

Contents

PART I ORGANIZATION

CHAPTER 1: INTRODUCTION	1-1
Introduction.	1-2
1.1. Nature and Use of This Practice Manual.	1-2
1.2. Comparison of the LLC with Other Entities.	1-3
Table 1. Comparison of Limited Liability Companies, Limited Partnerships, S Corporations, C Corporations, and Registered Limited Liability Partnerships	1-4
1.3. History of the LLC.	1-12
1.4. Classification of the LLC as a Partnership for Federal Income Tax Purposes	1-12
1.4.1. Introduction	1-12
1.4.2. Tax Treatment of an LLC—"Check-the-Box Regulations"	1-13
1.4.2.1. LLCs Organized Prior to January 1, 1997	1-13
1.4.2.2. Corporate Classification Election	1-14
1.4.2.3. Changes in Classification	1-15
1.4.2.4. Limitations on Classification Status	1-16
1.4.2.5. Employer Identification Numbers.	1-16
1.4.2.6. Tax Consequences of Change of Classification..	1-16
1.4.3. Impact of Check-the-Box Regulations	1-18
1.4.4. Self-Employment Tax Consequences of Partnership Classification	1-20
1.4.4.1. The SECA Tax	1-21
1.4.4.2. The FICA Tax	1-22
1.4.4.3. The Proposed Regulations	1-23
1.4.4.4. Examples.	1-23
1.4.4.5. Unpaid Payroll Taxes	1-25
1.4.4.6. Single-Member LLC's Employment Tax Obligations	1-26
1.4.4.7. Effective Date	1-26
1.4.4.8. Summary of Comments and Changes.	1-27
1.5. Louisiana Taxation.	1-27
1.6. The Louisiana Limited Liability Company Law— An Overview	1-28

CHAPTER 2: FORMATION AND ORGANIZATION	2-1
2.1. Introduction	2-4
2.2. Preformation Matters.	2-4
Form 2-1. Memorandum Attendant to the Execution and Filing of Articles of Organization	2-5
Form 2-2. Letter Directing Execution and Filing of Articles of Organization	2-5
2.3. Articles of Organization and Initial Report	2-7
2.3.1. Basic Requirements—Articles of Organization	2-8
2.3.1.1. Name	2-9
2.3.1.2. Purpose	2-10
2.3.1.3. Duration	2-12.1
2.3.1.4. Meeting the Minimum Requirements of LLC Law	2-12.1
Form 2-3. Articles of Organization of Manager-Managed or Member-Managed LLC	2-13
Form 2-3.1. Articles of Organization without Restrictions on the Authority of Members—Signed by Agent. . . .	2-14.2
Form 2-4. Articles of Organization— Louisiana Secretary of State Form #365	2-15
Form 2-5. Articles of Organization of a Professional Medical Limited Liability Company	2-17
2.3.1.5. Online Filing with Louisiana Secretary of State	2-18
2.3.2. Basic Requirements—Initial Report.	2-20
Form 2-6. Initial Report of LLC—With Registered Agent’s Affidavit and Acceptance	2-22
Form 2-7. Initial Report—Louisiana Secretary of State Form #973	2-24
Form 2-8. Supplemental Initial Report—Louisiana Secretary of State Form #366	2-26
2.3.3. Optional Provisions—Articles of Organization	2-28
2.3.3.1. Provision Limiting Agency Authority of Members	2-28
2.3.3.2. Statement Concerning Management by Managers	2-29
2.3.3.3. Restrictions on Authority of Managers	2-29
2.3.3.4. Date of Dissolution	2-30
2.3.3.5. Statement of Who Can Certify Matters.	2-30

2.3.3.6.	Indemnification of Members and/or Managers	2-30
2.3.4.	No Provision Requiring Written Operating Agreement	2-30.1
2.4.	Certificate of Correction.	2-30.1
	Form 2-9. Certificate of Correction of [Instrument to be Corrected]	2-31
2.5.	Articles of Amendment	2-32
	Form 2-10. Unanimous Consent of Members to Amend Articles of Organization	2-33
	Form 2-11. Consent of Members to Amend Articles of Organization Where Operating Agreement Does Not Require Unanimity	2-34
	Form 2-12. Articles of Amendment.	2-35
2.6.	Reservation of Name	2-36
	Form 2-13. Application to Reserve Name.	2-36
	Form 2-14. Letter Application to Reserve Name.	2-37
	Form 2-15. Reservation of Corporate or LLC Name—Louisiana Secretary of State Form #398	2-38
	Form 2-16. Transfer of Reserved LLC Name	2-40
2.7.	Changes to Members and Managers	2-40
2.7.1.	Addition or Withdrawal of Members	2-40
	Form 2-17. Notice of Change of Members—Louisiana Secretary of State Form #983A.	2-42
2.7.2.	Replacement of Managers	2-43
	Form 2-18. Notice of Change of Managers— Louisiana Secretary of State Form #983A	2-44
2.8.	Changes to Registered Agent and Registered Office	2-45
	Form 2-19. Change of Registered Agent by a Limited Liability Company	2-45
	Form 2-20. Change of Address of Registered Office by a Limited Liability Company	2-46
	Form 2-21. Change of Address of Registered Agent by a Limited Liability Company	2-47
	Form 2-22. Change of Address of Registered Agent by Registered Agent.	2-48
	Form 2-23. Change of Addresses of Registered Agent and Registered Office by Registered Agent	2-48
	Form 2-24. Resignation of Registered Agent—Notice to Louisiana Secretary of State	2-50
	Form 2-25. Resignation of Registered Agent—Notice to LLC.	2-50

