Legal Entity Structures for Maple Producers

Acer Series: Maple Business Development

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Contents

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Choice of Entity

There are numerous entity options available to Vermont maple producers seeking to operate individually or in partnerships of two or more individuals. In most instances, the entity chosen should offer limited liability protection. Limited liability means that only the assets contributed to or acquired by the entity are at risk from claims by unsecured creditors and some negligence or other tort claimants. Your personal assets are shielded from liability associated with the business. Certain formalities must be observed, however, in order to maintain that limited liability shield. The business must have its own bank accounts and you must not commingle personal funds with business funds or use business property for a purely personal use. You must put the public, your suppliers and customers on notice that you are a limited liability entity by including "LLC" for example on your business checks, business cards, labels, and invoices. You must also have adequate capital to run the business. An empty checking account and minimal assets can also result in a court stripping away the limited liability shield.

There are significant limits to limited liability. Certain creditors will require security for a loan, by taking a mortgage on real estate or placing a lien on business and personal property. This step results in an individual that is still personally liable for the full repayment of debts. A limited liability entity cannot shield you from the liability resulting from your own negligence. Instances of negligence, fraud or other inappropriate actions can result in personal liability for the negligent partner. This is often known as the "piercing of the corporate veil."

LEGAL TERMS

General Partnership: any business activity carried out by two or more persons as co-owners for the purpose of making a profit

Limited Liability Partnership: the same concept as the general partnership with the additional feature of the limited liability shield

Personal Assets: things of present value or future value such as cash, savings, investments, cars and real estate that are owned by an individual or household.

Liability Shield: the assets available to satisfy claims against a business are limited to the property of the business. The business owner's personal assets (in most cases) are shielded from claims against the business.

Part A: The Menu of Entity Options

Limited Liability Partnerships (LLP), Limited Liability Companies (LLC) and simple joint ventures are likely the best options available for maple operations with multiple members. Generally speaking, a general partnership is not a good option.

General Partnership:

A general partnership is any business activity carried out by two or more persons as co-owners for the purpose of making a profit. Partnership taxation is relatively simple, with profits and losses carrying through to the individual partners. Profits are taxed at the partner level, rather than at the entity level. A written partnership agreement is not necessary although highly recommended. A partnership need not register with the state other than perhaps a business name registration.

Simplicity is perhaps the biggest advantage of a general partnership. The lack of a limited liability shield, however, is the general partnership's biggest drawback.

In a general partnership, all partners are jointly and severally liable for all obligations either in tort or in contract of the partnership. Individual partners may thus be held personally liable for the tortious conduct of another partner while acting for the partnership. Claims are not limited to assets of the business. Personal assets including homes and personal savings are also at risk.

Each partner in the partnership is an agent of the partnership, and the partners are agents of one another. Each partner can contractually bind the partnership and the other partners in the ordinary, everyday matters of the partnership.

Intent to form a partnership isn't necessary. A partnership can be "implied" simply by the fact that you conduct business with another person or entity and share profit. One of the dangers of being in an unintended partnership is that partners are liable, both individually and together, for the debts of the partnership.

The Implied Partnership – Scenario 1

Bruce and Chris are neighboring landowners who have had individual maple enterprises for many years. They decide they would like to produce maple syrup together. They share the cost of outfitting a sugar house, combine their sap and share labor. They divide the net profits according to the ratio of sap provided to the operation. They have no written partnership agreement. This is an implied partnership. Both are individually and together personally liable for all debts of the business. Both can be sued for the negligence of one partner committed in the course of conducting partnership business. And both can be sued to collect a partnership debt incurred by just one Partner. These tort and credit claimants will be able to reach the personal assets of each Partner.

Limited Liability Partnership

A Limited Liability Partnership (LLP) is simply a general partnership with a limited liability shield. By statute operations already operating as a partnership can inexpensively take on a limited liability shield by filing a Certificate of Limited Liability Partnership with the Vermont Secretary of State – and observe the formalities noted above. This allows the business to take advantage of partnership flexibility while taking on a limited liability shield. One potential drawback of an LLP is that it requires two active partnership members. If a partnership of two becomes a business operated by just one individual, the entity reverts to a sole proprietorship which has no liability shield. With that caveat in mind, an LLP is a good option for those already operating as a partnership and are comfortable with the partnership format.

