Basic Legal Structures
For Local Food Value Chain Businesses

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This presentation does not constitute legal advice.

Whenever forming a new business entity, always consult an attorney and an accountant.
The Super Local Food Entrepreneur
Before you hit the start button, ask yourself . . .

Do I have the money I need?

Am I willing to give up some control of the business to others?

What happens if I want to leave the business?

Does everyone involved have common goals?
Things to Consider When Choosing a Legal Structure

1. Ease of Formation
2. External Liability
3. Taxation
4. Management and Control
5. Transferability
6. Continuity
7. Mission
Ease of Formation

Easiest
- Sole Proprietorship
- Partnership
- LLC
- Corporation
- Cooperative

Hardest
External Liability

Greater Protection
- Cooperative
- Corporation
- LLC
- Partnership
- Sole Proprietorship

Least Protection

Past Expiry

Greeting Cards

Sorry to hear about your foreclosure.

www.PastExpiry.com
Taxation

Pass-through
  Sole Proprietorship
  Partnership
  S-Corp

Election
  LLC
  Cooperative

Double
  Corporation (C)

Exemption
  Nonprofit
Management and Control

Greatest Owner Control

Sole Proprietorship
Partnership
LLC
Cooperative
Corporation

Least Owner Control
Transferability

Most transferable
- Corporation
- Cooperative
- Partnership/LLC

Least transferable
- Sole Proprietorship
Mission
It Gets Down to the Money
Nonprofit Corporations

I know, let’s form a non-profit!
Nonprofit Corporations

Advantages:

• Attractive to corporate donors and foundations
• Great for bootstrapping in respect of in-kind contributions
• May be tax-exempt
• May or may not be member-based
Nonprofit Corporations

Disadvantages

- Profits are not distributed but must be reinvested in the social mission
- There is no “owner”
- Upon dissolution, all assets must be transferred to another nonprofit
- Risk loss of exempt status due to excessive unrelated business income
That money tree may lose its leaves, come fall!
Sole Proprietorships

Advantages
• Easy and Inexpensive to Form (may need a DBA)
• Direct Taxation
• Full Control
• No major reporting requirements

Disadvantages
• Unlimited Liability/Need for Major Insurance
• Difficulty Raising Debt Capital
• Business Survival all depends on YOU!
Partnerships

Partners Share!
• In profits and losses
• In management
• In raising capital

But they also share:
• Unlimited liability for the partnership debt
• Individual partners have the authority to act for the partnership.
• Succession and transferability issues

General Partnership
Limited Partnership
Limited Liability Limited Partnership
LOL

Corporations are people. Evil people.
Corporations (C Corps)

Advantages:

- Limited liability for owners
- Ability to raise major capital through sale of stock
- Transferability
Corporations (C Corps)

**Disadvantages**
- More complex and expensive to form
- More governmental regulation
- No pass-through of losses to shareholders
- Double-taxation
- Control resides in the board of directors
Corporations (S Corps)

- Pass-through taxation
- Limited liability
- Limited to 100 shareholders who must be US citizens or residents
- Not desirable if wanting to expand
- Limited ability to own subsidiary corporations
B Corporation

Not available in North Carolina.
The LLC
Limited Liability Companies

Advantages

• Pass-through taxation to members
• Limited Liability
• Perpetual Existence
• Centralized management
• Free transferability
• Unlimited number of members
• May own subsidiary corporations
• May have multiple classes of stock
Limited Liability Companies

Disadvantages

• More expensive to form
• Not a separate entity
• Members must file quarterly estimated taxes
• May be required to register with SEC if members don’t manage it
• Consensus may be difficult
L3C or “4th Sector” Enterprises
Cooperatives

4 Kinds
- Producer
- Consumer
- Worker
- Multistakeholder/Hybrid
Cooperatives

Advantages

• Pass-through taxation
• Technical assistance providers funded through USDA-RD
• Reduced costs and improved bargaining power due to membership
• Perpetual existence
• Democratic organization
Cooperatives

Disadvantages

• Slow to form and capitalize
• Lack of membership and participation
Role of Cooperatives in Local Food System Development

PLEASE watch this webinar

www.amsta.net/webinars.html
We did it!
References


Thank you!

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