

Table of Contents

CHAPTER 1. CHOICE OF BUSINESS FORM

- § 1:1 Introduction
- § 1:2 Federal tax classification: A historical perspective and the check-the-box regulations
- § 1:3 The choices—Sole proprietorship
- § 1:4 General partnerships
- § 1:5 Limited Liability Partnership
- § 1:6 Limited Partnership
- § 1:7 Limited Liability Companies
- § 1:8 Corporation
- § 1:9 S Corporation
- § 1:10 Nontax considerations in choosing the form of entity—Overview
- § 1:11 Limitation of liability
- § 1:12 Ownership and management
- § 1:13 Transferability of interests
- § 1:14 Existence: Perpetual or limited
- § 1:15 Administrative complexity and expense
- § 1:16 Exit strategy
- § 1:17 Entity Comparison Chart

CHAPTER 2. CORPORATIONS

- § 2:1 Formation/Defective formation
- § 2:2 Certificate of incorporation—Default provisions
- § 2:3 Amendment of certificate of incorporation—Procedure for amendment of certificate of incorporation
 - Super-majority shareholder voting on amendments
 - Class or series voting on amendments
- § 2:6 —Certificate of Amendment
- § 2:7 By-laws
- § 2:8 Corporate powers/*Ultra vires*
- § 2:9 Directors—Overview
- § 2:10 —Cumulative voting
- § 2:11 —Number, term, compensation, resignation, removal, and vacancies
- § 2:12 Board meetings/Board action
- § 2:13 Board committees
- § 2:14 Duties of directors—Standard of conduct
- § 2:15 —Duty of loyalty—Transactions with interested directors
- § 2:16 —Corporate opportunity

- § 2:17 —Duty of care—The Business Judgment Rule
- § 2:18 —Presumption of assent
- § 2:19 —Limiting director liability
- § 2:20 Officers
- § 2:21 —Authority
- § 2:22 —Employment contract
- § 2:23 —Resignation, removal and vacancies
- § 2:24 —Standard of conduct
- § 2:25 Shareholders and shares—Introduction/definitions
- § 2:26 —Methods of fixing terms of shares; Issuance of shares
- § 2:27 —Share dividends, divisions and combinations
- § 2:28 —Subscription for shares
- § 2:29 —Consideration for shares; Value and payment;
Liability
- § 2:30 —Rights to purchase
- § 2:31 —Preemptive rights
- § 2:32 —Share certificates; uncertificated shares
- § 2:33 —Fractional shares
- § 2:34 —Subscriber liability; Piercing the veil
- § 2:35 —Restrictions of transfer or registration of transfer of
securities
- § 2:36 Shareholder meetings, communications, and actions—
Regular meetings of shareholders
- § 2:37 —Special meetings of shareholders
- § 2:38 —Notice of shareholders' meeting
- § 2:39 —Waiver of notice of shareholders' meetings
- § 2:40 —Action without a meeting
- § 2:41 Voting/quorum/voting rights/proxy solicitation
materials
- § 2:42 Proxies
- § 2:43 Shareholder agreements—Voting trusts
- § 2:44 —Shareholder voting agreements
- § 2:45 —Shareholder control provision
- § 2:46 Books and records
- § 2:47 Shareholders' inspection rights
- § 2:48 Financial statements
- § 2:49 Permitted loans, guaranties and financial assistance
- § 2:50 Distributions—Types of transfers constituting
distributions
- § 2:51 —Determining validity of distributions
- § 2:52 —Distribution indebtedness
- § 2:53 —Other restrictions and limitations on distributions
- § 2:54 —Status of reacquired shares
- § 2:55 —Liability for unlawful distributions
- § 2:56 Shareholder litigation—Direct v. Derivative Suits

TABLE OF CONTENTS

- § 2:57 Shareholder derivative litigation—Overview
- § 2:58 Shareholder Derivative Litigation—*In re PSE&G Shareholder Litigation*