Taxation for Partnerships

In partnership taxation, net profit and loss of the entity flows through to the individual members and is reported on their personal tax returns. A member's share of net income or net loss is determined by the terms of a written partnership agreement. Income can be allocated on the basis of capital share or on some other basis provided it is "consistent with the underlying economic arrangement of the partners". There must be an economic benefit or economic burden that corresponds to an allocation. A member with a small capital stake but who provides a majority of the day-to-day labor and management (economic burden) could receive a larger income share disproportional to his capital share (economic benefit.) This flexibility is enormously useful in the context of business transfer or succession. Business asset transfer is most often a two-step process with the first step being transfer of a fractional share in the business operating assets. The heir or new entrant then has an opportunity to obtain management skills and equity over a period of time prior to the complete transfer of operating assets in addition to any real estate assets (the forest land).

Allocation of Income Between Partners - Scenario 2

Bruce and Chris are in an active limited liability partnership for a maple business. Bruce owns the forested property and the sugarhouse building. Bruce produced sap from 2,000 taps and boiled at his sugarhouse by himself until 3 years ago when he decided he wanted to reduce his workload on the maple business. Chris partnered with Bruce and he has expanded the taps to 3,000 total taps. Chris manages all of the woods set-up and maintenance. Chris and Bruce share the work in the sugarhouse evenly. Bruce leased the sugar bush to the partnership and the partnership pays all land costs. The two partners evaluated the amount of work they contribute to the enterprise. The partners decided that Chris will receive 70% of the net income and Bruce will receive 30% of the net income at the end of the season. Chris will pay income tax on his 70% income share and Bruce will pay income tax on his 30% share.

For more on LLPs see Section B.

Limited Liability Companies

The Limited Liability Company (LLC) has become the entity of choice for most new businesses. An LLC can choose to be taxed as a partnership, an S Corp or a C Corp. When taxed as a partnership the LLC offers a great deal of flexibility with respect to income allocation, management and capital formation. Most farmers and maple producers will choose partnership taxation. It is simple and well understood. Income of the entity flows through to the individual members and is reported on their personal tax returns. An LLC taxed as a partnership offers the same degree of flexibility with respect to income allocation as a Limited Liability Partnership. A member with a small capital stake but who provides a majority of the day-to-day labor and management (economic burden) can receive a larger income share disproportional to his capital share (economic benefit.)

The LLC also offers a great deal of flexibility with respect to management control. An LLC can be structured as a “Member Managed” entity with each member having the authority to conduct day to day business or as a “Manager Managed” entity with all day-to-day decisions made by a designated manager or managers. The latter is useful in situations where one member is primarily an investor and is not involved in the day-to-day workings of the business. The management control flexibility options make an LLC a good option for larger operations with larger amounts of capital at risk or with outside investors. An LLC is also a good option for business transfer. An LLC can issue voting and non-voting units. The senior generation can retain voting control while transferring economic interests in the entity over time to heirs. The voting shares can be transferred incrementally over time when the next generation is ready to take over the decision-making authority of the business.

An LLC is also an especially good option if the multi-member enterprise may one day become a solo operation. The entity will then become a single member LLC with a liability shield.
For more on LLCs see Section C.

The LLC Formation – Scenario 3

Bruce and Chris decide to set up an LLC for their maple business. Bruce owns forested property and a sugarhouse building. Bruce has produced sap from 2,000 taps and boiled at his sugarhouse by himself for many years but would like to significantly scale down his contribution of labor. Chris would like to join the business and add another 1,000 taps. Bruce contributes his existing equipment and a new and bigger reverse osmosis unit to the LLC. Chris contributes new tubing systems to expand the number of taps. Chris has little capital but a lot of experience with sugaring. They decide to set up a Manager Managed LLC with Chris providing all the day to day management and labor of the operation. For larger decisions, outside the ordinary course of business, Bruce will need to be consulted. Bruce, with a larger capital share and more voting units will retain control over major decisions.

