

Contents

About the Authors	vii
Preface	ix
Software Instructions	xi

PART I ORGANIZATION

CHAPTER 1: INTRODUCTION	1-1
1.1. Nature and Use of This Practice Manual	1-2
1.2. Comparison of the LLC with Other Entities	1-3
1.2.1. Generally	1-3
1.2.2. Comparison with S Corporations	1-5
1.3. History of the LLC	1-6
1.4. The New Jersey Limited Liability Company Act — An Overview	1-7
1.5. Key Features of the New Jersey Act	1-10.3
1.5.1. Flexible vs. Bulletproof Statutes	1-10.4
1.5.2. Term of the LLC	1-10.5
1.5.3. Written Operating Agreement	1-10.5
1.5.4. Management	1-10.5
1.5.5. Members	1-10.6
1.6. Classification of the LLC as a Partnership for Federal Income Tax Purposes	1-10.6
1.6.1. Introduction	1-10.6
1.6.2. Consequences of Classification as a Corporation ..	1-10.7
1.6.3. Tax History of the LLC	1-11
1.6.4. Understanding the Classification Rules	1-12
1.6.4.1. LLCs Organized on or after January 1, 1997	1-14
1.6.4.2. LLCs Organized before January 1, 1997, for Periods before January 1, 1997	1-14.1
1.6.4.3. LLCs Organized before January 1, 1997, for Periods on or after January 1, 1997	1-14.2
1.6.4.4. Elections	1-14.3
1.6.5. Understanding the Classification Rules in Effect Prior to the Check-the-Box Regulations	1-14.4
1.6.5.1. Limited Liability	1-14.5

CONTENTS

1.6.5.2. Centralized Management 1-14.6
1.6.5.3. Continuity of Life 1-16
1.6.5.4. Free Transferability of Interests 1-21

CHAPTER 2: FORMATION AND ORGANIZATION 2-1

2.1. Introduction 2-3
2.2. Preformation Matters 2-3
Form 2-1. Memorandum Attendant to the Execution
and Filing of Certificate of Formation 2-4
Form 2-2. Letter Directing Execution and Filing of
Certificate of Formation 2-4
2.3. Certificate of Formation 2-5
2.3.1. Basic Requirements 2-5
Form 2-3. Certificate of Formation
without Special Provisions —
Signed by Authorized Person 2-7
2.3.2. Optional Provisions 2-8
Form 2-4. Certificate of Formation —
Optional Provision 2-8
2.4. Certificate of Correction 2-9
Form 2-5. Certificate of Correction of Certificate
of Formation 2-9
2.5. Certificate of Amendment 2-10
Form 2-6. Consent of Members to Amend Certificate
of Formation 2-10
Form 2-7. Certificate of Amendment 2-11
2.6. Reservation of Name 2-12
Form 2-8. Application to Reserve Name 2-12
2.7. Change of Name of Registered Agent, Change of
Address of Registered Agent 2-13
Form 2-9. Change of Name of Registered Agent 2-13
Form 2-10. Change of Address of Registered Agent 2-14
Form 2-11. Resignation of Registered Agent and
Appointment of a Successor 2-14
2.8. Alternate Name 2-16
Form 2-12. Certificate of Registration of Alternate Name 2-17
2.9. Annual Report 2-17

**PART II
OPERATIONS**

CHAPTER 3: THE OPERATING AGREEMENT 3-1

3.1. In General 3-2
3.2. “Operating Agreement” Defined 3-3

3.3. Flexibility of the LLC Form 3-4
 Form 3-1. Checklist for the Formation of a New LLC 3-5
 3.4. Form of the Operating Agreement 3-10
 3.5. Formality of Adoption 3-10
 3.6. Amendment 3-10
 3.7. Form Operating Agreements 3-10

