

Legal Structure of the Farm Business: Choice of Entity and Drafting Business Agreements.

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Workshop Topics

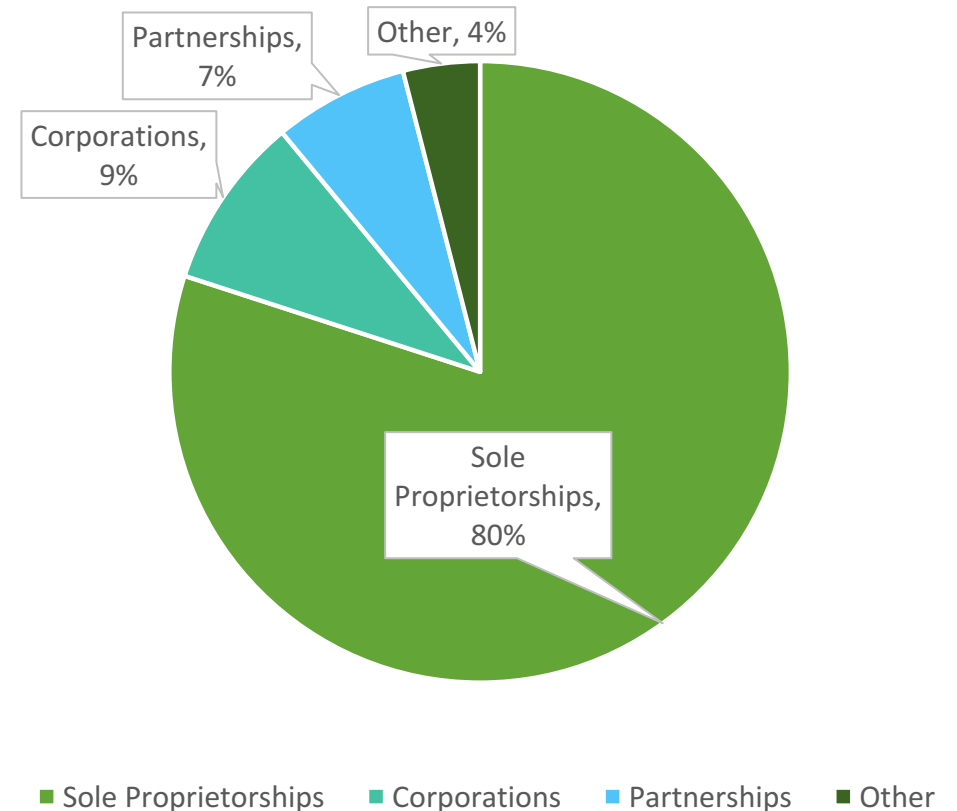
- **Choosing a Business Name and Entity**
 - How to you choose and protect a company name, and what legal form should the business take?
- **Drafting Business Agreements**
 - LLC Operating Agreement
 - Joint Venture Agreement

How should they organize their business?

Here are some business entities to choose from:

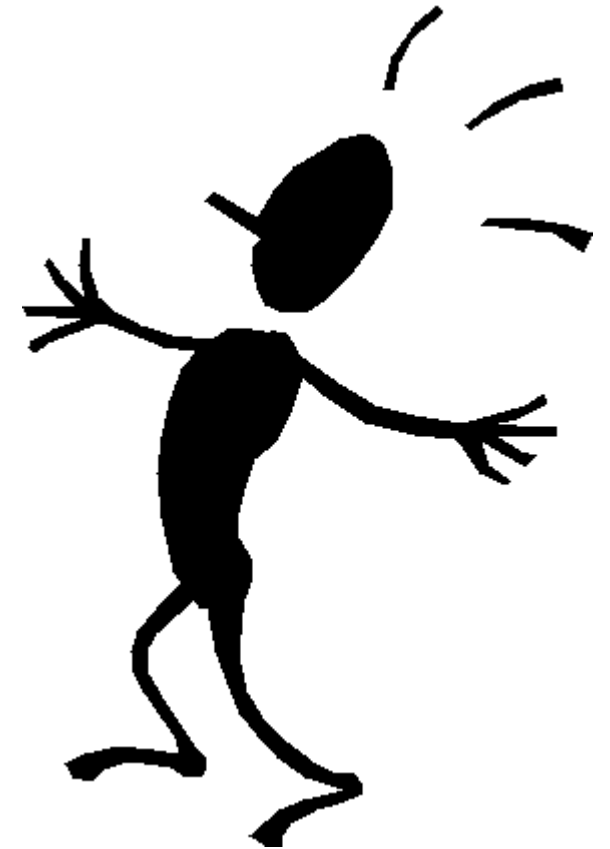
- Sole Proprietorship
- S Corporation
- C Corporation
- B Corporation
- Limited Liability Company (LLC)
- Partnership (General or Limited)
- Limited Liability Partnership (LLP)
- Non-profit Corporation
- Cooperative

MA Farms by Legal Status in 2012



Sole Proprietorships

- A sole proprietorship is a person engaged in business for him or herself.
- It is an unincorporated business owned and run by one individual with no distinction between the business and the owner.
- The owner is entitled to all profits and responsible for all liabilities.
- Does not require legal filings, except on the municipal level. If a farmer uses a business name other than her own, she must file a Doing Business As (DBA) certificate with the local municipality.



Corporations – S Corps. and C Corps.

- A corporation is an independent legal entity owned by shareholders.
- A “C corporation” is separately taxed on its taxable income.
- An “S Corporation” passes through its income, losses, etc. to its stockholders, who report their pro rata shares of the S corporation’s tax items on their personal tax returns and pay any resulting tax.
- Stockholders of a corporation enjoy limited liability and, with certain exceptions, are not liable for corporate obligations exceeding their investment.



