

WHAT LLC LAWYERS SHOULD KNOW ABOUT FORMS — TEN QUESTIONS AND ANSWERS



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This article is based on part on Chapter 2 of *Drafting Limited Liability Company Operating Agreements*, the Wolters Kluwer formbook and practice manual of which the author is the principal author and attorney Amanda Nelson is the co-author.

State-by-state statistical analyses suggest that there are presently at least 12 million US LLCs in good standing. It is reasonable to assume that at least 500,000 additional US LLCs will be formed by the end of 2022 and in every year thereafter.

It is also reasonable to assume that the members and managers of many of the above 12 million LLCs formed them with the help of LLC lawyers and that LLC lawyers will play a key role in the formation of hundreds of thousands of new LLCs this year and in future years.

This assumption is particularly reasonable with regard to the formation of multi-member LLCs. IRS filing statistics suggest that about 25 percent of all US LLCs are multi-member LLCs.¹ A significant number of individuals forming multi-member LLCs are likely to be aware that:

- Multi-member LLCs are unavoidably far more complex than single-member LLCs; and
- The formation of multi-member LLCs requires addressing many legal and tax issues of which neither LLC formation clients nor non-LLC lawyers are likely to have significant knowledge.

Furthermore, the accountants or other professional advisers of many multi-member LLC founders are likely to advise them of these facts.

Finally, American Bar Association statistics and other evidence suggest that, of the 1.33 million lawyers currently practicing law in the US, many tens of thousands qualify as LLC lawyers,² who likely engage in LLC formation practice frequently.

In short, LLC formation practice is a major form of US legal and tax practice.

THE IMPORTANCE OF FORMS

Forms are the most important tool at the disposal of any LLC lawyer. But, oddly enough, many LLC lawyers don't know much about LLC forms. As many readers will know, LLC forms (sometimes referred by LLC lawyers as "model operating agreements") are agreements whose main purposes are:

- To identify and address the LLC legal and tax issues relevant to the members of the specific types of LLCs for which these forms are designed; and
- To serve as the basis for LLC operating agreements for actual LLCs.³

To accomplish these purposes, forms typically contain numerous blanks.⁴

All LLC lawyers will agree that by far the most important tools in their LLC formation practice are their forms. Thus, it is critically important that these lawyers know how to evaluate, choose, and employ forms and that they acquire a library of forms sufficient for all types of LLCs their clients may ask them to create.

However, the author's experience over 30 years suggests that there is a widespread ignorance among LLC lawyers about forms. The author suspects that LLC lawyers who read this article will acknowledge this. It is also clear to us that for many decades, this ignorance has caused significant harm to many LLC formation clients and even to their lawyers. The harm that this ignorance can cause for LLC lawyers and their clients will be self-evident to readers and thus needs no comprehensive cataloguing here. However, it may be useful to state a few brief examples of situations in which this harm may arise—namely:

- Situations in which LLC lawyers lack forms for operating agreements their clients require and thus spend far more time drafting these agreements than if they possessed these forms, and in creating these agreements from scratch, they overlook key issues that excellent forms would address;
- Situations in which the forms that LLC lawyers have obtained from supposedly reliable sources fail to address issues—e.g., the seven subsidiary issues of the general duty of loyalty under the relevant Delaware case law and other authorities—likely to be of practical importance to their clients; and
- Situations in which, although they possess excellent forms, LLC lawyers fail to explain to their clients the practical significance of key provisions in operating agreements based on these forms, including, for example, issues about events of dissociation and dispute resolution whose practical importance may not be self-evident to their clients.

The purpose of this article is to address all principal questions about forms that LLC lawyers should be aware of and should know how to answer in order to provide excellent service to their LLC formation clients.

THE 10 QUESTIONS ABOUT FORMS

1. Why are forms so important in LLC formation practice?
2. What principal purposes should you accomplish in drafting operating agreements for your LLC formation clients?
3. What types of forms do you need in order to have a comprehensive forms library, and how many of these forms do you need?⁵
4. On what basis should you choose forms for inclusion in your forms library?
5. Who are the principal persons for whom you should draft operating agreements?
6. What implications does your answer to the above question have for the structure, format, and prose style of your forms and for the operating agreements that you draft?
7. How can you be certain that the authors of the forms in your forms library have addressed all of the legal and tax issues that they ought to have addressed?
8. Should the authors of the forms in your forms library provide you with written general guidelines for using these forms?
9. Should your forms library include annotated forms and “plug-in provisions”?
10. What practices should you employ to optimize your use of your forms?

