

**NEW HAMPSHIRE LLC FORMS BY JOHN CUNNINGHAM
AVAILABLE FOR PURCHASE ON THIS WEBSITE**

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I. INTRODUCTION—PURCHASING THE FORMS IN THIS WEBSITE

As I’ve indicated in the home page of this website, I’ve developed a total of 28 model operating agreements (“forms”), plus five ancillary forms, for use in forming LLCs under the old and new New Hampshire LLC Acts. You can order any of these forms by sending me an e-mail at lawjmc@comcast.net or by calling me personally at (603) 856-7172 and by mailing me a check for \$49.00 for each form. You can purchase all of the forms as a set by e-mail or telephone call for \$399.00. As soon as possible after I receive an order for any form, my law firm will e-mail it you. (Upon receiving your order, I will assume that you have mailed the requisite check and that it will clear.)

II. THE TYPES OF FORMS IN THIS WEBSITE

- 1) The 10 classes and 28 types of LLCs.
 - a) On the basis of their ownership structure, their management structure and their federal tax structure, most existing LLCs may be classified in one of 10 main classes. Each of these 10 LLC classes, in turn, may be divided into two or more types, for a total of 28 LLC types.
 - b) The 10 classes and 28 types of LLC are identified in the tables in Part III of this document. In order to be well equipped for your LLC formation practice, you need a model operating agreement (a “form”) for each of these 28 types.
 - c) The 28 forms are identified in the far-left-hand “cell” in the rows of these tables. The far right-hand cell in each of these rows contains an example of when to use the form identified in the row.
- 2) The 28 forms.
 - a) I have designed, and have identified in the tables in Part III of this document, a New Hampshire form for each of the above 28 LLC types. I have constructed these forms to work equally well under both (i) the current New Hampshire Limited Liability Company Act; and (ii) the Revised New Hampshire Limited Liability Company Act (effective

January 1, 2013).

- b) The 28 forms in this website are based on the forms in *Drafting Limited Liability Company Operating Agreements*, the leading U.S. LLC formbook and practice manual, published by Wolters Kluwer Law & Business.¹ I use all of these forms on a regular basis in my own New Hampshire LLC formation practice.
- c) A few of the 28 forms require the use of one and sometimes two accompanying forms. Specifically:
 - i) Forms 1.3 and 1.6. Forms 1.3 and 1.6, which provide for third-party LLC managers who are not LLC members, are accompanied by an employment agreement for use between these managers and their LLCs.
 - ii) Forms 2.1 and 2.2. Form 2.1 is for single-member LLCs whose members are entities and which have one individual as their managers. Form 2.2 is for single-member LLCs whose members are entities and that have two or more individuals as their managers. Form employment agreements for these managers accompany Forms 2.1 and 2.2.
 - iii) Form 2.3. Form 2.3 is for single-member LLCs whose members are entities and which have officers and internal boards of directors. Form 2.3 is accompanied by a form employment agreement and form bylaws.
 - iv) Forms 5.1 and 5.2. Form 5.1 and 5.2, which are forms for a multi-member LLC with relatively numerous members, require the use of:
 - (1) Accompanying forms with provisions for a managing member; and
 - (2) Accompanying forms with provisions for a management committee.
 - v) Forms 10.1 through 10.3. Forms 10.1 through 10.3, which are for multi-member LLCs with corporate management structures, are accompanied by form bylaws.

All of these various accompanying forms are provided at no extra charge with each of the “basic” forms which they accompany in each purchase of the “basic” form.

¹ I am the principal author of *Drafting Limited Liability Company Operating Agreements*. Vernon R. Proctor of the Delaware bar is the co-author.

