



Managing Legal Risk for Livestock and Dairy Producers in Ohio

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Project Support

- This project is provided with support from the North Central Risk Management Education Center, whose mission is *to empower the strengths and skills of individuals in the North Central region who are involved in the management of agricultural production, marketing, financial, legal, and human resource risks.*
- Visit the website at www.NCRME.org



Workshop Overview

Addressing legal risks in emerging risk areas:

- Animal identification
- Ohio Livestock Care Standards
- GIPSA
- Farm security issues

Understanding, assessing and adopting risk management strategies.

Workshop Overview

We will . . .

1. Explain the laws and legal issues.
2. Discuss strategies for managing risk.
3. Follow up.
4. Make resources available on website.

You will . . .

5. Assess your operation.
6. Identify risk management practices.
7. Adopt risk management practices.
8. Evaluate the program and participate in follow up surveys.

Workshop Overview

- **Important components:**
 - Exercises
 - Evaluations
 - Action
 - Follow up



Managing Legal Risk: Business Organizations

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The Business Structure

- **What is so Important about a Business Structure?**
 - Liability Protection – separating assets so that a creditor or plaintiff cannot take everything you own
 - Fairly cheap to use
 - Easy to set up

How Business Entities Work to Protect You

Know what business entities provide protection:

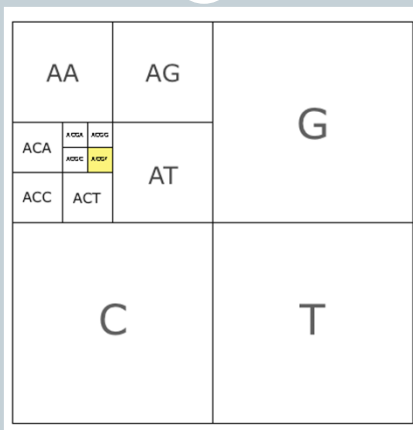
- **No protection** - Sole Proprietorship and General Partnership
- **Some partners protected** – Limited Partnership
- **Full protection** – Limited Liability Companies and Corporations

Why the differences in protection?

- Some business entities function as a separate legal entity (like another person) and others do not.



Like “Fire Breaks” -Not Shields



640 Acre section of land.

How to use a Business Entity



- Creating a business entity is not enough to provide any protection
- Creating a business entity is like buying another basket...

Respect the Business Structure

- At the end of the day, Courts will only respect your business structure as much as you do.
- What does this mean?
 - You **HAVE** to keep the business separate from your personal life and from other businesses that you run.
 - Keep separate bank accounts, business records, etc...
 - Don't use business funds for the family vacation

Issues we'll cover for each one

- **Liability of Owners**
- **Legal Status**
- **Formation**
- **Management**
- **Taxation**

Types of Business Structures

- **Sole Proprietorship**
- **General Partnership**
- **Limited Partnership**
- **Limited Liability Corporation**
- **Corporations**
 - Subchapter "S"
 - Subchapter "C"

Sole Proprietorship

- **Liability of Owners**

- 100% liability for the business debt

- Creditors will be able to reach your personal assets as well as what you invested into the business.

- This means that property such as your land, your home, your personal bank accounts are at risk!

- **Legal Status**

- Not a separate legal entity

- You would be sued directly.

Sole Proprietorship

- **Formation**

- No formalities are required...if you start a business by yourself than this is what you have.

- Formed or dissolved at the discretion of the individual who owns it

- Only 1 person, or it becomes a partnership

- **Management**

- Easy decision making – only one person to consult!

- **Taxation**

- Income is taxed on the individual's tax return (1040)

- Schedule C

General Partnership

- **Definition**

- An association of two or more “persons” who agree to carry on as co-owners of a business for profit.
- No intent is necessary to form a general partnership and it is possible to create one without intending to.

General Partnership

- **Liability**

- Each partner is ***jointly and severally*** liable for the debts of the business.
 - Not only are you personally liable for the debts and actions of the business (just like the sole proprietorship), but you are also responsible for all of the other partners actions
- Creditors can reach your personal assets, in addition to what you have invested into the business

General Partnership

- **Legal Status**
 - Recognized as a separate legal entity
- **Formation**
 - No formalities are required
 - Can be formed unintentionally (only intent required is to run business for profit)...Example look at your land lease forms when you go home.
 - There can be a formal partnership agreement that details management responsibilities and how profits/losses will be split

General Partnership

- **Management**
 - Each member of the partnership is called a “general partner”
 - The decisions are made by all partners and all partners actively participate...any partner can bind the rest of the partners to a contract
 - Profits and losses are split evenly
 - Unless the partnership agreement states otherwise and there typically has to be a good reason for this.

