CHAPTER 13

BUSINESS LAW PRACTICE

PART ONE: INCORPORATION OF A SMALL BUSINESS

PART ONE: INCORPORATION OF A SMALL BUSINESS

(13.1.1) INTRODUCTION

I. INCORPORATION, QUALIFICATION, AND ANNUAL REQUIREMENTS

A. Incorporation.
   1. (13.1.2) Name Selection.
   2. (13.1.3) Articles of Incorporation.
   3. (13.1.4) Bylaws.
   4. (13.1.5) Organizational Meeting. See Appendices J-N, infra.
   5. (13.1.6) Organizational Documents.
   6. (13.1.7) Initial and Annual Reports.
   7. (13.1.8) Change of Registered Agent or Registered Office; Consent.
   8. (13.1.9) Other Fees.
   9. (13.1.10) Pre-Incorporation Liability.

B. Qualifying a Foreign Corporation to Do Business in the State of Washington.
   1. (13.1.11) Articles of Incorporation and Corporate Name.
   2. (13.1.12) Bylaws.
   5. (13.1.15) Fees.

C. Post-Incorporation Annual Requirements for All Corporations.
   2. (13.1.18) Maintaining Minutes of Annual and Special Shareholders’ Meetings.
   3. (13.1.19) Annual Reports.

D. Commercial Services Available.
   1. (13.1.20) Commercial Corporation Service Companies.
   2. (13.1.21) Transfer Agents.
   3. (13.1.22) Other.

E. Filing Fees.
   1. (13.1.23) Secretary of State’s Office – Miscellaneous Filing Fees.

II. CONTROL OF SMALL CORPORATIONS


   1. (13.1.27) Classes of Stock and Other Securities.
   2. (13.1.28) Voting Requirements for Shareholders’ Meetings.
   4. (13.1.30) Supermajority Quorum and Voting Requirements for Board of Directors.
   5. (13.1.31) Issuance of Additional Shares.
   8. (13.1.34) Restrictions on Transfer of Shares.

III. STOCK ISSUANCE AND TRANSFER PROCEDURES
C. (13.1.38) Transfers of Shares Already Issued.

IV. BIBLIOGRAPHY
A. (13.1.41) General Corporate Practice.
C. (13.1.43) Forms.

V. (13.1.44) APPENDICES
APPENDIX A: INITIAL CLIENT CONFERENCE CHECKLIST
APPENDIX B: BASIC INFORMATION SHEET AND INCORPORATION CHECKLIST
APPENDIX C: INSTRUCTIONS FOR DRAFTING DOCUMENTS
APPENDIX D: ORGANIZATIONAL MEETING CHECKLIST
APPENDIX E: LETTER TO CLIENT TRANSMITTING ORGANIZATIONAL DOCUMENTS
APPENDIX G: LETTER TO SECRETARY OF STATE (FILING ARTICLES)
APPENDIX H: ARTICLES OF INCORPORATION
APPENDIX I: BYLAWS
APPENDIX J: CONSENT IN LIEU OF ORGANIZATIONAL MEETING OF INCORPORATOR
APPENDIX K: WAIVER OF NOTICE OF [ORGANIZATIONAL] [SPECIAL] [ANNUAL] MEETING
APPENDIX L: NOTICE OF [ORGANIZATIONAL] [SPECIAL] [ANNUAL] MEETING OF BOARD OF DIRECTORS
APPENDIX M: MINUTES OF ORGANIZATIONAL MEETING OF BOARD OF DIRECTORS
APPENDIX N: CONSENT OF DIRECTORS IN LIEU OF ORGANIZATIONAL MEETING
APPENDIX O: STOCK SUBSCRIPTION AGREEMENT AND INVESTMENT LETTER
APPENDIX P: CONSENT IN LIEU OF MEETING OF SHAREHOLDERS
APPENDIX Q: SHAREHOLDERS’ AGREEMENT
APPENDIX R: PROXY (APPOINTMENT FORM)
APPENDIX S: MINUTE BOOK OUTLINE
APPENDIX T: REMINDER FOR ANNUAL MEETING
APPENDIX U: LETTER TO OFFICERS AND DIRECTORS CONCERNING WAIVER OF UNEMPLOYMENT INSURANCE

PART TWO: PURCHASE AND SALE OF A SMALL BUSINESS

I. (13.2.1) SCOPE OF OUTLINE
II. (13.2.2) INVESTIGATION BY THE PURCHASER – DUE DILIGENCE
A. In General.
B. Scope of Purchaser’s Due Diligence.
C. Due Diligence Checklist.

