
Positioning for Growth

– Legal Considerations

Presentation for Michigan Emerging Farmers Learning Session

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By Carolyn Johnson, JD

Company Structures

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

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

- S-Corp
 - 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.
- 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
- 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
- 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
 - Company Structures

- Purchasing a Company
 - Asset Purchase
 - Membership or Stock Purchase
 - LOIs
 - Purchase Agreements

Real Property

- Purchases
 - Purchase Considerations
 - Property purchases have to be in writing to be enforced.
- 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
- Financing
 - Mortgage
 - Land Contract
 - Creative solutions – talk with your attorney or broker
- 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

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?

- 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

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

Independent Contractors

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

A Few Other Compliance and Regulatory Considerations

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

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

Liability

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

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

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 – please let me know!

Carolyn Johnson, JD

616-454-3883

carolyn.johnson@lightstonelaw.com

[connect to me on linkedin](#)