CHAPTER 4: ORGANIZATION 4-1

4.1. Drafting LLC Organization Provisions 4-3
 4.2. Introductory Paragraph 4-3
 Form 4-1. Introductory Paragraph — Names Parties 4-3
 Form 4-2. Introductory Paragraph — Does Not
 Name Parties 4-4
 4.3. Background to Agreement 4-4
 Form 4-3. Explanatory Statement 4-4
 4.4. Confirmation of Agreement 4-4
 Form 4-4. Confirmation of Agreement 4-4
 4.5. Definitions 4-5
 4.5.1. “Interest” Compared to “Membership Rights” 4-5
 4.5.2. “Interest Holder” Compared to “Member” 4-6
 Form 4-5. General Definitions 4-6
 4.6. Agreement to Organize LLC 4-8
 Form 4-6. General Agreement to Organize LLC 4-8
 Form 4-7. Organizational Provision Confirming That a
 Certificate of Formation Has Been Filed 4-8
 4.7. Name 4-9
 Form 4-8. Name Provision for Member-Managed LLC 4-9
 Form 4-9. Name Provision for Manager-Managed LLC 4-9
 4.8. Purpose 4-9
 Form 4-10. Any Lawful Purpose 4-10
 Form 4-11. Specific Purpose 4-10
 Form 4-12. Purpose Limited to Real Estate 4-10.1
 Form 4-12a. Purpose Limited to Specific Real Estate 4-10.1
 4.9. Term 4-10.2
 Form 4-13. Term Commences on Date of Filing of
 Certificate of Formation 4-11
 Form 4-14. Term Commences upon Execution of
 Operating Agreement 4-12
 4.10. Registered Office 4-12
 Form 4-15. Registered Office of LLC 4-12
 4.11. Registered Agent 4-12
 Form 4-16. Registered Agent 4-13
 4.12. Members 4-13
 Form 4-17. Schedule of Members Set Forth in Exhibit 4-13

CONTENTS

Form 4-18.	Schedule of Members Set Forth in Text of Agreement	4-14
Form 4-19.	Schedule of Members (without Percentages)	4-15
4.13.	Miscellaneous Provisions	4-15
Form 4-20.	Miscellaneous Provisions	4-15
4.14.	Post-Organization Communication with Clients	4-18
Form 4-21.	Form of Post-Organization Reporting Letter to Client.	4-18
Form 4-22.	Alternate Form of Letter to New LLC Regarding Operational and Other Post-Formation Matters	4-20
4.15.	Series LLC	4-33
CHAPTER 5: LIMITED LIABILITY COMPANY CAPITAL		5-1
5.1.	Drafting Capital Provisions	5-3
5.2.	Initial Capital Contributions	5-3
Form 5-1.	Initial Capital Contributions in Cash	5-4
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	5-5
5.3.	Additional Capital Contributions	5-5
Form 5-5.	Additional Capital Contributions at Discretion of Manager — Limit on Amount	5-6
Form 5-6.	Additional Capital Contributions at Discretion of Members — Limit on Amount	5-7
Form 5-7.	No Liability Beyond Initial Capital Contribution	5-7
Form 5-8.	No Liability Beyond Additional Capital Contributions.	5-8
5.4.	Default in Payment of Contributions.	5-8
Form 5-9.	Remedy of Reduction of Member's Interest in Event of Failure to Make Contribution to Manager-Managed LLC	5-8
5.5.	Interest on Capital Contributions.	5-9
Form 5-10.	No Interest on Capital Contributions	5-9
Form 5-11.	Interest on Capital Contributions	5-9
5.6.	Return of Capital Contributions	5-10
Form 5-12.	Return of Capital Contributions	5-10
5.7.	Form of Distribution	5-10
Form 5-13.	Form of Distribution — No Right to Receive Anything but Cash	5-11

Form 5-14. Form of Distribution — Form of Distribution Is at Discretion of Manager in Manager-Managed LLC 5-11

5.8. Capital Accounts 5-11

Form 5-15. Capital Accounts Maintained in Accordance with Code Section 704. 5-12

5.9. Loans 5-12

Form 5-16. Loans — General Authority of LLC to Borrow Money from Members on Terms to Be Agreed upon in Future 5-12

Form 5-17. Loans — Authority to Make Specific Loan with General Authority to Borrow Money from Members on Terms to Be Agreed upon in Future 5-13