1. Why are forms indispensable in LLC formation practice?

In your initial discussions with your LLC formation clients, you should determine the ownership structure of the LLCs your clients need, their federal tax structure, and their management structure. On the basis of this discussion, you will be able to choose the form best suited for drafting an operating

agreement for your clients. If the form you choose is excellent—i.e., it meets your clients' needs:

- You will greatly reduce the risk of overlooking legal or tax issues relevant to your clients and thus, in extreme cases, the risk of ethical or malpractice claims against you by your clients;
- You will be able to draft operating agreements for your clients as expeditiously and cost-effectively as possible. Indeed, if you use an excellent form in drafting an operating agreement, the form itself will often contain virtually all of the provisions your clients will need;
- You will facilitate excellent client service and can reasonably charge your LLC formation clients substantially higher fees for your LLC services than you might otherwise be able to charge; and
- You will have a depth of professional satisfaction that you could not otherwise attain.

2. What should you accomplish in drafting operating agreements for your LLC formation clients?

The purposes that your operating agreements should address for members of both single-member and multi-member LLCs will include at least three of the seven purposes listed below, and, in the case of many multi-member LLCs, it may address most of them. Thus, to the maximum extent possible, the forms in your forms library should also address these seven purposes:

- State the deal. Most importantly, you must identify and address all legal and tax issues important to your clients, and you must do so in a legally binding matter and in a manner that is as advantageous as possible to them. For example, in the case of single-member LLCs whose members are individuals, any operating agreement you draft must ensure that these individuals qualify for the maximum annual federal income tax deductions potentially available to them under Internal Revenue Code (Code) section 199A.⁶
- Minimize the risk of veil piercing. Operating agreements should make clear that the

members of the LLC in question and their LLC are separate legal persons legally independent from each other. In so doing, these agreements will significantly reduce the risk that, on the basis of the alter ego theory or otherwise, the members' veils will be pierced.⁷

- Teach the members about their LLCs. Operating agreements should provide the members of the LLCs with a clear, practical understanding of the legal and tax rules governing their LLCs and how the members should operate their LLCs. This means that operating agreements and the forms on which those agreements are based should contain at least a few provisions not central to the LLC deal but useful in teaching the members their LLC statutory rights and duties.
- Address disability and death. For multi-member LLCs in which one or more members are individuals, operating agreements should address legal issues likely to arise if these individuals become disabled or die while they are members.
- Address entity dissolutions. For multi-member LLCs in which one or more members are entities, operating agreements should address state and federal legal issues likely to arise if these entities are dissolved.
- Address third-party concerns. Operating agreements should address and resolve issues potentially important to third parties who review them, including potential lenders, investors, and tax auditors. These may include, for example, issues about legal good standing and about contract-signing authority.
- Address succession planning. The senior members of many multi-member LLCs want to give or sell their memberships to one or more junior members upon their retirement. The operating agreements of these LLCs or agreements that accompany them should address the terms of these gifts and sales and all other succession planning issues relevant to the members of the LLC in question.

3. What types and how many forms do you need in order to have a comprehensive forms library?

As briefly indicated above, in order to determine which type of form you need as the basis for drafting an operating agreement for a LLC formation client, you must determine three key factors in a discussion with your client—namely, the ownership structure, the federal tax structure, and the management structure of your client’s LLC.

Assuming that you need a comprehensive LLC forms library—i.e., a library that contains all of the forms you are likely to need to form virtually any type of LLC, you will find on the basis of this three-factor test that there are 10 main types of LLCs and 28 subtypes—in other words, 28 distinct forms. As noted, the 10 main types of forms and the 28 subtypes are listed in the exhibit that follows this article.⁸

The main types of ownership structures that the forms in your forms library should address are:

- Ownership by a single member who is an individual;
- Ownership by a single member that is an entity;
- Ownership by two members; and
- Ownership by three or more members.⁹

The main types of federal tax structures that the forms in your forms library should address are these:

- For single-member LLCs whose members are individuals, sole proprietorship taxation and taxation under IRC Subchapter S and, in very rare cases, Subchapter C;
- For single-member LLCs whose members are entities, “disregarded entity” tax treatment (i.e., treatment of the tax items of their LLC as the members’ tax items) and, in very rare cases, taxation under Subchapter C; and
- For multi-member LLCs, taxation under Subchapter K (i.e., partnership taxation), taxation under Subchapter S, and in very rare cases, taxation under Subchapter C.