Simple Joint Venture

The entities discussed above (LLP and LLC) are typically perpetual. The entity exists until the owners decide to “wind-up” (dissolve) the business. A joint venture is a general partnership undertaken for a limited period of time and for a limited purpose. In the business transfer context, a joint venture such as a discreet maple or livestock enterprise can be a useful way to help an heir or a potential non-family business partner to get a start in farming, to acquire farm assets and to gain management experience. This option should include a written Joint Venture Agreement.

A Joint Venture Agreement can offer simplicity for small family run sugaring operations. It does not however offer limited liability. For more on Joint Ventures see Part D.

Dual Legal Structure

Just as important as your entity choice is the decision as to what assets are to be included in the entity. In almost all instances it will be best to exclude the land base from the sugar operating entity. The land base can remain in sole proprietor ownership with a lease between the landowner and the operating entity. Excluding the land base has the effect of encapsulating the risk of the sugaring operation in the operating business with only those operating assets at risk. This dual legal structure shields the land base from liability associated with the sugaring operation. The lease between the landowner and sugaring operation entity can provide a cash rental payment or require the sugaring operation to pay all land costs in lieu of rent.

Dual Legal Structure – Scenario 4

When Bruce and Chris set up their LLC, only the sugar house assets are contributed to the business. Bruce retains ownership of the forest land (sugar bush) and leases it to the LLC. The lease requires the sugaring operation to pay all real estate taxes, insurance, expenses for minor and major repairs to the sugar house, and utilities. The lease also provides that any duties owed to invitees or trespassers upon the property are solely the obligation of the LLC. In the event of an unsecured claim against the business, only the operating assets are at risk. The forest land base is shielded.

Taxable Transfer

Maple operators should understand when the transfer of property into a new limited liability entity is a taxable transfer. The general rule is that transferring assets into an entity does not trigger recognition of income or capital gain. The one exception to a tax-free transfer is when a member transfers an asset to an LLC that is:

- Subject to debt; and
- The LLC assumes the debt; and
- The liability exceeds the transferor's basis in the new entity.

"Basis" can be generally defined as the amount of capital investment or the initial cost of the item. Basis is a term also used to define the depreciated value of an investment and it is updated over time for tax purposes. Taxable transfers can occur even if the transferor retains personal liability on the debt. A taxable event can occur when a member is transferring assets subject to debt that have been fully depreciated. The utilization of accelerated or bonus depreciation through United States IRS rules can create this situation. The amount of debt in excess of basis is considered a taxable cash distribution to the transferor. The transferor has in effect, recognized a personal "gain" equivalent to the excess debt transferred from their own interest to the receiving LLC. It is important to discuss any tax consequences of a transfer with your tax professional.

Taxable Transfer-Scenario 5

Bruce contributes existing equipment to the LLC which has been fully depreciated but still carries some debt from the initial purchase. The current basis in the equipment is zero ($0) because of the prior depreciation. The LLC assumes the remaining debt for this equipment. This is likely to be a taxable event for Bruce on his personal tax return. However, the additional contribution of assets with existing “basis” into the LLC might offset any personal tax liability. Bruce realizes this is complicated and he decides he will consult with a tax professional to determine the best course of action.

Part B: Establishment and Maintenance of an LLP

Note: Many of the aspects of a partnership agreement will be the same in a Limited Liability Partnership-LLP (this Part B) and in a Limited Liability Company-LLC taxed as a partnership (described further in Part C). It is important to read both Part B and Part C of this guide to become familiar with all the considerations that are relevant to your business entity.

A Limited Liability Partnership (LLP) is a good option for existing general partnerships with or without a partnership agreement. The LLP is a general partnership with a limited liability shield. To obtain the limited liability shield you need to:

- ☐ File a "Statement of Qualification" with the VT Secretary of State for a fee of $75;
- ☐ Include "LLP" in your business name, checking account and business correspondence;
- ☐ Update the partnership agreement to include a limited liability provision;
- ☐ And to maintain the LLP you will need to file an annual report with the Secretary of State with a filing fee of $15.