CHAPTER 3. LIMITED LIABILITY COMPANIES

- § 3:1 The New Jersey Revised Uniform Limited Liability Company Act
- § 3:2 Defined terms
- § 3:3 Formation—Certificate of formation
- § 3:4 —Purpose
- § 3:5 —Names
- § 3:6 —Registered agent—Registered office
- § 3:7 —Fees
- § 3:8 —Application for registration—Foreign LLC
- § 3:9 Continuing administration of an LLC—Annual filing requirements
- § 3:10 —State income taxes
- § 3:11 Powers of an LLC
- § 3:12 —The operating agreement
- § 3:13 —Indemnification
- § 3:14 —To sue
- § 3:15 —Merger
- § 3:16 Members—Rights and powers of members
- § 3:17 —Liability protection
- § 3:18 —Management
- § 3:19 —Information
- § 3:20 —Allocation of profits, losses and distributions
- § 3:21 —Right to resign
- § 3:22 —Transfer of transferable interest
- § 3:23 —Right to recover
- § 3:24 —Right to derivative action
- § 3:25 —Responsibilities to an LLC
- § 3:26 Contributions
- § 3:27 Managers
- § 3:28 Dissolution—Dissolution of the LLC
- § 3:29 —Time frame
- § 3:30 —Notice to creditors
- § 3:31 —Authority to wind up affairs
- § 3:32 —Distributions
- § 3:33 —Dissociation—Members
- § 3:34 Unique aspects of Foreign LLCs
- § 3:35 Piercing the LLC's veil

CHAPTER 4. GENERAL PARTNERSHIPS

- § 4:1 General overview—Introduction to general partnerships
- § 4:2 —Current New Jersey statutory scheme
- § 4:3 —General provisions of New Jersey's statutory scheme
- § 4:4 Partnership formation—Formation of partnership
- § 4:5 —Partnership as a separate entity
- § 4:6 —Statement of authority
- § 4:7 The partnership agreement—The role of the partnership agreement
- § 4:8 —Non-Waivable provisions
- § 4:9 Partnership property—What constitutes partnership property
 - § 4:10 —Transfers of partnership property
 - § 4:11 —Recovery of partnership property
 - § 4:12 —Partner's interest in partnership property
 - § 4:13 The nature of partner's interest in partnership—
 - Partner's interest in personal property
 - § 4:14 —Transferability of partner's interest
 - § 4:15 —Creditor's rights as to a partner's interest
 - § 4:16 Relation of partners to third parties dealing with partnership—Partner as agent of partnership
 - § 4:17 —Partner's liability for acts of other partners
 - § 4:18 —Liability for debts of partnership
 - § 4:19 —Liability of purported partners
 - § 4:20 Relation of partners to each other and to the partnership—Partner's general rights and duties
 - § 4:21 —Partner's fiduciary duties
 - § 4:22 —Distributions
 - § 4:23 —Books and records
 - § 4:24 Partner's dissociation—Events causing dissociation
 - § 4:25 —Partner's power to dissociate
 - § 4:26 —Effects of dissociation
 - § 4:27 —Purchase of dissociated partner's interest
 - § 4:28 —Statement of dissociation
 - § 4:29 Actions—Actions against the partnership and/or partners
 - § 4:30 —Actions by partnership and/or partners
 - § 4:31 Entity events—Merger or consolidation of the partnership
 - § 4:32 —Dissolution of partnership

TABLE OF CONTENTS

CHAPTER 5. LIMITED LIABILITY PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED PARTNERSHIP ASSOCIATIONS

I. LIMITED LIABILITY PARTNERSHIP

- § 5:1 Introduction
- § 5:2 Formation of the LLP
- § 5:3 Effect of qualification as an LLP
- § 5:4 Other aspects

II. LIMITED PARTNERSHIPS

- § 5:5 Introduction
- § 5:6 General provisions of limited partnerships
- § 5:7 Formation of limited partnership, amendment to the Certificate of Limited Partnership, and the partnership agreement
- § 5:8 General partners
- § 5:9 Limited partners
- § 5:10 Distributions and withdrawals of partners
- § 5:11 Partnership interests
- § 5:12 Dissolution
- § 5:13 Foreign limited partnerships

