

Contents

PART I ORGANIZATION

CHAPTER 1: INTRODUCTION	1-1
1.1. Nature and Use of This Practice Manual	1-2.1
1.2. Comparison of the LLC with Other Entities	1-2.1
1.3. History of the LLC	1-3
Table 1. Comparison of Indiana LLCs, Limited Partnerships, S Corporations, C Corporations, and LLPs	1-5
1.4. Classification of the LLC as a Partnership for Federal Income Tax Purposes	1-11
1.4.1. Introduction	1-11
1.4.2. Consequences of Classification as a Corporation	1-12
1.4.2.1. Consequences of Classification as a C Corporation	1-12
1.4.2.2. Consequences of Classification as an S Corporation	1-12
1.4.3. Entity Classification Regulations	1-14.3
1.4.4. [Reserved]	1-15
1.4.5. Single-Member LLCs	1-15
1.4.6. Uses of Single-Member LLCs	1-16
1.5. The Indiana Business Flexibility Act — An Overview	1-17
1.6. [Reserved]	1-18
1.7. 1999 Amendments to the Act	1-18
1.7.1. LLCs as Estate Planning Vehicles	1-19
1.7.2. Applicable Restrictions and Section 2704(b)	1-19
1.7.3. Other 1999 Amendments	1-21
1.7.3.1. Agency Rules: IND. CODE §§ 23-18-3-1 and 23-18-3-1.1	1-21
1.7.3.2. Dissolution Changes: IND. CODE §§ 23-18-5-4; 23-18-5-5; 23-18-5-5.1	1-22
1.7.3.3. Member's Right to Withdraw: IND. CODE §§ 23-18-6-6 and 23-18-6-6.1	1-22
1.7.3.4. Voluntary Dissolution: IND. CODE §§ 23-18-9-1 and 23-16-9-1.1	1-22

CONTENTS

1.8.	LLCs as Closely Held Investment Vehicles	1-23
1.9.	Use of LLCs for Emerging Venture-Backed Companies	1-23
1.10.	Net Investment Income Tax	1-25
	Form 1-1. Certificate of Conversion from a Limited Liability Company to a Corporation	1-27
	Form 1-2. Articles of Conversion	1-28
1.11.	2025 One Big Beautiful Bill Act.	1-30
	1.11.1. 2017 Tax Act and OBBBA's Impact on the Choice of Entity	1-30
	1.11.2. Section 199A – Deduction for Qualified Business Income.	1-32
	1.11.3. Section 1061 – Carried Interests	1-35
	1.11.4. Section 163(j) – Limitation on Interest Deduction	1-39
	1.11.5. Section 708 – Repeal of Technical Termination of Partnership.	1-41
	1.11.6. Section 461(l) – Limitation on Excess Business Losses of Non-Corporate Taxpayers	1-42
	1.11.7. Qualified Opportunity Funds Organized as Partnerships	1-43
	1.11.8. Section 1446(f)—Withholding on Transfers by Non-U.S. Partners	1-44
1.12.	Indiana Workaround to 2017 Tax Reform “Salt” Limitations	1-45
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	2-4
2.3.	Articles of Organization	2-5
	2.3.1. Basic Requirements.	2-5
	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 Members	2-7
	2.3.2. Designation of Manager	2-8
	2.3.3. Optional Provisions.	2-9

2.3.3.1.	Appointment of Manager and Agency Authority of Members	2-9
	Form 2-5. Articles of Organization with Manager — Signed by Agent	2-10
2.3.3.2.	Provision Requiring Written Operating Agreement	2-11
	Form 2-6. Articles of Organization with Manager and a Requirement that the Operating Agreement be in Writing	2-12
2.4.	The Corporate Transparency Act	2-13
2.4.1.	General	2-13
2.4.2.	Entities Subject to the Reporting Requirements	2-13
2.4.3.	What Information Must be Reported.	2-14
2.4.4.	When and How Information is Reported.	2-15
2.4.5.	Suggested Corporate Transparency Act Operating Agreement Provisions.	2-16
	Form 2-7. [Reserved]	2-16
2.5.	Articles of Amendment.	2-16
	Form 2-8. Unanimous Consent of Members to Amend Articles of Organization	2-17
	Form 2-9. Consent of Members to Amend Articles of Organization Where Operating Agreement Does Not Require Unanimity	2-18
	Form 2-10. Articles of Amendment.	2-19
2.6.	Name Selection, Protection, and Use	2-20
2.6.1.	Selecting a Distinguishable Name.	2-20
2.6.2.	Names, Infringement, and Unfair Competition.	2-21
2.6.3.	Federal and State Protection of a Name as a Trademark or Service Mark.	2-21
2.6.3.1.	How a Trademark Differs from a Name or DBA	2-21
2.6.3.2.	Benefits of Trademark Registration	2-22
2.6.3.3.	Benefits of Indiana State Trademark Registration.	2-22
2.6.3.4.	Indiana State Trademark Registration Process	2-23