Partnership Agreement

If you are filing for the limited liability shield, this is also a good time to develop or update the partnership agreement. A limited liability partnership agreement should include:

- ☐ General information: This includes the name of the Partnership, the principal place of business, names of the Partners.
- ☐ Description of the nature of the business: This can be very broad or very specific.
- ☐ Term of the Agreement: The agreement as well as the filing with the Secretary of State should specify the term (lifespan) of the partnership. Most often, this will be perpetual and the agreement will specify the terms upon which the business will terminate.

Partnership Capital- Scenario 6

Partnership taxation rules require that the business maintain a capital account for each individual partner. Each partner's initial capital account will be the value of the assets minus liabilities they contribute to the business. The aggregate capital account will be the total value of the assets in the business minus liabilities assumed by the business.

Bruce contributes $30,000 in equipment and Chris contributes $10,000 in equipment plus $30,000 in cash. There is no debt. The partnership agreement will include the following initial capital summary.

ACCOUNTING TERMS

Capital Account: A Capital Account will equal the Partner's equity in the Partnership. It can be expressed as a number or as a percentage of the aggregate capital (equity) of the Partnership.

Table 2: Capital Summary for Partnership Scenario 6

Partner	Initial Capital Interest	Partnership Interest
Bruce	$30,000	43%
Chris	$40,000	57%

The agreement should specify each contribution and its value. The easiest way to do this is to attach a balance sheet to the agreement listing equipment, cash transfers or other assets at fair market value. This makes clear what is and what is not property of the Company.

The Capital Account

The initial capital account will be equal to the value of the property contributed but the capital account will change over time depending on the profitability of the business, how income is withdrawn from the business and other factors. Capital accounts become the essential record that tracks the ownership interest of each partner. Account levels have a significant bearing on final liquidation, sale or buy-outs of partners and it is important to manage these accounts accurately throughout the existence of the business.

In general, each Partner’s Capital Account shall be increased by:

- ☐ The amount of money contributed by the Partner;
- ☐ The fair market value of property contributed by the Partner (net of liabilities secured by the property that the Company is considered to assume to take subject to); and
- ☐ Allocations of net profits to such Partner.

In general, each Partner’s Capital Account shall be decreased by:

- ☐ The amount of money (exclusive of salaries) distributed to such Partner;

- ☐ The fair market value of property distributed to such Partner (net of liabilities secured by the distributed property that the Partner is considered to assume or take subject to); and

- ☐ Allocations of net losses to such Partner.

The capital account will be impacted by how the Partners have decided on how to allocate income as well as on how income is taken from the business. Income can be taken as an owner draw against their income allocation (a distribution) or income can be taken as a guaranteed payment. Guaranteed payments are not distributions but are more in the nature of a salary to a Partner and they are made irrespective of whether the business is generating a profit. Guaranteed payments are considered business "expenses" and they do not impact the capital account. Guaranteed payments are considered ordinary income to the partner and are subject to self-employment tax.

In some situations, tax and accounting professionals will record and track a "Tax Adjusted Basis Capital Account" (or named similarly) to reflect an account that follows principals of basis and tax depreciation rules. The values in such an account are likely to diverge from Fair Market Values and will become relevant to tax preparation and planning.

Capital Accounts and Transfer Planning

In the business transfer context, where you are trying to increase the new entrant's capital share in the business it makes sense that compensation to the new entrant be in the form of a payment that will not impact his or her capital account. Guaranteed payments can provide income while allowing the new entrant to build their capital share over time. Income to which a new entrant is entitled under the partnership agreement is left in the business. Guaranteed payments do not impact the capital account in the same way as an "income distribution" explained in the previous section. Conversely it will make sense for the founding generation to take income in the form of an income distribution that will reduce their capital share. Taking their full income distribution or more will at least ensure that their capital share does not grow.

BUSINESS TERMS

Balance Sheet: A financial statement that lists the values of owned assets, liabilities (debts) and overall net worth.

Fair Market Value: the price that a business asset or property would sell for on the open market

Guaranteed Payment: a payment to a partner from business operating expenses that does not impact the capital account

Distribution: owner draws taken for personal use out of the business. A distribution results in a subtraction from the partner's capital account.

