

Contents

About the Author	v
Preface	vii
Software Instructions	ix
Table of Parts and Chapters	xi

PART I FORMATION

CHAPTER 1: INTRODUCTION	1-1
Introduction – The Revised LLC Act	1-2
1.1. Nature and Use of this Practice Manual	1-3
1.2. Comparison of the LLC with Other Entities	1-4
Table 1 Comparison of Limited Liability Companies, Limited Partnerships, S Corporations, and C Corporations and Limited Liability Partnerships	1-5
1.2.1. Comparison to Corporations	1-10
1.2.2. Comparisons to Partnerships	1-11
1.3. Considerations When Forming an LLC	1-11
1.4. History of the LLC Entity	1-13
1.5. Classification of LLC as a Partnership for Tax Purposes	1-14
1.5.1. Introduction	1-14
1.5.2. Understanding the Check-the-Box Regulations	1-15
1.5.2.1. Automatic Partnership Classification	1-16
1.5.2.2. Single-Member LLC	1-16
1.5.2.3. Corporate Classification Election	1-17
1.5.2.4. LLCs Formed Prior to January 1, 1997	1-18
1.5.2.5. Changes in Classification	1-19
1.5.2.6. Employer Identification Numbers	1-19
1.5.2.7. Tax Consequences of Conversions ...	1-19
1.5.3. Impact of Check-the-Box Regulations	1-20
1.5.4. Self-employment Tax Consequences of Partnership Classification	1-21
1.5.5. Utah Taxation	1-23

1.6. Overview of Utah Revised Limited Liability Company Act 1-23

1.7. Etymology and Comparison of LLC Acts 1-26

 1.7.1. Flexible vs. Bulletproof Statutes 1-26

 1.7.2. Term of the LLC 1-27

 1.7.3. Number of Members 1-27

 1.7.4. Dissolution 1-28

 1.7.5. Series LLC 1-28

1.8. Structure of this Manual 1-28

CHAPTER 2: ARTICLES OF ORGANIZATION AND FORMATION 2-1

2.1. Introduction 2-4

2.2. Pre-Formation Matters 2-4

 Form 2-1. Checklist for Formation of LLC 2-6

 Form 2-2. Letter Directing Execution and Filing of Articles of Organization and Evidencing Consent of Members and Managers 2-32

2.3. Articles of Organization 2-33

 2.3.1. Basic Requirements of Articles of Organization 2-33

 2.3.2. Discretionary Provisions in Articles of Organization 2-38

 2.3.3. Constructive Notice of Articles of Organization and Certain Filings 2-42

 2.3.4. Execution of Articles of Organization 2-43

 2.3.5. Various Forms of Articles of Organization 2-45

 Form 2-3. Articles of Organization – Specific Business Purpose – Management by Member(s) without Restrictions on the Authority of Member(s) 2-45

 Form 2-4. Articles of Organization – Management by Manager(s) without Limiting Authority – Broadest Business Purpose 2-47

 Form 2-5. Articles of Organization – Executed by Organizer – Management by Manager(s) – Limited Member Authority – Broad Business Purpose 2-49

Form 2-6.	Resolution of Organizer – Listing Initial Members [and Managers] . . .	2-51
Form 2-7.	Execution of Articles of Organization by Attorney-in-Fact for a Member or Manager	2-52
2.3.6.	Optional Provisions	2-52
2.3.6.1.	Provision Limiting Agency Authority of Members	2-53
Form 2-8.	Articles Provision – Management by Members – Limitation of Authority of Members	2-54
2.3.6.2.	Provision Limiting Agency Authority of Managers	2-54
Form 2-9.	Articles Provision – Management by Managers – Limitation of Authority of Managers and Members	2-55
2.3.6.3.	Provision Limiting Change of Tax Classification	2-56
Form 2-10.	Articles Provision – Limiting Change of Tax Classification	2-56
2.3.6.4.	Provision Requiring Written Operating Agreement No Longer Necessary	2-56
2.3.7.	Provisions Prohibited in Articles of Organization or Operating Agreement	2-57
2.3.8.	Filing of Articles of Organization and Formation of the LLC	2-58
2.4.	Correcting Filed Documents	2-60
Form 2-11.	Articles of Correction of Articles of Organization	2-61
2.5.	Amendment of Articles of Organization	2-62
Form 2-12.	Unanimous Consent of Members to Amend Articles of Organization	2-65
Form 2-13.	Consent of Members to Amend Articles of Organization Where Operating Agreement Does Not Require Unanimity	2-66

Form 2-14. Certificate of Amendment to Articles of Organization – Option of Deleting a Prior Member and Adding a New Member . . . 2-67

