

**Risk Management Training
for Diversified Family Farmers**

Workbook 6

**Overview — Managing Legal and Regulatory
Risk for Diversified Family Farms**

Managing Legal and Regulatory Risk for Diversified Family Farms

Eight Questions to Ask When Choosing a Business Form

Adapted from The Legal Guide to Direct Marketing by Neil D. Hamilton

1. How large is the business (or how large do you hope it will become) in terms of sales, employees and capital needs?

The larger and more complicated a business becomes, the easier it will be to justify the expense of forming a corporation and such a form may be needed to help organize and manage the business.

2. How many people are involved in the ownership and management of the business?

The fewer people involved, the less need there is for a formal business structure beyond a sole proprietorship or partnership. The more people or family members involved in managing or owning the business, the more valuable it may be to use some form of business structure like a corporation, to help allocate ownership interests and decision-making.

3. What is the relationship of the people involved? Are they family, unrelated business partners, or employees?

The number of people involved in the business and their relationship to each other can influence whether some business other than sole proprietor may be needed. If the parties are unrelated and are contributing capital or other assets to the business, then a partnership or some form of corporation may be needed.

4. Do you intend to sell or transfer part of the business to family members or employees?

If the future ownership and existence of the business is a concern, then it is worth considering a business form that may make it easier to transfer interests and continue the life of the enterprise after you retire. One benefit of a corporation is that the assets can be represented by shares that can be divided and transferred among the owners more easily than other assets, such as land and equipment.

5. Do you intend to be liable for the debts and obligations of the other owners or do you want to limit each party's risks?

One main reason to use a business organization is liability. When people are general partners, they not only share the profits and decision making but also the risks and obligations. If you do not want this joint liability, then a business form such as a limited partnership or a corporation may provide for limited liability.

6. Do you have the time and money to spend on the legal paperwork and record keeping some business forms require?

Creating a corporation means that decision making and accounting for the business become more complicated. If you want to be able to run the business any way you chose and not worry about holding meetings, keeping minutes, or getting the approval of the other owners, then a sole proprietorship or closely held corporation may be attractive.

7. What are potential risks and liabilities associated with the business?

How serious might they be?

The greater the potential for large liabilities, such as borrowing a large amount of money, hiring numerous employees, conducting dangerous activities, or creating potential environmental risks, then the more important it may be to choose a business form which offers some limited liability to investors and owners.

8. Do you have other businesses or do you have other personal assets you do not want to place at risk?

If all your assets and efforts are tied up in the direct farm marketing business, it may not make much difference what form you choose because everything you own may already be at risk. However, if you have separate businesses or have other property or assets you do not want to put at risk, then you should consider choosing and operating in a business form which will limit your potential liability and exposure.

Neil D. Hamilton's Ten Questions to Ask (and Answer) Before You Sign a Contract

Adapted from The Legal Guide to Direct Marketing by Neil D. Hamilton

1. Do you understand what you are agreeing to do, for example are you selling a particular quantity or quality of product?
2. What is the price you will be paid and how is it determined?
3. When will you be paid or when is payment due if you are buying something?
4. Who will decide if you have satisfied the terms of the contract?
5. What will happen if a dispute arises, will it go to court or does the contract include some form of alternative dispute resolution such as mediation or arbitration?
6. If there is a dispute, where will it be heard and which state's laws will be used?
7. How long will the agreement run and how can it be terminated or extended?
8. Can the agreement be modified once it is signed?
9. Are you considered a merchant under the agreement and held to a higher commercial standard or will you be treated as a farmer?
10. Can the contract be assigned to another person or is it personally to you?

Vegetable Production Contracts

*Check-list of questions about vegetable crop production contracts
developed by Dr. F. W. Simmons, University of Illinois Extension.*

Check List of Important Considerations

General understanding of the contract

1. What is the overall compensation being offered and what are the charges assessed?
2. What is the gross compensation on typical production of 3.0 tons of beans, 7.5 tons of sweet corn, or 1.5 tons of peas?
3. After you subtract all possible charges, such as seed costs, Integrated Pest Management, crop insurance, pool contribution, pesticide fees, service charges, etc., does the contract still look profitable?
4. What does each line of the contract require? Each line has a monetary value.
5. Assuming the worst possible scenario, how does the contract compare with worst possible scenarios for corn, soybeans, and wheat production on the intended acreage?
6. If the contract is a sale, am I protected under a state produce dealers' law or under PACA?
7. Does my state regulate vegetable production contracts or protect producer bargaining associations?
8. Who determines the quality of the crop I deliver, and can I appeal any determinations that reduce its value under the contract?
9. Will I have to alter any of my normal production practices to produce a crop for human consumption?
10. Who determines which chemicals I can use on the crop and when I can use them?
11. If the company refuses to take my crop or releases it, what can I do with it? Are there alternative local markets?

Seed charges

1. How are they determined? For example: dollars/acre, pound, no charge + \$/lb. in excess, \$/acre + \$/lb. in excess + \$/lb. of production. This will be the biggest charge in the contract.
2. What is the recommended seeding rate from the company and from the seed dealer?
3. Does the company warranty the seed?
4. How is the seed refunded, by \$/acre or \$/lb.?
5. Check for planting date so as not to lead into frost threat. Compensation for frost damage is generally much less.
6. When are cost deductions made? Some companies deduct all costs from the first crop payment.

