

NC Farm School

Farm Business Legal Structure

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Business Identity

- Entity Name vs. Assumed Name (DBA)
 - Secretary of State (SOS) filing (entity)
 - County Register of Deeds DBA filing (non-entity)
 - Required to open separate bank account for sole proprietorship
- Web URL ownership – don't let a 'friend' buy it for you!
- Trademarking
 - Unique logo (w/ name) or slogan?
 - SOS application (\$75)
 - Logo protection

Separating the Land Ownership from Farm Operations

- Business growth due to skills and risk tolerance of certain family members
 - Income
- Land value growth responds to capital markets expecting higher rates of return
 - Equity (fairness issues to off-farm heirs)

Default Forms of Business Structure

- Sole proprietorship (no formalities, unlimited liability)
 - Record DBA and get bank account
 - Separate tax ID optional (but good idea)
- Partnership
 - Unlimited liability between partners
 - Used in Farming: used to maximize USDA "payment limitations" (complicated topic!)
 - Can be unintentional: do not farm with another person absent a written agreement
 - if farming with another, use an LLC

Intentional Forms of Business Structure (filed with Secretary of State)

- Limited Partnership
 - Also called “Limited Liability Partnership”, “Family Limited Partnership”, etc.
 - Still common in Family Land situations, more common on non-ag investor-developer enterprises
- Corporation
 - Still common, preferred by some older lawyers
- Limited Liability Company
 - Modern practice, “new” combination of corporation and partnership

Business Entity Benefits

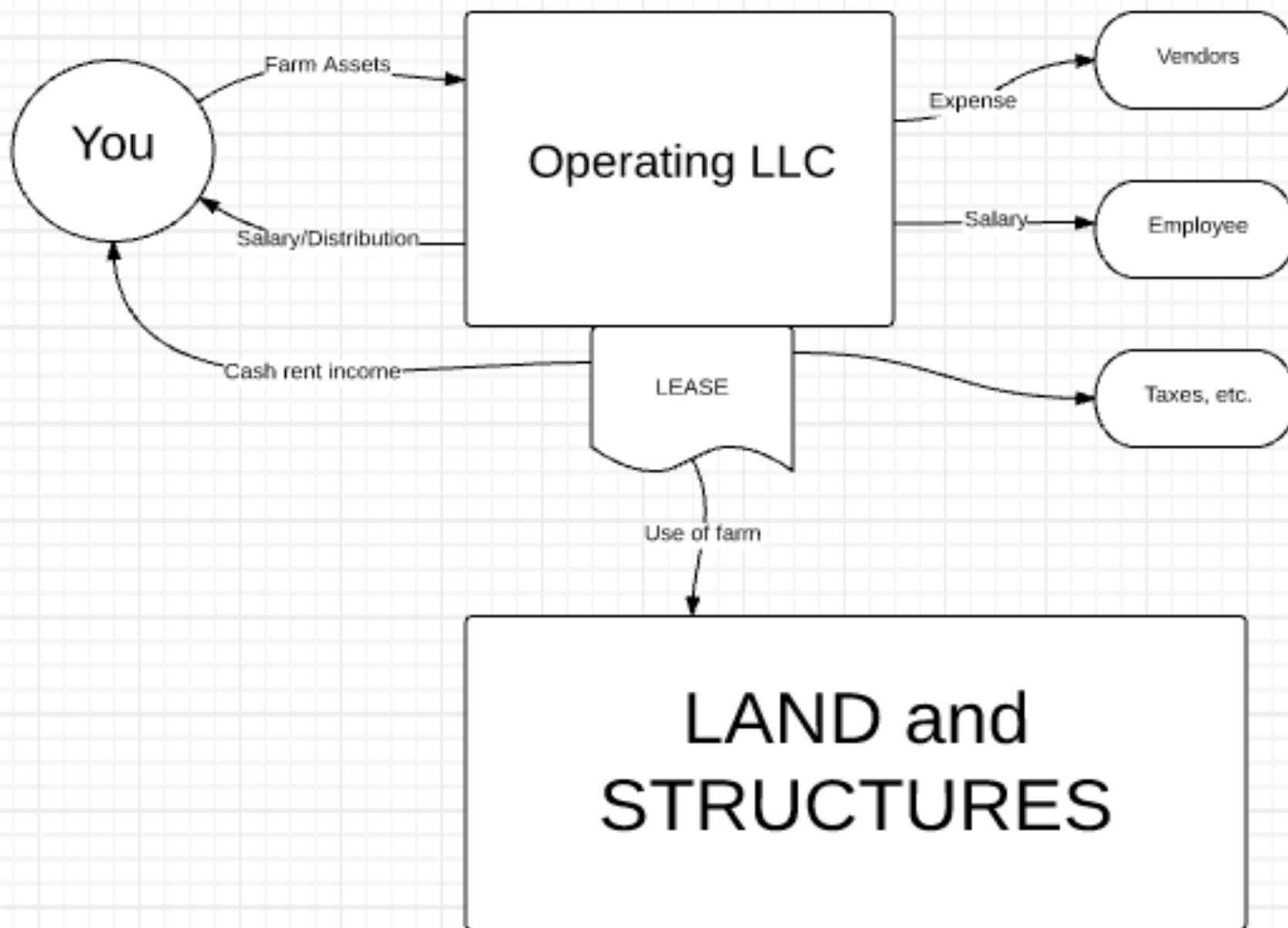
- Liability protection (protect personal wealth, land)
- Contract between owners (clarity)
 - Income
 - Management
 - Equity
- Buy-Sell (Manage the D's: Death, Disability, Divorce, Disaster, Disagreement, Disengagement)
- Ease of Transfer of Interests

Respecting the Formalities for Liability Protection

- “Piercing the Corporate Veil”
 - When your business entity is simply an alter-ego of your personal financial activity
 - If a creditor can show you have not followed formalities, can disregard entity liability protection to reach personal assets
- Common Evidence
 - Spend company money on personal needs (commingling of funds)
 - Use of Company assets (e.g. vehicles) for personal use
 - Failure to have annual meetings (evidence of business management)
 - Failure to file annual report result in administrative dissolution

Limited Liability Company

- Operating LLC (or S Corp)
 - Partners contribute their ownership interest in cattle, bins, machinery, “sweat” etc.
 - Use as transfer vehicle to farming heir (gifts/structured sale)
 - Existing S Corp or Partnerships (merger, conversion, asset transfer, etc.)
- Land LLC
 - Deed Land interest to the LLC (*never* a corporation)
 - Restrict membership
 - Strip partition rights inherit to real property interest
 - Structured exit of equity in land (title substitute)
 - Conversion of existing Limited Partnership (w/o retitling property) (SOS filing)



The LLC Operating Agreement

- A **Contract** between contributors of assets
- Restricts who can be members
 - Member vs. Assignee
- Dictates voting requirements for decisions
 - Manager
 - Voting and Non-voting Units
- Dictates triggers for buy-sell
 - **Farming Heir Option to Purchase**
 - Who may buy and when
 - Appraisal procedure
 - Price and payment terms (seller finance option)
- For existing S Corps, use Stock Purchase Agreement

LLC Set-Up Tasks

- Sketch plan, get accountant and lender sign-off
- Form entity with Secretary of State (after Jan 1)
- Get EIN (tax ID)
- Open bank account
- Elect S form 2553? (save on payroll tax)
- Re-title over-road equipment with DMV
- Update Contracts (or record DBA's)
- Update FSA payment entities
- For Land, update **PUV** within 60 days

THANKS FOR INVITING ME!

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