III. SELL-SIDE DUE DILIGENCE AND CONFIDENTIALITY
A. (13.2.3) Sell-Side Due Diligence.
B. (13.2.4) Confidentiality.

IV. VALUATION OF A BUSINESS
A. (13.2.5) In General.
B. (13.2.6) Discounted Cash Flows.
C. (13.2.7) Historical Performance.
D. (13.2.8) Asset Valuation.
E. (13.2.9) Industry Comparables.

V. (13.2.10) LETTERS OF INTENT
VI. (13.2.11) TRANSACTION STRUCTURE
A. (13.2.12) Purchase of Assets.
B. (13.2.13) Stock Sale.

VII. (13.2.15) TYPES OF PURCHASE PRICE
A. (13.2.16) CASH.
B. (13.2.17) DEFERRED PAYMENTS.
C. (13.2.18) EARNOUT PAYMENTS.
D. (13.2.19) BUYER’S STOCK.

VIII. THE AGREEMENT
A. (13.2.20) Bargaining and Compromise.
B. (13.2.21) The Agreement as a Disclosure Device.
C. Terms of the Agreement.
   1. (13.2.22) Introduction.
   2. (13.2.23) Transaction Structure.
   4. (13.2.25) Indemnification.

IX. (13.2.26) CONDITIONS PRECEDENT TO THE CLOSING
A. (13.2.27) Securing Approval From Governmental Agencies.
B. (13.2.28) Opinion by Seller’s Counsel.
C. (13.2.29) Obtaining Consents to Assignments.

X. THE CLOSING—AND THEREAFTER
A. (13.2.30) The Closing.
B. After the Closing.
   1. (13.2.31) Filing Security Agreements.
   2. (13.2.32) Giving Notice of the Transaction.

XI. (13.2.33) FORMS
FORM 1: ASSET PURCHASE AGREEMENT
FORM 2: STOCK PURCHASE AGREEMENT
FORM 3: BILL OF SALE AND ASSIGNMENT

PART THREE: SECURITIES, INVESTOR PROTECTION LAWS
I. SECURITIES REGULATION
A. (13.3.1) Coverage; Definition of “Security.”
B. (13.3.2) Registration Under the Securities Act.
C. (13.3.3) Exemptions from Registration.
   1. (13.3.4) Exempt Securities.
   2. (13.3.5) Intrastate Offerings.
   3. (13.3.6) Statutory Private Placement Exemption.
   6. (13.3.9) Antifraud Rules.

II. (13.3.10) INVESTOR PROTECTION LAWS.
A. (13.3.11) Securities Act of 1933.
D. (13.3.14) Investment Company Act of 1940.
E. (13.3.15) Investment Advisers Act of 1940.

III. FRANCHISE AND BUSINESS OPPORTUNITY AND RELATED LAWS.
A. Definition of a Franchise.
   1. (13.3.22) Washington Definition.
   2. (13.3.23) Definition of Franchise in Other States.
   3. (13.3.24) FTC Definition.
B. (13.3.25) Advantages of Franchising and Alternatives to Franchising.
C. (13.3.26) Registration and Disclosure Requirements.
   1. (13.3.27) Washington Law.
   2. (13.3.28) FTC Rule and Other States.
D. (13.3.29) Laws Governing Franchisee/ Franchisor Relationship.
E. (13.3.30) Antitrust Considerations.
G. (13.3.32) Tax Implications of Franchising.
H. (13.3.33) Franchises as Securities.
I. (13.3.34) Covenants Not to Compete.
J. (13.3.35) Other Laws.

IV. (13.3.36) BUSINESS OPPORTUNITY FRAUD ACT.
V. (13.3.37) MASTER FRANCHISING AND OTHER COMPLEX STRUCTURES.
VI. (13.3.38) DISTRIBUTORSHIP AND FRANCHISE STATUTES APPLICABLE TO SPECIFIC INDUSTRIES.
VII. (13.3.39) COUNSEL’S ROLE.

