## **Contents**

# PART I ORGANIZATION

CHA	PTER 1:	INTRODUCTION		
1.1.	Nature a	and Use of This Practice Manual	. 1-	
1.2.	Compar	rison of the LLC with Other Entities		
	1.2.1.	Generally		
	1.2.2.	Comparison with S Corporations		
1.3.	History	of the LLC		
1.4.	The Nev	w Jersey Limited Liability Company Act —		
		rview		
1.5.	Key Fea	atures of the Revised Uniform Limited Liability		
	Compan	ny Act		
	Table 1.	Comparison of Limited Liability Companies,		
		Limited Partnerships, S Corporations,		
		C Corporations, and Limited Liability		
		Partnerships	. 1	
1.6.	Classification of the LLC as a Partnership for Federal			
		Tax Purposes		
	1.6.1.	Introduction	. 1	
	1.6.2.	Consequences of Classification as a		
		Corporation		
	1.6.3.	Tax History of the LLC		
	1.6.4.	Understanding the Classification		
		Rules	. 1	
		1.6.4.1. LLCs Organized on or after		
		January 1, 1997	. 1	
		1.6.4.2. LLCs Organized before		
		January 1, 1997, for Periods		
		before January 1, 1997	. 1	
		1.6.4.3. LLCs Organized before January 1,		
		1997, for Periods on or after		
		January 1, 1997		
		1.6.4.4. Elections		
1.7.		x Reform and the 2020 CARES Act		
	1.7.1.	2017 Tax Act's Impact on the Choice of Entity	. 1	

	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(1) — 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.		sey Workaround to 2017 Tax Reform "SALT"	
	Limitati	ons	1-39
CHA	PTER 2:	FORMATION AND ORGANIZATION	2-1
2.1.	Introduc	etion	2-2
2.2.	Certifica	ate of Formation	2-2
	Form 2-	Certificate of Formation without	
		Special Provisions — Signed by	
		an Organizer	2-3
2.3.	Stateme	nt of Authority	2-4
2.4.	Certifica	ate of Correction	2-4
	Form 2-	2. Commond of Common of	
		Certificate of Formation	2-5
2.5.	Certifica	ate 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.	Reserva	tion 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.	Alternat	e Name	2-10
	Form 2-	7. Certificate of Registration of Alternate Name	2-11
2.9.	Annual	Report	2-11
2.10.	Federall	y Required Reporting of Beneficial Ownership	2-12

## PART II OPERATIONS

CHA	PTER 3:	THE OPERATING AGREEMENT	3-1
3.1.	In General		3-2
3.2.	Scope of ar	Operating Agreement and Limitations	3-3
3.3.	Flexibility	of the LLC Form	3-5
	Form 3-1a.		3-6
	Form 3-1b.	Checklist for Formation of a New LLC	3-10.1
3.4.	Form of the	e Operating Agreement	3-10.30
	Form 3-2.	Operating Agreement as the Entire Agreement	
		of the Parties	3-10.31
3.5.	Effect of th	e Operating Agreement on the Company	3-10.31
3.6.	Effect of th	e Operating Agreement on Third Parties	3-11
3.7.	Form Opera	ating Agreements	3-11
3.8.	Use of LLC	Cs to Hold Vacation Homes	3-12
3.9.	Ethical Cor	nsiderations 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
СНА	PTER 4:	ORGANIZATION	4-1
4.1.	Drafting LI	C Organization Provisions	4-3
4.2.		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	d to Agreement	4-4
	Form 4-3.	Explanatory Statement	4-4
	Form 4-3a.	Explanatory Statement	4-5
4.4.	Confirmation	on of Agreement	4-5
	Form 4-4.	Confirmation of Agreement	4-5
4.5.	Definitions		4-5
	4.5.1. "I	nterest" Compared to "Membership Rights"	4-6
	4.5.2. "I	nterest Holder" Compared to "Member"	4-7
	Fo	orm 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

