

Contents

PART I ORGANIZATION

CHAPTER 1: INTRODUCTION	1-1
Introduction	1-2
1.1. Nature and Use of This Practice Manual	1-2
1.2. Comparison of the LLC with Other Entities	1-3
1.2.1. Comparison to Corporations	1-3
Table 1. Comparison of Limited Liability Companies, Limited Partnerships, S Corporations, C Corporations, and Limited Liability Partnerships	1-6
1.2.2. Comparisons to Partnerships	1-11
1.2.3. Veil-Piercing	1-11
1.3. Considerations when Forming an LLC	1-12
1.3.1. Status of LLCs under Pre-Existing Legislation	1-13
1.3A. Additional Tax and Governance Considerations Regarding Entity Choice for Start-Up Companies	1-14.1
1.4. History of the LLC	1-15
1.5. Classification of the LLC for Federal and New York State Income Tax Purposes	1-16
1.5.1. Introduction	1-16
1.5.2. Understanding the Check-the-Box Regulations	1-17
1.5.3. Consequences of Electing Corporate Classification	1-24
1.5.4. Self-Employment Tax Consequences of Partnership Classification	1-24
1.5.5. Deduction for Qualified Business Income of Pass-Through Entities	1-28.4
1.5.6. Tax-Exempt Organizations as LLCs	1-28.10
1.6. The New York Limited Liability Company Law — An Overview	1-28.12
1.6.1. The 1999 Amendments	1-30.1
1.7. Comparison of the New York Law with Other LLC Acts — General	1-31
1.7.1. Flexible vs. Bulletproof Statutes	1-31
1.7.2. Term of the LLC	1-32
1.7.3. Written Operating Agreement	1-32
1.7.4. Manager	1-33

CHAPTER 1A: ANALYTIC COMPARISON BETWEEN THE DELAWARE AND NEW YORK LIMITED LIABILITY COMPANY STATUTES; ADDITIONAL OVERVIEW		1A-1
1A.1.	Scope Note	1A-2
1A.2.	Non-Waivable Provisions of the Law Not Found in the DLLC Act	1A-6
1A.2.1.	Law Section 206: New York Publication Requirements	1A-6
1A.2.2.	Law Section 409: Minimum Fiduciary Duties of Managers	1A-8
1A.2.3.	Law Section 411: Approval Requirements for Transactions between Interested Managers and the NYLLC	1A-12
1A.2.4.	Limitation on Exculpation and Indemnification under the Law: Section 417, Exculpation under the Operating Agreement, and Section 420, Indemnification.	1A-14
1A.2.5.	Law Sections 1002 and 1005: Dissenter’s Rights	1A-16
1A.2.6.	Other Law Provisions.	1A-18
	1A.2.6.1. Requirement That the Operating Agreement Be in Writing.	1A-18
	1A.2.6.2. Right to Amend Voting Provisions.	1A-18
1A.3.	Law Provisions Analogous to Corporate Governance Provisions	1A-19
1A.4.	Conversion Procedures	1A-21
1A.4.1.	Entities Which May Convert	1A-22
1A.4.2.	Approval Requirements	1A-26
1A.5.	Status of Members as Creditors (Bankruptcy Remoteness)	1A-28
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
2.3.	Articles of Organization	2-6
2.3.1.	Basic Requirements	2-6

	Form 2-3.	Articles of Organization — Signed by Authorized Person	2-8
	Form 2-4.	Articles of Organization without Restrictions on the Authority of Members — Signed by Organizers	2-9
2.3.2.	Optional Provisions		2-10
	2.3.2.1.	Provision Limiting Agency Authority of Members	2-10
	Form 2-5.	Articles of Organization with Restrictions on Authority — Signed by Agent	2-11
2.4.	Publication of Articles of Organization or a Notice Containing Their Substance		2-12
	Form 2-6.	Publication Notice of Organization of Limited Liability Company	2-14.1
2.5.	Certificate of Correction		2-15
	Form 2-7.	Certificate of Correction of Articles of Organization	2-15
2.6.	Articles of Amendment		2-16
	Form 2-8.	Unanimous Consent of Members to Amend Articles of Organization	2-16
	Form 2-9.	Consent of Members to Amend Articles of Organization where Operating Agreement Does Not Require Unanimity	2-17
	Form 2-10.	Articles of Amendment	2-18
2.6A.	Certificate of Change		2-19
	Form 2-10a.	Designation of New Post Office Address	2-20
2.7.	Reservation of Name		2-21
	Form 2-11.	Application to Reserve Name	2-22
2.8.	Transacting Business under an Assumed Name		2-23
2.9.	Change of Registered Agent		2-24
	Form 2-12.	Resignation of Registered Agent	2-24
	Form 2-12a.	Designation of New Registered Agent	2-25
2.10.	Change of Address of Registered Agent		2-26
	Form 2-13.	Change of Address of Registered Agent	2-26
2.11.	Change of Post Office Address for Service of Process; Resignation for Receipt of Process		2-27
	Form 2-14.	Resignation for Receipt of Process	2-29

