

Contents

PART I ORGANIZATION

CHAPTER 1: INTRODUCTION	1-1
1.1. Nature and Use of This Practice Manual	1-2.1
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 Revised Uniform Limited Liability Company Act	1-8
Table 1. Comparison of Limited Liability Companies, Limited Partnerships, S Corporations, C Corporations, and Limited Liability Partnerships	1-10
1.6. Classification of the LLC as a Partnership for Federal Income Tax Purposes	1-16
1.6.1. Introduction	1-16
1.6.2. Consequences of Classification as a Corporation	1-16
1.6.3. Tax History of the LLC	1-17
1.6.4. Understanding the Classification Rules	1-19
1.6.4.1. LLCs Organized on or after January 1, 1997	1-20
1.6.4.2. LLCs Organized before January 1, 1997, for Periods before January 1, 1997.	1-21
1.6.4.3. LLCs Organized before January 1, 1997, for Periods on or after January 1, 1997	1-22
1.6.4.4. Elections	1-23
1.7. 2017 Tax Reform and the 2020 CARES Act	1-24
1.7.1. 2017 Tax Act’s Impact on the Choice of Entity	1-25

CONTENTS

1.7.2.	Section 199A — Deduction for Qualified Business Income	1-26
1.7.3.	Section 1061 — Carried Interests	1-30
1.7.4.	Section 163(j) — Limitation on Interest Deduction	1-33
1.7.5.	Section 708 — Repeal of Technical Termination of Partnership	1-34
1.7.6.	Section 461(l) — Limitation on Excess Business Losses of Non-Corporate Taxpayers	1-35
1.7.7.	Qualified Opportunity Funds Organized as Partnerships	1-36
1.7.8.	Section 1446(f) — Withholding on Transfers by Non-U.S. Partners	1-37
1.7.9.	Additional CARES Act Changes	1-38
1.8.	New Jersey Workaround to 2017 Tax Reform “SALT” Limitations	1-39
CHAPTER 2: FORMATION AND ORGANIZATION		2-1
2.1.	Introduction	2-2
2.2.	Certificate of Formation	2-2
	Form 2-1. Certificate of Formation without Special Provisions — Signed by an Organizer	2-3
2.3.	Statement of Authority	2-4
2.4.	Certificate of Correction	2-4
	Form 2-2. Certificate of Correction of Certificate of Formation	2-5
2.5.	Certificate of Amendment	2-6
	Form 2-3. Consent of Members to Amend Certificate of Formation	2-6
	Form 2-4. Certificate of Amendment	2-7
2.6.	Reservation of Name	2-8
	Form 2-5. Application to Reserve Name	2-8
2.7.	Change of Name of Registered Agent, Change of Address of Registered Agent	2-9
	Form 2-6. Change of Name of Registered Agent	2-9
2.8.	Alternate Name	2-10
	Form 2-7. Certificate of Registration of Alternate Name	2-11
2.9.	Annual Report	2-11
2.10.	Federally Required Reporting of Beneficial Ownership	2-12

PART II OPERATIONS

CHAPTER 3: THE OPERATING AGREEMENT	3-1
3.1. In General	3-2
3.2. Scope of an Operating Agreement and Limitations	3-3
3.3. Flexibility of the LLC Form	3-5
Form 3-1a. Checklist for the Formation of a New LLC	3-6
Form 3-1b. Checklist for Formation of a New LLC	3-10.1
3.4. Form of the Operating Agreement	3-10.30
Form 3-2. Operating Agreement as the Entire Agreement of the Parties	3-10.31
3.5. Effect of the Operating Agreement on the Company	3-10.31
3.6. Effect of the Operating Agreement on Third Parties	3-11
3.7. Form Operating Agreements	3-11
3.8. Use of LLCs to Hold Vacation Homes	3-12
3.9. Ethical Considerations in Drafting Operating Agreements	3-13
Form 3-3. Separate Counsel	3-15
Form 3-4. Separate Counsel (Alternative)	3-16
Form 3-5. Joint Representation Waiver	3-16
 CHAPTER 4: ORGANIZATION	 4-1
4.1. Drafting LLC Organization Provisions	4-3
4.2. Operating Agreement 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
Form 4-3a. Explanatory Statement	4-5
4.4. Confirmation of Agreement	4-5
Form 4-4. Confirmation of Agreement	4-5
4.5. Definitions	4-5
4.5.1. “Interest” Compared to “Membership Rights”	4-6
4.5.2. “Interest Holder” Compared to “Member”	4-7
Form 4-5. General Definitions	4-8
4.6. Agreement to Organize LLC	4-9
Form 4-6. General Agreement to Organize LLC	4-10
Form 4-7. Organizational Provision Confirming That a Certificate of Formation Has Been Filed	4-10