2.6. Name Selection, Protection, and Use 2-68

2.6.1. Selecting a Distinguishable Name 2-68

2.6.2. Name Reservation with the Division 2-71

2.6.3. Names, Infringement, and Unfair Competition . . . 2-72

2.6.4. Federal and State Protection of Name as a Trademark or Service Mark 2-73

2.6.4.1. How a Trademark Differs from a Name or DBA 2-73

2.6.4.2. Benefits of Trademark Registration . . . 2-73

2.6.4.3. Benefits of Utah State Trademark Registration 2-74

2.6.4.4. Utah State Trademark Registration Process 2-75

2.6.4.5. Federal Trademark Application Process 2-75

2.6.4.6. Benefits Specific to Federal Trademark Registration 2-76

2.6.4.7. Cost of Federal Trademark Registration 2-78

2.6.4.8. Name and Trademark Searches 2-78

2.6.5. Use the Full LLC Name to Avoid Personal Liability 2-79

2.7. Annual Report Filed with the Division 2-79

Form 2-15. Change of Registered Agent 2-81

Form 2-16. Change of Address of Registered Agent 2-82

Form 2-17. Resignation of Registered Agent 2-82

Form 2-18. Change of Address of Registered Office 2-82

**PART II
OPERATIONS**

CHAPTER 3: THE OPERATING AGREEMENT 3-1

3.1. Introduction 3-2

3.2. “Operating Agreement” Defined 3-3

3.3. Flexibility of LLC Form 3-3

3.4. Form of Operating Agreement 3-5

3.4.1. Why Have an Operating Agreement 3-5

3.4.2.	Written Statement Required for Some Matters	3-6
3.4.3.	One Member LLCs	3-8
3.5.	Unanimous Adoption of Initial Operating Agreement	3-8
3.6.	Amendment of Operating Agreement	3-8
	Form 3-1. General Form of Amendment to Operating Agreement	3-9
	Form 3-2. General Form of Amendment and Restatement of Operating Agreement	3-10
3.7.	LLC as a Party to its Operating Agreement	3-11
3.8.	Interpretation and Enforcement	3-11
3.9.	Form Operating Agreements	3-11
CHAPTER 4: ORGANIZATION		4-1
4.1	Drafting LLC Organization Provisions	4-3
4.2.	Introductory Paragraph	4-4
	Form 4-1. Introductory Paragraph – Names Parties	4-4
	Form 4-2. Introductory Paragraph – Parties Referenced as Signatories	4-4
4.3.	Background to Agreement	4-4
	4.3.1. LLC Already Organized	4-5
	Form 4-3. Recital Confirming Articles of Organization Have Been Filed	4-5
	4.3.2. Agreement to Organize LLC	4-6
	Form 4-4. Alternate Recital: General Agreement to Organize LLC	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 with “Membership”	4-7
	4.5.2. “Interest Holder” Compared with “Member”	4-8
	Form 4-6. General Definitions	4-9
4.6.	Name	4-10
	Form 4-7. Name Provision for Member-managed LLC	4-11
	Form 4-8. Name Provision for Manager-managed LLC	4-11
4.7	Purpose	4-11
	Form 4-9. Any Lawful Purpose	4-11
	Form 4-10. Specific Purpose	4-12
	Form 4-11. Purpose Limited to Real Estate	4-12
4.8.	Term	4-12

Form 4-12.	Term Commences on Date of Filing of Articles	4-13
Form 4-13.	Term Commences upon Execution of Operating Agreement	4-13
4.9.	Registered Office and Agent	4-13
Form 4-14.	Registered Office and Agent	4-14
4.10.	Street Address of LLC’s Designated Office	4-14
Form 4-15.	Address of Designated Office; Required Records	4-15
4.11.	Members	4-15
Form 4-16.	Schedule of Members Set Forth in Exhibit	4-15
Form 4-17.	Schedule of Members Set Forth in Text of Agreement	4-16
Form 4-18.	Schedule of Members (without Percentages)	4-16
4.12.	Miscellaneous Provisions	4-17
Form 4-19.	Miscellaneous Provisions	4-17
Form 4-20.	Mandatory Arbitration Provision; Attorney Fees	4-20
4.13.	Execution	4-21
4.14.	Post-Organization Communication with Clients	4-22
Form 4-21.	Form of Post-Organization Reporting Letter to Client	4-22
Form 4-22.	Alternate Form of Letter to New LLC Regarding Operational and Other Post- Formation Matters	4-24
CHAPTER 5: CAPITAL IN THE LLC		5-1
5.1.	Drafting Capital Provisions	5-3
5.2.	Initial Capital Contributions	5-3
Form 5-1.	Initial Capital Contributions in Cash	5-4
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 [Use with Form 5-3]	5-5
Form 5-5.	Initial Capital Contributions – Nature and Value of Contribution Set Forth on Exhibit	5-5
5.2.1.	Contribution Agreement	5-6