**PART II
OPERATIONS**

CHAPTER 3:	THE OPERATING AGREEMENT	3-1
3.1.	In General	3-2
3.2.	“Operating Agreement” Defined	3-3
3.3.	Flexibility of LLC Form	3-4
3.4.	Form of Operating Agreement	3-4
3.5.	Formality of Adoption	3-4.1
3.6.	Amendment	3-5
3.6.1.	In General	3-5
3.7.	Form Operating Agreements	3-6
CHAPTER 4:	ORGANIZATION	4-1
4.1.	Drafting LLC Organization Provisions	4-3
4.2.	Introductory Paragraph	4-3
4.2.1.	Single-Member LLC, Signing Parties	4-3
4.2.2.	Sample Provisions	4-4
	Form 4-1. Introductory Paragraph — Names Parties and Addresses	4-5
	Form 4-2. Introductory Paragraph — Does Not Name Parties or Addresses	4-5
	Form 4-3. Introductory Paragraph — Single-Member	4-5
4.3.	Background to Agreement	4-6
	Form 4-4. Explanatory Statement	4-6
4.4.	Confirmation of Agreement	4-6
	Form 4-5. Confirmation of Agreement	4-6
4.5.	Definitions	4-7
4.5.1.	“Interest” Compared to “Membership Interest”	4-7
4.5.2.	“Interest Holder” Compared to “Member”	4-7
	Form 4-6. General Definitions	4-8
4.6.	Agreement to Organize LLC	4-11
	Form 4-7. General Agreement to Organize LLC	4-12
	Form 4-8. Organizational Provision Confirming That Articles of Organization Have Been Filed.	4-12
4.7.	Name	4-13
	Form 4-9. Name Provision for Member-Managed LLC	4-13
	Form 4-10. Name Provision for Manager-Managed LLC	4-13
4.8.	Purpose	4-14

	Form 4-11.	Any Lawful Purpose	4-14
	Form 4-12.	Specific Purpose.	4-15
	Form 4-13.	Purpose Limited to Real Estate	4-15
4.9.	Term.		4-15
	Form 4-14.	Term Commences on Date of Filing of Articles.	4-16
	Form 4-15.	(Reserved)	4-17
4.10.	Principal Office		4-17
4.11.	Registered Agent		4-17
	Form 4-16.	Registered Agent	4-17
4.12.	Members		4-18
	Form 4-17.	Schedule of Members Set Forth in Exhibit	4-18.1
	Form 4-18.	Schedule of Members Set Forth in Text of Agreement	4-18.1
	Form 4-19.	Schedule of Members (without Percentages).	4-19
4.13.	Exculpation and Indemnification		4-20
	Form 4-20.	Exculpation and Indemnification Provisions; Judicial Determination.	4-21
	Form 4-21.	Exculpation and Indemnification Provisions; No Requirement for Judicial Determination (Manager-Managed)	4-22
4.14.	Negation of Corporate Opportunity Doctrine		4-23
	Form 4-22.	Negation of Corporate Opportunity Doctrine	4-24
4.15.	Miscellaneous Provisions		4-25
	Form 4-23.	Miscellaneous Provisions	4-25
CHAPTER 4A: SINGLE-MEMBER LLCS.			4A-1
4A.1.	Introduction		4A-2
4A.2.	Operating Agreement		4A-3
4A.3.	Tax Treatment of the Single-Member LLC.		4A-4
4A.4.	Considerations for Single-Member LLCs Doing Business in Foreign Jurisdictions		4A-6
4A.5.	Business Asset Protection		4A-6
4A.6.	Elimination of Liability in Limited Partnerships or Joint Ventures.		4A-8.2
4A.7.	Estate Planning — Probate Proceedings		4A-8.3
4A.8.	Tax Planning Using Single-Member LLCs.		4A-8.3
	4A.8.1.	Like-Kind Exchanges.	4A-9
	4A.8.2.	Corporate Divisions	4A-9

