

# SHOULD YOUR FARMLAND BE OWNED BY AN LLC?



## A limited liability company avoids several issues that arise if the land is individually owned

By Linda M. Danielson, attorney, Ruder Ware, L.L.S.C.

Many farm operations are conducted through a legal entity, such as a corporation, partnership or limited liability company (LLC). Yet, in many cases, the land used in the farming operation is owned by individuals rather than an entity.

There are several reasons why it is better for the land to be owned by an LLC set up for such a purpose.

If you own real property personally and someone is injured on it, you may be liable to that party. The best protection is having the correct types and amounts of insurance.

**Above:** An LLC can help with management and ownership issues related to a farm property.

However, what if the damages exceed the available insurance? In that case, your other assets (except for certain exemptions) would have to be used to pay the portion of the damages not covered by insurance.

In contrast, if the real property is owned by an LLC, then generally only its assets are available to satisfy obligations; assets owned by the LLC members (owners) personally should not be at risk.

Under Wisconsin law, a member or manager of an LLC is not personally liable for an LLC liability merely by virtue of being a member or manager (although a member or manager's acts or conduct other than as a member or manager can create personal liability).

### SEPARATE LEGAL EXISTENCE

It's fairly easy to create an LLC. However, having an LLC in name only is not sufficient. To get the liability protection of an LLC, it must be operated in a manner that reflects



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a separate legal existence.

For example, contracts and leases with respect to the property should show the LLC, not its members, as the owner of the property. The LLC should have its own bank account, and income and expenses should be deposited into and paid from that account.

If these formalities are not followed, a creditor may be able to “pierce” the veil of liability protection to reach the members’ personal assets to satisfy LLC obligations.

An LLC can also help with management and ownership issues related to the property. An LLC can be either member managed or manager managed.

If the LLC is member managed, each member is an agent of the LLC with respect to its business and can bind the LLC. If the LLC is manager managed, decision making authority

is in the hands of one or more managers, providing centralized management.

Most LLCs are governed by a written operating agreement. The operating agreement describes the rights and obligations of the LLC and its members.

For example, if the LLC is manager managed, the operating agreement can describe how the managers are selected and removed. It can also require that certain actions, such as the sale of all or substantially all of the LLC assets, require the prior

approval of the members.

#### **OWNERSHIP CONTROL**

The operating agreement can also control the ownership of the LLC by prohibiting the transfer of interests without the consent of the other members (perhaps with some exceptions).

The operating agreement can also address other issues, such as what happens to a member’s interest on death, divorce or other events, and how the purchase price will be determined and paid if an option

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*“If you own real property personally and someone is injured on it, you may be liable to that party.”*

**– Linda M. Danielson**

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or obligation to purchase an LLC interest is triggered.

Further, an operating agreement can prohibit a member from pledging an LLC interest as collateral.

Using an LLC to own real property avoids several issues that arise if the land is individually owned. For example, if a landowner wants to transfer a fractional interest in property to a child, he or she must sign a deed making the transfer, which then needs to be recorded with the register of deeds office.

In contrast, transfers in the LLC ownership can be made more easily and do not change the ownership of the property itself. The identity of the LLC owners is not part of the real estate records.

Additionally, if there are multiple owners of real property, then, under



An LLC can be an integral part of the farm succession plan. It provides a structure to separate the active operation of the farm from land ownership.

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Wisconsin law, any owner who wants to be bought out can bring a partition action to require that the property be either divided among the owners or sold. The partition right can be eliminated if the property is owned by an LLC.

Finally, the LLC can be an integral part of the farm succession plan.

It provides a structure to separate the active operation of the farm from land ownership. This is useful, for example, if the long-term objective is to allow family members not active

**Above:** One argument for LLC farm ownership is that, if you own real property personally and someone is injured on it, you may be liable to that party. The best protection is having the correct types and amounts of insurance, which LLC's can provide.

in the farm operation to have an ownership interest in the land. **BC'T**

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