CONTENTS

2.6.3.5.	Federal Trademark Application Process	2-24
2.6.3.6.	Benefits Specific to Federal Trademark Registration	2-25
2.6.3.7.	Cost of Federal Trademark Registration	2-26
2.6.3.8.	Name and Trademark Searches	2-27
2.7.	Entrepreneur's Guide	2-28

**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	3-5
3.6.	Amendments to Operating Agreement	3-5
3.6.1.	In General	3-5
3.6.2.	Formality Required	3-6
3.7.	Form Operating Agreements	3-6
3.8.	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	3-10
3.9.	Guide to the Operating Agreements in the Appendices	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	4-3
	Form 4-2. Introductory Paragraph — Does Not Name Parties	4-4
4.3.	Background to Agreement	4-4
	Form 4-3. Explanatory Statement	4-4
4.4.	Confirmation of Agreement	4-4
	Form 4-4. Confirmation of Agreement	4-4
4.5.	Definitions	4-5
4.5.1.	"Interest" Compared to "Membership Rights"	4-5
4.5.2.	"Interest Holder" Compared to "Member"	4-5

	Form 4-5. General Definitions	4-6
4.6.	Agreement to Organize LLC.	4-8
	Form 4-6. General Agreement to Organize LLC	4-8
	Form 4-7. Organizational Provision Confirming That Articles of Organization Have Been Filed . . .	4-8
4.7.	Name	4-8
	Form 4-8. Name Provision for Member-Managed LLC	4-9
	Form 4-9. Name Provision for Manager-Managed LLC	4-9
4.8.	Purpose	4-9
	Form 4-10. Any Business Purpose.	4-10
	Form 4-11. Specific Purpose	4-10
	Form 4-12. Purpose Limited to Real Estate.	4-10
4.9.	Term	4-11
	Form 4-13. Term Commences on Date of Filing of Articles	4-11
	Form 4-14. Term Commences on Date Subsequent to Filing of Articles	4-12
4.10.	Principal Office	4-12
	Form 4-15. Principal Office of LLC Managed by Members . .	4-12
	Form 4-16. Principal Office of LLC Managed by Managers. . .	4-12
4.11.	Registered Agent	4-13
	Form 4-17. Registered Agent.	4-13
4.12.	Members	4-13
	Form 4-18. Schedule of Members Set Forth in Exhibit.	4-14
	Form 4-19. Schedule of Members Set Forth in Text of Agreement.	4-14
	Form 4-20. Schedule of Members (without Percentages)	4-14.1
4.13.	Miscellaneous Provisions	4-15
	Form 4-21. Miscellaneous Provisions	4-15
4.14.	Post-Organization Communication with Clients	4-17
	Form 4-22. Form of Post-Organization Reporting Letter to Client	4-18
	Form 4-23. Alternate Form of Letter to New LLC Regarding Operational and Other Post-Formation Matters . .	4-20
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

CONTENTS

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	5-5
Form 5-4.	Representation in Connection with Contribution of Property	5-5
5.3.	Additional Capital Contributions	5-6
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	5-6.1
Form 5-7.	No Liability beyond Initial Capital Contribution	5-7
Form 5-8.	No Liability beyond Additional Capital Contributions.	5-7
5.4.	Default in Payment of Contributions	5-7
Form 5-9.	Remedy of Reduction of Member's Interest in Event of Failure to Make Contribution to Manager-Managed LLC	5-8
5.5.	Interest on Capital Contributions	5-9
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	5-10
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	5-11
Form 5-14.	Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager-Managed LLC.	5-11
5.8.	Capital Accounts	5-11
Form 5-15.	Capital Accounts (Simple Definition).	5-12
5.9.	Loans.	5-12
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	5-13
5.10.	Options and Convertible Interests	5-13

