



PROTECTING YOUR LAND WITH AN LLC

BY KENT JORGENSEN, ATTORNEY AT LAW

Recently I had a conversation with a good friend, (I'll call him Bob) who runs a very successful farming operation. Bob told me he currently uses a business entity to operate his farm and that he holds all of his land in his personal name. He wondered if what he is doing is ok, or if I would suggest something different.

Every farming operation is distinct, but one thing remains constant across the board: farmers want to protect their land. For this reason, every farmer should sit down and determine whether he is doing enough to protect his land. For some, owning their land personally may be adequate, but for others, it may be wise to use an LLC to hold their land. Some may find it difficult to determine whether their circumstances would require them to use an LLC. In making this decision it is wise to consider two important variables: exposure to liability and family dynamics.

Exposure to Liability

The liability exposure you have will help determine whether an LLC should be used to protect your land. Let's use my friend's situation as an example. Bob not only raises row crops but also does a lot of custom harvesting and hauling. He has significant liability in connection with his custom harvesting operation. As considerable liability in farming stems from the operation of machinery, it is typically not a good idea to maintain your machinery in the same business entity as your land. My friend has this much correct. He maintains his farm land separate from his operating entity and his machinery. This helps contain liability from the operation of machinery to the business entity owning it. However, it is also important to consider who will be operating the machinery.

As with most farming operations, Bob, and his immediate family are the primary operators of their equipment. This creates a problem in the event of an accident. If Bob is driving his truck down the road and gets into an accident, the person injured can sue not only the business entity owning the truck, but also Bob personally for negligence.



If he does not have adequate insurance in place he could be personally liable for the damages. If important assets such as land are owned personally they may be at increased risk. For this reason it may be a good idea to hold land in an LLC if there is a high potential for personal liability. It is also important to note that although keeping land in a separate business entity is an important safeguard against liability this strategy is no replacement for adequate insurance coverage.

Family Dynamics

Liability protection is not the only reason land should be placed in an LLC. The use of an LLC is a very easy way to share ownership to land as well as assist in a farm succession plan. Family dynamics such as the number of children in a family, how the family members interact and how many children are involved in the farming operation are important to keep in mind when considering whether to hold land in an LLC. If there is a possibility that children might someday own land together, it may be a good idea to use an LLC.

Bob, like many other farmers, works with his father. He is the only child farming with his dad, but he has several other siblings who may inherit a portion of the land upon his father's death. Although their family gets along well now, relationships can change. Most parents want to be fair to all of their children in their estate plans. This may mean their land will be divided up among the children. It is very possible some

of the children may choose to sell the land they received. This could leave the farming child with insufficient land to farm after the parent's death.

An LLC can be used in the parents' estate plan. The land can be placed into an LLC with each child inheriting ownership in the LLC instead of the actual land. The LLC can be set up so a child cannot force the land to be sold. This allows all of the children to share in the profits of the land, but prevents them from selling it outside of the family. If a child wanted to sell his ownership interest, he may be required to offer it to the farming child first before it can be sold to anyone else. The farming child may also be allowed to maintain control of the LLC and to make necessary decisions to keep the farm running. A properly designed LLC makes it difficult for family farmland to be transferred outside of the family unless the family agrees to do so together. For this reason, LLC's are very valuable tools for farm estate planning and succession planning.

Liability and family dynamics are just two factors to take into account when considering an LLC. Other factors include income taxes, estate taxes, succession planning and wealth transfer strategies. LLC's are not the solution for everyone but they have proven to be very helpful to many farmers. It is always advisable to seek guidance from an attorney, accountant or other knowledgeable advisor when considering establishing an LLC. ■