

Table of Contents

PART I ORGANIZATION

CHAPTER 1: INTRODUCTION	1-1
Introduction	1-2.1
1.1. Nature and Use of This Practice Manual	1-2.1
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 Limited Liability Partnerships	1-4
1.2.1. Comparison to Corporations	1-9
1.2.2. Comparison to Partnerships	1-10
1.3. Considerations When Forming an LLC	1-10
1.4. History of the LLC	1-11
1.5. Classification of the LLC for Federal and Maryland State Income Tax Purposes	1-12
1.5.1. Introduction	1-12
1.5.2. Understanding the Check-the-Box Regulations	1-13
1.5.2.1. Automatic Partnership Classification	1-14
1.5.2.2. Single-Member LLC	1-14
1.5.2.3. Corporate Classification Election	1-14
1.5.2.4. LLCs Formed Prior to January 1, 1997	1-15
1.5.2.5. Changes in Classification	1-16
1.5.2.6. Employer Identification Numbers	1-17
1.5.2.7. Tax Consequences of Conversions	1-18
1.5.3. Impact of Check-the-Box Regulations	1-18
1.5.4. Self-Employment Tax Consequences of Partnership Classification	1-19
1.5.5. Maryland Taxation	1-20
1.6. The Maryland Limited Liability Company Act — An Overview	1-21
1.7. Comparison of the Maryland Act with Other LLC Acts	1-23
1.7.1. Term of the LLC	1-23
1.7.2. Written Operating Agreement	1-23
1.7.3. Manager vs. Authorized Person	1-23

1.7.4.	Number of Members	1-24
1.7.5.	Dissolution	1-24
1.7.6.	Series LLC	1-25
1.8.	The 2017 Tax Act	1-26
1.8.1.	2017 Tax Act's Impact on the Choice of Entity	1-26
1.8.2.	Section 199A – Deduction for Qualified Business Income.	1-28
1.8.3.	Section 1061 – Carried Interests	1-32
1.8.4.	Section 163(j) – Limitation on Interest Deduction.	1-33
1.8.5.	Section 708 – Repeal of Technical Termination of Partnership	1-34
1.8.6.	Section 461(l) – Limitation on Excess Business Losses of Non-Corporate Taxpayers	1-35

CHAPTER 2: FORMATION AND ORGANIZATION 2-1

2.1.	Introduction	2-3
2.2.	Preformation Matters.	2-3
	Form 2-1. Memorandum Attendant to the Execution and Filing of Articles of Organization	2-4
	Form 2-2. Letter Directing Execution and Filing of Articles of Organization	2-5
	Form 2-2A. Checklist for Formation of LLC	2-6
2.3.	Articles of Organization	2-6.22
2.3.1.	Basic Requirements	2-6.22
	Form 2-3. Articles of Organization without Restrictions on the Authority of Members — Signed by Agent	2-7
	Form 2-4. Articles of Organization without Restrictions on the Authority of Members — Signed by Organizers	2-8
2.3.2.	Optional Provisions	2-9
2.3.2.1.	Provision Limiting Agency Authority of Members	2-9
	Form 2-5. Articles of Organization with Restrictions on Authority — Signed by Agent	2-10
2.3.2.2.	Provision Requiring Written Operating Agreement.	2-10.1

	Form 2-6.	Articles of Organization with Restrictions on Authority and a Requirement that the Operating Agreement Be in Writing	2-11
2.3.2.3.		Provision Limiting Duration	2-12
	Form 2-7.	Provision for Articles of Organization Limiting Term	2-12
2.4.		Certificate of Correction	2-12
	Form 2-8.	Certificate of Correction of Articles of Organization	2-13
2.5.		Articles of Amendment	2-13
	Form 2-9.	Unanimous Consent of Members to Amend Articles of Organization	2-14
	Form 2-10.	Consent of Members to Amend Articles of Organization Where Operating Agreement Does Not Require Unanimity	2-15
	Form 2-11.	Articles of Amendment	2-16
2.6.		Reservation of Name	2-16
	Form 2-12.	Application to Reserve Name	2-17
2.7.		Consent to Act as Resident Agent	2-17
	Form 2-13.	Change of Resident Agent	2-18
	Form 2-14.	Change of Address of Resident Agent	2-19
	Form 2-15.	Change of Address of Principal Office	2-19

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	3-4
3.4.	Form of Operating Agreement	3-4
3.5.	Formality of Adoption	3-5
3.6.	Amendment	3-5
	3.6.1. In General	3-5
	3.6.2. Formality Required	3-5
3.7.	LLC as a Party to the Operating Agreement	3-6

3.8.	Enforcement of Operating Agreements	3-6
3.9.	Form Operating Agreements	3-6
3.10.	Ethical Considerations in Drafting Operating Agreements	3-7
	Form 3-1. Separate Counsel	3-9
	Form 3-2. Separate Counsel (Alternative)	3-10
	Form 3-3. Joint Representation Waiver	3-11
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	4-4
	Form 4-2. Introductory Paragraph — Does Not Name Parties	4-4
4.3.	Background to Agreement	4-4
	Form 4-3. Explanatory Statement	4-5
4.4.	Confirmation of Agreement	4-5
	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	4-6.1
4.6.	Agreement to Organize LLC	4-8
	Form 4-6. General Agreement to Organize LLC	4-8
	Form 4-7. Joinder Agreement	4-8
	Form 4-8. Organizational Provision Confirming That Articles of Organization Have Been Filed	4-9
	Form 4-8A. Organizational Provision Confirming Initial Filing of Articles of Organization and Filing of Amended and Restated Articles of Organization	4-9
4.7.	Name	4-9
	Form 4-9. Name Provision for Member-Managed LLC	4-10
	Form 4-10. Name Provision for Manager-Managed LLC	4-10
4.8.	Purpose	4-10
	Form 4-11. Any Lawful Purpose	4-11
	Form 4-12. Specific Purpose	4-11
	Form 4-13. Purpose Limited to Real Estate	4-11
4.9.	Term	4-11
	Form 4-14. Perpetual Existence	4-12
	Form 4-15. Existence Commences on Date of Filing of	