**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 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	6-6
6.4.2.2.	The Second Test: Substantial Economic Effect and Capital Accounts	6-6
6.4.2.3.	The Third Test: Nonrecourse Debt	6-7
6.4.3.	Allocations to Interest Holders	6-8
6.5.	Definitions.	6-9
6.5.1.	Distribution-Related Definitions	6-9
	Form 6-1. 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
6.6.3.	Distribution of Capital Proceeds	6-14
	Form 6-4. Distribution of Capital Proceeds.	6-14
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	6-16
6.7.1.	Basic Allocations of Income and Loss	6-16
	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.	6-18

CONTENTS

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	6-24
	Form 6-12. Disproportionate Allocation of Loss.	6-25
6.8.3.	Flip-Flops	6-25
	Form 6-13. Flip-Flop on Sale.	6-26
6.8.4.	Carried Interests	6-27
6.8.5.	Universal Gain and Loss Allocation Provisions	6-28
	Form 6-14. Targeted Capital Account Gain or Loss Allocation Provision	6-28
6.9.	Distributions and Allocations for LLCs Taxed as S Corporations	6-31
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 Agents	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.	7-10
7.3.2.	Management by Management Committee	7-10
	Form 7-5. Management Committee.	7-11
7.3.3.	Management by One Class of Members	7-12
	Form 7-6. Definition of Class A and Class B Members	7-13

Form 7-7.	Management by Class A Members (Class B Members Not Agents)	7-13
Form 7-8.	Management by Class A Members (Class B Members Remain Agents)	7-14
7.3.4.	Corporate-Like Management by “Board of Directors,” with Committees Appointed and Officers Elected by the Board	7-14
Form 7-8.1.	Corporate-Like Management by “Board of Directors,” with Committees Appointed and Officers Elected by the Board	7-14.1
7.3.5	Management by “Board of Managers” Appointed by the Members — Weighted Voting by the Board	7-14.7
7.4.	Replacement of Managers.	7-14.7
Form 7-9.	Removal of Manager without Cause.	7-15
Form 7-10.	Removal of Manager for Only Specified Reasons	7-15
7.5.	Meetings of Members	7-16
Form 7-11.	Procedure for Calling and Holding Meetings	7-17
Form 7-12.	Procedure for Calling and Holding Meetings — Only Class A Members Vote	7-18
7.6.	Informal Action of Members; Form of Member Consents	7-19
Form 7-13.	Consents and Informal Actions.	7-19
Form 7-14.	Form of Consent of Members	7-20
7.7.	Unanimous Consent	7-22
Form 7-15.	Unanimous Consent (Vote of All Members).	7-22.1
Form 7-16.	Written Consent (Vote of Less Than All Members)	7-23
7.8.	Deadlock and Resolution	7-23
Form 7-17.	Arbitration of Deadlock	7-23
Form 7-18.	Russian Roulette in the Event of Deadlock	7-24
Form 7-19.	Submission of Sealed Bids in the Event of Deadlock	7-27
7.9.	Compensation and Reimbursement	7-28
Form 7-20.	No Arrangement for Compensation (Member-Managed)	7-29
Form 7-21.	Compensation (Manager-Managed)	7-29
Form 7-22.	Extraordinary Compensation	7-30

