Managing Risk for Value Added Endeavors

October 18, 2019

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Considerations before beginning a value added endeavor to an existing business

Maintaining the Strength and Health of your Initial Business

- Is your business established and will it provide a strong base for your value added endeavor?
- Are your customers excited about the endeavor? Have they committed in some way to supporting the endeavor? Is there potential for your market to view the endeavor as a distraction from your existing business?
- Will you be able to maintain the quality of both businesses? How?
- Is your existing business financially strong enough to support the start of your value added endeavor or will you need to borrow money?
- Do you have TIME to devote to both businesses? Do you have a clear view of how much time the value added endeavor will take? What are the ways that you will manage your time? Will you need to add employees or shift what you are doing in your existing business in order to get everything done?

Maintaining your Desired Quality of Life

- Is your family/personal support system on board? Can you integrate your value added endeavor into your personal daily life?

Steps in Risk Management

1. **Determine Risk**
2. **Assess Risk**
3. **Manage Risk**

1. The first step in managing risk is **determining risks.** Worriers! It's your time to shine! We get to imagine all the things that could go wrong. It's best to imagine bad things happening in all aspects that your venture will touch.

- Food Safety
- Financial
- Environmental
- Health
- Business
- Time
- Quality of life

No risk is insignificant. Health inspectors, insurance folks, and parents are great at worrying and determining risks.

2. In **Assessing Risk** we get to calm our fears a bit and ask

- How likely is the risk?
- What type of impact would they have?
- How much urgency is involved?

From here we can focus on likely risks that would have the most impact and are the most urgent.

3. Managing Risk is setting up solutions and plans of action for potential risks. Risk Management allows us to be proactive instead of reactive.

Steps to managing risk:

- evaluate risk
- determine course of action
- put plan in place
- monitor and review
- document all actions

Examples of Risk Management include:

-learning about and being in compliance with FSMA
-GAPGHP training and compliance
-insurance

Celebrate risk management as self-care and supportive of your mental health. Our indulging in some worrying will make our products of better safety, quality, and consistency. It will improve our relationships with our inspectors as well as customers and vendors. It will improve our quality of life. We will be less likely to have unexpected challenges throw us out of our flow.

RESOURCES:

- Land Stewardship Project Journey Person Course
- FSMA Food Safety Plan Builder
- Food Venture Risk Management Plan - Penn State University Extention
- Local health department and inspectors

<u>Protection from lawsuits</u>

- Four main legal risks:
  - **Premises liability**—someone comes to the farm, gets injured, and sues the farmer
  - **Harm from food sold by a farmer**—someone buys food, gets sick, and sues the farmer
  - **Nuisance lawsuits**—if a farming activity interferes with another person's use and enjoyment of his or her property, the farmer could be sued. These are called nuisance lawsuits.
  - **Debtor-creditor lawsuits**—a farmer is unable to pay a debts and a creditor sues the farmer

<u>Two Main Legal Strategies to Minimize Risk</u>

1. **Form an Entity**

- Basic idea: farmer creates a legal entity that owns property, sells at a farmer's market, etc, and the assets of that entity become liable for any risk (not the farmer's personal assets)
- Not guaranteed protection
    - Piercing the Corporate Veil—If someone becomes quite sick, there is a danger that the existence of an entity will provide little protection
    - May Not Protect in Lending Situations—Unless a farmer has a very large operation with lots of assets, creditors are likely to ask the farmer to be personally liable for the debt
- There are a variety of entities (corporations, LLCs, LLPs, etc)—laws differ state-by-state
- **RESOURCES:**
    - Look for resources at state offices (for example, in MN, the Office of Employment and Economic Development publishes an annual guide to starting a business (https://mn.gov/deed/assets/a-guide-to-starting-a-business-in-minnesota-37th-ed-2019_tcm1045-155254.pdf)
    - Farm Commons has a Farmer's Guide to Business Structures (https://farmcommons.org/resources/farmers-guide-business-structures)

2. **Obtain Insurance**

    o In general, insurance does two things: (1) the insurance company accepts liability of something goes wrong and is within the terms of the policy; and (2) the insurance company provides legal representation if a farmer is sued

    o Types of insurance

    § Property

    § Liability—premises liability, commercial general liability

    § Crop/Livestock

    o Ensure you are covered for the risks that matter to you

    § Work with your agent, make sure they understand your farm, and ask questions

    · Where are the covered risks and exclusions in the policy?

    · Does coverage change if you lease land?

    · What is the process for if/when you need to report a loss?

    · What if you acquire new property--how do you update policy?

<u>Managing Risk in Daily Operations of Farm</u>

- **Contract basics**
    - An agreement between two parties
    - Disputes usually arise out of misunderstandings, not intentional wrongdoind
    - Putting contracts in writing helps to avoid misunderstandings
        - All states have laws that dictate which contracts must be in writing
        - In general, the following types of contracts should be in writing
            - *Contract for sale of goods worth $500 or more*
            - *Contract for sale of interest in land (mortgage, etc)*
            - *Contract that cannot be completed within one year*

- **Importance of record-keeping**
    - Applying for USDA programs (disaster relief, loans, etc)
    - Some insurance (for example, Whole-Farm Revenue Protection)
    - If the farmer ends up in court

Navigating the Layers of the Law

- There are many layers to the law, and at times a farmer can be subject to all of them
    - Federal (ex: FSMA Produce Safety Rule)
    - State (ex: Cottage Food Laws)
    - Local (ex: permits, licenses, zoning rules, etc)

FSMA

- Produce Safety Rule (final rule in place Jan. 26, 2016)
    - Exemptions
        - Farms with total sales of $25,000 or less
        - Produce not governed by the Product Safety Rule
            - Produce that is "rarely consumed raw" (there's an exhaustive list)
            - Produce for personal or on-farm consumption
            - Produce that is not a raw agricultural commodity
                - Food grains, including barley, dent- or flint-corn, sorghum, oats, rice, rye, wheat, amaranth, quinoa, buckwheat, and oilseeds (e.g. cotton seed, flax seed, rapeseed, soybean, and sunflower seed)
                - Produce destined for commercial processing where there is a kill step.
- **RESOURCES:**
    - https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-produce-safety
    - The website for your state's department of agriculture will likely have FSMA-specific information

Cottage Food Laws

- Narrow laws—they provide exemptions to certain food code regulations, but only for some farmers, and often under very limited circumstances
- Exist in varying form in every state but New Jersey
- Be sure to understand:
    - What you can make and sell
    - Where you can make it
    - How you can sell it
    - How much can you sell (ie: is there a sales cap?)
    - What other laws must you still comply with

- **RESOURCES:**
  - https://forrager.com
  - Harvard Law School Food Law & Policy Clinic 2018 report: Cottage Food Laws in the United State (https://www.chlpi.org/flpc-releases-cottage-food-laws-united-states-report/)