

Agriculture Insights

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STRUCTURING YOUR FAMILY FARM AS A LIMITED LIABILITY COMPANY

When analyzing the future business and risk protection plan for your family farm, an important step is to review today's new forms of business organizations.

Pennsylvania has recently approved a new way to structure a business called a limited liability company (LLC). An LLC combines many of the best features of all types of business organizations while providing some protection from lawsuits and making it easier to form and operate than a corporation.

The source of the following information is the Agricultural Law Research and Education Center at Penn State's Dickinson School of Law.

A farm organized as an LLC is considered a separate legal entity, similar to a corporation, as it is liable for its own debt and can act as a legal person. One or more

farmers may operate their business together under an LLC with the same protection from personal liability as shareholders in a corporation, yet it retains the advantages of a partnership. There is no double taxation; it is rather simple and inexpensive to create and use. The farmer and members of the farm LLC are only liable for the amount of investment, not personal liability.

To form an LLC in Pennsylvania, two documents are needed: a certificate of organization and an operating agreement. Your attorney will help ensure that both of these documents are properly drafted. To help make certain that the public is aware of your business form, it is required that the term "company," "limited," "limited liability company," or "LLC" is in-

cluded on all documents listing your company name. An LLC can be made up of one or more members. A single individual can form an LLC, which is unique compared to some other states, which require more than one member.

There are many advantages to forming your farm as a LLC. One of the biggest benefits is protection against lawsuits, which are a constant risk for businesses. If an LLC is sued, only the assets of the LLC are subject to legal liability, the personal assets of the members who own the LLC cannot be reached.

The simplicity and flexibility of operating an LLC farm is another key advantage. An LLC can use either a cash or accrual method of accounting.

An LLC allows for the planning of different family situations and the flexibility for estate planning. This would allow for an equitable option to give children who are not involved in the farm

a share in the farm business while still fairly compensating the children that are involved in the operation of the farm. The LLC operating agreement can specify a process for resolving family disputes, should one occur, which can help avoid a major disruption in the operation of the farm.

The protection an LLC offers during an economic downturn is greater than an operation that is organized as a sole proprietorship or partnership.

In the formation of an LLC, members may contribute farm assets such as animals, buildings, equipment, land, and their services in exchange for an ownership interest. A farmer may choose to exclude his farmhouse, farmland, and other nonfarm real estate. This would protect the farmer in a worse-case scenario where the LLC may have borrowed funds, because only the assets placed into an LLC would be taken to pay off creditors.

Some limitations that a farm LLC may encounter include personal liability for any LLC debt, which was personally guaranteed and for any personal acts or omissions. For example, a farmer who is an LLC member causes an accident with an LLC tractor on an LLC business may be personally sued along with the LLC for any damages caused by the accident. Another possible limitation with a farm LLC is that banks may not always loan

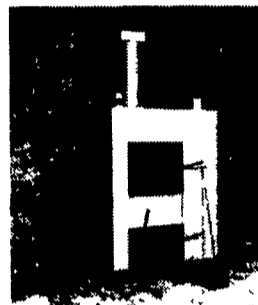
an LLC money without personal guarantees of its members. If an LLC loan is personally guaranteed and the LLC does not pay back the loan, the guarantor is responsible for the loan.

The limited liability company entity may provide advantages for family farms by allowing it to operate its business with the same protection from personal liability as shareholders in a corporation, yet retain many of the advantages of a partnership. Operating any business presents many risks, which an LLC may help protect. It is highly recommended you seek the counsel of an agricultural law attorney along with your accountant and properly research all business entities before making a decision for your farm.

The information in this article was researched by Jeff Feirick, graduate research assistant with the Agricultural Law Research and Education Center of Penn State's Dickinson School of Law and College of Agricultural Sciences. The center provides many agricultural publications, educational programs, and cutting edge legal research. For a complete copy of the article on LLCs or for more information on organizing your farm as an LLC or other agricultural law issues, contact the center at (717) 241-3517, at aglaw@psu.edu, or visit their Website at www.dsl.psu.edu/aglaw/aglaw.html. For information on The Lancaster Chamber, contact Brent Landis at blandis@lcci.com or (717) 397-3531, ext. 134.

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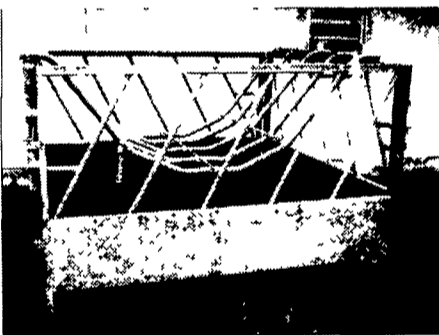
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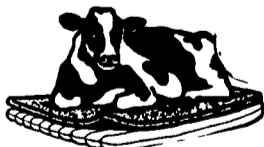
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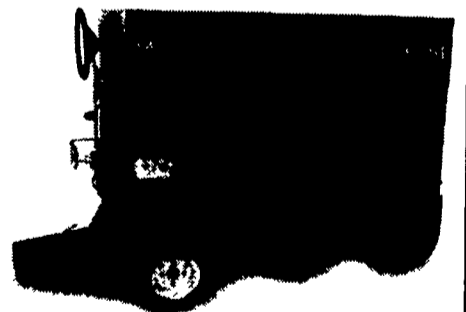
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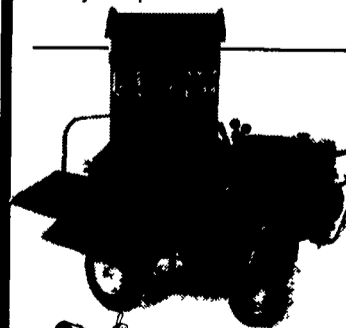
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