

Contents

PART I ORGANIZATION

CHAPTER 1:	INTRODUCTION	1-1
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	1-22
1.8.	LLCs and Tax Treaties.	1-22.2
1.9.	Massachusetts LLCs and Estate Planning.	1-23
1.10.	The 2017 Tax Act and the OBBBA.	1-25

CONTENTS

1.10.1.	2017 Tax Act's and OBBBA's Impact on the Choice of Entity	1-25
1.10.2.	Section 199A – Deduction for Qualified Business Income.	1-28
1.10.3.	Massachusetts Conformity	1-28
CHAPTER 2: FORMATION AND FILINGS		2-1
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
	Form 2-7. Corporate Transparency Act	
	Operating Agreement Provisions.	2-20

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	3-4
3.5.	Formality of Adoption	3-4.1
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
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.	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

CONTENTS

	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
	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
CAPITAL**

		5-1
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 Contributions with Promissory Note	5-7
5.3.		Additional Contributions	5-7
	Form 5-6.	Additional Contributions at Discretion of Manager — Limit on Amount	5-7
	Form 5-7.	Additional Contributions at Discretion of Members — Limit on Amount	5-8
	Form 5-8.	No Liability Beyond Initial Contribution	5-8.1
	Form 5-9.	No Liability Beyond Additional Contributions . .	5-8.1
5.4.		Default in Payment of Contributions	5-8.1
	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	5-16

CONTENTS

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	5-17
5.11.1.2.3.	Disregarded Entities	5-17
5.11.2.	Convertible Interests.	5-18
5.11.2.1.	Description of Convertible Preferred Interests	5-18
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.	6-8
6.4.3.	Allocations to Members	6-9
6.5.	Definitions	6-10
6.5.1.	Distribution-Related Definitions	6-10.1
Form 6-1.	Distribution Definitions	6-10.1
6.5.2.	Allocation-Related Definitions.	6-10.2
Form 6-2.	Tax Definitions	6-10.2
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	6-15
6.6.1.3.	Distributions and Allocations for LLCs Taxed as S Corporations.	6-16
6.6.2.	Cash Flow from Operations	6-16
Form 6-3.	Distributions of Cash Flow	6-16
Form 6-3A.	Distributions to Pay Taxes	6-16
Form 6-3B.	Withholding	6-16.1

6.6.3.	Distribution of Capital Proceeds	6-16.3
	Form 6-4. Distribution of Capital Proceeds	6-16.3
6.6.4.	Liquidation Proceeds	6-16.4
	Form 6-5. Liquidation and Dissolution.	6-16.5
	Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation	6-16.5
6.7.	Basic Allocation Provisions.	6-16.6
6.7.1.	Basic Allocations of Income and Loss	6-16.6
	Form 6-7. Profit or Loss	6-16.6
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
CHAPTER 7: MANAGEMENT PROVISIONS		7-1
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

CONTENTS

7.3.2.	Management by Management Committee	7-11
	Form 7-5. Management Committee	7-11
7.4.	Replacement of Managers	7-12
	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)	7-24.22
	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
8.2.3.	Transfers that Don't Look Like Transfers	8-5
8.3.	Preliminary Drafting Considerations	8-6
	Form 8-1. Definitional Provision — Transfer	8-6
8.4.	Drafting Transfer Provisions That Follow the Act's Default Rules.	8-6.1
	Form 8-2. Transfer Provision Following the Act's Default Rules.	8-6.1
8.5.	Drafting Transfer Provisions That Permit Some Free Transferability of Interests	8-6.1
	Form 8-3. Free Transferability of Interests and Rights	8-6.1
	Form 8-3A. Free Transferability of Interests and Limited Transferability of Other Rights	8-6.2
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

CONTENTS

	Form 8-7. Right of First Refusal; Member's Purchase Payment Terms Matched . . .	8-11
	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 8-10A. 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
CHAPTER 9: DISSOLUTION		9-1
9.1.	Tax Aspects of LLC Dissolution Provisions	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
CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING . . .		10-1
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	10-6
	Form 10-7. Reserved	10-6
10.5.	Reports	10-6