PART FOUR: ANTITRUST INTRODUCTION
I. FEDERAL AND STATE ENFORCEMENT OF ANTITRUST LAWS
A. The Federal Trade Commission.
   1. (13.4.1) Organization and Structure.
   2. (13.4.2) Laws Administered.
   3. (13.4.3) Antitrust Laws Enforced.
   4. (13.4.4) Functions.
6. (13.4.6) Enforcement Methods and Procedures.
7. (13.4.7) Pre-merger Notification.

B. The Department of Justice—Antitrust Division.
1. (13.4.8) Antitrust Laws Enforced.
3. (13.4.10) Enforcement Methods and Procedures.
4. (13.4.11) Enforcement of Existing Decrees.
5. (13.4.12) Criminal Statute of Limitations.

C. Washington State Actions.
4. (13.4.16) Parents Patriae Suits.

D. (13.4.17) Governmental Assistance to Companies Injured by Antitrust Violations.

E. (13.4.18) Alternatives of Company Under Investigation by the Government.
1. Negotiation.
3. Litigation.

II. SHERMAN ACT.
A. Introduction to the Sherman Act.
1. (13.4.19) Transformation of the American Economy.
2. (13.4.20) The Antitrust Movement.
4. (13.4.22) Enforcement History, 1890-1914.
5. (13.4.23) Passage of the Clayton and FTC Acts.
7. (13.4.25) Basic Concepts Under Section 1, Sherman Act.
10. (13.4.28) Predatory Pricing.
11. (13.4.29) Combination and Conspiracy.
12. (13.4.30) Interstate Commerce.
13. (13.4.31) Civil Statute of Limitations.
15. (13.4.33) Standing to Sue; The “Passing-on” Doctrine.

B. Per Se and Other Violations.
1. (13.4.35) Definition.
2. (13.4.36) Price Fixing.
3. (13.4.37) Concerted Horizontal Division of Markets.
4. (13.4.38) Group Boycotts.
5. (13.4.39) Tying Arrangements and Exclusive Dealing Contracts.
6. (13.4.40) Reciprocal Dealing Arrangements; Rights of First Refusal.

C. Remedies.
1. (13.4.41) Criminal Action.
2. (13.4.42) Injunctive Relief.
3. (13.4.43) Treble Damages.

D. Noerr-Pennington Doctrine.

E. Exemptions.
1. (13.4.44) State Action.
2. (13.4.45) Regulated Industries.
3. (13.4.46) Others.

III. PRICE DISCRIMINATION
A. In General.

B. Robinson-Patman Act.

IV. PRIVATE ACTIONS UNDER WASHINGTON’S CONSUMER PROTECTION ACT (CPA)
   A. The Statutes.
   B. Federal Law as Precedent.
   C. Damages and Other Relief.
   D. Consumer Protection.
   E. Practical Considerations in Filing a State Versus Federal Action.

V. RELATIONS WITH INDEPENDENT DISTRIBUTORS INCLUDING FRANCHISEES.
   A. The Applicable Statutes.
   B. Coverage of the Various Statutes.
      1. (13.4.47) Clayton Act, Section 3.
      2. (13.4.48) Sherman Act.
      3. (13.4.49) FTC Act, Section 5.
   C. Selection of Distributors or Franchisees.
      1. (13.4.50) Right of Selection and Its Limitations.
      2. (13.4.51) Selection of Exclusive Distributorships.
      3. (13.4.52) Recruitment Advertising.
   D. Territorial and Customer Restrictions.
      1. (13.4.53) Definition of Terms.
      2. (13.4.54) Horizontal Territorial Allocation or Customer Allocation.
      3. (13.4.55) Vertical Restraints on Customers or Territories.
   E. Price Restrictions.
      1. (13.4.56) Introduction.
      3. (13.4.58) Price Controls Through Agency Arrangements.
      4. (13.4.59) Pre-Ticketing and Suggested Resale Prices.
      5. Pre-Conditions.
   F. Restrictions On Products Carried.
      1. (13.4.60) Exclusive-Dealing and Requirement Contracts.
      2. (13.4.61) Tying Arrangements.