2.9. Annual Report	2-51
2.9.1. Failure to File Annual Report	2-52
2.9.2. Reinstatement of an LLC	2-52
Form 2-26. Application for Reinstatement of Articles of Organization	2-53
2.10. Conversion of Entity to Domestic Limited Liability Company	2-54
2.10.1. Basic Requirements—Conversion Application	2-54
2.10.2. Elements of Conversion Application	2-55
2.10.3. Filing Requirements—Conversion Application and Certificate of Conversion	2-56
Form 2-27. Conversion Application—Conversion of a Domestic Entity of One Type Into a Domestic Entity of Another Type	2-57
2.10.4. Filing Requirements—Tax Returns	2-59
2.10.5. Updating Professional License after Conversion	2-59
2.10.6. Effect of Conversion	2-60
2.10.6.1. Not a Dissolution	2-60
2.10.6.2. Real Estate and Other Property	2-60
2.10.6.3. Existing Liabilities	2-60
2.10.6.4. Tax Liabilities	2-61
2.10.6.5. Rights of Creditors	2-61
2.10.6.6. Legal Proceedings	2-61
2.10.6.7. Converting Ownership Interest	2-61
2.10.6.8. Liability of Owners of Converted Entity	2-61
2.11. Retroactivity of LLC’s Existence—Immovable Property	2-62

PART II OPERATIONS

CHAPTER 3: THE OPERATING AGREEMENT	3-1
3.1. In General	3-2
3.2. “Operating Agreement” Defined	3-2
3.3. Flexibility of LLC Form	3-3
3.4. Form of Operating Agreement	3-3
3.4.1. Written Operating Agreement to Restrict or Enlarge Management Rights and Duties of Members	3-4
3.4.2. Written Operating Agreement to Limit Authority of Members and Managers	3-4
3.4.3. Written Operating Agreement to Provide for Members’ Initial Capital Contributions	3-5

3.4.4.	Written Operating Agreement to Allocate Distributions Unequally	3-5
3.4.5.	Written Operating Agreement to Allocate Profits Unequally	3-6
3.4.6.	Written Operating Agreement to Regulate Member Voting	3-6
3.4.7.	Written Operating Agreement to Limit Liability of Members and Managers	3-6
3.4.8.	Written Operating Agreement to Provide for Indemnification of Members and Managers	3-7
3.4.9.	Written Operating Agreement to Regulate Admission of an Assignee as a Member	3-8
3.4.10.	Written Operating Agreement to Regulate Dissolution of LLC	3-8
3.5.	Formality of Adoption	3-8
3.6.	Amendment	3-9
3.7.	Form Operating Agreements	3-9
CHAPTER 4: ORGANIZATION		4-1
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
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	4-5
4.5.	Definitions	4-5
	4.5.1. “Interest” Compared to “Membership Rights”.	4-5
	4.5.2. “Interest Holder” Compared to “Member”.	4-6
	Form 4-5. General Definitions	4-7
4.6.	Agreement to Organize LLC	4-9
	Form 4-6. General Agreement to Organize LLC	4-9
	Form 4-7. Organizational Provision Confirming That Articles of Organization Have Been Filed	4-9
4.7.	Name	4-10
	Form 4-8. Name Provision for Member-Managed LLC	4-10
	Form 4-9. Name Provision for Manager-Managed LLC	4-10
4.8.	Purpose	4-10
	Form 4-10. Any Lawful Purpose	4-11
	Form 4-11. Specific Purpose	4-11
	Form 4-12. Purpose Limited to Real Estate	4-11

4.9. Term	4-12
Form 4-13. Term—Articles to Be Filed after Execution of Operating Agreement	4-13
Form 4-14. Term—Articles Filed Prior to Execution of Operating Agreement	4-13
4.10. Registered Office	4-13
Form 4-15. Registered Office of LLC Managed by Members . .	4-14
Form 4-16. Registered Office of LLC Managed by Managers . .	4-14
4.11. Registered Agent	4-14
Form 4-17. Registered Agent of LLC Managed by Members . .	4-15
Form 4-18. Registered Agent of LLC Managed by Managers . .	4-15
4.12. Members.	4-16
Form 4-19. Schedule of Members Set Forth in Exhibit.	4-16
Form 4-20. Schedule of Members Set Forth in Text of Agreement.	4-17
4.13. Miscellaneous Provisions.	4-17
Form 4-21. Miscellaneous Provisions	4-17
 CHAPTER 5: LIMITED LIABILITY COMPANY CAPITAL	 5-1
5.1. Drafting Capital Provisions	5-3
5.2. Initial Capital Contributions.	5-4
Form 5-1. Initial Capital Contributions in Cash	5-4
Form 5-2. Initial Capital Contributions—Partly in Cash and Partly in Services	5-5
Form 5-3. Initial Capital Contributions—Partly in Cash and Partly in Property	5-6
Form 5-4. Representation in Connection with Contribution of Property	5-6
5.3. Additional Capital Contributions.	5-6
Form 5-5. Additional Capital Contributions at Discretion of Manager—Limit on Amount	5-7
Form 5-6. Additional Capital Contributions at Discretion of Members—Limit on Amount	5-7
Form 5-7. No Liability beyond Initial Capital Contribution . . .	5-8
Form 5-8. No Liability beyond Additional Capital Contributions.	5-8
Form 5-8A. Additional Interests—Preemptive Rights; Identified Purchaser	5-8.1
5.4. Default in Payment of Contributions	5-8.3
Form 5-9. Remedy of Reduction of Member’s Interest upon the Failure to Make Contribution to Manager-managed LLC.	5-9

