



TRELLIS

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Legal Health Checklist For Your Farm

The health of your farm business is just like your own health. If something is broken or off, the whole system isn't going to work well. So sometimes it's good to do a check up and make sure everything is in good shape and work on the things that may not be.

This checklist is designed to help you do just that!

To use this checklist, look at each item and see if you have that aspect covered for your business. If you aren't sure, that's ok! You can always reach out or check out some of our blog posts on our website www.trellispgh.com for more info. Also remember, you don't need to beat yourself up if you don't have everything on this checklist done, it's just a check-up and a guide to help you figure out what may be a good next step to take.

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- Business Entity.** Having an entity like an LLC or corporation can provide good legal protection for your personal assets. This means that only the business assets are at risk if your business is sued. Also if you are operating a business or selling your products under a name other than your personal name you need to have an entity or a fictitious name (also known as a "Doing Business As"), but often times filing a fictitious name is more expensive than forming an LLC and doesn't come with the same legal protections. Check out our blog posts on [LLCs](#) and [The Low-Down on Legal Costs](#) which discusses forming an entity and our free resources page which includes resources on creating and LLC.

- My remaining questions regarding an entity or business structure are:

- My next steps are:

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- Operating Agreement, Bylaws, or Partnership Agreement.** Having an entity is important, but so is having the proper governing document. If you don't operate your entity truly separate from yourself and have the proper documentation, then someone suing you may be able to get past the limited liability to your personal assets by arguing you are not separate from the business. An operating agreement is the appropriate document for an LLC, bylaws are for corporations or non-profit corporations, and a partnership agreement is for when multiple people are working together without an entity yet (though remember no entity=no limited liability). A governing document is important even if you are a single owner, and more important if you have multiple owners as crucial considerations such as how profits are divided, what happens if someone leaves or needs to be removed from the company, and how decisions are made are essential to have written down to avoid disputes. Check out our blog post on [Operating Agreements](#) and feel free to reach out if you aren't sure if you have one. Governing documents can even help in farm succession planning.

If you need an operating agreement but don't have the budget for a lawyer right now, download one of our affordable Trellis Legal [Operating Agreement](#) templates! Reach out to us if you want help selecting the right one for your business.

- I don't have a governing document but here's what I'm going to do next to create it and considerations I need to talk through with my partners (if applicable):

- I Talked to an Accountant.** Speaking to an accountant is important when running a business. You need to make sure you understand what taxes you need to be paying and any specific tax registrations you need to file for. Attorneys only advise on the legal side of things (unless they are a tax attorney) so it is important you also understand the tax implications of your business. Accountants can also help you set up your bookkeeping practices and help you understand what is and isn't deductible as a business owner.

- I don't have an accountant yet but here's what I'm going to do next to find one or get accounting help: _____

- I Have a Separate Business Bank Account.** If you have an entity, you need to make sure your business funds and personal funds are kept separate. All business money should be

run through a separate business bank account. The rule of thumb is, you can always buy business things with your personal account (and reimburse yourself or deduct it later), but you can never buy personal things with your business account. Even if you don't have an entity yet, but are running a sole proprietorship or partnership having a separate business checking account is a good habit to get into to keep things clean and make it easier to know what you can deduct when you do your taxes.

I don't have a separate bank account but here's what I'm going to do to create one: _____

I Have Insurance. While having an entity helps protect you from personal liability, you don't want to lose your whole business if you get sued. So, insurance is a great first line of defense. Making sure your insurance policy covers all the activities of your farm business is important, including property, equipment, on-farm activities, etc. Often times you can get business liability insurance from the same agent as your home insurance, but it is also important to shop around. So, talk to some agents, and make sure you tell them exactly what your business does or update them on your operations, so you have all the right coverage you need.

I need to obtain insurance or update my insurance agent, I will reach out by: _____

Independent Contractors vs Employees. While having a person (or company) work for your business as an independent contractor can have some great cost benefits (hello, no payroll costs, health insurance, withholdings, etc.), it is important to ensure that someone working for you actually meets the qualifications of an independent contractor. Recently, the federal government adopted the stringent standards that have been applied by courts for years in determining an employee vs independent contractor.

The Internal Revenue Service (which oversees worker classification and taxation) largely focuses on factors under three main categories:

- Behavioral: Does the company or the contractor control how the job is done, when it is done, and the specifics of the job?
- Financial: Is the company providing all the workspace, supplies, equipment, etc.? Or is the contractor providing them and invoicing the company for their time and external costs?

- Type of Relationship: Does the contract have an end date? Is there a clear contract establishing the independent contractor relationship? Does the contractor provide these types or offer these types of services to other clients?

It is important to analyze these factors (and look into the full IRS list of factors) before hiring someone as a contractor. If you find that the company is controlling much of the relationship, work, and hours then you likely have a w-2 employee rather than a contractor. Resources: <https://www.trellispgh.com/post/employees-vs-independent-contractors>

- In thinking of my future staff needs, I know I will need the following, and they will be classified as an IC/W-2 (List staff and if you think W-2 or IC):

- I Have Separated My Liability with My Land and/or Have Land Security Measures.**

When having a farm as a business, one of your most important assets is your land. If you own your land, you should consider if it makes sense to separate your land liability from your farm business liability. If you separate the two, then if you have liability under your business, your land is not at risk if something goes south. This can be done through a lease between you as the landowner and your farm business. But the lease must be written and provide evidence of the separation, and rent cannot be so minimal it wouldn't be considered reasonable.

If you rent land, you should make sure you have a solid lease in place. Too many horror stories are told about farmers leasing land being kicked off without protections. Make sure you have a lease in place if you are renting and that it accounts for your situation. Also make sure it is up to date.

- Outline of what I am looking for in a lease:

Who, Where, When

Specific premises use

Production: What, when, where, how?

Permitted activities

Facilities: storage, irrigation, electricity, trash?

What if they are damaged, reduced?

Who fixes, restores?

Improvements

Buildings, fences, hoopouses

Soil quality considerations?

Term of lease

Expiration

Renewal

Termination

Purchasing Considerations:

Due diligence considerations:

Structure:

Property Goals:

- Other land considerations I need to think about:**

- Sales and Contracts.** It's important for any farm business to think about HOW they are going to sell their products-will it be on-farm, direct sales, wholesale, or maybe CSA? No matter how you decide to sell your products you want to make sure you have your legal checkboxes checked. For on-farm sales you want to think about how you will be making those sales, what regulations and zoning applies, permitting, food safety considerations, temperature and labelling rules and insurance. For direct to customer or wholesale contracts you want to make sure you spell out the key components of your agreement-how are orders placed and when will delivery occur? What happens if there are defects in the product? What IS a defect? Etc. And for CSAs you want to have clear CSA policies your potential customers can understand to make sure you and them are on the same page.

- I will be selling my products in the following way(s):

- Key terms or legal considerations I need to include/think about:

For a purchase order agreement template: check out our [basic purchase order terms and conditions template](#). CSA terms coming soon.

I Spoke to a Lawyer About Considerations Specific to my Business. Every farm business has unique legal considerations specific to their operations. So even if you don't have a regular relationship with a lawyer, it is important to speak to one to make sure your business has all of its legal ducks in a row. Specific considerations can include zoning, permits, licenses, liability allocation, on-farm events, incubator farming, purchasing agreements, etc.

Some considerations unique to my business that I want to do more research on/talk to an attorney about are:
