Farmers Market
LEGAL TOOLKIT

Picking a Business Structure

Why Your Choice Matters

Whether you're starting a new farmers market or leading a long-established one, you face the same important question: how should the business be structured? Should the market operate as a sole proprietorship, partnership, limited liability company (LLC), corporation (for profit or nonprofit), cooperative, or some other form of business?

Personal Liability

One of the key legal differences among business structures is that they offer different levels of protection from personal liability. Without personal liability protection, an individual's personal assets (stocks, car, vacation residence, etc.) can be used to satisfy legal claims against the market. This matters if the market incurs a debt it cannot repay, or if an accident occurs at the market and an injured person sues. Some business structures will protect personal assets from being at risk if the market loses the suit, and some will not. The business structures that provide personal liability protection need to be actively adopted, usually by filing certain paperwork with your state and adopting formal bylaws.

Taxation

Different business structures are taxed differently. Some are considered part of the owner's personal income tax obligations, some are taxed as corporations under a separate part of the tax code, and some are eligible for tax-exempt status or other special treatment. It is important to understand the tax-filing obligations for your market's business structure.

Decision-Making Powers

Some business structures allow for one owner who holds all of the decision-making power. Other business structures allow or require the business to have multiple owners with decision-making authority. Some have specific governing structures in place with defined positions, such as a board of directors, officers, and members. It's important to be clear about who will make decisions for your market and to choose a business structure that sets up the kind of governing structure you want your market to have.

State law will assign you a default business structure

If your farmers market does not proactively adopt a specific business structure, it will nevertheless fall into a business structure category as defined by state law. This will most likely be a sole proprietorship, a partnership, or in some cases an unincorporated nonprofit association. These three business structures do not provide personal liability protection, which is often why people choose a different structure. **If you want your market to be something other than a sole proprietorship or a partnership, you need to actively adopt a different business structure.**

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Getting Started

	Sole Proprietorships	Partnerships	LLCs	Corporations	Nonprofits	Cooperatives
Must file paperwork to start business			●	●	●	●
Must file articles of incorporation			●	●	●	●
Must have bylaws				●	●	● [2]
Must pay fees to start business			●	●		●
May have one sole owner and operator	●		●	●		
May have multiple owners and operators		●	●	●	●	●

Liability

	Sole Proprietorships	Partnerships	LLCs	Corporations	Nonprofits	Cooperatives
Protects personal assets from business liabilities			●	●	●	●

Leadership

	Sole Proprietorships	Partnerships	LLCs	Corporations	Nonprofits	Cooperatives
Decision-making authority is/can be vested in one person	●		●	●		
Decision-making authority is/can be shared by multiple people		●	●	●	●	●
Decision-making authority is vested in a board				●	● [1]	● [2]

Taxation

	Sole Proprietorships	Partnerships	LLCs	Corporations	Nonprofits	Cooperatives
Potential for tax-exempt status					●	
Potential for certain deductions from businesses taxes					●	●
Taxes are/may be filed as part of your personal taxes in some situations	●	●	●		● [3]	●
May be taxed as a corporation			●	●	● [4]	

1 If your nonprofit is incorporated. If it is an unincorporated nonprofit association (UNA), the members themselves are responsible for decision making. A board of directors is not required if you choose a UNA. 2 Depending on your state's laws. 3 This is true for UNAs only, not nonprofit corporations.
4 To become tax-exempt, nonprofit corporations must apply for and receive tax-exempt status. Otherwise they file taxes as corporations.

Sole Proprietorships

This is the easiest, fastest structure choice. Sole proprietorships have a single owner, the "sole proprietor," who is responsible for making all decisions and satisfying tax obligations. Farmers markets organized as sole proprietorships can be large or small, have many employees or none, and make a large profit or none at all. Sole proprietorships are default business structures, meaning that they are the business structure that state law will generally assign a business if it is started by one person who hasn't taken any formal action to create a different business structure.

- An owner need only start market operations to launch a business under this structure—no paperwork or formal action is required to start a sole proprietorship.
- **The biggest drawback** to a sole proprietorship is that sole proprietors are not shielded from personal liability. This means that if any accidents happen that result in a lawsuit, the owner's personal assets are at risk should the owner lose the lawsuit. Personal assets are also available to settle business debts.
- The sole proprietor has full control of the business and holds all decision-making responsibilities.
- This is a for-profit business. Taxes are owed on any profits generated.
- Business profits and losses are reported on the sole proprietor's personal tax returns, and taxed at personal income tax rates.

Partnerships

This is another fast, easy business structure to create. Partnerships have two or more owners, who are jointly responsible for making all decisions and satisfying tax obligations. Farmers markets organized as partnerships can be large or small, have many employees or none, and make a large profit or none at all. Partnerships are created without any formal action. Like sole proprietorships, they are a default business structure assigned by state law if two or more partners start a business without taking additional steps to adopt a different business structure.