The main types of management structures that the forms in your forms library should address are these:

- For single-member LLCs whose members are individuals: (i) management by the individuals themselves without a non-member assistant manager; (ii) management by the individuals themselves and assistant managers appointed under their operating agreements to provide for continuity of management if, because of illness or otherwise, the members are unable to manage; and (iii) management by a non-member third party;
- For single-member LLCs whose members are entities: (i) management by the members themselves; (ii) management by one or more individuals appointed under their LLCs’ operating agreements, and (iii) management by a director and officers; and
- For multi-member LLCs: (i) management by the members themselves in a general partnership management structure; (ii) management by the members and by a member-manager in a limited partnership management structure in which the non-member managers have substantial control; (iii) management by the members and a member-manager in a limited partnership management structure in which the manager has substantial control; and (iv) a corporate management structure with directors and officers.

Finally, you should have separate forms for two-member LLCs in which the members are equal and two-member LLCs in which the economic or management rights of one of the members are greater than those of the other.

To illustrate the application of the above three-factor test:

Individuals A and B decide to form AB, LLC, a two-member LLC, to manufacture and sell widgets. Both of them are married. A and B both want membership rights equal to those of the other. In order to maximize the annual 20 federal income tax deductions potentially available to them under Code section 199A, their

tax professional advises them that the federal tax regimen of AB must be partnership taxation under IRC Subchapter K.

Obviously, therefore, AB's ownership structure must be that of a two-member LLC; its federal tax structure must be partnership taxation; and its management structure must be a general partnership structure.

4. On what basis should you choose forms for inclusion in your forms library?

It is clear that many LLC lawyers, and perhaps especially those in solo practice, choose the forms in their forms libraries on the basis of recommendations by other lawyers whom they believe have LLC expertise or simply because these other lawyers are willing to share their forms with them.

Other LLC lawyers choose their forms because the forms are used by other lawyers in their firms. Indeed, in many cases, their firms may require them to use these forms.

Finally, many other LLC lawyers choose their forms because they are contained in reputable LLC treatises, formbooks, or practice manuals.

However, in the author's view, it is self-evident that to the extent that LLC lawyers are in solo practice or, if they practice in multi-lawyer firms, to the extent their firms permit them to do so, LLC lawyers should choose their forms not on any of the above grounds, but only on the objective criteria of excellence. These criteria are set forth in questions 6 through 10 of this article.

5. Who are the primary readers for whom you draft your operating agreements?

Some operating agreements are written in terms that are intended to address possible irreconcilable disputes among the members of the LLC in question; these agreements are written in terms primarily intended for courts and arbitrators and contain elaborate provisions intended to protect members from other members and from managers.

Other operating agreements are intended to address possible IRS audits; these agreements are written in terms primarily intended for IRS agents.

Still others are written in taxese and legalese, since their authors believe that *all* contracts should be written in legalese and taxese or that lawyers or other participants in the LLC formation in question will expect legalese and taxese.

However, it is reasonable to assume that: (i) a substantial majority of LLCs—indeed, perhaps the vast majority—have only one or two members; (ii) most of the members of these LLCs are non-lawyers who know little or nothing about LLC law and tax; and (iii) some or all of these members have limited cash. It is convenient to refer to these LLCs as “Main Street LLCs” and to highly complex LLCs as “Wall Street LLCs.”

Yet it is clear that in order to determine whether they should form LLCs for their businesses and in order to resolve disputes among themselves after formation, the members of Main Street LLCs will need operating agreements whose terms they can understand without legal help on a careful first reading. In the author's view, it is mainly these persons for whom you should draft operating agreements.

6. What implications does your answer to the above question have for the style, structure, and format of your forms?

The principal guidelines the author proposes in order to draft operating agreements to meet the needs of non-lawyer readers who are members of Main Street LLCs are as follows:

- You should draft these agreements in plain English—i.e., using as few technical legal and tax terms and phrases as possible and, wherever possible, using terms of the kind used in good newspapers.

