Form 11-10.	Assignment of General Partnership Interests to LLC . . . . .	11-23
Form 11-11.	Resolutions of Members Approving Liquidation of Partnership into LLC . . . . .	11-23
11.3.3.	Conversion of Limited Partnership into LLC . . . . .	11-24
11.3.4.	Conversion of Corporation into LLC . . . . .	11-25
11.3.5.	Conversion of LLC into Corporation . . . . .	11-26
11.4.	Statutory Mergers, Interest Exchanges, Conversions and Domestications . . . . .	11-27
11.4.1.	Statutory Mergers . . . . .	11-28
Form 11-11A.	Merger of Two Indiana LLCs . . . . .	11-31
Form 11-11B.	Merger of Three Indiana LLCs with Different Classes of Interests . . . . .	11-33
11.4.2.	Statutory Interest Exchanges . . . . .	11-36
11.4.3.	Statutory Conversions . . . . .	11-37
Form 11-11C.	Articles of Conversion of Omega L.P. . . . .	11-37
11.4.4.	Statutory Domestications . . . . .	11-38
11.5.	Recapitalizing the LLC . . . . .	11-38
Form 11-12.	Form of Amendment of Operating Agreement . . . . .	11-39
11.6.	Tax Issues in Reorganizations of LLC . . . . .	11-40
11.6.1.	Hidden Tax Issues Associated with LLC Mergers . . . . .	11-40
11.6.2.	Retention of EIN . . . . .	11-40.1
11.7.	The LLC as a Taxpayer: Implications in Buying an Existing LLC . . . . .	11-40.2
11.7.1.	Introduction . . . . .	11-40.2
11.7.2.	The LLC as Taxpayer and Withholding Agent . . . . .	11-40.3
11.7.2.1.	Employment Taxes . . . . .	11-40.3
11.7.2.2.	Property and Excise Taxes . . . . .	11-40.3

CONTENTS

11.7.2.3. Sales and Use Taxes; Registration-Type Taxes . . . . .	11-41
11.7.2.4. Nonresident Members . . . . .	11-41
11.7.2.5. Section 1446(f) – Withholding on Transfers by Non-U.S. Partners . . . . .	11-41
11.7.2.6. Successor Liabilities . . . . .	11-42.1
11.7.2.7. Partnership Audit Responsibilities . . . . .	11-42.1
11.7.3. Drafting the Tax Indemnity Agreement/Interests Purchase Agreement . . . . .	11-42.2
11.7.4. Acquiring an SMLLC . . . . .	11-43
11.7.5. Using an SMLLC to Facilitate the Acquisition of an S Corporation’s Business . . . . .	11-44
Form 11-13. Tax Gross-Up . . . . .	11-46
11.8. Overview of Noncompensatory Partnership Options and Convertible Interest . . . . .	11-47
<b>CHAPTER 12: DOING INTERSTATE BUSINESS . . . . .</b>	<b>12-1</b>
12.1. Foreign LLCs Doing Business in Indiana . . . . .	12-2
12.1.1. Governing Law . . . . .	12-2
12.1.2. Definitions . . . . .	12-2
12.1.3. Procedure for Registration . . . . .	12-3
12.1.3.1. Filing Fee . . . . .	12-4
12.1.4. Effect of Registration . . . . .	12-4
12.2. Indiana LLCs Doing Business Outside of Indiana . . . . .	12-6
12.2.1. Ohio . . . . .	12-6
12.2.2. Illinois . . . . .	12-7
12.2.3. Delaware . . . . .	12-7
12.2.4. District of Columbia . . . . .	12-8
12.2.5. State LLC Fees . . . . .	12-9
Table 12-1. Comparison of State LLC Fees and Other Information . . . . .	12-10
<b>CHAPTER 13: PROFESSIONAL LIMITED LIABILITY COMPANIES AND LIMITED LIABILITY PARTNERSHIPS . . . . .</b>	<b>13-1</b>
13.1. Historical Background . . . . .	13-2
13.2. Comparison of LLCs and Professional Corporations . . . . .	13-2
13.3. Comparison of LLCs and LLPs . . . . .	13-4



