

A rural landscape at sunset. In the background, a red barn with a white roof is visible, partially obscured by trees. The sun is low on the horizon, creating a warm, golden glow. The foreground is a grassy field with some trees on the left and right sides.

Positioning for Growth – Legal Considerations

Carolyn Johnson, JD

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Please note that this presentation is not intended to be legal advice.

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Outline

- Company Structures
- Real Property Purchases and Leases
- Environmental Regulations
- Contracts
- Employment
- Compliance
- Liability
- Insurance
- Succession Planning

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Company Structures

- What's the point?
- LLC • PLLC • C-corp • S-corp
- Sole Proprietorship • Partnership



Company Structures LLC

- Limited Liability Company
- Usually small to mid sized businesses
- Owners are often referred to as members
- LLCs can be manager managed or member managed
- The members vote depending on the operating agreement
- Pass-through taxation



Company Structures

C-Corp

- Standard corporation
- Works for any size but especially used for larger companies
- Owners are shareholders
- Shareholders vote on board of directors, board of directors manage the company (sometimes through appointing a president etc)
- Double taxation

Company Structures

S-Corp

S-corp tax designation

- Smaller corporation (subchapter S corporation)
- Works as a corporation but has pass through taxation rather than double taxation
- Has some guardrails that a C-corp doesn't have: has to be domestic, 100 or fewer shareholders, shareholders cannot be other corporations, and can only have one class of stock.

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Company Structures Filing

- LLCs, PLLCs, and corporations are registered with the state of organization or incorporation.
- In Michigan, that's with LARA – the department of Licensing and Regulatory Affairs
- Articles of Organization or Incorporation are registered with LARA and then annual statements are filed
- These filings are all searchable on LARA's website

A scenic photograph of a rural landscape at sunset. In the background, a red barn with a white roof is silhouetted against the bright, low sun. The foreground is a grassy field with several large, leafy trees. The sky is filled with soft, golden light from the setting sun.

Company Structures Keeping a Business Separate

- Bank accounts
- Purchases
- Accounting
- Leases, even from property you own
- Paying employees
- Keep the entity distinct to prevent piercing the corporate veil
- Signing for something personally negates the liability protection

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Company Structures

What should be in writing?

- Operating Agreement or By-laws
- Distribution agreements and exit plans
- Any partnership agreements
- Employment agreements
- Contracts
- Loans, debts
- Purchase agreements
- Everything that is an agreement!
- Succession planning

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Company Structures Purchasing a Company

- Asset Purchase
- Membership or Stock Purchase
- LOIs
- Purchase Agreements

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Real Property Purchases

- Purchase Considerations
- Property purchases have to be in writing to be enforced.

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Real Property Purchases Inside a Purchase Agreement

- Property description
- Purchase price and terms
- Marketable Title
- Type of Deed – warranty deed or quit claim deed
- Surveys
- Warranties and disclosures
- Fixtures
- Condition of the property
- Closing and possession
- Costs for closing
- Taxes and other prorations
- Contingencies

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Real Property Purchases Financing

- Mortgage
- Land Contract
- Creative solutions – talk with your attorney or broker

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Real Property Purchases Recording

- Register of Deeds
- Township, City, or Village

Real Property Leases

- Property description
- Price and Term
- Access
- Conditions
- Anything included such as buildings
- Maintenance
- Farming practices
- Renewal options
- Right of first refusal

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Environmental Regulations and Land Use

- Zoning and use restrictions
- Environmental Due Diligence
 - Phase I
 - Phase II
 - BEA
- Verifications and certifications

Contracts

- Employment
- Supplier
- Purchase
- Service
- Master Service or Supplier

Inside a Contract

Reasonable, fair,
achievable, and protect
you from unreasonable
risk.

- Plain English
- Make sure you understand it
- Cover the what-ifs
- Who is responsible for what?
- Are you agreeing to more than

you would have been
responsible without the
contract?

- Who is signing it?
- Can you terminate the contract?

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A Few Common Contract Terms and Clauses

- Indemnity
- Liquidated damages, delayed damages, and consequential damages
- Limitation of liability
- Standard of care
- Dispute resolution
- Governing law
- Waivers
- Warranty
- Assignment
- Ownership of work product
- Solicitation and non competition
- Safety responsibility and requirements
- Code of conduct
- Insurance
- Duty to defend
- Notice
- Fully integrated

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Employment

- Hiring
- Keeping records
- Policies and Procedures
- ESTA
- ADA, FMLA
- What to avoid
- Always have an employment agreement
- When an employee isn't working out

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Independent Contractors

- What makes an independent contractor versus an employee?
- In either case, have a written agreement that describes the work and status.

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A Few Other Compliance and Regulatory Considerations

- Taxes
- Employee pay
- OSHA
- Corporate governance
- Data privacy

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As you grow

- Find groups and other business owners in similar situations to you
- Insurance agencies
- Trainings like this, don't be afraid to connect afterwards with presenters.
- Fractional CFOs, COOs, and HR consultants

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Liability

- What are you liable for?
- How can you reduce your risk?
- Safety
- Clarity of responsibility in contracts
- Record keeping

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Insurance

- General liability, auto, employers, property
- Other types of insurance
- What to look for in an agent
- What to look for when reviewing policies
- How to lower your risk and improve rates

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Succession Planning

- Business Sales
- Trusts
- Passing businesses, real property, and other assets to the next generation
- Creative purchase structures
- Brokers, attorneys, and accountants
- Keeping the property agricultural

Questions

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