CONTENTS

Form 7-22.1. Guaranteed Payment	7-30
7.10. Standard of Care and Degree of Loyalty	7-30.1
Form 7-23. Standard of Care and Degree of Loyalty	7-31
Form 7-24. Standard of Care and Degree of Loyalty — Same Obligations as Imposed on Corporate Directors	7-32
7.11. Indemnification	7-33
Form 7-25. Liability and Indemnification of General Manager (Manager-Managed)	7-33
Form 7-26. Liability and Indemnification of Members (Member-Managed)	7-34
Form 7-27. Liability and Indemnification of Managers — Follows Business Corporation Law	7-34
7.12. Confidentiality	7-35
7.13. Power of Attorney	7-36
Form 7-28. Power of Attorney	7-36
7.14. Bankruptcy Remote Entities — Giving Management Rights to Another Party	7-37
7.14.1. SPEs	7-37
7.14.2. Giving Lenders LLC Control and Noneconomic Interests	7-38
7.14.3. Challenges to Lender LLC Control in Bankruptcy	7-40
Form 7-29. Operating Agreement Provision — Purpose Clause for an SPE LLC	7-40
Form 7-30. Operating Agreement Provision — SPE Management Provisions	7-41
Form 7-31. Operating Agreement Provision — Limit on Dissolution	7-42
Form 7-32. Operating Agreement Provision — Limits on Bankruptcy	7-42
Form 7-33. Operating Agreement Provision — Special Amendment Provision	7-43
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. Partnership Classification	8-4
8.2.2. Transfers that Don't Look Like Transfers	8-5
8.2.3. Basis Issues	8-6
8.3. Preliminary Drafting Considerations	8-6.1
Form 8-1. Definitional Provision — Transfer	8-6.1

Form 8-1.1.	Expanded Definition — Transfer	8-6.1
Form 8-2.	Definitional Provisions — Interest and Membership Rights	8-6.2
8.4.	Drafting Transfer Provisions That Follow the Act's Default Rules	8-6.2
Form 8-3.	Transfer Provision Following Act's Default Rules	8-6.3
8.5.	Drafting Transfer Provisions That Permit Free Transferability of Interests	8-6.3
Form 8-4.	Free Transferability of Interests and Rights	8-6.3
8.6.	Drafting Transfer Provisions That Absolutely Prohibit Transfers of Any Kind	8-7
Form 8-5.	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 8-6.	Transfer Permitted on Satisfaction of Certain Conditions	8-8
8.7.2.	First Refusal Rights	8-9
Form 8-7.	Right of First Refusal; LLC Purchases; Installments Allowed	8-9
Form 8-8.	Right of First Refusal; Member's Purchase Payment Terms Matched	8-11
Form 8-9.	Right of First Offer; LLC Purchases; Cash Purchase	8-13
8.7.3.	Admission of Transferee as a Member	8-14
Form 8-10.	Transferee Not Admitted as Member without Consent of Members	8-14
Form 8-11.	Transferee Automatically Admitted as Member	8-14
8.7.4.	Transfers to Members' Affiliates and Family	8-15
Form 8-12.	Definitional Provision — Family	8-15
Form 8-13.	Transfers to Affiliates and Family	8-15
8.8.	Withdrawal under the Act	8-16
8.8.1.	Voluntary Withdrawal	8-16
8.8.1.1.	Pre-July 1, 1999 LLCs	8-16
Form 8-14.	Voluntary Withdrawal Defined	8-16
Form 8-15.	Voluntary Withdrawal — Not Permitted	8-16

CONTENTS

8.8.1.2.	Post-June 30, 1999 LLCs	8-16
8.8.1.3.	Retirement as a Permitted Voluntary Withdrawal	8-17
	Form 8-15.1. Voluntary Withdrawal - Retirement	8-18
8.8.2.	Involuntary Withdrawal	8-19
	Form 8-16. Involuntary Withdrawal Defined (Long Form)	8-20
	Form 8-17. Involuntary Withdrawal Defined (Short Form)	8-21
8.8.3.	Removal of Member	8-21
	8.8.3.1. Removal Following Assignment of Entire Interest	8-21
	8.8.3.2. Removal for Other Causes	8-22
	8.8.3.3. Derivative Actions.	8-24
8.9.	Consequences of Disassociation in General	8-24
8.9.1.	Pre-July 1, 1999 LLCs.	8-24
	Form 8-18. Successor of Withdrawn Member Continues as Unadmitted Assignee	8-24.1
	Form 8-19. Successor of Withdrawn Member Continues as Substitute Member	8-24.2
8.9.2.	Post-June 30, 1999 LLCs	8-24.3
8.10.	Creating Buy-Out Rights	8-24.3
	Form 8-20. Optional Buy-Out; Company Buys; Cash Purchase.	8-24.4
	Form 8-21. Mandatory Buy-Out; Members Buy; Installments Permitted	8-24.5
8.11.	Valuation Provisions	8-24.5
	Form 8-22. Agreed Value.	8-24.6
	Form 8-23. Book Value	8-24.7
	Form 8-24. Appraised Value	8-25
8.12.	Miscellaneous Transfer Provisions	8-27
	Form 8-25. Installment Buy-Outs	8-27
	Form 8-26. Insolvency Form	8-28
	Form 8-27. Drag Along Rights	8-29
	Form 8-28. Members Not Required to Assume Company's Obligation	8-31
8.13.	Transfer on Death and Joint Tenancy Rules	8-31