	Articles	4-12
	Form 4-16. Existence Commences upon Execution of Operating Agreement	4-13
4.10.	Principal Office	4-13
	Form 4-17. Principal Office of LLC Managed by Members	4-13
	Form 4-18. Principal Office of LLC Managed by Managers	4-13
4.11.	Resident Agent	4-13
	Form 4-19. Resident Agent	4-14
	Form 4-19A. Consent of Resident Agent	4-14
4.12.	Members and Preemptive Rights	4-14
	Form 4-20. Schedule of Members Set Forth in Exhibit	4-15
	Form 4-21. Schedule of Members Set Forth in Text of Agreement	4-15
	Form 4-22. Schedule of Members (without Percentages) ...	4-16
	Form 4-22A. No Preemptive Rights	4-16.1
	Form 4-22B. Short-Form of Grant of Preemptive Rights	4-16.1
	Form 4-22C. Long-Form of Grant of Preemptive Rights	4-16.2
	Form 4-22D. Alternative Long-Form of Grant of Preemptive Rights	4-16.4
4.13.	Miscellaneous Provisions	4-16.6
	Form 4-23. Miscellaneous Provisions	4-17
	Form 4-23A. Alternative Amendment Provision	4-19
	Form 4-23B. Mandatory Arbitration Provision	4-20
	Form 4-23C. Alternative Notice Provision	4-20.1
4.14.	Execution	4-20.2
4.15.	Post-Organization Communication with Clients	4-20.2
	Form 4-24. Form of Post-Organization Reporting Letter to Client	4-20.3
	Form 4-25. Alternate Form of Letter to New LLC Regarding Operational and Other Post-Formation Matters	4-20.5
4.16.	Issuance of Membership Certificates	4-32
 CHAPTER 5: LIMITED LIABILITY COMPANY		
	CAPITAL	5-1
5.1.	Drafting Capital Provisions	5-3
5.2.	Initial Capital Contributions	5-3
	5.2.1. General Clauses	5-3

	Form 5-1.	Initial Capital Contributions in Cash	5-4
	Form 5-2.	Initial Capital Contributions — Partly in Cash and Partly in Services	5-4
	Form 5-2A.	Profits Interest in an LLC for Services	5-5
	Form 5-3.	Initial Capital Contributions — Partly in Cash and Partly in Property	5-6
	Form 5-3A.	Initial Contribution with Promissory Note	5-6
	Form 5-4.	Representation in Connection with Contribution of Property	5-6
5.2.2.		Contribution Agreement	5-6.1
	Form 5-4A.	Contribution Agreement	5-6.1
5.2.3.		Contribution Agreement (Real Estate)	5-7
	Form 5-4B.	Contribution Agreement — Real Estate	5-8
5.2.4.		Contribution Agreement (Contribution of Professional Practice)	5-8.7
	Form 5-4C.	Contribution Agreement — Professional Practice	5-8.8
5.3.		Additional Capital Contributions	5-8.13
	Form 5-5.	Additional Capital Contributions at Discretion of Manager — Limit on Amount	5-8.14
	Form 5-6.	Additional Capital Contributions at Discretion of Members — Limit on Amount . . .	5-8.14
	Form 5-7.	No Liability beyond Initial Capital Contribution.	5-8.15
	Form 5-8.	No Liability beyond Additional Capital Contributions	5-8.15
	Form 5-8A.	Additional Interest — Right of First Refusal.	5-8.16
5.4.		Default in Payment of Contributions.	5-8.17
	Form 5-9.	Remedy of Reduction of Member’s Interest in Event of Failure to Make Contribution to Manager-Managed LLC	5-8.17
	Form 5-9A.	Remedy of Suspension of Economic and Non-Economic Rights in Event of Failure to	

	Make Contribution.	5-8.18
	Form 5-9B. Remedy of Loan and Purchase Rights in Event of Failure to Make Contribution	5-8.19
5.5.	Interest on Capital Contributions	5-8.21
	Form 5-10. No Interest on Capital Contributions.	5-9
	Form 5-11. Interest on Capital Contributions	5-9
5.6.	Return of Capital Contributions	5-9
	Form 5-12. Return of Capital Contributions — Unanimous Consent of Members and Compliance with Act Required	5-10
5.7.	Form of Distribution	5-10
	Form 5-13. Form of Distribution — No Right to Receive Anything but Cash.	5-10
	Form 5-14. Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager- Managed LLC	5-10
5.8.	Capital Accounts	5-11
	Form 5-15. Capital Accounts (Simple Definition).	5-11
5.9.	Loans	5-11
	Form 5-16. Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future	5-12
	Form 5-17. Loans — Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed upon in Future	5-12
5.10.	Noncompensatory Options and Convertible Equity	5-12
	5.10.1. Treatment of Grant of Options	5-13
	5.10.2. Treatment of Lapse of Noncompensatory Options	5-13
	5.10.3. Exercise of Noncompensatory Options	5-14
	5.10.4. Capital Accounts and Noncompensatory Options	5-14
	5.10.5. When an Optionee Is Considered a Partner	5-15
 CHAPTER 6: ALLOCATION AND DISTRIBUTION PROVISIONS. 6-1		
6.1.	Taxation of the LLC	6-3
	Form 6-1. Publicly-Traded Partnership	6-3
6.2.	General Allocation and Distribution Concepts	6-3

