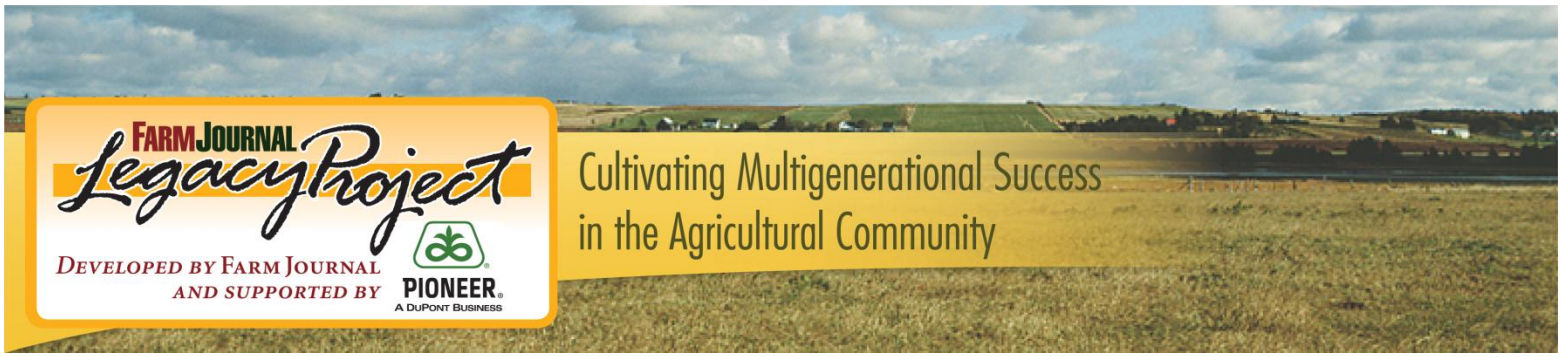

Operating Agreement Design Tool

This worksheet is designed to help you, the owners and future owners of the operation discuss the common, and sometimes contentious, issues included in an operating agreement. Each question should prompt a discussion and encourage a decision. This tool is not intended to be comprehensive, or to take the place of qualified legal assistance. The completed worksheet should be shared with an attorney who will help you weigh the pros and cons of particular points and draft an operating agreement into a legal and binding document.

_____

Entity – Operation/Company – Information: Name, address, and purpose.

_____

_____

Members Information: Names, contact information, and respective membership (ownership) class.

_____

_____

Membership Classes: The variety of membership (ownership) classes, the duties and rights of each class, and the voting power of each respective class. *Note: At least one member class must have voting rights.*

_____

_____

Capital Contributions: A description of all capital contributions made by each respective member.

_____

_____

Allocations/Distributions: Will a respective member's share of profits & losses be based on a fixed amount, or on a percentage equal to contributions?

When should distributions be made?

Should members be compensated for services?

Note: The sum of distributions should equal 100%, or include a provision to satisfy a respective member's income tax obligation for earning retained by the operation.

_____

_____

Transfer and Assignment of Interests/New Members: Can new members be admitted?

If so, what are the voting requirements and conditions to admit a new member?

_____

_____

Dissolution, Disassociation or Withdrawal of a Member: Can a member voluntarily withdraw from the Company?

Will the withdrawal or disassociation of a member automatically dissolve the company?

Can a member sell an interest in the company to a third party and/or other existing members?

_____

_____

Non-Compete: Provisions should be included that prohibit a member from competing against the company, operation, or entity for a set period of time after withdrawing or dissociation.

_____

_____

Member Meetings: When, where, and under what conditions will member meetings be held?

How much, and what manner of, notice is required to schedule a non-regular meeting?

_____

_____

Voting/Decision-making: Should voting power be based on contributions, or an equal vote for each member?

What decisions are made by a majority, and what decisions, if any, are made by super majority?

What percentage of ownership constitutes a super majority?

Note: Unanimous decisions are not recommended.

_____

_____

Management Information: How will the company be managed? By member(s) or by manager(s)

What are the duties and responsibilities of manager(s)? And, what are the limitations on the powers of manager(s)?

Under what circumstances can members remove a manager? And, under what circumstances can a manager voluntarily withdraw?

What is required for the addition of a new manager?

How may a manager be compensated?

_____

_____

_____

_____

Accounting and Annual Reports: Accounting will be on a cash or accrual method?

When does the company's fiscal year end?

Annual reports should include federal and state income tax reports, income statements, balance sheet, statement of cash flow, and profit and loss.

Who, how, and when may a member review the books and audit the accounting results?

_____

_____

Contractual Authority: Who has the authority to bind the operation, company, or entity to contracts?

Under what conditions and limits may a member and/or manager bind the company to contracts?

_____

_____

Amendments to the Operating Agreement: Under what conditions can this operating agreement be amended?

_____

_____

Miscellaneous: Will unresolved disputes between members be referred to Mediation, and then to arbitration?

What additional clauses, conditions, or terms should be included that are not already addressed above?

_____

_____

_____

_____

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.