5.5. Interest on Capital Contributions 5-10
 Form 5-10. No Interest on Capital Contributions 5-10
 Form 5-11. Interest on Capital Contributions 5-10
 5.6. Return of Capital Contributions 5-11
 Form 5-12. Return of Capital Contributions—Unanimous
 Consent of Members and Compliance with LLC
 Law Required 5-12
 5.7. Form of Distribution 5-12
 Form 5-13. Form of Distribution—No Right to Receive
 Anything but Cash 5-12
 Form 5-14. Form of Distribution—Form of Distribution Is at
 Discretion of Manager in Manager-Managed LLC . . . 5-13
 5.8. Capital Accounts 5-13
 Form 5-15. Capital Accounts (Simple Definition). 5-13
 5.9. Loans 5-13
 Form 5-16. Loans—General Authority of LLC to Borrow
 Money from Members on Terms to Be Agreed
 upon in Future. 5-14
 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. 5-15

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

6.1. Taxation of the LLC 6-3
 6.1.1. Formation of an LLC 6-3
 6.1.2. The Contribution of Services 6-4
 6.2. General Allocation and Distribution Concepts 6-4
 6.2.1. Taxable Year of an LLC 6-5
 6.3. Allocation of Member’s Distributive Share 6-5
 6.4. Allocation Restrictions—Code Section 704(b) 6-5
 6.4.1. Overview 6-5
 6.4.2. The Three Alternative Allocation Tests 6-7
 6.4.2.1. The First Test: Partners’ Interests 6-7
 6.4.2.2. The Second Test: Substantial Economic
 Effect and Capital Accounts 6-7
 6.4.2.3. The Third Test: Nonrecourse Debt 6-8
 6.4.3. Allocations to Interest Holders 6-10
 6.5. Loss Deduction Limitations 6-10
 6.5.1. Basis Limitation 6-11
 Form 6-1. Allocation of Excess Nonrecourse
 Liabilities. 6-11
 6.5.2. At Risk Limitation 6-13

6.5.3.	Passive Loss Limitation	6-14
6.5.4.	Investment Interest Limitation	6-15
6.6.	Allocations When Membership Interests Vary.	6-16
6.7.	Definitions	6-17
6.7.1.	Distribution-related Definitions	6-17
Form 6-2.	Distribution Definitions	6-17
6.7.2.	Allocation-related Definitions	6-18
Form 6-3.	Tax Definitions	6-18
6.8.	Basic Distribution Provisions.	6-21
6.8.1.	In General	6-21
6.8.2.	Cash Flow from Operations	6-22
Form 6-4.	Distributions of Cash Flow	6-22
6.8.3.	Discretionary Distributions	6-22
Form 6-5.	Discretionary Distributions	6-22
Form 6-6.	Tax Distribution.	6-23
6.8.4.	Distribution of Capital Proceeds	6-23
Form 6-7.	Distribution of Capital Proceeds	6-23
6.8.5.	Liquidation Proceeds	6-24
Form 6-8.	Liquidation and Dissolution	6-24
Form 6-9.	Liquidation and Dissolution—Deficit Restoration Obligation	6-25
6.8.6.	Distinguishing Distributions and Satisfaction of Obligations	6-26
6.9.	Basic Allocation Provisions	6-26
6.9.1.	Basic Allocations of Income and Loss	6-26
Form 6-10.	Profit or Loss	6-27
6.9.2.	Qualified Income Offset and Minimum Gain Chargeback	6-28
Form 6-11.	Qualified Income Offset and Minimum Gain Chargeback	6-29
6.9.3.	Other Regulatory Allocations	6-30
Form 6-12.	Regulatory Allocations	6-31
6.9.4.	General Provisions	6-33
Form 6-13.	General Provisions	6-33
6.10.	Complex and Disproportionate Distribution and Allocation Provisions.	6-34
6.10.1.	Distribution Preferences	6-34
Form 6-14.	Distribution Preference	6-34
6.10.2.	Disproportionate Allocation of Losses	6-36
Form 6-15.	Disproportionate Allocation of Loss	6-36
6.10.3.	Flip-Flop.	6-37
Form 6-16.	Flip-Flop on Sale.	6-37