Corporations – B Corps.

- Benefit corporations, or B-corporations, pursue general or specific public benefits AND can distribute profits to shareholders.
- Unlike S and C-corporations, B-corporations are not required to focus solely on maximizing profits.
- The new kid on the block. Corporations were able to elect benefit corporation status in December 2012.
- Additional filings and fees required.



Partnerships (General or Limited) and Limited Liability Partnerships (LLPs)

- A **General Partnership** is an association of two or more persons who combine their resources – money, labor, skills, and/or property – to conduct business for profit, expecting to share both profits and losses.
- In a **Limited Partnership**, the general partners control business management and remain liable for the business obligations. The limited partners can reap the benefits of their investment and enjoy a limitation on liability, BUT cannot participate in the management or operation of the business.
- A Limited Liability Partnership (LLP) limits the personal liabilities of the business' partners but requires legal filings and fees.



Limited Liability Company – LLC

- A Limited Liability Company (LLC) is a hybrid that provides the limited liability features of a corporation and the flexibility of a partnership.
- Relatively easy to form and manage. Owners are members, and the Operating Agreement may establish one or more managers.
- Can have a single member/manager.
- May elect pass-through or double taxation.
- Provides flexibility regarding raising capital and transferring interests in the LLC.



Non-Profit Corporations

- Status as a non-profit corporation provides certain benefits such as tax exemption and the ability to receive tax-deductible charitable donations.
- BUT, to qualify as a non-profit, the farm's primary purpose must be educational, cultural, or charitable.
- The non-profit must be governed by individuals who do not have a financial stake in the business.
- Upon dissolution of the non-profit, its assets must be used in furtherance of its educational or charitable purposes.
- Must submit annual filings and petition the I.R.S. to obtain 501(c)(3) status.



Cooperatives

- Cooperatives must further members' goals and meet their needs.
- Primary operational characteristics:
 - member ownership;
 - member control; and
 - proportional distribution of surplus based on a member's use of the enterprise.
- Types of co-operatives:
 - producer cooperative - where the co-operative markets and distributes the members' produce;
 - purchasing cooperative – where members purchase supplies or equipment together; and
 - worker co-operative – where employees own and govern the business together.
- Need seven or more members for an agricultural co-operative and need to follow the enabling statute if the organization calls itself a “co-operative.”



Case Study: The Goode Farm

Family Members

- John and Bea Goode
- Married with two children (ages 13 and 15)

The Farm

- Currently involved in vegetable production – a 100 member CSA.
- Have been reclaiming an old orchard and introducing small fruits to the landscape to offer fruit CSA shares as well as a pick-your-own component to the farm.



Case Study: The Goode Farm

The Challenge/Opportunity

- As the orchard matures, the Goodes are realizing that they're ready to hire more help to harvest the fruit and would like to explore preparing value-added food products made with the fruit, such as juice, vinegar, preserves, and baked goods.
- The Goodes have a nearby business, Nadine's Foods, who would like to team up to produce salsa.



Business Name – What's Available?

- Conduct an on-line search at Corporations Division of the Massachusetts Secretary of State's Office for name of corporations and trademarks.
- Conduct an on-line search at the U.S. Patent and Trademark Office.
- Google away.

Should they register a trademark?

Rights in trademarks in the United States accrue:

- with the use of a mark in commerce (applies locally and no fee);
- by registering a mark with the MA Secretary of State's office (applies throughout the commonwealth and costs \$50);
- by registering a mark with the U.S. Patent Office (applies throughout the U.S. and costs between \$275 - \$375, not counting the costs of a search).

































The Goode Name

With what they've learned, the Goodes are now considering:

- naming their business, **Goode Family Farm**.
- reserving another name, **Goode Goodies**, for the value-added food business (\$30.00).
- registering a trademark at the MA Secretary of State's Office (\$50.00).

The Entity Matrix for Farm Businesses

(this is a job for you and your accountant)

Things to Consider	C Corporation	S Corporation	Partnership	LLC	Sole Proprietor
Structure					
Taxation					
Personal Liability			 		
Formation					
Ease of Exit					
Outside Investment			 		

Is a Separate Entity Worth It?

- Helps shield personal assets from business liabilities.
- Facilitates raising capital.
- Facilitates bringing on partners.
- Rents as business expense increase personal equity.
- Facilitates transfer of business assets for succession and estate planning purposes.

The Goode Entity – Goode Family Farm, LLC

With what they've learned, The Goods have decided to set up a limited liability corporation, Goode Family Farm, LLC. John and Bea will be the members and the managers.

Pros:

- Provides some additional protection against liabilities stemming from increased farm activities.
- Offers easier way in for future investors/partners.
- Makes future transitions (e.g., sale of company, estate planning, etc.) easier to manage.

Cons:

- Added expenses (e.g., accountants, attorneys, and filing fees).

Establishing Goode Family Farm LLC

- Application for Employer Identification Number
- Certificate of Organization
- Operating Agreement

The Goode Products – Joint Venture Agreement

Johnny and Bea Goode have decided to team up with Nadine's Foods, LLC to make and sell salsa. Let's help them:

- Outline the Scope of their work together
- Draft Joint Venture Agreement

Additional resources:

Farm & Food Law Guides for MA and ME

How to Choose A Business Structure: A Decision Guide

All available at www.legalfoodhub.org (under attorney resources)

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