

# 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 . . . . .	1-3
1.3. History of the LLC . . . . .	1-8.1
1.4. Classification of the LLC as a Partnership for Federal and State Income Tax Purposes . . . . .	1-8.2
1.4.1. Introduction . . . . .	1-8.2
1.4.2. Consequences of Classification as a Corporation . . . . .	1-9
1.4.3. Tax History of the LLC . . . . .	1-10
1.4.4. Understanding the Check-the-Box Rules . . . . .	1-11
1.4.4.1. LLCs Organized on or after January 1, 1997 . . . . .	1-13
1.4.4.2. Special Rules for LLCs Organized before January 1, 1997, for Periods on or after January 1, 1997 . . . . .	1-14
1.4.4.3. Elections . . . . .	1-15
1.4.4.4. Planning Opportunities of Single-Member LLCs . . . . .	1-16
1.5. The Massachusetts Limited Liability Company Act — An Overview . . . . .	1-17
1.6. Using an LLC as an S Corporation . . . . .	1-18
1.6.1. Overview . . . . .	1-18
1.6.2. Advantages Associated with Using the LLC Form . . . . .	1-18
1.6.3. Disadvantages Associated with Using the LLC Form . . . . .	1-19
1.7. Series LLC and L3Cs . . . . .	1-20
1.7.1. Series LLC . . . . .	1-20
1.7.2. L3Cs . . . . .	1-21
1.8. LLCs and Tax Treaties . . . . .	1-22
1.9. Massachusetts LLCs and Estate Planning . . . . .	1-23
1.10. The 2017 Tax Act . . . . .	1-25

CONTENTS

1.10.1.	2017 Tax Act’s Impact on the Choice of Entity . . . . .	1-25
1.10.2.	Section 199A – Deduction for Qualified Business Income. . . . .	1-27
1.10.3.	Massachusetts Conformity . . . . .	1-28
<b>CHAPTER 2:</b>	<b>FORMATION AND FILINGS . . . . .</b>	<b>2-1</b>
2.1.	Introduction . . . . .	2-3
2.2.	Pre-Formation Matters . . . . .	2-3
	Form 2-1. Memorandum to File on Execution and Filing of Certificate of Organization . . . . .	2-4
	Form 2-2. Letter Directing Execution and Filing of Certificate of Organization . . . . .	2-4
2.2A.	Ethical Considerations in Forming LLCs . . . . .	2-4.1
	Form 2A-1. Counsel for Organizers and Counsel for the Company upon Formation . . . . .	2-4.4
	Form 2A-2. Counsel for One Organizer and Counsel for the Company upon Formation . . . . .	2-4.7
	Form 2A-3. Joint Representation Waiver . . . . .	2-4.8
2.3.	Certificate of Organization . . . . .	2-4.8
	2.3.1. Basic Requirements . . . . .	2-4.8
	2.3.1.1. Federal Employer I.D. Number . . . . .	2-4.8
	2.3.1.2. Name . . . . .	2-4.9
	2.3.1.3. Office . . . . .	2-5
	2.3.1.4. General Character of Business. . . . .	2-5
	2.3.1.5. Date of Dissolution . . . . .	2-5
	2.3.1.6. Registered Agent . . . . .	2-5
	2.3.1.7. Name and Address of Managers . . . . .	2-6
	2.3.1.8. Other Authorized Person . . . . .	2-6
	2.3.1.9. Person Authorized to Execute and Record Instruments Affecting an Interest in Real Property . . . . .	2-6
	Form 2-3. Certificate of Organization. . . . .	2-7
	2.3.2. Optional Provisions . . . . .	2-10
	2.3.3. Filing Fee . . . . .	2-10
2.4.	Certificate of Amendment . . . . .	2-10
	Form 2-4. Consent of Members to Amend the Certificate of Organization . . . . .	2-12
	Form 2-5. Certificate of Amendment of Certificate of Organization of _____, LLC. . . . .	2-13
2.5.	Restated Certificate of Organization and Amended and Restated Certificate of Organization . . . . .	2-14

2.6.	Reservation of Name; Trademark and Domain	
	Name Considerations . . . . .	2-15
	Form 2-6. Application to Reserve Name . . . . .	2-16
2.7.	Annual Report . . . . .	2-17
2.8.	Execution or Amendment by Judicial Order . . . . .	2-17
2.9.	Corporate Transparency Act . . . . .	2-17

## 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 . . . . .	3-2
3.3.	Flexibility of LLC Form . . . . .	3-3
3.4.	Form of Operating Agreement . . . . .	3-3
3.5.	Formality of Adoption . . . . .	3-4
3.6.	Amendment . . . . .	3-5
	3.6.1. In General . . . . .	3-5
	3.6.2. Formality Required . . . . .	3-5
3.7.	Form Operating Agreements . . . . .	3-5
<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
4.3.	Background to Agreement . . . . .	4-4
	Form 4-3. Explanatory Statement . . . . .	4-4
4.4.	Definitions . . . . .	4-4
	Form 4-4. General Definitions . . . . .	4-5
4.5.	Agreement to Organize LLC . . . . .	4-5
	Form 4-5. General Agreement to Organize LLC . . . . .	4-6
	Form 4-6. Organizational Provision Confirming That Articles of Organization Have Been Filed . . . . .	4-6
	Form 4-7. Organizational Provisions Relating to Adoption of New LLC Agreement . . . . .	4-6
4.6.	Name . . . . .	4-7
	Form 4-8. Name Provision for Member-Managed LLC . . . . .	4-7
	Form 4-9. Name Provision for Manager-Managed LLC . . . . .	4-7
4.7.	Purpose and Powers . . . . .	4-8
	Form 4-10. Any Lawful Purpose and Broad Powers . . . . .	4-8

