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Illinois Migrant Council

# PREPARING A NEW GENERATION OF ILLINOIS FRUIT AND VEGETABLE FARMERS

a USDA NIFA BEGINNING FARMER AND RANCHER  
DEVELOPMENT PROGRAM PROJECT  
GRANT # 2012-49400-19565

<http://www.newillinoisfarmers.org>





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**GROWING A NEW GENERATION  
OF ILLINOIS FRUIT AND VEGETABLE FARMERS**

# **CHOOSING YOUR SMALL FARM BUSINESS STRUCTURE**

Andy Larson

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# Objectives

- As they start their farms, beginning fruit and vegetable growers will:
  - Know about the various types of business structures available to Illinois farms
  - Have some understanding of the pros and cons of these various business structures
  - Consult an attorney before making the final decision on which structure is of most benefit



# The Basics

- Factors to consider:
  - Simplicity
  - Flexibility
  - Cost
  - Protection from personal liability





# The Basics

- Structures to consider:
  - Sole proprietorship
  - Partnership  
(and its variants)
  - Limited Liability Company  
(LLC)
  - Corporation  
(and its variants)



[www.flickr.com/photos/kalmyket/](http://www.flickr.com/photos/kalmyket/)



# Sole Proprietorship

- Simple to form, owner and business are one and the same
  - Business taxes filed with personal taxes
- No filing fee or annual report fee with the Secretary of State
- If operating under an “assumed” name:
  - There may be a DBA filing fee with your county clerk
  - Will have to publish intention to operate under assumed name in the newspaper for three consecutive weeks



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# Sole Proprietorship

- The major drawback:
  - Since you and your business are one entity, you are personally responsible for the liabilities of the business



<https://www.flickr.com/photos/wallyg/>



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# Partnership

- Similarly simple and cheap
  - Tax liability passes through to owners' tax returns
  - Registration of assumed name with county clerk
- Both owners authorized to act on behalf of the business



<https://www.flickr.com/photos/birkbeckmediaservices/>





# Partnership

- Drawbacks:
  - Again, both owners responsible for all liabilities of the business
    - Including obligations entered into by other partner
  - If a partner leaves, partnership may dissolve
  - Partnership shares are not freely transferable

# Partnership

- Limited Partnership (LP)
  - Reduces exposure of certain partners to unlimited personal liability by creating two classes of partner:
    - General partners – remain personally liable for partnership's obligations
    - Limited partners – NOT personally liable for partnership's obligations

# Corporation

- Owners, called shareholders, finance the corporation by purchasing stock
  - Shareholders elect board of directors, who are responsible for day to day affairs
  - Board of Directors designates officers
- Corporation separate legal entity from shareholders
  - Owners' personal assets protected from business' debts and liabilities

# Corporation

- Drawbacks
  - Paperwork and formalities
    - Articles of incorporation, issuance of stock, election of board and officers, annual meeting and minutes
  - “Double taxation”
    - Corporation pays taxes on profits, on which shareholders pay income taxes when received as dividends
  - Cost
    - \$281.25 to start (\$150 filing fee, \$25 franchise tax fee, \$100 expedited fee, \$6.25 payment processing fee)
    - \$75 annual report filing



# Corporation

- Subchapter S
  - Corporate profits and losses pass directly through to shareholders without being taxed
- Close corporations
  - Stock is “closely held” by few individuals
  - Avoids some formalities by permitting broad shareholder agreements and operation without a board of directors



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# Limited Liability Company (LLC)

- Simple to start, flexible
- Owners, called members, are protected from unlimited personal liability
  - As long as best business practices are followed
- Pass-through entity, so members account for profits and losses on personal taxes
- No requirement for formal meetings or elected boards/officers

# Limited Liability Company (LLC)

- Drawback
  - Cost
    - \$600 to start (\$500 filing fee, \$100 expedited fee)
    - \$250 annual report filing



# Summary

- Choose the best balance of **simplicity, flexibility, cost,** and liability **protection**
- Think beyond farm business **creation,** and into business **maintenance** and **continuity**
- Seek **professional legal counsel**
- Do your **due diligence**



# Resources

- [Farm Commons](#)
  - [Archived webinar](#) on exactly this topic
- Illinois [directfarmbusiness.org](#)
- [Illinois Secretary of State Business Services](#)
  - [A Guide for Organizing Domestic LLCs](#)
- Your local legal and tax professionals



# To reach us

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## Contacts

## Contact information

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# If you have questions ...

- University of Illinois Extension Local Food Systems and Small Farms team
  - <http://web.extension.illinois.edu/smallfarm/>
- USDA's Start2Farm site
  - <http://www.start2farm.gov/>