Professional Training for Farm Succession Advisors in New England
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Other Land Access Tools

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Cooperative Land Ownership

Cooperative land ownership has the potential for providing affordable land access for multiple producers willing to farm together on one farm property. The cooperative legal structure is unique – unlike more common legal structures that farmers and attorneys are more familiar with and perhaps more comfortable with.

See Excel File – Cooperative Legal Structure Comparison

The primary differences in the cooperative legal structure relate to:

- voting rights
- distribution of profits
- initial capital contributions, and
- the purpose of the business.

In a non-cooperative business, voting rights are usually, though not always, determined by a member's capital share in the business. In a co-op, every member has one vote regardless of their capital.

In a non-cooperative business, profits are usually though not always distributed on the basis of a member's capital share. In a cooperative, profits are returned to the members in proportion to their use of the co-op. In this way, members are encouraged to do business with the co-op rather than some other business. The return is called a "patronage dividend." In a land co-op, the patronage paid is rent, and profit is returned in proportion to the amount of rent paid by the member.

In a cooperative, the initial capital contribution is most often equal. Many state cooperative formation statutes, in fact, limit the amount of capital that can be owned by any one member. In a non-cooperative business, capital contributions can vary quite a lot.

The purpose of a non-cooperative business is to make money for its owners. The purpose of a co-op, however, is to provide goods and services to its members at cost. This is why, some state statutes refer to cooperatives as non-profits. While a co-op is a for profit venture, the profits are returned to members in proportion to their patronage.

Co-op taxation also is quite different. Co-ops can retain earnings or distribute them to members. Co-op income can be characterized as unallocated equity, or non-qualified deferred patronage which is taxed at the co-op level, or as cash distributions to members, or qualified allocated equity which is taxed at the member level. Identifying an account familiar with cooperative taxation is essential.

Co-ops also strive to operate under certain principles adopted by the International Cooperative Alliance in 1995. Some of these principles are embedded in state cooperative formation statutes.

I. Co-op Principles

1. Voluntary and Open Membership. Co-operatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic Member Control. Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organized in a democratic manner.

Each shareholder has only one vote, the earnings are distributed in a uniform dividend and one individual cannot own more than 10 percent of the capital stock.

3. Member Economic Participation. Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4. Autonomy and Independence. Co-operatives are autonomous, self-help organizations controlled by their members. If they enter to agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, Training and Information. Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute

effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6. Cooperation among Co-operatives. Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7. Concern for Community. Co-operatives work for the sustainable development of their communities through policies approved by their members.

II. New England Cooperative Formation Statutes

State statutes will generally provide specific formation requirements for producer marketing co-ops, consumer co-ops, worker co-ops, and credit unions. In some states, co-ops can also be formed under the general corporate formation statutes provided the entity will meet certain requirements with respect to one member one vote, payment of dividends and other cooperative principles. If there is no provision for cooperative formation under the general incorporation statue, then a land co-op would most resemble a consumer co-op as it is providing a good (land) to its members at cost although it isn't always a good fit.

Vermont

11 V.S.A. §981 and §991 et seq.

Maine

13 M.R.S. §1501

Massachusetts

Mass. Gen. Laws 157 §1 et seq.

Connecticut

Conn. Gen. Stat. §33-183, et seq.

Rhode Island

R.I. Gen. Laws §7-8-1, et seq.

New Hampshire

New Hampshire R.S.A. §301-A1, et seq.

III. Land Cooperative Examples and Case Studies

A Multi-Stakeholder Land Cooperative

A land co-op can be a single stakeholder co-op (just farmers) or multi-stakeholder. Poudre Valley Community farms in Colorado is an example of a multi-stakeholder farmland co-op. Still in the fundraising stage, members of this co-op will be consumers, restaurants, and producers. The co-op will own the land and rent it to member producers under long-term market rate leases. http://poudrevalleycommunityfarms.com/the-plan/ Patronage dividends are to be paid based on the amount of food purchased from co-op producers rather than rents paid to the co-op. The land in this example is not being offered to farmers "at cost" but at market rates. Multi-stakeholder co-ops can present significant challenges given the conflicting interests of farmers who want market and land access at cost and consumers who want high quality food at the least possible cost. In addition, most state formation statutes don't recognize or allow multi-stakeholder cooperatives. On the other hand, multi-stakeholder cooperatives provide a greater member pool for raising capital.

