



Episode 66: Leasing Land to Your Farm Business

Eva: Welcome to the Farm Commons podcast! Today we're addressing a very, very popular question we get from producers: *should I lease my land to my LLC?* This is such a great question as it uplifts the relationship between the landowner, the land, and the farm or ranch business. I'm here with Rachel to finally give all you inquirers the answer. Hi Rachel!

Rachel: Hi folks, I gotta say, I'm pretty excited to get into this topic. Let's settle this matter, right? I'm ready Eva!

Eva: Me too. Before diving in, I'm curious if you have thoughts on why this is such a popular question.

Rachel: I do, I do have some thoughts. Folks often have farmland and have an LLC ...but they aren't sure where what the relationship is there- separate or one and the same? These folks have heard about leasing land to the LLC and are wondering what that means and what that looks like. So they ask us, should I lease my land to my LLC?

Eva: You know, this is sounding a bit like a wild shouldism, which is what I call pieces of common advice or an implication something should be done because that's the way to do it without a clear reason for *why* you should do it... So to dispel this shouldism, we're here to reframe this and say, you can use an LLC to protect your land!

Rachel: Yes! That's exactly it. Leasing land to your the LLC can help you do that! We don't do it just because- we do it to help protet the land as a personal asset.



Eva: Can you give us a general overview of how that works? Take us a step back and cover the basics of how an LLC can protect farmland.

Rachel: Sure. Let's take an example. We've got Farmer Kale, who is farming on his own land and wants to form an LLC because he's interested in personal asset protection and eventually potential tax savings. Kale knows that to get these benefits from the LLC he needs to separate his personal assets from business assets.

Eva: I think the separation of assets is a concept most farmers can easily grasp where the tractor purchased for the farm business is kept as a farm asset where as the boat purchased for enjoyment on the lake is a personal asset. Those kinds of material assets are relatively easy to distinguish, but land is more challenging.

Rachel: Totally! Land is used for the business but it's highly personal. Which does Kale Choose -- is it a personal asset or a business asset? We know the land is titled in his name at the Registrar's office, likely because he bought it with a personal mortgage.....but should he change that?

Eva: I'd say the answer depends on his goals, so Kale is the only person who can answer this, really.

Rachel: Exactly, so let's walk through Kale's decision making process. If Kale wants it as a personal asset, then it's protected from business liabilities! Sounds great right? Also rings true with how Kale feels about the land: Personal legacy, identity with the land, lifestyle.

If Kale makes it a business asset, it would be EXPOSED to business liabilities. Sounds bad right? But recall that all our business assets are exposed to business liabilities and we use insurance to protect our business assets. So Kale can still



achieve protection. And he might chose to do that if he wants the land as an asset on the business balance sheet. He might have various reasons to do that, including being able to borrow against it as an asset.

Most folks like the first option better- the land as a personal asset speaks more to their values, and they can often still find ways to use land owned personally as debt collateral. But again, there's no single correct way to do this.

Eva: Super helpful to have the two options spelled out, including the values that can be wrapped up into the decision making process. Let's say Kale likes the first option- he wants it keep the land as a personal asset. Let's say Kale also recognizes the power of paperwork, right?? He knows he needs to formalize that relationship between the land and the LLC... And help us out with that Rachel, what IS that relationship??.

Rachel: We know the land is Kale's, we know the LLC uses it.... so how do we square that circle? It's a lease! A lease is the legal name for a relationship where one entity uses land they don't own right? That's what gives them permission to be on land they don't own. It's an agreement -- just as if Kale was using someone else's land, a neighbor up the road or a cousin's land. Kale already has this agreement with himself in his mind but no one else has proof of this! Not his lenders, not the IRS, and they might need paperwork proof! That's a written lease. Is that silly to create a written lease when it's you your person who is leasing to you your LLC? No, because written agreements help others understand what we're doing, also. It's a communciations tool.

Eva: Weird, yes, but still very logical to get this lease in writing. For our listeners who may be wondering what should go into a lease here are the basics for what generally needs to be included as applied to Kale:

The parties. The LLC is the tenant. Kale is the landlord. Kale is not both the tenant and the landlord.



The price. LLC is paying Kale. Kale is not paying himself. So how much should the LLC pay Kale?

Rachel: Eva I know youve got more elements of a lease coming, but I do want to interject here with a few words on selecting a price. Many farmers have asked if they can pay \$1 to rent the land for the and call it a day. there are reasons for LLC to pay less than market rate.

Kale may want to subsidize his farm LLC until it's on more stable financial footing.

Kale, personally, not as LLC owner, may not want extra reportable income. Income from rental of farmland is reported on a separate schedule.

While this is possible, there are good business reasons for the LLC to pay market rate:

On the flip side,It creates a more realistic business model. If the LLC needed to rent other land, the costing would provide a more accurate expectation of expenses.

Kale bears the expenses of the land, including paying taxes, insuring the property, and paying interest on the mortgage. Kale has costs he need to cover.

It's a deductible expense. If the LLC is looking to manage profit, this can be a useful tool.

Eva: Yes, thank you for those key insights into setting the price for the lease. For folks wondering how to find the market rate for land in your area, check out the National Agriculture Statistics Service and ask around in your community. See what land is being leased for per acre in your area to get an idea.



Rachel: Yep, and one more consideration about the price and that is if the LLC wants to pay MORE than market rate. This is risky. Because it's a deductible expense the IRS will not look kindly on an inflated rental value.

Eva: Oh yes, I'm glad you brought that point in Rachel. We're trying to manage risk here, not create more! To finish up our leasing basics, in addition to the parties and the prices, your lease agreement should also address:

The duration: Especially if the LLC has other members/owners, they may want some assurance that the price is locked in and that access is long term in the case Kale dies and the land passes to his successor.

Maintenance and Repairs: What does Kale need to take care of v. the farm LLC? Who has to bear the cost of replacing the well pump if it breaks? It's easy if it's just Kale making the decision but if it's not... It's not as easy!

Rachel: Yep, not all leases are this easy. When you're leasing from or to someone else there's much more to talk about.

Eva: Absolutely. In wrapping up here, we've got a couple of resources to help you move forward if you are interested in setting yourself up to manage your land as a personal asset by creating a lease. Check out our Leasing: Agroforestry workbook which is a comprehensive guide on long term leases and includes an annotated model lease. Skim through it for relevant details to simplify for your purposes.

Rachel: Folks can also check out the Farmers Guide to LLCs and the Farmers Workbook for Creating a Governance Document for setting up your LLC for maximum legal resilience.



Eva: The links to those 3 resources will be linked in the shownotes. As always, thanks for tuning in!

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