CONTENTS

4A.8.3. Corporate Reorganizations Involving Single-Member LLCs 4A-10

4A.8.4. Using Single-Member LLCs as a Substitute for Consolidated Returns 4A-10

4A.8.5. Charitable Contributions to Single-Member LLCs 4A-11

4A.9. Conclusion 4A-12

CHAPTER 5: LIMITED LIABILITY COMPANY

CAPITAL 5-1

5.1. Drafting Capital Provisions 5-3

5.2. Initial Capital Contributions 5-3

Form 5-1. Initial Capital Contributions in Cash 5-3

Form 5-2. Initial Capital Contributions — Partly in Cash and Partly in Services 5-4

Form 5-3. Initial Capital Contributions — Partly in Cash and Partly in Property 5-4

Form 5-4. Representation in Connection with Contribution of Property 5-5

5.3. Additional Capital Contributions 5-5

Form 5-5. Additional Capital Contributions at Discretion of Manager — Limit on Amount 5-6

Form 5-6. Additional Capital Contributions at Discretion of Members — Limit on Amount 5-6

Form 5-7. Specified Additional Capital Contributions 5-7

Form 5-8. No Liability Beyond Initial Capital Contribution 5-8

Form 5-9. No Liability Beyond Additional Capital Contributions 5-8

5.4. Default in Payment of Contributions 5-9

Form 5-10. Remedy of Reduction of Member’s Interest in Event of Failure to Make Contribution to Manager-Managed LLC 5-9

Form 5-10a. Remedy of 200% Dilution of a Member’s Interest in Event of Failure to Make Capital Contributions to Manager-Managed LLC 5-10

Form 5-11. Additional Remedy of Partial Forfeiture of Member’s Interest in Event of Failure to Make Contribution to Manager-Managed LLC 5-10.1

5.5. Interest on Capital Contributions 5-11

Form 5-12. No Interest on Capital Contributions 5-11

Form 5-13. Interest on Capital Contributions 5-11

5.6. Return of Capital Contributions 5-12

	Form 5-14.	Return of Capital Contributions — Unanimous Consent of Members and Compliance with Act Required	5-13
5.7.		Form of Distribution	5-13
	Form 5-15.	Form of Distribution — No Right to Receive Anything but Cash	5-13
	Form 5-16.	Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager-Managed LLC	5-14
5.8.		Capital Accounts	5-14
	Form 5-17.	Capital Accounts Maintained in Accordance with Code Section 704.	5-14
5.9.		Loans	5-14
	Form 5-18.	Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future	5-15
	Form 5-19.	Loans — Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed upon in Future	5-15
	Form 5-20.	Loans — Authority to Make with Approval	5-16
	Form 5-21.	Authority to Obtain Financings and Issue Guarantees	5-16
	Form 5-22.	Limited Recourse Guarantee	5-18
5.10.		Issuance of Noncompensatory Options.	5-18

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 Law	6-4
6.4.		Allocation Restrictions — Code Section 704(b).	6-5
	6.4.1.	Overview	6-5
	6.4.2.	The Three Alternative Allocation Tests	6-6
		6.4.2.1. The First Test: Partners’ Interests.	6-6
		6.4.2.2. The Second Test: Substantial Economic Effect and Capital Accounts	6-6
		6.4.2.3. The Third Test: Nonrecourse Debt	6-8
	6.4.3.	Allocations to Interest Holders.	6-8.1
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