6.11. Tax Issues upon Death of a Member 6-38

CHAPTER 7: MANAGEMENT PROVISIONS 7-1

7.1. Drafting LLC Management Provisions 7-3

 7.1.1. General Flexibility under the LLC Law 7-3

 7.1.2. Typical Approaches 7-4

 7.1.3. Managers 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 an Administrator 7-5

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

 Form 7-3A. Limitations on Power and Authority of
 Managers 7-10

 Form 7-4. Manager with “General Partner”-like
 Authority—Alternate Form 7-10.1

 7.3.2. Management by Management Committee 7-11

 Form 7-5. Management Committee 7-11

 7.3.3. Management by One Class of Members 7-13

 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 7-15

 Form 7-9. Corporate-like Management by “Board of
 Directors” 7-15

 Form 7-9A. Board of Managers with Specific Powers
 Reserved to the Board 7-21

7.4. Replacement of Managers 7-22.1

 Form 7-10. Removal of Manager for Any Reason 7-22.2

 Form 7-11. Removal of Manager for Only Specified Reasons 7-22.2

7.5. Meetings of Members 7-22.2

 Form 7-12. Procedure for Calling and Holding Meetings 7-23

 Form 7-13. Procedure for Calling and Holding
 Meetings—Only Class A Members Vote 7-23

7.6. Informal Action of Members; Form of Member Consent 7-24

Form 7-14. Action by Written Consent	7-24
Form 7-15. Form of Consent of Members	7-25
7.7. Unanimous Consent	7-27
7.8. Deadlock and Resolution	7-27
Form 7-16. Arbitration of Deadlock	7-28
Form 7-17. Brinkmanship in the Event of Deadlock.	7-28
Form 7-18. Submission of Sealed Bids in the Event of Deadlock.	7-32
7.9. Compensation and Reimbursement	7-34
Form 7-19. No Arrangement for Compensation (Member-Managed)	7-34
Form 7-20. Compensation (Manager-Managed).	7-34
Form 7-21. Extraordinary Compensation	7-35
Form 7-22. “Guaranteed Payment” for Personal Services	7-36
7.10. Standard of Care and Degree of Loyalty	7-36
Form 7-23. Standard of Care and Degree of Loyalty	7-37
Form 7-24. Standard of Care and Degree of Loyalty—Same Obligations as Imposed by LLC Default Rules	7-38
7.11. Indemnification	7-39
Form 7-25. Liability and Indemnification of Manager (Manager-Managed)	7-39
Form 7-26. Liability and Indemnification of Members (Member-Managed)	7-40
Form 7-27. Liability and Indemnification of Managers	7-40
7.12. Power of Attorney	7-41
Form 7-28. Power of Attorney.	7-41
7.13. Proprietary Rights and Noncompetition Agreements	7-42
Form 7-29. Proprietary Rights and Noncompetition Agreement.	7-42
7.14. Confidentiality	7-48
Form 7-30. Confidentiality	7-49
CHAPTER 8: TRANSFER AND BUY-SELL PROVISIONS	8-1
8.1. The LLC Law’s Default Rules for Transfers	8-3
8.2. Tax Aspects of Transfer Restrictions	8-4
8.2.1. Termination of the LLC	8-4
8.2.2. Basis Issues.	8-5
8.3. Preliminary Drafting Considerations	8-5
Form 8-1. Definitional Provision—Transfer	8-6
Form 8-2. Definitional Provisions—Interest and Membership Rights.	8-6

8.4.	Transfer Provisions That Follow the LLC Law’s	
	Default Rules	8-6
	Form 8-3. Transfer Provision Following LLC Law’s	
	Default Rules	8-7
8.5.	Transfer Provisions That Permit Some Free Transferability	8-7
	Form 8-4. Free Transferability of Interests and Rights	8-7
	Form 8-5. Definition of Class A and Class B Members,	
	Interests, and Interest Holders	8-8
	Form 8-6. Free Transferability of Interests of All Classes	
	of Members and of the Rights of One Class	
	of Members, but Limited Transferability of	
	Rights of a Class of Member-Managers	8-8
	Form 8-7. Free Transferability of Interests and Limited	
	Transferability of Other Rights.	8-9
8.6.	Transfer Provisions That Absolutely Prohibit Transfer	8-9
	Form 8-8. Absolute Prohibition of Transfers.	8-10
8.7.	Transfer Provisions That Permit Transfers Only under	
	Certain Conditions	8-10
	8.7.1. In General.	8-10
	Form 8-9. Transfer Permitted on Satisfaction of	
	Certain Conditions.	8-11
	Form 8-9A. Restrictions on Transfer; Approval by a	
	“Board of Managers”	8-12
	8.7.2. First Refusal Rights	8-12.1
	Form 8-10. Right of First Refusal; LLC Purchases;	
	Installments Allowed.	8-12.2
	Form 8-11. Right of First Refusal; Member’s Purchase	
	Payment Terms Matched.	8-13
	Form 8-12. Right of First Offer; LLC Purchases;	
	Cash Purchase	8-15
	8.7.3. Admission of Assignee as a Member	8-16
	Form 8-13. Assignee Not Admitted as Member	
	without Consent of Members	8-17
	Form 8-14. Assignee Automatically Admitted as	
	Member	8-17
	Form 8-15. Admission of Assignee as Member	
	after Consent of Members.	8-18
	8.7.4. Transfers to Members’ Affiliates and Family	8-18
	Form 8-16. Definitional Provision—Family	8-18
	Form 8-17. Transfers to Affiliates and Family.	8-19
	Form 8-18. Transfers to Affiliates and Family and	
	Admission of Transferee as a	
	Member	8-19