CHAPTER 9:	DISSOLUTION	9-1
9.1.	Cessation of Membership	9-3
9.1.1.	Events That May Trigger Cessation of Membership	9-3
9.1.2.	Transfer of a Member's Entire Interest	9-4
9.1.3.	Voluntary Withdrawal	9-4
9.1.4.	Expulsion	9-4.1
9.1.5.	Consequences of a Member's Cessation of Membership	9-4.1
9.1.5.1.	Pre-June 30, 1999 LLCs	9-4.2
9.1.5.2.	Post-June 30, 1999 LLCs	9-4.2
9.1.6.	Considerations in Negotiating Exit Provisions	9-4.3
9.1.6.1.	Identity of the Client	9-4.3
	Form 9-1A. "I Am Not Your Lawyer"	
	Letter	9-4.4
9.1.6.2.	Types and Uses of Exit Provisions	9-4.5
9.2.	Overview of the Act's Dissolution Provisions	9-4.7
9.2.1.	Pre-July 1, 1999 LLCs	9-4.7
9.2.2.	Post-June 30, 1999 LLCs	9-4.8
9.2.3.	Post-June 30, 2013 LLCs	9-4.9
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 Disassociation of Member	9-5
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 Disassociation of Member	9-6
Form 9-3.	Dissolution — Refers to Events of Withdrawal under Another Section; Requires Unanimity of Members to Continue if Dissolution Is Due to Disassociation of Member	9-6
9.4.	Vote Required in Order to Continue after Event of Dissolution	9-7
Form 9-4.	Less Than Unanimous Vote Required to Continue after Dissolution	9-7
Form 9-5.	Sample Resolutions Approving Continuation of Business after Disassociation	9-8
9.5.	Articles of Dissolution	9-8

CONTENTS

Form 9-6.	Articles of Dissolution Signed by Remaining Members	9-9
9.6.	Procedure for Winding Up and Distribution of Assets	9-10
Form 9-7.	Procedure for Winding Up in Member-Managed LLC	9-10
Form 9-8.	Procedure for Winding Up in Manager-Managed LLC	9-11
Form 9-9.	Procedure for Winding Up in Member-Managed LLC; References to Another Section of Operating Agreement for Manner of Distribution to Members	9-11
Form 9-10.	Procedure for Winding Up in Manager-Managed LLC; References to Another Section of Operating Agreement for Manner of Distribution to Members	9-11
Form 9-11.	Procedure for Winding Up and Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee	9-12
9.7.	Administrative Dissolution	9-12
CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING		10-1
10.1.	Introduction	10-2
10.2.	Banking	10-3
Form 10-1.	Bank Accounts	10-3
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)	10-4
Form 10-4.	Maintenance of Records — Manager-Managed LLC (Long Form)	10-5
10.4.	Accounting Period	10-5
Form 10-5.	Calendar Year Accounting Period Specified	10-6
Form 10-6.	Fiscal Year Accounting Period Specified	10-6
Form 10-7.	Year to Be Determined by Members	10-6
Form 10-8.	Annual Accounting Period Established by Managers	10-6
10.5.	Reports	10-7
Form 10-9.	Preparation of Reports (Short Form) for Member-Managed or Manager-Managed LLC	10-7

Form 10-10. Preparation of Reports (Long Form) for Manager-Managed LLC	10-7
10.6. Tax Audit Procedures	10-8
10.6.1. Introduction	10-8
10.6.2. Tax Matters Partner	10-9
Form 10-11. Tax Matters Member (Short Form)	10-10
Form 10-12. Tax Matters Member (Long Form)	10-10
10.6.3. BBA Partnership Audit Procedures	10-11
Form 10-12A. Partnership Audit Procedures	10-15
10.7. Tax Elections	10-18
Form 10-13. Tax Elections	10-18
Form 10-14. Tax Elections — Applies to Code Section 754 Only — For Use in Either Member-Managed or Manager-Managed LLC	10-18

