Alternative Business Structures for Closely-Held Joint Ventures

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Adapted from: Comparison of Five Business Structure Alternatives for Closely-Held Joint Ventures, by Greg Lawless, Robert Cropp and Phil Harris, University of Wisconsin, April, 1996.

Note: Traditional and New Generation Cooperatives (NGC) are structured very similarly, except that: (1) NGCs require the ownership of delivery rights; and (2) NGCs have closed memberships. Ownership of delivery rights typically requires a higher level of initial equity investment and controls overall delivery volumes. The delivery rights also provide for transferability and the opportunity for appreciation or depreciation in their value.

	Partnership	**Limited Liability Company**	**S Corporation**	**C Corporation**	**Cooperative Corporation**
Ownership Issues	*The number of owners, their respective and relative contributions, and their personal and collective business goals will determine the significance of ownership and start-up issues described below.*				
Title of owner	Partner (general and limited)	Member	Shareholder	Shareholder	Member
Limitations	New owners must be unanimously approved.		Limited to 35 owners. May not own a subsidiary. Corporations and non-resident aliens may not own stock.	Few, if any, limitations.	Generally limited to current "users" of the business' goods or services. Nonusers may invest through ownership of preferred capital, but with very limited voting rights.
Limited liability	No	Yes	Yes	Yes	Yes

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Capitalization	Unlimited liability may discourage investment	Limited liability, and the ability to contribute and withdraw appreciable assets without capital gains taxes are distinct advantages.	Limited liability, but capital gains tax penalties may discourage contributions of appreciable assets such as land.		Same as S and C corps. Also, restrictions on membership, dividends, transferability and capital appreciation may limit investment
Distributions to investors	Special allocations are possible.		Single class of stock limits special allocations to more substantial investors.	Multiple classes of stock enable special allocations to substantial investors.	8% limit on dividends.

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Decision-Making and Management	*Decision-making authority is allocated and structured differently among the business forms.*				
Distribution of voting power	Usually, one vote per partner.	Usually in proportion to investment, although each owner enjoys veto power in consensus-based decisions.	One vote per share of stock. While only one class of stock is permitted, differences in voting rights are permissible.	One vote per share of stock.	One vote per member, or proportionate to current patronage.
Decision-making body	The partners as a whole. Less formal, more flexible. No board of directors.		Board of Directors, elected by a majority vote of the owners. More formal than partnership or LLC.		Board of Directors, elected by a majority vote of the owners. Few cooperatives have outside directors on their Boards.
Management	Owners may manage collectively or appoint and/or hire a manager.		Usually, the Board of Directors hire a manager, and management is centralized. In a tightly held corporation or small cooperative, however, owners may effectively manage collectively and/or share management responsibilities.		

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Taxation	*Tax treatments are complex and vary considerably by form of business.*				
"Pass through" income taxation	Yes		Built-in gains and passive net income are taxed at entity level. Otherwise, yes.	No. Income is taxed at the corporate **and** shareholder levels.	Yes, to the extent that the cooperative issues patronage refunds.
Deductions for fringe benefits	These "pass-through" business forms are not considered separate employers from their owners, and the entity cannot therefore deduct fringe benefits paid to employee-owners.			Entity level can deduct fringe benefits, and employees may exclude benefits received when determining their gross income.	
Capital gains taxes on distribution of appreciated assets	Appreciated assets can be distributed back to original contributors without recognizing gains.		Gains penalties may be somewhat less severe than C corporations and cooperatives.	Taxable gains may be recognized at both the individual and entity levels.	