CONTENTS

4.7. Name 4-10
Form 4-8. Name Provision for Member-Managed LLC 4-10
Form 4-9. Name Provision for Manager-Managed LLC 4-11

4.8. Purpose 4-11
Form 4-10. Any Lawful Purpose 4-11
Form 4-11. Specific Purpose 4-12
Form 4-12. Purpose Limited to Real Estate. 4-12
Form 4-12a. Purpose Limited to Specific Real Estate 4-13

4.9. Term 4-14
Form 4-13. Term Commences on Date of Filing of
Certificate of Formation 4-15
Form 4-14. Term Commences upon Execution of
Operating Agreement 4-15

4.10. Registered Office 4-15
Form 4-15. Registered Office of LLC 4-16

4.11. Registered Agent. 4-16
Form 4-16. Registered Agent 4-16

4.12. Members 4-16
Form 4-17. Schedule of Members Set Forth in Exhibit 4-16
Form 4-18. Schedule of Members Set Forth in Text
of Agreement. 4-17
Form 4-19. Schedule of Members (without Percentages) 4-18
Form 4-19a. No Preemptive Rights 4-18
Form 4-19b. Short-Form of Grant of Preemptive Rights. 4-19
Form 4-19c. Long-Form of Grant of Preemptive Rights. 4-20
Form 4-19d. Additional Interests — Preemptive Rights;
Identified Purchaser 4-22

4.13. Miscellaneous Provisions 4-24
Form 4-20. Miscellaneous Provisions 4-24

4.14. Post-Organization Communication with Clients 4-26
Form 4-21. Form of Post-Organization Reporting Letter
to Client. 4-27
Form 4-22. Alternate Form of Letter to New LLC
Regarding Operational and Other
Post-Formation Matters 4-29

4.15. Series LLC 4-41

CHAPTER 5: LIMITED LIABILITY COMPANY CAPITAL 5-1

5.1. Drafting Capital Provisions. 5-3

5.2. Initial Capital Contributions 5-3
5.2.1. Generally 5-3

Form 5-1.	Initial Capital Contributions in Cash	5-4
Form 5-1a.	Initial Capital Contributions — Automatic Amendment of Exhibit A	5-4
Form 5-2.	Initial Capital Contributions — Partly in Cash and Partly in Services	5-4
Form 5-2a.	Class B Units Issued as Profits Interests	5-7
Form 5-3.	Initial Capital Contributions — Partly in Cash and Partly in Property	5-8
Form 5-4.	Representation in Connection with Contribution of Property	5-8
5.2.2.	Contribution Agreement	5-8
Form 5-4a.	Contribution Agreement	5-8.1
5.2.3.	Contribution Agreement (Real Estate).	5-10
Form 5-4b.	Contribution Agreement — Real Estate.	5-10
5.3.	Additional Capital Contributions	5-10.7
Form 5-5.	Additional Capital Contributions at Discretion of Manager — Limit on Amount	5-10.7
Form 5-6.	Additional Capital Contributions at Discretion of Members — Limit on Amount	5-10.8
Form 5-7.	No Liability Beyond Initial Capital Contribution	5-10.9
Form 5-8.	No Liability Beyond Additional Capital Contributions.	5-10.9
5.4.	Default in Payment of Contributions	5-10.10
Form 5-9.	Remedy of Reduction of Member’s Interest in Event of Failure to Make Contribution to Manager-Managed LLC	5-10.10
Form 5-9a.	Remedy of Reduction of Member’s Share of Profits in Event of Failure to Make Contribution to Manager-Managed LLC	5-10.11
5.5.	Interest on Capital Contributions	5-10.12
Form 5-10.	No Interest on Capital Contributions	5-10.12
Form 5-11.	Interest on Capital Contributions	5-10.12
5.6.	Return of Capital Contributions; Limitations on Distributions	5-11