PART FIVE: INTELLECTUAL PROPERTY CONSIDERATIONS

I. UNITED STATES PATENTS.
   A. General.
      1. (13.5.1) Legal Background.
      2. (13.5.2) Definition of a Patent.
      3. (13.5.3) Grant of Patent.
      4. (13.5.4) Term.
   B. Patentable Subject Matter.
      1. (13.5.5) Statutory Categories.
      2. (13.5.6) Judicial Exceptions.
      3. (13.5.7) Software.
      4. (13.5.8) Business Methods.
      5. (13.5.9) USPTO 2014 Interim Guidance on Patent Subject Matter Eligibility.
   C. Statutory Requirements for Patent Protection.
      1. (13.5.10) Utility.
      2. (13.5.11) Novelty.
      3. (13.5.12) Nonobviousness.
   D. Application Process.
      1. (13.5.13) Preliminary Considerations.
      2. (13.5.14) Nonprovisional vs. Provisional Applications.
3. (13.5.15) Documenting the Act of Invention.
4. (13.5.16) Duty of Candor.
5. (13.5.17) Important Time Frames.
6. (13.5.18) Nuts and Bolts.

E. Infringement, Defenses and Remedies.
1. (13.5.20) Venue and Jurisdiction.
2. (13.5.21) Infringement.
4. (13.5.23) Remedies.

F. Tax Aspects.
1. (13.5.24) Section 1235.
2. (13.5.25) Section 1221.
3. (13.5.26) Mutual Exclusivity.
4. (13.5.27) Sale Required.
5. (13.5.28) Licensing.

G. Ensuring Ownership.
1. (13.5.29) Invention Agreements.
2. (13.5.30) Invention Disclosures.

H. Licensing.

I. International Considerations.
1. (13.5.32) Important Time Frames.
2. (13.5.33) Treaty-Based Priority Rights.
3. (13.5.34) PCT.
4. (13.5.35) Publication.

II. COPYRIGHTS.

A. General.
1. (13.5.36) Legal Background.
2. (13.5.37) Definition of Copyright in General.
3. (13.5.38) International Treaties.

B. Basics of Copyright Law.
1. (13.5.39) Copyrightable Subject Matter.
2. (13.5.40) Idea/Expression Dichotomy.
3. (13.5.41) Exclusive Rights.
4. (13.5.42) Limitations to the Exclusive Rights.
5. (13.5.43) Creation of Rights.
6. (13.5.44) Ownership of Rights.
7. (13.5.45) Government Created Works.
8. (13.5.46) Formalities.
9. (13.5.47) Duration of Copyright.

C. Selected Copyright Issues for the Internet.
1. (13.5.48) Copyright and the Internet.

D. Online Services from the U.S. Copyright Office.
1. (13.5.49) The Online Copyright Search System.
2. (13.5.50) Online Registration System.
3. (13.5.51) Other Online Copyright Services.

III. TRADEMARK LAW.

A. Legal Background.

B. Common Law.
1. (13.5.52) Definition.
2. (13.5.53) Protection for Distinctive Trademarks.
3. (13.5.54) Ownership.
C. Federal Statute.
   2. (13.5.56) Relationship to Common Law.
   3. (13.5.57) Federal Registration.
   4. (13.5.58) Maintenance.
   5. (13.5.59) Dilution.

D. The Madrid Protocol

E. Washington State Law.
   1. (13.5.60) Statewide Registration.
   2. (13.5.61) Requirements.
   3. (13.5.62) Constructive Notice.
   4. (13.5.63) Evidence of Validity.
   5. (13.5.64) Dilution.
   6. (13.5.65) Application.
   7. (13.5.66) Terms.

F. Federal v. State Registration.
   1. (13.5.67) Prima Facie Evidence.
   2. (13.5.68) Foreign Rights.
   3. (13.5.69) Customs Services.
   4. (13.5.70) International Use.

G. Infringement And Remedies.
   1. (13.5.71) Test.
   2. (13.5.72) Jurisdiction.
   3. (13.5.73) Delay in Filing Suit.
   4. (13.5.74) Injunctive Relief.
   5. (13.5.75) Damages for Federally Registered Marks.
   6. (13.5.76) State Law Damages.

H. Internet Issues.
   1. (13.5.77) Domain Names.
   2. (13.5.78) Metatags.
   3. (13.5.79) Internet Keyword Advertising.
   4. (13.5.80) Framing.

IV. PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS.

A. Introduction.
   1. (13.5.82) Definition of a Mask Work.
   2. (13.5.83) Ownership.
   3. (13.5.84) Transfer of Ownership.