III. TABLES OF NEW HAMPSHIRE LLC FORMS

**Table 1: TABLE OF FORMS FOR
CLASS 1 LLCs (SINGLE-MEMBER LLCs OWNED BY ONE INDIVIDUAL)**

FORM NUMBER	MANAGEMENT STRUCTURE	FEDERAL INCOME TAX REGIMEN	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 1.1	<u>Member-managed.</u> The LLC's member is also its manager and there is no assistant manager.	Disregarded entity	<ol style="list-style-type: none"> 1. John Doe is married to Mary Doe. He decides to form ABC, LLC in order to purchase and operate a convenience store. John's LLC lawyer, Ann Able, advises him to form a two-member LLC in order to reduce the risk of veil-piercing and to obtain LLC statutory charging order protections. However, John doesn't want a co-owner, so Ann forms ABC as a single-member LLC. 2. Ann advises John to appoint his wife or another trusted person as a non-member assistant manager of ABC in order to provide for continuity of management in case, because of illness or otherwise, John can't manage ABC. However, John doesn't want an assistant manager. 3. John's tax accountant advises John that the simplest and least expensive federal tax regimen for ABC is the disregarded entity regimen. 4. Thus, Ann uses Form 1.1 as the basis for ABC's operating agreement.
Form 1.2	<u>Manager-managed.</u> The LLC's member is its manager, but the LLC also has one or more assistant managers.	Disregarded entity	<ol style="list-style-type: none"> 1. Same facts as in Row 1.1, except that John is willing to have a non-member assistant manager. 2. Thus, Ann uses Form 1.2 as the basis for ABC's operating agreement.
Form 1.3 [Note: This form is accompanied by a model employment agreement.]	<u>Manager-managed.</u> The LLC's member is a non-manager, and the LLC is managed by a non-member manager.	Disregarded entity	<ol style="list-style-type: none"> 1. Same facts as in Row 1.2, except that John does not want to manage ABC, but rather, wants to be a non-manager member and to appoint his friend Richard Roe as ABC's non-member manager. 2. Thus, Ann uses Form 1.3 as the basis for ABC's operating agreement.
Form 1.4	<u>Member-managed.</u> The LLC's member is also its manager and there is no assistant manager	Subchapter S	<ol style="list-style-type: none"> 1. Same facts as in Row 1.1, except that John's tax adviser advises him that to reduce the risk of federal tax audits, ABC should be taxable as an S corporation rather than as a sole proprietorship. 2. Thus, Ann uses Form 1.4 as the basis for ABC's operating agreement.

FORM NUMBER	MANAGEMENT STRUCTURE	FEDERAL INCOME TAX REGIMEN	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 1.5	<u>Manager-managed.</u> The LLC's member is its manager, but the LLC also has one or more assistant managers.	Subchapter S	<ol style="list-style-type: none"> 1. Same facts as in Row 1.2, except that John's tax adviser advises him that to reduce the risk of federal tax audits, ABC should be taxable as an S corporation rather than as a sole proprietorship. 2. Thus Ann uses Form 1.5 as the basis for ABC's operating agreement.
Form 1.6 [Note: This form is accompanied by a model employment agreement.]	<u>Manager-managed.</u> The LLC's member is a non-manager, and the LLC is managed by a non-member manager.	Subchapter S	<ol style="list-style-type: none"> 1. Same facts as in Row 1.3, except that John's tax adviser advises him that to reduce the risk of federal tax audits, ABC should be taxable as an S corporation rather than as a sole proprietorship. 2. Thus Ann uses Form 1.6 as the basis for ABC's operating agreement.

Table 2: TABLE OF FORMS FOR CLASS 2 LLCs (SINGLE-MEMBER LLCs OWNED BY ONE ENTITY)

FORM NUMBER	MANAGEMENT STRUCTURE	FEDERAL INCOME TAX CLASSIFICATION	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 2.1 [Note: This form is accompanied by a model employment agreement.]	Managed by a single non-member individual.	Disregarded entity	<ol style="list-style-type: none"> 1. LLC lawyer Ann Able advises XYZ, Inc. to form DEF, LLC, a single-member LLC, to conduct certain hazardous XYZ operations and thus to insulate XYZ from liability for these operations. XYZ agrees. 2. Since DEF's operations will not be complex, Ann advises XYZ that DEF should be managed by one individual. XYZ agrees. 3. Thus, Ann uses Form 2.1 as the basis for DEF's operating agreement.
Form 2.2 [Note: This form is accompanied by a model employment agreement.]	Managed by two or more non-member managers	Disregarded entity	<ol style="list-style-type: none"> 1. Same facts as in Row 2.1, except that DEF's operations will be somewhat complex. 2. Thus, Ann uses Form 2.2 as the basis for DEF's operating agreement.

