

**New Jersey
N2K Hour:
Corporations
&
LLCs**

**Webex Presentation:
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Corporations in New Jersey

- New Jersey Business Corporation Act (N.J.S.A. 14:1-1) was enacted in 1969. Amended several times since.
- Governs most business corporations formed after 1968 with a few exceptions:
 - Non-profits (NJ Title 15)
 - Religions Corps (NJ Title 16)
 - Banking and Insurance Corps (NJ Title 17)
 - Public Utilities (NJ Title 48)

Formation of a NJ Corporation

- Must file a Certificate of Incorporation with the Division of Revenue and Enterprise Services (DORES).
- Corporations have broad powers to acquire, hold, convey, and mortgage real estate
- What's required?
 - Name: must include “corporation, company or incorporate, or limited”. OK to use abbreviations
 - Registered Office: Doesn't have to be regular place of business but must be in the state of NJ.
 - Registered Agent: Person at least 18 years old or a corporation (domestic or foreign) authorized to transact business in NJ

Who can act on behalf of a Corporation?

- First and foremost, check the certificate of incorporation and bylaws
 - Exception to this rule: Well known national corporations (Wells Fargo, Bank of America, etc.)
- Generally speaking, the board of directors acts by corporate resolution.
- A sale, lease, or all or substantially all assets (NOT in ordinary course of business) requires shareholder approval. If in the ordinary course of business, shareholder approval is not required (unless stated in cert. of incorporation).

Corporations – Execution and Acknowledgment

- Executed by authorized executive pursuant to corporation documents.
- Must be attested by an officer as well.
- In the past, a corporate seal was required – under N.J.S.A. 46:15-1.1(b) this is no longer necessary.
- Acknowledgment can be in the standard format, where officer signs in their corporate capacity and not individually.

Corporate Resolutions vs. Powers of Attorney

- Corporations can NOT give a power of attorney to someone.
- Corporate Resolution is a document signed by required parties and/or shareholders (check those corporate docs!) authorizing one or more persons to act on behalf of the corporation for a specific purpose.
- What if there is a Power of Attorney? While technically incorrect, contact your Underwriter. If the document effectively authorizes the individual(s) and the transaction, we can work with it in most cases.

Corporate Status?

- When a corporation is involved in a transaction, you must confirm its status.
- A Good Standing Certificate confirms the corporation's status (proper incorporation, current standing, any outstanding issues, and payment of franchise taxes)
- Good Standing Certificates are obtained from the NJ Treasury Department.
- If corporate name can not be found, set up an exception requiring proof of incorporation.

Defunct Corporations

- A dissolved or defunct corporation may still convey property as part of its “winding up” process (N.J.S.A. 14A:12-9).
 - Watch out for passage of time though!
- Defunct or Revoked Corporations should be reinstated if they are not winding up (both domestic and foreign).
- If there is no winding up process, corporate property technically devolves to shareholders. Check with your Underwriter if shareholders are conveying!

Foreign Corporations

- Refers to corporations which are incorporated in another state or alien corporation (corporations formed outside the United States).
- Foreign corporations must obtain a Certificate of Authority in order to transact business in NJ.
 - Failure to obtain does not invalidate real estate transactions under N.J.S.A. 14A:13-11(2).
 - Same general underwriting principals as domestic corporations (good standing certificates, obtain resolutions, franchise tax reports)

NJ Nonprofit Corporations

- Governed by the Nonprofit Corporations Act of 1983 (N.J.S.A. 15A:1-1 et seq.)
- Formed by filing corporate documents with DORES (under the old law, filed with the county clerk).
- The name must include one of the following:
 - “A New Jersey nonprofit corporation”, “incorporated”, “corporation”, or an abbreviation of the same.
- Must have a Registered Office and Agent and file Annual Reports.

NJ Nonprofit Corporations

- Nonprofits also have the same broad powers to acquire, hold, convey, and mortgage real estate.
- Nonprofits are typically exempt from Franchise Tax as long as they do not “engage in business for profit”.
- A nonprofit can obtain a letter of exemption from the Treasury Dept. regarding Franchise Tax.
 - Requirements should be included in Schedule B-1 regarding same.

Religious Corporations

- Governed by NJ Title 16 (N.J.S.A. 16:1-1, et seq.)
- Title 16 is unique in that it include general provisions for religious corporations AND specific requirements for individual religious groups.
 - As a result, some religious organizations incorporated as a non-profit. Make sure to understand how the corporation is formed when setting up a commitment.
- Certificate of Incorporation is filed with the County Clerk – optional to file with DORES.
- No Franchise Tax Report required

Religious Corporations

- Title 16 limits the power to acquire, hold, convey, and mortgage real estate subject to specific requirements for each particular religion. (N.J.S.A. 16:1-4-6)
- These actions require authorization by a majority of trustees with approval of a majority of the church's membership (*Hopewell Baptist Church of Newark v. Gary*, 111 N.J. Super. 1 (App. Div. 1970).)
- It is important to understand which religious group the church belongs to in order to understand and comply with the individual requirements. If the name of the corporation does not indicate that, require documentation stating same.

