

## Worksheet 3.1

# WHAT'S IN AN LLC OPERATING AGREEMENT?

As you will note from the preceding article on business entities, a lot of decisions are required for constructing an agreement to meet your needs. A common form of business entity in farming and land ownership is the Limited Liability Company (LLC). An LLC is governed by a contract between the interest owners called an Operating Agreement, which covers many issues which are posed below as questions. Many if not most items in an operating agreement also have a default provision in Commonwealth law, but can be changed by agreement.

<b>GENERAL CONSIDERATIONS</b>	
State where entity will be formed	
Name of entity vs. trade name of business	
Cross check names with state Secretary of Corporations	
Narrative of business purpose (very important for farm LLCs)	
Term of entity (e.g. indefinite)	
Member-managed or Manager Managed (for LLCs)	
Identity of managers	
Agent and address for service of process	
<b>CAPITAL CONTRIBUTIONS</b>	
Initial capital contributions (and percentages) of each member	
Will members be required to make additional contributions if necessary?	
What happens if a member fails to make a required capital contribution?	
Who is allowed to become a member (e.g. lineal descendants of grandfather)	
What approvals are required to add new members?	
Are members allowed to withdraw their capital contributions? If so, under what circumstances?	
Is a member entitled to interest on his or her capital contributions?	
Does any member have any priority on distributions over any other members?	
<b>INCOME AND TAX ALLOCATIONS</b>	
How are profits and losses to be divided among the members?	
How are tax allocations made?	
When are distributions to be made?	

Should the agreement require special distributions to be made to at least pay for tax on each member's pro rata income from the business?	
<b>COMPENSATION OF MANAGERS</b>	
What fees is the manager entitled to?	
What reimbursements is the manager entitled to?	
Is the manager entitled to incentive compensation?	
<b>BOOKS, RECORDS, MINUTES</b>	
What books and records are to be maintained by the business?	
What access rights will the members have to books and records?	
What reports will the members be required to receive?	
Who will be the tax matters partner?	
<b>VOTING RIGHTS</b>	
What voting rights will the members have?	
What major actions can the manager take without other members' approval?	
Will a supermajority be required for some actions of the business?	
<b>MEETINGS</b>	
Where will meetings be held?	
How often will meetings be held?	
How can meetings (regular and special) be called?	
What notices for meetings must be given?	
What quorum is necessary for meetings?	
Can actions be taken by written consent of the members?	
<b>ASSIGNMENT AND TRANSFER OF INTERESTS</b>	
Do the members have the right to assign their interests in distributions?	
What rights does an assignee of a member's interest get?	
In what situations will assignment be prohibited?	
What are the procedures for substitution of members?	
What happens on the death, incompetency or bankruptcy of a member?	

Is there a right of first offer or first refusal on transfers of interests?	
Are there restrictions on transfer of ownership interests? (i.e., owners can only be direct lineal descendents of grandma or grandpa)?	
Should a buy/sell agreement be included, setting out a formula to value ownership interests upon divorce, withdrawal of an owner, etc.?	
If included, should the buy/sell agreement include terms of payment for such business interests, allowing installment payments at a modest interest rate?	
Should key person life insurance provisions be included to fund purchases of a deceased owner's interest in the business?	
Should there be a prohibition on sale of ownership without permission of the other owners?	
<b>REMOVAL OF A MANAGER</b>	
Under what circumstances can the manager voluntarily withdraw as the manager of the business?	
What are the events that will result in the manager ceasing to be the manager of the business?	
Under what circumstances can the members remove the manager?	
What happens to the manager's interest when it has ceased to be the manager?	
<b>DISSOLUTION AND TERMINATION</b>	
Under what circumstances will the business be dissolved?	
Under what circumstances can the business continue notwithstanding a technical dissolution?	
How are distributions to be made on liquidation of the business?	
How can the business agreement be amended?	