Form 2.3 [Note. This form is accompanied by model bylaws for a single-member LLC.]	Managed by an internal board of directors and by officers who are non-member managers	Disregarded entity	<ol style="list-style-type: none"> 1. Same facts as in Row 2.2, except that DEF's operations will be quite complex and will involve significant financial risks. 2. Thus, Ann uses Form 2.3 as the basis for DEF's operating agreement.
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TABLE 3: TABLE OF FORMS FOR CLASS 3 LLCs (MULTI-MEMBER LLCs—SIMPLE GENERAL PARTNERSHIP MANAGEMENT STRUCTURE—TAXABLE UNDER SUBCHAPTER K)

FORM NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 3.1	Two members with equal management rights	<ol style="list-style-type: none"> 1. John Doe and Mary Roe want to form GHI, LLC, a small two-member LLC, to jointly purchase and operate a convenience store. They agree that they will have equal membership rights. 2. Their tax adviser advises them that they will have maximum tax flexibility if GHI is taxable as a partnership. 3. Thus, their LLC lawyer, Ann Able, uses Form 3.1 as the basis for GHI's operating agreement.
Form 3.2	Two members with unequal management rights	<ol style="list-style-type: none"> 1. Same facts as above, except that John will have lesser economic and management rights than Mary. 2. Thus, Ann uses Form 3.2 as the basis for GHI's operating agreement.
Form 3.3	Three or more members	<ol style="list-style-type: none"> 1. Same facts as in Row 3.1, except that GHI will have three members. 2. Thus, Ann uses Form 3.3 as the basis for GHI's operating agreement.

**Table 4: TABLE OF FORMS FOR
CLASS 4 LLCs (MULTI-MEMBER LLCs—SIMPLE GENERAL PARTNERSHIP
MANAGEMENT STRUCTURE—TAXABLE UNDER SUBCHAPTER S)**

FORM NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 4.1	Two members with equal management rights	<ol style="list-style-type: none"> 1. Same facts as in Row 3.1, except that GHI's tax adviser advises that to avoid double taxation and to reduce the members' Social Security Tax liability on their shares of GHI's income, GHI should be taxable as an S corporation. 2. Thus, Ann Able uses Form 4.1 as the basis for GHI's operating agreement.
Form 4.2	Two members with unequal management rights	<ol style="list-style-type: none"> 1. Same facts as in Row 3.2, except that GHI's tax adviser advises that in order to avoid double taxation and to reduce the members' Social Security Tax liability on their shares of GHI's income, GHI should be taxable as an S corporation. 2. Thus, Ann Able uses Form 4.2 as the basis for GHI's operating agreement.
Form 4.3	Three or more members	<ol style="list-style-type: none"> 1. Same facts as in Row 3.2, except that GHI's tax adviser advises that in order to avoid double taxation and to reduce the members' Social Security Tax liability on their shares of GHI's income, GHI should be taxable as an S corporation. 2. Thus, Ann Able uses Form 4.3 as the basis for GHI's operating agreement.

**Table 5: TABLE OF FORMS FOR
CLASS 5 LLCs (MULTI-MEMBER LLCs—COMPLEX GENERAL PARTNERSHIP
MANAGEMENT STRUCTURE—TAXABLE UNDER SUBCHAPTER K OR S)**

FORM NUMBER	NUMBER OF MEMBERS	FEDERAL INCOME TAX REGIMEN	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
<p>Form 5.1 [Note. This form is accompanied by model provisions for a managing member and for a management committee.]</p>	<p>Three or more members</p>	<p>Subchapter K (without Prop. Reg. provisions)</p>	<ol style="list-style-type: none"> 1. Six lawyers resign from the litigation department of a large New Hampshire law firm to form JKL, LLC, a litigation firm of their own. Each member will have full management rights, but, for efficiency, they agree to delegate day-to-day management of JKL to one of the members. 2. JKL’s tax adviser advises them that in order to maximize federal tax flexibility, JKL should be subject to federal income taxation as a partnership. 3. Thus, Ann Able uses Form 5.1 as the basis for JKL’s operating agreement.
<p>Form 5.2 [Note. This form is accompanied by model provisions for a managing member and for a management committee.]</p>	<p>Three or more members</p>	<p>Subchapter S</p>	<ol style="list-style-type: none"> 1. Same facts as in Row 5.1, except that JKL’s tax adviser advises that in order to avoid double taxation and to minimize the members’ Social Security Tax liability, JKL should be taxable as an S corporation. 2. Thus, Ann uses Form 5.2 as the basis for JKL’s operating agreement.

