If you have decided to start an agricultural or food-based business, you may have felt overwhelmed by trying to decide what is needed to get your business started. This guide is intended to give you a starting point in determining what is need to successfully and legally start your business. In addition to deciding on a business activity and business entity, you should also consider whether you will need an Employer Identification Number, how you will finance your business, and how you will limit potential liabilities. Although this is not a complete guide, with the assistance of the resources cited herein, and competent legal counsel you should be able to establish an organized and successful small business.

**Type of Business Activities**

When deciding on a small agricultural or food-based business, it is important to decide the boundaries of the business's operations, this will allow you to determine what permits and registrations are required to operate your business legally. You may want to determine whether your business fits into any of the following categories, or if it can be categorized in more than one:

**Production**

This means the production of an agricultural product such as crop, or animal production. Typically a business will do more than just production, because it is necessary for the products to be sold into some market. There are no permits required on the state level for the production of animals or crops, however, local zoning issues should be addressed. Also if you wish to market your products as organic, specific requirements must be followed, as well as organic certification must be obtained.

**Processing**
This means the packaging, canning, preserving, freezing, fabricating, storing, or preparing food or drink items in any way, or the sale of food items, other than prepackaged nonperishable food items, such as snack foods, or canned foods. If your business will engage in any food processing, or serving it must be licensed as a Food Establishment with the Michigan Department of Agriculture and Rural Development (MDARD). Depending on the types of foods being processed, your business is subject to both state and federal regulations and inspections. It is also likely that you will need to operate your food processing business in a certified kitchen or facility. Your business must also comply with state and federal labeling laws. More information regarding the requirements for a Food Establishment in Michigan can be found at: http://www.michigan.gov/statelicensesearch/0,1607,7-180-24786_24812-81114--.00.html.

There is a possibility that your business may be exempt from some state licensing and regulations under the Cottage Food Law. If your business makes less than $15,000 per year and is processing foods determined to be non-potentially hazardous such as some baked goods, jams, and other specified items, the processor is not required to be licensed with the state and can process the food in a home kitchen so long as the food is sold directly to customers at farmers markets, roadside stands or other direct markets. The products may not be sold to retail stores; restaurants; over the Internet; by mail order; or to wholesalers, brokers or other food distributors who resell foods. For more information regarding the cottage food bill, including a list of items that qualify please visit the MDARD website at http://www.michigan.gov/mdard/0,4610,7-125-50772_45851-240577--,00.html.

**Distribution**

This means the transportation and/or storage of agricultural or food products. There are no regulations specific to the distribution of food products. Of course the food products must be handled, stored, and transported according to the regulations and restrictions mentioned in paragraphs above. Also you must comply with all Department of Transportation licensing requirements. It is also your responsibility to ensure that the driver of any vehicle is properly licensed to operate the vehicle.

**Retail**

This means that your business sells items directly to the public. As a retailer your business is responsible for paying the state of Michigan 6% sales tax on all items sold to customers. Your business must also be licensed with the state of Michigan to collect tax from customers. If your business intends to grow and sell starter plants from a nursery a Nursery Stock Dealer & Grower License might be necessary. More information about nursery plant requirements can be found at: http://www.michigan.gov/mdard/0,4610,7-125-1569_28953_28955-232136--.00.html.

If your business intends to sell food products your business might also be required to obtain a Retail Food Establishment License with MDARD. There are different requirements and regulations depending on what type of food products your business is planning to sell. Information regarding what type of licensing your business may be required to obtain can be found at: http://www.michigan.gov/documents/MDA_FoodEstablishmentLicensing_41803_7.swf

There are also different requirements for items sold at a farmers’ market, or road side stand. If your business plans only to sell whole, unprocessed fruits and vegetables, and or baked goods (or
other items that qualify under the cottage food bill) prepared by you, your business is exempt from food licensing requirements, so long as the business owner is present at the time of sale. If your business plans to sell processed foods of any kind, it may be necessary to obtain a Temporary Food Establishment License from MDARD. More information regarding farmers’ market food licensing requirements can be found at: http://www.michigan.gov/mdard/0,1607,7-125-1570-169339-00.html

Wholesale

This means that you sell your own goods, or purchased goods to other businesses who in turn will sell it to the consumer. The actual price of an item sold does not determine whether it is wholesale or not. The determining factor is whether you are selling your goods to the end consumer. As a wholesaler you are not required to pay sales tax on the items you sell. Also if you purchase items with the intent to resell them you are exempt from paying sales tax on those purchased items. All other requirements regarding food licensing previously discussed apply to wholesalers.

