

# Creating Business Opportunities

Business Structures for  
Value-Added Enterprises

Presented by

The Southern States Cooperative Foundation  
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# Who We Are



- Established in 1999
- Sponsored by the Southern States Cooperative
- Our Mission:
  - ***To be committed partners in building profitable farmer-based enterprises that sustain rural communities.***

# Our Goals



- ***Identify market opportunities*** for producers.
- ***Leverage dollars*** from private and public sources for business development.
- ***Identify partnerships*** to maximize outreach and technical assistance for cooperative development.
- ***Document our experiences*** to strengthen cooperative development.

# Projects



- Technical assistance and business development activities focused in VA, NC, KY.
- Have helped developed or assist more than 20 producer groups in:
  - Fruit and vegetable marketing cooperatives (NC, DE, MS, VA)
  - Dairy and meat goat cooperatives & associations NC, MS, KY)
  - Soybean processing cooperative (NC)
  - Livestock marketing cooperatives (NC/VA)
  - Aquaculture cooperative (Tilapia) (NC/VA/GA/NY/MN)
  - Peanut marketing cooperative (NC/VA)
  - Soy bio-diesel cooperative (NC)
  - Sustainable Timber production (VA)
  - Turkey Processing & marketing (VA)

# Management & Staff



- Three full-time staff
  - Exec. Director
  - Marketing Specialist
  - Office Manager
  - Expertise in strategic planning, marketing, financial planning, government programs, and business development
- Consultants throughout US with real world experience & expertise
  - Work/product flow,
  - Organic marketing,
  - Natural meats marketing,
  - Business triage (turnaround/workout)
  - Structures,
  - Feasibility analyses.

# Funding



- Funding primarily from a competitively awarded rural cooperative development grant - \$350,000 awarded for 2003/04, \$300,000 for 04/05.
- More than \$2 million in Federal funding since inception.

# What We Do



- Conduct pre-development analyses
- Strategic planning
- Board training & policy development
- Conduct and/or coordinate project feasibility analysis
- Conduct market analysis and help develop marketing strategies

# What We Do (Cont'd.)



- Assist in Business Plan development
- Help turnaround struggling cooperatives
- Identify/develop strategic partnerships and linkages
- Coordinate legal assistance for the development of new ag based businesses
- Develop/document business processes and procedures (inventory management, product flow, quality control)
- Identify Capital sources for new value-added businesses.

# Business Structure Basics



- Disclaimer
  - I am not a lawyer
  - I cannot & will not offer legal advice
  - I don't tell lawyer jokes
  - I value legal counsel insight on every project
  - I can share our experiences about structure

# What We'll Cover Today



- Business Planning
- Structure Basics
- Identifying & Retaining legal counsel
- Dos & Don'ts regarding structure
- Questions

# Plan First!



- Many good ideas aren't successful because of the lack of planning.
- Answer key questions FIRST
  - What do you want to do?
  - How will you do it?
  - How much will it cost?
  - How will you market your product?
  - How will you manage your business?

## Planning (Cont'd.)



- Are you doing this alone or with others?
- How will you capitalize your business?
- Do you need outside financing?
- How are you going to manage & staff your business?
- Have you defined an exit strategy?

# Structure Basics



- Structure is one of your last decisions, not your first!
- Refer to your responses to the planning questions
- If you are going into business with others carefully consider your options
- Two primary structures
  - LLC (Limited Liability Company)
  - Cooperative

## Basics (Cont'd.)



- Each structure has advantages & disadvantages
- Evaluate them carefully with your legal counsel

# North Carolina State Statutes



	<b>North Carolina Cooperative Corporation</b>	<b>North Carolina Limited Liability Company</b>
<b>Tax</b>	<p>Taxed as corporation, through Form 1120C, but subchapter T coops (most) have single-level income tax through deductability of patronage allocations, which are taxed only to members.</p> <p>Section 521 (exempt) coops may also deduct <u>-non-patronage-</u>sourced income, but are more restrictive.</p>	<p>Taxed as partnership</p>



Capitalization	Common/membership stock and preferred. N.C. S. §4-148. Common stock may <b><u>only</u></b> be sold to producers.	No limits; very flexible. §57C-4-01.
Return to Members	8% limit on preferred if §521 or Capper-Volstead co-op.	No limits; per agreement of members. §57C-4-01.
Management	One member/one vote, unless federated. (Then by <u>agreement.</u> ) 54-148.	Members can divide management in accordance with Articles and Operating Agreement. 57C-3-20



Members	Only agricultural producers can be members or common stockholders. 54-145.	Flexible.
Securities Law Registration	Largely exempt, under state Blue Sky law. 78A-16, -17.	Some exemptions may apply. 78A-16.
Transfer limits	Limited transferability of common/voting stock. 54-148.	Assignable unless limited by articles/agreement. Other members must allow admission. 57C-5-02,04



Miscellaneous	May do marketing contracts. Antitrust exemption. §54-141,-152.	Cannot name “cooperative.”
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# Cooperatives – Pluses/Minuses



- ✓ Farmer-owned/controlled
  - ✓ One member-one vote
  - ✓ Opportunity to eliminate middle men from supply and/or marketing chain
  - ✓ Can enter into marketing contracts to ensure product availability
  - ✓ Public trusts cooperatives and cooperative products
  - ✓ Exemption from anti-trust laws
- Must be a farmer to be a voting member
  - Major investor may link his/her investment to seat on the board – impossible if they are not a farmer
  - Giving up measure of independence for the common good
  - Time required to become an exempt cooperative

# LLCs – Pluses & Minuses



- ✓ Maximum Flexibility for both operations and organization
- ✓ Usually done with a limited number of investor/owners who have the resources to meet Federal Securities Exemptions (Reg D) – income/asset test, limited non-qualified investors
- ✓ Unless majority farmer-owned, unable to tap into Farm Credit System for debt
- ✓ Can be established quickly
- Can be costly to establish if unable to qualify for securities filing exemption.
- If you file intrastate, significant oversight of process by Sec. of State
- If you investment goal is more than \$2 million, you must have broker-dealer to manage process and that's costly.
- Can result in perception of exclusivity
- Can be a challenge to create because of divergent owner interests, i.e. management, etc.

# Legal Counsel Can Save You from Yourself!



- Get legal advice from a lawyer, not a professor, economist, banker, or business developer (me)
- Find out who other groups have used and ask them about their experiences and results
- Ask lots of questions
- Satisfy yourself that whomever you hire understands what you want to do – don't assume!

# Legal (Cont'd.)



- Ask them for a proposal that identifies what they are going to do and how many hours it will take
- Cap your expenses in any agreement
- If you don't have funds to cover their entire proposal, make certain that you get the minimum assistance necessary to move forward.

# Dos & Don'ts



- ***Don't*** rely on cookie cutter solutions – it's not a one size fits all process
- ***Do*** read articles, reports, and journals for information to learn what others have done and how
- ***Don't*** try to use another organization's bylaws verbatim
- ***Do*** get prepared to spend a good amount of time thinking about your business so that you can respond to literally dozens of questions from your legal counsel.
- ***Do*** work with your legal counsel on bylaws drafted specifically for your organization.
- ***Do*** cap your legal fees.
- ***Do*** take the time to carefully explore your options.

# Questions



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