Business Succession – Business Transfer: the process of shifting the management decision-making and transferring the ownership interest of business property from an existing owner(s) to a new owner(s)

A common business transfer scenario will start a new member with a zero-capital account but with a right to a specified percentage of the partnership income. The new partner may receive guaranteed payments but will not take his or her full income share. If the partnership is making money, his capital account and capital share in the business will grow over time. An important caveat, however, is that it is essential that the entity be profitable. If the new entrant starts with a zero-capital share and in the first year, the partnership allocates only losses, the new entrant can end up with a negative capital account. A negative capital account upon liquidation will obligate the partner to restore the deficit for distribution to creditors and other partners.

A capital account will also be relevant at the end of the business's life or in the event of death, disability or withdrawal of a member. A Partner's share of the aggregate capital of the business expressed as a percentage will serve as a proxy for the partner's share of the business in the event of a buy out or his share of the liquidated value of the business. Thus, it is essential that capital accounts as well as the owners' agreement on the fair market value of the business be tracked over time – annually, at least.

The notion of a capital account is both a business and a tax construct and it can be very confusing for lawyers as well as their clients. It's essential to have an accountant on the team who can both help explain capital accounts and help the business track them over time.

Income Allocation and Distribution

The Partnership Agreement will provide for the allocation of income, losses, deductions and credits among the Partners. Income can be allocated on the basis of capital share; work contribution or other factors provided those factors fall within the "substantial economic effect" test of Treasury Reg. § 1.704-1(b)(2). An income allocation not based on capital share must be "consistent with the underlying economic arrangement of the partners. This means that in the event there is an economic benefit or economic burden that corresponds to an allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden." A Partner with a small capital stake but who provides a majority of the day-to-day labor and management (economic burden) could receive a larger income share disproportional to his capital share (economic benefit.)

Income allocation, expressed as a percentage, should be specified in the Partnership Agreement. The Partnership agreement should also specify when and under what circumstances allocations will then be distributed to members, such as a majority vote or a unanimous vote. An income allocation will be taxed even if it is not distributed. In some cases, an operating agreement will specify that the entity must at least distribute enough income to cover the tax consequences of the allocation.

Providing a larger income share to the new entrant who is contributing substantial labor or other services provides a mechanism to grow their capital share more quickly over time. This labor contribution can be specified in the Partnership Agreement.

Management of the Business

The Partnership Agreement needs to specify how business decisions – both large and small - are to be made. Typically, a Partnership Agreement will provide that each Partner is an agent of the Partnership and can make decisions and bind the business in matters within the ordinary course of business. Matters beyond the ordinary course of business, liquidating the business, taking on substantial debt, for example, will likely require a higher threshold of agreement. Perhaps a majority vote or even a unanimous agreement.

Voting control is most often a function of capital share. If there are three Partners, each with a 33% share, the consent of at least 2 Partners would be required to achieve a majority vote.

Duties of Partners

Partners owe certain duties to one another. By statute in Vermont, Partners owe one another a fiduciary duty of loyalty and a duty of care.

The duty of loyalty requires that Partners or Members account to the other Partners or Members and hold as trustee for the business any property or benefit derived from the ongoing operation or the winding up of the business. Property of the business, for example, should not be employed for personal use. Personal and business income should not be co-mingled.

The duty of loyalty also precludes a Partner or Member from appropriating a Partnership or LLC business opportunity. Business opportunities with potential benefit to the business should be brought to the business rather than pursued individually. The duty of loyalty also precludes a Member or Partner from engaging in any business which competes with the business. How broad or narrowly the nature of the business is described in the partnership agreement defines the boundaries of this duty. If the nature of the business is described as simply producing maple syrup, Partners will need to refrain from competing with that business unless the other Partners' consent. Partners will still be free to engage in other business opportunities unconnected to maple sugaring without breaching the duty of loyalty.

A Partner's duty of care means that the Partner will refrain from grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the law.

Vermont law also requires that Partners must discharge their duties consistently with the obligation of good faith and fair dealing. Good faith and fair dealing require honesty and in some cases a willingness to compromise on matters involving the management of the business.

Restrictions on Transfer - Death, Disability and Divorce

If the Partners wish to prohibit any voluntary transfers of Partnership Interests in the business outside the family, or in any case, the Partnership Agreement should provide for that restriction. The Agreement may prohibit transfers outright or allow transfers to new Partners if all existing Partners consent.