Form 13-1. Certificate of Limited Liability Partnership . . . . .	13-5
13.4. Form of Operating Agreement for LLC Conducting a Professional Practice . . . . .	13-6
13.5. Law Firms as LLCs or LLPs. . . . .	13-6
<b>CHAPTER 14: MISCELLANEOUS FORMS. . . . .</b>	<b>14-1</b>
14.1. Opinion Letters . . . . .	14-2.1
Form 14-1. Form of Opinion Letter in Connection with a Bank Loan to an LLC . . . . .	14-2.1
14.2. Responsibility for Losses Derived From Guarantees of LLC Obligations . . . . .	14-13
Form 14-2. Indemnity and Contribution Agreement Obligation Guaranteed Only by Members . . . . .	14-14
14.3. Pledges of LLC Interests. . . . .	14-18
Form 14-3. Collateral Assignment of Membership Interest and Security Agreement . . . . .	14-19
Form 14-4. Financing Statement . . . . .	14-29
14.4. Other Borrowing Documents . . . . .	14-30
Form 14-5. Borrowing Resolution. . . . .	14-30
Form 14-6. Manager’s Certificate . . . . .	14-32
Form 14-7. Credit Enhancement Agreement. . . . .	14-33
Form 14-8. Guaranty Agreement. . . . .	14-38
Form 14-9. Pledge of Limited Liability Company Interests in ABC, LLC . . . . .	14-48
14.5. Series LLCs. . . . .	14-69
14.5.1. General . . . . .	14-69
14.5.2. What is a Series LLC? . . . . .	14-69
14.5.3. Observations . . . . .	14-71
14.5.4. Potential Benefits vs. Multiple LLCs . . . . .	14-72
14.5.5. Potential Uses of Series LLCs . . . . .	14-74
14.5.6. Potential Risks and Open Issues . . . . .	14-75
14.5.7. Practical Considerations and Drafting Series LLC Agreements . . . . .	14-79
14.5.8. Sample Series LLC Agreement. . . . .	14-81
14.5.9. Forms. . . . .	14-81
Form 14-10. Articles of Designation. . . . .	14-81
Form 14-11. Articles of Organization Provision Setting Forth Limitation of Interseries Liabilities . . . . .	14-82

CONTENTS

Form 14-12. Provision Authorizing Manager of  
Manager-Managed Limited Liability  
Company to Designate Separate Series  
and Classes of Members and Interests . . . 14-82

Form 14-13. Provision Designating Separate Series  
of Members and Interests . . . . . 14-84

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

15.1. Introduction . . . . . 15-2

15.2. Code Section 83 . . . . . 15-3

15.3. Unrealized Appreciation . . . . . 15-5

15.4. LLC (Partnership) vs. Corporation Compensation Methods . . . 15-10

    15.4.1. Corporation Context . . . . . 15-10

        15.4.1.1. Stock Grants . . . . . 15-10

        15.4.1.2. Stock Options . . . . . 15-11

        15.4.1.3. Phantom Stock Plans . . . . . 15-12

    15.4.2. The LLC Context . . . . . 15-13

        15.4.2.1. Equity Interests . . . . . 15-14

            15.4.2.1.1. Full Equity Interest . . . . . 15-14

            15.4.2.1.2. Options . . . . . 15-14

        15.4.2.2. Equity Interest vs. Non-Equity Incentive  
            Compensation . . . . . 15-15

    15.4.3. Compensation Comparison Chart . . . . . 15-16

15.5. Fiduciary Duties, Inspection Rights, and Other Duties to  
Equity Holders . . . . . 15-19

    15.5.1. Right of (Soon-to-Be-Former) Shareholders or  
        Members . . . . . 15-20

    15.5.2. Fiduciary Duties Are Enforced Even Though Little  
        Is at Stake . . . . . 15-21

    15.5.3. Fiduciary Duties of Minority Shareholders or  
        Members Who Look to the Court Like Partners . . . . . 15-21