	Form 5-6. Contribution Agreement – Interest in an LLC Contributed to a Holding Company	5-6
5.3.	Additional Capital Contributions	5-8
	Form 5-7. No Liability beyond Additional Capital Contributions	5-8
	Form 5-8. Additional Capital Contributions at Discretion of Manager – Limit on Amount	5-8
	Form 5-9. Additional Capital Contributions at Discretion of Members – Limit on Amount	5-9
	Form 5-10. Additional Capital Contributions Required by Members’ Vote – Dilution of Interest for not Contributing – Limit on Amount	5-10
	Form 5-11. Additional Interest – Right of First Refusal	5-10
5.4.	Default in Payment of Contributions	5-11
	Form 5-12. Reduction of Member’s Interest for Failure to Make Contribution	5-13
	Form 5-13. Reduction of Member’s Interest for Failure to Make Contribution – Alternate Contributors Allowed	5-13
	Form 5-14. Damages and Collection Costs on Unpaid Contribution – Reduction of Member’s Interest for Failure to Make Contribution and Pay Damages	5-13
5.5.	Interest on Capital Contributions	5-14
	Form 5-15. No Interest on Capital Contributions	5-14
	Form 5-16. Interest on Capital Contributions	5-14
5.6.	Return of Capital Contributions to Members	5-15
	Form 5-17. Return of Capital Contributions – Unanimous Consent of Members and Compliance with Act Required	5-16
5.7.	Form of Distribution	5-16
	Form 5-18. Form of Distribution – No Right to Receive Anything but Cash	5-17
	Form 5-19. Form of Distribution – Form of Distribution in Discretion of the Company	5-17
5.8.	Capital Accounts	5-18
	Form 5-20. Capital Accounts Required	5-19
5.9.	Loans	5-19

Form 5-21.	Loans – General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future	5-19
Form 5-22.	Loans – Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed upon in Future	5-20
5.10.	Noncompensatory Options and Convertible Equity	5-20
5.10.1.	Treatment of Grant of Options	5-21
5.10.2.	Treatment of Lapse of Noncompensatory Options	5-21
5.10.3.	Exercise of Noncompensatory Options	5-21
5.10.4.	Capital Accounts and Noncompensatory Options	5-21
5.10.5.	When an Optionee Is Considered a Partner	5-22
5.11.	Duty of Member to Return Wrongful Distributions to LLC	5-23

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)	6-5
6.4.1.	Overview	6-5
6.4.2.	The Three Alternative Allocation Tests	6-7
6.4.2.1.	The First Test: Partners’ Interests	6-8
6.4.2.2.	The Second Test: Substantial Economic Effect and Capital Accounts	6-8
6.4.2.3.	The Third Test: Nonrecourse Debt	6-9
6.4.3.	Allocations to Interest Holders	6-10
6.5.	Definitions	6-11
6.5.1.	Distribution-related Definitions	6-11
	Form 6-1. Distribution Definitions	6-11
6.5.2.	Allocation-related Definitions	6-12
	Form 6-2. Tax Definitions	6-12
6.6.	Basic Distribution Provisions	6-15
6.6.1.	In General	6-15
6.6.2.	Cash Flow from Operations	6-16
	Form 6-3. Distributions of Cash Flow	6-16

6.6.3.	Cash Flow Distributions to Fund Tax Liabilities . . .	6-16
	Form 6-4. Distributions to Pay Taxes	6-16
	Form 6-5. Tax Payment Loans	6-17
6.6.4.	Capital Proceeds	6-19
	Form 6-6. Distributions of Capital Proceeds . . .	6-19
6.6.5.	Liquidation Proceeds	6-19
	Form 6-7. Liquidation and Dissolution	6-20
	Form 6-8. Liquidation and Dissolution – Deficit Restoration Obligation	6-20
6.7.	Basic Allocation Provisions	6-21
6.7.1.	Basic Allocations of Income and Loss	6-21
	Form 6-9. Profit or Loss with Optional Special Allocations for Capital Transactions	6-22
6.7.2.	Qualified Income Offset and Minimum Gain Chargeback	6-23
	Form 6-10. Qualified Income Offset and Minimum Gain Chargeback	6-23
6.7.3.	Other Regulatory Allocations with Optional Special Allocations for Capital Transactions	6-24
	Form 6-11. Regulatory Allocations (Optional)	6-25
6.7.4.	General Provisions	6-26
	Form 6-12. General Provisions	6-27
6.8.	Disproportionate Distribution and Allocation Provisions . . .	6-28
6.8.1.	Distribution Preferences	6-28
	Form 6-13. Distribution Preference	6-28
6.8.2.	Disproportionate Allocation of Losses	6-29
	Form 6-14. Disproportionate Allocation of Loss	6-30
6.8.3.	Flip-Flops	6-30
	Form 6-15. Flip-Flop on Sale	6-31
6.8.4.	Targeted Capital Account Approach to Allocations	6-32
	Form 6-16. Targeted Capital Account Allocation	6-32
CHAPTER 7: MANAGEMENT PROVISIONS		7-1
7.1.	Drafting LLC Management Provisions.	7-4
7.1.1.	General Flexibility under the Act	7-4