Form 5-18. Any Member May Call for Member Loans. 5-13

Form 5-19. Member Loans — Terms. 5-14

CHAPTER 6: ALLOCATION AND DISTRIBUTION PROVISIONS 6-1

6.1. Taxation of the LLC 6-3

6.2. General Allocation and Distribution Concepts 6-3

6.3. Distribution Restrictions under the Act 6-4

6.4. Allocation Restrictions — Code Section 704(b) 6-4

6.4.1. Overview. 6-4

6.4.2. The Three Alternative Allocation Tests 6-5

6.4.2.1. The First Test: Partners’ Interests 6-5

6.4.2.2. The Second Test: Substantial Economic Effect and Capital Accounts. 6-6

6.4.2.3. The Third Test: Nonrecourse Debt. 6-7

6.4.3. Allocations to Interest Holders 6-8

6.5. Definitions 6-8

6.5.1. Distribution-Related Definitions. 6-9

Form 6-1. Distribution Definitions. 6-9

6.5.2. Allocation-Related Definitions 6-10

Form 6-2. Tax Definitions 6-10

6.6. Basic Distribution Provisions. 6-13

6.6.1. In General 6-13

6.6.2. Cash Flow from Operations 6-13

Form 6-3. Distribution of Cash Flow. 6-14

6.6.3. Distribution of Net Capital Proceeds 6-14

Form 6-4. Distribution of Capital Proceeds 6-14

6.6.4. Liquidation Proceeds 6-14

Form 6-5. Liquidation and Dissolution 6-15

Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation 6-15

CONTENTS

- 6.7. Basic Allocation Provisions. 6-16
 - 6.7.1. Basic Allocations of Profits and Losses. 6-16
 - Form 6-7. Profits and Losses 6-16
 - 6.7.2. Minimum Gain Chargeback and Qualified Income Offset. 6-17
 - Form 6-8. Minimum Gain Chargeback and Qualified Income Offset. 6-17
 - 6.7.3. Other Regulatory Allocations 6-18
 - Form 6-9. Regulatory Allocations. 6-19
 - 6.7.4. General Provisions 6-20
 - Form 6-10. General Provisions 6-20
- 6.8. Complex and Disproportionate Distribution and Allocation Provisions 6-22
 - 6.8.1. Distribution Preferences. 6-22
 - Form 6-11. Distribution Preference. 6-22.1
 - 6.8.2. Disproportionate Allocation of Losses 6-25
 - Form 6-12. Disproportionate Allocation of Losses. . . 6-25
- CHAPTER 7: MANAGEMENT PROVISIONS. 7-1**
 - 7.1. Drafting LLC Management Provisions 7-3
 - 7.1.1. General Flexibility under the Act. 7-3
 - 7.1.2. Typical Approaches 7-4
 - 7.1.3. Officers and Managers. 7-5
 - 7.1.4. Tax Aspects 7-5
 - 7.2. Member-Managed LLC Provisions. 7-6
 - Form 7-1. Simple Member-Management Provision 7-6
 - Form 7-2. Member-Management with Appointment of Ministerial Manager 7-6
 - 7.3. Representative Management 7-6.1
 - 7.3.1. Management by a Manager Similar to a General Partner of a Limited Partnership 7-6.1
 - Form 7-3. Manager with Authority Similar to a General Partner of a Limited Partnership 7-7
 - Form 7-4. Manager with Authority Similar to a General Partner of a Limited Partnership — Alternative Form 7-9
 - 7.3.2. Management by Management Committee. 7-9
 - Form 7-5. Management Committee 7-9
 - Form 7-5a. Management Committee (Alternative Form) 7-11
 - 7.3.3. Management by One Class of Members 7-12.1
 - Form 7-6. Definition of Class A and Class B Members. 7-12.2
 - Form 7-7. Management by Class A Members. . . 7-12.2

7.3.4. Management in Bankruptcy Remote Entity 7-12.2
 Form 7-7a. Special Purpose Management
 Provisions 7-12.2

7.4. Replacement of Managers 7-12.5
 Form 7-8. Removal of Manager for Any Reason 7-12.5
 Form 7-9. Removal of Manager for Only Specified Reasons 7-13

7.5. Meetings of Members 7-13
 Form 7-10. Procedure for Calling and Holding Meetings 7-13
 Form 7-11. Procedure for Calling and Holding
 Meetings — Only Class A Members Vote 7-14

7.6. Informal Action of Members; Form of Member Consents 7-15
 Form 7-12. Informal Actions 7-15
 Form 7-13. Form of Consent of Members 7-15

7.7. Unanimous Consent 7-17
 Form 7-14. Unanimous Consent (Vote of All Members) 7-18
 Form 7-15. Consent of Members (Vote of Less
 Than All Members) 7-18

7.8. Deadlock and Resolution 7-18
 Form 7-16. Arbitration of Deadlock 7-19
 Form 7-16a. Arbitration of Dispute (Alternate Form) 7-19
 Form 7-16b. Meeting between Senior Executives; Mediation 7-21
 Form 7-17. Reciprocal Purchase Rights in the Event
 of Deadlock 7-21
 Form 7-17a. Deadlock; Buy-Sell 7-24

7.9. Compensation and Reimbursement 7-26
 Form 7-18. No Arrangement for Compensation
 (Member-Managed) 7-26
 Form 7-19. Compensation (Manager-Managed) 7-27
 Form 7-20. Extraordinary Compensation 7-27

7.10. Standard of Care and Degree of Loyalty 7-27
 Form 7-21. Standard of Care and Degree of Loyalty 7-30
 Form 7-21a. Standard of Care and Duty of Loyalty
 (Alternative Form) 7-31