4.7.	Name		4-1	
	Form 4-8.	Name Provision for Member-Managed LLC	4-1	
	Form 4-9.	Name Provision for Manager-Managed LLC	4-1	
4.8.	Purpose		4-1	
	Form 4-10.	Any Lawful Purpose	4-1	
	Form 4-11.		4-12	
	Form 4-12.		4-12	
	Form 4-12a.	÷	4-1	
4.9.			4-1	
	Form 4-13.	Term Commences on Date of Filing of		
		Certificate of Formation	4-1:	
	Form 4-14.	Term Commences upon Execution of		
		Operating Agreement	4-1:	
4.10.	Registered C	Office 4	4-1:	
	Form 4-15.	Registered Office of LLC	4-1	
4.11.	Registered A	gent	4-1	
	Form 4-16.	Registered Agent	4-1	
4.12.	Members		4-1	
	Form 4-17.		4-1	
	Form 4-18.	Schedule of Members Set Forth in Text		
		of Agreement.	4-1	
	Form 4-19.	Schedule of Members (without Percentages)	4-1	
	Form 4-19a.	_	4-1	
	Form 4-19b.	Short-Form of Grant of Preemptive Rights	4-19	
			4-2	
	Form 4-19d.	Additional Interests — Preemptive Rights;		
			4-2	
4.13.	Miscellaneo	us Provisions	4-2	
	Form 4-20.	Miscellaneous Provisions	4-2	
4.14.	Post-Organiz	zation Communication with Clients	4-2	
	Form 4-21.	Form of Post-Organization Reporting Letter		
		to Client	4-2	
	Form 4-22.	Alternate Form of Letter to New LLC		
		Regarding Operational and Other		
		Post-Formation Matters	4-2	
4.15.	Series LLC		4-4	
СПА	PTER 5: L	IMITED LIABILITY COMPANY CAPITAL	5-	
5.1.			5-	
5.2.	Drafting Capital Provisions			
5.4.			5- 5-	
	5.2.1. Ge	nerally	J	

	I	Form 5-1.	Initial Capital Contributions in	5-4
	1	Zama <b>5</b> 1a	Cash	3-4
	1	Form 5-1a.	Initial Capital Contributions — Automatic Amendment of	
				5-4
	1	Z 5 0	Exhibit A	3-4
	1	Form 5-2.	Initial Capital Contributions —	
			Partly in Cash and Partly in	5-4
	1	Za 5 2a	Services	3-4
	1	Form 5-2a.		5-7
	1	Z 5 2	Interests	3-7
	1	Form 5-3.	Initial Capital Contributions —	
			Partly in Cash and Partly in	5-8
	1	7 <i>5.</i> 4	Property	3-0
	1	Form 5-4.	Representation in Connection	
	500	O	with Contribution of Property	5-8
			Agreement	5-8
		Form 5-4a.	Contribution Agreement	5-8.1
			Agreement (Real Estate)	5-10
	I	Form 5-4b.	Contribution Agreement —	
			Real Estate	5-10
5.3.		_	ntributions	5-10.7
	Form 5-5.		nal Capital Contributions at Discretion	
			ger — Limit on Amount	5-10.7
	Form 5-6.		nal Capital Contributions at Discretion	
			bers — Limit on Amount	5-10.8
	Form 5-7.		ility Beyond Initial Capital	
			ition	5-10.9
	Form 5-8.		ility Beyond Additional Capital	
			itions	
5.4.	Default in	Payment of	Contributions	5-10.10
	Form 5-9.		of Reduction of Member's	
			in Event of Failure to Make	
		Contribu	tion to Manager-Managed LLC	5-10.10
	Form 5-9a		of Reduction of Member's	
			Profits in Event of Failure to	
			ontribution to Manager-Managed	
5.5.	Interest or	n Capital Co	ntributions	5-10.12
	Form 5-10	). No Inter	est on Capital Contributions	5-10.12
	Form 5-11	. Interest	on Capital Contributions	5-10.12
5.6.	Return of	Capital Con	tributions; Limitations on	
	Distributio	ons		5-11

	Form 5-12	2. Return of Capital Contributions	5-11
5.7.	Form of D	Distribution	5-12
	Form 5-13	3. Form of Distribution — No Right to Receive Anything but Cash	5-12
	Form 5-14	4. Form of Distribution — Form of Distribution Is at Discretion of Manager in	
		Manager-Managed LLC	5-13
5.8.		ccounts	5-13
	Form 5-15	1	
		with Code Section 704	5-13
	Form 5-13	5a. Capital Accounts Maintained in Accordance	~ 1.4
<b>7</b> 0		with Code Section 704	5-14
5.9.			5-14.1
	Form 5-16		
		Borrow Money from Members on Terms to Be Agreed upon in Future	5-14.1
	Form 5-17		3-14.1
	1'01111 3-1	with General Authority to Borrow Money	
		from Members on Terms to Be Agreed	
		upon in Future	5-14.2
	Form 5-18	-	5-15
	Form 5-19		5-15
	Form 5-20		5-16
СНАР	TER 6:	ALLOCATION AND DISTRIBUTION	
011111	121100	PROVISIONS	6-1
6.1.	Taxation o	of the LLC	6-3
6.2.		Allocation and Distribution Concepts	6-3
6.3.		on Restrictions under the Act	6-4
6.4.		n Restrictions — Code Section 704(b)	6-4
		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.	Definition	ns	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
	1	Form 6-2. Tax Definitions	6-10

