



CHAPTER FIVE

Risk-Management for Farmers Markets

As a market develops, they may become interested in managing the risks involved with operating the market. There are several issues that can be overwhelming for a new farmers market to consider. As markets mature that may want to consider these topics:

- Forming a business structure
- Business banking
- Purchasing a liability policy for the market

It is nearly impossible to provide a “one size fits all” suggestion for farmers markets interested in these topics. Each market situation will be unique, and some smaller markets may choose not to pursue these topics at all.

The following chapter provides insight and advice; however, the key takeaway is this: Consider talking with a lawyer or accountant regarding these issues.

Sometimes professionals will provide their services to the farmers market “pro bono” or at no cost. Each market’s community, history, size, structure, and goals will play into which business structure or liability policy they may be interested in obtaining.

Business Structure

Most small markets function as a group of vendors who come together and sell their products. From the perspective of the vendors, they are an official farmers market. However, technically this group has not formed an official business structure within the state of South Dakota.

While this may not be an issue initially, it can be limiting for the market. For example, some government funding is only available to farmers markets that have filed with the state to become an official business or organization. Other benefits to forming an official

business entity can include personal asset protection in the case of an accident. Due to these benefits, markets may consider going down the path of official business formation.

There are multiple options for business entity structures. Consider talking with a lawyer or accountant to determine your goals. This can help discover which business structure best meets the needs of your market.

One option to consider is forming a Limited Liability Corporation or LLC. Compared to other business structures, an LLC is a simple process for organizations in South Dakota. To become an LLC, contact the South Dakota Secretary of the State office at 605-773-4845. The current process includes filing Articles of Organization and paying a one-time fee.

Some markets may also be interested in forming a non-profit organization under IRS Code 501(c)3. This paperwork can be overwhelming, so it would be best to seek the counsel of a lawyer if this is a goal of the market.

“The Vermillion Area Farmers Market has enjoyed several benefits after becoming a legal entity.” – Amy Schweinle, Board President

Business Banking

Initial fundraising, dues and donations may be collected and deposited into a market organizer’s personal account. However, one drawback to this method is that the tax liability will legally be placed on the person who volunteers to use their Social Security number to set up the account. Over time, as the market begins collecting stall fees, dues and other transactions, consider opening a business account specifically for the farmers market.

If possible, select a convenient, local bank that provides free or low-cost business checking accounts. According to the IRS website, setting up a business checking account may require an Employer Identification Number (EIN) for the organization.

A single individual cannot apply for an EIN; this process can only be completed by official businesses that are filed with the state. As a result, markets may want to consider forming a business entity and then applying for an EIN. The term “employer identification number” can be confusing because businesses that have no employees and never plan to in the future can still need an EIN number for tax purposes. In some cases, an EIN number is also called a federal tax identification number. By either name, this number is used to identify a specific business entity. The concept is similar to a personal Social Security number identifying a specific person. It is a 9-digit number that is assigned to a business by the IRS.

Obtaining an EIN number for an established business is simple. This can likely be completed without the assistance of a lawyer or an accountant. The process can be completed by phone, fax or online. The online form is available from the IRS at the following link: <https://sa2.www4.irs.gov/modiein/individual/index.jsp>

The EIN is the permanent number for the organization and will not have to be renewed or updated over time. It can be used immediately but may take up to two weeks before the number becomes part of the IRS’s permanent records. After obtaining verification and receiving an EIN the market organizers can use this number to:

- Open a business bank account
- Apply for a local business license
- File for tax returns by mail

A newly formed bank account can be used for a number of transactions, from depositing the market dues to paying for supplies or advertising. If the market is able to process SNAP/EBT cards or electronic purchases this account could also be used for processing those transactions.

This account should be accessible to a very small number of people. For example, only the President, Treasurer, and market manager. These individuals will have to sign a signature card at the bank in order to write checks.

Liability and Insurance

Concerns about liability and who is responsible can cause some of the biggest fears to farmers and others involved in direct marketing products to consumers. Many markets in South Dakota operate without a liability policy for the market; however, this can be risky. Markets without a liability policy are unprotected in the event that a customer might slip and fall at their market; unless the entity that owns the land where the market is held assumes the responsibility for insuring the premises.

Market Rules

One way to manage the risk of a food-borne illness, product or liability issues is to utilize the market rules. The rules can establish the guidelines for the types of products that can be sold. The rules also require that vendors comply with stated, applicable rules. This can provide the market an option for removing vendors who may be causing issues with poor production practices that could result in a food safety or liability issue. Markets can also require that vendors have a proof of insurance for viewing each day at the market. These policies can help manage the risk involved with a farmers market, without any cost to the organization.

Premise and Product Liability

Consider talking with an attorney and be aware of the market's responsibilities in terms of premise and product liability. For example, keeping common areas free of potential hazards and warning visitors of potential hazards like a wet spot or slippery area with signs. In some cases, a lawyer will offer these services to the farmers market "pro bono."

Considering a Liability Policy

As markets develop, they may want to consider purchasing a liability insurance policy specifically for the farmers market. Before a market purchases a policy, they should check with the landowner to determine what coverage is already in place. In some cases, the individual or public entity that owns the land will assume the responsibility for the insurance. For a new market, the cost of a liability policy may be overwhelming. However, a market interested in managing their risk can research and purchase an insurance policy. The market could begin by assembling a committee to research available policies.

The committee should talk with several insurance agents in the area. The market will likely be shopping for a policy that includes \$1,000,000 in commercial liability coverage. Not all insurance agents are licensed to sell policies for commercial ventures; the market will need to find an agent who sells commercial policies.

Make sure that those researching the policies understand the limits of the policy and what is covered. The policy may need to have an additional \$5,000 "per one person" in

Medical Coverage. The Medical Coverage would pay hospital bills if someone were injured on the market premises.

If the market happens to own any tents, trailers, sound system or other property it would also be wise to consider having these items insured. After working with several insurance agents to determine price quotes, the market could hold a meeting; hear a report from the committee and then vote on which policy they are interested in purchasing.

Conclusion

These issues may seem complex, but with time and effort a farmers market of any size can understand and utilize these suggestions. Taking the time to form a business structure, use a business banking account and purchase a liability policy can help manage the risks at the farmers market and open up new opportunities for growth.