B. Exclusive Rights, Registration, and Term.

V. TRADE SECRET LAW.

A. Introduction.

B. Washington State Law.
   1. (13.5.85) Definition of Trade Secret.
   2. (13.5.86) Misappropriation.
   3. (13.5.87) Remedies for Trade Secret Misappropriation.
   4. (13.5.88) Statute of Limitations.
   5. (13.5.89) Protection of Trade Secrets in Court Proceedings
   6. (13.5.90) Preemption of Other Laws.

C. Federal Defend Trade Secrets Act (18 U.S.C. §§ 1832 et seq.)
   1. (13.5.91) Definition of Trade Secret.
   2. (13.5.92) Misappropriation.
   3. (13.5.93) Remedies for Trade Secret Misappropriation.
   4. (13.5.94) Whistleblower Immunity and Employer Notice Requirements
   5. (13.5.95) Statute of Limitations.
PART SIX: LIMITED PARTNERSHIPS AND LIMITED LIABILITY LIMITED PARTNERSHIPS

I. INTRODUCTION
   A. (13.6.1) Scope of Section.
   B. (13.6.2) Form of Certificate of Limited Partnership and Agreement of Limited Partnership.

II. (13.6.3) NATURE OF A LIMITED PARTNERSHIP, IN GENERAL

III. GENERAL PROVISIONS
   A. (13.6.4) Partnership Name.
   B. (13.6.5) Registered Office, Registered Agent and Recordkeeping Requirements.

IV. FORMATION OF LIMITED PARTNERSHIPS
   B. (13.6.8) Liability for False Statements in Certificate.
   C. (13.6.9) Certificate of Existence or Registration.
   D. (13.6.10) Annual Reports.

V. LIMITED PARTNERS
      2. (13.6.15) Liability of Person Who Erroneously Believes that He or She is a Limited Partner.
   C. (13.6.16) Limited Partners’ Rights to Partnership Information.

VI. GENERAL PARTNERS
   A. (13.6.18) Definition and Admission of General Partners.
   B. (13.6.19) Liability of General Partners.
   C. (13.6.20) Liability of Partnership for Actions of General Partners.
   D. (13.6.21) Fiduciary Duties of General Partners.
   F. (13.6.23) Rights of the General Partner to Information.

VII. FINANCE
   C. (13.6.26) Sharing Profits and Losses.
   D. (13.6.27) Sharing of Distributions.

VIII. DISSOCIATION.
   A. (13.6.28) Dissociation of Limited Partner.
   B. (13.6.29) Dissociation of General Partner.

IX. DISTRIBUTIONS
   A. (13.6.30) Interim Distributions.
   B. (13.6.31) Distribution Upon Dissociation.
   C. (13.6.32) Distributions in Kind.
   D. Limitations on Distributions.
      1. (13.6.33) Prohibition on Distributions.
E. (13.6.35) Right to Distribution.

X. TRANSFERS OF PARTNERSHIP INTERESTS
   A. (13.6.36) Right to Transfer.
   B. Rights of Parties Upon Transfer.
      1. (13.6.37) Dissociation and Dissolution.
      2. (13.6.38) Rights of Transferee.
   D. (13.6.41) Rights of Creditors.

XI. DISSOLUTION
   A. (13.6.43) Nonjudicial Dissolution.
   B. (13.6.44) Judicial Dissolution.
   C. Administrative Dissolution.
   D. (13.6.48) WINDING UP
      B. (13.6.50) Barr ing Claims Against the Partnership.
         1. (13.6.51) Known Claims Against Dissolved Limited Partnership.
         2. (13.6.52) Other Claims Against Dissolved Limited Partnership.
      D. (13.6.54) Statement of Termination.
      E. (13.6.55) Power of General Partner and Dissociated General Partner to Bind the Partnership after Dissolution.
      F. (13.6.56) Liability after Dissolution of General Partner and Dissociated General Partner.

XIII. FOREIGN LIMITED PARTNERSHIPS
   B. (13.6.58) Foreign Registration Statement.
   C. (13.6.59) Name.
   D. (13.6.60) Withdrawal of Registration.
   E. (13.6.61) Termination of Registration.
      1. (13.6.63) Activities Not Constituting the Transaction of Business.
      2. (13.6.64) Service of Process.

XIV. MERGERS OR CONVERSION
   B. (13.6.66) Plan of Merger.
   C. (13.6.67) Approval of Plan of Merger and Articles of Merger.
   D. (13.6.68) Results of Merger.
   F. (13.6.70) Conversion.
   I. (13.6.73) Effect of Conversion.
   J. (13.6.74) Liability of General Partner after Merger or Conversion.