CONTENTS

	Form 4-11.	Specific Purpose . . . . .	4-9
	Form 4-12.	Purpose to Render Professional Services . . . . .	4-9
	Form 4-13.	Purpose Limited to Real Estate . . . . .	4-9
4.8.	Term. . . . .		4-10
	Form 4-14.	Term Commences on Date of Filing of Certificate . . . . .	4-10
	Form 4-15.	Term Commences upon Execution of Operating Agreement . . . . .	4-11
4.9.	Office in the Commonwealth . . . . .		4-11
	Form 4-16.	Office in the Commonwealth of LLC Managed by Members. . . . .	4-11
	Form 4-17.	Office in the Commonwealth of LLC Managed by Managers . . . . .	4-11
4.10.	Resident Agent . . . . .		4-11
	Form 4-18.	Resident Agent . . . . .	4-12
4.11.	Members . . . . .		4-12
	Form 4-19.	Schedule of Members Set Forth in Exhibit. . . . .	4-12
	Form 4-20.	Schedule of Members Set Forth in Text of Agreement. . . . .	4-13
	Form 4-21.	Schedule of Members (without Percentages) . . . . .	4-13
4.12.	Miscellaneous Provisions . . . . .		4-13
	Form 4-22.	Miscellaneous Provisions . . . . .	4-13
4.13.	Piercing the Corporate Veil of LLCs. . . . .		4-15
	4.13.1.	Introduction . . . . .	4-15
	4.13.2.	Piercing the Corporate Veil – General . . . . .	4-16
	4.13.3.	Piercing the Corporate Veil of Corporations in Massachusetts. . . . .	4-18
	4.13.4.	Piercing the Corporate Veil of LLCs in Massachusetts. . . . .	4-20

**CHAPTER 5: LIMITED LIABILITY COMPANY**

	<b>CAPITAL . . . . .</b>	<b>5-1</b>	
5.1.	Drafting Capital Provisions. . . . .	5-3	
5.2.	Initial Contributions . . . . .	5-3	
	Form 5-1.	Initial Contributions in Cash . . . . .	5-4
	Form 5-2.	Initial Contributions — Partly in Cash and Partly in Services. . . . .	5-4
	Form 5-3.	Initial Contributions — Partly in Cash and Partly in Property. . . . .	5-5
	Form 5-4.	Representation in Connection with Contribution of Property. . . . .	5-6
	Form 5-5.	Initial Contribution with Promissory Note . . . . .	5-6

5.3.	Additional Contributions . . . . .	5-6.1
	Form 5-6. Additional Contributions at Discretion of Manager — Limit on Amount. . . . .	5-6.1
	Form 5-7. Additional Contributions at Discretion of Members — Limit on Amount . . . . .	5-7
	Form 5-8. No Liability Beyond Initial Contribution . . . . .	5-8
	Form 5-9. No Liability Beyond Additional Contributions . . . . .	5-8
5.4.	Default in Payment of Contributions. . . . .	5-8
	Form 5-10. Remedy of Reduction of Member’s Interest in Event of Failure to Make Contribution to Manager-Managed LLC . . . . .	5-9
5.5.	Interest on Contributions . . . . .	5-10
	Form 5-11. No Interest on Contributions . . . . .	5-10
	Form 5-12. Interest on Contributions . . . . .	5-10
5.6.	Return of Contributions. . . . .	5-11
5.7.	Distributions and Allocations of Profits . . . . .	5-11
5.8.	Form of Distribution . . . . .	5-11
	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 . . . . .	5-12
5.9.	Capital Accounts . . . . .	5-12
	Form 5-15. Capital Accounts Maintained in Accordance with Code § 704 . . . . .	5-13
5.10.	Loans . . . . .	5-13
	Form 5-16. Loans — General Authority of LLC to Borrow Money from Members or Managers on Terms to Be Agreed upon in Future . . . . .	5-13
	Form 5-17. Loans — Authority to Make Specific Loan with General Authority to Borrow Money from Members or Managers on Terms to Be Agreed upon in Future. . . . .	5-14
5.11.	Introduction: Noncompensatory Call Options and Convertible Interests . . . . .	5-14
	5.11.1. Noncompensatory Call Options: Defined . . . . .	5-15
	5.11.1.1. Tax Consequences of Issuance and Exercise of Call Option . . . . .	5-15
	5.11.1.2. Tax Consequences of Exercise of Option . . . . .	5-16
	5.11.1.2.1. Option Holder. . . . .	5-16
	5.11.1.2.2. Partnership . . . . .	5-16
	5.11.1.2.3. Disregarded Entities . . . . .	5-17