Services

Agricultural service based businesses can be a very broad spectrum of businesses ranging from farm services such as pesticide or fertilizer application, land working or harvesting operations to agri-tourism operations offering guests the “farm experience.” Each type of service may require its own unique licensing requirements, such as a pesticide applicators license from MDARD, but ultimately the basic principles behind each of these businesses is the same. A service-based business interacts with the customer in offering a specific service to them. As a service-based business you are exposed to a high risk of liability as a company. With chemical or fertilizer application for example you run the risk of destroying the property of another through negligence or mistake. You also run the risk of causing illness or injury to others through the application process. With agri-tourism, you run the risk of injury or illness to visitors of your facility. It is important that any service-based business be covered by adequate insurance to cover any potential harm caused by the businesses service.

Another important aspect of a service-based business is compliance with local and state zoning laws. These laws may regulate requirements for signage, parking availability, hours of operation, or sewage and wastewater protection. These regulations may differ by location, and type of business. You are responsible to ensure that your business is in compliance with those zoning regulations. Before beginning any sort of business operations it is a good idea to check with your local zoning office.

Each Type of Agricultural or food-based business is unique, and it is strongly advised that you seek the assistance of a professional to ensure that your business is in compliance with any and all licensing requirements. The State of Michigan Has provided several good resources to assist you in determining what types of licenses are needed to run your specific business. One of those resources is the Michigan Business One Stop Simulator. This resource allows you to go through the steps of licensing your business without having to pay any fees or fill out all of the paperwork. It may help you to get an idea of what specific licenses may be necessary for your business. The simulator can be found at: http://www.michigan.gov/business/0,4539,7-255-52457---,00.html.
Another great resource to help you determine what you need to start up an agriculturally based business is the Growing Michigan's Future guide. This guide is a downloadable PDF brochure covering several different agriculturally based businesses and the steps that you should take to be successful at starting your own business, including necessary licenses. A link to this guide can be found at: [http://www.michigan.gov/mdard/0,4610,7-125-1570---S.00.html](http://www.michigan.gov/mdard/0,4610,7-125-1570---S.00.html). As always these guides are not intended to take the place of competent professional advice. Professional assistance should be sought when setting up any business.

**Business organizations**

There are many different types of business entities; when choosing what type of business entity you want to do business under you should consider both the potential advantages and disadvantages of that particular business entity. First you must consider what the purpose of your business is, whether it is to gain profit, or for a non-profit cause. Next you should consider whether you will be doing business by yourself, or if your business will have more than one person involved. Then you should consider the potential liabilities to yourself, and others involved in the business. Finally you should consider the potential tax advantages or disadvantages of the different business entities that you can do business under.

**Sole Proprietor**

A sole proprietorship is a business that is owned by one individual. It is the simplest of all business entities. If you do not officially register your business in any manner, your business will be considered a sole proprietorship. You may also create a sole proprietorship by registering a business in your name in the county clerk’s office of every county where you do business. If you want to do business under another name other than your own, you must file a Certificate of Persons Conducting Business under Assumed Name with the county clerk.

**Liability**

Although a sole proprietorship is the simplest business entity to create, it also carries the most amount of liability for the owner of the business. A sole proprietorship cannot own real or personal property as a business, so any property that is used for the business must be in the business owner’s personal name. This means that the business owner is personally liable for all debts or other liabilities of the business. If the business is not properly insured, or does not have enough assets to cover a debt, the personal property of the business owner must be used to pay the debt. Further, the business name is only protected within the counties that it is registered, and not the whole state. This means anyone could use your business name within the state, so long as it is not in the same county.