This means, among other things, that you must avoid words that only lawyers use, such as “whereas” and “wherefore,” and you should replace these terms with plain-English terms

(such as replacing the word “recitals” with the phrase “statement of background”); and it means that you must avoid phrases such as “including but not limited to.” (The word “including” will always suffice as a replacement for that phrase.)

It also means that wherever possible, you should use short sentences, which should generally be no more than four lines long; and you should use short paragraphs, which should generally be no more than four sentences long.

The structure of operating agreements you draft should be intuitively appropriate and user-friendly for non-lawyer readers. This means that these agreements should contain: (i) a cover page (to give dignity to the agreement); (ii) a summary table of contents (to provide readers with a quick overview of the contents of the agreement); (iii) a two-level table of contents (to give readers a detailed overview of the agreement and to enable them to readily find provisions addressing issues of particular concern to them); (iv) a body with sections and subsections whose provisions address all relevant legal and tax issues; (v) a separate signature page; and (vi) exhibits in which you address complex issues that would distract readers from key issues in the body of their operating agreements.

- User-friendly format. The format of operating agreements you draft should be pleasing to the eye. This means, among other things, that this format should include substantial white space and should employ a variety of font sizes and appearances.
- Logical sequence of provisions. The provisions of operating agreements should be in a logical sequence that will make intuitive sense to non-lawyer readers. This means, in general, that after one or two initial sections that provide an overview of the contents of the agreement, the provisions of the agreement should follow the likely life cycle of the relevant LLC.
- User-friendly placement of definitions. Operating agreements should not begin with a section setting forth definitions of the key terms in the agreement; such a section will only confuse and

annoy non-lawyer readers. Instead, the definitions in the agreement should immediately precede or follow the terms they define.

- User-friendly exhibits. As indicated above, all matters whose complexity is likely to clutter the body of the agreement and distract non-lawyer readers should be relegated to exhibits at the end of the agreement.

7. How can you be certain that the authors of the forms in your forms library have addressed all of the legal and tax issues they ought to have addressed?

As noted above:

- A form you employ in your LLC formation practice will be excellent only if, among other requirements, it identifies and properly addresses all of the legal and tax issues reasonably likely to be relevant to your LLC formation clients when they form their LLC and thereafter; and
- The manner in which an operating agreement resolves each of these issues meets a “plurality” test.

That is, the form must resolve each of the above issues in a manner more likely to work for your clients than any alternative resolution. Thus, for example, your forms for multi-member LLCs should normally impose a fiduciary duty of care on LLC managers, and the standard of this duty should normally be ordinary prudence.

How can you be sure that the forms in your LLC formation practice meet the above key tests? The answer is that, in planning and drafting their forms, the authors demonstrate adherence to five principal drafting procedures. The five procedures are as follows:

- Study of LLC acts. The authors must have studied the LLC act of their home jurisdiction and at least a few other LLC acts, especially the Delaware Limited Liability Company Act; they must have identified all of the provisions in these acts potentially relevant to LLC formation clients; they must have determined how the default and mandatory

provisions of these acts resolve these issues; and they must have included these issues and issue resolutions in the provisions of their forms.

- Study of forms by another author. The authors must have ensured that their forms comport with the forms in all of the leading LLC treatises and formbooks to the extent that the authors agree with them.
- Application of tax expertise. If the authors are experts in LLC tax, they must have applied this expertise to ensure that each of their forms addresses and properly resolves all federal and state tax issues relevant to members of LLCs whose operating agreements are based on these forms; and, if they lack this expertise, in drafting their forms they must have obtained the assistance of tax professionals who possess this expertise.
- Engagement in LLC formation practice. In order to have a practical feel for the needs of LLC formation clients, the authors must have engaged and, ideally, must currently engage, in a broad LLC formation practice.
- Review by other LLC lawyers. Before making their forms available for general use, the authors must have obtained the review of their forms and resulting comments by other lawyers with substantial LLC expertise and by non-lawyer LLC members, and they must have applied these comments in their forms to the extent appropriate.

You should not choose any forms for your forms library unless you are reasonably confident that that in drafting their forms, these drafters have met the above requirements.

8. Should the authors of the forms in your forms library provide you with written general guidelines for using these forms?

The manner in which the author of forms believes that LLC lawyers should use them may not always be clear, and different authors may have different views about how their forms should be used. Thus, these

authors should provide LLC lawyers who use their forms with written general guidelines for their use.