CONTENTS

5.11.2. Convertible Interests . . . . . 5-17  
5.11.2.1. Description of Convertible Preferred Interests . . . . . 5-17  
5.11.2.2. Tax Consequences of Issuance and Exercise of Convertible Preferred Interests . . . . . 5-18  
5.11.3. Tax Consequences of Issuance and Exercise of Convertible Debt Interests . . . . . 5-19

**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 § 704(b). . . . . 6-4  
6.4.1. Overview . . . . . 6-4  
6.4.2. The Three Alternative Allocation Tests . . . . . 6-5  
6.4.2.1. The First Test: Partners' Interests. . . . . 6-5  
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 Members . . . . . 6-8  
6.5. Definitions . . . . . 6-9  
6.5.1. Distribution-Related Definitions . . . . . 6-9  
Form 6-1. Distribution Definitions . . . . . 6-10  
6.5.2. Allocation-Related Definitions. . . . . 6-10  
Form 6-2. Tax Definitions. . . . . 6-10.1  
6.6. Basic Distribution Provisions . . . . . 6-12  
6.6.1. In General . . . . . 6-12  
6.6.1.1. Tax Distributions . . . . . 6-13  
6.6.1.2. Taxation of Distributions . . . . . 6-14.1  
6.6.1.3. Distributions and Allocations for LLCs Taxed as S Corporations. . . . . 6-14.2  
6.6.2. Cash Flow from Operations . . . . . 6-14.2  
Form 6-3. Distributions of Cash Flow . . . . . 6-14.2  
Form 6-3A. Distributions to Pay Taxes . . . . . 6-14.3  
Form 6-3B. Withholding . . . . . 6-14.3  
6.6.3. Distribution of Capital Proceeds . . . . . 6-14.5  
Form 6-4. Distribution of Capital Proceeds . . . . . 6-14.6  
6.6.4. Liquidation Proceeds . . . . . 6-14.6  
Form 6-5. Liquidation and Dissolution. . . . . 6-15

	Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation . . . . .	6-15
6.7.	Basic Allocation Provisions. . . . .	6-16
6.7.1.	Basic Allocations of Income and Loss . . . . .	6-16
	Form 6-7. Profit or Loss . . . . .	6-16
6.7.2.	Qualified Income Offset and Minimum Gain Chargeback. . . . .	6-17
	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. . . . .	6-25
	Form 6-12. Disproportionate Allocation of Loss . .	6-25
6.8.3.	Flips . . . . .	6-26
	Form 6-13. Flip on Sale . . . . .	6-26
6.9.	Forced Allocations. . . . .	6-28
	Form 6-14. Forced Allocations. . . . .	6-29
<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 Persons . . . . .	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
	Form 7-4. Manager with “General Partner”- Like Authority — Alternate Form . . . . .	7-9
7.3.2.	Management by Management Committee . . . . .	7-11
	Form 7-5. Management Committee . . . . .	7-11
7.4.	Replacement of Managers. . . . .	7-12

CONTENTS

Form 7-6.	Removal of Manager for Only Specified Reasons . . . . .	7-13
Form 7-7.	Removal of Manager for Any Reason . . . . .	7-14
7.5.	Meetings of Members . . . . .	7-14
Form 7-8.	Procedure for Calling and Holding Meetings . . . . .	7-15
7.6.	Informal Action of Members; Form of Member Consents . . . . .	7-15
Form 7-9.	Informal Actions . . . . .	7-16
Form 7-10.	Form of Consent of Members . . . . .	7-16
7.7.	Deadlock and Dispute Resolution . . . . .	7-17
Form 7-12A.	Mediation . . . . .	7-18
Form 7-12B.	Arbitration . . . . .	7-19
Form 7-13.	Russian Roulette in the Event of Deadlock. . . . .	7-20
7.8.	Compensation and Reimbursement. . . . .	7-21
Form 7-14.	No Arrangement for Compensation (Member-Managed). . . . .	7-21
Form 7-15.	Compensation (Manager-Managed) . . . . .	7-22
Form 7-16.	Extraordinary Compensation. . . . .	7-22
7.9.	Standard of Care and Duty of Loyalty . . . . .	7-23
7.9.1.	Default Fiduciary Duties . . . . .	7-23
7.9.2.	Defining Scope of Fiduciary Duties Contractually . . . . .	7-24.8
Form 7-17A.	Standard of Care and Duty of Loyalty . . . . .	7-24.21
Form 7-17B.	Elimination of Fiduciary Duties (Manager-Managed LLC) . . . . .	7-24.21
Form 7-17C.	Elimination of Fiduciary Duties (Member-Managed LLC). . . . .	7-25
7.10.	Indemnification and Exculpation . . . . .	7-25
Form 7-18.	Liability and Indemnification of Managers (Manager-Managed) . . . . .	7-26.10
Form 7-19.	Liability and Indemnification of Members (Member-Managed). . . . .	7-26.11
7.11.	Litigation Involving LLCs. . . . .	7-26.12
7.11.1.	Overview of Litigation-Related Provisions of the Act . . . . .	7-26.13
7.11.1.1.	Direct Claims By or Against an LLC . . . . .	7-26.13
7.11.1.2.	Claims by Members or Managers in the Name of the LLC . . . . .	7-26.14
7.11.1.3.	Jurisdictional Considerations. . . . .	7-26.15
7.11.1.4.	Costs and Expenses of a Derivative Suit. . . . .	7-26.17
7.11.2.	Distinguishing Derivative and Direct Claims. . . . .	7-26.19



