

Organizational Structures for Farm and Ranch Businesses

	Sole Proprietor	C Corporation	S Corporation	General Partnership	Limited Partnership	Limited Liability Partnership	Limited Liability Company
General Characteristics	• Easy to form • Not a legal entity, simply refers to person who owns the business	• Liability is limited for shareholders • Equity owners are called shareholders • May offer more than one class of shares • Earnings paid to shareholders are called distributions	• An otherwise ordinary corporation taxed under subchapter S of the Internal Revenue Code • No entity-level taxation, tax liability flows to shareholders • Liability is limited for shareholders	• Easy to form • Freedom to vary levels of management authority, profit sharing, and debt responsibility • No entity-level taxation, tax liability flows to partners	• An otherwise ordinary general partnership with two classes of partners: general partners and limited partners • Liability is limited for limited partners	• An otherwise ordinary general partnership where all partners enjoy limited liability	• Flexibility in how the business is structured and operated • All members enjoy limited liability
Formation	• No formal filing is required • Buying or selling goods and services may establish a sole proprietorship	• Created when articles are filed with appropriate state officials • Directors are named • Ownership shares are issued	• Created when articles are filed with appropriate state officials • Directors are named • Ownership shares are issued • Number of shareholders is limited to no more than 75 • May offer only one class of shares	• No requirement to file an agreement • Best if documented by written agreement • Agreement to share profits may demonstrate partnership exists	• Formed by filing a certificate of limited partnership with appropriate state officials • Partnership agreement need not be in writing • Statutes must be followed to avoid designation as a general partnership	• Created by a general partnership filing an application with the appropriate state officials • Document will generally identify the name of the LLP, the registered agent, and the names of the general partners • Must be renewed, often annually	• Created when organizational document is filed with appropriate state officials • Document will generally identify the name of the LLC, the registered agent, and address of the registered office
Operation	• Sole proprietors typically conduct business in their own name • Sole proprietors can, and often do, commingle personal and business property and funds • Need not observe formalities such as voting and meetings	• Management authority is usually exercised by or under the authority of the board of directors • Directors are generally required to hold meetings at least annually • Directors are usually elected by the shareholders • Rights to share in net profits depend on stock held by each shareholder	• Management authority is usually exercised by or under the authority of the board of directors • Directors are generally required to hold meetings at least annually • Directors are usually elected by the shareholders • Rights to share in net profits depend on stock held by each shareholder	• Partnership agreements should describe: 1. management rights 2. how profits and losses will be shared • Partners hold a capital account in accordance with the value they have contributed • Partners each have at: 1. duty of loyalty 2. duty of care	• Management of a limited partnership is vested in the general partners • Limited partners do not hold management authority • Partners hold a capital account in accordance with the value they have contributed • Distributions that would render a limited partnership insolvent are forbidden	• Management of a limited liability partnership is vested in the general partners • Only one class of partners (general partners) • Unless specified, general partners share equally in the profits and losses of the business. • Partners hold a capital account in accordance with the value they have contributed	• May be managed by the members or by a manager • Member-management means that all members share responsibility for the day-to-day operations and have the power to bind the company to ordinary business contracts • Have a streamlined organizational structure, without officers or boards of directors.

	Sole Proprietor	C Corporation	S Corporation	General Partnership	Limited Partnership	Limited Liability Partnership	Limited Liability Company
Liability	- Sole proprietors are personally liable for all debts of the business - Sole proprietors are personally liable for any legal issues and lawsuits brought against the business	- Liability is limited for all shareholders - Shareholders are liable for the agreed-upon value of their contribution - Personal liability may arise where the courts generally agree that the corporation has been used in the furtherance of crime, to facilitate fraud, or to justify similar wrongdoing	- Liability is limited for all shareholders - Shareholders are liable for the agreed-upon value of their contribution - Personal liability may arise where the courts generally agree that the corporation has been used in the furtherance of crime, to facilitate fraud, or to justify similar wrongdoing	General partners share personal liability for all debts of the partnership	- General partners share personal liability for all debts of the partnership - Limited partners do share in the liability for partnership debt up to the value of their contribution	- Partners have no personal liability for certain debts of the partnership - State statutes are divided about the amount of protection from personal liability offered to general partners	- Members have no personal liability beyond the agreed-upon value of their contributions. - Personal liability may arise where the courts agree that the members acted in a manner inconsistent with LLC operation as a separate entity, such as commingling personal and business funds, failing to document loans to/from the entity, etc.
Taxes	Sole proprietors have no separate tax status. They are recognized by the Internal Revenue Service as an extension of the owner	- Net income reported at the entity-level is subject to taxation - Earnings distributed to shareholders are subject to personal income tax	No entity-level taxation, tax liability flows through to shareholders	No entity-level taxation, tax liability flows through to the partners	- No entity-level taxation, tax liability flows through to the partners - Unless specified, partners are assumed to share in the profits and losses in accordance with each partner's interest - May elect to be taxed as a partnership or as a corporation	- No entity-level taxation, tax liability flows through to the partners - Unless specified, partners are assumed to share in the profits and losses in accordance with each partner's interest	- LLCs with two or more members are presumed to be taxed as partnerships - Any given LLC may elect to be taxed as a corporation - State rules vary considerably but every state allows an LLC to establish rules governing the allocation of profits and losses
Ownership Transfer	The sole proprietor includes all property in his/her individual estate plan	- Shareholders may sell or otherwise convey shares at any time to any other legal person - Buyers or transferees become a shareholder, with all the rights such a position entails	- Shareholders may sell or otherwise convey shares at any time to any other legal person - Buyers or transferees become a shareholder, with all the rights such a position entails	- Partners are generally not entitled to transfer ownership to any other person, without the unanimous consent of all other partners - New partners may be admitted by unanimous consent	- Partners are generally not entitled to transfer ownership to any other person, without the unanimous consent of all other partners - Partners may admit new partners by unanimous consent	- Partners are generally not entitled to transfer ownership to any other person, without the unanimous consent of all other partners - Partners may admit new partners by unanimous consent	Generally, transfer of LLC membership operates only to transfer the economic rights, unless the remaining members unanimously agree to accept the transferee as a substitute member
Dissolution	- A sole proprietorship terminates when the owner: - sells the business-related assets - gifts the business related assets to another person - dies	- The process of terminating a corporation is spelled out in corporate statutes - Most rules are mandatory and cannot be circumvented by agreement of the parties	- The process of terminating a corporation is spelled out in corporate statutes - Most rules are mandatory and cannot be circumvented by agreement of the parties	Dissolution of a general partnership begins when a partner withdraws due to retirement, announces an intent to withdraw, dies, is incapacitated, or is removed by the other partners	- Partners have significant flexibility in determining when the limited partnership dissolves - Generally, only general partners may supervise the process of dissolution	Dissolution of an LLP begins when a partner withdraws due to retirement, announces an intent to withdraw, dies, is incapacitated, or is removed by the other partners	- The right of members to withdraw and the consequences of such withdrawal are issues that probably should be specifically considered and agreed upon in advance and spelled out in the operating agreement - Once dissolution is triggered, most state statutes follow the corporate model governing the winding up and termination of the business