6.6.	Basic D	vistribution 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 A	llocation 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					
	6.8.1.	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			
СНА	PTER 7:	MANAGEMENT PROVISIONS	7-1			
7.1.	Drafting	g 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	r-Managed LLC Provisions	7-6			
	Form 7-	1. Simple Member-Management Provision	7-6			
	Form 7-1a. Long-Form Member-Management Provision					

	Form 7-2		r-Management with Appointment sterial Manager	
7.3.	Represer		gement	
,,,,,	7.3.1.		t by a Manager Similar to a General	
	7.5.11		Limited Partnership	
		Form 7-3.	Manager with Authority Similar to	
			a General Partner of a	
			Limited Partnership	
		Form 7-4.	Manager with Authority Similar to	
			a General Partner of a Limited	
			Partnership — Alternative Form	
	7.3.2.	Managemen	t by Management Committee	
		Form 7-5.	Management Committee	
		Form 7-5a.	Management Committee	
			(Alternative Form)	
	7.3.3.	_	t by One Class of Members	
		Form 7-6.	Definition of Class A and Class B	
			Members	
		Form 7-7.	Management by Class A Members	
	7.3.4.	•	t in Bankruptcy Remote Entity	
		Form 7-7a.	Special Purpose Management	
			Provisions	
7.4.	_		agers	
	Form 7-8		al of Manager for Any Reason	
	Form 7-9		al of Manager for Only Specified	
			8	
7.5.	_		ons by Members	
	Form 7-1		are for Calling and Holding Meetings	
	Form 7-1		are for Calling and Holding	
		-	gs — Only Class A Members Vote	
	Form 7-1		l Actions	
		Form 7-13. Form of Consent of Members		
7.6.			ity	
	Form 7-1		ent of Authority of	
			, LLC	
	Form 7-1	5. Amendi	ment to Statement of Authority of	
	For. 7 1	6 Dant D'	LLC	
	Form 7-1	o. Post-Di	ssolution Statement of Authority of	
7.7.	Dandlaal	z and Dasalus	tion	
1.1.			ion of Deadlock	
			ion of Dispute (Alternate Form)	

	Form 7-19.	Meeting between Senior Executives; Mediation	7-30
	Form 7-20.	Reciprocal Purchase Rights in the Event	7-30
	101111 7-20.	of Deadlock	7-31
	Form 7-21.	Deadlock; Buy-Sell.	7-34
7.8.		as a Remedy for Deadlock or Oppression	7-35
,,,,,		eneral	7-35
		ourt-Ordered Dissolution in the Case of	
		eadlock	7-35
	7.8.3. Co	ourt-Ordered Dissolution in the Case of	
	Op	ppression	7-39
7.9.	Compensation	on 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.		
		Business Opportunities	7-45
	Form 7-26.	Standard of Care and Duty of Loyalty	
		(Alternative Form)	7-46
		Manager Granted Broad Discretion	7-46.1
7.11.	Indemnificat	tion 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
		Advancement of Indemnification	7-53
7.12.		torney	7-53
	Form 7-31.	Power of Attorney	7-54
CHA	PTER 8: T	TRANSFER AND BUY-SELL PROVISIONS	8-1
8.1.	The Act's D	efault Rules for Transfers	8-3
8.2.	Tax Aspects	of Transfer Restrictions	8-3
		rtnership Classification	8-3
		rmination of the LLC	8-4
	8.2.3. Ba	sis Issues	8-5
8.3.	Preliminary	Drafting Considerations	8-5