7.11.3. Issues Arising From Suits Under Section 56 of the Act . . . . . 7-26.23

7.11.4. Massachusetts Court Application of Corporate Derivative Principles to LLC Disputes. . . . . 7-26.24

7.11.5. Interplay Between the Act and Rule 23.1. . . . . 7-26.29

7.11.6. Piercing the Corporate Veil . . . . . 7-26.30

7.12. Liability to Third Parties . . . . . 7-26.31

7.13. Power of Attorney . . . . . 7-26.33

Form 7-20. Power of Attorney . . . . . 7-27

7.14. Access to and Confidentiality of Information; Records . . . . . 7-28

Form 7-21. Access to Information Provision. . . . . 7-28

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

8.1. The Act’s Default Rules for Transfers. . . . . 8-3

8.2. Tax Aspects of Transfer Restrictions. . . . . 8-3

8.2.1. Partnership Classification. . . . . 8-3

8.2.2. Basis Issues . . . . . 8-4.1

8.3. Preliminary Drafting Considerations . . . . . 8-5

Form 8-1. Definitional Provision — Transfer . . . . . 8-5

8.4. Drafting Transfer Provisions That Follow the Act’s Default Rules. . . . . 8-5

Form 8-2. Transfer Provision Following the Act’s Default Rules. . . . . 8-5

8.5. Drafting Transfer Provisions That Permit Some Free Transferability of Interests . . . . . 8-6

Form 8-3. Free Transferability of Interests and Rights . . . . . 8-6

Form 8-3.1. Free Transferability of Interests and Limited Transferability of Other Rights . . . . . 8-6

8.6. Drafting Transfer Provisions That Absolutely Prohibit Transfers of Any Kind. . . . . 8-7

Form 8-4. 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 8-5. Transfer Permitted on Satisfaction of Certain Conditions . . . . . 8-8

8.7.2. First Refusal Rights . . . . . 8-9

Form 8-6. Right of First Refusal; LLC Purchases; Installments Allowed . . . . . 8-10

Form 8-7. Right of First Refusal; Member’s Purchase Payment Terms Matched . . . . . 8-11

CONTENTS

	Form 8-8. Right of First Offer; LLC Purchases; Cash Purchase . . . . .	8-13
8.7.3.	Admission of Transferee as a Member . . . . .	8-14
	Form 8-9. Transferee Not Admitted as Member without Consent of Members . . . . .	8-14
	Form 8-10. Transferee Automatically Admitted as Member . . . . .	8-14
	Form 8-10.1. Admission of Transferee as Member after Consent of Members . . . . .	8-15
8.7.4.	Transfers to Members' Affiliates and Family . . . . .	8-15
	Form 8-11. Definitional Provision — Family . . . . .	8-16
	Form 8-12. Transfers to Affiliates and Family . . . . .	8-16
8.8.	Withdrawal under the Act . . . . .	8-16
	8.8.1. Voluntary Withdrawal . . . . .	8-16
	Form 8-13. Voluntary Withdrawal Defined . . . . .	8-16
	Form 8-14. Voluntary Withdrawal — Not Permitted . . . . .	8-17
	8.8.2. Involuntary Withdrawal (Pre-1997 LLCs) . . . . .	8-17
	Form 8-15. Involuntary Withdrawal Defined (Long Form for Pre-1997 LLCs) . . . . .	8-17
	Form 8-16. Involuntary Withdrawal Defined (Short Form for Pre-1997 LLCs) . . . . .	8-19
8.9.	Consequences of Dissociation in General . . . . .	8-19
	Form 8-17. Company Continues after Member Withdraws; No Buy-Out . . . . .	8-19
8.10.	Creating Buy-Out Rights . . . . .	8-19
	Form 8-18. Optional Buy-Out; Company Buys; Cash Purchase . . . . .	8-20
	Form 8-19. Mandatory Buy-Out; Members Buy; Installments Permitted . . . . .	8-21
8.11.	Valuation Provisions . . . . .	8-22
	Form 8-20. Agreed Value . . . . .	8-22
	Form 8-21. Book Value . . . . .	8-23
	Form 8-22. Appraised Value . . . . .	8-24
8.12.	Miscellaneous Transfer Provisions . . . . .	8-24
	Form 8-23. Installment Buy-Outs . . . . .	8-25
8.13.	Withholding on Transfers . . . . .	8-25
<b>CHAPTER 9: DISSOLUTION . . . . .</b>		<b>9-1</b>
9.1.	Tax Aspects of LLC Dissolution Procedures . . . . .	9-2
9.2.	Overview of the Act's Dissolution Provisions . . . . .	9-2
9.3.	Events of Dissolution . . . . .	9-3