7.11. Indemnification 7-32
 Form 7-22. Liability and Indemnification of Members
 (Manager-Managed) 7-32
 Form 7-22a. Indemnification 7-33
 Form 7-23. Liability and Indemnification of Members
 (Member-Managed) 7-33
 Form 7-23a. Notice and Defense of Third-Party Claims 7-34

7.12. Power of Attorney 7-34
 Form 7-24. Power of Attorney 7-34

CHAPTER 8: TRANSFER AND BUY-SELL PROVISIONS 8-1

8.1. The Act’s Default Rules for Transfers 8-3

CONTENTS

- 8.2. Tax Aspects of Transfer Restrictions. 8-3
 - 8.2.1. Partnership Classification 8-3
 - 8.2.2. Termination of the LLC 8-4
 - 8.2.3. Basis Issues 8-5
- 8.3. Preliminary Drafting Considerations. 8-5
 - Form 8-1. Definitional Provision — Transfer 8-6
 - Form 8-2. Definitional Provisions — Interest and Membership Rights. 8-6
- 8.4. Drafting Transfer Provisions That Follow the Act’s Default Rules. 8-6.1
 - Form 8-3. Transfer Provision Following the Act’s Default Rules 8-6.1
- 8.5. Drafting Transfer Provisions That Permit Free Transferability of Interests 8-6.1
 - Form 8-4. Free Transferability of Interests and Rights 8-7
- 8.6. Drafting Transfer Provisions That Absolutely Prohibit Transfers of Any Kind. 8-7
 - Form 8-5. Absolute Prohibition of Transfers. 8-7
- 8.7. Miscellaneous Transfer Provisions 8-8
 - 8.7.1. In General. 8-8
 - Form 8-6. Transfer Permitted on Satisfaction of Certain Conditions 8-8
 - 8.7.2. First Refusal Rights 8-9
 - Form 8-7. Right of First Refusal; LLC Purchases; Installments Allowed 8-10
 - Form 8-8. Right of First Refusal; Member’s Purchase; Payment Terms Matched 8-11
 - Form 8-9. Right of First Offer; LLC Purchases; Cash Purchase. 8-13
 - 8.7.3. Admission of Transferee as a Member 8-14
 - Form 8-10. Transferee Not Admitted as Member without Consent of Members 8-14
 - Form 8-11. Transferee Automatically Admitted as Member 8-15
 - 8.7.4. Transfers to Members’ Affiliates and Family 8-15
 - Form 8-12. Definitional Provision — Family 8-16
 - Form 8-13. Transfers to Affiliates and Family 8-16
 - 8.7.5. Right of First Refusal to Member of Family Group 8-16
 - Form 8-13a. Right of First Refusal — Members of Designated Family Group Have Right of First Refusal to Purchase Units of That Family Group before Company or Other Members 8-16.1
 - 8.7.6. Transfers Incidental to Disputes between Members 8-16.3

8.8.	Resignation and Dissociation under the Act	8-16.3
8.8.1.	Resignation	8-16.3
	Form 8-14. Resignation Defined	8-17
	Form 8-15. Resignation Restricted.	8-17
	Form 8-15a. Resignation Restricted — Alternative.	8-17
8.8.2.	Dissociation	8-17
	Form 8-16. Dissociation Defined (Long Form).	8-19
	Form 8-17. Dissociation Defined (Short Form)	8-21
8.9.	Consequences of Disassociation in General.	8-21
	Form 8-18. Status of Successor of a Dissociated Member; Fair Value Purchase of Resigning Member’s Interest Not Required.	8-23
8.10.	Fair Value Rights	8-23
	Form 8-19. Payment of Fair Value	8-24
8.11.	Valuation Provisions.	8-24
	Form 8-20. Agreed Value	8-24
	Form 8-21. Book Value.	8-25
	Form 8-22. Appraised Value.	8-26
	Form 8-23. Net Present Value.	8-26
8.12.	Other Transfer Considerations	8-27
	Form 8-24. Installment Buy-outs	8-27
8.13.	Redemption Agreements	8-28
	Form 8-25. Membership Interest Redemption Agreement.	8-28
	Form 8-26. Membership Interest Redemption Agreement (Alternative Form)	8-31
CHAPTER 9: DISSOLUTION		9-1
9.1.	Tax Aspects of LLC Dissolution	9-2
9.2.	Overview of the Act’s Dissolution Provisions	9-2
	Form 9-1. Dissolution — Comprehensively Describes All Events of Dissolution.	9-4
	Form 9-2. Specific Dissolution Event	9-5
	Form 9-3. Sample Resolutions Approving Continuation of Business after Dissolution.	9-5
	Form 9-3a. Sample Appointment of Substitute Member Following Death of Sole Member	9-6
	Form 9-3b. Consent of Members to Dissolution, Liquidation and Winding Up of Affairs of LLC and Subsidiary	9-6.1
9.3.	Procedure for Winding Up and Distribution of Assets	9-6.3
	Form 9-4. Procedure for Winding Up.	9-7
	Form 9-5. Procedure for Winding Up LLC and for Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee	9-8
9.4.	Certificate of Cancellation	9-8

