



ORGANIZATION AND SALE OF SMALL BUSINESSES

PRACTICAL SKILLS
SERIES

2019 Edition

Written by

W. Raymond Felton, Esq.

ABOUT THE AUTHOR

W. Raymond Felton is chair of the corporate department at Greenbaum, Rowe, Smith & Davis LLP, in Woodbridge, Roseland and Holmdel, New Jersey and New York City. He is also co-managing partner of the firm. Felton serves on the board of directors of the New Jersey Chamber of Commerce. He also serves on the board of directors of the New Jersey State Bar Association Business Law Section, of which he is a past chair, and is a member of the American Bar Association Business Law Section and the Middlesex County Bar Association. Felton concentrates his practice in the areas of corporation, LLC and partnership formation, operations and agreements, mergers and acquisitions, securities law, reorganizations, joint ventures, employment law, and the financing of transactions through both public and private equity and debt. He often serves as outside in house counsel, providing general legal advice on both day-to-day issues and major complex problems. His clients range from entrepreneurial start-ups to established middle market companies operating in a diverse variety of industries, including manufacturing, technology, food and beverage, real estate, construction, and healthcare, as well as service industries. Felton also represents issuers and underwriters in public and private offerings and counsels clients concerning corporate governance and SEC compliance issues.

Please note that the forms in this volume come with no guarantee or warranty; may contain errors or omissions; do not define a minimum standard or practice; have not been approved by, and are not the official position of, any organization; do not estop any person in any negotiation or transaction or otherwise; should be used only where correct in context; do not replace thought, analysis, and use of a range of appropriate precedents; have not been tailored for use in any particular state (except perhaps New Jersey); and are just models, nothing more. The author disclaims responsibility for any use or misuse of this model document, outline, or checklist. Consent is granted for any attorney to use and adapt for specific transactions, subject to the preceding qualifications.

©2019 New Jersey State Bar Association. All rights reserved. Any copying of material herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission should be sent to NJICLE, a division of the New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520.

CONTENTS

PART 1: INTRODUCTION	9
<hr/>	
PART 2: SELECTION OF BUSINESS ENTITY	10
1.1 RETENTION AS COUNSEL	11
1.2 CONSIDERATIONS IN SELECTION OF BUSINESS ENTITY	11
1.3 SOLE PROPRIETORSHIPS	12
1.4 GENERAL PARTNERSHIPS	13
1.5 LIMITED PARTNERSHIPS	14
1.6 LIMITED LIABILITY PARTNERSHIPS	15
1.7 LIMITED LIABILITY COMPANIES	16
1.8 LIMITED PARTNERSHIP ASSOCIATIONS	17
1.9 CORPORATIONS	17
1.10 PROFESSIONAL SERVICE CORPORATIONS	18
1.11 OFFICE OF THE DIVISION OF REVENUE AND ENTERPRISE SERVICES; FEES	18
<hr/>	
PART 3: PARTNERSHIPS	20
2.1 FORMATION OF A GENERAL PARTNERSHIP	21
2.2 TRADE NAME CERTIFICATE	24
2.3 FORMATION OF LIMITED PARTNERSHIPS	25
2.4 CERTIFICATE OF LIMITED PARTNERSHIP	27
2.5 OPERATIONS	28
2.6 LIMITED LIABILITY PARTNERSHIPS	30
<hr/>	
PART 4: LIMITED LIABILITY COMPANIES	31
3.1 NAMES AND ALTERNATE NAMES	32
3.2 CERTIFICATE OF FORMATION	33
3.3 OPERATING AGREEMENT	33

PART 5: CORPORATIONS	35
4.1 CORPORATE NAME	36
4.2 CERTIFICATE OF INCORPORATION	37
4.3 ORGANIZATIONAL MEETING	40
4.4 BYLAWS	41
4.5 TAX MATTERS	44
4.6 SHARE CERTIFICATES	44
4.7 BUY-SELL AGREEMENTS	45
4.8 FOREIGN QUALIFICATIONS	46
4.9 OPERATIONS	46

PART 6: DISSOLUTION OF A BUSINESS ENTITY	48
5.1 SOLE PROPRIETORSHIPS	49
5.2 GENERAL PARTNERSHIPS	49
5.3 LIMITED PARTNERSHIPS	49
5.4 LIMITED LIABILITY COMPANIES	49
5.5 CORPORATIONS	49

PART 7: SALE OF A BUSINESS	51
6.1 ROLE OF COUNSEL	52
6.2 CONFIDENTIALITY AGREEMENTS	52
6.3 DUE DILIGENCE	52
6.4 LETTER OF INTENT	53
6.5 FORM OF TRANSACTION— STOCK VS. ASSET SALE	53
6.6 BULK SALES ACT	54
6.7 ASSET SALES	54
6.8 STOCK SALE	55
6.9 INDUSTRIAL SITE RECOVERY ACT	55
6.10 RIGHTS OF DISSENTING SHAREHOLDERS	56

