



Choosing the Appropriate Business Entity for Your Farmland Ownership

The Sole Proprietorship is the simplest form of business.

A sole proprietorship is a business entity owned and managed by one person. The sole proprietorship can be organized very informally, is not subject to much federal or state regulation, and is relatively simple to manage and control.

The prevalent characteristic of a sole proprietorship is that the owner is inseparable from the business and is financially and legally responsible for all debts and legal actions against the business.

A sole proprietorship is a good business organization for an individual starting a business that will remain small, does not have great exposure to liability, and does not justify the expenses of incorporating and ongoing corporate formalities.

A Partnership is formed when two or more people decide to go into business together.

In a "general" partnership, each partner is totally liable for whatever happens to the business, and for whatever the other person does. Normally, a general partner has unlimited liability, which includes personally owned assets outside the business assets.

In a "limited partnership" (LP), a limited partner is liable only for the amount of money he or she invests into the business, but there must be at least one general partner who assumes unlimited liability for the entire partnership. This works well when the "general partner" is a corporation, which does have limited liability.

A Corporation (C-Corp) is a legal entity. The ownership of a corporation is divided into "stocks." One person can own all of the stocks, in which case there is only one stockholder. The profits can be reinvested in the business or distributed among the stockholders as "dividends." Control and profit division is proportional to the stocks held. The person who has 51% of the stocks will have 51% of the dividends.

An S Corporation (S-Corp) is a hybrid corporation that is treated like a partnership for many (but not all) tax purposes. It has virtually all of the features of a corporation, e.g., limited liability. The S-Corp is treated like a partnership in that profits and losses flow through to the individual shareholders. S-Corp's have restrictions on distributions and stock ownership which must be strictly followed.

Limited Liability. If your business is a corporation, your liability is only limited to the amount of assets in your business (except in the case of a loan for which you offer your personal guaranty). Therefore, creditors and plaintiffs in lawsuits cannot make claims upon your personal assets.

Ease of Raising Capital and Transferability. Since owners of a corporation are liable only for the amount they invest, it is much easier to convince other people to invest in the business in exchange for a certain percentage of the profit. If one of the owners wants to pull out, all they have to do is find someone to buy their share of the business. If any one of the owners dies, his/her heirs inherit that share of the business. There is no interruption in the day-to-day operation of the business.



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A **Limited Liability Company (LLC)** is an unincorporated association with the advantage of limited liability for participants. The participants, referred to as members, can participate in management control of the business without increasing their personal exposure beyond their contribution to the business.

LLCs are created by filing a certificate of organization with the Secretary of State. Once created, LLCs function in accordance with the terms of the operating agreement. For estate purposes the LLC works well because the units are transferred according to the will or trust. The LLC does not die with the owner. An LLC can be taxed as a partnership, a C-Corp, or an S-Corp depending upon the goals of the

owner(s). The “units” of an LLC are easily transferred and also may be eligible for valuation discounts based on marketability and minority interests.

A **Limited Liability Partnership (LLP)** is a partnership which, by registering with the Secretary of State, limits the personal liability of a partner for debts, obligations, and liabilities of the partnership except that a partner cannot eliminate liability for his own negligence.

When setting up a new entity, the owner(s) should consult their team of experts to review their goals and objectives. This document is for information only and is not intended to be tax or legal advice.

	Sole Proprietorship	Partnership	LP	C-Corp	S-Corp	LLC
Type of Ownership	1 owner	2 or more owners	2 or more owners	Stock, different classes allowed	One class of stock	Member Units
Eligible Owners	No restrictions	No restrictions	At least 1 General Partner	No restrictions	Maximum 100 shareholders	No restrictions
Management	Owner	Partnership Agreement	General Partners	Directors and Officers	Directors and Officers	All members or designated manager
Allocation of Ownership	Owner	Partnership Agreement	Partnership Agreement	% of shares owned	% of shares owned	Units owned
Liability of Owner	Unlimited	Unlimited	GP - Unlimited LP - Limited	Limited	Limited	Limited
Duration	Owner's Life	Partnership Agreement	Partnership Agreement	Perpetual	Perpetual	Operating Agreement
Transferability	Sale of Business	Partnership Agreement	Partnership Agreement	Shares easily transferred	Shares transferred to eligible owners	Units easily transferred