CONTENTS

	Form 6-2.	Tax Definitions	6-11
6.6.	Basic Distribution Provisions		6-13
	6.6.1.	In General	6-13
	6.6.2.	Creditors' Rights	6-14
	6.6.3.	Cash Flow from Operations	6-15
	Form 6-3.	Mandatory Distributions of Cash Flow	6-16
	Form 6-4.	Discretionary Distributions of Cash Flow and Capital Proceeds	6-16
6.6.4.	Distribution of Capital Proceeds		6-16
	Form 6-4a.	No Entitlement to Distributions	6-16
	Form 6-5.	Distribution of Capital Proceeds	6-17
6.6.5.	Liquidation Proceeds		6-17
	Form 6-5a.	No Entitlement to Distributions	6-18
	Form 6-6a.	Liquidation and Dissolution	6-18
	Form 6-6b.	Liquidation and Dissolution	6-19
	Form 6-7.	Liquidation and Dissolution — Deficit Restoration Obligation	6-19
6.7.	Basic Allocation Provisions		6-20
	6.7.1.	Basic Allocations of Income and Loss	6-20
		Form 6-8a. Profit or Loss	6-20
		Form 6-8b. Profit or Loss	6-20
	6.7.2.	Qualified Income Offset and Minimum Gain Chargeback	6-21
		Form 6-9. Qualified Income Offset and Minimum Gain Chargeback	6-22
	6.7.3.	Other Regulatory Allocations	6-23
		Form 6-10. Regulatory Allocations	6-24
	6.7.4.	General Provisions	6-26
		Form 6-11. General Provisions	6-26.1
6.8.	Complex and Disproportionate Distribution and Allocation Provisions		6-26.2
	6.8.1.	Distribution Preferences	6-26.2
		Form 6-12. Distribution Preference	6-26.2
		Form 6-12a. Hurdle Rate of Return; Carried Interest	6-28
		Form 6-12b. Tax Distributions	6-28.4
		Form 6-12c. Complex Disproportionate Distribution and Allocation Provisions	6-28.6
	6.8.2.	Disproportionate Allocation of Losses	6-28.19

	Form 6-13. Disproportionate Allocation of Loss	6-29
6.8.3.	Flip-Flops	6-30
	Form 6-14. Flip-Flop on Sale.	6-30
CHAPTER 7: MANAGEMENT PROVISIONS		7-1
7.1.	Drafting LLC Management Provisions	7-3
7.1.1.	General Flexibility under the Law	7-3
7.1.2.	Typical Approaches	7-6
7.1.3.	Officers, Managers, and Authorized Persons	7-7
7.1.4.	Default Provisions of the Law Regarding Management.	7-8
7.2.	Member-Managed LLC Provisions.	7-10
	Form 7-1. Simple Member-Management Provision.	7-10
	Form 7-2. Simple Member-Management Provision for Single-Member LLC	7-10
	Form 7-3. Member-Management but with Appointment of Ministerial Official	7-10.1
	Form 7-4. Simple Member-Management for Single-Member LLC but with Appointment of Ministerial Official	7-11
7.3.	Representative Management	7-11
7.3.1.	Management by a “General Partner”-Like Manager	7-12
	Form 7-5. Manager with “General Partner”-Like Authority.	7-12
	Form 7-6. Manager with “General Partner”-Like Authority — Alternate Form	7-16
7.3.2.	Management by Management Committee	7-17
	Form 7-7. Management Committee.	7-17
7.3.3.	Management by “Board of Directors” and Officers.	7-19
	Form 7-7a. Management by Board of Directors and Officers.	7-20
7.4.	Replacement of Managers.	7-20.8
	Form 7-8. Removal of Manager for Any Reason	7-20.8
	Form 7-9. Removal of Manager for Only Specified Reasons	7-20.9
	Form 7-9a. Resignation of General Manager.	7-21
7.5.	Meetings of Members	7-21
	Form 7-10. Procedure for Calling and Holding Meetings	7-22

CONTENTS

7.6.	Action of Members without Meeting; Form of Member	
	Consents	7-22
	Form 7-11. Actions of Members without Meeting.	7-23
	Form 7-12. Form of Consent of Members	7-24
7.7.	Unanimous Consent	7-25
7.8.	Deadlock and Resolution	7-25
	Form 7-13. Resolution in Case of Deadlock	7-26
	Form 7-14. Russian Roulette in the Event of Deadlock.	7-27
7.9.	Compensation and Reimbursement.	7-30
	Form 7-15. Services by Member; No Arrangement for Compensation (Member-Managed).	7-31
	Form 7-16. Services; Compensation (Manager- Managed).	7-31
	Form 7-17. Scheduled Compensation.	7-32
7.10.	Standard of Care and Duty of Loyalty	7-32
	Form 7-18. Standard of Care and Duty of Loyalty.	7-33
7.11.	Exculpation and Indemnification	7-35
	Form 7-19. Exculpation and Indemnification of Manager (Manager-Managed)	7-36
	Form 7-20a. Liability and Indemnification of Members (Member-Managed).	7-38
	Form 7-20b. Advancement of Indemnification.	7-38.1
	Form 7-20c. Advancement of Indemnification.	7-38.2
7.12.	Power of Attorney	7-38.2
	Form 7-21. Power of Attorney	7-39
7.13.	Proxies.	7-42
CHAPTER 7A: EQUITY COMPENSATION AND THE LLC		7A-1
7A.1.	Introduction.	7A-2
7A.2.	Capital Interests.	7A-2
	Form 7A-1. Sample Memorandum to Employee Regarding Unit Grant and Section 83(b) Election Rules	7A-4
	Form 7A-2. Sample Section 83(b) Form.	7A-5
7A.3.	Vested Profits Interests	7A-6
7A.4.	Profits Interests Subject to Vesting	7A-20
7A.5.	Options	7A-23
7A.6.	Loss of Employee Status.	7A-24
CHAPTER 8: TRANSFER AND BUY-SELL PROVISIONS		8-1
8.1.	The Law's Default Rules for Transfers	8-3
8.2.	Tax Aspects of Transfer Restrictions.	8-4