PART 8: FORMS	57
----------------------	-----------

FORMS

FORM 1.1	58
SAMPLE RETAINER LETTER	
<hr/>	
FORM 1.2	59
TRADE NAME CERTIFICATE	
<hr/>	
FORM 1.3	61
APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER	
<hr/>	
FORM 1.4	63
APPLICATION TO REGISTER AS A LIMITED LIABILITY PARTNERSHIP	
<hr/>	
FORM 2.1	64
GENERAL PARTNERSHIP AGREEMENT	
<hr/>	
FORM 2.2	69
CERTIFICATE OF LIMITED PARTNERSHIP	
<hr/>	
FORM 2.3	70
CERTIFICATE OF REGISTRATION OF ALTERNATE NAME	
<hr/>	
FORM 2.4	71
APPLICATION FOR RESERVATION OF LIMITED PARTNERSHIP NAME	
<hr/>	
FORM 2.5	72
AGREEMENT OF LIMITED PARTNERSHIP	
<hr/>	
FORM 3.1	85
APPLICATION TO RESERVE NAME OF CORPORATION	
<hr/>	
FORM 3.2	86
CERTIFICATE OF REGISTRATION OF ALTERNATE NAME	

FORM 3.3	88
CERTIFICATE OF FORMATION	
<hr/>	
FORM 3.4	89
OPERATING AGREEMENT FOR LIMITED LIABILITY COMPANY	
<hr/>	
FORM 4.1	111
APPLICATION FOR RESERVATION OF CORPORATE NAME	
<hr/>	
FORM 4.2	112
APPLICATION FOR REGISTRATION OF ALTERNATE NAME	
<hr/>	
FORM 4.3	113
CERTIFICATE OF INCORPORATION	
<hr/>	
FORM 4.4	116
CONSENT IN LIEU OF ORGANIZATIONAL MEETING	
<hr/>	
FORM 4.5	119
BYLAWS	
<hr/>	
FORM 4.6	126
IRS FORM 2553 AND NEW JERSEY FORM CBT-2553	
<hr/>	
FORM 4.7	133
SHARE CERTIFICATION	
<hr/>	
FORM 4.8	135
STOCKHOLDERS AGREEMENT	
<hr/>	
FORM 4.9	151
WAIVER OF NOTICE OF REGULAR MEETING OF DIRECTORS	
<hr/>	
FORM 4.10	152
MINUTES OF REGULAR MEETING OF DIRECTORS	
<hr/>	
FORM 4.11	154
MINUTES OF SPECIAL MEETING OF DIRECTORS	

FORM 4.12	156
WAIVER OF NOTICE OF ANNUAL MEETING OF SHAREHOLDERS	
<hr/>	
FORM 4.13	157
MINUTES OF ANNUAL MEETING OF SHAREHOLDERS	
<hr/>	
FORM 4.14	158
BOARD OF DIRECTORS' ANNUAL MEETING MINUTES	
<hr/>	
FORM 4.15	159
UNANIMOUS CONSENT IN LIEU OF THE ANNUAL MEETING OF SHAREHOLDERS	
<hr/>	
FORM 5.1	160
CERTIFICATE OF DISSOLUTION OF TRADE NAME	
<hr/>	
FORM 5.2	162
CERTIFICATE OF CANCELLATION OF CERTIFICATE OF LIMITED PARTNERSHIP	
<hr/>	
FORM 5.3	163
CERTIFICATE OF CANCELLATION OF CERTIFICATE OF FORMATION	
<hr/>	
FORM 5.4	164
UNANIMOUS CONSENT OF THE DIRECTORS AND SHAREHOLDERS IN LIEU OF A SPECIAL JOINT MEETING OF THE SHAREHOLDERS AND DIRECTORS	
<hr/>	
FORM 5.5	165
CERTIFICATE OF DISSOLUTION BY CONSENT OF ALL SHAREHOLDERS	
<hr/>	
FORM 5.6	166
APPLICATION FOR TAX CLEARANCE CERTIFICATE	
<hr/>	
FORM 6.1	168
CONFIDENTIALITY AGREEMENT	

FORM 6.2	171
LETTER OF INTENT	
<hr/>	
FORM 6.3	174
NOTICE OF BULK SALE TO DIVISION OF TAXATION	
<hr/>	
FORM 6.4	176
ASSET PURCHASE AGREEMENT	
<hr/>	
FORM 6.5	185
BILL OF SALE	
<hr/>	
FORM 6.6	187
SECURITY AGREEMENT	
<hr/>	
FORM 6.7	193
UCC FINANCING STATEMENT	
<hr/>	
FORM 6.8	194
UNANIMOUS CONSENT OF THE SHAREHOLDERS	
<hr/>	
FORM 6.9	195
STOCK PURCHASE AGREEMENT	