**Table 6: TABLE OF FORMS FOR
CLASS 6 LLCs (MULTI-MEMBER LLCs—SIMPLE LIMITED PARTNERSHIP
MANAGEMENT STRUCTURE—MEMBER-MANAGER—MEMBER-CONTROLLED—
TAXABLE UNDER SUBCHAPTER K)**

FORM NUMBER	NUMBER OF MEMBERS	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 6.1	Two members	<ol style="list-style-type: none"> 1. John Doe wants to form MNO, LLC to manufacture widgets. Mary Roe will invest \$50,000 in MNO but will not participate in its day-to-day management. However, Mary wants a vote on all other MNO management matters. 2. MNO's tax adviser advises that to maximize federal tax flexibility, MNO should be taxable as a partnership. 3. Thus, Ann Able uses Form 6.1 as the basis for MNO's operating agreement.
Form 6.2	Three or more members	<ol style="list-style-type: none"> 1. Same facts as in Row 6.1, except that Mary Roe and her brother Roger Roe will each invest in MNO; neither will participate in MNO's day-to-day management; but both want votes on all other MNO management matters. 2. Thus, Ann uses Form 6.2 as the basis for MNO's operating agreement.

**Table 7: TABLE OF FORMS FOR
CLASS 7 LLCs (MULTI-MEMBER LLCs—SIMPLE LIMITED PARTNERSHIP
MANAGEMENT STRUCTURE—MEMBER-MANAGER—MEMBER-CONTROLLED—
TAXABLE UNDER SUBCHAPTER S)**

FORM NUMBER	NUMBER OF MEMBERS	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 7.1	Two members	<ol style="list-style-type: none"> 1. Same facts as in Row 6.1, except that MNO's tax adviser advises that in order to avoid double taxation and to minimize the members' Social Security Taxes, MNO should be taxable as an S corporation. 2. Thus, Ann Able uses Form 7.1 as the basis for MNO's operating agreement.
Form 7.2	Three or more members	<ol style="list-style-type: none"> 1. Same facts as in Row 6.2, except that MNO's tax adviser advises that in order to avoid double taxation and to minimize the members' Social Security Taxes, MNO should be taxable as an S corporation. 2. Thus, Ann Able uses Form 7.2 as the basis for MNO's operating agreement.

**Table 8: TABLE OF FORMS FOR
CLASS 8 LLCs (MULTI-MEMBER LLCs--SIMPLE LIMITED PARTNERSHIP
MANAGEMENT STRUCTURE—MEMBER-MANAGER—MANAGER-
CONTROLLED—TAXABLE UNDER SUBCHAPTER K)**

FORM NUMBER	NUMBER OF MEMBERS	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 8.1	Two members	<ol style="list-style-type: none"> 1. Same facts as in Row 6.1, except that John Doe will have the right not only to manage MNO's day-to-day business but also to decide all but a few major MNO matters such as whether it should be dissolved or should sell all of its assets. 2. Thus, Ann Able uses Form 8.1 as the basis for its operating agreement.
Form 8.2	Three or more members	<ol style="list-style-type: none"> 1. Same facts as in Row 6.2, except that John Doe will have the right not only to manage MNO's day-to-day business but also to decide all but a few major MNO matters such as whether it should be dissolved or should sell all of its assets. 2. Thus, Ann Able uses Form 8.2 as the basis for its operating agreement.

**Table 9: TABLE OF FORMS FOR
CLASS 9 LLCs (MULTI-MEMBER LLCs--SIMPLE LIMITED PARTNERSHIP
MANAGEMENT STRUCTURE—MEMBER-MANAGER—MANAGER-
CONTROLLED—TAXABLE UNDER SUBCHAPTER S)**

FORM NUMBER	NUMBER OF MEMBERS	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
Form 9.1	Two members	<ol style="list-style-type: none"> 1. Same facts as in Row 8.1, except that MNO's tax adviser advises that, in order to avoid double taxation and to minimize the members' Social Security Tax liability, MNO should be taxable as an S corporation. 2. Thus, Ann uses Form 9.1 as the basis for MNO's operating agreement.
Form 9.2	Three or more members	<ol style="list-style-type: none"> 1. Same facts as in Row 8.2, except that MNO's tax adviser advises that, in order to avoid double taxation and to minimize the members' Social Security Tax liability, MNO should be taxable as an S corporation. 2. Thus, Ann uses Form 9.2 as the basis for MNO's operating agreement.