	Form 9-1.	Dissolution — Events of Dissolution . . . . .	9-4
	Form 9-2.	Sample Resolutions Approving Continuation of Business after Dissolution. . . . .	9-5
9.4.	Procedure for	Winding Up and Distribution of Assets . . . . .	9-6
	Form 9-3.	Procedure for Winding Up in Member- Managed LLC . . . . .	9-7
	Form 9-4.	Procedure for Winding Up in Manager- Managed LLC . . . . .	9-7
	Form 9-5.	Procedure for Winding Up in Member- Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members . . . . .	9-8
	Form 9-6.	Procedure for Winding Up in Manager- Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members . . . . .	9-8
9.5.	Termination; Certificate of Cancellation . . . . .		9-8
	Form 9-7.	Filing of a Certificate of Cancellation — Member-Managed LLC. . . . .	9-9
	Form 9-8.	Filing of a Certificate of Cancellation — Manager-Managed LLC . . . . .	9-9
	Form 9-9.	Certificate of Cancellation Signed by Authorized Person . . . . .	9-10
9.6.	Administrative Dissolution . . . . .		9-11
<b>CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING . . . .</b>			<b>10-1</b>
10.1.	Introduction . . . . .		10-2
10.2.	Records . . . . .		10-2
	Form 10-1.	Maintenance of Records — Member-Managed LLC. . . . .	10-2
	Form 10-2.	Maintenance of Records — Manager-Managed LLC . . . . .	10-3
10.3.	Banking . . . . .		10-4
	Form 10-3.	Bank Accounts. . . . .	10-4
10.4.	Accounting Period; Taxable Year . . . . .		10-4
	Form 10-4.	Calendar Year Accounting Period Specified . . . . .	10-5
	Form 10-5.	Fiscal Year Accounting Period Specified. . . . .	10-5
	Form 10-6.	Reserved . . . . .	10-5
	Form 10-7.	Reserved . . . . .	10-5
10.5.	Reports . . . . .		10-5

CONTENTS

Form 10-8.	Preparation of Reports (Short Form) for Member-Managed or Manager-Managed LLC . . . . .	10-6
Form 10-9.	Preparation of Reports (Long Form) for Manager-Managed LLC . . . . .	10-7
10.6.	“Tax Matters Partner” . . . . .	10-7
Form 10-10.	Tax Matters Partner/Partnership Representative (Long Form) . . . . .	10-11
10.7.	Tax Elections . . . . .	10-14
Form 10-11.	Tax Elections . . . . .	10-14
Form 10-12.	Tax Elections — Applies to Code § 754 Only — For Use in Either Member-Managed or Manager-Managed LLC . . . . .	10-14
10.8.	Title to Property . . . . .	10-15
Form 10-13.	Title to Property — In Company Name . . . . .	10-15
Form 10-14.	Title to Company Property — Use of Nominee Permitted . . . . .	10-15

**PART III  
MISCELLANEOUS**

<b>CHAPTER 11:</b>	<b>REORGANIZATION OF THE LLC . . . . .</b>	<b>11-1</b>
11.1.	In General . . . . .	11-3
11.2.	Admission of New Members . . . . .	11-3
11.2.1.	Acquisition of Interest from LLC . . . . .	11-3
Form 11-1.	Simple Subscription Agreement for LLC Membership Interest . . . . .	11-4
Form 11-2.	Long Form Subscription Agreement for LLC Membership Interest . . . . .	11-6
Form 11-3.	Amendment to Operating Agreement Admitting Assignee of Interest as a Member . . . . .	11-6.2
11.2.2.	Acquisition of Interest from Another Member . . . . .	11-8
Form 11-4.	Joinder Agreement . . . . .	11-8
11.3.	Conversion of an Existing Entity into an LLC . . . . .	11-9
11.3.1.	In General . . . . .	11-9
11.3.2.	Conversion of General Partnership to LLC . . . . .	11-9
Form 11-5.	Explanatory Statement (Conversion of General Partnership into LLC) . . . . .	11-11
Form 11-6.	Term Is Continuation of Term of Partnership . . . . .	11-11