CONTENTS

Form 5-12. Return of Capital Contributions 5-11

5.7. Form of Distribution 5-12

Form 5-13. Form of Distribution — No Right to Receive
Anything but Cash 5-12

Form 5-14. Form of Distribution — Form of Distribution
Is at Discretion of Manager in
Manager-Managed LLC 5-13

5.8. Capital Accounts 5-13

Form 5-15. Capital Accounts Maintained in Accordance
with Code Section 704 5-13

Form 5-15a. Capital Accounts Maintained in Accordance
with Code Section 704 5-14

5.9. Loans 5-14.1

Form 5-16. Loans — General Authority of LLC to
Borrow Money from Members on Terms to
Be Agreed upon in Future 5-14.1

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 5-14.2

Form 5-18. Any Member May Call for Member Loans 5-15

Form 5-19. Member Loans — Terms 5-15

Form 5-20. Convertible Promissory Note 5-16

**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. 6-6

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	6-14
	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.	Tax Distributions	6-14.1
	Form 6-4a. Tax Distributions	6-14.1
6.6.5.	Liquidation Proceeds	6-14.2
	Form 6-5. Liquidation and Dissolution	6-15
	Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation	6-15
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	6-19
	Form 6-9. Regulatory Allocations	6-19
6.7.4.	General Provisions	6-20
	Form 6-10. General Provisions	6-21
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
6.8.3.	Targeted Gain and Loss Allocations	6-26
	Form 6-13. Targeted Capital Account Gain or Loss Allocation Provision	6-26
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.	Management Structure Options	7-4
7.1.3.	Tax Aspects	7-5
7.2.	Member-Managed LLC Provisions	7-6
	Form 7-1. Simple Member-Management Provision	7-6
	Form 7-1a. Long-Form Member-Management Provision	7-6

CONTENTS

Form 7-2.	Member-Management with Appointment of Ministerial Manager	7-6.2
7.3.	Representative Management.	7-7
7.3.1.	Management by a Manager Similar to a General Partner of a Limited Partnership	7-7
Form 7-3.	Manager with Authority Similar to a General Partner of a Limited Partnership.	7-8
Form 7-4.	Manager with Authority Similar to a General Partner of a Limited Partnership — Alternative Form	7-10
7.3.2.	Management by Management Committee.	7-10
Form 7-5.	Management Committee	7-10
Form 7-5a.	Management Committee (Alternative Form).	7-12
7.3.3.	Management by One Class of Members	7-15
Form 7-6.	Definition of Class A and Class B Members	7-15
Form 7-7.	Management by Class A Members	7-15
7.3.4.	Management in Bankruptcy Remote Entity.	7-15
Form 7-7a.	Special Purpose Management Provisions	7-16
7.4.	Replacement of Managers.	7-18
Form 7-8.	Removal of Manager for Any Reason.	7-19
Form 7-9.	Removal of Manager for Only Specified Reasons	7-19
7.5.	Meetings of and Actions by Members	7-19
Form 7-10.	Procedure for Calling and Holding Meetings.	7-20
Form 7-11.	Procedure for Calling and Holding Meetings — Only Class A Members Vote	7-21
Form 7-12.	Informal Actions	7-21
Form 7-13.	Form of Consent of Members.	7-22
7.6.	Statements of Authority	7-23
Form 7-14.	Statement of Authority of _____, LLC.	7-24
Form 7-15.	Amendment to Statement of Authority of _____, LLC.	7-25
Form 7-16.	Post-Dissolution Statement of Authority of _____, LLC.	7-27
7.7.	Deadlock and Resolution	7-28
Form 7-17.	Arbitration of Deadlock	7-28
Form 7-18.	Arbitration of Dispute (Alternate Form).	7-28