6.3.	Distribution Restrictions under the Act	6-4.1
6.4.	Allocation Restrictions — Code Section 704(b).	6-4.1
6.4.1.	Overview	6-4.1
6.4.2.	The Three Alternative Allocation Tests	6-5
6.4.2.1.	The First Test: Partners' Interests.	6-5
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 Interest Holders.	6-8
6.5.	Definitions	6-9
6.5.1.	Distribution-Related Definitions	6-9
	Form 6-1A. Distribution Definitions	6-9
6.5.2.	Allocation-Related Definitions.	6-10
	Form 6-2. Tax Definitions.	6-10
6.6.	Basic Distribution Provisions	6-13
6.6.1.	In General	6-13
6.6.2.	Cash Flow from Operations	6-14
	Form 6-3. Distributions of Cash Flow	6-14
6.6.2A.	Cash Flow Distributions to Fund Tax Liabilities	6-14
	Form 6-3A. Distributions to Pay Taxes	6-14
	Form 6-3B. Tax Payment Loans	6-14.1
6.6.3.	Distribution of Capital Proceeds	6-14.3
	Form 6-4. Distribution of Capital Proceeds.	6-14.3
6.6.4.	Liquidation Proceeds	6-15
	Form 6-5. Liquidation and Dissolution	6-15
	Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation.	6-16
6.7.	Basic Allocation Provisions.	6-17
6.7.1.	Basic Allocations of Income and Loss	6-17
	Form 6-7. Profit or Loss	6-17
6.7.2.	Qualified Income Offset and Minimum Gain Chargeback.	6-18
	Form 6-8. Qualified Income Offset and Minimum Gain Chargeback.	6-19
6.7.3.	Other Regulatory Allocations.	6-19
	Form 6-9. Regulatory Allocations	6-20
6.7.4.	General Provisions	6-22

	Form 6-10.	General Provisions	6-23
6.8.	Complex and Disproportionate Distribution and Allocation Provisions		6-24
6.8.1.	Distribution Preferences		6-24
	Form 6-11.	Distribution Preference	6-24
6.8.2.	Disproportionate Allocation of Losses		6-26
	Form 6-12.	Disproportionate Allocation of Loss	6-26
6.8.3.	Flip-Flops		6-27
	Form 6-13.	Flip-Flop on Sale	6-27
6.8.4.	Targeted Capital Account Approach to Allocations		6-29
	Form 6-14.	Targeted Capital Account Allocation	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	7-3
	7.1.3.	Officers, Managers, and Authorized Persons	7-4
7.2.	Member-Managed LLC Provisions		7-4
	Form 7-1.	Simple Member-Management Provision	7-4
	Form 7-2.	Member-Management but with Appointment of Ministerial Manager	7-5
7.3.	Representative Management		7-5
	7.3.1.	Management by a “General Partner”-like Manager	7-6
	Form 7-3.	Manager with “General Partner”-like Authority	7-6
	Form 7-4.	Manager with “General Partner”-like Authority — Alternate Form	7-8
	7.3.2.	Management by Management Committee	7-9
	Form 7-5.	Management Committee	7-9
	7.3.3.	Management by One Class of Members	7-11
	Form 7-6.	Definition of Class A and Class B Members	7-11
	Form 7-7.	Management by Class A Members (Class B Members Not Agents)	7-11
	Form 7-8.	Management by Class A Members (Class B Members	

	Remain Agents)	7-12
7.3.4.	Corporate-like Management by “Board of Directors,” with Committees Appointed and Officers Elected by the Board	7-13
	Form 7-8A. Corporate-like Management by “Board of Directors”	7-13
	Form 7-8B. Management by Board of Managers and Officers.	7-19
7.3.5.	Management by a “Non-Economic Member”	7-20.7
7.4.	Replacement of Managers.	7-20.8
	Form 7-9. Removal of Manager for Any Reason.	7-20.8
	Form 7-9A. Removal of Manager for Only Specified Reasons	7-20.8
	Form 7-10. Replacement of Manager with Designated Successor.	7-20.9
7.5.	Meetings of Members	7-21
	Form 7-11. Procedure for Calling and Holding Meetings	7-21
	Form 7-12. Procedure for Calling and Holding Meetings — Only Class A Members Vote	7-22
7.6.	Informal Action of Members; Form of Member Consents	7-23
	Form 7-13. Informal Actions	7-23
	Form 7-14. Form of Consent of Members	7-24
7.7.	Unanimous Consent	7-26
	Form 7-15. Unanimous Consent (Vote of All Members).	7-26
	Form 7-16. Unanimous Consent (Vote of Less Than All Members)	7-26
7.8.	Deadlock and Resolution	7-26.1
	Form 7-17. Arbitration of Deadlock.	7-26.1
	Form 7-18. Russian Roulette in the Event of Deadlock.	7-26.2
	Form 7-19. Submission of Sealed Bids in the Event of Deadlock	7-29
	Form 7-19A. “Put-Call” Buyout Provision.	7-31
7.9.	Compensation and Reimbursement.	7-31
	Form 7-20. No Arrangement for Compensation (Member-Managed).	7-31
	Form 7-21. Compensation (Manager-Managed)	7-32
	Form 7-22. Extraordinary Compensation.	7-33
	Form 7-22A. “Guaranteed Payment” for Personal Services.	7-33
7.10.	Standard of Care and Degree of Loyalty.	7-33
	Form 7-23. Standard of Care and Degree of Loyalty.	7-34.1

