

Introduction to the Legal Entity Choice Comparison Chart

This chart is not a comprehensive list of the ways that farmers and farming organizations can hold land. It is an ongoing exploration of how to use existing legal entity choices to preserve land for agricultural use, permanently remove that land from the speculative market, and lower barriers to access for people who face challenges getting secure, long-term tenure to farmland.

Bear in mind that the existing tools were not designed to do anything of the kind. The law of property was developed to support individual wealth building and residential and commercial development. Any attempt to use the law to support affordable and equal access to sustainable farmland meets with limitations. Each entity explored on this chart has advantages and disadvantages.

For example, the single-parent title-holding organization of a 501(c)(2) can be a useful entity choice for a farmer whose sole aim is to farm and who is eligible to receive long-term, secure tenure on farmland at a below-market rate. The c2 is not a good fit for farmers or farm organizations that want local control of the board or wish to use the land for more than farming. It requires that the parent organization retain at least 51% control of the board. A c2 is limited to holding title to property and related activities such as leasing and maintenance. For example, a c2 board may select farmer tenants but it may not create the farmer selection criteria. It may not engage in educational or outreach activities. It may not engage in fundraising or accept charitable donations. The multiple beneficiary title-holding entity is controlled equally by each of its beneficiaries, but is otherwise much like the c2 in terms of what it can and cannot do.

One of Agrarian Trust's goals is to find a way for farmers to reduce financial risk as well as grow financial equity through ownership of improvements on the land.

Follow our work on equitable land tenure at:

agrariantrust.org/land

Legal Entity Choice Comparison Chart

	Title Holding Org- Single Beneficiary (Parent org) 501(c)(2)	Public Charity 501(c)(3)	Title Holding Org- Multiple Beneficiaries (Parent Orgs) 501(c)(25)	Supporting Org 501(c)(3) / 509(a)(3)	LLC
State Formation	<ul style="list-style-type: none">• Formed under state law• Registered with the State (requires annual report)• Registered with the Department of Revenue	<ul style="list-style-type: none">• Formed under state law• Registered with the state (requires annual report)• Registered with the Department of Revenue	<ul style="list-style-type: none">• Formed under state law• Registered with the state (requires annual report)• Registered with the Department of Revenue	<ul style="list-style-type: none">• Formed under state law• Registered with State (requires annual report)• Registered with the Department of Revenue• Known as a “Supporting Organization” for a 501(c)(3)	<ul style="list-style-type: none">• Formed under state law• Registered with the State (requires annual report)• Registered with the Department of Revenue
Exterior Control	<ul style="list-style-type: none">• Controlled by beneficiary 501(c)(3) organization (beneficiary holds voting stock/has right to appoint 51% directors)	<ul style="list-style-type: none">• No need for external control	<ul style="list-style-type: none">• Controlled by multiple members / beneficiary organizations (501c3s). Each org has the same rights	<ul style="list-style-type: none">• Managed by a board of directors (relation to supported org?)	<ul style="list-style-type: none">• Exempt “parent” is sole member• No board required
Allowable Charitable Purpose	<ul style="list-style-type: none">• Limited to holding title to property and distributing income less expenses to exempt “parent” (beneficiary 501(c)(3) organization)	<ul style="list-style-type: none">• Any charitable purpose under 501(c)(3)	<ul style="list-style-type: none">• Limited to holding title to property and distributing income less expenses to exempt “parents”	<ul style="list-style-type: none">• Limited to carrying out exempt purposes of parent 501(c)(3)	<ul style="list-style-type: none">• Limited to carrying out exempt purpose of sole member 501(c)(3) / 509(a)(1) or 509(a)(2) with limitations that insure that the LLC’s assets are used consistently with the IRS restrictions applicable to the exempt parent
Operations	<ul style="list-style-type: none">• Two separate sets of books required	<ul style="list-style-type: none">• One set of books required	<ul style="list-style-type: none">• Two separate sets of books required	<ul style="list-style-type: none">• Two separate sets of books required	<ul style="list-style-type: none">• Simplified accounting requirements

Federal Tax Requirements	<ul style="list-style-type: none"> • Must file Form 1024 for IRS 501(c)(2) recognition • Must file separate Form 990 annually (possibly unless the parent files the Form 990 on behalf of its subs as part of a group exemption) 	<ul style="list-style-type: none"> • Needs to file Form 1023 for IRS 501(c)(3) recognition Must file separate Form 990 annually 	<ul style="list-style-type: none"> • Must file Form 1024 for IRS 501(c)(25) recognition • Must file separate Form 990 annually (possibly unless the parent files the Form 990 on behalf of its subs as part of a group exemption) 	<ul style="list-style-type: none"> • Doesn't need to meet the public support test defined in 509(a)(1) and (2) • Must file annual 990 or 990-EZ • Provide parent written notice of amount of support given to parent during previous tax year and a copy of its governing documents • Doesn't need to maximize income (below market leases ok as long as they are in furtherance of exempt purpose and without private benefit) • Make payments to or for the use of individual members of the charitable class benefited by the parent organization Must file Form 1023 for 501(c)(3)/509(a)(3) recognition 	<ul style="list-style-type: none"> • No Form 1023 or Form 1024 required (in most cases) • Assets of LLC reported on exempt organization/sole member's Form 990
Liability	<ul style="list-style-type: none"> • Shields exempt "parent" from liability associated with its assets if corporate formalities observed 	<ul style="list-style-type: none"> • Does not shield the organization from liability associated with its assets. 	<ul style="list-style-type: none"> • Shields exempt "parent" from liability associated with its assets if corporate formalities observed 	<ul style="list-style-type: none"> • Shields exempt "parent" from liability associated with its assets if corporate formalities observed 	<ul style="list-style-type: none"> • Shields single member from liability associated with its assets if corporate formalities observed
Deductibility	<ul style="list-style-type: none"> • Contributions to 501(c)(2) not deductible 	<ul style="list-style-type: none"> • Contributions to 501(c)(3) are deductible 	<ul style="list-style-type: none"> • Contributions to 501(c)(25) not deductible 	<ul style="list-style-type: none"> • Contributions to 509(a)(3) are deductible 	<ul style="list-style-type: none"> • Contributions deductible to exempt member if status of LLC as "disregarded" tax entity maintained

Tax-Exempt Considerations in Operating Leases	<ul style="list-style-type: none">• Purpose limited to holding title to property and distributing income less expenses to benefitted org;• Leases need not further charitable purpose of exempt beneficiary;• Leases must avoid inurement/impremissible private benefit under federal exempt organization and state nonprofit law	<ul style="list-style-type: none">• Leases must further organization's charitable purposes;• Leases must avoid private inurement/impermissible private benefit under federal tax exempt organization and state nonprofit law;• Leases must be compliant with "fit" criteria that meets charitable parameters under federal and state law	<ul style="list-style-type: none">• Purposes limited to holding property and distributing income less expenses to benefitted organizations;• Leases need not further charitable purposes of exempt beneficiaries• Leases must avoid inurement/impermissable private benefit under federal exempt organization and state nonprofit law	<ul style="list-style-type: none">• Leases must further charitable purpose of supported organization;• Leases must avoid private inurement/impermissible private benefit under federal exempt organization and state nonprofit law;• Leases must be compliant with "fit" criteria that meets charitable parameters under federal and state law	<ul style="list-style-type: none">• Leases must further charitable purpose of exempt member;• Leases must avoid private inurement/impermissible private benefit under federal exempt organization and state nonprofit law;• Leases must be compliant with "fit" criteria that meets charitable parameters under federal and state law
--	---	--	---	--	---