

General Legal Issues for Community Farmers Market Managers to Consider.

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Disclaimer

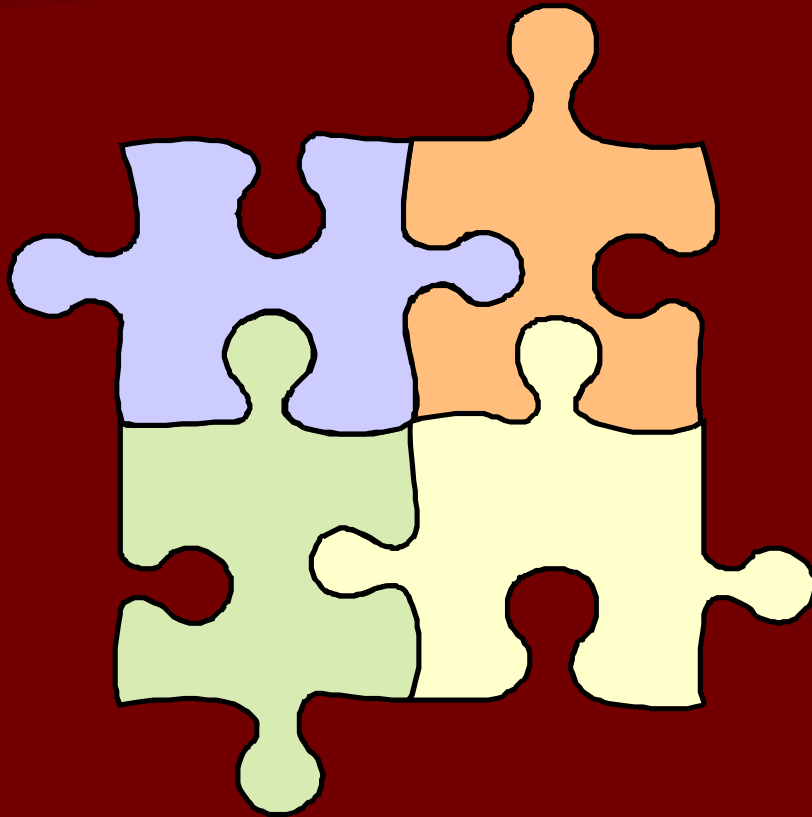


- I cannot represent individual clients because I can only represent the State Department of Agriculture at this time.
- Today's presentation is not intended to provide specific legal advice, but rather a general discussion of potential legal issues related to farmers market activities.

Potential Legal Issues Regarding your Farmers Market Operation.

- Business Incorporation status – Is your farmers market a non-profit? Other business incorporation status? Should it be?
- Contractual Obligations & Rights – What are you entitled to? Do you understand your legal responsibilities & risks under the contract terms? Lease terms?
- Food Safety – local, state and federal regulations related to the sale of food products to the public.
- Premises Liability for injuries and damages occurring on the market or related to market activities.

Business Incorporation Status



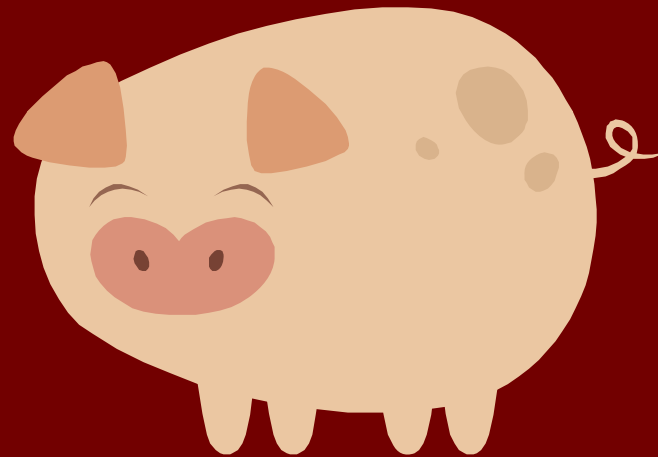
- What protection does incorporation status provide to me? To the Market? To Market board members and/or volunteer workers?
- What tax benefits does my business status provide?
- What's the difference between an LLP and an LLC?