8.2.1.	Transfers of Interest	8-4
8.2.2.	Code Section 708 Termination of the LLC	8-5
8.2.3.	Basis Issues	8-6
8.2.4.	Publicly Traded Partnership Status.	8-7
8.2.5.	Transfer Tax Issues.	8-8
8.2.6.	Withholding Tax on Dispositions of Partnership Interests by Non-U.S. Persons	8-8.1
	Form 8-a. Withholding Tax on Dispositions of Partnership Interests by Non-U.S. Persons	8-8.6
	Form 8-1. Mandatory Distributions of Cash Flow	8-9
	Form 8-1a. No Entitlement to Distributions	8-9
	Form 8-1b. Transfer Coupled with Rights of First Refusal	8-9
8.3.	Preliminary Drafting Considerations	8-10
	Form 8-1c. Definitional Provisions — Transfer.	8-10
	Form 8-2. Definitional Provisions — Interest and Membership Interest	8-11
8.4.	Drafting Transfer Provisions That Follow the Law’s Default Rules.	8-11
	Form 8-3. Transfer Provision Following Law’s Default Rules	8-11
8.5.	Drafting Transfer Provisions That Permit Free Transferability of Interests	8-12
	Form 8-4. Free Transferability of Interests and Rights.	8-12
8.6.	Drafting Transfer Provisions That Absolutely Prohibit Transfers of Any Kind.	8-12
	Form 8-5. Absolute Prohibition of Transfers	8-12
8.7.	Drafting Transfer Provisions That Permit Transfers Only on Certain Conditions.	8-13
	8.7.1. In General.	8-13
	Form 8-6. Transfer Permitted on Satisfaction of Certain Conditions	8-14
	8.7.2. First-Refusal Rights	8-15
	Form 8-7. Right of First Refusal; LLC Purchases; Installments Allowed	8-15
	Form 8-8. Right of First Refusal; LLC Member’s Purchase Payment Terms Matched	8-16.2
	Form 8-9. Right of First Offer; LLC Purchases; Cash Purchase.	8-16.5

CONTENTS

8.7.3.	Admission of Transferee as a Member	8-17
	Form 8-10. Transferee Not Admitted as Member without Consent of Members	8-17
	Form 8-11. Transferee Automatically Admitted as Member.	8-18
	Form 8-11a. Transferee Not Admitted as Member without Consent of Managing Members	8-18
8.7.4.	Transfers to Members' Affiliates and Family	8-18
	Form 8-12. Definitional Provision — Family . . .	8-19
	Form 8-13. Transfers to Affiliates and Family. . .	8-19
8.7.5.	Tag-Along and Drag-Along Rights	8-19
	Form 8-13a. Tag-Along Rights	8-20
	Form 8-13b. Drag-Along Rights	8-20.4
8.8.	Withdrawal under the Law	8-21
8.8.1.	Voluntary Withdrawal.	8-21
	Form 8-14. Voluntary Withdrawal Defined	8-21
	Form 8-15. Voluntary Withdrawal — Prohibited	8-21
	Form 8-15a. Voluntary Withdrawal — Prohibited (Alternative Form)	8-21
	Form 8-15b. Regulatory Withdrawal	8-22
8.8.2.	Involuntary Withdrawal	8-22.3
	Form 8-16. Involuntary Withdrawal Defined (Long Form)	8-22.4
	Form 8-17. Involuntary Withdrawal Defined (Short Form)	8-24
8.9.	Consequences of Dissociation in General.	8-24
	Form 8-18. Successor of Withdrawn Member Continues as Unadmitted Assignee.	8-24
8.10.	Creating Buy-Out Rights.	8-24.1
	Form 8-19. Optional Buy-Out; Company Buys; Cash Purchase [Option to Pay with Note].	8-24.1
	Form 8-20. Mandatory Buy-Out; Members Buy; Installments Permitted	8-25
	Form 8-20a. Buy-Sell Procedure	8-26.1
8.11.	Valuation Provisions	8-26.5
	Form 8-21. Agreed Value	8-27
	Form 8-22. Book Value.	8-27
	Form 8-23. Appraised Value.	8-28