7.1.2.	Typical Approaches	7-5
7.1.3.	Managers and Officers	7-5
7.2.	Member-managed LLC Provisions	7-6
Form 7-1.	Simple Member-management Provision	7-7
Form 7-2.	Member Management with Appointment of Ministerial Manager	7-8
7.3.	Representative Management	7-8
7.3.1.	Management by a “General Partner”-like Manager	7-10
Form 7-3.	Manager with “General Partner”-like Authority [with Reservation of Authority to Members and Limitation of Agency Authority of Members]	7-10
Form 7-4.	Manager with “General Partner”-like Authority – Alternate Form [No Reservation of Authority to Members; with Limitation of Agency Authority of Members]	7-13
7.3.2.	Management by Management Committee	7-14
Form 7-5.	Management Committee	7-14
7.3.3.	Management by One Class of Members	7-16
Form 7-6.	Definition of Class A and Class B Members	7-17
Form 7-7.	Management by Class A Members (Class B Members Not Agents)	7-17
Form 7-8.	Management by Class A Members (Class B Members Remain Agents)	7-18
7.3.4.	Corporate-like Management by “Board of Directors,” with Committee Appointed and Officers Elected by the Board	7-19
Form 7-9.	Corporate-like Management by “Board of Directors”	7-19
7.4.	Removal and Replacement of Managers	7-25
Form 7-10.	Removal of Manager for Any Reason or No Reason	7-25
Form 7-11.	Removal of Manager for Only Specified Reasons	7-26
Form 7-12.	Replacement of Manager with Designated Successor	7-27
7.5.	Meetings of Members	7-27

	Form 7-13.	Procedure for Calling and Holding Meetings – Tracks the Act	7-29
	Form 7-14.	Procedure for Calling and Holding Meetings – Only Class A Members Vote . .	7-30
7.6.	Action Without a Meeting		7-31
	Form 7-15.	Informal Actions	7-33
7.7.	Consents of Members and Managers		7-33
	Form 7-16.	Written Consents and Notices	7-34
	Form 7-17.	Form of Unanimous Written Consent of Members	7-34
	Form 7-18.	Form of Written Consent of Members Entitled to Receive Majority of LLC’s Profits	7-36
	Form 7-19.	Form of Unanimous Written Consent of Managers	7-37
	Form 7-20.	Form of Written Consent of Majority of Managers	7-39
	Form 7-21.	Sample Resolutions Regarding Bank Accounts [Manager-managed LLC; Signing Authority Specified]	7-40
7.8.	Certain Fundamental Change Decisions		7-41
7.9.	Deadlock and Resolution		7-42
	Form 7-22.	Arbitration of Deadlock	7-43
	Form 7-23A.	“Shot Gun” Buy-out in the Event of Deadlock	7-43
	Form 7-23B.	“Shot Gun” Buy-Sell Any Time	7-46
	Form 7-24.	Submission of Sealed Bids in the Event of Deadlock	7-48
	Form 7-25.	Put-Call Option for Deadlock Resolution	7-49
7.10.	Compensation and Reimbursement		7-50
	Form 7-26.	No Arrangement for Compensation, but Reimbursement (Member-managed)	7-50
	Form 7-27.	Approval Required for Compensation and Reimbursement (Member-managed)	7-51
	Form 7-28.	Approval Required for Compensation and Reimbursement (Manager-managed)	7-51
	Form 7-29.	Extraordinary Compensation (Manager-managed)	7-52

	Form 7-30.	Minimum and Maximum Compensation Aggregated with Family Compensation	7-52
7.11.		Standard of Care and Degree of Loyalty	7-53
	Form 7-31.	Standard of Care and Degree of Loyalty	7-55
	Form 7-32.	Standard of Care and Degree of Loyalty – Same Obligations as Imposed on Corporate Directors	7-56
7.12.		Indemnification	7-57
	7.12.1.	Limitations	7-57
		Form 7-33. Articles of Organization Provision – Broadest Purpose Including Indemnification of Members, Officers, and Managers	7-58
	7.12.2.	Discretionary Indemnification of Managers	7-58
	7.12.3.	Mandatory Indemnification of Managers and Members	7-60
	7.12.4.	Discretionary Indemnification of Members, Employees and Others	7-60
	7.12.5.	Insurance	7-61
	7.12.6.	Indemnification Provisions	7-61
		Form 7-34. Liability and Indemnification of Members (Member-managed)	7-61
		Form 7-35. Liability and Indemnification of Manager	7-62
		Form 7-36. Liability and Indemnification of Managers – Similar to URBCA	7-62
7.13.		Power of Attorney	7-63
	Form 7-37.	Power of Attorney to General Manager	7-64
7.14.		Confidentiality	7-65
	Form 7-38.	Confidentiality	7-65