Form 7-19.	Meeting between Senior Executives; Mediation	7-30
Form 7-20.	Reciprocal Purchase Rights in the Event of Deadlock	7-31
Form 7-21.	Deadlock; Buy-Sell	7-34
7.8.	Dissolution as a Remedy for Deadlock or Oppression	7-35
7.8.1.	General	7-35
7.8.2.	Court-Ordered Dissolution in the Case of Deadlock	7-35
7.8.3.	Court-Ordered Dissolution in the Case of Oppression	7-39
7.9.	Compensation and Reimbursement	7-40.4
Form 7-22.	No Arrangement for Compensation (Member-Managed)	7-40.4
Form 7-23.	Compensation (Manager-Managed)	7-40.4
Form 7-24.	Guaranteed Payment	7-40.5
7.10.	Standard of Care and Degree of Loyalty	7-40.6
Form 7-25.	Standard of Care and Degree of Loyalty	7-44
Form 7-25a.	Modifying Duty of Loyalty Regarding Other Business Opportunities	7-45
Form 7-26.	Standard of Care and Duty of Loyalty (Alternative Form)	7-46
Form 7-26a.	Manager Granted Broad Discretion	7-46.1
7.11.	Indemnification and Insurance	7-46.1
Form 7-27.	Liability and Indemnification of Members (Manager-Managed)	7-47
Form 7-28.	Indemnification	7-48
Form 7-29.	Liability and Indemnification of Members (Member-Managed)	7-48
Form 7-30.	Right to Indemnification; Advancement	7-51
Form 7-30a.	Advancement of Indemnification	7-53
7.12.	Power of Attorney	7-53
Form 7-31.	Power of Attorney	7-54
CHAPTER 8: TRANSFER AND BUY-SELL PROVISIONS		8-1
8.1.	The Act's Default Rules for Transfers	8-3
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

CONTENTS

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
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.	8-6.2
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 8-12a.	Definitional Provision - Affiliate (Alternative to Form 4-5)	8-16
Form 8-12b.	Definitional Provision — Family	8-16
Form 8-12c.	Transfers to Affiliates and Family.	8-16
Form 8-12d.	General Restrictions on Transfer — Permitted Transfers	8-16.1
Form 8-13.	Permitted Transferees	8-16.2
8.7.5.	Right of First Refusal to Member of Family Group	8-16.3
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.	8-16.4

8.7.6.	Transfers Incidental to Disputes between Members	8-16.6
8.7.7.	Transfers Incidental to Put-Call, Tag-Along and Drag-Along Rights	8-16.6
	Form 8-13b. “Put-Call” Buyout Provision.	8-16.6
	Form 8-13c. Tag-Along Right	8-16.7
	Form 8-13d. Drag-Along Right	8-16.8
	Form 8-13e. Drag-Along Right (Alternative Form). . .	8-16.9
8.7.8.	Transfers Incidental to Change in Control of a Member.	8-16.10
	Form 8-13f. Change-in-Control.	8-16.11
8.8.	Withdrawal and Dissociation under the Act	8-16.12
8.8.1.	Withdrawal.	8-16.12
	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)	8-20
	Form 8-17. Dissociation Defined (Short Form)	8-21
8.9.	Consequences of Dissociation in General.	8-21
8.9.1.	In General	8-21
8.9.2.	Information Rights of a Dissociated Person	8-22
	Form 8-18. Status of Successor of a Dissociated Member; Fair Value Purchase of Resigning Member’s Interest Not Required	8-22
8.10.	Valuation of Transferable Interests	8-23
	Form 8-19. Mandatory Purchase from Dissociated Member.	8-23
	Form 8-20. Agreed Value.	8-24
	Form 8-21. Book Value	8-24
	Form 8-21a. Alternative Book Value Provision.	8-25
	Form 8-22. Appraised Value	8-25
	Form 8-23. Net Present Value	8-26
8.11.	Other Transfer Considerations	8-26
	Form 8-24. Installment Buyouts	8-26.1
8.12.	Redemption Agreements.	8-27
	Form 8-25. Membership Interest Redemption Agreement	8-27
	Form 8-26. Membership Interest Redemption Agreement (Alternative Form)	8-30
8.13.	Sale of All Limited Liability Company Interests	8-40
8.14.	Certain United States Federal Income Tax Considerations.	8-40