CONTENTS

Form 9-6. Filing of Certificate of Cancellation —
Member-Managed LLC 9-9

Form 9-7. Filing of Certificate of Cancellation —
Manager-Managed LLC 9-9

Form 9-8. Certificate of Cancellation Signed by
Authorized Person. 9-10

9.5. Notice to Creditors of a Dissolved Limited Liability Company 9-11

Form 9-9. Notice to Creditors of a Dissolved Limited
Liability Company 9-12

Form 9-10. Letter of Transmittal of Notice to Creditors 9-13

Form 9-11. Affidavit of Publication and Mailing of Notice
to Creditors 9-13

CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING 10-1

10.1. Introduction 10-2

10.2. Banking 10-2

Form 10-1. Bank Accounts 10-2

10.3. Records 10-2

Form 10-2. Maintenance of Records (Short Form) 10-3

Form 10-3. Maintenance of Records — Manager-Managed
LLC (Long Form) 10-3

10.4. Accounting Period; Method of Accounting. 10-4

Form 10-4. Calendar Year Accounting Period Specified 10-4

Form 10-5. Fiscal Year Accounting Period Specified 10-5

Form 10-6. Year to Be Determined by Members. 10-5

Form 10-7. Annual Accounting Period Established
by Managers 10-5

Form 10-8. Method of Account — Manager-Managed. 10-6

10.5. Reports 10-6

Form 10-9. Preparation of Reports (Short Form) for
Member-Managed or Manager-Managed LLC. 10-6

Form 10-10. Preparation of Reports (Long Form) for
Manager-Managed LLC 10-7

10.6. Unified Audit Rules and Tax Matters Partner 10-7

Form 10-11. Tax Matters Member (Member-Managed) 10-9

Form 10-12. Tax Matters Partner (Manager-Managed). 10-9

10.7. Tax Elections 10-10

Form 10-13. Tax Elections. 10-10

Form 10-14. Tax Elections — Applies to Code
Section 754 Only — for Use in Either
Member-Managed or Manager-Managed LLC. 10-10

**PART III
MISCELLANEOUS**

**CHAPTER 11: BUSINESS REORGANIZATIONS INVOLVING
LLCS 11-1**

11.1. In General 11-2

11.2. Admission of New Members 11-2

 11.2.1. Acquisition of Interest from Company 11-2

 Form 11-1. Simple Subscription Agreement
 for LLC Membership Interest 11-4

 Form 11-2. Long Form Subscription Agreement
 for LLC Membership Interest with
 Securities Language 11-5

 Form 11-2a. Short Form Subscription Letter
 with Securities Language 11-9

 Form 11-3. First Amendment to Operating
 Agreement Admitting a
 New Member 11-10

 11.2.2. Acquisition of Interest from Another Member 11-12

 Form 11-4. Assignment of LLC Membership
 Right 11-12.1

 Form 11-5. Joinder Agreement 11-17

11.3. Conversion of an Existing Entity into an LLC 11-17

 11.3.1. In General 11-17

 11.3.2. Conversion of General Partnership to LLC 11-18

 Form 11-6. Agreement to Convert General
 Partnership to Limited Liability
 Company 11-19

 Form 11-7. Explanatory Statement — Conversion
 of General Partnership into LLC 11-21

 Form 11-8. Term Is Continuation of Term of
 Partnership 11-22

 Form 11-9. Initial Capital Contributions — In
 Property Consisting of Partnership
 Interests in LLC’s Predecessor 11-22

 Form 11-10. Assignment of General Partnership
 Interests to LLC 11-22

 Form 11-11. Resolutions of Members Approving
 Liquidation of Partnership into LLC 11-23

 11.3.3. Conversion of Limited Partnership into LLC 11-24

 11.3.4. Conversion of Corporation into LLC 11-24

11.4. Conversion of LLC into Corporation 11-26

11.5. Recapitalizing the LLC 11-27

 Form 11-12. Form of Amendment of Operating Agreement 11-28

CONTENTS

11.6. Mergers Involving a New Jersey LLC 11-28
Form 11-13. Merger of Two New Jersey LLCs 11-31
Form 11-14. Merger of Non-New Jersey LLC with and
into a New Jersey Corporation 11-32
Form 11-15. Certificate of Merger of New Jersey LLC
with and into Delaware LLC 11-34
11.7. Conversions of Business Entities in Delaware 11-35
Form 11-16. Certificate of Conversion to Limited
Liability Company 11-36