III. LIMITED PARTNERSHIP ASSOCIATIONS

- § 5:14 In general
- § 5:15 Requirements
- § 5:16 Amendments
- § 5:17 Interests
- § 5:18 Debts and liability of individual members
- § 5:19 Powers
- § 5:20 Profits
- § 5:21 Dissolution

CHAPTER 6. FEDERAL TAXATION OF BUSINESS ORGANIZATIONS

- § 6:1 Introduction
- § 6:2 Check-the-Box regulations
- § 6:3 Taxation of proprietorships
- § 6:4 Taxation of C Corporations—Overview
- § 6:5 —Forming the C Corporation

- § 6:6 —C Corporation income tax
- § 6:7 —Distributions and redemptions
- § 6:8 —Liquidations
- § 6:9 Taxation of partnerships and limited liability entities—Overview
 - § 6:10 —Forming the partnership
 - § 6:11 —Partnership income tax
 - § 6:12 —Partnership operations
 - § 6:13 —Liquidation
 - § 6:14 Taxation of S Corporations—Overview
 - § 6:15 —Electing S Corporation status
 - § 6:16 —S Corporation income tax
 - § 6:17 —S Corporation operations
 - § 6:18 —Redemptions and liquidations
 - § 6:19 —Termination

CHAPTER 6A. THE CORPORATE TRANSPARENCY ACT

- § 6A:1 Sample Beneficial Ownership Information (BOI) Report

CHAPTER 7. CONTRACTS

- § 7:1 Introduction—Definition of “contract”
- § 7:2 —Sources of New Jersey contract law
- § 7:3 Contract formation—Capacity to contract
- § 7:4 —Offer and acceptance: Mutual assent
- § 7:5 —Offer
- § 7:6 —Acceptance; rejection; revocation; unilateral offers
- § 7:7 —Consideration
- § 7:8 —Option contracts; implied contracts; quasi-contracts
- § 7:9 —Reliance; Promissory estoppel; Equitable Estoppel
- § 7:10 —Modification of contracts
- § 7:11 Statute of frauds—The statute in New Jersey
- § 7:12 —Application and purpose of the statute of frauds
- § 7:13 —Writing—In general
- § 7:14 Mistake—Mutual mistake
- § 7:15 —“Misunderstanding”
- § 7:16 —Unilateral mistake
- § 7:17 Changed circumstances: Impracticability and frustration of purpose; Impossibility
- § 7:18 Misrepresentation and fraud—Overview
- § 7:19 —Special issues with fraud and misrepresentation
- § 7:20 Duress and undue influence—General overview
- § 7:21 —Duress

TABLE OF CONTENTS

- § 7:22 —Economic duress
- § 7:23 —Undue influence
- § 7:24 Unenforceability on grounds of public policy
- § 7:25 The scope of contractual obligations—Rules of contract construction
- § 7:26 —Covenant of good faith and fair dealing
- § 7:27 —Effect of adoption of writing—Parol evidence
- § 7:28 Conditions; condition precedent
- § 7:29 Performance and breach—Overview
- § 7:30 —The duty of substantial performance
- § 7:31 —Repudiation—Anticipatory repudiation
- § 7:32 —Material breach
- § 7:33 —Abandonment
- § 7:34 Remedies for breach of contract—Introduction
- § 7:35 —Purpose of remedies for breach of contract
- § 7:36 —Requirements for a valid claim
- § 7:37 —Expectation damages—Compensatory damages
- § 7:38 —Limitations on damages; Foreseeability, mitigation, and certainty
- § 7:39 —Reliance damages
- § 7:40 —Restitution
- § 7:41 —Liquidated damages
- § 7:42 —Rescission
- § 7:43 —Specific performance and injunctive relief
- § 7:44 Third-Party Beneficiaries
- § 7:45 Statute of limitations