15.6. Securities Law Issues . . . . . 15-22

15.7. Member Exit Strategies: Buy-Out Arrangements . . . . . 15-22

15.8. Forms: Equity and Non-Equity-Based LLC Compensation  
Plans . . . . . 15-23

    15.8.1. Compensatory Grant of Membership Interest . . . . . 15-23

        Form 15-1. Stock Grant Agreement . . . . . 15-23

        Form 15-1A. Adjusted Capital Balance . . . . . 15-29

        Form 15-1B. Capital Accounts (Book-up on Interest  
            for Services) . . . . . 15-29

15.8.2. Phantom Membership Interest. . . . . 15-30.1  
     Form 15-2. Communications, LLC: Employee  
     Incentive Compensation Plan  
     (Corporate Format) . . . . . 15-30.1  
 15.8.3. Grant of Nonqualified Options . . . . . 15-40  
     Form 15-3. XYZ, LLC: Equity Incentive Plan . . . . . 15-40  
 15.9. A Different Way of Looking at Carried Interests . . . . . 15-50

**PART IV  
 APPENDICES**

APPENDIX A: [MEMBER-MANAGED] OPERATING  
 AGREEMENT. . . . . APP A-1  
 APPENDIX B: [MANAGER-MANAGED] OPERATING  
 AGREEMENT. . . . . APP B-1  
 APPENDIX C: [PROFESSIONAL SERVICES] OPERATING  
 AGREEMENT OF \_\_\_\_\_  
 LIMITED LIABILITY COMPANY . . . . . APP C-1  
 APPENDIX D: [MANAGEMENT COMMITTEE-MANAGED]  
 OPERATING AGREEMENT OF \_\_\_\_\_  
 LIMITED LIABILITY COMPANY . . . . . APP D-1  
 APPENDIX J: OPERATING AGREEMENT OF [NELSON]  
 ASSOCIATES, LLC . . . . . APP J-1  
 APPENDIX K: OPERATING AGREEMENT OF DEERWOOD  
 INVESTMENTS, LLC . . . . . APP K-1  
 APPENDIX L: FIRST AMENDED AND RESTATED  
 OPERATING AGREEMENT OF  
 PROFITS INTEREST, LLC . . . . . APP L-1  
 APPENDIX M: FORM OF CROSS-SPECIES MERGER  
 AGREEMENT. . . . . APP M-1  
 APPENDIX N: SERIES LLC AGREEMENT . . . . . APP N-1  
 APPENDIX O: OPERATING AGREEMENT OF HARBOR  
 SPRINGS LLC . . . . . APP O-1  
 APPENDIX P: OPERATING AGREEMENT OF LONESOME  
 PINE OF SMITH VALLEY LLC . . . . . APP P-1  
 APPENDIX Q: OPERATING AGREEMENT OF  
 BIOVENTURE, LLC . . . . . APP Q-1  
 APPENDIX R: MEMBERSHIP INTERESTS PURCHASE  
 AGREEMENT . . . . . APP R-1  
 APPENDIX T: STATES WITH SERIES LLC STATUTES. . . . . APP T-1  
 APPENDIX U: AMENDED AND RESTATED OPERATING

CONTENTS

AGREEMENT OF HOOSIERTEK LLC . . . . . APP U-1

APPENDIX V: UNIT PURCHASE AGREEMENT . . . . . APP V-1

APPENDIX W: UNIT PURCHASE AGREEMENT (F DROP) . . . . . APP W-1

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

APPENDIX Y: OPERATING AGREEMENT OF EMERALD  
CITY COMPANIES, LLC . . . . . APP Y-1

APPENDIX Z: \_\_\_\_\_, LLC SUBSCRIPTION AGREEMENT  
FOR PURCHASE OF LLC INTEREST. . . . . APP Z-1

**PART V**  
**INDICES**

Cumulative Table of Internal Revenue Code Citations . . . . . INDEX-1

Cumulative Table of Treasury Regulations . . . . . INDEX-4

Cumulative Table of Revenue Rulings and Revenue Procedures . . . . . INDEX-7

Cumulative Table of Indiana Business Flexibility Act Sections . . . . . INDEX-8

Table of Cases . . . . . INDEX-14

References . . . . . INDEX-15

Subject Index . . . . . INDEX-16

Forms Index . . . . . INDEX-31