CHAPTER 12: DOING INTERSTATE BUSINESS 12-1

12.1. Foreign LLCs Doing Business in New Jersey 12-2
12.1.1. Governing Law 12-2
12.1.2. Doing Business 12-2
12.1.3. Procedure for Registration 12-3
Form 12-1. Application for Registration of a
Foreign Limited Liability Company 12-3
12.1.4. Filing Fee 12-4
12.1.5. Issuance and Cancellation of Registration 12-4
12.1.6. Doing Business without Registration 12-4
12.2. New Jersey LLCs Doing Business Outside of New Jersey 12-5
12.2.1. Delaware 12-5
12.2.2. New York 12-6
Form 12-2. Application for Authority of a Foreign
Limited Liability Company to
Transact Business in New York 12-8.1
12.2.3. Pennsylvania 12-10

**CHAPTER 13: PROFESSIONAL LIMITED LIABILITY
COMPANIES 13-1**

13.1. Use of Limited Liability Companies by Professionals 13-2
13.2. Limited Liability Partnerships 13-5
13.2.1. Generally 13-5
13.2.2. Becoming a Limited Liability Partnership 13-7
Form 13-1. Statement of Qualifications to Become
a Limited Liability Partnership 13-7
13.2.3. Foreign Limited Liability Partnerships 13-8
Form 13-2. Statement of Qualifications of a
Foreign Limited Liability
Partnership 13-9
13.2.4. Use of Limited Liability Partnerships by Attorneys 13-10
13.3. Member Service Agreement 13-11
Form 13-3. Member Service Agreement 13-11

CHAPTER 14: MISCELLANEOUS MATTERS. 14-1

14.1. Credit Agreement Considerations for LLC Borrowings 14-3

 14.1.1. Due Diligence 14-3

 Form 14-1. Manager’s Certificate 14-5

 Form 14-2. Member’s Certificate. 14-7

 Form 14-3. Majority Member’s Certificate 14-8

 14.1.2. Documentation 14-10

 14.1.2.1. Recourse. 14-11

 14.1.2.2. Representations and Warranties 14-11

 14.1.2.3. Covenants. 14-11

 14.1.3. Remedies. 14-12

 14.1.4. Conversions of Existing Entities. 14-12

 14.1.5. Banking Resolutions. 14-13

 Form 14-4. Limited Liability Company
 Depository and Signing
 Resolutions 14-13

 14.1.6. Amendment of Operating Agreement in
 Connection with a Loan Transaction 14-15

 Form 14-5. Amendment of Operating Agreement
 in Connection with Financing
 Agreement. 14-16

14.2. Opinion Letters. 14-18

 Form 14-6. Form of Opinion Letter in Connection with a
 Bank Loan to an LLC 14-19

14.3. Guarantees and Responsibility for Losses Derived from
 Guarantees of LLC Obligations 14-23

 Form 14-7. Guaranty Agreement 14-23

 Form 14-8. Indemnity and Contribution Agreement —
 Obligation Guaranteed Only by Members. 14-36

14.4. Pledges of LLC Interests 14-38

 Form 14-9. Membership Interest Pledge Agreement 14-39

14.5. Bankruptcy Implications 14-50

 14.5.1. The Bankruptcy Code and LLCs 14-50

 Form 14-10. Operating Agreement Provision —
 Unanimous Consent of Members to
 Filing a Voluntary Case. 14-52

 Form 14-11. Operating Agreement Provision —
 Manager Vote Required for Filing
 of Voluntary Case 14-52

 Form 14-12. Operating Agreement Provision —
 Member and Manager Vote
 Required for Filing of Voluntary
 Case. 14-52

Form 14-13. Resolutions of Board of Managers
in Manager-Managed LLC
Consenting to Filing a Voluntary
Case under Chapter 11 14-53

14.5.2. Involuntary Cases. 14-54

14.5.3. Bankruptcy of a Member 14-5

14.5.4. *Ipso Facto Clauses*. 14-56.1

14.5.5. Bankruptcy-Remote LLCs. 14-60

14.5.6. LLC Interest as Property of a Bankrupt
Member’s Estate 14-61

14.6. Securities Law Aspects 14-61

14.6.1. LLC Interests as Securities 14-62

14.6.2. Status of the LLC as an Issuer 14-62

14.7. Applicability of the Pre-Merger Notification Requirements
of the Hart-Scott-Rodino Act to LLCs 14-63

14.7.1. Background 14-63

14.7.2. New Hart-Scott Rodino Act Pre-merger
Reporting Requirements Affecting Partnerships,
LLCs and Unincorporated Entities 14-65