8.12.	Miscellaneous Transfer Provisions	8-29
	Form 8-24. Installment Buy-Outs.	8-29
	Form 8-25. Insolvency Form	8-30
	Form 8-26. Members Not Required to Assume Company’s Obligation	8-31
8.13.	Transfer Documentation	8-31
CHAPTER 9: DISSOLUTION		9-1
9.1.	Tax Aspects of LLC Dissolution	9-3
9.2.	Overview of the Law’s Dissolution Provisions	9-3
9.3.	Events of Dissolution	9-5
	Form 9-1. Dissolution — Comprehensively Describes All Events of Dissolution; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	9-8
	Form 9-2. Dissolution When Less Than All Events of Withdrawal Result in Dissolution; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	9-8.1
	Form 9-3. Dissolution — Refers to Events of Withdrawal under Another Section; Requires Unanimity of Members to Continue if Dissolution Is Due to Dissociation of Member	9-9
	Form 9-4. Right to Continue the LLC (Unless the Remaining Members Vote for Dissolution) Following the Death, Retirement, Resignation, Expulsion, Bankruptcy or Dissolution of Any Member, or Any Other Event That Terminates the Continued Membership of Any Member	9-10
	Form 9-5. Right to Continue the LLC (without Requiring a Vote by the Members) Following the Death, Retirement, Resignation, Expulsion, Bankruptcy or Dissolution of Any Member, or Any Other Event That Terminates the Continued Membership of Any Member	9-11
	Form 9-6. Provides for the Automatic Continuation of the LLC upon the Death, Retirement, Resignation, Expulsion, Bankruptcy or Dissolution of the Last Member	9-11
	Form 9-7. Provides for the Continuation of the LLC upon the Death, Retirement, Resignation,	

CONTENTS

	Expulsion, Bankruptcy or Dissolution of the Last Member by a Vote of Such Member's Successor	9-11
Form 9-8.	Right to Continue the LLC (Without Requiring a Vote by the Members) Following the Death, Retirement, Resignation, Expulsion, Bankruptcy or Dissolution of a Member (Not Including the Last Member), or Any Other Event That Terminates the Continued Membership of a Member (Not Including the Last Member).	9-12
9.4.	Less Than Unanimous Vote Required in Order to Dissolve or to Continue after Event of Dissolution.	9-12
Form 9-9.	Less Than Unanimous Vote Required to Continue after Dissolution; General Manager	9-13
Form 9-10.	Sample Resolutions Approving Continuation of Business after Dissolution.	9-13
9.5.	Articles of Dissolution	9-14
Form 9-11.	Articles of Dissolution Signed by at Least One Member or Manager.	9-14.1
Form 9-12.	Articles of Dissolution Signed by Authorized Person	9-15
9.6.	Procedure for Winding Up and Distribution of Assets	9-16
Form 9-13.	Procedure for Winding Up Member-Managed LLC	9-16
Form 9-14.	Procedure for Winding Up Manager-Managed LLC	9-16
Form 9-15.	Procedure for Winding Up Member-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-17
Form 9-16.	Procedure for Winding Up Manager-Managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-17
Form 9-17.	Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee	9-18
9.7.	Termination; Filing Articles of Dissolution.	9-18
Form 9-18.	Filing of Articles of Dissolution — Member-Managed LLC	9-18
Form 9-19.	Filing of Articles of Dissolution — Manager-Managed LLC	9-19

CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING	10-1
10.1. Introduction	10-3
10.2. Banking	10-4
Form 10-1. Bank Accounts	10-4
10.3. Records	10-4
Form 10-2. Maintenance of Records — Member- Managed LLC (Short Form)	10-4
Form 10-3. Maintenance of Records — Manager- Managed LLC (Short Form)	10-5
Form 10-4. Maintenance of Records — Manager- Managed LLC (Long Form)	10-5
10.4. Accounting Period	10-7
Form 10-5. Calendar Year Accounting Period Specified	10-7
Form 10-6. Fiscal Year Accounting Period Specified	10-7
Form 10-7. Year to Be Determined by Members	10-8
Form 10-8. Annual Accounting Period Established by Managers	10-8
10.5. Reports	10-8
Form 10-9. Preparation of Reports (Short Form) for Member-Managed or Manager- Managed LLC	10-8.1
Form 10-10. Preparation of Reports (Long Form) for Manager-Managed LLC	10-8.1
10.5A. Restriction on Use/Disclosure of Confidential Information	10-8.2
Form 10-10a. Confidentiality	10-8.2
10.6. “Tax Matters Partner” and “Partnership Representative”	10-8.5
Form 10-11. Tax Matters Partner and Partnership Representative (Short Form)	10-12.1
Form 10-12. Tax Matters Partner and Partnership Representative (Long Form)	10-12.1
10.7. Tax Elections	10-12.2
Form 10-13. Tax Elections	10-12.2
Form 10-14. Tax Elections — Applies to Code Section 754 Only — For Use in Either Member-Managed or Manager-Managed LLC	10-13
Form 10-15. Tax Classification Election on Form 8832	10-14
10.8. Title to Property	10-14
Form 10-16. Title to Property — In Company Name	10-15
Form 10-17. Title to Company Property — Use of Nominee Permitted	10-15

CONTENTS

10.9. Tax Shelter Reporting Regulations 10-16
 Form 10-18. Confidentiality Waiver Language 10-17

**PART III
 MISCELLANEOUS**

CHAPTER 11: REORGANIZATION OF THE LLC. 11-1

11.1. In General 11-2

11.2. Admission of New Members. 11-2

 11.2.1. Acquisition of Interest from Company. 11-2

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

 Form 11-2. Long Form Subscription Agreement
 for LLC Membership Interest. 11-5

 Form 11-3. First Amendment to Operating
 Agreement Admitting Assignee of
 Interest as a Member. 11-10

 11.2.2. Acquisition of Interest from Another Member. 11-12

 Form 11-4. Joinder Agreement 11-13

11.3. Conversion of an Existing Entity into an LLC 11-14

 11.3.1. In General. 11-14

 11.3.2. Conversion of General Partnership to LLC 11-14

 Form 11-5. Agreement of Conversion —
 New York General Partnership into
 New York Limited Liability
 Company. 11-16

 Form 11-6. Certificate of Conversion —
 New York General Partnership into
 New York Limited Liability
 Company. 11-19

 Form 11-6a. Term Is Continuation of Term
 of Partnership 11-20

 11.3.3. Conversion of Limited Partnership into LLC. 11-20

 Form 11-7. Agreement of Conversion —
 New York Limited Partnership into
 New York Limited Liability
 Company. 11-21

 11.3.4. Conversion of Corporation into LLC. 11-23

11.4. Recapitalizing the LLC 11-25

 Form 11-8. Form of Amendment of Operating
 Agreement 11-26

11.5.	Mergers Involving a New York LLC	11-27
	Form 11-9. Merger of Two New York LLCs	11-31
	Form 11-10. Merger of Three New York LLCs with Different Classes of Interests.	11-33
CHAPTER 12: DOING INTERSTATE BUSINESS		12-1
12.1.	Foreign LLCs Doing Business in New York	12-2
	12.1.1. Governing Law	12-2
	12.1.2. Doing Business.	12-3
	12.1.3. Procedure for Registration	12-3
	Form 12-1. Application for Authority of a Foreign Limited Liability Company	12-4
	12.1.4. Filing Fee	12-6
	12.1.5. Issuance and Cancellation of Authority	12-6
	12.1.6. Doing Business without Certificate of Authority	12-6
12.2.	New York LLCs Doing Business Outside of New York	12-7
CHAPTER 13: DERIVATIVE ACTIONS		13-1
CHAPTER 14: PROFESSIONAL LIMITED LIABILITY COMPANIES.		14-1
14.1.	Introduction	14-2
14.2.	Membership of a PLLC.	14-3
14.3.	Multi-Profession Practice	14-4
14.4.	Formation and Operation of a PLLC.	14-6.1
14.5.	Admissions and Withdrawals of New Members	14-8
14.6.	Dissolution	14-9
14.7.	Possible Drawbacks.	14-10
14.8.	Interstate Practice	14-10
CHAPTER 15: REGISTERED LIMITED LIABILITY PARTNERSHIPS.		15-1
15.1.	Differences with Other LLP Legislation	15-2
15.2.	Broad Limitation of Liability	15-3
	15.2.1. First Exception: Malpractice by Partner and Those under Supervision and Control	15-3
	15.2.2. Second Exception: “Waive-Down”	15-5
15.3.	Only Partnerships without Limited Partners May Become LLPs	15-5
15.4.	The Culture and Contribution Questions.	15-6
15.5.	Use Limited to Certain Professionals and Related Persons	15-7