**Taxes** An owner of a sole proprietorship includes all business gains and losses on her individual tax returns. This may leave the owner susceptible to self-employment tax.

**Is it for me?** A sole proprietorship is probably a good fit for small startup businesses with very few assets, and very little risk of liability. The simplicity of setting up and managing a sole proprietorship is probably the most attractive element of it, however, it offers no personal liability protection. This entity may work for farmers who produce non-food crops, or non-potentially hazardous food crops. Of course there is always a risk for liability in any business, but some of this
risk may be eliminated through insurance. It is possible to start your small business as a sole proprietorship and change it to another business entity as your business grows.

**General Partnership**

A general partnership occurs when two or more individuals begin a business together, typically each person contributes something to the partnership. A general partnership should have a partnership agreement between the partners. It is not a requirement that the agreement be in writing, but it is highly recommended that it is. The partnership agreement should lay out what each partner's responsibilities are within the business, and how each will operate. The partnership agreement is a legally binding agreement between the partners in the case that something goes wrong in the future. If you do not register your joint business, a general partnership will result. A general partnership can also be formed by filing a Certificate of Copartnership, or a Certificate of Persons Conducting Business under Assumed Name, with the county clerk's office of every county where you do business.

**Liability** Liability for a general partnership is very similar to that of a sole proprietorship, in that there is no liability protection for the partners' personal assets. The general partnership also adds an additional level of liability; each partner is jointly and severally liable for all of the debts and liability of the entire business. This means that if the business were unable to pay its debts, and your partner were unable to pay her part of the debt, you would be forced to pay all of the debt from your personal assets. Further, each partner has the power to act as if she were the sole owner of the business, even entering into contracts without the consent of the other partners. Each partner is then legally bound by those contracts, potentially exposing each partner to unwanted liability.

**Tax** The general partnership is basically viewed as two or more sole proprietors, unless otherwise stated in the partnership agreement; the partners will share the profits or losses equally and report their share of the profits or losses in her individual tax return. If the partnership agreement stipulates unequal division of the profits or losses then each partner will report her share under the agreement on her individual tax return. Each partner may be subject to self-employment tax.

**Is it for me?** Similar to a sole proprietorship, a general partnership may be considered for a small start-up business with limited assets and very little potential liability. There is an added danger, however, with a general partnership in that you are personally liable for the actions of your partners. Although the general partnership has the benefit of being simple to set up and maintain, the great potential for liability should be seriously considered by anyone thinking to do business under a general partnership.

**Limited Partnership**

A limited partnership consists of a business with one or more general partners, and one or more limited partners in the business. In this business structure the general partners are personally liable for the debts and liabilities of the whole partnership, but the limited partners are not. This is typical when one or more partners wish to invest in the company, but do not wish to share in the liability of the general partner. The general partners are typically the managers of the business. A limited partnership is created by filing a Certificate of Limited Partnership with the Michigan Department of Licensing and Regulatory Affairs (LARA).

**Liability** General partners in a limited partnership have joint and several liability just as in a general partnership, although it is possible to have only one general partner, thus limiting the liability only to your own actions. Limited partners are not liable for any debts or obligations of the
partnership beyond their personal investment. Thus if a limited partner contributed $1,000.00 to the partnership, that is the extent of her liability. Typically limited partners have very little, or no control over the management of the business, however, if a limited partner takes an active role in the management of the partnership, or acts in any way as a general partner, that limited partner may have the same liability as a general partner.

Taxes A Limited partnership may be taxed similar to a general partnership, where each partner is taxed according to their share of the profits or losses on their individual tax returns. The General partners may be subject to self-employment tax. The limited partners on the other hand can avoid being subject to self-employment tax by not participating in the day to day operations of the business.

Is it for me? The limited partnership is for any business who wants the benefit of partners, either for financial value, or other assets, but also wants to limit liability. This entity may be an option for a farming or food operation where the general partner is managing the operation and the limited partners are providing capital or other hands-off support. The general partner is then able to limit the amount of liability she holds to only her own actions, and the limited partners are shielded from liability. The general partner, however, is still liable personally for the entire business just as a sole proprietor is. This option may be a fit if the general partner needs help from others to get her business off the ground.