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	9-4.1
Form 9-2. Specific Dissolution Event	9-4.2
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	9-7
9.3. Procedure for Winding Up and Distribution of Assets	9-9
Form 9-4. Procedure for Winding Up	9-10
Form 9-5. Procedure for Winding Up LLC and for Distribution of Assets in Manager-Managed LLC — Manager Acts as Liquidating Trustee.	9-11
9.4. Certificate of Dissolution	9-12
Form 9-6. Filing of Certificate of Dissolution — Member-Managed LLC	9-12
Form 9-7. Filing of Certificate of Dissolution — Manager-Managed LLC	9-12
Form 9-8. Certificate of Dissolution	9-13
9.5. Notice to Creditors of a Dissolved Limited Liability Company	9-13
Form 9-9. Notice to Known Creditors	9-14
Form 9-10. Published Notice to Creditors of a Dissolved Limited Liability Company.	9-16
9.6. Notice of Termination	9-17
Form 9-11. Certificate of Termination	9-17
Form 9-12. Certificate of Dissolution and Termination.	9-18
 CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING	 10-1
10.1. Introduction.	10-2.1
10.2. Banking	10-2.1
Form 10-1. Bank Accounts	10-2.1
10.3. Rights of Members, Managers and Dissociated Members to Information	10-3
10.3.1. Statutory Rules.	10-3

10.3.2.	Required Records	10-4
	Form 10-2. Maintenance of Records (Short Form)	10-4
	Form 10-3. Maintenance of Records — Manager-Managed LLC (Long Form)	10-4
10.4.	Accounting Period; Method of Accounting	10-6
	Form 10-4. Calendar Year Accounting Period Specified	10-6
	Form 10-5. Fiscal Year Accounting Period Specified	10-6
	Form 10-6. Year to Be Determined by Members	10-6
	Form 10-7. Annual Accounting Period Established by Managers	10-7
	Form 10-8. Method of Account — Manager-Managed	10-7
10.5.	Reports	10-7
	Form 10-9. Preparation of Reports (Short Form) for Member-Managed or Manager-Managed LLC	10-8
	Form 10-10. Preparation of Reports (Long Form) for Manager-Managed LLC	10-8
10.6.	LLCs and Tax Audits	10-9
	10.6.1. Unified Audit Rules	10-9
	Form 10-11. Reserved	10-10
	10.6.2. New Partnership Audit Procedures	10-10
	Form 10-12. Partnership Audit Procedures	10-11
10.7.	Tax Elections	10-15
	Form 10-13. Tax Elections	10-15
	Form 10-14. Tax Elections — Applies to Code Section 754 Only — for Use in Either Member-Managed or Manager-Managed LLC	10-16

**PART III
MISCELLANEOUS**

CHAPTER 11:	BUSINESS REORGANIZATIONS INVOLVING LLCS	11-1
11.1.	In General	11-3
11.2.	Admission of New Members	11-3
	11.2.1. Acquisition of Interest from Company	11-3
	Form 11-1. Simple Subscription Agreement for LLC Membership Interest	11-4

CONTENTS

	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
	Form 11-3a.	Contribution Agreement	11-12.1
11.2.2.		Acquisition of Interest from Another Member	11-12.3
	Form 11-4.	Assignment of LLC Membership Right	11-12.4
	Form 11-5.	Joinder Agreement.	11-17
11.3.		Mergers, Conversions and Domestications Involving a New Jersey LLC.	11-17
	11.3.1.	In General	11-17
	11.3.2.	Mergers	11-18
	Form 11-6.	Merger of Two New Jersey LLCs	11-22
	Form 11-7.	Merger of New Jersey LLC with and into a New Jersey Corporation	11-23
	Form 11-8.	Certificate of Merger of New Jersey LLC with and into Delaware LLC.	11-25
11.3.3.		Conversions Involving LLCs	11-26
	11.3.3.1.	In General	11-26
	11.3.3.2.	Conversion of an LLC into a Corporation	11-28
	Form 11-9.	Conversion of a New Jersey LLC to a Delaware Corporation — Plan of Conversion.	11-29
	Form 11-9a.	Conversion of a New Jersey LLC to a Delaware Corporation — Articles of Conversion	11-30.2
	Form 11-10.	Certificate of Conversion to Corporation	11-30.3
	11.3.3.3.	Conversion of General Partnership to LLC	11-30.4
	Form 11-11.	Agreement to Convert General	