XV. (13.6.75) DERIVATIVE ACTIONS AND DIRECT ACTIONS BY PARTNERS

XVI. (13.6.76) FORMS
   FORM A Certification of Limited Partnership
   FORM C Agreement of Limited Partnership (Multi-Person)

PART SEVEN: GENERAL PARTNERSHIPS — THE WASHINGTON REVISED UNIFORM PARTNERSHIP ACT
I. NATURE OF PARTNERSHIPS; GENERAL PROVISIONS

A. The Nature of Partnerships (RUPA Article 2).
   1. (13.7.1) Partnership as Entity.
   2. (13.7.2) Partnership Property.
   3. (13.7.3) Formation.
   4. (13.7.4) Types of Partnerships.

B. General Provisions (RUPA Article 1).
   1. (13.7.5) Default Statute.
   2. (13.7.6) RUPA’s Ten Non-Waivable Provisions.
   3. (13.7.7) Statements.
   4. (13.7.8) Governing Law.
   5. (13.7.9) Knowledge of, and Notice to, Partners and the Partnership.

II. RELATIONS OF PARTNERS TO THIRD PARTIES AND AMONG THEMSELVES

A. Relations of Partners to Persons Dealing with the Partnership  (RUPA Article 3).
   1. (13.7.10) Agency Powers of Partners Respecting the Partnership’s Business.
   2. (13.7.11) Statements of Partnership Authority and Statements of Denial.
   4. (13.7.13) Liability of Partners.
   5. (13.7.14) Actions by and against the Partnership and the Partners.

B. Relations of Partners to Each Other and to the Partnership (RUPA Article 4).
   1. (13.7.15) Partners’ Basic Rights and Duties.
   2. (13.7.16) Distributions in Kind.
   3. (13.7.17) Books and Records, and Other Information about the Partnership.
   4. (13.7.18) Standards of Conduct.
   5. (13.7.19) Actions by the Partnership and the Partners.

A. Adoption of the Entity Theory.
   1. (13.7.20) No Interest in Partnership Property.
   2. (13.7.21) A Partner’s Transferable Interest.

B. Consequences of a Transfer of a Partner’s Transferable Interest.
   1. (13.7.22) In General.
   2. (13.7.23) Transferee’s Rights.
   3. (13.7.24) Transferor’s Rights.

C. Charging Orders.

IV. DISSOCIATION AND ITS CONSEQUENCES; DISSOLUTION

A. Introduction.

B. Dissociation.
   1. (13.7.25) Definition.
   2. (13.7.26) Effects of Dissociation, in General.
   3. (13.7.27) Events of Dissociation.

C. When Dissociation Results in Dissolution.
   1. (13.7.28) Withdrawal From an At-Will Partnership.
   2. (13.7.29) Majority Vote to Dissolve in Certain Instances.

D. When Dissociation is Wrongful.
   1. (13.7.30) RUPA Default Rules.

E. The Consequences of a Partner’s Dissociation When the Partnership is Not Dissolved.
   1. (13.7.31) Purchase of Dissociated Partner’s Interest.
   2. (13.7.32) The Dissociated Partner’s Power to Bind and Liability to the Partnership.
   3. (13.7.33) A Dissociated Partner’s Liability to Third Parties.
   4. (13.7.34) Statements of Dissociation.

F. Dissolution.
   1. (13.7.35) Definition.
   2. (13.7.36) Causes of Dissolution.
4. (13.7.38) Waiver of Dissolution.
5. (13.7.39) Right to Wind Up the Partnership Business.
6. (13.7.40) Power to Bind the Partnership and Partners’ Liability to Other Partners After Dissolution.
7. (13.7.41) Statements of Dissolution.
8. (13.7.42) Settlement of Capital Accounts; Liquidating Distributions; Contributions.

