

The National Agricultural Law Center



University of Arkansas



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# Business Organizations

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The National Agricultural Law Center



University of Arkansas



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A federal judge in California recently dismissed a constitutional challenge to that state's "Proposition 2," a ballot initiative that addressed the confinement of laying hens, veal calves, and pregnant sows. To read the language of state statutes that have been enacted addressing farm animal confinement, [click here](#).

## Twitter @nataglaw

September 26, 2012  
[@bammedia](#) [@AgCouncilofAr](#) Nat'l Ag Law Center and Nat'l Assoc. of State Depts. of Agriculture form new partnership, <http://t.co/lsQLTX2f>

## Ag and Food Law Blog

[HSUS Files Suit Against NPPC Funding](#)  
*24 September 2012*  
Earlier today, the Humane Society of the United States (HSUS) filed suit against the United States D [...]

[Center Hosting Series of Ag Law Producer Workshops in Louisiana, Mississippi, and Arkansas](#)  
*24 September 2012*  
The National Agricultural Law Center is hosting a series of producer workshop meetings throughout Lo [...]

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**BUSINESS  
ORGANIZATION  
OPTIONS TO PROTECT  
YOUR PERSONAL AND  
BUSINESS ASSETS.**

# The Business Structure

- What is so Important about a Business Structure?
  - Liability Protection – separating assets so that a creditor or plaintiff cannot take everything you own
  - Fairly cheap to use
  - Easy to set up
  - Great estate planning tool

# How Business Entities Work to Protect You

Know what business entities provide protection:

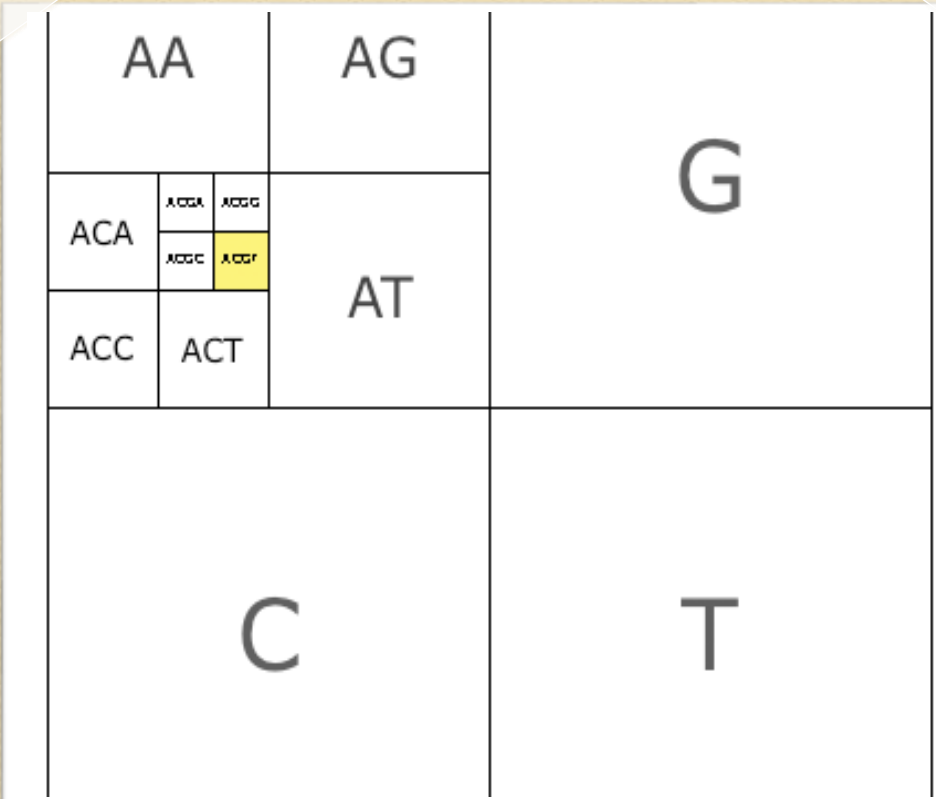
- No protection - Sole Proprietorship and General Partnership
- Some partners protected – Limited Partnership
- Full protection – Limited Liability Companies and Corporations

# How Business Entities Work to Protect You, continued

Why the differences in protection?

- Some business entities function as a separate legal entity (like another person) and others do not.





**640 Acre section of land.**

**Business Organizations are like “fire breaks” and not shields**



# How to use a Business Entity



- Creating a business entity is not enough to provide any protection
- Creating a business entity is like buying another basket...

# Respect the Business Structure

- At the end of the day, Courts will only respect your business structure as much as you do.
- What does this mean?
  - You **HAVE** to keep the business separate from your personal life and from other businesses that you run.
  - Keep separate bank accounts, business records, etc...
  - Don't use business funds for the family vacation



# Issues we'll cover for each one

- Liability of Owners
- Legal Status
- Formation
- Management
- Taxation

# Types of Business Structures

- Sole Proprietorship
- General Partnership
- Registered Limited Liability Partnerships
- Limited Liability Corporation

# Sole Proprietorship

- Liability of Owners
  - 100% liability for the business debt
    - Creditors will be able to reach your personal assets as well as what you invested into the business.
      - This means that property such as your land, your home, your personal bank accounts are at risk!
- Legal Status
  - Not a separate legal entity
    - You would be sued directly.

# Sole Proprietorship

- Formation

- No formalities are required...if you start a business by yourself than this is what you have.
- Formed or dissolved at the discretion of the individual who owns it
- Only 1 person, or it becomes a partnership

- Management

- Easy decision making – only one person to consult!