	Partnership to Limited Liability Company	11-31
Form 11-12.	Explanatory Statement — Conversion of General Partnership into LLC	11-33
Form 11-13.	Term Is Continuation of Term of Partnership	11-34
Form 11-14.	Initial Capital Contributions — In Property Consisting of Partnership Interests in LLC’s Predecessor.	11-35
Form 11-15.	Assignment of General Partnership Interests to LLC	11-35
Form 11-16.	Resolutions of Members Approving Liquidation of Partnership into LLC .	11-36
11.3.3.4.	Conversion of Limited Partnership into LLC	11-37
11.3.3.5.	Conversion of Corporation into LLC. . .	11-37
11.3.4.	Domestications Involving LLCs	11-39
Form 11-16a.	Plan of Domestication.	11-41
Form 11-16b.	Certificate of Domestication.	11-44
Form 11-16c.	Certificate of Surrender.	11-45
Form 11-16d.	Delaware Certificate of Conversion	11-46
11.3.5.	Restrictions on Approval of Mergers, Conversions and Domestications	11-46
11.4.	Recapitalizing the LLC.	11-47
Form 11-17.	Form of Amendment of Operating Agreement.	11-47
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	

CONTENTS

	Foreign Limited Liability Company	12-3
12.1.4.	Issuance and Cancellation of Registration.	12-4
12.1.5.	Doing Business without Registration	12-4
12.2.	Domestication of Foreign Limited Liability Companies	12-5
12.3.	New Jersey LLCs Doing Business Outside of New Jersey.	12-5
12.3.1.	Delaware	12-5
12.3.2.	New York	12-6
	Form 12-2. Application for Authority of a Foreign Limited Liability Company to Transact Business in New York	12-9
12.3.3.	Pennsylvania	12-10

CHAPTER 13: PROFESSIONAL LIMITED LIABILITY COMPANIES AND PROFESSIONAL LIMITED LIABILITY PARTNERSHIPS 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.	Professional Service LLC Agreements	13-11
	Form 13-2a. Professional Service LLC Distributions	13-11
	Form 13-3. Member Service Agreement	13-12.2

CHAPTER 14: COMMERCIAL AND SECURITIES LAW ASPECTS OF LLCs 14-1

14.1.	Credit Agreement Considerations for LLC Borrowings.	14-4
14.1.1.	Due Diligence	14-4
	Form 14-1. Manager’s Certificate	14-6
	Form 14-2. Member’s Certificate.	14-8
	Form 14-3. Majority Member’s Certificate	14-9
14.1.2.	Documentation.	14-11
	14.1.2.1. Recourse	14-12
	14.1.2.2. Representations and Warranties.	14-12
	14.1.2.3. Covenants.	14-12
14.1.3.	Remedies	14-13

14.1.4.	Conversions of Existing Entities	14-13
14.1.5.	Banking Resolutions	14-14
	Form 14-4. Limited Liability Company Depository and Signing Resolutions	14-14
14.1.6.	Amendment of Operating Agreement in Connection with a Loan Transaction.	14-16
	Form 14-5. Amendment of Operating Agreement in Connection with Financing Agreement	14-17
14.2.	Opinion Letters	14-19
14.2.1.	Introduction	14-19
	Form 14-6. Form of Opinion Letter in Connection with a Bank Loan to an LLC.	14-20
14.2.2.	Status Opinion	14-25
	14.2.2.1. Background and Meaning	14-25
	14.2.2.2. Due Diligence Procedures	14-26
14.2.3.	Power Opinion	14-27
	14.2.3.1. Background and Meaning	14-27
	14.2.3.2. Due Diligence Procedures	14-28
14.2.4.	Action Opinion (Due Authorization, Execution and Delivery)	14-28
	14.2.4.1. Background and Meaning	14-28.1
	14.2.4.2. Due Diligence Procedures	14-29
14.2.5.	No Violation Opinion	14-31
	14.2.5.1. Background and Meaning	14-31
	14.2.5.2. Due Diligence Procedures	14-36
14.2.6.	No Consent Opinion	14-37
	14.2.6.1. Background and Meaning	14-38
	14.2.6.2. Due Diligence Procedures	14-39
14.2.7.	Remedies Opinion	14-40
	14.2.7.1. Background and Meaning	14-40
	14.2.7.2. Due Diligence Procedures	14-45
14.2.8.	Opinions on LLC Membership Interests	14-47
14.2A.	Due Diligence Checklists	14-48
14.2A.1.	Status Opinion	14-48
	Form 14-6A. Status Opinion Checklist.	14-48
14.2A.2.	Power Opinion	14-49
	Form 14-6B. Power Opinion Checklist.	14-49
14.2A.3.	Acts Opinion	14-50
	Form 14-6C. Acts Opinion Checklist	14-50