Comparison of Business Entities

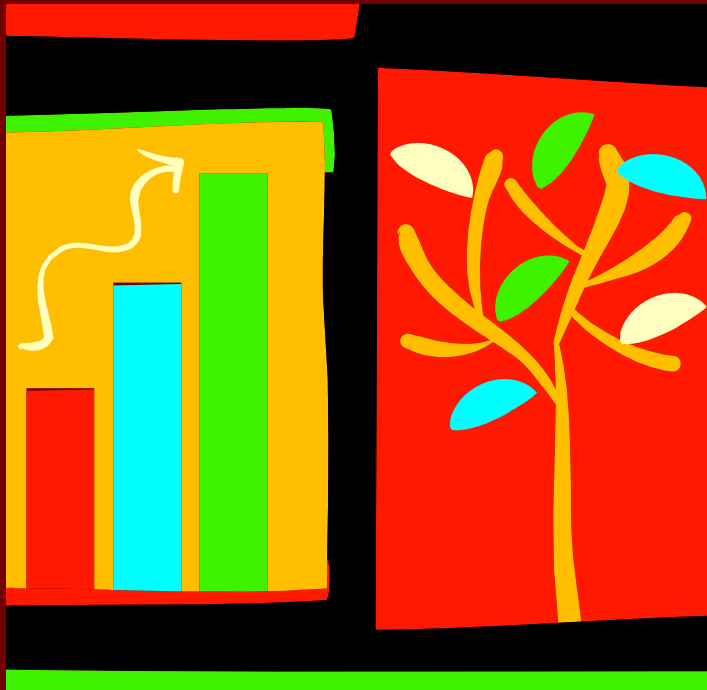
	Legal status	Management Decisions	Limited Liability Available?
LLC	Entity made up of 2 or more persons.	Usually a general manager that is elected.	Yes, very good protection available.
LLP	Entity made up of 2 or more persons.	Usually an agreement between partners.	Poor; LLP partner exempt only from co-partner's torts.
FLP	Entity made up of 2 or more persons.	Usually a general partner.	Poor protection for managing partner; good protection for limited partner.
C Corp.	Legal person separate from shareholder-owners.	Elected directors & officers selected by directors.	Very good protection.
Partnership	Entity made up of 2 or more persons.	Usually by agreement of partners.	Very poor protection.

Cooperatives: Another Business Entity to Consider.

- Member owned and operated.
- Can receive different tax status because they are not considered to be vehicles for investment for profit; primarily providing member-only benefits.
- The overall goal is to maximize the interests of its members as it transacts business.



Sales Tax Exemptions:



- Are fruits and vegetables subject to sales tax at a farmers market?
- If so, who is responsible for remitting sales tax? Market manager or vendor?

Market Manager's Role in Sales Tax Collection.

- Most Markets operate so that each vendor is responsible for remitting his or her sales tax to the appropriate authority.
- Establishing Market Rules & Regulations up front can quickly help vendors to understand that they are responsible for their own tax liabilities associated with the direct sales of their products.
- It is important, however, for the Market Manager to have a good understanding of how taxes are collected in that state and/or local government, in order to help vendors operate legally and to prevent confusion and headaches down the road.

Farm Products May be Exempt from Sales Tax

- Farmers may be exempt from collecting and charging sales tax on vegetables, fruit and vineyard products sold in its original state of production.
- This exemption is not usually available if the farmer processes his product beyond the usual and customary preparation for sale.
- Example: *Fresh, whole tomatoes may be exempt, but homemade tomato salsa is subject to sales tax because it has been processed beyond its original state.*



Sales Tax Collection for Unprepared Food Products Sold at the Market.

- Unprepared food products sold by anyone other than the farmer may be subject to a reduced sales tax. For example, in SC, unprepared food products are taxed at 3% rather than 6%. (2007)
- This means that grocery stores and produce brokers are required to charge and remit sales tax to the state Department of Revenue on all sales of unprepared food products. This would likely include brokers or resellers selling at a farmers market.
- In other words, the Farmers Sales Tax Exemption does not usually extend beyond the first point of sale, whether it's a grocery store or a produce broker reselling fresh produce at a farmers market.
- Furthermore, processed food items are subject to regular sales tax, which is usually 6% or higher.

Taxation of Market Entity

- The business status of the Market will determine how taxes, if any, are to be remitted to the State Department of Revenue and/or local governments.
 - i.e. Non-profit, council, trade-association, etc.

Lease Agreements/Contracts

- Does the Market own the land where the market is operated? If not, is the Market leasing space? Other agreement?
- Some things to consider when you have a contractual agreement related to the use and operation of the Market location:
 - What are your obligations under the terms of the contract?
 - Which is responsible for replacement costs/damages in the event that an Act of God occurs?
 - What rights to you have to seek full performance of the contract?
 - When does the contract terminate?

Contracts

- If you are overwhelmed by the language or unsure about the language in a contract, don't hesitate to ask an attorney to review it for you.
- If the other side had an attorney invest time and money into writing the contract, then it might not be a bad idea for you to ask your attorney to read and review the contract and inform you of the risks and liabilities you might incur by entering into the contract.