CHAPTER 8: TRANSFER AND BUY-SELL PROVISIONS			8-1
8.1.		Introduction	8-4
8.2.		The Act’s Default Rules for Transfers	8-4
8.3.		Tax Aspects of Transfer Restrictions	8-6
	8.3.1.	Termination of the LLC	8-6
	8.3.2.	Basis Issues	8-7

8.4.	Preliminary Drafting Considerations	8-7
	Form 8-1. Definition Provision – Transfer	8-7
	Form 8-2. Definition Provisions – Interest and Membership	8-8
8.5.	Transfer Provisions Embodying the Act’s Default Rule	8-8
	Form 8-3. Transfer Provision Following Act’s Default Rule [with No Deemed Termination Option]	8-9
8.6.	Transfer Provisions Permitting Transfer of Interests	8-9
	Form 8-4. Free Transferability of Interests and Membership	8-9
	Form 8-5. Definition of Class A and Class B Members, Interests, and Interest Holders	8-10
	Form 8-6. 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	8-11
	Form 8-7. Free Transferability of Interests and Limited Transferability of Membership	8-12
8.7.	Transfer Provisions that Prohibit All Transfers	8-12
	Form 8-8. Absolute Prohibition of Transfers	8-12
8.8.	Transfer Provisions Permitting Transfers on Conditions	8-13
	8.8.1. In General	8-13
	Form 8-9. Transfer Permitted on Satisfaction of Certain Conditions	8-14
	8.8.2. Rights of First Refusal	8-15
	Form 8-10. Right of First Refusal; LLC Purchases; Installments Allowed	8-15
	Form 8-11. Right of First Refusal; Members Match Purchase Payment Terms	8-16
	Form 8-12. Right of First Offer; LLC Purchases at Calculated Value; Cash Purchase	8-18
	8.8.3. Admission of Transferee as a Member	8-19
	Form 8-13. Admission of Transferee as Member – Unanimous Written Consent of Members Required	8-20
	Form 8-14. Transferee Automatically Admitted as Member	8-20

	Form 8-15. Admission of Transferee as Member – Multiple Consents of Members	8-20
8.8.4.	Transfers to Members’ Affiliates and Family	8-21
	Form 8-16. Definition Provision – Family	8-21
	Form 8-17. Transfers to Affiliates and Family	8-22
8.9.	Withdrawal Under the Act	8-22
8.9.1.	Voluntary Withdrawal	8-22
	Form 8-18. Definition Provision – Voluntary Withdrawal	8-22
	Form 8-19. Voluntary Withdrawal – Not Permitted	8-23
8.9.2.	Involuntary Withdrawal	8-23
	Form 8-20. Definition Provision – Involuntary Withdrawal (Long Form)	8-23
	Form 8-21. Definition Provision – Involuntary Withdrawal (Short Form)	8-25
8.10.	Consequences of Dissociation in General	8-25
	Form 8-22. Successor of Withdrawn Member Continues as Unadmitted Assignee	8-25
	Form 8-23. Successor of Withdrawn Member Continues as Substitute Member (Option to LLC and Remaining Member to Buy All or Part of Interest)	8-26
8.11.	Creating Buy-Out Rights	8-27
	Form 8-24. Optional Buy-Out After Involuntary Withdrawal; LLC Buys for Cash	8-27
	Form 8-25. Mandatory Buy-Out After Involuntary Withdrawal; Members Buy; Installments Permitted	8-28
8.12.	Valuation Provisions	8-29
	Form 8-26. Agreed Values	8-29
	Form 8-27. Book Value	8-30
	Form 8-28. Appraised Value	8-31
8.13.	Miscellaneous Transfer Provisions and Forms	8-31
	Form 8-29. Installment Buy-Outs	8-31
	Form 8-30. Procedure for Discretionary Buy-Outs	8-32
	Form 8-31. Members’ Purchase Obligation if LLC Is Insolvent	8-33
	Form 8-32. Members Not Required to Assume LLC’s Purchase Obligation	8-34

CHAPTER 9: DISSOLUTION AND WINDING UP 9-1

9.1. Introduction – Some Historical Perspective 9-3

9.2. The Revised Act’s Dissolution Provisions 9-4

9.3. Operating Agreement Dissolution Provisions 9-6

 Form 9-1. Dissolution – Comprehensive Events of
 Dissolution; Requires All Members to
 Continue if Dissolution Is Due to Dissociation
 or Withdrawal of Member 9-7

 Form 9-2. Dissolution – Limited Possibility of
 Dissolution 9-7

 Form 9-3. Dissolution – Requires Definition of
 Involuntary Withdrawal; Requires Unanimity
 of Members to Continue if Dissolution Is
 Due to Dissociation of Member 9-8