CONTENTS

14.2A.4. No Violation Opinion	14-52
Form 14-6D. No Violation Opinion Checklist	14-52
14.2A.5. No Consent Opinion	14-54
Form 14-6E. No Consent Opinion Checklist	14-54
14.2A.6. Remedies Opinion	14-55
Form 14-6F. Remedies Opinion Checklist	14-55
14.3. Guarantees and Responsibility for Losses Derived from Guarantees of LLC Obligations	14-56
Form 14-7. Guaranty Agreement	14-56
Form 14-8. Indemnity and Contribution Agreement — Obligation Guaranteed Only by Members	14-69
14.4. Pledges of LLC Interests	14-71
Form 14-9. LLC “Opt In” under UCC Article 8	14-72
Form 14-9a. Operating Agreement Provision that LLC Will Not “Opt Out” of Article 8	14-73
Form 14-9b. Membership Interest Pledge Agreement	14-74
Form 14-9c. Assignment Separate from Certificate	14-84.2
14.5. Bankruptcy Implications	14-84.3
14.5.1. The Bankruptcy Code and LLCs	14-84.3
Form 14-10. Operating Agreement Provision — Unanimous Consent of Members to Filing a Voluntary Case	14-85
Form 14-11. Operating Agreement Provision — Manager Vote Required for Filing of Voluntary Case	14-86
Form 14-12. Operating Agreement Provision — Member and Manager Vote Required for Filing of Voluntary Case	14-86
Form 14-13. Resolutions of Board of Managers in Manager-Managed LLC Consenting to Filing a Voluntary Case under Chapter 11	14-87
14.5.2. Involuntary Cases	14-88
14.5.3. Bankruptcy of a Member — Ipsa Facto Clauses and Section 541 of the Bankruptcy Code	14-88
14.5.4. Executory Operating Agreements and the Impact of Section 365 of the Bankruptcy Code	14-94
14.5.5. Bankruptcy-Remote LLCs	14-94.8
Form 14-13a. Operating Agreement Provision — Special Amendment Provision	14-96

14.6. Securities Law Aspects 14-96
 14.6.1. LLC Interests as Securities 14-96.1
 14.6.2. Status of the LLC as an Issuer 14-101
 14.7. Applicability of the Premerger Notification Requirements
 of the Hart-Scott-Rodino Act to LLCs 14-102
 14.7.1. Background 14-102
 14.7.2. Current Hart-Scott-Rodino Act Premerger
 Reporting Requirements Applicable Partnerships,
 LLCs and Unincorporated Entities 14-103
 14.7.3. Treatment of LLCs and Unincorporated Entities 14-105
 14.8. Diversity Jurisdiction for LLCs 14-107
 14.9. Charging Orders 14-107
 14.9.1. Generally 14-107
 14.9.2. The Olmstead Case 14-109
 14.9.3. The Bankruptcy Cases 14-110
 14.9.4. Does Olmstead Have Precedential Value in
 New Jersey? 14-112
 14.10. Proprietary Rights and Noncompetition Agreements 14-112
 Form 14-14. Proprietary Rights and Noncompetition
 Agreements 14-113
 14.11. S Corporation Limited Liability Companies 14-119
 Form 14-15. Selected S Corporation Provisions 14-121
 14.12. Bulk Sales Notification Process for Pass-Through Sellers 14-122