	Form 8-	1. Definition	nal Provision — Transfer	8-6
	Form 8-	2. Definition	nal Provisions — Interest and	
		Members	ship Rights	8-6
8.4.	Drafting	g Transfer Prov	isions That Follow the Act's	
	Default	Rules		8-6
	Form 8-	3. Transfer	Provision Following the Act's	
		Default I	Rules	8-6.1
8.5.	Drafting	g Transfer Prov	isions That Permit Free Transferability	
	of Intere	ests		8-6.2
	Form 8-	4. Free Tran	nsferability of Interests and Rights	8-7
8.6.			isions That Absolutely Prohibit	
	Transfer	rs of Any Kind		8-7
	Form 8-	5. Absolute	Prohibition of Transfers	8-7
8.7.	Miscella	aneous Transfe	r 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.		f 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.		Members' Affiliates and Family	8-15
		Form 8-12a.	Definitional Provision - Affiliate	0.46
		F 0.121	(Alternative to Form 4-5)	8-16
			Definitional Provision — Family	8-16
			Transfers to Affiliates and Family	8-16
		Form 8-12d.	General Restrictions on Transfer —	0.16.1
		E 0.12	Permitted Transfers	8-16.1
	0.7.5	Form 8-13.	Permitted Transferees	8-16.2
	8.7.5.		t 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	8-164

	8.7.6.	Transfers Incidental to Disputes	
			8-16.6
	8.7.7.	Transfers Incidental to Put-Call, Tag-Along	
		6 6 6	8-16.6
		•	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	-16.10
		Form 8-13f. Change-in-Control 8-	-16.11
8.8.	Withdra	wal and Dissociation under the Act 8-	-16.12
	8.8.1.	Withdrawal8	-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.	Consequ	uences 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.	Valuatio	on 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 Tr	ransfer Considerations	8-26
	Form 8-	24. Installment Buyouts	8-26.1
8.12.	Redemp	otion Agreements	8-27
	Form 8-	e	8-27
	Form 8-	1 1 0	
		Agreement (Alternative Form)	8-30
8.13.	Sale of A	All Limited Liability Company Interests	8-40
8.14.		United States Federal Income Tax Considerations	8-40

<b>CHAI</b>	PTER 9: D	DISSOLUTION	9-1		
9.1.	Tax Aspects	of LLC Dissolution	9-2		
9.2.	Overview of	f 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	or 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.		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				
			9-13		
	Form 9-9.	Notice to Known Creditors	9-14		
	Form 9-10.	Published Notice to Creditors of a Dissolved	0.46		
		Limited Liability Company	9-16		
9.6.		ermination	9-17		
	Form 9-11.	Certificate of Termination	9-17		
	Form 9-12.	Certificate of Dissolution and Termination	9-18		
9.7.	Rescission of	of Dissolution and Termination	9-18		
СНАІ	PTER 10. B	BOOKS, RECORDS, AND ACCOUNTING	10-1		
10.1.		1	10-2.1		
10.2.			10-2.1		
10.2.	•	Bank Accounts	10-2.1		
10.3.		embers, Managers and Dissociated Members	10 2.1		
10.5.		on	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.	Account	ting Period; Method of Accounting	10-6
	Form 10	0-4. Calendar Year Accounting Period Specified	10-6
	Form 10	0-5. Fiscal Year Accounting Period Specified	10-6
	Form 10	9-6. Year to Be Determined by Members	10-6
	Form 10	0-7. Annual Accounting Period Established	
		by Managers	10-7
	Form 10	0-8. 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	0-10. Preparation of Reports (Long Form) for	
		Manager-Managed LLC	10-8
10.6.	LLCs an	nd 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 Elec	ctions	10-15
	Form 10	0-13. Tax Elections	10-15
	Form 10	0-14. Tax Elections — Applies to Code	
		Section 754 Only — for Use in Either	
		Member-Managed or Manager-Managed	
		LLC	10-16
		PART III	
		MISCELLANEOUS	
СПАТ	PTER 11:	: BUSINESS REORGANIZATIONS INVOLVING	
CHAI	ILK II.	LLCS	11-1
11.1.	In Gener	ral	11-3
11.2.		on of New Members	11-3
11,4,	11.2.1.	Acquisition of Interest from Company	11-3
	11.2.1.	Form 11-1 Simple Subscription Agreement	11-3