Disease and insect control

1. Who has the responsibility to treat the crop for pests, the grower or processor?
2. What is the cost if the grower treats the field or if the processor treats the field?
3. Regardless of who treats the field, do you assume all responsibility?
4. Does the company compensate less for insect damaged crop? If so, how much?

Harvesting

1. Who is responsible for harvesting? The company may endeavor to harvest but may not guarantee that it will harvest the crop.
2. Does the company have a right to decline to harvest and not compensate for a crop due to unsuitable quality? What if it has not been the growers' fault?
3. Does the company have sole judgment in deciding when to harvest? Premature harvest may become a problem. If harvest is at the convenience of the company, this may cause ruts, compaction, etc. Are you reimbursed?
4. Does the company charge for hauling or harvesting?

Passed acres (non-harvested crop/minimum return/crop adjustment fund)

1. What is the maximum amount the grower contributes?
2. What is the maximum amount the processor can contribute?
3. What does the fund pay for: frost, unsuitable quality, minimum return, bunching, excessive yields, etc.?
4. What happens if the funds are insufficient? Proration back to those eligible for funds, proration back to all participants, no proration?
5. What are the deductions from minimum payment? Any other deductions under the non-harvested crop clauses?
6. Are there any alternatives to the fund, such as insurance? What does the insurance cover?
7. What constitutes abandoned acreage: unsuitable quality, wet at harvest, low yields, etc.? Is abandoned acreage paid for via minimum return or no compensation at all?
8. Who oversees the passed acreage pool?

Bonuses and premiums

1. What needs to be done to achieve a bonus?
2. How is the bonus determined? A yield bonus is actual tonnage divided by contracted acreage. (Planting premiums may lead to frost or other perils.)
3. At what point and by whom are quality measurements made: on the truck, at the plant--loaded or unloaded?

Mystery clauses

1. How is your acreage determination made? Is it a simple calculation of seed used divided by established seeding rate? Is acreage actually measured? (Different parts of the contract have different ways of determining acreage.)
2. What is the contract? Is it a rental/lease agreement? Are you an independent contractor?
3. Some charges are hidden under their respective parts of the contract. Charges for pesticides, harvesting, and planting are separate deductions from the passed acreage pool.
4. Are all charges subject to change each year? While compensation may remain stable or even decline, the charges may increase.
5. Check for a provision for a requirement of water (e.g. 1" per week).

6. What are the payment dates? Figure your time value of money. Bankers worry about these payment dates.

Grower Responsibilities

1. Check into the financial strength of the company. How long has it been in business; what is its reputation in other areas? Best recommendations come from past growers.
2. You may have to harvest one day and plant second crop the next day.
3. How is the acreage treated by Farm Service Agency?
4. How does the contracted crop fit in with your rotation?
5. Will you be able to comply with your conservation compliance?
6. What are the machinery requirements and the length of time to pay them off?
7. The company fieldman greatly determines the value of your contract. He is generally your crop consultant.
8. What chemicals can or cannot be used? Are there any clauses prohibiting the use of sludge on the land?
9. Are there a certain number of days during which you can back out of the contract?
10. Contracts generally stay with the operator, not the land. Is this a problem?
11. Except in the case of seed corn and popcorn, when you sign a contract, you have probably marketed the crop.

If you cannot answer these questions, consider asking or having your attorney ask a company representative for answers. If you still have concerns, you may not want to enter into the contract. In any case, you should always consider having your attorney review any legal document before you sign it.

Human Resources Documents and Systems

Before you hire someone:

1 Position Analysis

- Position description
- Wage & salary survey
- Federal Employer Identification Number (EIN)
- California Employer Account number
- Workers compensation insurance

Posting Requirements

- State and Federal minimum wage
- Payday and workweek
- Workers comp carrier
- Unemployment Insurance notice
- State Disability Insurance
- Industrial Welfare Commission Industry Orders poster
- Equal Employment Opportunity
- Migrant and Seasonal Worker notices
- Health and Safety
 - Toilet and hand washing
 - Hand washing notice
 - Drinking water
 - First aid kit
- Recruitment or hire of agency/farm labor contractor

2 Application

3 Interview

4 Reference checks

At the point of hire — create personnel file with the following:

Hiring

- Documentation
 - Application
 - Reference checks
 - Job offer including wages/salary & benefits
 - I-9
 - If minor, work permit
 - Consider proof of age
 - W-4
 - New Hire Report to EDD DE-54

Orientation and Training

Documentation

5 Read/reading Employee handbook

6 Safety Training based on written IIPP

Position description/task list received (for each successive position)

Position specific training received including safety training (for each successive position)

Equipment received or location of equipment to be used

On-going Documentation:

7 Payroll

Documentation

Pay stub

Employee name and social security number

Pay date and period covered

Salary or base wage or piece wage

Hours worked or pieces handled

Total compensation

State and Federal tax deductions

Other deductions (must have written permission)

Net pay

Receipt of check

Due immediately on termination or layoff; within 72 hours on quit

Progressive Discipline

Documentation

Verbal warning and re-training employee signs re-training

Written warning

Discharge

Miscellaneous

Promotion and pay increases

Signed resignation forms for voluntary quits (can be done with last pay check)

Unemployment insurance claims

State Disability insurance claims

Vacation and leave requests

Medical release to work

Annual/seasonal pay summaries

Keep but not in personnel file

Workers comp claims — these should be kept in workers comp file with annual log to be posted

Discrimination complaints/actions

Safety complaints/OSHA actions