Form 7-24.	Standard of Care and Degree of Loyalty — Same Obligations as Imposed on Corporate Directors	7-35
7.11.	Indemnification	7-35
Form 7-25.	Indemnification of Manager (Manager-Managed)	7-36
Form 7-26.	Indemnification of Members (Member-Managed).	7-36
Form 7-27.	Indemnification of Managers	7-36
Form 7-27A.	Indemnification — Discretionary Advancement of Expenses	7-37
7.12.	Power of Attorney	7-38
Form 7-28.	Power of Attorney	7-38
7.13.	Confidentiality	7-39
Form 7-29.	Confidentiality	7-40
7.14.	Proxies	7-40
Form 7-30.	Proxy	7-41
7.15.	Voting Trusts	7-41
Form 7-31.	Voting Trust Agreement	7-42
CHAPTER 8:	TRANSFER AND BUY-SELL PROVISIONS ...	8-1
8.1.	The Act's Default Rules for Transfers	8-4
8.2.	Tax Aspects of Transfer Restrictions	8-4
8.2.1.	Termination of the LLC	8-4
8.2.2.	Basis Issues	8-4.1
8.3.	Preliminary Drafting Considerations	8-5
Form 8-1.	Definitional Provision — Transfer	8-5
Form 8-2.	Definitional Provisions — Interest and Membership Rights	8-5
8.4.	Drafting Transfer Provisions That Follow the Act's Default Rules	8-6
Form 8-3.	Transfer Provision Following Act's Default Rules	8-6
8.5.	Drafting Transfer Provisions That Permit Free Transferability of Interests	8-6
Form 8-4.	Free Transferability of Interests and Rights	8-6
Form 8-4A.	Definition of Class A and Class B Members, Interests, and Interest Holders	8-7
Form 8-4B.	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 8-4C. Free Transferability of Interests and Limited Transferability of Other Rights	8-8
8.6.	Drafting Transfer Provisions That Absolutely Prohibit Transfers of Any Kind	8-9
	Form 8-5. Absolute Prohibition of Transfers	8-9
8.7.	Drafting Transfer Provisions That Permit Transfers Only on Certain Conditions.	8-10
8.7.1.	In General	8-10
	Form 8-6. Transfer Permitted on Satisfaction of Certain Conditions.	8-10
8.7.2.	First Refusal Rights	8-11
	Form 8-7. Right of First Refusal; LLC Purchases; Installments Allowed	8-12
	Form 8-8. Right of First Refusal; Member's Purchase Payment Terms Matched	8-13
	Form 8-9. Right of First Offer; LLC Purchases; Cash Purchase	8-15
8.7.3.	Admission of Transferee as a Member.	8-16
	Form 8-10. Transferee Not Admitted as Member without Consent of Members	8-16
	Form 8-11. Transferee Automatically Admitted as Member	8-17
	Form 8-11A. Admission of Transferee as Member After Consent of Members	8-17
8.7.4.	Transfers to Members' Affiliates and Family	8-18
	Form 8-12. Definitional Provision — Family	8-18
	Form 8-13. Transfers to Affiliates and Family	8-18
8.7.5.	Right of First Refusal First to Member of Family Group	8-19
	Form 8-13A. Right of First Refusal — Members of Designated Family Group Have Right of First Refusal to Purchase Units of That Family Group Before Company or Other Members	8-19

8.7.6.	Other Special Rights of First Refusal.	8-20.1
	Form 8-13B. Right of First Refusal in the Event of a Sale Transaction	8-20.2
8.7.7.	Avoidance of Publicly-Traded Partnership Status . . .	8-20.5
	Form 8-13C. Avoidance of Publicly-Traded Partnership Status	8-20.5
8.8.	Withdrawal under the Act	8-20.6
8.8.1.	Voluntary Withdrawal.	8-20.6
	Form 8-14. Voluntary Withdrawal Defined . . .	8-20.6
	Form 8-15. Voluntary Withdrawal — Not Permitted	8-20.6
8.8.2.	Involuntary Withdrawal	8-20.7
	Form 8-16. Involuntary Withdrawal Defined (Long Form).	8-20.7
	Form 8-17. Involuntary Withdrawal Defined (Short Form)	8-21
8.9.	Consequences of Dissociation in General.	8-21
	Form 8-18. Successor of Withdrawn Member Continues as Unadmitted Assignee	8-21
	Form 8-19. Successor of Withdrawn Member Continues as Substitute Member	8-22
8.10.	Creating Buy-out Rights	8-23
	Form 8-20. Optional Buy-out; Company Buys; Cash Purchase.	8-23
	Form 8-21. Mandatory Buy-out; Members Buy; Installments Permitted.	8-24
8.11.	Valuation Provisions	8-25
	Form 8-22. Agreed Value	8-25
	Form 8-23. Book Value	8-26
	Form 8-23A. Alternative Book Value Provision	8-27
	Form 8-24. Appraised Value.	8-27
	Form 8-24A. Fair Value.	8-28
	Form 8-24B. Alternative Fair Value Definition.	8-28.1
8.12.	Miscellaneous Transfer Provisions	8-28.2
	Form 8-25. Installment Buy-outs	8-28.2
	Form 8-26. Members Not Required to Assume Company's Obligation.	8-28.3
	Form 8-26A. Withdrawn Member's Payment of Bank Debt	8-28.3

8.13. Stand-Alone Buy/Sell Agreements 8-28.4

8.14. Redemption Agreements 8-28.6

Form 8-27. Membership Interest Redemption Agreement. . . 8-29

Form 8-28. Membership Interest Redemption Agreement
(Alternative Form). 8-32

8.15. Tag-Along and Drag-Along Rights 8-42

Form 8-29. Tag-Along Right 8-42

Form 8-30. Drag-Along Right 8-43

CHAPTER 9: DISSOLUTION 9-1

9.1. Introduction 9-3

9.2. The 1997, 2002 and 2010 Amendments 9-3

9.3. Dissolution Provisions. 9-5

Form 9-1. Dissolution — Limited Possibility of
Dissolution 9-5

Form 9-2. Dissolution — Comprehensively Describes All
Events of Dissolution; Requires Unanimity of
Members to Continue if Dissolution Is Due to
Dissociation of Member 9-5

Form 9-3. Dissolution upon the Occurrence of Some
Specific Events of Withdrawal 9-6

Form 9-4. Dissolution upon Vote of Members. 9-6

Form 9-4A. Provision for Avoidance of Dissolution
if LLC Has No Members. 9-7

Form 9-4B. Alternative Provision for Avoidance of
Dissolution if LLC Has No Members 9-7

Form 9-5. Sample Resolutions Approving Continuation
of Business after Dissolution. 9-8

Form 9-5A. Sample Appointment of Substitute Member
Following Death of Sole Member. 9-8.1

Form 9-5B. Sample Provision Providing That the Entire
Membership Interest of the Last Remaining
Member Is Automatically Deemed Assigned
to the Last-Remaining Member’s Successor
Upon Death or Incompetency of
Last-Remaining Member. 9-8.3

Form 9-5C. Sample Provision Providing That the Entire
Membership Interest of the Last Remaining
Member Is Automatically Deemed Assigned to
the Last-Remaining Member’s Successor
(Any Successor) 9-8.4