G. Summary of Consequences Arising From a Partner’s Dissociation.

V. CONVERSIONS, Mergers and Dissenters’ Rights

A. Conversions of Partnerships to Limited Partnerships and Vice Versa.
B. Mergers of Partnerships and Other Entities
C. Dissenters’ Rights

VI. LIMITED LIABILITY PARTNERSHIPS

A. Liability Protection.
B. Registration and Other Procedural Matters.
   1. (13.7.43) Existing Limited Liability Partnerships.
   2. (13.7.44) Registration of Other Partnerships.
   3. (13.7.45) Annual Filing Requirement.
   4. (13.7.46) Termination of LLP Status.
C. Name.
D. Service of Process
   1. (13.7.47) In General.
   2. (13.7.48) Changes to registered office, agent, and address of agent.
   3. (13.7.49) Resignation of Registered Agent.
E. Professional Limited Liability Partnerships.
   1. (13.7.50) In General.
   2. (13.7.51) Professional Liability Insurance Requirement.
F. Foreign Limited Liability Partnerships.
   1. (13.7.52) Registration Requirement.
   2. (13.7.53) Defining “Transacting of Business.”
   3. (13.7.54) Effect of Failure to Register.
   4. (13.7.55) Service or Process.
   5. (13.7.56) Controlling Law.

PART EIGHT: LIMITED LIABILITY COMPANIES

I. INTRODUCTION
A. (13.8.1) Historical Background.
B. (13.8.2) Taxation as Partnerships.
C. (13.8.3) Form of Certificate of Formation and Limited Liability Company Agreement

II. FORMATION

A. (13.8.4) Filing of Certificate of Formation.
B. (13.8.5) Contents of Certificate.
   1. The name of the LLC.
   2. Registered Agent.
   3. The address of the principal office of the LLC.
   4. If the LLC is to have a specific date of dissolution, the latest date on which the LLC is to dissolve.
   5. The name and address of each person executing the Certificate of Formation.
   6. Any other matters which the members choose to include.

C. (13.8.6) No Limited Liability Company Agreement Required.
D. (13.8.7) Date of Formation.
E. (13.8.8) Filing Fee.
F. (13.8.9) Amendment of Certificate.
   1. Certificate of Amendment.

III. PURPOSES
A. (13.8.10) In General.
B. (13.8.11) Professional Limited Liability Companies.

IV. MEMBERSHIP
B. (13.8.13) LLC Agreement.
   2. (13.8.15) Default Rule—Other Decisions.

V. BOOKS, RECORDS AND REPORTS
A. (13.8.17) Initial and Annual Reports.
B. Records and Information.

VI. PROTECTION FROM LIABILITY
A. Liability to Third Parties.
   2. (13.8.20) Exception: Liability for Contribution Obligations.
B. (13.8.26) Liability to the Other Members and to the LLC.

VII. FINANCE
A. Contributions.
   1. (13.8.27) Form of Contribution.
   3. (13.8.29) Right of Creditor to Compel Contribution.
B. (13.8.30) Profit and Loss Allocations.
   1. (13.8.31) Substantial Economic Effect Considerations.
C. (13.8.32) Distributions.
   4. (13.8.36) Limitations on Distributions.

VIII. MANAGEMENT
B. (13.8.38) Member Management.
C. Manager Management.
   3. (13.8.41) Election of Managers.
   4. (13.8.42) Authority of Members.
   5. (13.8.43) Death, Resignation or the Removal of Manager.
D. (13.8.44) Standard of Care

IX. LIMITED LIABILITY COMPANY INTEREST
A. Transfer.
   1. (13.8.45) LLC Interest is Transferable.
   2. (13.8.46) Rights and Obligations of Transferee.
   3. (13.8.47) Special Circumstances of Transfer.
C. Transferees.
   1. (13.8.49) Transferee Becoming a Member.
   2. (13.8.50) Rights of an Assignee who becomes a Member.
X. DISSOLUTION AND WINDING UP
   A. Dissolution.
      1. (13.8.51) Statutory.

XI. MERGERS AND CONVERSIONS
   A. Mergers.
      1. (13.8.56) Parties to a Merger.
      2. (13.8.57) Plan of Merger.
      4. (13.8.59) Articles of Merger.
      5. (13.8.60) Effect of Merger.
   C. Tax Consequences.
      1. (13.8.63) Mergers.
      3. (13.8.65) Conversions.

XII. COMPARISON OF LIMITED LIABILITY COMPANIES WITH “C” AND “S” CORPORATIONS
   B. (13.8.69) Comparison of LLCs with C Corporations.
   C. (13.8.70) Comparison of LLCs with S Corporations.

XIII. ADDITIONAL TAX ISSUES
   B. (13.8.73) Self-Employment Tax.

XIV. FORMS
   FORM A Form of Certificate of Formation
   FORM B Form of LLC Agreement