

# 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

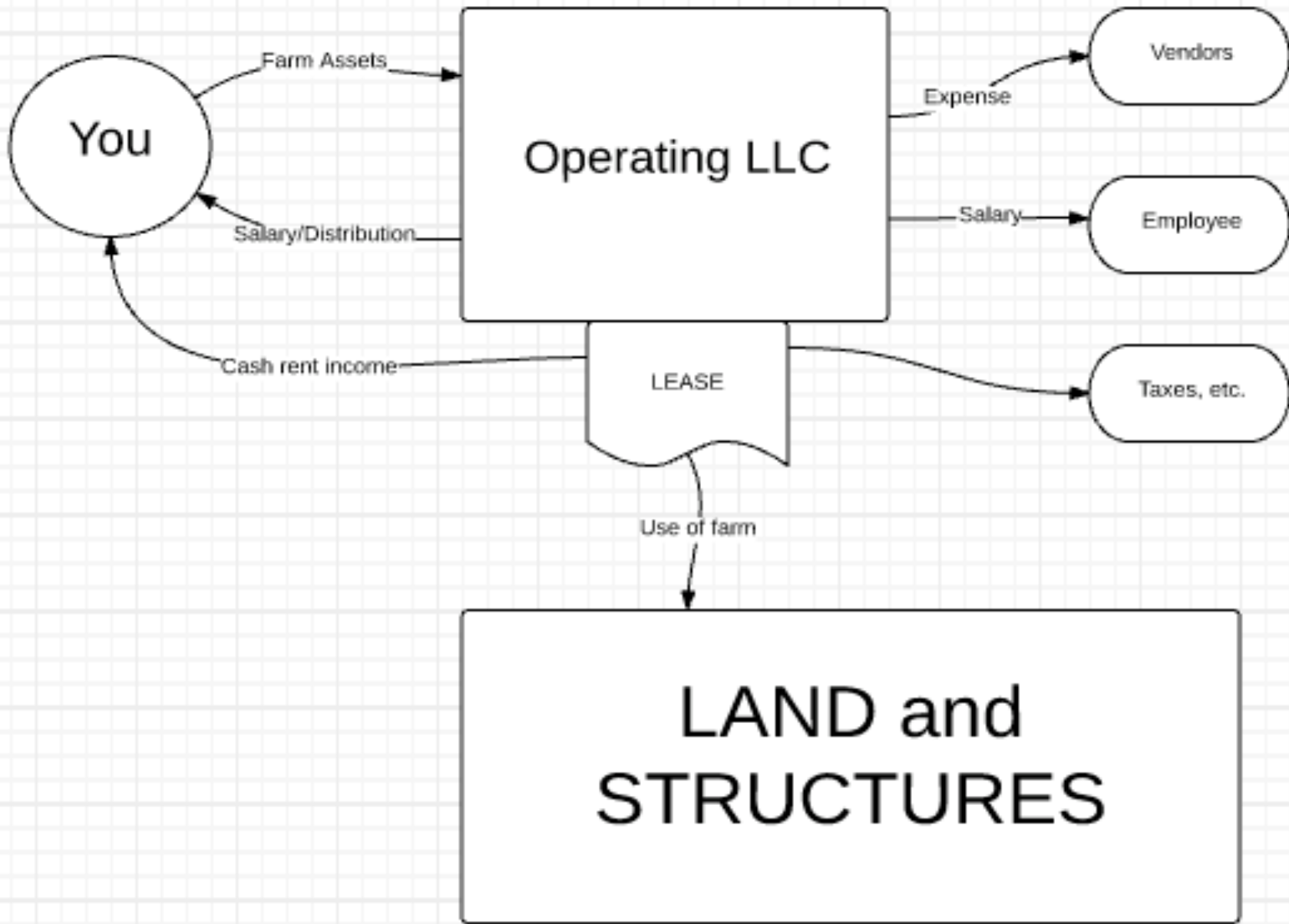
# Respecting the Formalities for Liability Protection

- “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 retitle 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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