- Taxation

- Income is taxed on the individual's tax return (1040)
  - Schedule C or F

# General Partnership

- Definition

- An association of two or more “persons” who agree to carry on as co-owners of a business for profit.
- No intent is necessary to form a general partnership and it is possible to create one without intending to.

# General Partnership

- Liability

- Each partner is liable for the debts of the business.

- In LA, La. C.C.Art. 2817, allows for partners to discussion of assets to limit recovery to only identifiable business assets

- If those assets are not enough then they can go after individual assets in many cases.



# In Re Simmons (Arkansas 2007)

- Simmons farming operation was in financial trouble and filed for Chapter 7 which would discharge many of the debts.
- Simmons' son, and general partner, produced a forged personal guarantee on a loan that Simmons had no knowledge of at the time (he later found out about it)
- Court held that the Son's actions imputed fraud to ALL partners so no discharge was allowed.

# General Partnership

- Legal Status
  - Recognized as a separate legal entity
- Formation
  - No formalities are required
  - Can be formed unintentionally (only intent required is to run business for profit)...Example look at your land lease forms when you go home.
  - There can be a formal partnership agreement that details management responsibilities and how profits/losses will be split

# General Partnership

- Management
  - Each member of the partnership is called a “general partner”
  - The decisions are made by all partners and all partners actively participate...any partner can bind the rest of the partners to a contract
  - Profits and losses are split evenly
    - Unless the partnership agreement states otherwise and there typically has to be a good reason for this.

# General Partnership

- Taxation

- The general partnership has the advantage of being a “pass-through entity”
- This means the partnership itself pays no income taxes
- Instead, income is taxed only after it is distributed to the partners.
  - This is different than the “double tax” where income is taxed when the business earns it and when it is paid out to the individual partners.

# General Partnership

## Examples:

- I enter into a partnership with my brother to farm. While I'm in Arkansas, he decides to convert our farming operation from cattle to emu and now the creditors are coming after me...can they?
- My brother was suitably disappointed at his dumb decision and went out drinking later that night and got into a car wreck. Can those people sue me as well because of our partnership?

# Registered Limited Liability Partnership

- Limited Liability Partnership
  - A formal business organization that limits some liability
  - Louisiana Revised Statutes 9:3431-3433
- Liability
  - Provides some liability protection due to the mistakes, omissions, negligence, or incompetence of another partner
  - Fairly new entity (early 1990s) so there is a limited amount of case law dealing with them!
  - Must be filed with the LA Secretary of State and needs annual filings performed in order to retain the liability protection

# Limited Liability Company (LLC)

- LLC – created in the 1970s
  - Similar to Limited Partnerships...except everybody can be protected.
  - Provides protection to personal assets
  - Made up of “members” rather than “partners”
- Liability
  - Members’ personal assets are protected from creditors of the business.
  - Creditors can only reach that which has been invested or pledged to the business

# LLC

- Legal Status
  - Recognized as separate legal entity
- Formation
  - Can be formed with 1 or more members
  - Created by delivering Articles of Organization to the Secretary of State's office
    - Must include
      - Name of LLC
      - Address of LLC
      - Agent for service of process
  - Certain reports must be filed each year to maintain LLC status



# LLC

- **Management – 2 options**
  - **Member Management (small businesses)**
    - All members have the right to participate in management
    - This is the more common option
  - **Manager Management (large businesses)**
    - Only designated members have management authority as provided in articles of organization
  - Profits and losses are shared equally among members unless otherwise agreed

# LLC

- Taxation

- The LLC can elect to be a “pass-through entity”
  - Income is taxed only when it is distributed to the members
- Or the LLC also has the option of being taxed as a corporation
  - Income would be taxed when the LLC earns it and again when it is distributed to the members

# Corporations



**the Corporation**  
a film by Mark Achbar, Jennifer Abbott & Joel Bakan

- Oldest and most complex business organization
- Offer liability protection for shareholders
  - Similar to that of LLC
  - Older business organization with centuries of case law.

# Corporations

- Liability
  - Shareholders are protected from creditors of the corporation in most cases
- Legal Status
  - Corporation is a separate legal entity

# Corporations

- Formation
  - Articles of incorporation must be filed with Secretary of State
    - Must include
      - Name of corporation
      - Purpose of corporation
      - Stock structure
  - Fictitious name statement
  - By Laws
    - Include details of how the corporation will be run
      - Officers
      - Shareholder meetings
      - Number and terms of Directors on Board

# Corporations

- Formalities
  - Record keeping requirements
  - Regular board meetings
  - Annual shareholder meetings (remember the trip to Hawaii)
  - Annual filing requirements for the state



# Corporations

- Management
  - Shareholders elect a Board of Directors
  - Board of Directors appoint Officers
    - Officers are responsible for day-to-day management decisions
    - Board of Directors is responsible for long term planning and management
    - Shareholders have limited management authority and vote only on extraordinary measures
      - Like selling more than 1/2 of the assets or dissolving

# Types of Corporations

- S Corporation
  - Limited number of shareholders (100 or less)
  - “Legal persons” that are allowed to be shareholders is limited to citizens, resident aliens, estates and certain trusts
    - No corporations, non-resident aliens
  - Only one class of voting stock
  - Distribution rights to shareholders must be equal
  - No tax at the corporate level...“pass through”
    - Similar to taxation of LLC



# How to choose!

- Deciding which business structure to use is an important decision.
- Many factors to consider
  - Who is involved
  - What is their role
  - What are the requirements
  - What makes the most sense for my business

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