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. First Amendment to Operating Agreement Admitting Assignee of Interest as a Member	11-5
11.2.2. Acquisition of Interest from a Member	11-8
Form 11-3. Assignment of LLC Membership Right	11-9
Form 11-4. Joinder Agreement	11-14
11.2.3. Non-Foreign Affidavit	11-14
Form 11-5. Certificate of Non-Foreign Status	11-15
11.3. Conversion of an Existing Entity	11-16
11.3.1. In General	11-16
11.3.2. Conversion of General Partnership to LLC	11-16
Form 11-6. Agreement to Convert General Partnership to Limited Liability Company	11-19

CONTENTS

Form 11-7.	Explanatory Statement — Conversion of General Partnership into LLC.	11-21
Form 11-8.	Term Is Continuation of Term of Partnership	11-22
Form 11-9.	Initial Capital Contributions — In Property Consisting of Partnership Interests in LLC's Predecessor	11-22
Form 11-10.	Assignment of General Partnership Interests to LLC	11-23
Form 11-11.	Resolutions of Members Approving Liquidation of Partnership into LLC.	11-23
11.3.3.	Conversion of Limited Partnership into LLC	11-24
11.3.4.	Conversion of Corporation into LLC	11-25
11.3.5.	Conversion of LLC into Corporation	11-26
11.4.	Statutory Mergers, Interest Exchanges, Conversions and Domestications	11-27
11.4.1.	Statutory Mergers	11-28
	Form 11-11A. Merger of Two Indiana LLCs	11-31
	Form 11-11B. Merger of Three Indiana LLCs with Different Classes of Interests	11-33
11.4.2.	Statutory Interest Exchanges.	11-36
11.4.3.	Statutory Conversions	11-37
	Form 11-11C. Articles of Conversion of Omega L.P.	11-37
11.4.4.	Statutory Domestications	11-38
11.5.	Recapitalizing the LLC.	11-38
	Form 11-12. Form of Amendment of Operating Agreement.	11-39
11.6.	Tax Issues in Reorganizations of LLC	11-40
11.6.1.	Hidden Tax Issues Associated with LLC Mergers	11-40
11.6.2.	Retention of EIN	11-40.1
11.7.	The LLC as a Taxpayer: Implications in Buying an Existing LLC.	11-40.2
11.7.1.	Introduction.	11-40.2
11.7.2.	The LLC as Taxpayer and Withholding Agent	11-40.3
	11.7.2.1. Employment Taxes	11-40.3
	11.7.2.2. Property and Excise Taxes	11-40.3
	11.7.2.3. Sales and Use Taxes; Registration-Type Taxes	11-41
	11.7.2.4. Nonresident Members.	11-41

11.7.2.5. Section 1446(f) – Withholding on Transfers by Non-U.S. Partners	11-41
11.7.2.6. Successor Liabilities	11-42.1
11.7.2.7. Partnership Audit Responsibilities	11-42.1
11.7.3. Drafting the Tax Indemnity Agreement/Interests Purchase Agreement	11-42.2
11.7.4. Acquiring an SMLLC	11-43
11.7.5. Using an SMLLC to Facilitate the Acquisition of an S Corporation’s Business	11-44
Form 11-13. Tax Gross-Up	11-46
11.8. Overview of Noncompensatory Partnership Options and Convertible Interest	11-47
CHAPTER 12: DOING INTERSTATE BUSINESS	12-1
12.1. Foreign LLCs Doing Business in Indiana.	12-2
12.1.1. Governing Law	12-2
12.1.2. Definitions	12-2
12.1.3. Procedure for Registration.	12-3
12.1.3.1. Filing Fee	12-4
12.1.4. Effect of Registration.	12-4
12.2. Indiana LLCs Doing Business Outside of Indiana	12-4
12.2.1. Ohio	12-5
12.2.2. Illinois	12-5
12.2.3. Delaware	12-6
12.2.4. District of Columbia	12-7
12.2.5. State LLC Fees	12-8
Table 12-1. Comparison of State LLC Fees and Other Information.	12-9
CHAPTER 13: PROFESSIONAL LIMITED LIABILITY COMPANIES AND LIMITED LIABILITY PARTNERSHIPS.	13-1
13.1. Historical Background	13-2
13.2. Comparison of LLCs and Professional Corporations	13-2
13.3. Comparison of LLCs and LLPs	13-4
Form 13-1. Certificate of Limited Liability Partnership	13-5
13.4. Form of Operating Agreement for LLC Conducting a Professional Practice	13-6
13.5. Law Firms as LLCs or LLPs.	13-6