 Form 9-4. Dissolution – Requires Definition of
 Involuntary Withdrawal; Requires Consent of
 Members to Continue if Dissolution Is
 Due to Dissociation of a Class A
 Member-manager 9-8

 Form 9-5. Less than Unanimous Vote Required to
 Continue after Dissolution 9-9

9.4. Operating Agreement Provisions for Avoiding
 Dissolution 9-9

 Form 9-6. Provision for Avoidance of Dissolution if LLC
 Has No Members 9-10

9.5. Approving Dissolution or Continuance 9-10

 Form 9-7. Sample Resolutions Approving Continuation
 of Business after Dissolution 9-10

 Form 9-8. Sample Resolution Approving Dissolution
 of the LLC 9-11

 Form 9-9. Consent of Members to Dissolution,
 Liquidation and Winding Up of Affairs of
 LLC and Subsidiary 9-12

9.6. Articles of Dissolution 9-14

 Form 9-10. Articles of Dissolution Signed by Manager
 or Authorized Member 9-16

9.7. Judicial Dissolution 9-17

9.8. Procedure for Winding Up and Distribution
 of Assets 9-19

 Form 9-11. Procedure for Winding Up in
 Member-managed LLC 9-23

Form 9-12.	Procedure for Winding Up in Manager-managed LLC	9-24
Form 9-13.	Procedure for Winding Up in Member-managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-24
Form 9-14.	Procedure for Winding Up in Manager-managed LLC; Reference to Another Section of Operating Agreement for Manner of Distribution to Members	9-25
Form 9-15.	Procedure for Winding Up and Distribution of Assets in Manager-managed LLC – Manager Acts as Liquidating Trustee	9-25

CHAPTER 10: BOOKS, RECORDS, AND

	ACCOUNTING	10-1
10.1.	Introduction	10-3
10.2.	Banking	10-5
	Form 10-1. Bank Accounts	10-5
10.3.	Records	10-6
	Form 10-2. Maintenance of Records – Member- managed or Manager-managed LLC (Short Form)	10-6
	Form 10-3. Maintenance of Records – Member- managed or Manager-managed LLC (Long Form)	10-7
10.4.	Accounting Period	10-8
	Form 10-4. Calendar Year Accounting Period Specified	10-8
	Form 10-5. Fiscal Year Accounting Period Specified	10-9
	Form 10-6. Year to Be Determined by Members	10-9
	Form 10-7. Annual Accounting Period Established by Manager	10-9
10.5.	Reports to Members	10-9
	Form 10-8. Preparation of Reports for Member- managed or Manager-managed LLC (Short Form)	10-10
	Form 10-9. Preparation of Reports for Member- managed or Manager-managed LLC (Long Form)	10-10
10.6.	Annual Reports Filed with the Division	10-11

10.7.	“Tax Matters Partner”	10-13
	Form 10-10. Tax Matters Partner for Member- managed or Manager-managed LLC (Short Form)	10-13
	Form 10-11. Tax Matters Partner for Member- managed or Manager-managed LLC (Long Form)	10-13
10.8.	Tax Elections	10-14
	Form 10-12. Tax Elections – Member-managed or Manager-Managed LLC	10-14
	Form 10-13. Tax Elections – Applies to Code Section 754 Only – Member-managed or Manager-managed LLC	10-14
10.9.	Title to Property	10-15
	Form 10-14. Title to Property – in LLC’s Name	10-15
	Form 10-15. Title to LLC Property – Use of Nominee Permitted	10-15
10.10.	Copyright Ownership of Management’s Works of Authorship	10-16

PART III SPECIAL CONSIDERATIONS

CHAPTER 11: REORGANIZATION OF THE LLC	11-1
11.1. In General	11-3
11.2. Obtaining and Admitting Additional Members	11-3
11.2.1. Admitting Additional Members Acquiring an Interest from LLC	11-3
Form 11-1. Admission of Additional Member Acquiring Interest from LLC with Unanimous Consent of Members	11-5
Form 11-2. Admission of Additional Member Acquiring Interest from LLC with Consent of Members Entitled to Receive Majority of Profits of LLC	11-6
Form 11-3. Member’s Preemptive Right – Installments Allowed	11-6

