

# Legal issues in setting up small-scale biodiesel production organizations



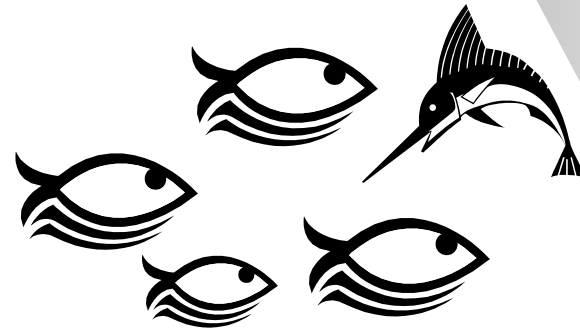
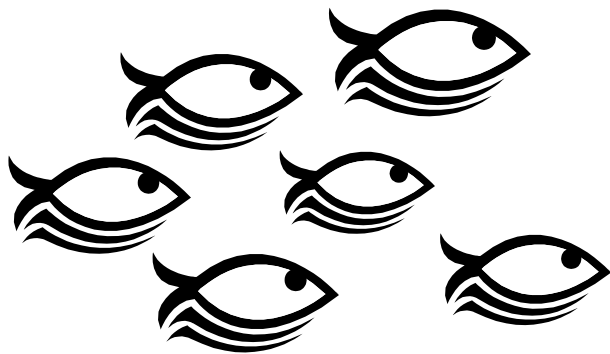
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# Cooperative



v.

# LLC



# Limited Liability Company



- A limited liability company (LLC) is an unincorporated association having one or more members. The LLC can be managed by managers or members. Managers could be compared to the board of directors, and members are like the shareholders of a corporation. In order to be a member of a limited liability company, a contribution such as cash, property, or services rendered must be made.
- The internal affairs of the LLC are governed by operating agreements that may be oral or written. These operating agreements are comparable to the bylaws of a corporation. The internal affairs are managed by the members, unless the articles of organization state that they shall be managed by a manager(s)

# Cooperative



- “Cooperative” means a cooperative corporation which is subject to the provisions of the Oregon Cooperative Corporation Act.” [1957]
  - It is a legal entity created under Oregon statute by submitting articles of incorporation.
  - It is owned by its members which can be compared to shareholders.
  - It acts as a single entity.
  - It is managed by a board of directors

# Cooperative Difference



- User owned
- User controlled
- User benefited

# Formation Factors



- Personal Stakeholder liability
- Means of formation
- Duration of business structure
- System of governance
- Taxation
- Securities registration
- Antitrust limitations



<u>Factor</u>	<u>Cooperative</u>	<u>Limited Liability Company</u>
Personal stakeholder liability	Members are typically afforded same limited liability protection afforded to shareholders in general business corporation.	Similar to general business corporation in that investors are shielded from personal liability.
Means of formation	Typically, expense and formality similar to forming a business corporation. Additional expenses and formality required to be recognized under Sec. 521 of Internal Revenue Code.	Organization may be expensive and complex. Filing articles of organization with the Secretary of State, and developing a written operating agreement.
Duration of Business Structure	Unless the certificate of incorporation specifies an expiration date, a cooperative will have perpetual existence.	Exists until such time when articles of organization are canceled. Once formed, exists indefinitely.
System of governance	Management is by a Board of Directors. Control is exercised by members who vote for directors.	LLC members can either designate "managers" or assume management responsibility themselves.
Securities registration	Exempt cooperatives enjoy a unique status under the securities laws and are exempt from registering securities regardless of the number of investors or amount of investment.	If securities are issued, entity may be required to register under provisions of state and federal securities law. Entity may qualify for exemption for such cases as: private placements, limited offerings or small offerings
Antitrust limitations	Under the Capper-Volstead Act and Clayton Act, agricultural producers may act together to collectively market products and enjoy limited immunity from anti-trust laws.	No immunity from anti-trust laws.

# Summary

- Co-op or LLC?

It depends



# Where to Get More Information

- Business Referral Center  
Public Service Bldg, Suite 151  
255 Capitol Street NE, Salem, OR 97310-1327  
503-986-2200    [www.filinginoregon.com](http://www.filinginoregon.com)
  
- Mike Weber  
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