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

15.1. Introduction 15-3
 15.2. IRC Section 83 15-4
 15.3. Profits Interest vs. Capital Interest 15-6
 Form 15-1a. Provision for Issuance of Profits Interests 15-10
 Form 15-1b. Profits Interest Based on Achieving a
 “Threshold Amount” 15-12
 Form 15-1c. Definitions for Profits Interest Based on
 Achieving a “Threshold Amount” 15-12.6
 15.4. LLC (Partnership) vs. Corporation Compensation
 Methods 15-12.7
 15.4.1. Corporation Context 15-12.7
 15.4.1.1. Stock Grants 15-12.7
 15.4.1.2. Stock Options 15-12.9
 15.4.1.3. Phantom Stock Plans 15-13
 15.4.2. The LLC Context 15-13

CONTENTS

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	15-15
15.4.2.3.	The Importance of Member Involvement	15-17
15.4.2.4.	Loss Allocation and Debt Guarantees	15-17
15.4.2.5.	Equity Interest vs. Non-Equity Incentive Compensation.	15-18
15.4.3.	Guidance from the Internal Revenue Service	15-19
15.5.	Phantom Income and Distributions.	15-22.1
15.5.1.	Tax Effected Distributions.	15-22.1
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	15-27
15.5.2.1.	Calculating Self-Employment Income	15-28
15.5.2.2.	Application of Self-Employment Tax to LLC Members.	15-28
15.5.2.3.	Electing S Corporation Status as a Means of Mitigating Employment Tax Liability	15-29
15.6.	Forms: Equity and Non-Equity Based LLC Compensation Plans	15-30
15.6.1.	Grant of Equity Interest to Employees Subject to Forfeiture	15-30
Form 15-1.	Unit Grant Agreement	15-30
15.6.2.	Phantom Ownership Plan	15-32.3
Form 15-2.	Communications, LLC: Employee Incentive Compensation Plan	15-32.3
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
15.7.	Other Compensation Issues.	15-45
15.7.1.	Internal Revenue Code Section 409A	15-45
15.7.2.	“Carried Interest” Legislation	15-46
CHAPTER 16:	RESERVED	16-1

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	17-9
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	17-10
CHAPTER 18: THE LLC IN LITIGATION	18-1
18.1. Introduction.	18-2
18.2. Derivative Actions.	18-2
Form 18-1. Letter Demanding Members with Authority to Enforce the Rights of the LLC	18-4
Form 18-2. Complaint for Derivative Action.	18-6
18.3. Dissolution as a Remedy for Member Disputes and Alleged Oppression.	18-10
18.4. The Role of Equity in the LLC Litigation	18-10
18.5. Judgment Creditors of Members.	18-11

**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

CONTENTS

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

APPENDIX D: OPERATING 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

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 D4: OPERATING AGREEMENT OF A LIMITED LIABILITY COMPANY THAT HAS ELECTED “S” STATUS UNDER THE INTERNAL REVENUE CODE. APP D4-1

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 REVISED UNIFORM 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

APPENDIX L: COMMON UNIT INCENTIVE PLAN;
CORRESPONDING PROVISIONS OF OPERATING
AGREEMENT; FORM OF INCENTIVE UNIT
GRANT AGREEMENT APP L-1

APPENDIX L1: INCENTIVE UNIT AGREEMENT APP L1-1

APPENDIX M: OPERATING AGREEMENT OF LIMITED
LIABILITY COMPANY THAT OWNS
A VACATION HOME. APP M-1

APPENDIX N: COMPARISON OF STATE LLC FEES
AND OTHER INFORMATION APP N-1

APPENDIX O: UNIT PURCHASE AGREEMENT APP O-1

**PART V
LLP AND LLC CASES**

LLP and LLC Cases LLC Cases-1

**PART VI
INDICES**

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-6

Cumulative Table of New Jersey Limited Liability Company
Act Sections INDEX-7

Miscellaneous New Jersey Act Sections. INDEX-11

Subject Index INDEX-13

Forms Index INDEX-29