Review: Contract/Lease Agreements



- Be aware of your rights and responsibilities.
- Understand the term or period of your lease/contract agreement.
- Always have a written lease agreement.

Premises Liability



- Insurance coverage?
 - What are your policy limits?
 - Read and understand your policy limits and coverage.
- Responsibilities might include:
 - Keeping common areas free of potential hazards.
 - Warning visitors of potential hazards, such as wet spots, slippery areas, etc. using signs or yellow paint to identify such areas.

Farmers Market & Direct Marketing Activities

- Admission Tax – Inviting people to the market for special events for entertainment purposes may require you to collect an Admission Tax to be turned over to the State Dept. of Revenue.
- Licensing and permits – Certain direct marketing activities might require the Market or individual vendors to have a business license or permit; check with your local ordinances and regulations (city and county).



Regulatory Compliance: Selling Processed Food Products at the Market

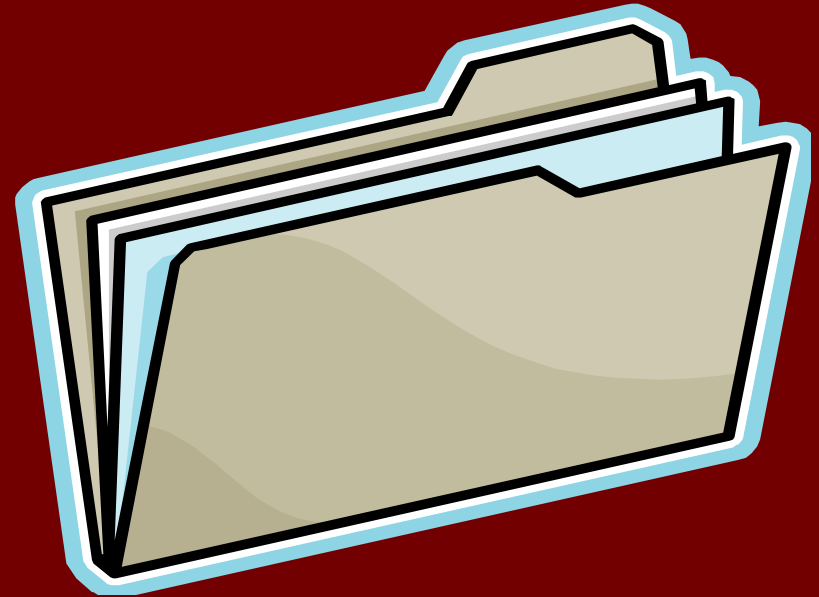
- Selling Meat & Dairy products – vendors must be compliant with State and Federal meat processing, storage (including temperature) and labeling requirements.
- Selling processed products – vendors need to meet the standards of the state regulations regarding the labeling and handling facilities of certain processed foods. (usually state department of agriculture and/or state departments of health have this authority).
- Selling ready to eat products – keep in mind that selling ready to eat products such as donuts, sandwiches and other foods might require additional or different permits from state or local health inspectors. (sometimes know as special event permits, food services permits, etc.)
- Collection of Sales Tax – vendor should probably be responsible for remitting sales tax to the State Dept. of Revenue for the sales of processed items. Some exemptions apply for unprocessed agricultural products.

Educating Vendors About Food Safety & Regulatory Compliance.

- It is probable that you will come across some vendors who are unaware of some of the requirements for selling processed homemade food items to the public.
- What are the responsibilities of the Market Manager?
 - Ask the vendor to leave or remove the product? Might want to decide this in your policies and give copies of policies to all participating vendors.
 - Make arrangements for periodic educational programs for vendors, which might include meeting with state and local officials to review the current processed food requirements or having the state Dept. of Revenue do a presentation on collecting sales tax. Usually these officials are more than willing to come and speak to your group and they do not usually charge a fee for these services.

Written Rules and Policies

- Providing vendors with written rules and policies can help the market treat all vendors and shoppers in a fair and uniform manner.
- Goal: having a uniform set of rules can ensure all vendors are treated equitably and help the market to run more efficiently.



Example Rules or Policies

- "Pets must be leashed" or "Pets not allowed on the Market."
- "Vendors allowed to set up starting at 7 am and all vendors must exit their assigned space by 6pm."
- "Sale of meat products allowed" or "Sale of meat products not allowed at market."
- "All signs & displays advertising vendor products must have prior market manager approval"
- "Vendors are responsible for collecting and remitting any and all state and local sales tax associated with the sale of their products."

Tip the Scale in your Favor!

- Having an attorney as part of your business/market planning team can help you to anticipate and avoid potential problem areas down the road.



How do I find a good attorney?

- Local attorney in your home town.
- Lawyer Referral through the State Bar Association.



Questions????



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