8.7.5.	Admission of New Member upon Death of Member in Single-Member LLC	8-19
8.8.	Withdrawal under the LLC Law	8-20
8.8.1.	Voluntary Withdrawal.	8-20
Form 8-19.	Voluntary Withdrawal Defined	8-21
Form 8-20.	Voluntary Withdrawal—Not Permitted	8-21
8.8.2.	Involuntary Withdrawal	8-21
Form 8-21.	Involuntary Withdrawal Defined (Long Form)	8-22
Form 8-22.	Involuntary Withdrawal Defined (Short Form)	8-23
8.9.	Consequences of Disassociation in General	8-23
Form 8-23.	Consideration upon Withdrawal	8-24
Form 8-24.	Successor of Withdrawn Member Continues as Substitute Member.	8-25
8.10.	Creating Buy-out Rights	8-26
Form 8-25.	Optional Buy-out; Company Buys; Cash Purchase.	8-26
Form 8-26.	Mandatory Buy-out; Members Buy; Installments Permitted	8-28
8.10.1.	Funding a Buy-out Provision	8-28
8.11.	Valuation Provisions	8-29
Form 8-27.	Agreed Value.	8-29
Form 8-28.	Book Value	8-29
Form 8-29.	Appraised Value	8-30
Form 8-29A.	Formula Value	8-31
8.12.	Miscellaneous Transfer Provisions	8-32
Form 8-30.	Installment Buy-outs.	8-32.1
Form 8-31.	Insolvency Form	8-32.1
Form 8-32.	Members Not Required to Assume Company’s Obligation	8-33
8.13.	Noncompete Agreements with Former Members	8-34
CHAPTER 9: DISSOLUTION		9-1
9.1.	Introduction	9-3
9.2.	1997 Amendments	9-3
9.3.	Events of Dissolution.	9-4
Form 9-1.	Dissolution—Limited Possibility of Dissolution	9-4
Form 9-2.	Dissolution—Comprehensively Describes All Events of Dissolution; Requires Unanimity of Members to Continue if Dissolution Is Due to Disassociation of Member	9-5

Form 9-3.	Dissolution upon the Occurrence of Some Specific Events of Withdrawal	9-5
Form 9-3A.	Dissolution upon Occurrence of Date, Vote, Judicial Decree and Bankruptcy Order	9-6
Form 9-4.	Dissolution upon Vote of Members	9-6
Form 9-5.	Sample Resolutions Approving Continuation of Business after Dissolution	9-6.1
Form 9-6.	Sample Resolutions Approving Dissolution of the LLC	9-7
9.4.	Articles of Dissolution	9-8
Form 9-7.	Articles of Dissolution—Member-Managed LLC	9-9
Form 9-8.	Articles of Dissolution—Manager-Managed LLC	9-10
9.5.	Procedure for Winding Up and Distribution of Assets.	9-12
Form 9-9.	Procedure for Winding Up in Member-Managed LLC	9-12
Form 9-10.	Procedure for Winding Up in Manager-Managed LLC	9-13
Form 9-11.	Procedure for Winding Up in Member-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-13
Form 9-12.	Procedure for Winding Up in Manager-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-14
Form 9-13.	Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC—Manager Acts as Liquidator.	9-14
Form 9-13A.	Appointment of Liquidator; Procedure for Liquidation	9-14.1
Form 9-13B.	Unanimous Consent by Board of Managers to Enter into Dissolution; Appointment of Board as Liquidators	9-14.2
9.6.	Termination; Certificate of Dissolution	9-14.3
Form 9-14.	Filing of Certificate—Member-Managed LLC	9-15
Form 9-15.	Filing of Certificate of Dissolution—Manager-Managed LLC	9-15
Form 9-16.	Certificate Required to Be Filed Pursuant to LLC Law Section 1340(A)(1).	9-16
9.7.	Termination; Dissolution by Affidavit	9-17
Form 9-17.	Affidavit to Dissolve LLC—Louisiana Secretary of State Form #368	9-19
9.8.	Peremption of Claims Against LLCs in Dissolution	9-20

CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING	10-1
10.1. Introduction	10-3
10.2. Banking	10-4
Form 10-1. Bank Accounts	10-4
10.3. Inspection of Records	10-4
Form 10-2. Maintenance of Records—Member-Managed LLC (Short Form)	10-5
Form 10-3. Maintenance of Records—Manager-Managed LLC (Short Form)	10-6
Form 10-4. Maintenance of Records—Manager-Managed LLC (Long Form)	10-6
10.4. Accounting Period	10-7
Form 10-5. Calendar Year Accounting Period Specified	10-7
Form 10-6. Fiscal Year Accounting Period Specified	10-7
Form 10-7. Year to Be Determined by Members	10-7
Form 10-8. Annual Accounting Period Established by Managers	10-8
10.4.1. Calendar Year Accounting of an LLC	10-8
10.4.2. Fiscal Year Accounting of an LLC	10-8
10.5. Reports	10-9
Form 10-9. Preparation of Reports (Short Form) for Member-Managed or Manager-Managed LLC	10-10
Form 10-10. Preparation of Reports (Long Form) for Manager-Managed LLC	10-10
10.6. “Tax Matters Partner”	10-11
Form 10-11. Tax Matters Partner (Short Form)	10-11
Form 10-12. Tax Matters Partner (Long Form)	10-12
10.6.1. TEFRA—Overview	10-12
10.7. Tax Elections	10-13
Form 10-13. Tax Elections (Short Form)	10-13
Form 10-14. Tax Elections (Long Form)	10-13
Form 10-15. Tax Elections—Applies to Code Section 754 Only—For Use in Either Member-Managed or Manager-Managed LLC	10-14
10.8. Title to Property	10-14
Form 10-16. Title to Property—In Company Name	10-15
Form 10-17. Title to Company Property—Use of Nominee Permitted	10-15

PART III MISCELLANEOUS

CHAPTER 11: REORGANIZATION OF THE LLC.....	11-1
11.1. In General	11-2.1
11.2. Admission of New Members	11-2.1
11.2.1. Acquisition of Interest from Company	11-2.1
Form 11-1. Simple Subscription Agreement for LLC Membership Interest.....	11-3
Form 11-2. Long Form Subscription Agreement for LLC Membership Interest.....	11-4
Form 11-3. First Amendment to Operating Agreement Admitting Assignee of Interest as a Member	11-8
11.2.2. Acquisition of Interest from Another Member	11-10
Form 11-4. Assignment of LLC Membership Right ..	11-11
Form 11-5. Joinder Agreement.....	11-16
11.2.3. Admission of a Second Member.....	11-16
11.3. Conversion of an Existing Entity into an LLC	11-17
11.3.1. In General	11-17
11.3.2. Conversion of General Partnership into LLC	11-17
Form 11-6. Agreement to Convert General Partnership into Limited Liability Company	11-20
Form 11-7. Explanatory Statement—Conversion of General Partnership into LLC	11-23
Form 11-8. Term Is Continuation of Term of Partnership.....	11-23
Form 11-9. Initial Capital Contributions—In Property Consisting of Partnership Interests in LLC’s Predecessor.....	11-24
Form 11-10. Assignment of General Partnership Interests to LLC.....	11-24
Form 11-11. Resolutions of Members Approving Liquidation of Partnership into LLC	11-25
11.3.3. Conversion of Limited Partnership into LLC	11-25
11.3.4. Conversion of Corporation into LLC	11-26
11.4. Conversion of LLC into Corporation	11-28
11.5. Recapitalizing the LLC.....	11-30
Form 11-12. Form of Amendment of Operating Agreement....	11-31
11.6. Mergers and Consolidations Involving a Louisiana LLC.....	11-32

Form 11-13. Merger of Two Louisiana LLCs	11-33
11.6.1. Tax Implications of Merging or Consolidating LLCs	11-34
11.6.2. Federal Tax Returns of Merging or Consolidating LLCs	11-35
CHAPTER 12: DOING INTERSTATE BUSINESS	12-1
12.1. Foreign LLCs Doing Business in Louisiana	12-3
12.1.1. Governing Law	12-3
12.1.2. Definitions	12-3
12.1.2.1. Transacting Business.	12-3
12.1.2.2. Interstate or Foreign Commerce	12-4
12.1.3. Name	12-4
12.1.4. Application Procedure.	12-5
Form 12-1. Foreign LLC Application for Certificate of Authority—Louisiana Secretary of State Form #972	12-7
12.1.5. Filing Fee	12-9
12.1.6. Issuance of Certificate of Authority.	12-9
12.1.7. Doing Business without Certificate of Authority	12-9
12.1.8. Withdrawal Procedure.	12-10
Form 12-2. Application for Withdrawal of Foreign LLC—Louisiana Secretary of State Form #338	12-12
12.1.9. Termination of Withdrawal Proceedings.	12-13
12.1.10. Revocation or Suspension of Certificate of Authority	12-14
12.1.11. Annual Report	12-15
12.1.12. Changes to Address of Principal Business Establishment, Registered Office or Registered Agent	12-16
Form 12-2A. Statement of Change of Registered Office, Registered Agent and/or Principal Business Establishment— Louisiana Secretary of State Form #346 (Rev. 09/11).	12-16.1
12.2. Louisiana LLCs Doing Business Outside of Louisiana	12-16.3
12.2.1. Texas	12-16.3
Form 12-3. Foreign LLC Application for Registration—Texas Secretary of State Form #304	12-17
Form 12-4. Foreign Professional LLC Application for Registration—Texas Secretary of State Form #305	12-24