Limited Liability Partnership (LLP)

A limited liability partnership is a partnership where no partner is responsible for the acts committed by another partner, or any other employee, except those who are directly under her supervision. This form of partnership is typically used by professionals who want to share office space and staff, but do not want to share any liability with their partners. A LLP is formed by filing a Certificate of Copartnership, or a Certificate of Persons Conducting Business Under Assumed Name with the county clerk’s office in every county where you do business. Then you must register the limited liability partnership with the Michigan Department of Licensing and Regulatory Affairs (LARA).

Liability Although each partner in a limited liability partnership is jointly and severally liable for the obligations of the LLP, each partner is typically not responsible for any debts or liabilities caused by the misconduct of another partner.

Taxes A limited liability partnership is taxed the same as a general partnership.

Is it for me? The LLP may be beneficial to businesses with partners who all take on a substantial role in the business. The LLP essentially eliminates liability for another partner’s acts, although each partner is still jointly and severally liable for the general debts or liability of the business as a whole. Growers who want to share land, crops, employees, etc. may want to form a LLP, thus protecting them from the negligent acts of their partners.

Limited Liability Limited Partnership (LLLP)

The LLLP is a fairly new legal entity, and is not yet recognized in the state of Michigan. In general the LLLP would provide liability protection to each member up to the amount of their personal contribution to the partnership, and limit liability of the partnership to the business alone (similar to a corporation). This entity is mentioned only to make you aware that at some point in the future the LLLP may be recognized in Michigan, and may be an option for your business.

Limited Liability Company (LLC)

The limited liability company has become one of the most popular business structures for both agriculturally based business as well as businesses in general. The LLC is a sort of hybrid structure, it combines the flexibility and tax benefits of a partnership, and the liability protection of a
corporation. An LLC is formed by filing the Articles of Organization with LARA. A LLC must also file a statement with LARA each year. Failure to file the annual statement will cause the LLC to no longer be in good standing after two years.

In an LLC owners are called members. An LLC can either be member-managed, or manager-managed. A member-managed LLC can be managed by all the members, similar to a general partnership, or it can be managed by a select group of members, similar to a limited partnership. A manager-managed LLC hires or appoints an individual to manage and make decisions for the business. Most small businesses prefer a member-managed scheme because all members have the ability to decide the direction of the business. Large businesses prefer a manager-managed scheme because it simplifies the decision making process, which could be complex for a large entity. Each LLC should create an operating agreement between the members setting up which scheme of management is to be used, and establishing rules and limits for decision-making members. The operation agreement should be approved by all members.

**Liability** a limited liability company offers limited liability protection to its members. Each member of an LLC is only liable up to the amount of their individual investment for the debts and liability of the business. Generally members are not personally liable for company debts.

**Taxes** Members of an LLC are taxed similarly to a general partnership. Each member is taxed on their share of the profits or losses of the business in their individual tax return.

**Is it for me?** The LLC is a great business option for almost any business. The disadvantage of the LLC is the added amount of paperwork required each year, but the benefits in regards to liability protection and tax benefits make it a great option. The LLC should be considered by any agricultural, or food-based business because of the liability protection it offers. Besides not being liable for the acts of other members, each member is only liable up to their own contribution for the company as a whole. Because of the amount of paperwork involved in establishing and maintaining a LLC it may not be the best option for small, low risk start-up businesses, but may be an option to consider as their business, and risk of liability grows.

**Corporation**

A Corporation is a group of individuals (or shareholders) who create a separate legal entity in which they each have an ownership interest. A corporation must have shareholders, and must have on record the amount of ownership each shareholder has. The corporation is an entity completely separate from its shareholders, and unlike most entities does not die with the original shareholders. Because the corporation is completely separate from its shareholders it offers superior liability protection. Although the corporation entity provides unsurpassed liability protection to its shareholders, the process for establishing and maintaining a corporation is tedious, and the shareholders are subject to double taxation. Typically the corporation entity is not a good fit for small businesses, and is usually only used by the largest of companies. A corporation is created by filing the Articles of Incorporation with LARA. A corporation must then file an information update with LARA each year. Failure to file the annual update will result in an automatic dissolution of the corporation.