9. Why are annotated forms and “plug-in provisions” indispensable in drafting operating agreements?

Many LLC lawyers are likely to benefit from the availability of annotations in the texts of their forms that advise them of situations in which, for particular clients, particular provisions in these forms may need to be altered, deleted, or supplemented with additional provisions.

Thus, the authors of forms should provide their users not only with “clean” versions of forms—i.e., forms that contain no annotations—but also annotated versions of these forms. These annotations should explain, for example, why these forms contain qualified income offset provisions that would otherwise be unintelligible not only to LLC members but also to their LLC lawyers.

In addition, forms should be accompanied with “plug-in provisions” that LLC lawyers can use to supplement or replace provisions in their forms. These should include, for example, plug-in provisions for the reduction or elimination of fiduciary and other duties, for “shotgun” buy-outs, and for “tag-along” and “drag-alongs” applicable to purchases of LLC membership rights or assets by third parties.

Finally, materials accompanying forms should include lists of the dozens of situations in which LLC lawyers should include special federal tax terms to address. These situations include, for example:

- Those in which property contributed by members in whose hands these items had built-in gain or loss at the time of contribution and thus require operating agreement allocations and dispositions under Code section 704(c); and
- Operating agreement allocations among the members of interest deductions in respect of LLC mortgage loans.

10. What practices should you employ in order to optimize your use of forms?

In order to make optimal use of your forms in helping your clients form LLCs, you should do the following:

- Understand your forms. You must carefully study all of your forms in order to learn the practical meaning of each of their provisions—for you as an LLC lawyer and for your clients. This will include reading and understanding any materials that the authors of your forms have identified as explanatory. It may also mean that you must consult with a tax professional in your own firm or in another firm to ensure that you have at least a basic understanding of the tax provisions in your forms.
- Explain your forms to your clients. You must explain the provisions of your forms to your LLC formation clients if they are open to these explanations.
- Alter operating agreements based on your forms as necessary. In using a form as the basis for an operating agreement for your LLC formation client, however excellent the form may be, any operating agreement based on it will almost inevitably require at least a small measure of customization to meet the needs of your LLC formation clients. You must alter the operating agreements you draft for your clients under your forms to accomplish this customization.
- Add provisions to operating agreements based on your forms. If, in working with your LLC formation clients, you discover any legal or tax issues that are not addressed in the form you are using to draft their operating agreement, but that should be addressed in the agreement, alter the operating agreement accordingly. The better you understand your LLC formation clients on a personal level and the better you understand their business, the more likely you will uncover such issues.

To illustrate the above guideline:

Individuals E and F want to form EF, LLC, in order to engage in construction activities that, as

you discover in your research, require a county license in one or more of the counties in which they plan to work. E and F are unaware of this requirement. You inform them of it, and you advise them that their operating agreement should contain a provision that, if they cannot obtain or maintain the license, they must terminate their business and dissolve and liquidate their LLC.

CONCLUSION

As shown above, there are numerous questions that, as an LLC lawyer, you should address and resolve in order to evaluate, choose, and employ your forms. Many of them are complex and the answers to many of them are not obvious. The following brief summary of the key points in this article may be useful to you in addressing these questions:

- You need excellent forms. If you have excellent forms—i.e., forms that maximize the likelihood that the operating agreements you draft on their basis will meet your clients' needs—these forms will maximize the competence, efficiency, and profitability of your LLC formation practice.
- Your forms should enable you to accomplish each potentially relevant operating agreement purpose addressed in Question 2.
- You need forms in your forms library for all of the various types and subtypes of LLCs that you are likely to use in your LLC formation practice. On the basis of the three relevant factors discussed above in Question 3—ownership structure, federal tax structure, and management structure—there are 10 such forms, and, if you have a broad LLC formation practice, you may need as many as 28 forms.
- To the extent possible, you must choose your forms on the basis of the objective standards of excellence and comprehensiveness set forth in Questions 5 through 9 of this article and not on any other basis, such as that your forms are used by other lawyers in your firm or that they are contained in respected LLC formbooks or treatises.

- The structure, format, and prose style of your forms should enable non-lawyer clients to obtain a practical understanding of the terms of operating agreements based on those forms on a careful first reading.
- Your forms must identify all operating agreement legal and tax issues likely to be significant for members of the LLCs for which these forms

are designed, and the forms must resolve these issues in accordance with a “plurality” rule.