12.2.2. Arkansas 12-32
 Form 12-5. Foreign LLC Application for
 Registration—Arkansas Secretary
 of State Form 12-33

12.2.3. Mississippi 12-34
 Form 12-6. Foreign LLC Application for
 Registration—Mississippi Secretary
 of State Form 12-35

Form 12-7. Application for Appointment of
 Registered Agent of a Foreign LLC—
 Mississippi Secretary of State Form 12-38

12.2.4. Florida 12-40
 Form 12-8. Cover Letter, Foreign LLC Application
 for Authorization and Designation of
 Registered Agent/Registered Office—
 Florida Secretary of State Form 12-42

12.2.5. Delaware 12-46
 Form 12-9. Foreign LLC Certificate of
 Registration—Delaware Secretary of
 State Form 12-47

12.2.6. State Tax Treatment 12-50

**CHAPTER 13: PROFESSIONAL LIMITED LIABILITY
 COMPANIES; REGISTERED LIMITED
 LIABILITY PARTNERSHIPS..... 13-1**

13.1. Overview 13-2

13.2. Professional Limited Liability Company 13-3

13.2.1. Professional Medical Limited Liability Company 13-3

13.2.2. Professional Dental Limited Liability Company 13-4

13.3. Form of Operating Agreement for LLC Conducting a
 Professional Practice 13-5

13.4. Comparison of LLCs and Registered Limited Liability
 Partnerships 13-5

13.4.1. General 13-5

13.4.2. Classification of Debt Issues 13-6

13.4.3. Transition Issues 13-8

13.4.4. Mechanics 13-9

Form 13-1. Application of RLLP 13-10

Form 13-2. Application of a Registered Limited
 Liability Partnership—Louisiana
 Secretary of State Form #975 13-12

CHAPTER 14: MISCELLANEOUS FORMS	14-1
14.1. Opinion Letters	14-2
Form 14-1. Form of Qualified Opinion Letter in Connection with a Loan to an LLC	14-2
Form 14-2. Form of Unqualified Opinion Letter in Connection with a Loan to an LLC	14-13
Form 14-3. Form of Unqualified Borrower’s Opinion Letter in Connection with a Loan to an LLC	14-21
Form 14-4. Form of Borrower’s Certificate in Connection with a Loan to an LLC	14-23
Form 14-4A. Form of Attorney Opinion Letter in Connection with a Bank Loan to an LLC	14-25
14.2. Responsibility for Losses Derived from Guarantees of LLC Obligations	14-26.3
Form 14-5. Indemnity and Contribution Agreement— Obligation Guaranteed Only by Members	14-26.4
14.3. Pledges of LLC Interests	14-30
Form 14-6. UCC-1 Financing Statement—Louisiana Secretary of State Form	14-33
Form 14-7. Description of LLC Interest as Collateral in UCC-1 Financing Statement	14-35
14.4. Assignment of LLC Interests	14-35
Form 14-8. Assignment of Units or Membership Interests of an LLC	14-36
 CHAPTER 15: BANKRUPTCY ISSUES CONCERNING LLCS	 15-1
15.1. Overview	15-3
15.2. Eligibility of LLCs for Voluntary Relief Under the Bankruptcy Code	15-3
15.3. Property of the Estate	15-4
Form 15-1. Operating Agreement Provision—Limitation on Obligation to Make Additional Capital Contributions	15-5
15.4. May a Member Commence an Involuntary Case Against an LLC?	15-6
15.5. What Approval is Needed to Approve the Filing of a Voluntary Case by an LLC?	15-7
Form 15-2. Operating Agreement Provision—Unanimous Consent of Members to Filing Voluntary Case....	15-8
Form 15-3. Operating Agreement Provision—Consent of Majority of Members to Filing a Voluntary Case	15-9

Form 15-4. Operating Agreement Provision—Manager Vote
Required for Filing a Voluntary Case 15-9

Form 15-5. Operating Agreement Provision—Member and
Manager Vote Required for Filing a Voluntary
Case 15-10

Form 15-6. Resolutions of Members in Member-managed
LLC—Consenting to Filing a Voluntary
Case under Chapter 7 15-11

Form 15-7. Resolutions of Board of Directors in Director-
Managed LLC—Consent to Filing a
Voluntary Case under Chapter 11 15-12

15.6. Creating Limitations on the Ability of an LLC to
Commence a Voluntary Case—Single-Purpose
Bankruptcy Remote LLCs 15-13

Form 15-8. Operating Agreement Provision—Purpose
Clause for a SPBR LLC 15-14

Form 15-9. Operating Agreement Provision—Management
of Business and Affairs of the Company 15-15