Form 11-7.	Initial Capital Contributions in Property Consisting of Partnership Interests in LLC’s Predecessor . . . . .	11-12
Form 11-8.	Assignment of General Partnership Interests to LLC . . . . .	11-12
Form 11-9.	Resolutions of Members Approving Liquidation of Partnership Into LLC . .	11-13
11.3.3.	Conversion of Limited Partnership into LLC . . . . .	11-13
11.3.4.	Conversion of Corporation into LLC . . . . .	11-14
11.3.5.	Statutory Conversion of an Existing Entity into an LLC . . . . .	11-16
11.4.	Conversion of LLC into Corporation . . . . .	11-18
11.4A.	Determination of Holding Period after Conversion . . . . .	11-18.2
Form 11-9A.	Mandatory Incorporation Prior to Public Offering . . . . .	11-18.3
11.5.	Recapitalizing the LLC . . . . .	11-18.4
Form 11-10.	Form of Amendment of Operating Agreement . . . . .	11-18.5
11.6.	Mergers Involving a Massachusetts LLC . . . . .	11-19
11.6.1.	Certificate of Merger Generally . . . . .	11-20
Form 11-11.	Merger of Two Massachusetts LLCs . . . . .	11-22
11.6.2.	Filing for Mergers Involving a Massachusetts Corporation and a Massachusetts LLC . . . . .	11-25
11.6.3.	Tax Treatment of Mergers Involving LLCs . . . . .	11-25
<b>CHAPTER 11A:</b>	<b>SPECIAL USES OF LLCs . . . . .</b>	<b>11A-1</b>
11A.1.	Creative Use of Single-Member LLCs . . . . .	11A-2
11A.1.1.	Overview of Single-Member LLCs . . . . .	11A-2
11A.1.2.	Corporate Reorganizations Involving Single-Member LLCs . . . . .	11A-2
11A.1.3.	Single-Member LLCs in Like-Kind Exchanges . . . . .	11A-5
11A.1.4.	Single-Member LLCs in Lieu of Consolidated Returns . . . . .	11A-6
11A.1.5.	The “Two-Member,” Single-Member LLC . . . . .	11A-7
11A.2.	LLCs as a Buy-Sell Life Insurance Holding Company Tool . . . . .	11A-8
11A.3.	Use of LLC in Venture and Private Equity-Backed Companies . . . . .	11A-9
11A.4.	Using a Single-Member LLC to Facilitate the Acquisition of an S Corporation’s Business . . . . .	11A-11

CONTENTS

<b>CHAPTER 12: MASSACHUSETTS TAXATION .....</b>	<b>12-1</b>
12.1. Classification as a Partnership .....	12-2
12.2. Taxation of Individual Members .....	12-2
12.3. Taxation of Corporate Members .....	12-4
12.3.1. Excise Tax .....	12-4
12.3.2. Apportionment .....	12-5
12.3.3. Investment Tax Credits .....	12-7
12.3.4. Property Tax Exemption .....	12-7
12.4. Reporting Requirements .....	12-8
12.5. Partnership Audits .....	12-10
<b>CHAPTER 13: DOING INTERSTATE BUSINESS .....</b>	<b>13-1</b>
13.1. Foreign LLCs Doing Business in Massachusetts .....	13-2
13.1.1. Governing Law .....	13-2
13.1.2. Doing Business .....	13-3
13.1.3. Procedure for Registration .....	13-3
Form 13-1. Registration for Foreign LLC .....	13-5
Form 13-2. Registration for Foreign Professional LLC .....	13-8
13.1.4. Name Requirement .....	13-11
13.1.5. Resident Agent for Service of Process .....	13-11
Form 13-3. Statement of Change of Resident Agent/ Resident Office .....	13-12.1
Form 13-4. Statement of Resignation as Resident Agent .....	13-14
13.1.6. Annual Report .....	13-16
13.1.7. Amendment to Registration .....	13-16
13.1.8. Effectiveness of Registration; Cancellation and Withdrawal of Registration .....	13-16
Form 13-5. Certificate of Cancellation of Registration for Foreign LLC .....	13-17
Form 13-6. Certificate of Withdrawal of Registration for Foreign LLC .....	13-19
13.1.9. Fees .....	13-19
13.1.10. Doing Business without Registration .....	13-20
13.2. Massachusetts LLCs Doing Business Outside of Massachusetts .....	13-20
13.2.1. Doing Business in Other States and Foreign Jurisdictions .....	13-20.1
13.2.2. Protective Measures for Massachusetts LLCs Doing Business Outside of Massachusetts .....	13-21

<b>CHAPTER 14: COMMERCIAL AND SECURITIES LAW</b>	
	<b>ASPECTS OF LLCs . . . . . 14-1</b>
14.1.	Credit Agreement Considerations for LLC Borrowings . . . . . 14-2.1
14.1.1.	Due Diligence . . . . . 14-2.1
Form 14-1.	Manager’s Certificate . . . . . 14-5
Form 14-2.	Member’s Certificate . . . . . 14-7
Form 14-3.	Majority Members’ Certificate . . . . . 14-9
14.1.2.	Documentation . . . . . 14-12
14.1.2.1.	Recourse . . . . . 14-12
14.1.2.2.	Representations and Warranties . . . . . 14-12
14.1.2.3.	Covenants . . . . . 14-12
14.1.3.	Remedies/Bankruptcy . . . . . 14-12.1
14.1.4.	Conversions of Existing Entities . . . . . 14-13
14.1.5.	Tax Considerations . . . . . 14-14
14.2.	Opinion Letters . . . . . 14-14
Form 14-4.	Excerpts for Borrower’s Counsel Opinion for an LLC . . . . . 14-17
Form 14-4A.	Excerpts for LLC’s Counsel Opinion to Investors in the LLC When LLC Is a Venture Capital Fund . . . . . 14-18
14.3.	Pledge of Membership Interest and Member Notes . . . . . 14-20
14.3.1.	Pledge of Membership Interest . . . . . 14-20
Form 14-4B.	Amendment to “Opt-In” to Article 8 . . . . . 14-21
Form 14-4C.	LLC’s Acknowledgement and Consent to Be Governed by Article 8 of UCC . . . . . 14-22
Form 14-4D.	Operating Agreement Provision that LLC will not “Opt-Out” of Article 8 . . . . . 14-24
Form 14-4E.	Operating Agreement Provision that LLC Interests Will Be General Intangibles . . . . . 14-24
Form 14-5.	UCC-1 Description for Collateral Assignment of Membership Interest . . . . . 14-26
14.3.2.	Pledge of Membership Notes . . . . . 14-26
14.4.	Securities Law Aspects . . . . . 14-27
14.4.1.	LLC Interests as Securities . . . . . 14-27
14.4.2.	Status of the LLC as an Issuer . . . . . 14-28
14.4.3.	Status of the LLC as an Investor . . . . . 14-28
14.5.	Applicability of the Pre-Merger Notification Requirements of the Hart-Scott-Rodino Act to LLCs . . . . . 14-29

