Should Your Ranch Be Incorporated Or Not?
TSCRA Annual Convention – School for Successful Ranching
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Note: for our purposes, the term "incorporated" includes creation of any formal legal entity such as a corporation (S or C), limited liability company, or limited liability partnership. General partnerships are not incorporated.

Advantages

- Liability Protection – This term can apply to several contexts.
  - The creation of a formal legal entity will typically serve as a shield for your personal assets that are not held by the entity, in the event valid claims are made against the entity**.**
  - Generally speaking, entity owners are not personally liable for an entity's debts and obligations
  - Individuals serving in management of an entity are generally not personally liable for the entity's debts and obligations, so long as they act pursuant to the law and applicable company regulations.
- Insurance Coverage
  - Practically speaking, an entity's liability protection extends as far as that entity's insurance coverage.
  - Each entity should have appropriate coverage (property, commercial liability, other specific lines); inform your agent periodically of any changes to your operation, to ensure planned activities are covered events
- Taxes
  - In some situations, conveyance of certain assets into an LLC can offer estate tax advantages, by utilizing "discounting" and other rules regarding valuation of assets and assets owned by entities.
  - Expenses that are related to the business are tax deductible.
  - Income from S-corporations, limited liability companies and limited liability partnerships is treated as pass-through income and is only taxed once at the individual level.
- USDA – "Farm Program" Payments
  - This can be an advantage to incorporating in some situations.
  - Each legal entity is deemed to be a "person" and, provided that entity otherwise meets the eligibility determinations that would apply to a natural person, will be eligible to receive farm program payments, up to one "payment limit" for a person in each respective USDA program with a separate payment limit.
    - Dollars received by an entity are "attributed" to entity owners, such that the natural person owners are allocated a proportionate share of the payments of each entity owned, up to payment limit

Disadvantages

- Property Rights Considerations
  - Once real property is conveyed to an LLC, it becomes an asset of the LLC. The prior owner no longer has the right to partition (if it was previously held in cotenancy) or the right to transfer the property via will or other estate planning instrument. Instead, the owner must transfer an interest in the entity.
  - The entity must have separate bank accounts and recordkeeping from personal assets. Mixing entity assets with personal assets (including using entity assets as personal collateral) may void liability protection.
- Liability/Insurance Coverage
  - Without a liability shield in place, personal actions can incur liability and personal assets can be at risk.
  - Umbrella policies must be considered and purchased.
- Taxes
  - Counsel of a CPA should be included in decision-making process to avoid unintended tax problems
  - Certain entities have specific tax requirements that may complicate entity finances. Ex: C-type corporations must pay separate income tax; partnerships and LLCs may not be able to pay a true "salary" to an owner
- USDA – "Farm Program" Payments
  - This can also be a disadvantage to incorporating in some scenarios.
  - Each formal legal entity, otherwise eligible for program payments, can only receive dollars up to one "payment limit." Ex: if entity is owned by husband and wife, or a general partnership, and each party is deemed "actively engaged in farming," then, after attributing entity's farm program dollars to the two owners, husband and wife together receive one payment limit, instead of each potentially receiving one payment limit (two total payments)

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