A corporation is managed by officers and/or directors who are elected by the shareholders. The shareholders establish how the corporation is to be managed by establishing bylaws, which the officers and/or directors must follow in the management of the company.

**Liability** Shareholders of a corporation have limited liability protection up to the amount of their investment in the company. Directors and officers can only be held liable for their personal wrongful action.
Taxes  Corporations and their shareholders are subject to double taxation. The corporation itself, as a separate entity, is subject to taxation on its earnings. Shareholders are then subject to individual tax on the income earned from the corporation.

Is it for me? Although corporations offer unsurpassed liability protection, their complexity and cost of operation don’t make them a great option for most small agricultural and food-based businesses.

‘S’ Corporation

An ‘S’ Corporation is a small corporation that enjoys special tax advantages. The ‘S’ Corporations takes advantage of the superior liability protection of the corporation, but is given tax status similar to an LLC. An ‘S’ Corporation is created just as a corporation is by filing the Articles of Incorporation with LARA. It achieve ‘S’ Corporation status a corporation must:

- be a Domestic Corporation
- have no more than 100 shareholders
- only have one class of stock
- not be an insurance company, domestic international sales corporation, or a non-qualified financial institution
- not have a shareholder who is not an individual (no partnerships, LLC’s, or nonqualified trusts as shareholders)
- not have a shareholder that is a nonresident alien

Once it is determined that a company qualifies for ‘S’ Corporation status, the corporation must file a Form 2553 Election by a Small Business Corporation with the IRS to receive ‘S’ Corporation tax status. An ‘S’ Corporation is run and managed just like a regular corporation. More information regarding establishing an ‘S’ Corporation can be found at: http://www.irs.gov/businesses/small/article/0,,id=98263,00.html.

Liability protection for an ‘S’ Corporation is identical to that of a regular corporation.

Taxes If an ‘S’ Corporation meets the requirements established by the IRS, the corporation can receive pass-through status, meaning that the shareholders are taxed similar to an LLC. The corporation is not taxed, but the shareholders are taxed according to their individual profit or loss from the corporation on their individual tax returns.

Is it for me? The ‘S’ Corporation might be a better option for small businesses than the general corporation, and most Michigan based agriculture and food-based businesses could probably qualify. The complexity of operating and maintaining a ‘S’ Corporation, however, may deter most small businesses.

Nonprofit Corporation

A nonprofit corporation is a business entity established specifically for the purpose of serving a public need. A nonprofit is established and maintained in the same way a regular corporation is by filing the Articles of Incorporation with LARA, and annual information updates, but the nonprofit must state a specific purpose for its existence, including the public need it is serving. A nonprofit can earn profits, but any profits earned by the nonprofit must be utilized for its nonprofit purpose, and when the nonprofit is dissolved, any assets must be dispersed to other nonprofits. Unlike in a regular corporation where shareholders can earn dividends from the corporation’s profits, no member of the nonprofit may benefit privately from the income of the nonprofit. Nonprofit status also opens up the possibility of receiving capital from charitable foundations and other organizations.
Nonprofits are managed and operated similar to a regular corporation. All employees, directors and officers may be paid, but their salaries must be reasonably based on the standard salary for the type of job they perform. Directors are typically not paid.

**Liability** protection is similar to that of a corporation because the nonprofit corporation is not technically owned by any individual, therefore there is no liability for investors. Volunteer officers and directors must make sure that the nonprofit will indemnify (or assume responsibility) them for any liability caused by their duties in those positions.

**Tax** Nonprofit Corporations are taxed at the standard corporate rate unless they are granted tax-exempt status by the IRS. Most Agricultural nonprofits are tax-exempt. Information regarding tax-exempt status requirements can be found at: [http://www.irs.gov/charities/nonprofits/content/0,,id=132157,00.html](http://www.irs.gov/charities/nonprofits/content/0,,id=132157,00.html).