- You should not use any form unless you are confident that its author has complied with the guidelines addressed in Questions 7 and 8.
- You should employ your forms in accordance with the guidelines addressed in Question 1. 🍀

Notes

- 1 The rest, of course, are single-member LLCs. The members of a substantial majority of these single-member LLCs are individuals, but the members of a significant few are entities.
- 2 By “LLC lawyers” in this article, the author means all US business and tax lawyers who at least from time to time assist their clients in forming LLCs and who draft operating agreements for them.
- 3 As used in this article, “forms” refer to model operating agreements that are “general-purpose” agreements—i.e., agreements that can be used for any kind of business LLC, asset protection LLC, or nonprofit LLCs; and that are “generic” agreements—i.e., agreements that are not drafted for use under any specific LLC Act. (In the author’s experience, well-drafted “generic” forms can be readily adapted for use under any LLC Act, since the LLC formation issues that are addressed in these forms are essentially identical under most or all those acts.)
- 4 It is sometimes easy to overlook these blanks and to include them, precisely as blanks, in operating agreements provided to clients. One solution to avoid this possibility is to mark all such blanks in yellow.
- 5 The word “you” in the rest of this article refers, of course, to LLC lawyers as defined above.
- 6 Section 199A provides individuals and certain trusts that are owners of interests in pass-through businesses with annual federal income tax deductions of up to 20 percent of their shares of the “qualified business income” (essentially, the net business income) of their businesses. Pass-through businesses include sole proprietorships, entities taxable as S corporations, and entities taxable as partnerships. Section 199A has revolutionized LLC formation practice and the drafting of operating agreements.

In general, the federal tax regimen of qualifying owners of both single-owner and multi-owner pass-through businesses should be Subchapter S if the taxable income

of these owners is relatively high (for 2021, at or over \$164,925 for individuals filing separate federal tax returns and at or over \$329,800 for qualified owners who file joint returns). For all other qualified owners who own single-owner businesses, the federal income tax regimen should generally be sole proprietorship taxation, and, for those who own multi-owner businesses, it should generally be partnership tax under Subchapter K, and, in order to maximize LLC qualified business income, the LLC in question should provide compensation to members not in the form of guaranteed payments, which must be treated as reducing LLC qualified taxable income, but rather, as distributions, which will not reduce LLC taxable income. See generally, Cunningham, *Maximizing Pass-Through Deductions under Internal Revenue Code Section 199A*, published by Wolters Kluwer.

- 7 For a discussion of such guidelines, see Cunningham, John M., *Eight Guidelines for Preventing Plaintiffs from Piercing Your LLC’s Veil*, which appeared in the June 2018 issue of *The Practical Lawyer*, 64 *Prac. Law.* 3, at 16.
- 8 The reason for the effectiveness of the above three-factor test for the purposes outlined above is that while most of the provisions in single-member and multi-member LLCs vary little from single-member LLC to single-member LLC and from multi-member LLC to multi-member LLC, the ownership structure, federal tax structure, and management structure vary widely among these LLCs.
- 9 You should have separate forms for each type of multi-member LLC because many references to the members will be different in two-member and three-or-more-member LLCs. For example, forms for two-member LLCs should generally provide for member decisions by unanimous vote, while those for LLCs with three or more members should generally provide for member decisions by majority vote. Changing a form for two-member LLCs to a form for LLCs with three or more members can be time-consuming and may easily result in errors.

EXHIBIT¹

The 28 main subtypes of forms potentially necessary in LLC formation practice

TYPE 1: Single-member LLCs owned by one individual

General-purpose form number	Management structure	Federal income tax regimen	Frequency of use by practitioners
General-Purpose Form 1.1	Member-managed. The LLC's member is also its manager and there is no assistant manager.	Disregarded entity	Somewhat frequent
General-Purpose Form 1.2	Manager-managed. The LLC's member is its manager, but the LLC also has one or more assistant managers.	Disregarded entity	Frequent
General-Purpose Form 1.3	Manager-managed. The LLC's member is a non-manager, and it is managed by a non-member manager.	Disregarded entity	Somewhat frequent
General-Purpose Form 1.4	Member-managed. The LLC's member is also its manager and there is no assistant manager	Subchapter S	Somewhat frequent
General-Purpose Form 1.5	Manager-managed. The LLC's member is its manager, but the LLC also has one or more assistant managers.	Subchapter S	Frequent
General-Purpose Form 1.6	Manager-managed. The LLC's member is a non-manager, and it is managed by a non-member manager.	Subchapter S	Somewhat frequent
Total number of Type 1 general-purpose forms			6