The Partnership Agreement should also address involuntary transfers which occur as the result of bankruptcy or divorce of a member. Business interests transferred as a result of an involuntary process can be treated as "dissociated" Partners. Dissociated Partners will have economic rights including rights to income allocations but will have no management rights including the right to direct distributions. The buy sell agreement should also provide a mechanism for voluntary purchase of the disassociated Partner's share.

LEGAL TERMS

Disassociated Partners: a partner with an economic interest but is without any management or voting rights in the business.

Deadlock: situation of inaction that results when there is a tied vote or two partners who cannot agree or compromise.

Partner Withdrawal and Buy Sell Agreements

A buy-sell agreement is a means of planning for the death, disability or withdrawal of a Partner. It is simply an agreement to buy and an agreement to sell an existing Partner's interest in the business upon the occurrence of a certain triggering event. A buy-sell can be mandatory or voluntary. In the case of a gifted capital interest, the buy sell may impose a length of service requirement. The buy-sell can be a separate agreement or be embedded in the Partnership Agreement. It should be structured to protect the viability of the business by setting out payment terms that the remaining Partner's in the business can withstand. A means of valuation should also be included. (See Sample Operating Agreement.)

Most buy-sell agreements identify death or disability as triggering events for the buy sell. The buy sell can also be triggered when a member wishes to withdraw from the business. In the context of farm transfer, the buy sell agreement can provide a structure for buying out the founding generation or when the second generation decides they want to leave.

The terms of the sale and a method of evaluation can provide for payments over a term of a specified number of years and at an interest pegged to FSA loan interest rates or the AFR (Applicable Federal Rate) which is the lowest interest rate allowed by the IRS without triggering a gift.

An annual valuation by the Partners can provide a means of valuing the exiting Partners share. If an annual valuation is not conducted the Partnership Agreement should provide an appraisal method for determining value. An appraisal method of valuation is also an important addition in the event of deadlock.

Deadlock can be another potential triggering event under a buy-sell agreement. If deadlock is the triggering event, it is less likely that the Partners will be able to agree upon a value for the departing member's interest.

Part C: Establishment and Maintenance of the LLC

Note: Many of the aspects of a partnership agreement will be the same in a Limited Liability Company-LLC taxed as a partnership (in this Part C) and in a Limited Liability Partnership-LLP (see Part B). An LLC taxed as a partnership will have all of the flexibility of an LLC with respect to income allocation with the added advantages of the Corporate structure. It is important to read both Part B and Part C of this guide to become familiar with all the considerations that are relevant to your business entity.

A Limited Liability Company (LLC) is a business form that provides a limited liability shield and also a great deal of flexibility in terms of allocating management control. An LLC will be the best choice for new businesses, solo entrepreneurs or an entity that may become a solo member entity, complex farm transfer situations, and entities with large capital investments from non-producers.

An LLC, can choose to be taxed as a Partnership or as an S or C Corporation. Choosing Partnership taxation provides more flexibility in terms of income allocation by allowing an income allocation that reflects contributions of labor and management rather than capital share. It is very farm transfer friendly. In an S Corp, on the other hand, income must be allocated solely on the basis of capital share.

An LLC Operating Agreement taxed as a Partnership will look an alot like the LLP Partnership Agreement discussed in Part B. The Operating Agreement will include the same provisions with respect to Capital Account Maintenance, Income Allocation and Distributions, Duties of Partners, Restrictions on Transfers, and a Buy-Sell Agreement.

There will be differences, however. In an LLC the owners are called "Members". The business is referred to as a "Company". When you read Section B, simply substitute Member for Partner and Company for Partnership.

Another difference is that an LLC will issue "units" which are similar to the concept of shares issued in a Corporation. If the LLC issued 1,000 units, the initial capital of the Company would be expressed as:

Table 4: Capital Summary for a sample LLC

Member	Initial Capital Interest	Units
Bruce	$30,000 / 43%	430
Chris	$40,000/ 57%	570

Ordinarily, each unit will have the same voting rights. In this example, Bruce would have 430 votes and Chris would have 570. Decisions can require 50% or any other percentage of voting units to reach a decision. More significant decisions will require a higher percentage of units voting. Alternatively, the LLC could issue voting and non-voting units. A non-voting share will carry economic rights entitling the owner to a liquidation share or buy-out, for example but no vote on the major decisions regarding the entity.