Form 9-6.	Sample Resolutions Approving Dissolution of the LLC	9-8.5
Form 9-6A.	Consent of Members to Dissolution, Liquidation and Winding Up of Affairs of LLC and Subsidiary	9-8.6
9.4.	Articles of Dissolution	9-9
Form 9-7.	Articles of Dissolution Signed by Remaining Members	9-9
Form 9-8.	Articles of Dissolution Signed by Authorized Person	9-10
9.5.	Articles of Continuation	9-11
Form 9-9.	Articles of Continuation Signed by Members	9-11
Form 9-10.	Articles of Continuation Signed by Authorized Person	9-12
9.6.	Procedure for Winding Up and Distribution of Assets	9-13
Form 9-11.	Procedure for Winding Up in Member-Managed LLC	9-13
Form 9-12.	Procedure for Winding Up in Manager-Managed LLC	9-13
Form 9-13.	Procedure for Winding Up in Member-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-14
Form 9-14.	Procedure for Winding Up in Manager-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-14
Form 9-15.	Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee.	9-15
9.7.	Termination; Articles of Cancellation	9-15
Form 9-16.	Filing of Articles of Cancellation — Member-Managed LLC	9-15
Form 9-17.	Filing of Articles of Cancellation — Manager-Managed LLC	9-16
Form 9-18.	Articles of Cancellation Signed by Authorized Person	9-16
9.8.	Forfeiture of Right to do Business — Domestic LLCs	9-18
Form 9-19.	Articles of Reinstatement	9-19

9.9. Forfeiture of Right to Do Business — Foreign LLCs
Registered to Do Business in Maryland 9-20

CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING. . . . 10-1

10.1. Introduction 10-2

10.2. Banking 10-2

Form 10-1. Bank Accounts 10-2

10.3. Records 10-3

Form 10-2. Maintenance of Records — Member-Managed
LLC (Short Form) 10-3

Form 10-3. Maintenance of Records — Manager-Managed
LLC (Short Form) 10-3

Form 10-4. Maintenance of Records — Manager-Managed
LLC (Long Form) 10-4

10.4. Accounting Period 10-4

Form 10-5. Calendar Year Accounting Period Specified . . . 10-4

Form 10-6. Fiscal Year Accounting Period Specified. 10-5

Form 10-7. Year to Be Determined by Members 10-5

Form 10-8. Annual Accounting Period — Established by
Manager. 10-5

10.5. Reports 10-5

Form 10-9. Preparation of Reports (Short Form) for
Member-Managed or Manager-Managed
LLC 10-6

Form 10-10. Preparation of Reports (Long Form) for
Manager-managed LLC 10-6

10.6. Tax Matters Partner/Partnership Representative 10-7

Form 10-11. Tax Matters Partner/Partnership
Representative (Short Form) 10-10

Form 10-12. Tax Matters Partner/Partnership
Representative (Long Form) 10-10

10.7. Tax Elections 10-13

Form 10-13. Tax Elections 10-13

Form 10-14. Tax Elections — Applies to Code Section 754
Only — For Use in Either Member-Managed
or Manager-Managed LLC 10-13

10.8. Title to Property 10-14

Form 10-15. Title to Property — In Company Name 10-14

Form 10-16. Title to Company Property — Use of
Nominee Permitted 10-14

PART III MISCELLANEOUS

CHAPTER 11: REORGANIZATION OF THE LLC	11-1
11.1. In General	11-3
11.2. Admission of New Members	11-3
11.2.1. Acquisition of Interest from Company	11-3
Form 11-1. Simple Subscription Agreement for LLC Membership Interest	11-4
Form 11-2. Long Form Subscription Agreement for LLC Membership Interest	11-6
Form 11-2A. Short Form Subscription Letter with Securities Language	11-10
Form 11-3. First Amendment to Operating Agreement Admitting Assignee of Interest as a Member	11-11
11.2.2. Acquisition of Interest from Another Member	11-13
Form 11-4. Assignment of LLC Membership Right	11-13
Form 11-5. Joinder Agreement	11-18
Form 11-5A. Agreement of Sale and Purchase	11-19
11.3. Conversion of an Existing Entity into an LLC	11-20.5
11.3.1. In General	11-20.5
11.3.2. Conversion of a Sole Proprietorship to an LLC	11-20.6
Form 11-6. Articles of Organization Converting a Proprietorship to a Limited Liability Company	11-20.7
Form 11-7. Confirmatory Deed Transferring Real Property Pursuant to the Conversion of a Proprietorship to a Limited Liability Company	11-22
11.3.3. Conversion of General Partnership to LLC	11-24
Form 11-8. Agreement to Convert General Partnership to Limited Liability Company	11-27
Form 11-9. Explanatory Statement — Conversion of General Partnership into LLC	11-29
Form 11-10. Term Is Continuation of Term of Partnership	11-29

	Form 11-11.	Assignment of General Partnership Interests to LLC	11-30
	Form 11-12.	Resolutions of Members Approving Conversion of Partnership into LLC	11-31
	Form 11-13.	Articles of Organization Converting a General Partnership to a Limited Liability Company	11-31
	Form 11-14.	Confirmatory Deed Transferring Real Property Pursuant to the Conversion of a General Partnership to a Limited Liability Company.	11-33
11.3.4.	Conversion of Limited Partnership into LLC		11-35
	Form 11-15.	Articles of Organization (Conversion of Limited Partnership to LLC)	11-36
	Form 11-16.	Confirmatory Deed Transferring Real Property Pursuant to the Conversion of a Limited Partnership to a Limited Liability Company	11-38
11.3.5.	Conversion of Corporation into LLC		11-40
11.3.6.	Conversion of Other Entity into LLC Pursuant to the Conversions Bill		11-42
	Form 11-16A.	Articles of Conversion (Conversion of an Other Entity to LLC)	11-43
11.4.	Conversion of LLC into Another Form of Entity		11-44
11.4.1.	Conversion of LLC into Other Entity Pursuant to the Conversions Bill		11-46
	Form 11-16B.	Articles of Conversion (Conversion of LLC to an Other Entity formed in Maryland)	11-46
	Form 11-16C.	Articles of Conversion (Conversion of a Maryland LLC to an Other Entity not formed in Maryland)	11-46.2
	Form 11-16D.	Articles of Conversion of a Maryland LLC to a Delaware Limited Partnership	11-46.4
	Form 11-16E.	Written Consent of Sole Member to Conversion	11-46.6