**Is it for me?** If your organization has a specific public interest, such as a community development, or preservation organization, this might be a good fit for you. If the main goal of your business is to make financial profit, this entity is not for you. It is also important to note that a nonprofit can earn profits, but those profits must be utilized for the nonprofit’s purpose. Therefore, if you are a religious or community development organization who has established an organic garden, you may sell the produce from the garden if you wish, but the profit made from the garden must be used for the public interest purposes of the nonprofit.

**Cooperatives**

Cooperatives are groups of individuals or businesses who come together to form a working group. The group then pools its resources to assist in marketing, and development of the group as a whole, typically by requiring a percentage from their members’ sales. Co-ops can be a great benefit to small groups who generally would not have the resources to market on their own. Typically a cooperative has an organization style like a corporation where there is a director or group of directors who manages the everyday functions of the co-op. Bylaws, or regulations must also be decided on and put in place. Each Co-op must incorporate. In Michigan Co-ops typically take on the legal entity of a corporation with all the same requirements for establishing and maintaining. A co-op must also include the word cooperative or co-op in its name in order to be recognized as such. For a more complete guide of how to establish a co-op visit: [http://www.rurdev.usda.gov/rbs/pub/cir7/cir7rpt.htm](http://www.rurdev.usda.gov/rbs/pub/cir7/cir7rpt.htm).

**Liability/Tax** Liability and tax information is typically the same as any corporation, with the exception that some agricultural co-ops may receive tax-exempt status.

**Is it for me?** There are definitely advantages to belonging to a co-op, including an established marketing group, available capital, and other member perks, but there are also disadvantages. Many Co-ops are very large organizations, and many times their smaller members do not have a lot of influence on decision-making. Also most co-ops require some percentage of your profits in order to run their operations. Whether to belong to a co-op is a very fact intensive decision dependent upon the organization itself, the products at issue and many other aspects. As with the decision to enter into business with any other individual or organization, you should consider all aspects of the situation before making a decision.

**Triple Bottom Line Companies**

Triple Bottom Line Companies (3BL) are not recognized in the state of Michigan. 3BLs are a very new type of business entity that has been recognized in a minority of states, but is not recognized by the federal government. 3BLs are intended to be a hybrid business entity crossing the nonprofit and for-profit business models. The idea is that the company is held to more than one accounting practice, therefore the company not only is responsible to make profits but also is responsible socially. The three bottom lines are typically referred to as the three 'P's' People,
Planet, and Profit. Thus a business operating as a 3BL is responsible to show that they are achieving all three of these objectives. Because this business entity is only recognized in a minority of states and not yet by the federal government, there is not yet any uniformity as to the requirements necessary for a business to report success under the three bottom lines. Although there is conflict regarding the benefit of this type of business entity, many companies have opted to adopt a sort of 3BL business model setting their own goals of what they will do in each category. Although these companies are not legally operating as 3BLs, they are changing their business practices to make more of a difference socially. Although in Michigan you cannot legally operate as a 3BL, it is possible to operate your business in a socially friendly way.

**Tax Identification Numbers**

One question that is commonly asked by new businesses is whether they need to get an Employer Identification Number (EIN), also known as a Tax Identification Number. An EIN is a special, federally filed, tax identification for your business. There are very few businesses that are not required to have an EIN, although no one is prohibited from requesting one. The EIN is used when filing the business’s taxes much like an individual would use their Social Security Number for tax identification. The EIN is to be used when filing both state and federal business taxes. All Corporations, Partnerships, Non-Profits, and any businesses involved in a Farmer’s Cooperative are required to have an EIN to file their business’s tax returns. Also, all businesses with any employees are required to have an EIN. Therefore, Sole Proprietorships are not required to have an EIN if they have no employees and are not involved in a cooperative. An EIN can be obtained for free from the Internal Revenue Service (IRS), and can be done in a day. You can apply via internet, phone, mail, or fax. For more information on how to apply for an EIN you can visit the IRS website at: [http://www.irs.gov/businesses/small/article/0,,id=97860,00.html](http://www.irs.gov/businesses/small/article/0,,id=97860,00.html).