CHAPTER 8. SALES

- § 8:1 General comments
- § 8:2 Formal requirements of contracts for the sale of goods
- § 8:3 Construction of contracts for sale of goods
- § 8:4 Warranties
- § 8:5 Sale on approval and sale or return; Rights of creditors
- § 8:6 Seller's obligation of delivery and passing of risk of loss
- § 8:7 Buyer's obligations for payment
- § 8:8 Rights of creditors
- § 8:9 Rights of good faith purchasers
- § 8:10 Breach and repudiation
- § 8:11 Seller's remedies for breach of contract
- § 8:12 Buyer's remedies for breach of contract
- § 8:13 Liquidated damages
- § 8:14 Statute of limitations
- § 8:15 Bills of sale

CHAPTER 9. EQUIPMENT LEASES

- § 9:1 Introduction
- § 9:2 Definitions
- § 9:3 The lease contract—Formation of the lease contract
- § 9:4 —True leases versus security interests disguised as leases
- § 9:5 Enforceability, construction, and interpretation of lease contracts—Enforceability
 - Statute of frauds
 - § 9:7 —Parol Evidence Rule
 - § 9:8 —Interpreting lease contracts
 - § 9:9 Firm offers
 - § 9:10 Modification, rescission, and waiver
 - § 9:11 Warranties
 - § 9:12 Identification
 - § 9:13 Insurable interests
 - § 9:14 Risk of loss
 - § 9:15 Title to and possession of goods
 - § 9:16 Performance of the lease contract
 - § 9:17 Default
 - § 9:18 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods—Computation of damages
 - Lessee's incidental and consequential damages; Specific performance
 - § 9:20 —Lessor's remedies

CHAPTER 10. REVISED ARTICLE 9

- § 10:1 Introduction and scope—Overview
- § 10:2 —Scope of Revised Article 9
- § 10:3 —Security interests arising under Article 2 or 2A
- § 10:4 —Certain definitions
- § 10:5 —Sales of accounts, chattel paper, payment intangibles, promissory notes, and other receivables
- § 10:6 —Transfer of ownership in sales of receivables
- § 10:7 —Consignments
- § 10:8 —Security interests in obligations secured by non- Article 9 transactions
- § 10:9 —Commercial tort claims
- § 10:10 —Deposit accounts
- § 10:11 —Scope—Miscellaneous
- § 10:12 Creation and attachment of security interests—Overview
 - Security agreements and security interests

TABLE OF CONTENTS

§ 10:14	—Creating and authenticating a valid security agreement
§ 10:15	—Attachment of security interest—Giving Value
§ 10:16	— —Description of collateral
§ 10:17	— —Rights in collateral
§ 10:18	—Attaching after-acquired property
§ 10:19	—Attaching proceeds
§ 10:20	—Attaching supporting obligations and underlying collateral
§ 10:21	Rights and duties of the parties—Overview
§ 10:22	—Title is immaterial
§ 10:23	—Rights and duties of secured party having possession or control of collateral
§ 10:24	—Certain restrictions void
§ 10:25	Choice of law—Overview
§ 10:26	—Agricultural liens
§ 10:27	—Deposit accounts and letter of credit rights
§ 10:28	—Certificates of title
§ 10:29	—Location of debtor
§ 10:30	Perfection—Overview
§ 10:31	—Perfection by attachment
§ 10:32	When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply
§ 10:33	Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties
§ 10:34	Perfection—Perfection by possession
§ 10:35	—Perfection under UCC § 9-312
§ 10:36	—Secured party's rights on disposition of collateral and in proceeds
§ 10:37	—Temporary perfection; maintaining perfection continued perfection following change in governing law
§ 10:38	—Assignment of a perfected interest
§ 10:39	Priority—Overview
§ 10:40	—Interests taking priority over or taking free of security interest or agricultural lien
§ 10:41	—Buyer of goods
§ 10:42	Priorities among conflicting security interests in and agricultural liens on same collateral
§ 10:43	Priority—Future advances
§ 10:44	—Priority of purchase-money security interests
§ 10:45	—Priority of security interests in transferred collateral