**TABLE 10: TABLE OF FORMS FOR
CLASS 10 LLCs (MULTI-MEMBER LLCs—CORPORATE MANAGEMENT
STRUCTURE—MANAGERS MAY BE EITHER MEMBER-MANAGERS OR NON-
MEMBER MANAGERS—TAXABLE UNDER SUBCHAPTER C, K OR S)**

FORM NUMBER	NUMBER OF MEMBERS	FEDERAL INCOME TAX REGIMEN	EXAMPLE OF FACT SITUATION IN WHICH TO USE THIS FORM
<p>Form 10.1 [Note. This form is accompanied by model bylaws for a multi-member LLC and by a model employment agreement.]</p>	<p>Three or more members</p>	<p>Subchapter C</p>	<ol style="list-style-type: none"> 1. Arthur Able wants to form and manage PQR, LLC to manufacture widgets. PQR will have five equity investors. The investors want a corporate management structure with a board of directors to supervise Arthur’s management of PQR. 2. PQR’s tax adviser advises that because PQR will be authorized to issue preferred stock, it cannot meet the eligibility rules for taxation under Subchapter S; and that PQR needs to be able to offer simply structured stock options. Thus, PQR’s tax adviser advises that PQR should be taxable as a C corporation. 3. Thus, Ann Able uses Form 10.1 as the basis for PQR’s operating agreement.
<p>Form 10.2 [Note. This form is accompanied by model bylaws for a multi-member LLC and by a model employment agreement.]</p>	<p>Three or more members</p>	<p>Subchapter K provisions</p>	<ol style="list-style-type: none"> 1. Same facts as in Row 10.1, except that PQR will not be authorized to issue stock options. Thus, its tax adviser advises that, to maximize its tax flexibility, it should be taxable as a partnership. 2. Thus, Ann uses Form 10.2 as the basis for its operating agreement.
<p>Form 10.3 [Note. This form is accompanied by model bylaws for a multi-member LLC and by a model employment agreement.]</p>	<p>Three or more members</p>	<p>Subchapter S</p>	<ol style="list-style-type: none"> 1. Same facts as above, except that PQR’s tax adviser advises that to avoid double taxation and to minimize the members’ Social Security Tax liability, PQR should be taxable as an S corporation. 2. Thus, Ann uses Form 10.3 as the basis for PQR’s operating agreement.

IV. HOW TO CHOOSE THE RIGHT FORM FOR A NEW HAMPSHIRE LLC FORMATION CLIENT

- 1) Choosing forms on the basis of the 10 tables.
 - a) In order to choose the right form for a particular New Hampshire LLC formation client, you must first determine the ownership structure, the management structure and the federal tax structure of the LLC in question. These determinations will tell you the class of that LLC. As indicated above in this document and in the tables in Part II of this document, there are 10 classes of LLCs, and in order to be able to form each of the types of LLCs in each of these classes, you must have a form for each of those types. This means that you must have a total of 28 forms.
 - b) You must choose the right form for a particular LLC on the basis of the table in Part III for that class.
- 2) Ease and difficulty in making the choice. You will probably find it easy to determine the ownership structure and the management structure that will be best for your clients' LLCs. If you lack tax expertise, you may find it difficult to determine the best federal tax structure for these LLCs. However, your clients' accountants will often be able to make this determination; and, in any event, you should consult with these accountants if they are the tax professionals who will prepare tax returns for these LLCs.
- 3) Example. As indicated above, each row in each of the tables in Part III of this document provides an example of when to use the form identified in the row. Here is an additional example:

EXAMPLE.