Additional Michigan resources regarding business entities, their advantages, and any filing requirements and fees can be found at: [http://www.michigan.gov/lara/0,4601,7-154-35299_35413--,00.html](http://www.michigan.gov/lara/0,4601,7-154-35299_35413--,00.html).

**Crowd-funding**

One of the many challenges a small business faces at start-up, and when attempting to expand, is the availability of capital to fund their venture. Unfortunately there are limited ways for a small business to get funding other than bank loans, which may be impossible to get, or not conducive to your business model. One advantage of the corporation business entity is that you can have several shareholders who purchase an interest in your company in exchange for a return on their investment in the form of dividends. Unfortunately the requirements and complexity of the corporation entity makes it impossible to implement for most small start-up businesses.

Small businesses may attempt to receive donations from individuals, as long as you disclose to donees that the donation is for a for-profit business, and as long as it is accounted for properly in your annual tax return. However, it is not likely that a business can receive all of the funding needed through donations. In November, 2011 the United States House of Representatives passed a bill that would allow crowd funding for small for-profit businesses. The bill would allow businesses to accept small investments up to $1,000,000.00 total funding from several individual investors in exchange for security notes. The bill also set regulations on how much a person was able to invest, as well as disclosure requirements for the startup business. At the time this paper
was published the crowd-funding bill was still awaiting approval by the Senate. Although it does not seem likely at this point that the bill actually proposed by the house will pass the senate and become law without substantial changes, it does seem likely that some form of crowd-funding legislation will emerge in the near future. Small businesses looking to raise capital through crowd-funding should keep a close eye on the issue, and take advantage of the legislation when it becomes law. The bill passed by the House in November, 2011 is referred to as H.R 2930.

Limiting liability through the use of more than one business entity

It is possible to limit personal liability through the use of more than one business entity, but it must be done very carefully, and you should consult a professional to assist in establishing the separate entities to ensure that they are both viewed as legitimate. Often times one individual may operate a business that includes more than one category of operation, for example Suzy, an apple farmer, may also operate a cider press and distribute cider for wholesale or retail sale. She may fear that if a consumer sues her she may not only lose her cider press business, but also her entire orchard operation. In order to limit her liability she may choose to establish two or more separate business, one to grow the apples, and the other to operate the cider press, and possibly even a third to run her distribution business. This is a legal solution to limiting your business’s liability, but it must be done legitimately, and preferably with the assistance of legal professionals. Not all legal entities can be used to shield the businesses assets. A sole proprietorship or general partnership cannot be used, because these entities cannot own personal or real property, therefore the individual owners are personally liable for all debts or liability, and any of their property can be used to satisfy the debts of the business, including the assets of all other businesses.

The most common legal entity used to shield assets is the LLC. Because the LLC limits the owner’s personal liability, the only assets vulnerable to liability are the assets of the business being sued. Therefore Suzy may lose her distribution, or cider press business if one of them is sued, but her farm is protected along with her other assets.

However, merely setting up separate entities is not enough. The businesses must be operated completely separate from each other including separate accounting, operation, and use of assets. For example, if Suzy wants her separate businesses to be recognized as legitimate, she cannot use the same trucks and tractors for both her orchard farm, and her cider or distribution business. She also has to “sell” her apples from her orchard to her cider business; this includes transferring money from the cider business to her orchard business. It is important that all money be kept separate, and be accounted for properly. It is also important that employees of one business not work for any other business. If one employee does work for both businesses, a strict accounting of hours must be kept and the employee must be paid from the separate accounts. In sum, the greater separation between her businesses Suzy can achieve the better off she will be if the legitimacy of her individual businesses are challenged in court. Even if Suzy does all she can to separate her businesses, it is still possible that a court finds that the businesses are not legitimate, leaving all of Suzy’s businesses subject to liability. This is clearly a very complex area of law and a legal professional should be consulted.