Form 15-10. Operating Agreement Provision—Transfers 15-19

Form 15-11. Operating Agreement Provision—Dissolution
of the Company 15-20

Form 15-12. Operating Agreement Provision—Special
Amendment Provision 15-21

15.7. Right of LLC or Remaining Members to Terminate
Management Rights of a Bankrupt Member 15-22

15.8. Member’s Bankruptcy as an Event of Dissolution 15-24

15.9. Buyout of a Member’s Interest in the Event of the
Member’s Bankruptcy 15-25

15.10. Right of a Creditor as Assignee 15-25

Form 15-13. Involuntary Assignment by Member 15-26

**CHAPTER 16: COMPENSATION STRATEGIES FOR THE
LLC 16-1**

16.1. Introduction 16-2

16.2. Tax Treatment: Units Grants and Options 16-3

16.2.1. Code § 83 16-3

16.2.2. Code § 409A 16-5

16.2.3. Proposed § 83 Guidance 16-10

16.3. Unit Grants and Options; Equity Incentive Plans 16-12

16.3.1. Granting Units or Membership Interests 16-12

Form 16-1. Membership Interest Grant
Agreement 16-13

16.3.2. Options for Units or Membership Interests 16-18

Form 16-2. Option Agreement for Purchase of Membership Interests	16-19
16.3.3. Equity Incentive Plans.	16-24
Form 16-3. Equity Incentive Plan	16-25

CHAPTER 17: LOW-PROFIT LIMITED LIABILITY

COMPANY OR “L3C”	17-1
17.1. Requirements of an L3C.	17-2
17.2. Potential Purposes of an L3C	17-3
Form 17-1. Addition to Capital Contribution Provision of L3C That Will Receive Program-Related Investments	17-5
17.3. Advantages and Disadvantages of an L3C	17-5
Form 17-2. Articles of Organization and Initial Report for Formation of an L3C in Louisiana	17-7

**PART IV
APPENDICES**

APPENDIX A:	[MEMBER-MANAGED] OPERATING AGREEMENT OF _____, LLC	APP A-1
APPENDIX B:	[MANAGER-MANAGED] OPERATING AGREEMENT OF _____, LLC	APP B-1
APPENDIX C:	PROFESSIONAL SERVICES OPERATING AGREEMENT OF _____, LLC	APP C-1
APPENDIX D:	[SINGLE-MEMBER] OPERATING AGREEMENT OF _____, LLC	APP D-1
APPENDIX E:	THE LOUISIANA LIMITED LIABILITY COMPANY LAW [TITLE 12, CHAPTER 22 OF THE LOUISIANA REVISED STATUTES]	APP E-1
APPENDIX E1:	CONVERSIONS OF BUSINESS ORGANIZATIONS [TITLE 12, CHAPTER 25 OF THE LOUISIANA REVISED STATUTES]	APP E1-1
APPENDIX E2:	FEEs CHARGEABLE BY LOUISIANA SECRETARY OF STATE [TITLE 49, CHAPTER 3 OF THE LOUISIANA REVISED STATUTES]	APP E2-1
APPENDIX E3:	[RESERVED]	APP E3-1
APPENDIX E4:	PROFESSIONAL MEDICAL CORPORATIONS [TITLE 12, CHAPTER 9 OF THE LOUISIANA REVISED STATUTES]	APP E4-1

APPENDIX E5: PROFESSIONAL DENTAL CORPORATIONS AND LIMITED LIABILITY COMPANIES [TITLE 12, CHAPTER 11 OF THE LOUISIANA REVISED STATUTES] APP E5-1

APPENDIX E6: NONCOMPETE CONTRACTS AND AGREEMENTS [TITLE 23, CHAPTER 9 OF THE LOUISIANA REVISED STATUTES] APP E6-1

APPENDIX F1: CHECK-THE-BOX REGULATIONS APP F1-1

APPENDIX F2: SELECTED PORTIONS OF ENTITY CLASSIFICATION TREASURY REGULATIONS APP F2-1

APPENDIX F3: IRS FORM 8832. APP F3-1

APPENDIX F4: REV. RUL. 99-5 [TAX CONSEQUENCES OF SALE OF INTEREST IN A SINGLE MEMBER LLC]. APP F4-1

APPENDIX F5: REV. RUL. 99-6 [TAX CONSEQUENCES OF PURCHASE OF LLC INTERESTS WHERE AFTER PURCHASE ALL LLC INTERESTS ARE OWNED BY A SINGLE MEMBER] APP F5-1

APPENDIX G: REV. RUL. 95-37 [IRS RULING ON TAX CONSEQUENCES OF CONVERTING PARTNERSHIP INTO L.L.C.]. APP G-1

APPENDIX H: LOUISIANA SECRETARY OF STATE FEE SCHEDULE APP H-1

APPENDIX I: LOUISIANA STATE BOARD OF MEDICAL EXAMINERS—STATEMENT OF POSITION: EMPLOYMENT OF PHYSICIAN BY CORPORATION OTHER THAN A PROFESSIONAL MEDICAL CORPORATION. APP I-1

**PART V
LLP AND LLC CASES**

LLP and LLC Cases LLC Cases-1

PART VI
INDICES

Cumulative Table of Louisiana Limited Liability Company
 Act Sections INDEX-1
Cumulative Table of Louisiana Revised Statutes and Civil Codes INDEX-6
Cumulative Table of Internal Revenue and Bankruptcy
 Code Citations INDEX-8
Cumulative Table of Treasury Regulations INDEX-12
Cumulative Revenue Rulings and Revenue Procedures INDEX-14
Table of Cases INDEX-16
Subject Index INDEX-17
Forms Index INDEX-31