The LLC structure allows the founding generation to gradually transfer management and voting control. The founding generation can retain full voting control by retaining all the voting units until ready to assign some or all of them to the new Member. Non-voting units can be transferred to the new Member providing equity in the Company.

An LLC can be either manager-managed or member-managed. Managers will have the authority to make all the day to day management decisions without having to consult other non-manager members. Non-managers will not participate in the day-to-day decision making. Managers may be elected each year or for a specific term by all members and can be removed by a vote of a majority of the members. This is a structure that works best when there are members who have a capital stake but who are not engaged in the day-to-day operation of the farm. It’s a structure that may be appropriate when a beginning farmer partners with a non-farm investor as a structure that grants significant authority and control to a low capital, farming member.

In a member-managed LLC, each member will have the authority to bind the entity. Members may individually or collectively make day to day management decisions. These types of decisions should be specified in the operating agreement. For example, hiring and firing of personnel, approval of employment or independent contractor agreements, to write or deposit checks and otherwise manage cash accounts and to enter into contracts in the ordinary course of business that bind the entity.

Larger decisions, however, such as taking on significant debt, sale or purchase of new equipment, and other decisions outside the ordinary course of business will most often require the approval of a majority or even a super majority of all Members. It’s important to tell your attorney how you are currently making decisions. If that process is working, the operating agreement should reflect that practice.

Part D: Establishment and Maintenance of a Joint Venture

Joint Ventures are typically short-term business relationships. They can offer a simple means of giving new business partners or new entrants a trial run. They are best used for small family run operations to provide a start in sugaring. A Joint Venture does not provide limited liability. This means that your risk is not limited to the assets committed to the Venture. Unsecured creditors and tort claimants can reach your personal assets to satisfy claims associated with the Venture. Sometimes the parties to a Joint Venture are limited liability entities, single member LLCs for example, and this provides each party to the Joint Venture limited liability. Liability and casualty insurance are also important measures to minimize risk.

A Joint Venture Agreement can be very simple. See Appendix B: Joint Venture Template for an example. The Joint Venture Agreement should specify the following items:

- ☐ Names of parties
- ☐ Description of each individual venture
- ☐ Purpose of the joint venture
- ☐ Term or duration of the joint venture
- ☐ A trade name if applicable

Most importantly the Joint Venture Agreement should specify what each participant's contribution will be in the Venture in the form of: access to forest land, sap, cash, equipment, and other discrete contributions.

The Agreement should require income and expense record keeping and specify how net profits are to be allocated. The Venture will not maintain a capital account and net profits will flow through to and be reported on the participant's personal tax return. Management issues should also be addressed. The agreement should explain how decisions will be made, the role of each member and a person's authority to make decisions within that realm.

Part E. Legal Representation Issues

Successfully forming and maintaining an entity will require the help of an attorney. Your accountant should also review the Operating or Limited Liability Partnership Agreement. The best outcomes are achieved when attorneys and accountants work together.

You can prepare for your first meeting with an attorney by gathering certain documents and information. This is short list of common items that are useful to have ready: any existing agreements, a balance sheet for the operation, the names and addresses of existing and potential Members or Partners, and proposed names for the business.

Most importantly you can review the sections of this educational guide and make a list of questions for the attorney.

Your attorney should also clarify who they consider their client and if they are representing one Member, all Members or the Company. Sometimes joint representation is appropriate but not always. You should discuss all issues around the attorney's duty of loyalty and confidentiality.

Appendix A: Sample Operating Agreement

UVM has published a sample operating agreement template as a separate resource. Go to www.maplemanager.org or contact UVM Extension directly to request a copy of the Maple Operating Agreement

Appendix B: Joint Venture Agreement

UVM has published a joint venture agreement template as a separate resource. Go to www.maplemanager.org or contact UVM Extension directly to request a copy of the Maple Operating Agreement.

Appendix C: Business Relationships Diagram

Visit www.maplemanager.org for maple development resources.

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