	Form 11-4.	Second Offer to Members Before Sale to Third Parties	11-7
11.2.2.	Acquisition of Interest from the LLC		11-8
	Form 11-5.	Simple Subscription Agreement for LLC Membership Interest (Letter Format)	11-9
	Form 11-6.	Long Form of Subscription Agreement for LLC Membership Interest [Managed by General Manager][Refers to an Offering Memorandum]	11-10
	Form 11-7.	First Amendment to Operating Agreement and Consent Admitting Acquiror of Interest as a Member	11-16
11.2.3.	Acquisition of Interest from Another Member		11-17
	Form 11-8.	Assignment of LLC Membership Right [with Attached Form of Written Consent of the Company]	11-19
	Form 11-9.	Joinder Agreement	11-24
	Form 11-10.	Agreement of Sale and Purchase	11-25
11.3.	Conversion of an Existing Entity into an LLC		11-30
	11.3.1.	In General	11-30
	11.3.2.	Conversion of General Partnership into LLC	11-32
	Form 11-11.	Agreement to Convert General Partnership into LLC	11-35
	Form 11-12.	Explanatory Statement – Conversion of General Partnership into LLC	11-37
	Form 11-13.	Term Is Continuation of Term of Partnership	11-38
	Form 11-14.	Initial Capital Contributions – In Property Consisting of Partnership Interests in LLC’s Predecessor	11-38

	Form 11-15. Assignment of General Partnership Interests to LLC . . .	11-38
	Form 11-16. Resolutions of Members Approving Liquidation of Partnership into LLC	11-39
11.3.3.	Conversion of Limited Partnership into LLC	11-40
11.3.4.	Conversion of Corporation into LLC	11-41
11.4.	Conversion of LLC into Corporation	11-43
11.5.	Mergers Involving a Utah LLC	11-46
11.6.	Recapitalizing the LLC	11-48
11.7.	Division of the LLC into Two or More LLCs	11-48
	Form 11-17. Agreement of Division	11-49
CHAPTER 12: DOING INTERSTATE BUSINESS		12-1
12.1.	Foreign LLCs Doing Business in Utah	12-2
12.1.1.	Introduction	12-2
12.1.2.	Governing Law	12-2
12.1.3.	No Statutory Definition of Doing Business in Utah	12-3
12.1.4.	Procedure for Registration in Utah of Foreign LLC	12-4
12.1.5.	Foreign LLC’s Name Requirements or Assumed Name for Use in Utah	12-6
12.1.6.	Issuance of Registration	12-6
12.1.7.	Amended Applications	12-7
12.1.8.	Withdrawal and Revocation of Registration	12-8
12.1.9.	Doing Business in Utah Without Authorization	12-9
12.2.	Utah LLCs Doing Business Outside Utah	12-10
	Table 2. Summary of Foreign LLC Registration Requirements	12-11
CHAPTER 13: [RESERVED: PROFESSIONAL SERVICE LLCs]		13-1
CHAPTER 14: [RESERVED: EQUITY-BASED COMPENSATION STRATEGIES]		14-1
CHAPTER 15: [RESERVED: COMMERCIAL AND SECURITIES LAW ASPECTS OF LLCs]		15-1

CHAPTER 16: [RESERVED: SINGLE MEMBER LLCs] .. 16-1

CHAPTER 17: LIMITED USE OF LLC BY TAX-EXEMPT ORGANIZATIONS 17-1

17.1. Introduction 17-2

17.2. Use of LLC by Exempt Organizations 17-2

 17.2.1. Use of LLC as a Wholly-Owned
 Subsidiary of an Exempt Organization to
 Carry out a “Business” Purpose 17-2

 17.2.2. Use of LLC as Enterprise Jointly Owned
 by Two or More Tax-Exempt Organizations
 to Carry out a Business Purpose 17-3

 17.2.3. Use of LLC as the Wholly-Owned Subsidiary
 of an Exempt Organization to Carry out an
 Exempt Purpose 17-4

 17.2.4. Use of LLC as a Subsidiary of a Tax-Exempt
 Organization 17-7

 17.2.5. Use of LLC as an Enterprise Jointly Owned
 by Two or More Tax-Exempt Organizations to
 Carry out an Exempt Purpose 17-8

17.3. Use of the LLC as “Freestanding” Exempt
 Organization 17-8

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 18-3

18.3. Property of the Estate 18-4

 Form 18-1. Operating Agreement Provision –
 Limitation on Obligation to Make
 Additional Capital Contributions 18-5

18.4. May a Member Commence an Involuntary Case
 Against an LLC? 18-5

18.5. What Approval is Needed to Approve the Filing of a
 Voluntary Case by an LLC? 18-6

 Form 18-2. Operating Agreement Provision –
 Unanimous Consent of Members to
 Filing a Voluntary Case 18-7