	Form 11-16F. Consent to Conversion to be Included in Operating Agreement .	11-46.10
11.5.	Recapitalizing the LLC	11-46.10
	Form 11-17. Form of Amendment of Operating Agreement	11-46.11
	Form 11-17A. Approval of Recapitalization Contained in Operating Agreement	11-46.12
11.6.	Mergers Involving a Maryland LLC	11-46.13
	Form 11-18. Merger of Two Maryland LLCs	11-48
	Form 11-19. Merger of Three Maryland LLCs with Different Classes of Interests	11-49
11.7.	Divisions of the LLC	11-52
	Form 11-20. Agreement of Division	11-53
	Form 11-21. Merger of a Maryland Corporation into a Maryland LLC	11-55
11.8.	Transfers of Assets of an LLC	11-58
	Form 11-22. Articles of Transfer from Corporation to LLC	11-59
11.9	Sales of All Membership Interests	11-60
	Form 11-23. Right to Assert or Waive Attorney-Client Privilege	11-61
CHAPTER 12:	DOING INTERSTATE BUSINESS	12-1
12.1.	Foreign LLCs Doing Business in Maryland	12-2
	12.1.1. Governing Law	12-2
	12.1.2. Definitions	12-2
	12.1.2.1. Doing Business	12-2
	12.1.2.2. Interstate, Intrastate, or Foreign Business	12-3
	12.1.3. Procedure for Registration	12-4
	Form 12-1. Application for Registration of a Foreign Limited Liability Company	12-5
	12.1.4. Filing Fee	12-6
	12.1.5. Issuance and Cancellation of Registration	12-6
	12.1.6. Doing Business without Registration	12-6
	12.1.7. Merger	12-7
12.2.	Maryland LLCs Doing Business Outside Maryland	12-8
	12.2.1. Delaware	12-8

12.2.2.	Virginia	12-9
12.2.3.	West Virginia	12-10.1
12.2.4.	District of Columbia	12-11
12.2.5.	Pennsylvania.	12-11

CHAPTER 13: PROFESSIONAL LIMITED LIABILITY COMPANIES 13-1

13.1.	Historical Background.	13-2
13.2.	Overview	13-3
13.3.	Comparison of LLCs and Professional Corporations	13-4
13.4.	Comparison of LLCs and Limited Liability Partnerships	13-6
	Form 13-1. Certificate of Limited Liability Partnership	13-9
13.5.	Issues Pertaining to the Use of LLCs by Attorneys.	13-9
13.6.	Form of Operating Agreement for LLC Conducting Professional Practice	13-11
13.7.	Member Service Agreement	13-11
	Form 13-2. Member Service Agreement	13-11
13.8.	Management Agreement	13-23
	Form 13-3. Management Agreement	13-23

CHAPTER 14: EQUITY-BASED COMPENSATION STRATEGIES 14-1

14.1.	Introduction	14-3
14.2.	IRC Section 83	14-4
14.3.	Profits Interest vs. Capital Interest	14-5
	Form 14-1A. Provision for Issuance of Profits Insurance	14-9
	Form 14-1B. Profits Interest Based on Achieving a “Hurdle Amount”	14-10.1
	Form 14-1C. Definitions for Profits Interest Based on Achieving a “Hurdle Amount”	14-10.7
14.4.	LLC (Partnership) vs. Corporate Compensation Methods	14-10.8
	14.4.1. Corporate Context	14-10.8
		14.4.1.1. Stock Grants. 14-10.8
		14.4.1.2. Stock Options. 14-10.9
		14.4.1.3. Phantom Stock Plans 14-11
	14.4.2. The LLC Context	14-11
		14.4.2.1. Equity Interests 14-12
		14.4.2.1.1. “Full Equity Interest” 14-12
		14.4.2.2. Point System Compensation 14-13

14.4.2.3.	The Importance of Member Involvement	14-14
14.4.2.4.	Loss Allocation and Debt Guarantees	14-15
14.4.2.5.	Equity Interest vs. Non-Equity Incentive Compensation.	14-15
14.4.3.	Compensation Comparison Chart	14-17
14.5.	Phantom Income and Distributions	14-19
14.5.1.	Tax Effected Distributions	14-19
14.5.1.1.	Separate Calculations for Each Member	14-20
14.5.1.2.	Standard Distribution Rate.	14-21
14.5.1.3.	Highest Incremental Tax Rate	14-21
14.5.2.	Self-Employment Tax.	14-23
14.5.2.1.	Calculating Self-Employment Income	14-24
14.5.2.2.	Application of Self-Employment Tax to LLC Members.	14-24
14.5.3.	Other Tax Aspects of Becoming an LLC Member	14-24
14.6.	Fiduciary Duties, Inspection Rights and Other Duties to Equity Holders.	14-24.1
14.7.	Securities Law Issues	14-25
14.8.	Employee/Member Exit Strategies: Buyout Arrangements	14-25
14.9.	Forms: Equity- and Non-Equity-Based LLC Compensation Plans and Other Related Documents.	14-26
Form 14-1.	Unit Grant Agreement.	14-26
Form 14-2.	Employee Incentive Compensation Plan.	14-31
Form 14-3.	Interest Appreciation Rights Agreements	14-39
Form 14-4.	Reserved	14-46
Form 14-5.	Section 83(b) Election.	14-46
Form 14-6.	Department of Labor Notice for Top Hat Plan	14-49
CHAPTER 15: MISCELLANEOUS FORMS.		15-1
15.1.	Opinion Letters	15-2
Form 15-1.	Form of Opinion Letter in Connection with a Bank Loan to an LLC	15-2
15.2.	Responsibilities for Losses Derived from Guarantees of LLC Debt.	15-11