TYPE 2: Single-member LLCs owned by one entity

General-purpose form number	Management structure	Federal income tax regimen	Frequency of use by practitioners
General-Purpose Form 2.1	Managed by a single non-member manager	Disregarded entity	Frequent
General-Purpose Form 2.2	Managed by two or more non-member managers	Disregarded entity	Somewhat frequent
General-Purpose Form 2.3	Managed by an internal board of directors and by officers who are non-member managers	Disregarded entity	Infrequent
Total number of Type 2 general-purpose forms			3

¹ Model forms for Operating Agreements 1.2, 2.1, and 6.1 will appear in subsequent issues of The Practical Tax Lawyer.

**TYPE 3: Multi-member LLCs (simple general partnership management structure)
taxable under subchapter K**

General-purpose form number	Number and relationship of members	Frequency of use by practitioners
General-Purpose Form 3.1	Two members with equal management rights	Frequent
General-Purpose Form 3.2	Two members with unequal management rights	Somewhat frequent
General-Purpose Form 3.3	Three or more members	Frequent
Total number of Type 3 general-purpose forms		3

**TYPE 4: Multi-member LLCs (simple general partnership management structure)
taxable under subchapter S**

General-purpose form number	Number and relationship of members	Frequency of use by practitioners
General-Purpose Form 4.1	Two members with equal management rights	Frequent
General-Purpose Form 4.2	Two members with unequal management rights	Somewhat frequent
General-Purpose Form 4.3	Three or more members	Frequent
Total number of Type 4 general-purpose forms		3

**TYPE 5: Multi-member LLCs (complex general partnership management structure)
taxable under subchapter K or S**

General-purpose form number	Number and relationship of members	Federal income tax regimen	Frequency of use by practitioners
General-Purpose Form 5.1	Three or more members	Subchapter K	Frequent
General-Purpose Form 5.2	Three or more members	Subchapter S	Occasional
Total number of Type 5 general-purpose forms			2

TYPE 6: Multi-member LLCs (simple limited partnership management structure — member-manager — member-controlled) taxable under subchapter K

General-purpose form number	Number and relationship of members	Frequency of use by practitioners
General-Purpose Form 6.1	Two members	Somewhat frequent
General-Purpose Form 6.2	Three or more members	Frequent
Total number of Type 6 general-purpose forms		2

TYPE 7: Multi-member LLCs (simple limited partnership management structure — member-manager — member-controlled) taxable under subchapter S

General-purpose form number	Number and relationship of members	Frequency of use by practitioners
General-Purpose Form 7.1	Two members	Somewhat frequent
General-Purpose Form 7.2	Three or more members	Frequent
Total number of Type 7 general-purpose forms		2

TYPE 8: Multi-member LLCs (simple limited partnership management structure — member-manager — manager-controlled) taxable under subchapter K

General-purpose form number	Number and relationship of members	Frequency of use by practitioners
General-Purpose Form 8.1	Two members	Frequent
General-Purpose Form 8.2	Three or more members	Frequent
Total number of Type 8 general-purpose forms		2

TYPE 9: Multi-member LLCs (simple limited partnership management structure — member-manager — manager-controlled) taxable under subchapter S

General-purpose form number	Number and relationship of members	Frequency of use by practitioners
General-Purpose Form 9.1	Two members	Frequent
General-Purpose Form 9.2	Three or more members	Frequent
Total number of Type 9 general-purpose forms		2

TYPE 10: Multi-member LLCs (corporate management structure — managers may be either member-managers or non-member managers) taxable under subchapter C, K or S

General-purpose form number	Management structure	Federal income tax regimen	Frequency of use by practitioners
General-Purpose Form 10.1	Three or more members	Subchapter C	Infrequent
General-Purpose Form 10.2	Three or more members	Subchapter K	Infrequent
General-Purpose Form 10.3	Three or more members	Subchapter S	Infrequent
Total number of Type 10 general-purpose forms			3