Religious Corporations – Christian Denominations

- Baptist Churches (N.J.S.A. 16:2-4) - Any conveyance of real estate or interest therein, or other written contract made by any such corporation shall be executed under the hand of the president of its board of trustees and its common seal (Requires Board and Membership Approval).
- The United Methodist Church (N.J.S.A. 16:10A-11) – Conveyance must be approved by members, trustees, pastor, and district superintendent. Written consent from pastor and district superintendent must be affixed to the deed or mortgage.

Religious Corporations – Christian Denominations

- United Presbyterian Church (N.J.S.A. 16:11-3) – President and Secretary execute documents upon a 2/3 vote by the congregation authorizing the transaction.
- Protestant Episcopal Church (N.J.S.A. 16:12-4) – Requires written consent of bishop and majority of standing committee of the diocese where church is located. Documents are executed by Rector and attested by the Secretary.
- Roman Catholic Church (N.J.S.A. 16:15-2, 5) – Requires approval by board of trustees and diocese bishop.

Religious Corporations

- What about Non-Christian Denominations?
 - NJ Title 16 does not have specific references for non-Christian religious corporations.
 - Examples: Judaism, Islam, Hinduism, Buddhism
 - May be incorporated as a non-profit.
 - Best practices are to require corporate documents to confirm valid incorporation and any specific requirements to convey or mortgage real estate.

Franchise Taxes

- All standard corporations “transacting business” in NJ are subject under N.J.S.A. 54:10A-1, et seq.
 - Not subject: Non-profits, religious corps., national banks with principal office outside of NJ or chartered in other states, NJ LLCs, and partnerships.
- Unpaid franchise taxes are a lien on all corporate property for 10 years. Lien attaches on first day of the year **FOLLOWING** the year which the tax is due.
- Failure to pay franchise results in corporate charter being revoked. It can be instated after payment.
- **NOT** the same as failure to file annual report (not a lien).

NJ Bulk Sale (Does not Affect Title)

- Bulk Sale - Sale (or transfer or assignment) of an individual's or company's business asset/s, in whole or in part, outside of the ordinary course of business.
 - Can include Real Estate
- Must be reported to the Division of Taxation by Purchaser at least 10 days before sale.
- State will issue a escrow letter with amount required to be escrowed.
- Always direct the parties to consult their attorneys and/or accountants.

Judgments and Corporations

- From an underwriting standpoint, if a judgment is against a corporation and mentions the property in question, it attaches – pay close attention to small corporations.
- If the corporation is a national one, such as a large national bank, and the property is not mentioned in the judgment, you may pass.
- Judgments against executives, board members, and shareholders generally do not attach (unless the corporate veil is pierced through litigation).

Limited Liability Companies (LLCs)

- The form of ownership most common in real estate transactions is in the form of a Limited Liability Company
- A limited liability company is a business entity which exists independently from its owners, but which elects not to be treated as a separate entity *for tax purposes*
- On September 19, 2012, Governor Chris Christie signed the **Revised Uniform Limited Liability Company Act** (the “RULLCA”) that substantially modifies and modernizes New Jersey law governing the formation and operation of LLCs incorporated in New Jersey

Limited Liability Companies (LLCs)

- RULLCA instituted some significant changes on how LLCs operate:
 - LLCs by default have a perpetual duration and has power to do things all necessary or convenient to carry on its activities (N.J.S.A. 42:2C-4,5)
 - The LLC Operating Agreement may be oral, written, or implied. (N.J.S.A. 42:2C-2,11)
 - A Statement of Authority can be filed with DORES (and county land records) authorizing an individual to bind the LLC. – Helpful if there is no written operating agreement or parties refuse to provide.

Limited Liability Companies

- Must file a Certificate of Formation with DORES
- Name must include “Limited Liability Company or L.L.C.”
- Must have registered office and a registered agent
- LLC business is handled by a manager or managers. Operating Agreement will specify who they are.
- As with a Corporation, a resolution authorizing the sale and the managers to bind the LLC is required for a real estate transaction.
- Not subject to Franchise Tax
- Foreign LLCs must also obtain a Certificate of Authority
 - Failure to do so does not affect conveyance of real estate

Limited Liability Companies

- If the LLC is properly formed, judgments against the members and/or managers of the LLC will not attach to property held by the LLC.
- However, the “corporate veil” of LLCs can also be pierced by creditors through litigation.
- Pay close attention to LLCs that are nested in one another – you must require certificates of formation and operating agreements for each!

Limited Liability Companies

- Execution and Acknowledgment by a LLC:
 - Documents are executed by the manager (or managers) depending on the operating agreement
 - Example: Alphabet Soup, L.L.C.

By _____

Jane Smith, its Manager

- Acknowledgments are similar to Corporations but no seal is required.

Corporate Entities – What to look out for?

- With both Corporations and LLCs, the devil is in the details.
 - Require certificates of incorporation/formation, bylaws, and operating agreements for each transaction.
 - These will tell you who can act on the entities' behalf and any specific requirements.
 - If an entity refuses to provide operating documents, contact your Underwriter.

Corporate Entities – Transfer of Title

- What happens to title insurance coverage if title is transferred to or from an entity?
- The ALTA 2006 Owner's Policy (Condition 1(d)(i). Definition of Terms), defines the term "Insured" to also include:
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;

Corporate Entities – Transfer of Title

- D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
- (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
- (2) if the grantee wholly owns the named Insured,
- (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

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