	Form 15-2. Indemnity and Contribution Agreement	15-12
15.3.	Pledges of LLC Interests	15-16.3
	Form 15-3. Collateral Assignment of Membership Interest and Security Agreement	15-17
	Form 15-4. Amendment to “Opt-In” to Article 8	15-28
	Form 15-5. LLC’s Acknowledgement and Consent to Be Governed by Article 8 of UCC	15-30
	Form 15-6. Operating Agreement Provision That LLC Will Not “Opt-Out” of Article 8	15-31
	Form 15-7. Operating Agreement Provision That LLC Interests Will Be General Intangibles	15-31
	Form 15-8. Form of Control Agreement	15-32
	Form 15-9. Financing Statement	15-35
15.4.	Alternative Dispute Resolution	15-36
	Form 15-10. Alternative Dispute Resolution	15-36
CHAPTER 16: SINGLE-MEMBER LLCS		16-1
16.1.	Introduction	16-2
16.2.	What Is a Single-Member LLC?	16-2
16.3.	Some Uses for Single-Member LLCs	16-5
	16.3.1. Firewalls	16-5
	16.3.2. Creation of Single Purpose Bankruptcy Remote Entities	16-6
	16.3.3. Avoidance of Transfer and Recordation Taxes	16-9
	16.3.3.1. Sales Tax	16-10
	16.3.3.2. Real Estate Transfer and Recordation Tax	16-10
	16.3.4. Like-Kind Exchanges	16-12.1
	16.3.5. Avoidance of Ancillary Probate	16-13
	16.3.6. Use as Entity of Choice for Corporate Subsidiaries	16-13
	16.3.7. Mergers Involving Single-Member LLCs	16-14
	Form 16-1. Articles of Merger of Target Corporation into Single-Member LLC	16-15
16.4.	Income Tax Conversion Issues	16-17
	16.4.1. Conversion of a One-Member LLC into a Multi-Member LLC	16-17

16.4.2.	Conversion of a Multi-Member LLC into a One-Member LLC	16-18
16.5.	Payment of Employment Taxes with Respect to Disregarded Entities	16-19
CHAPTER 17: USE OF LLCs BY EXEMPT ORGANIZATIONS 17-1		
17.1.	Introduction	17-2
17.2.	Use of LLC by Exempt Organizations	17-2
17.2.1.	Use of a Maryland LLC as a Wholly-Owned Subsidiary of an Exempt Organization to Carry Out a Business Purpose	17-2
17.2.2.	Use of Maryland LLC as Enterprise Jointly Owned by Two or More Tax-Exempt Organizations to Carry Out a Business Purpose	17-4
17.2.3.	Use of a Maryland LLC as the Wholly-Owned Subsidiary of an Exempt Organization to Carry Out an Exempt Purpose	17-4
Form 17-1.	Articles of Organization of Single-Member LLC Organized to Carry Out an Exempt Purpose of a Tax-Exempt Parent XYZ Charitable Gifts LLC	17-8
17.2.3A.	Use of Maryland LLC as a Subsidiary of a Tax-Exempt Organization.	17-10
17.2.4.	Use of Maryland LLC as an Enterprise Jointly Owned by Two or More Tax-Exempt Organizations to Carry Out an Exempt Purpose	17-10
17.3.	Use of the LLC as “Freestanding” Exempt Organization	17-10
17.4.	Use of LLC as an “L3C” or for Program-Related Investments	17-12
Form 17-2.	Addition to Capital Contribution Provision of LLC That Will Receive Program-Related Investments	17-13
CHAPTER 18: BANKRUPTCY ISSUES CONCERNING LLCs 18-1		
18.1.	Overview	18-3

18.2.	Eligibility of LLCs for Voluntary Relief under the Bankruptcy Code	18-4
18.3.	Property of the Estate	18-5
	Form 18-1. Operating Agreement Provision — Limitation on Obligation to Make Additional Capital Contributions	18-6
18.4.	May a Member Commence an Involuntary Case Against an LLC?	18-6
18.5.	What Approval Is Needed to Approve the Filing of a Voluntary Case by an LLC?	18-8
	Form 18-2. Operating Agreement Provision — Unanimous Consent of Members to Filing Voluntary Case	18-9
	Form 18-3. Operating Agreement Provision — Consent of Majority of Members to Filing a Voluntary Case	18-10
	Form 18-4. Operating Agreement Provision — Manager Vote Required for Filing of Voluntary Case	18-10
	Form 18-5. Operating Agreement Provision — Member and Manager Vote Required for Filing a Voluntary Case	18-11
	Form 18-6. Resolutions of Members in Member- Managed LLC — Consenting to Filing a Voluntary Case under Chapter 7	18-12
	Form 18-7. Resolutions of Board of Directors in Director-Managed LLC — Consent to Filing a Voluntary Case under Chapter 11	18-13
18.6.	Creating Limitations on the Ability of an LLC to Commence a Voluntary Case — Single Purpose Bankruptcy Remote LLCs	18-14
	Form 18-8. Operating Agreement Provision — Purpose Clause for an SPBR LLC	18-16
	Form 18-9. Operating Agreement Provision — Management of Business and Affairs of the SPBR LLC	18-17
	Form 18-10. Operating Agreement Provision — Special Amendment Provision	18-23
18.7.	Other Bankruptcy Issues in Connection with SPBR LLCs	18-23