CONTENTS

14.5.1. Background . . . . . 14-29  
14.5.2. Qualifying Transactions . . . . . 14-30  
14.5.3. Prior Interpretations . . . . . 14-31  
14.5.4. Treatment of LLCs under the Interpretation . . . . . 14-32  
14.6. Diversity Jurisdiction for LLCs . . . . . 14-32

**CHAPTER 15: LIMITED LIABILITY PARTNERSHIPS . . . . . 15-1**

15.1. Introduction . . . . . 15-2  
    15.1.1. Tax Classification . . . . . 15-3  
15.2. Formation of an LLP . . . . . 15-3  
    Form 15-1. Registration for Domestic LLP . . . . . 15-5  
    Form 15-2. Registration for Professional LLP . . . . . 15-5  
15.3. Name Requirement . . . . . 15-6  
15.4. Registered Agent . . . . . 15-7  
    Form 15-3. Certificate of Appointment of Registered  
        Agent for Service of Process . . . . . 15-8  
    Form 15-4. Certificate of Revocation of Agency . . . . . 15-9  
    Form 15-5. Certificate of Resignation as Registered  
        Agent for Service of Process . . . . . 15-9  
15.5. Insurance Requirements for Professional LLPs . . . . . 15-10  
15.6. Annual Report . . . . . 15-10  
    Form 15-6. Annual Report for Domestic LLP . . . . . 15-11  
    Form 15-7. Annual Report for Professional LLP . . . . . 15-12  
    Form 15-8. Annual Report for Foreign LLP . . . . . 15-13  
    Form 15-9. Annual Report for Foreign Professional LLP . . . . . 15-13  
15.7. Amendments . . . . . 15-14  
    Form 15-10. Certificate of Amendment . . . . . 15-15  
15.8. Revocation and Withdrawal of Registration . . . . . 15-16  
    Form 15-11. Certificate of Withdrawal of Registration  
        For LLP . . . . . 15-17  
15.9. Fees . . . . . 15-17  
15.10. Foreign and Interstate Commerce . . . . . 15-18  
15.11. Foreign LLPs . . . . . 15-18  
    Form 15-12. Registration for Foreign LLP . . . . . 15-19  
    Form 15-13. Registration for Foreign Professional LLP . . . . . 15-20

**CHAPTER 16: EQUITY COMPENSATION AND  
THE LLC . . . . . 16-1**

16.1. Introduction . . . . . 16-2  
16.2. Capital Interests . . . . . 16-2  
16.3. Vested Profits Interests . . . . . 16-3  
16.4. Profits Interests Subject to Vesting . . . . . 16-7



16.5.	Options . . . . .	16-8
16.6.	Loss of Employee Status . . . . .	16-9
16.7.	Application of Code § 409A to LLC Interests . . . . .	16-11
16.8.	Proposed Regulations on Compensatory Partnership Interests . . . . .	16-12
 <b>CHAPTER 17: LLCS AS TAX-EXEMPT 501(C)(3) ORGANIZATIONS . . . . . 17-1</b>		
17.1.	Introduction . . . . .	17-2
17.2.	Formation Documents . . . . .	17-4
	17.2.1. Organizational Documents . . . . .	17-4
	17.2.2. Certificate of Organization . . . . .	17-4
17.3.	Tax Consequences . . . . .	17-4
	17.3.1. Reporting . . . . .	17-4
	17.3.2. Charitable Deductions . . . . .	17-5
	17.3.3. Unrelated Business Taxable Income . . . . .	17-5
17.4.	Miscellaneous . . . . .	17-5
	17.4.1. Limited Liability Companies with Multiple Members . . . . .	17-5
	Form 17-1. Certificate of Organization . . . . .	17-8
	17.4.2. Benefit Corporations in Comparison to LLCs . . . . .	17-10
 <b>CHAPTER 18: BANKRUPTCY RELATED ISSUES. . . . . 18-1</b>		
18.1.	Introduction . . . . .	18-3
18.2.	Eligibility of an LLC to Become a Debtor in Bankruptcy . . . . .	18-3
18.3.	Authority to Commence a Voluntary Case . . . . .	18-4
18.4.	Commencing an Involuntary Bankruptcy Case Against an LLC . . . . .	18-7
18.5.	The Bankruptcy Estate of an LLC. . . . .	18-8
	18.5.1. General . . . . .	18-8
	18.5.2. Capital Calls . . . . .	18-8
	18.5.3. Member's Bankruptcy Estate's Right to LLC Property . . . . .	18-10
18.6.	Insiders . . . . .	18-13
18.7.	Exculpatory Clauses in Bankruptcy . . . . .	18-14
18.8.	Operating Agreements in Bankruptcy . . . . .	18-15
	18.8.1. Effect of Member's Bankruptcy . . . . .	18-15
	18.8.2. Operating Agreement as an Executory Contract. . . . .	18-16
	18.8.2.1. Executory . . . . .	18-16
	18.8.2.2. Not Executory . . . . .	18-17
	18.8.3. Assignment or Sale of the Membership Interest. . . . .	18-18.1
	18.8.4. Management Rights . . . . .	18-18.1