CONTENTS

15.6. Prior Alternatives: Partnership or Corporation 15-8
15.7. Ease of Registration for Existing Partnerships 15-9
15.8. Comparison with LLCs 15-10
15.9. Procedures 15-11
 Form 15-1. Certificate of Registration 15-11
15.10. Interstate Practice 15-13
15.11. Non-Recognition in Foreign Jurisdictions 15-14

CHAPTER 16: STATE AND LOCAL TAX ISSUES 16-1

16.1. New York State 16-2
16.2. New York City 16-10.1
16.3. Other Tax Issues 16-10.6
16.4. Publication 16 of New York Tax Status of Limited
 Liability Companies and Partnerships 16-11

**PART IV
APPENDICES**

**APPENDIX A: MEMBER-MANAGED LIMITED
LIABILITY COMPANY OPERATING
AGREEMENT A-1**

**APPENDIX B: MANAGER-MANAGED LIMITED
LIABILITY COMPANY OPERATING
AGREEMENT B-1**

**APPENDIX B1: SINGLE-MEMBER LIMITED
LIABILITY COMPANY OPERATING
AGREEMENT B1-1**

**APPENDIX B2: MODEL FORM OF MANAGER-MANAGED
LIMITED LIABILITY COMPANY
OPERATING AGREEMENT FOR AN
OPERATING BUSINESS B2-1**

**APPENDIX B3: FORM OF PURCHASE AGREEMENT FOR
THE PURCHASE OF A MEMBERSHIP
INTEREST IN A LIMITED LIABILITY
COMPANY B3-1**

APPENDIX B4: ABC LLC SUBSCRIPTION DOCUMENTS B4-1

**APPENDIX B5: ACTION BY WRITTEN CONSENT OF
THE SOLE MEMBER OF ABC LLC B5-1**

APPENDIX C:	CHAPTER 34 OF THE CONSOLIDATED LAWS NEW YORK LIMITED LIABILITY COMPANY LAW	C-1
APPENDIX D:	SAMPLE FORMS FOR FILING UNDER NEW YORK LIMITED LIABILITY LAW AND UNDER NEW YORK PARTNERSHIP LAW	D-1
APPENDIX E:	DOCUMENTS, REPORT OF JOINT DRAFTING COMMITTEE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK	E-1
APPENDIX F:	REVENUE PROCEDURE 95-10	F-1
APPENDIX G:	SELECTED SECTIONS OF THE NEW YORK PARTNERSHIP LAW RELATED TO REGISTERED LIMITED LIABILITY PARTNERSHIPS	G-1
APPENDIX H:	REGISTERED LIMITED LIABILITY PARTNERSHIP STATUTE ARTICLE 8-B REGISTERED LIMITED LIABILITY PARTNERSHIPS	H-1
APPENDIX I:	IRS FORM 8832	I-1
APPENDIX J:	CHECK-THE-BOX REGULATIONS	J-1
APPENDIX K:	TAX HISTORY OF THE LLC	K-1
APPENDIX L:	UNDERSTANDING THE CATEGORIZATION RULES	L-1
APPENDIX M:	GUARANTY AGREEMENT	M-1
APPENDIX N:	CREDIT ENHANCEMENT AGREEMENT	N-1
APPENDIX O:	PLEDGE OF LIMITED LIABILITY COMPANY INTERESTS IN ABC, LLC	O-1
APPENDIX P:	NEW POLICY RELATING TO RESPONSIBLE PERSON LIABILITY UNDER THE SALES TAX LAW	P-1

CONTENTS

APPENDIX Q: COMPARISON OF STATE LLC FEES AND OTHER INFORMATION..... Q-1

APPENDIX R: HSR THRESHOLDS..... R-1

**PART V
INDICES**

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

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

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

Cumulative Table of New York Limited Liability
Company Act Sections..... INDEX-8

Subject Index..... INDEX-15

Forms Index..... INDEX-30