- Mary Roe wants to form ABC, LLC, a simple husband-wife LLC, through which to conduct a trucking business that she and her husband will own and operate. The LLC will have a simple general partnership management structure in which Mary and her husband will have equal agency rights, decision-making rights and other management rights; and all of the other rights that Mary and her husband will have as members of ABC will also be equal.
 - Mary's accountant advises her that to avoid double taxation and to minimize the Social Security Tax liability of her and her husband, the federal tax structure of ABC should be that of an S corporation.
 - Under the LLC classification system outlined above and implemented in the tables in Part III of this document, ABC will be a Class 4 LLC. The types of LLCs under Class 4 and the forms for those types are identified in Part III of this document, Table 4.
 - Obviously, the ownership structure of ABC will be that of a two-member LLC in which the members have equal membership rights. Thus, in drafting an operating agreement for ABC, you should use Form 4.1.
- 4) My availability to consult. However, as noted above, if you have any doubt about the right form for a particular New Hampshire LLC formation client, please feel free to consult with me about the matter. As indicated, my telephone number is (603) 856-7172 and my e-mail address is lawjmc@comcast.net.

V. HOW TO USE THE FORMS IN THIS WEBSITE

[A] INTRODUCTION—BASIC DEFINITIONS AND CONCEPTS

- 1) Operating agreements—definition. Operating agreements are binding legal contracts:
 - a) Between the members of multi-member LLCs about their rights and duties as members; and
 - b) Between the members of single-member LLCs and their LLCs about the legal and tax structures of their LLCs.
- 2) What is a “good” operating agreement? A good operating agreement is one that:
 - a) Identifies in its table of contents and in the captions of its sections and subsections all of the legal and tax issues important to the client forming the LLC; and
 - b) To the extent possible, resolves these issues in the client’s best interest.
- 3) Model operating agreements (“forms”)—definition; functions. Model operating agreements (“forms”) are, in essence, blank operating agreements. A good form:
 - a) Identifies, in its tables of contents and in its sections and subsections, all of the legal and tax issues reasonably likely to be significant for the members and managers of LLCs of the specific LLC type for which the form is designed; and
 - b) In the provisions under its sections and subsections, provides optimal starting points for resolving these issues.
- 4) What is an “optimal starting point”? To provide the above “optimal starting points,” the provisions of a form must meet a “plurality” test—that is, a provision that will work for more LLCs of the relevant LLC type than any alternative provision.

[B] GUIDELINES FOR USING THE FORMS

On the basis of the above definitions and concepts, it is clear that in order to make competent use of the LLC forms in this website, you will need to follow three guidelines:

- 1) Delete. Every LLC has at least a few unique features. Thus, it is inevitable that even the best LLC form will contain provisions that are irrelevant for the LLC you are forming for your client. Accordingly, in using any form in this website in an LLC formation to draft an operating agreement for an LLC formation client, you must delete from the agreement all provisions that are not needed by your client. You will almost always find that this requires you to delete at least a few provisions.

EXAMPLE. Section 1.17 of Form 3.1 in the above Table 3 contains a provision requiring a specification of the “principal legal adviser” of the LLC in question. Many LLC clients for whom you are drafting operating agreements on the basis of Form 3.1 may not need or want this specification. Thus, in the operating agreements you draft for these clients, you should delete Section 1.17.

- 2) Alter. Since every LLC has at least a few unique features, it is inevitable that the content of the starting-point provisions in some of the sections and sections of any form in this website that you use as the basis for drafting an operating agreement for an LLC formation client will not be optimal for that client. Thus, you must alter each of these provisions in that operating agreement. You will almost always find that this will require you to alter at least a few

provisions in these agreements.

EXAMPLE. Section 16.2 of Form 3.1 provides that the standard of care of the members of LLCs whose operating agreements are based on that form is a standard of “competence.” However, the members of particular LLCs whose operating agreements are based on Form 3.1 may prefer a different standard, such as a standard merely requiring LLC managers to avoid gross negligence. You should alter the operating agreement of a client for which you are using Form 3.1 as a basis to provide for the alternative standard of care preferred by your client.

- 3) Add. Since every LLC has at least a few unique features, it is inevitable that at least a few issues important to your LLC formation client will not be addressed in the form in this website that you use in drafting an operating agreement for the client. Thus, you must add original provisions to these operating agreements to address each of these issues. You will almost always find that this will require you to add at least a few original provisions to these agreements.

EXAMPLE. Form 3.1 contains no provision expressly requiring members of LLCs whose operating agreements are based on that form to transfer to their LLC any intellectual property they develop while they are members of the LLC that may be useful to their LLC. In forming an LLC whose members, while they are members, may develop intellectual property useful to their LLC, you may want to add an original provision to an operating agreement you are basing on Form 3.1 that will require the members to transfer that intellectual property to the LLC.