			for LLC Mem	bership Interest	11-4
		Form 11-2.	Long Form Su	bscription Agreement	
			for LLC Mem	bership Interest with	
			Securities Lan	guage	11-5
		Form 11-2a.	Short Form Su	bscription Letter	
				s Language	11-9
		Form 11-3.		ent to Operating	
			Agreement Ad		
					11-10
		Form 11-3a.	Contribution A	Agreement	11-12.1
	11.2.2.			Another Member	
		Form 11-4.		LLC Membership	
		1011111111	•		11-12.4
		Form 11-5.		ment	
11.3.	Margare		and Domesticat		11 17
11.5.					11-17
	11.3.1.	•			11-17
	11.3.1.				11-17
	11.3.2.			N. I II.C.	
		Form 11-6.	_	New Jersey LLCs	
		Form 11-7.	-	v Jersey LLC with and into	
		T 44.0	•	orporation	11-23
		Form 11-8.		Merger of New Jersey LLC	
		~		Delaware LLC	
	11.3.3.		•	3	11-26
		11.3.3.1.			11-26
		11.3.3.2.		f an LLC into a	
			Corporation .		11-28
			Form 11-9.	Conversion of a	
				New Jersey LLC	
				to a New Jersey or	
				Delaware	
				Corporation —	
				Plan of Conversion	11-30
			Form 11-9a.		
				New Jersey LLC	
				to a New Jersey	
				Corporation	
				[Articles/Certificate]	
				of Conversion	11-32.1
			Form 11-9b.	Conversion of a	
				New Jersey LLC	
				to a Delaware	
				Corporation —	

				Articles of Conversion	11-32.2
			Form 11-10.	Certificate of	
				Conversion to	
				Corporation	11-32.3
		11.3.3.3.	Conversion of	General Partnership to	
			$LLC \ldots \ldots$		11-32.4
			Form 11-11.	Agreement to	
				Convert General	
				Partnership to	
				Limited Liability	
				Company	11-32.6
			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	11 25
			E 11.15	Predecessor	11-35
			Form 11-15.	C	
				General Partnership Interests to LLC	11-35
			E 11 16		11-33
			Form 11-16.	Resolutions of Members	
				Approving Liquidation of Partnership into LLC.	11-36
		11.3.3.4.	Conversion of	Limited Partnership into	11-30
		11.3.3.4.			11-37
		11.3.3.5.		Corporation into LLC	11-37
	1121			•	
	11.3.4.		_	Cs	11-39 11-41
				estication	
				Domestication	11-44
				Surrender	11-45
		Form 11-16d.			11 46
	1105	D			11-46
	11.3.5.			Mergers, Conversions	11 46
11.4	D				11-46
11.4.				· · · · · · · · · · · · · · · · · · ·	11-47
	rorm 11	-17. Form of A			11 47
		Agreemen	ιι		11-47