- § 10:46 —Priority of security interests created by new debtor
- § 10:47 —Priority of security interests in deposit accounts
- § 10:48 —Priority of security interests in investment property
- § 10:49 —Priority of security interests in letter of credit right
- § 10:50 —Priority of purchaser of chattel paper or instrument
- § 10:51 —Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8
- § 10:52 —Transfer of money; transfer of funds from deposit account
- § 10:53 —Priority of Certain Liens Arising by Operation of Law; priority of security interests in fixtures and crops
- § 10:54 —Accessions and commingled goods
- § 10:55 —Miscellaneous priority provisions
- § 10:56 Third-party rights—Overview
- § 10:57 —Secured party not obligated on contract of debtor or in tort
- § 10:58 —Agreement not to assert defenses against assignee
- § 10:59 —Rights acquired by assignee; claims and defenses against assignee
- § 10:60 —Modifications of assigned contracts
- § 10:61 —Discharge of account debtor; notification of assignment; Identification and proof of assignment; Restrictions on certain assignments
- § 10:62 —Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest
- § 10:63 —Restrictions on assignment of promissory notes, healthcare-Insurance receivables, and certain general intangibles ineffective
- § 10:64 —Restrictions on assignment of letter of credit rights ineffective
- § 10:65 Filing—Overview
- § 10:66 —Contents of financing statement; record of mortgage as financing statement; time of filing financing statement
- § 10:67 —Debtor's name
- § 10:68 —Indication of collateral
- § 10:69 —Effect of errors or omissions
- § 10:70 —Effect of certain events on effectiveness of financing statement

TABLE OF CONTENTS

§ 10:71	—Effectiveness of financing statement if new debtor becomes bound by security agreement
§ 10:72	—Persons entitled to file a record
§ 10:73	—Effectiveness of filed record
§ 10:74	—Secured party of record
§ 10:75	—Amendment of financing statement
§ 10:76	—Termination statements
§ 10:77	—Assignment of powers of secured party of record
§ 10:78	—Duration and effectiveness of financing statement; effect of lapsed financing statement
§ 10:79	—What constitutes filing; effectiveness of filing
§ 10:80	—Effect of indexing errors
§ 10:81	—Correction statement
§ 10:82	Filing office housekeeping rules
§ 10:83	Default and enforcement—Overview
§ 10:84	—Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes
§ 10:85	—Waiver and variance of rights and duties
§ 10:86	—Agreement on standards concerning rights and duties
§ 10:87	—Procedure if security agreement covers real property or fixtures
§ 10:88	—Unknown debtor or secondary obligor
§ 10:89	—Collection and enforcement by secured party
§ 10:90	—Application of proceeds of collection or enforcement; liability for deficiency and right to surplus
§ 10:91	—Secured party's right to take possession after default
§ 10:92	—Disposition of collateral after default
§ 10:93	—Notification before disposition of collateral
§ 10:94	—Timeliness of notification before disposition of collateral
§ 10:95	—Contents and form of notification before disposition of collateral: general
§ 10:96	—Contents and form of notification before disposition of collateral: consumer goods transaction
§ 10:97	—Application of proceeds of disposition; liability for deficiency and right to surplus
§ 10:98	—Explanation of calculation of surplus or deficiency
§ 10:99	—Rights of transferee of collateral
§ 10:100	—Rights and duties of certain secondary obligors
§ 10:101	—Transfer of record or legal title

NEW JERSEY BUSINESS LAW

- § 10:102 —Acceptance of collateral; compulsory disposition of collateral
- § 10:103 —Notification of proposal to accept collateral
- § 10:104 —Effect of acceptance of collateral
- § 10:105 —Right to redeem collateral
- § 10:106 —Waiver
- § 10:107 —Remedies for secured party's failure to comply with article
- § 10:108 —Action in which deficiency or surplus is in issue
- § 10:109 —Determination of whether conduct was commercially reasonable
- § 10:110 —Nonliability and limitation on liability of secured party
- § 10:111 Consumer goods, consumer-goods transactions, and consumer transactions
- § 10:112 Transition provisions—Overview
- § 10:113 —Perfection
- § 10:114 —Filing
- § 10:115 —Priority
- § 10:116 —2013 Amendments

Table of Laws and Rules

Table of Cases