General Partnership

- **Taxation**

- The general partnership has the advantage of being a “pass-through entity”
- This means the partnership itself pays no income taxes
- Instead, income is taxed only after it is distributed to the partners.
 - This is different than the “double tax” where income is taxed when the business earns it and when it is paid out to the individual partners.

Limited Partnership

- **A more formal business organization that limits some liability**
- **Liability**
 - **General Partner**
 - Is fully liable for the financial and legal obligations of the business
 - **Limited Partner**
 - Only at risk of losing the capital invested or pledged to the business
 - Personal assets are not at risk

Limited Partnership

- **Legal Status**
 - Separate legal entity
- **Formation**
 - Requires at least 1 General partner and 1 Limited partner
 - Requires a partnership agreement that lays out how the business will be run, including how profits/losses will be divided
 - Certificate must be filed with Secretary of State...all states vary slightly, but the our website contains the necessary information
 - Name of business must have “limited” or “LP”

Example

Grandmother wishes to help her grandson start a farming operation and she really doesn't know much about farming.

- The Limited Partnership would work well for her because she can have a stake in the business (i.e. she doesn't have to just give the grandson money).
- If the grandson fails than only the money that she gave to the grandson can be lost and the creditors cannot come back against her.

Limited Liability Company (LLC)

- **LLC – created in the 1970s**
 - Similar to Limited Partnerships...except everybody can be protected.
 - Provides protection to personal assets
 - Made up of “members” rather than “partners”
- **Liability**
 - Members’ personal assets are protected from creditors of the business.
 - Creditors can only reach that which has been invested or pledged to the business

LLC

- **Legal Status**
 - Recognized as separate legal entity
- **Formation**
 - Can be formed with 1 or more members
 - Created by delivering Articles of Organization to the Secretary of State’s office
 - **Must include**
 - Name of LLC
 - Address of LLC
 - Agent for service of process
 - Certain reports must be filed each year to maintain LLC status

LLC



- **Management – 2 options**
 - Member Management (small businesses)
 - All members have the right to participate in management
 - This is the more common option
 - Manager Management (large businesses)
 - Only designated members have management authority as provided in articles of organization
 - Profits and losses are shared equally among members unless otherwise agreed

LLC



- **Taxation**
 - The LLC can elect to be a “pass-through entity”
 - Income is taxed only when it is distributed to the members
 - Or the LLC also has the option of being taxed as a corporation
 - Income would be taxed when the LLC earns it and again when it is distributed to the members

Corporations

- **Most complex business organization**
- **Offer liability protection for shareholders**
 - Similar to that of LLC
 - Older business organization with centuries of case law.

Corporations

- **Liability**
 - Shareholders are protected from creditors of the corporation in most cases
- **Legal Status**
 - Corporation is a separate legal entity

Corporations

- **Formation**

- Articles of incorporation must be filed with Secretary of State
 - **Must include**
 - Name of corporation
 - Purpose of corporation
 - Stock structure
 - Fictitious name statement
 - **By Laws**
 - **Include details of how the corporation will be run**
 - Officers
 - Shareholder meetings
 - Number and terms of Directors on Board

Corporations

- **Formalities**

- Record keeping requirements
- Regular board meetings
- Annual shareholder meetings
- Annual filing requirements for the state

Corporations

- **Management**

- Shareholders elect a Board of Directors
- Board of Directors appoint Officers
 - Officers are responsible for day-to-day management decisions
 - Board of Directors is responsible for long term planning and management
- Shareholders have limited management authority and vote only on extraordinary measures
 - Like selling more than 1/2 of the assets or dissolving

Types of Corporations

- **S Corporation**

- Limited number of shareholders (100 or less)
- “Legal persons” that are allowed to be shareholders is limited to citizens, resident aliens, estates and certain trusts
 - No corporations, non-resident aliens
- Only one class of voting stock
- Distribution rights to shareholders must be equal
- No tax at the corporate level... “pass through”
 - Similar to taxation of LLC

Types of Corporations

- **C Corporation**
 - Typically the big national corporations
 - Unlimited number of shareholders
 - No limits on who (or what legal entities) can be shareholders
 - Can issue common or preferred stocks or bonds (multiple classes of stock)
 - Distribution rights are very flexible
 - Income is taxed at the corporate level
 - And then again when it is distributed to shareholders

How to choose!

- **Deciding which business structure to use is an important decision.**
- **Many factors to consider**
 - Who is involved
 - What is their role
 - What are the requirements
 - What makes the most sense for your business