Form 18-11.	Operating Agreement Provision — Transfers of Membership Interests in SPBR LLCs	18-24
Form 18-12.	Operating Agreement Provision — Dissolution of the SPBR LLC	18-25
18.8.	Right of the LLC or Remaining Members to Terminate Management Rights of a Bankrupt Member	18-26
Form 18-13.	Operating Agreement Provision — Economic Interests Versus Other Rights and Interests	18-31
18.9.	Member's Bankruptcy as an Event of Dissolution	18-31
18.10.	Buyout of a Member's Interest in the Event of the Member's Bankruptcy	18-33
18.11.	"Corporation" or "Partnership" for the Purpose of Other Bankruptcy Issues?	18-34
18.12.	Series LLCs	18-35
CHAPTER 19: PERSONAL USE LLCs		19-1
19.1.	Use of LLCs to Hold Vacation Homes	19-2
CHAPTER 20: THE LLC IN LITIGATION		20-1
20.1.	Introduction	20-2
20.2.	Derivative Actions	20-2
Form 20-1.	Letter Demanding Members with Authority Enforce the Rights of the LLC	20-3
Form 20-2.	Complaint for Derivative Action	20-5
20.3.	Creditors of Members of an LLC	20-8
20.3.1.	Wage Garnishments	20-8
Form 20-3.	Letter from LLC Counsel Responding to Attempted Wage Garnishment.	20-9
20.3.2.	Charging Orders	20-11
Form 20-4.	Complaint for Charging Order (Where Debtor is Sole Member of a Single-Member LLC)	20-15
Form 20-5.	Complaint for Charging Order (Debtor Member of a Multi- Member LLC)	20-18

20.3.3.	Foreclosure on Member Interests	20-21
Form 20-6.	Restrictions on Creditor of a Member	20-22
Form 20-7.	Restrictions on Creditor of a Member or Interest Holder— Another Form.	20-22
CHAPTER 21: BENEFIT LLCs IN MARYLAND		21-1
21.1.	Introduction	21-2
21.2.	Income Tax Aspects.	21-3
21.3.	Manner of Electing to Be a Benefit LLC	21-3
21.4.	Identification of the LLC as a Benefit LLC.	21-3
21.5.	Annual Benefit Reports	21-4
21.6.	Duties of Benefit LLC Managers	21-5
21.7.	Termination of Status as Benefit LLC.	21-6
21.8.	Property Tax Credits Available to Benefit LLC.	21-6
Form 21-1.	Articles of Organization for a Benefit LLC.	21-8
Form 21-2.	Articles of Amendment for an LLC Converting to Benefit LLC Status	21-9
Form 21-3.	Sample Consent Minutes of Members Approving Amendment of Articles of Organization Adopting Benefit LLC Status	21-11
Form 21-4.	Sample Minutes of Special Meeting of Managers of Benefit Limited Liability Company	21-12

PART IV
APPENDICES

APPENDIX A:	[MEMBER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY	APP A-1
APPENDIX B:	[MANAGER-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY	APP B-1
APPENDIX C:	PROFESSIONAL SERVICES OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY	APP C-1

APPENDIX D:	[FAMILY CONTROLLED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY.....	APP D-1
APPENDIX E:	SINGLE-MEMBER LIMITED LIABILITY COMPANY OPERATING AGREEMENT	APP E-1
APPENDIX E1:	SINGLE-MEMBER LIMITED LIABILITY COMPANY OPERATING AGREEMENT—ALTERNATIVE FORM	APP E1-1
APPENDIX F:	SYNDICATION OPERATING AGREEMENT	APP F-1
APPENDIX G:	LLC TAXED AS A CORPORATION OPERATING AGREEMENT OF _____ LIMITED LIABILITY CORPORATION	APP G-1
APPENDIX G1:	MARYLAND LIMITED LIABILITY COMPANY ACT (AS AMENDED THROUGH OCTOBER 1, 2013)	APP G1-1
APPENDIX G1.1:	OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY WHICH IS A SUBSIDIARY OF A TAX-EXEMPT ENTITY AND IS USED FOR TAX-EXEMPT PURPOSES.....	APP G1.1-1
APPENDIX G2:	MARYLAND STATE BAR ASSOCIATION SECTIONS OF TAXATION AND BUSINESS LAW: THIRD REPORT OF THE SPECIAL JOINT COMMITTEE ON THE MARYLAND LIMITED LIABILITY COMPANY ACT	APP G2-1
APPENDIX G3:	REPORT OF SPECIAL COMMITTEE ON LIMITED LIABILITY COMPANIES WITH RESPECT TO THE PROPOSED AMENDMENTS TO THE MARYLAND LIMITED LIABILITY COMPANY ACT (1997)	APP G3-1

**APPENDIX G4: REPORT OF THE MARYLAND STATE
 BAR ASSOCIATION BUSINESS LAW
 SECTION COMMITTEE ON
 UNINCORPORATED BUSINESS
 ASSOCIATIONS WITH RESPECT
 TO THE MARYLAND LIMITED
 LIABILITY COMPANY ACT
 OF 2011..... APP G4-1**

**APPENDIX G5: REPORT OF THE MARYLAND STATE
 BAR ASSOCIATION BUSINESS LAW
 SECTION COMMITTEE ON
 UNINCORPORATED BUSINESS
 ASSOCIATIONS WITH RESPECT
 TO THE MARYLAND LIMITED
 LIABILITY COMPANY ACT
 OF 2012..... APP G5-1**

**APPENDIX H1: IRS “CHECK-THE-BOX”
 REGULATIONS APP H1-1**

APPENDIX H2: IRS FORM 8832..... APP H2-1

**APPENDIX I1: RESTRICTED INTEREST
 AGREEMENT APP I1-1**

APPENDIX I2: RESTRICTED UNIT AGREEMENT APP I2-1

**APPENDIX J: OPERATING AGREEMENT OF LIMITED
 LIABILITY COMPANY WHICH OWNS A
 VACATION HOME..... APP J-1**

**PART V
LLP AND LLC CASES**

LLP and LLC CasesLLC Cases-1

**PART VI
INDICES**

Cumulative Table of Internal Revenue Code Citations INDEX-1

Cumulative Table of Treasury Regulations..... INDEX-5

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

TABLE OF CONTENTS

Cumulative Table of Maryland Limited Liability Company

Act Sections	INDEX-8
Bankruptcy Code Citations	INDEX-12
Subject Index	INDEX-13
Forms Index	INDEX-31