CHAPTER 14: MISCELLANEOUS FORMS..... 14-1

14.1. Opinion Letters 14-2.1

 Form 14-1. Form of Opinion Letter in Connection with a
 Bank Loan to an LLC 14-2.1

14.2. Responsibility for Losses Derived From Guarantees of LLC
 Obligations 14-13

 Form 14-2. Indemnity and Contribution Agreement
 Obligation Guaranteed Only by Members 14-14

14.3. Pledges of LLC Interests..... 14-18

 Form 14-3. Collateral Assignment of Membership Interest
 and Security Agreement 14-19

 Form 14-4. Financing Statement 14-29

14.4. Other Borrowing Documents 14-30

 Form 14-5. Borrowing Resolution..... 14-30

 Form 14-6. Manager’s Certificate 14-32

 Form 14-7. Credit Enhancement Agreement 14-33

 Form 14-8. Guaranty Agreement..... 14-38

 Form 14-9. Pledge of Limited Liability Company
 Interests in ABC, LLC 14-48

14.5. Series LLCs..... 14-69

 14.5.1. General 14-69

 14.5.2. What is a Series LLC? 14-69

 Form 14-9A. Articles of Organization of Series LLC .. 14-71

 14.5.3. Observations 14-72.1

 14.5.4. Potential Benefits vs. Multiple LLCs 14-73

 14.5.5. Potential Uses of Series LLCs 14-74

 14.5.6. Potential Risks and Open Issues 14-75

 14.5.7. Practical Considerations and Drafting Series
 LLC Agreements 14-79

 14.5.8. Sample Series LLC Agreement..... 14-81

 14.5.9. Forms..... 14-81

 Form 14-10. Articles of Designation..... 14-81

 Form 14-11. Articles of Organization Provision
 Setting Forth Limitation of Interseries
 Liabilities 14-82

 Form 14-12. Provision Authorizing Manager of
 Manager-Managed Limited Liability
 Company to Designate Separate Series
 and Classes of Members and Interests ... 14-82

Form 14-13. Provision Designating Separate Series of Members and Interests	14-84
CHAPTER 15: COMPENSATION STRATEGIES FOR THE LLC	15-1
15.1. Introduction.	15-2
15.2. Code Section 83	15-3
15.3. Unrealized Appreciation	15-5
15.4. LLC (Partnership) vs. Corporation Compensation Methods	15-10
15.4.1. Corporation Context	15-10
15.4.1.1. Stock Grants	15-10
15.4.1.2. Stock Options	15-11
15.4.1.3. Phantom Stock Plans.	15-12
15.4.2. The LLC Context.	15-13
15.4.2.1. Equity Interests	15-14
15.4.2.1.1. Full Equity Interest	15-14
15.4.2.1.2. Options	15-14
15.4.2.2. Equity Interest vs. Non-Equity Incentive Compensation	15-15
15.4.3. Compensation Comparison Chart	15-16
15.5. Fiduciary Duties, Inspection Rights, and Other Duties to Equity Holders	15-19
15.5.1. Right of (Soon-to-Be-Former) Shareholders or Members	15-20
15.5.2. Fiduciary Duties Are Enforced Even Though Little Is at Stake	15-21
15.5.3. Fiduciary Duties of Minority Shareholders or Members Who Look to the Court Like Partners	15-21
15.6. Securities Law Issues	15-22
15.7. Member Exit Strategies: Buy-Out Arrangements.	15-22
15.8. Forms: Equity and Non-Equity-Based LLC Compensation Plans	15-23
15.8.1. Compensatory Grant of Membership Interest.	15-23
Form 15-1. Stock Grant Agreement.	15-23
Form 15-1A. Adjusted Capital Balance	15-29
Form 15-1B. Capital Accounts (Book-Up on Interest for Services)	15-29