14.7.3. Treatment of LLCs and Unincorporated Entities
under New Rules 14-66

14.7.4. Treatment of LLCs under the Interpretation 14-66

14.8. Diversity Jurisdiction for LLCs. 14-67

CHAPTER 15: COMPENSATION STRATEGIES FOR THE LLC .. 15-1

15.1. Introduction 15-3

15.2. IRC Section 83. 15-4

15.3. Hypo, LLC. 15-6

15.4. LLC (Partnership) vs. Corporation Compensation Methods. 15-10

15.4.1. Corporation Context. 15-11

15.4.1.1. Stock Grants 15-11

15.4.1.2. Stock Options 15-12

15.4.1.3. Phantom Stock Plans 15-13

15.4.2. The LLC Context 15-13

15.4.2.1. Equity Interests 15-14

15.4.2.1.1. “Full Equity Interest” 15-14

15.4.2.2. Point System Compensation 15-14.1

15.4.2.3. The Importance of Member
Involvement. 15-16

15.4.2.4. Loss Allocation and Debt
Guarantees 15-16

15.4.2.5. Equity Interest vs. Non-equity
Incentive Compensation 15-17

15.4.3. Compensation Comparison Chart 15-18

15.4.3.1. Definition of Terms 15-20

- 15.4.4. Guidance from the Internal Revenue Service 15-21
- 15.5. Phantom Income and Distributions 15-22
 - 15.5.1. Tax Effected Distributions 15-22
 - 15.5.1.1. Separate Calculations for Each Member 15-23
 - 15.5.1.2. Standard Distribution Rate 15-24
 - 15.5.1.3. Highest Incremental Tax Rate 15-25
 - 15.5.2. Self-Employment Tax 15-26.1
 - 15.5.2.1. Calculating Self-Employment Income 15-26.2
 - 15.5.2.2. Application of Self-Employment Tax to LLC Members 15-27
- 15.6. Forms: Equity and Non-equity Based LLC Compensation Plans . 15-27
 - 15.6.1. Grant of Equity Interest to Employees Subject to Forfeiture 15-27
 - Form 15-1. Unit Grant Agreement 15-28
 - 15.6.2. Phantom Ownership Plan 15-32
 - Form 15-2. Communications, LLC : Employee Incentive Compensation Plan 15-32
 - Form 15.3. Sample Memorandum to Employee Regarding Unit Grant and Section 83 Rules 15-42
 - Form 15.4. Sample Section 83(b) Election Statement 15-44

CHAPTER 16: OPTIONS AND CONVERTIBLE INTERESTS FOR LLCs TAXED AS PARTNERSHIPS 16-1

- 16.1. Introduction: Noncompensatory Call Options and Convertible Preferred Interests 16-3
- 16.2. Noncompensatory Call Options: Defined and Example 16-3
 - 16.2.1. Tax Consequences of Issuance and Exercise of Call Option 16-4
 - 16.2.1.1. Partnership 16-8
 - 16.2.1.2. Option Holder 16-10
 - 16.2.2. Tax Consequences of Lapse of Call Option 16-10
 - 16.2.2.1. Partnership 16-10
 - 16.2.2.2. Option Holder 16-12
 - 16.2.3. Tax Consequences of Exercise of Option 16-12
 - 16.2.3.1. Option Holder 16-13
 - 16.2.3.2. Partnership 16-13
 - 16.2.4. Drafting Considerations in the Partnership Agreement 16-23
 - 16.2.4.1. Capital Account Maintenance under Code Section 704(b) 16-23