CONTENTS

	Form 10-8.	Preparation of Reports (Short Form) for Member-Managed or Manager- Managed LLC	10-7
	Form 10-9.	Preparation of Reports (Long Form) for Manager-Managed LLC	10-7
10.6.	“Tax Matters Partner”		10-8
	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**

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 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 11-2A. Investor Questionnaire	11-6.2
	Form 11-3. Amendment to Operating Agreement Admitting Assignee of Interest as a Member.	11-6.16
	11.2.2. Acquisition of Interest from Another Member.	11-8
	Form 11-4. Joinder Agreement	11-9
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
CHAPTER 11A: SPECIAL USES OF LLCS		11A-1
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

CHAPTER 12:	MASSACHUSETTS TAXATION	12-1
12.1.	Classification as a Partnership	12-2
12.2.	Taxation of Individual Members	12-2
12.2.1.	General Principles	12-2
12.2.2.	PTE Election	12-4
12.3.	Taxation of Corporate Members	12-5
12.3.1.	Excise Tax	12-5
12.3.2.	Apportionment	12-6
12.3.3.	Investment Tax Credits	12-8
12.3.4.	Property Tax Exemption	12-8
12.4.	Reporting Requirements	12-9
12.5.	Partnership Audits	12-11
CHAPTER 13:	DOING INTERSTATE BUSINESS	13-1
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

CHAPTER 14: COMMERCIAL AND SECURITIES LAW

	ASPECTS OF LLCs	14-1
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	14-22.1
	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
14.5.1.	Background	14-29

CONTENTS

14.5.2.	Qualifying Transactions	14-30
14.5.3.	Treatment of LLCs under the Interpretation	14-31
14.5.4.	Proposed Changes	14-31
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	16-9
16.6.	Loss of Employee Status	16-10
16.7.	Application of Code § 409A to LLC Interests	16-11
16.8.	Proposed Regulations on Compensatory Partnership Interests	16-12

CHAPTER 17: LLCs AS TAX-EXEMPT 501(C)(3)

	ORGANIZATIONS	17-1
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

CHAPTER 18: BANKRUPTCY RELATED ISSUES..... 18-1

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	18-9
	18.5.3. Member's Bankruptcy Estate's Right to LLC Property	18-10
18.6.	Insiders	18-14
18.7.	Exculpatory Clauses in Bankruptcy	18-15
18.8.	Operating Agreements in Bankruptcy	18-16
	18.8.1. Effect of Member's Bankruptcy	18-16
	18.8.2. Operating Agreement as an Executory Contract	18-17
	18.8.2.1. Executory	18-17
	18.8.2.2. Not Executory	18-19

CONTENTS

18.8.3.	Assignment or Sale of the Membership Interest.	18-20
18.8.4.	Management Rights	18-21
18.8.5.	Discharge of Indebtedness	18-21
18.9.	Bankruptcy Remote LLCs.	18-22
18.9.1.	Generally	18-22
18.9.2.	Purpose Limitation	18-23
	Form 18-1. Sample Special Purpose Limitation Provision	18-23
18.9.3.	Independent Manager or Member	18-23
18.9.3.1.	Sample Independent Manager Provisions.	18-24
	Form 18-2. Definition of Independent Manager	18-24
	Form 18-3. Company Must Have At Least One Independent Manager	18-25
	Form 18-4. Actions Requiring Unanimous Written Consent.	18-26
18.9.4.	Separateness Covenants	18-27
	Form 18-5. Sample Separateness Covenants	18-27
18.9.5.	Non-Economic/Springing Members	18-30
	Form 18-6. Sample Springing Member Provision	18-31
18.9.6.	No Dissolution/Disassociation Upon Member's Bankruptcy	18-32
	Form 18-7. Sample No Dissolution/Disassociation Provision	18-32
18.9.7.	Fiduciary Duties.	18-32
	Form 18-8. Sample Fiduciary Duties Provision	18-33

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
Cumulative Table of Massachusetts Limited Liability Company Act Sections	INDEX-8
Cumulative Table of Massachusetts General Law Sections	INDEX-12
Cumulative Table of The Code of Massachusetts Regulations	INDEX-12
Subject Index	INDEX-16
Forms Index	INDEX-32