<b>CHAI</b>	<b>PTER 12:</b>	DOING INTER	RSTATE BUSINESS	12-1
12.1.	Foreign	LLCs Doing Busin	ness in New Jersey	12-2
	12.1.1.	Governing Law .		12-2
	12.1.2.	Doing Business .		12-2
	12.1.3.	Procedure for Reg	gistration	12-3
		Form 12-1. App	olication for Registration of a	
			eign Limited Liability Company	12-3
	12.1.4.	Issuance and Can	cellation of Registration	12-4
	12.1.5.	-	vithout Registration	12-4
12.2.		_	Limited Liability Companies	12-5
12.3.	New Jer	sey LLCs Doing B	usiness Outside of New Jersey	12-5
	12.3.1.	Delaware		12-5
	12.3.2.			12-6
			plication for Authority of a Foreign	
			nited Liability Company to	
			nsact Business in New York	12-9
	12.3.3.	Pennsylvania		12-10
CHAI	TER 13:	PROFESSIONA	AL LIMITED LIABILITY	
		COMPANIES A	AND PROFESSIONAL	
		LIMITED LIA	BILITY PARTNERSHIPS	13-1
13.1.			ompanies by Professionals	13-2
13.2.	Limited	Liability Partnersh	ips	13-5
	13.2.1.	Generally		13-5
	13.2.2.	Becoming a Limit	ted Liability Partnership	13-7
			tement of Qualifications to Become	
			imited Liability Partnership	13-7
	13.2.3.	_	Liability Partnerships	13-8
			tement of Qualifications of a	
			eign Limited Liability	
			tnership	13-9
	13.2.4.		iability Partnerships by Attorneys	13-10
13.3.			Agreements	13-11
			Service LLC Distributions	13-11
	Form 13	-3. Member Serv	vice Agreement	13-12.2
CHAI	TER 14:	COMMERCIA	L AND SECURITIES	
	TER III		S OF LLCS	14-1
14.1.	Credit A		rations for LLC Borrowings	14-4
	14.1.1.	_		14-4
		•	nager's Certificate	14-6
			mber'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.	_	Letters	14-19
	14.2.1.	Introduction	14-19
		Form 14-6. Form of Opinion Letter in Connection	1.4.20
	1100	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
	1100	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
	4404	14.2.3.2. Due Diligence Procedures	14-28
	14.2.4.	Action Opinion (Due Authorization,	14.20
		Execution and Delivery)	14-28
		14.2.4.1. Background and Meaning	
	1405	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 14-36
	1406	14.2.5.2. Due Diligence Procedures	
	14.2.6.	No Consent Opinion	14-37
		14.2.6.1. Background and Meaning	14-38
	1407	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
	1400	14.2.7.2. Due Diligence Procedures	14-45
1424	14.2.8.	Opinions on LLC Membership Interests	14-47
14.2A	. Due Dili	igence 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
	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	
	1	14-73
	Form 14-9b. Membership Interest Pledge Agreement	14-74
	Form 14-9c. Assignment Separate from Certificate	4-84.2
14.5.	Bankruptcy Implications	4-84.3
	14.5.1. The Bankruptcy Code and LLCs	4-84.3
	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	14.06
	, and the second se	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	17-00
	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 — Ipso Facto Clauses and Section 541 of the Bankruptcy Code	14-88
	14.5.4.	Executory Operating Agreements and the Impact	
	1	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.	Securitie	s 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.	Applicab	vility of the Premerger Notification Requirements	
	of the Ha	art-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	
	14.7.3.	1	14-105
14.8.		Jurisdiction for LLCs	14-107
14.9.		g 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	
		•	14-112
14.10.		ry Rights and Noncompetition Agreements	14-112
	Form 14-	-14. Proprietary Rights and Noncompetition	
		C	14-113
14.11.	-	ration Limited Liability Companies	14-119
		-15. Selected S Corporation Provisions	14-121
14.12.	Bulk Sal	es Notification Process for Pass-Through Sellers	14-122
СНАР	TER 15:	COMPENSATION STRATEGIES FOR THE	
011111	1211110	LLC	15-1
15.1.	Introduct	tion	15-3
15.2.		ion 83	15-4
15.3.		iterest vs. Capital Interest	15-6
		-1a. Provision for Issuance of Profits Interests	15-10
		-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.		artnership) vs. Corporation Compensation			
	Methods	S			
	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		
		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.	Phanton	n 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: I	Equity and Non-Equity Based LLC Compensation			
	Plans				
	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
CHA	PTER 16: RESERVED	16-1
CHA	PTER 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	17.0
	of Member's Interest	17-9
	Interest	17-9
17.6.	Tax Consequences of a Single Member LLC Becoming an	17-9
17.0.	Entity with More than One Owner	17-10
	Entity with More than One Owner	17 10
CHA	PTER 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	<b>\</b> -1
APPENDIX B:	[MANAGER-MANAGED] OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY	3-1
APPENDIX C:	PROFESSIONAL SERVICES OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY	C-1
APPENDIX D:	OPERATING AGREEMENT FOR A SINGLE MEMBER NEW JERSEY LIMITED LIABILITY COMPANY OWNED BY A CORPORATION	<b>)</b> -1
APPENDIX D1:	ALTERNATIVE FORM OF SINGLE MEMBER OPERATING AGREEMENT APP D1	1-1
APPENDIX D2:	OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY WHICH IS A SUBSIDIARY OF A TAX-EXEMPT ENTITY AND IS USED FOR TAX-EXEMPT PURPOSES	2-1
APPENDIX D3:	OPERATING AGREEMENT FOR A BANKRUPTCY-REMOTE ENTITY APP D3	3-1
APPENDIX D4:	OPERATING AGREEMENT OF A LIMITED LIABILITY COMPANY THAT HAS ELECTED "S" STATUS UNDER THE INTERNAL REVENUE CODE	4-1
APPENDIX E:	FORM OF OPERATING AGREEMENT FOR A TWO PERSON LIMITED LIABILITY COMPANY FORMED FOR A SPECIFIC PROJECT APP E	Ξ-1
APPENDIX F:	NEW JERSEY REVISED UNIFORM LIMITED LIABILITY COMPANY ACT APP F	7-1
APPENDIX C:	CHECK-THE-ROY REGIII ATIONS 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 OPERAT AGREEMENT; FORM OF INCENTIVE UNIT GRANT AGREEMENT	
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
APPENDIX P:	FORMS PERTAINING TO CORPORATE TRANSPARENCY ACT COMPLIANCE	. APP P-1
	PART V LLP AND LLC CASES	
LLP and LLC Ca	ses L	LC Cases-1
	PART VI INDICES	
Cumulative Table Cumulative Table Cumulative Table Act Section Miscellaneous No Subject Index	of Internal Revenue Code Sections	INDEX-4 INDEX-6 INDEX-7 INDEX-11 INDEX-13
Forms Index		INDEX-29