A Vermont Multi-Stakeholder Land Cooperative

Lost Meadow Land Cooperative holds about 600 acres of land in West Corinth, Vermont. Currently, it is used solely for residential purposes with 6 home sites. They have recently posted on Vermont Land Link, looking for a farmer member to farm 10 acres of cleared land with the potential to clear an additional 15. There is also potential home site for the new farmer member.

Ground Lease

Co-op members hold ground leases for the home sites and the area immediately surrounding the home site. The initial term is for 20 years, but can be renewed for an unlimited number of additional terms. Lessees pay taxes attributable to the home site. Lessee also pays carrying charges consisting of the portion of operating costs and expenses of the co-op related to the property of which the home site is a part. In addition, Lessee pays an assessment for the cost of building and maintaining common lands of the co-op. Improvements are owned by the Lessee. The home site and improvements may not be sold without the consent of the Co-op. The gournd lease is inheritable.

Bylaws

Members purchase one or more common shares at a price determined by the Co-op Council. Redemption is available only on terms as determined by the Council and only when replacement capital is available. Net profits are allocated on the basis of member patronage. One member, one vote.

Feasibility Case Study

Four separate farming operations explored a cooperative land ownership structure for a Vermont farm capable of supporting two diversified vegetable farms, one dairy, one beef, and one maple operation. All four farm families were then leasing the conserved premises under a single lease from the owner. In addition to serving member farms, the Co-op had the potential to rent its infrastructure and facilities to community members for events, gatherings, a farmer's market, food hub and private/commercial use. The Co-op's member marketing reach had the potential to further sales and brand awareness for the Co-op members on a regional scale.

The members agreed on a "one member, one vote" structure and that the co-op would provide land access at cost to its members. Rental payments to the Co-op and other fees for services provided would form the basis of each member's patronage. Membership was to be limited to farmers. The Co-op would have a board of directors to make decisions on land use, financials, membership, and marketing. Land use and farm management was to use holistic farm planning.

The purchase price for the farm was $574,000. Discussions with the Cooperative Fund of New England indicated that members would need to raise approximately 20% or $110,000 in the form of cash equity in order to secure the remainder as a loan. The initial capital outlay of $27,612 per member proved too steep for several of the prospective co-op members. Annual debt service financed through lease payments would have also been a challenge for several of the members. Other potential members preferred to invest their available capital into their own farming operations rather than a new cooperative. Many landowners in the area were offering short term land access for free. The operations were all at varying stages in their development and for the nascent operations the prospect of committing additional time and energy into a new entity was unappealing. Among other things, this example illustrates the importance of first doing a feasibility study before you begin to draft the by-laws and ground lease; of counseling clients on the responsibilities and time commitments required for co-op governance; and that all prospective members should be in a similar formative stage and ready to move forward with land ownership.

Well Spring Land Cooperative

Created in 1994, Wellspring consists of 189 acres in Marshfield, Vermont. The legal structure is similar to Lost Meadow although two house sites were subdivided from the 189 acres to allow the owners to obtain a mortgage. Members must own a home on the property and must reside there. In addition to the ground lease for the home sites, members enter into an agricultural lease with the co-op and pay a separate lease fee. The bylaws also deal with dissolution of the cooperative. See 8.1.

Conclusions:

Cooperative land ownership can make land access more affordable.

Start with a feasibility study.

If multi-stakeholder, identify and address conflicts of interest.

Educate clients on significant differences in the cooperative legal structure and cooperative governance.

Taxation is unique as structure; specialized tax advice is essential.

State cooperative statutes can be arcane and a bad fit.

Farm operations must be in a similar developmental stage and in similar economic status.

Difficulty of obtaining a mortgage on homes and improvements.

Consider carefuly redemption and dissolution provisions.