CONTENTS

18.8.5. Discharge of Indebtedness . . . . . 18-18.2

18.9. Bankruptcy Remote LLCs. . . . . 18-19

18.9.1. Generally . . . . . 18-19

18.9.2. Purpose Limitation . . . . . 18-20

    Form 18-1. Sample Special Purpose Limitation  
    Provision . . . . . 18-20

18.9.3. Independent Manager or Member . . . . . 18-20

    18.9.3.1. Sample Independent Manager  
    Provisions. . . . . 18-21

    Form 18-2. Definition of Independent  
    Manager . . . . . 18-21

    Form 18-3. Company Must Have  
    At Least One Independent  
    Manager . . . . . 18-23

    Form 18-4. Actions Requiring  
    Unanimous Written  
    Consent. . . . . 18-23

18.9.4. Separateness Covenants . . . . . 18-24

    Form 18-5. Sample Separateness Covenants . . . . . 18-24

18.9.5. Non-Economic/Springing Members . . . . . 18-26

    Form 18-6. Sample Springing Member Provision . . . . . 18-26

18.9.6. No Dissolution/Disassociation Upon Member’s  
Bankruptcy . . . . . 18-27

    Form 18-7. Sample No Dissolution/Disassociation  
    Provision . . . . . 18-27

18.9.7. Fiduciary Duties. . . . . 18-28

    Form 18-8. Sample Fiduciary Duties Provision . . . . . 18-28

**PART IV  
APPENDICES**

**APPENDIX A: MODEL OPERATING AGREEMENT  
MEMBER-MANAGED . . . . . APP A-1**

**APPENDIX B: MODEL OPERATING AGREEMENT  
MANAGER-MANAGED . . . . . APP B-1**

**APPENDIX C: CHAPTER 156C. LIMITED LIABILITY  
COMPANY ACT GENERAL  
PROVISIONS . . . . . APP C-1**

**APPENDIX D: CHAPTER 108A. PARTNERSHIPS . . . . . APP D-1**

**APPENDIX E: 950 CMR 112.00: LIMITED LIABILITY  
COMPANIES . . . . . APP E-1**

**APPENDIX F: 950 CMR 111:00: LIMITED LIABILITY PARTNERSHIPS . . . . . APP F-1**

**APPENDIX G: IRS FORM 8832 . . . . . APP G-1**

**APPENDIX H: UNDERSTANDING THE CLASSIFICATION RULES PRIOR TO CHECK-THE-BOX AND THE CHECK-THE-BOX REGULATIONS (TREAS. REG. §§ 301.7701-1-3) . . . . . APP H-1**

**APPENDIX I: MODEL CORPORATE-TYPE STRUCTURE OPERATING AGREEMENT . . . . . APP I-1**

**APPENDIX J: SINGLE-MEMBER LLC AGREEMENT . . . . . APP J-1**

**APPENDIX K: CHECKLIST FOR FORMATION OF LLC . . . . . APP K-1**

**APPENDIX L: FORM OF OPERATING AGREEMENT FOR USE OF LLC AS A BUY-SELL LIFE INSURANCE HOLDING COMPANY TOOL . . . . . APP L-1**

**APPENDIX M: FORM OF EQUITY INCENTIVE PLAN AND EMPLOYEE GRANT AGREEMENT . . . . . APP M-1**

**APPENDIX N: OPERATING AGREEMENT (FOR USE IF S CORPORATION TAX TREATMENT IS TO BE ELECTED) . . . . . APP N-1**

**APPENDIX O: COLLATERAL ASSIGNMENT OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT . . . . . APP O-1**

**PART V  
LLP AND LLC CASES**

LLP and LLC Cases . . . . . LLC Cases-1

**PART VI  
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

CONTENTS

Cumulative Table of Massachusetts Limited Liability  
    Company Act Sections ..... INDEX-8  
Cumulative Table of Massachusetts General Law Sections ..... INDEX-12  
Subject Index ..... INDEX-14  
Forms Index ..... INDEX-30