CONTENTS

15.8.2. Phantom Membership Interest. 15-30.1
Form 15-2. Communications, LLC: Employee
Incentive Compensation Plan
(Corporate Format) 15-30.1
15.8.3. Grant of Nonqualified Options 15-40
Form 15-3. XYZ, LLC: Equity Incentive Plan 15-40
15.9. A Different Way of Looking at Carried Interests 15-50

**CHAPTER 16: MEMBER DISPUTES, DEADLOCK, AND
JUDICIAL REMEDIES 16-1**

16.1. Introduction and Scope 16-2
16.2. Deadlock Distinguished from Judicial Dissolution 16-2
16.3. Judicial Dissolution Under the Act 16-3
16.3.1. Statutory Standard 16-3
16.3.2. The “Not Reasonably Practicable to Carry on the
Business” Concept. 16-4
16.3.3. Who May Seek Judicial Dissolution and Practical
Considerations. 16-5
16.4. Minority Member Oppression and Fiduciary Duty Claims 16-6
16.4.1. Statutory Baseline 16-6
16.4.2. Case Law Considerations 16-7
16.4.3. Derivative Actions 16-9
16.4.4. Accounting as a Precondition to Member-Against-
Member Financial Claims 16-10
16.5. Drafting Escalation Ladders: Negotiation, Mediation,
and Arbitration 16-10
Form 16-1. Escalating Dispute Resolution 16-11
16.6. Coordinating Deadlock and Buy-Sell Mechanisms with the
Judicial Dissolution Remedy 16-13
Form 16-2. Acknowledgment of Adequacy of Contractual
Remedies. 16-14
16.7. Drafting Checklist. 16-16

**PART IV
APPENDICES**

APPENDIX A: [MEMBER-MANAGED] OPERATING
AGREEMENT. APP A-1
APPENDIX B: [MANAGER-MANAGED] OPERATING
AGREEMENT. APP B-1

APPENDIX C:	[PROFESSIONAL SERVICES] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY	APP C-1
APPENDIX D:	[MANAGEMENT COMMITTEE-MANAGED] OPERATING AGREEMENT OF _____ LIMITED LIABILITY COMPANY	APP D-1
APPENDIX E:	OPERATING AGREEMENT FOR SINGLE-MEMBER LLC—MANAGER-MANAGED WITH SUBCHAPTER S ELECTION	APP E-1
APPENDIX J:	OPERATING AGREEMENT OF [NELSON] ASSOCIATES, LLC	APP J-1
APPENDIX K:	OPERATING AGREEMENT OF DEERWOOD INVESTMENTS, LLC	APP K-1
APPENDIX L:	FIRST AMENDED AND RESTATED OPERATING AGREEMENT OF PROFITS INTEREST, LLC	APP L-1
APPENDIX M:	FORM OF CROSS-SPECIES MERGER AGREEMENT	APP M-1
APPENDIX N:	SERIES LLC AGREEMENT	APP N-1
APPENDIX O:	OPERATING AGREEMENT OF HARBOR SPRINGS LLC	APP O-1
APPENDIX P:	OPERATING AGREEMENT OF LONESOME PINE OF SMITH VALLEY LLC	APP P-1
APPENDIX Q:	OPERATING AGREEMENT OF BIOVENTURE, LLC	APP Q-1
APPENDIX R:	MEMBERSHIP INTERESTS PURCHASE AGREEMENT	APP R-1
APPENDIX T:	STATES WITH SERIES LLC STATUTES	APP T-1
APPENDIX U:	AMENDED AND RESTATED OPERATING AGREEMENT OF HOOSIERTEK LLC	APP U-1
APPENDIX V:	UNIT PURCHASE AGREEMENT	APP V-1
APPENDIX W:	UNIT PURCHASE AGREEMENT (F DROP)	APP W-1
APPENDIX X:	CHECK-THE-BOX REGULATIONS	APP X-1
APPENDIX Y:	OPERATING AGREEMENT OF EMERALD CITY COMPANIES, LLC	APP Y-1
APPENDIX Z:	_____, LLC SUBSCRIPTION AGREEMENT FOR PURCHASE OF LLC INTEREST	APP Z-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 Indiana Business Flexibility Act Sections. . . . INDEX-8

Table of Cases INDEX-16

References. INDEX-17

Subject Index INDEX-18

Forms Index INDEX-32