Form 18-3.	Operating Agreement Provision – Consent of Majority of Members to Filing a Voluntary Case	18-8
Form 18-4.	Operating Agreement Provision – Member Vote Required for Filing of Voluntary Case	18-8
Form 18-5.	Operating Agreement Provision – Member and Manager Vote Required for Filing of Voluntary Case	18-9
Form 18-6.	Resolutions of Members in Member- managed LLC Consenting to Filing a Voluntary Case Under Chapter 7	18-10
Form 18-7.	Resolutions of Board of Directors in Director-managed LLC Consenting to Filing a Voluntary Case Under Chapter 11	18-11
18.6.	Creating Limitations on the Ability of an LLC to Commence a Voluntary Case – Single-Purpose Bankruptcy Remote LLCs	18-12
Form 18-8.	Operating Agreement Provision – Purpose Clause for a SPBR LLC	18-13
Form 18-9.	Operating Agreement Provision – Management of Business and Affairs of the Company	18-14
Form 18-10.	Operating Agreement Provision – Transfers	18-18
Form 18-11.	Operating Agreement Provision – Dissolution of the Company	18-19
Form 18-12.	Operating Agreement Provision – Special Amendment Provision	18-20
18.7.	LLC Interest as Property of a Bankrupt Member’s Estate	18-20
18.8.	Right of the LLC or Remaining Members to Terminate Management Rights of a Bankrupt Member	18-21
18.9.	Member’s Bankruptcy as an Event of Dissolution	18-22
18.10.	Buyout of a Member’s Interest in the Event of the Member’s Bankruptcy	18-24
CHAPTER 19: [RESERVED: PERSONAL USE LLCs		19-1
CHAPTER 20: [RESERVED]		20-1

CHAPTER 21:	[RESERVED]	21-1
CHAPTER 22:	[RESERVED]	22-1
CHAPTER 23:	[RESERVED]	23-1
CHAPTER 24:	[RESERVED]	24-1
CHAPTER 25:	[RESERVED]	25-1
CHAPTER 26:	[RESERVED]	26-1
CHAPTER 27:	[RESERVED]	27-1
CHAPTER 28:	[RESERVED]	28-1
CHAPTER 29:	MISCELLANEOUS FORMS	29-1
29.1.	Opinion Letters	29-2
	Form 29-1. Checklist of Due Organization, Valid Existence, and Good Standing of a Utah LLC	29-2
	Form 29-2. Form of Opinion Letter in Connection with a Bank Loan to an LLC	29-5
	Form 29-3. Form of Borrower’s Certificate per Opinion Letter	29-11
29.2.	Responsibility for Losses Derived from Guarantees of LLC Obligations	29-13
	Form 29-4. Indemnity and Contribution Agreement – Obligation Guaranteed Only by Members	29-15
	Form 29-5. Unconditional Personal Guaranty of Member	29-19
29.3.	Pledges of LLC Interests	29-21
	Form 29-6. Collateral Assignment of Membership Interest and Security Agreement – Including a Consent to the Assignment by the Members of the LLC	29-22
	Form 29-7. Financing Statement	29-31
	Form 29-8. Form of Pledge of Interest in LLC	29-32
29.4.	Alternative Dispute Resolution [Reserved]	29-51
	Form 29-9. Alternative Dispute Resolution [Reserved]	29-51

**PART IV
APPENDICES**

APPENDICES O OPERATING AGREEMENTS

O-1:	MEMBER-MANAGED OPERATING AGREEMENT OF UTAH LIMITED LIABILITY COMPANY	APP O1-1
O-2:	MANAGER-MANAGED OPERATING AGREEMENT OF UTAH LIMITED LIABILITY COMPANY	APP O2-1
O-3:	[RESERVED]	APP O3-1
O-4:	TWO CLASSES OF MEMBERS, WITH ONE CLASS OF MEMBER-MANAGERS OPERATING AGREEMENT OF UTAH LIMITED LIABILITY COMPANY	APP O4-1
O-5:	SHORT FORM OF OPERATING AGREEMENT (MANAGER-MANAGED) ..	APP O5-1
O-6:	[RESERVED]	APP O6-1

**APPENDICES S STATUTES, REGULATIONS AND
LEGISLATION**

S-1:	UTAH REVISED LIMITED LIABILITY COMPANY ACT	APP S1-1
S-2:	CHECK-THE-BOX REGULATIONS	APP S2-1
S-3:	REVENUE PROCLAMATION 95-10 (1995-3 I.R.B. 20)	APP S3-1
S-4:	PRE-CHECK-THE-BOX CLASSIFICATION OF THE LLC AS A PARTNERSHIP FOR FEDERAL INCOME TAX PURPOSES	APP S4-1

**APPENDICES U UTAH STATE FORMS AND
DOCUMENTS**

U-1:	Form TC-69 Utah Business and Tax Registration Form	APP U1-1
U-2:	Utah Entity Annual Report/Renewal Form ..	APP U2-1
U-3:	Form of Articles of Dissolution of Limited Liability Company	APP U3-1
U-4:	Form of Application for Foreign Limited Liability Company (to do business in Utah)	APP U4-1

PART V
INDICES

Internal Revenue Code Section Citations	INDEX-1
Revenue Rulings and Procedures Citations	INDEX-2
Treasury Regulations Citations	INDEX-3
Utah Limited Liability Company	
Act Section Numbers	INDEX-4
Subject Index	INDEX-15
Forms Index	INDEX-33