CONTENTS

	16.2.4.1.1.	Book-Up	16-28
	16.2.4.1.2.	No Book-Up	6-30
	16.2.4.2.	Code Section 704(c)	16-32
	16.2.4.3.	Tax Distributions	16-32
16.2.5.		Ancillary Tax Considerations	16-33
	16.2.5.1.	Code Section 704(c)	16-33
	16.2.5.2.	Code Section 752	16-35
	16.2.5.3.	Code Section 751	16-35
	16.2.5.4.	Holding Period	16-35
	16.2.5.5.	Original Issue Discount	16-36
	16.2.5.6.	Code Section 708	16-36
	16.2.5.7.	Disregarded Entities	16-37
16.3.		Convertible Preferred Membership Interests	16-37
	16.3.1.	Description of Convertible Preferred Interests	16-37
	16.3.2.	Example: Convertible Preferred Interests	16-38
	16.3.3.	Real Deals	16-39
	16.3.4.	Tax Consequences of Issuance and Exercise of Convertible Preferred Interests	16-39
	16.3.4.1.	Tax Consequences of Issuance of Convertible Preferred Interests	16-39
		16.3.4.1.1 Preferred Holder as a Partner	16-39
		16.3.4.1.2 Partnership, A and B	16-41
		16.3.4.1.3 Tax Consequences of Partnership Operations Prior to Conversion	16-41
	16.3.4.2.	Tax Consequences at Exercise of the Conversion Right of the Preferred Convertible Interest	16-42
		16.3.4.2.1 Capital Accounts	16-42
		16.3.4.2.2 Tax Consequences of Capital Account Adjustments	16-46
		16.3.4.2.3 Code Section 752	16-48
		16.3.4.2.4 Code Section 704(c)	16-49
		16.3.4.2.5 Code Section 708	16-51
		16.3.4.2.6 Code Section 705	16-52
		16.3.4.2.7 Nonrecourse Deductions	16-52
		16.3.4.2.8 Excess Nonrecourse Liabilities	16-53
	16.3.5.	Drafting Issues for Convertible Interests	16-54
		16.3.5.1. Form 16-1 Revaluation	16-60
		16.3.5.2. Tax Distributions	16-61

Form 16-1. Selected Provisions
 Applicable to
 Allocations and
 Distributions 16-61

CHAPTER 17: SINGLE MEMBER LLCs 17-1

17.1. In General 17-2

17.2. Tax Issues 17-2

17.3. Uses of Single Member LLCs in Statutory Mergers
 and Consolidations 17-4

17.4. Uses of Single Member Limited Liability Companies 17-5

17.5. Operating Agreements for Single Member Limited
 Liability Companies 17-7

 17.5.1 Generally 17-7

 17.5.2 Operating Agreement as a Means of
 Withstanding Veil-Piercing 17-7

 17.5.3 Single Member Operating Agreement can
 Eliminate Ambiguity Resulting from Transfer
 of Member’s Interest 17-8

 Form 17-1 Transferability of Single Member’s
 Interest 17-9

17.6. Tax Consequences of a Single Member LLC Becoming an
 Entity with More than One Owner 17-9

**PART IV
 APPENDICES**

APPENDIX A: [MEMBER-MANAGED] OPERATING
 AGREEMENT OF _____ LIMITED
 LIABILITY COMPANY APP A-1

APPENDIX B: [MANAGER-MANAGED] OPERATING
 AGREEMENT OF _____ LIMITED
 LIABILITY COMPANY APP B-1

APPENDIX C: PROFESSIONAL SERVICES OPERATING
 AGREEMENT OF _____ LIMITED
 LIABILITY COMPANY APP C-1

APPENDIX D: LIMITED LIABILITY COMPANY
 AGREEMENT FOR A SINGLE MEMBER
 NEW JERSEY LIMITED LIABILITY
 COMPANY OWNED BY A
 CORPORATION APP D-1

APPENDIX D1: ALTERNATIVE FORM OF SINGLE
 MEMBER OPERATING AGREEMENT APP D1-1

CONTENTS

APPENDIX D2: OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY WHICH IS A SUBSIDIARY OF A TAX-EXEMPT ENTITY AND IS USED FOR TAX-EXEMPT PURPOSES APP D2-1

APPENDIX D3: OPERATING AGREEMENT FOR A BANKRUPTCY-REMOTE ENTITY APP D3-1

APPENDIX E: FORM OF OPERATING AGREEMENT FOR A TWO PERSON LIMITED LIABILITY COMPANY FORMED FOR A SPECIFIC PROJECT APP E-1

APPENDIX F: NEW JERSEY LIMITED LIABILITY COMPANY ACT APP F-1

APPENDIX G: CHECK-THE-BOX REGULATIONS APP G-1

APPENDIX H: REVENUE PROCEDURE 95-10 APP H-1

APPENDIX I: IRS FORM 8832 APP I-1

APPENDIX J: N.Y.L.L.C.L. § 204. LIMITED LIABILITY COMPANY NAME APP J-1

APPENDIX K: DIVISION OF REVENUE, BUSINESS REGISTRATION FORM, NJ-REG APP K-1

**PART V
INDEXES**

Cumulative Table of Internal Revenue Code Sections INDEX-1

Cumulative Table of Treasury Regulations INDEX-4

Cumulative Table of Revenue Rulings and Revenue Procedures INDEX-7

Cumulative Table of New Jersey Limited Liability Company Act Sections INDEX-9

Miscellaneous New Jersey Act Sections INDEX-12

Subject Index INDEX-14

Forms Index INDEX-28