- Owners need only start market operations to launch a business under this structure.
- **The biggest drawback** to a partnership is that owners are not shielded from personal liability. This means that if any accidents happen that result in a lawsuit, the owners' personal assets are at risk should the owners lose the lawsuit. Personal assets are also available to settle business debts.
- Owners have joint liability, meaning each partner can be held liable for any decisions and commitments the other makes, and can be held liable for all of the market's legal obligations, not just their share.
- Owners have joint authority, meaning each partner can bind the whole market to a contract or business deal.
- This is a for-profit business. Taxes are owed on any profits generated.
- Business profits and losses are reported on each owner's personal tax returns.

Nonprofit Organizations

Nonprofits operate with the purpose of serving the public interest. Nonprofits must use their profits to further their mission and may not distribute net earnings to any individuals. A nonprofit can exist in two forms: an unincorporated nonprofit association (UNA) or a nonprofit corporation.

- If a group takes no formal action, no one intends to generate profit, and the vendors act for their mutual benefit they are likely a UNA. To start a nonprofit corporation, the owners must file paperwork with the state, create corporate bylaws, and appoint directors. The process is very similar to forming a regular corporation, except that nonprofits can choose to apply for tax-exempt status with the Internal Revenue Service (IRS) and state tax authorities.
- A UNA does not protect owners from personal liability. A nonprofit corporation does. This means that if any accidents result in a lawsuit, the owner's personal assets are only protected in a nonprofit corporation. If the structure is a UNA, personal assets can be claimed as compensation should the owner lose a lawsuit.
- In a UNA the members themselves are responsible for the decision-making and control. Nonprofit corporations must have a board of directors who make the "big" decisions and delegate "day-to-day" decision making to officers and employees.
- Nonprofits must file a tax return and may apply to the IRS for tax-exempt status. If approved, they complete a special tax form for organizations with tax-exempt status (Form 990) annually. Otherwise, nonprofit corporations file taxes as a corporation. A UNA making less than $5,000 a year may complete Form 990-N, even without tax-exempt status. Otherwise, UNA owners file taxes for the UNA as part of their personal tax returns.

Cooperatives

Cooperatives are formed by a group of people coming together around a shared goal. There is no single entity controlling the decision-making process, as this structure is known for its democratic, "one member-one vote" decision-making process.

- To start a cooperative the group must file paperwork with the state and usually pay a fee, which makes it an "incorporated cooperative." Most states also require cooperatives to create bylaws. This is always recommended because the bylaws set forth your market's strategy for operation. Further, if no bylaws are in place, the cooperative must abide by its state's default statutes, which may or may not be in the best interest of the farmers market.
- An incorporated cooperative protects the owners' personal assets from liability. This means that if any accidents happen that result in a lawsuit, the owners' personal assets are protected and cannot be claimed as compensation should the owners lose a lawsuit.
- Members own and operate the cooperative and are responsible for its governance in a democratic "one member-one vote" structure. Most states also require a board of directors—the main governing body—and officers elected by the members.
- Taxation for cooperatives can be complex but can present opportunities for special treatment. Cooperatives can give patronage dividends to members and deduct them from its gross income when filing taxes. Further, if the business can qualify as a farmers' cooperative, it can qualify for additional favorable tax treatment.

LLCs

A limited liability company (LLC) is beneficial in that it protects owners' personal assets from business liabilities. An LLC can have one or many owners, called "members."

- Owners file paperwork with the state and pay a fee to create this business structure. The LLC is official once the paperwork is approved.
- An LLC protects the owners' personal assets from liability. This means that if any accidents happen that result in a lawsuit, the owners' personal assets are protected and cannot be claimed as compensation should the owner lose a lawsuit. Only business assets are at risk.
- A multiple-member LLC may be member-managed or manager-managed. A member-managed LLC gives all members the authority to take actions on behalf of the company. In a manager-managed LLC, one or more managers are chosen to have this authority.
- Owners may choose to file taxes with personal tax returns or as an "S Corporation."

Corporations

A corporation is another popular choice for farmers market owners. It provides personal liability protection like an LLC but requires more formalities to start than an LLC. However, in many states a corporation is the less expensive option, and may be more familiar to local service providers.

- Owners file paperwork with the state and pay a fee to create this business structure. A corporation is also required to draft and adopt bylaws dividing up responsibility and setting the rules for its governance.
- Like an LLC, a corporation protects the owners' personal assets from liability. This means that if any accidents happen that result in a lawsuit, the owners' personal assets are protected and cannot be claimed as compensation should the owner lose the lawsuit. Only business assets are at risk.
- A corporation's three main decision-makers are shareholders, directors, and officers. Shareholders are the "owners" who elect the board of directors. The board of directors make the "big" decisions that impact the financial affairs of the company. Officers make the regular "day-to-day" management decisions. A single person can be all three.
- Owners may choose to file taxes as a "C Corporation" or an "S Corporation."