## Farm Management

# Changes under new Minnesota LLC act

**Farm & Family**

BY SCOTT P. MILLER

LAST year, we introduced you to Joel and Kim, dairy farmers in their mid-50s, with three children — two daughters and a farming son — all in their mid-20s.

One of Joel and Kim's goals was to continue farming for 10 years and eventually transition the farm to their son while protecting the farm assets from divorce, creditors, bankruptcy, etc. To achieve these goals we created three limited liability companies: one for the dairy farming operation, one for the dairy confinement facility and pasture acres, and one for the crop real estate and sheds.

We created their dairy farming operation LLC to begin transitioning their farming son into the operation. Joel and Kim gifted a 30% interest in this LLC to their son at a value of $1 million, and each retained a 35% ownership interest to maintain control of the operation. Because the gift was in excess of the annual exclusion ($14,000), Joel and Kim used a portion of their gift tax exclusion. We also set up an LLC for the dairy confinement facility and minimal pasture acres. The pasture acres were rented to the dairy farming operation LLC, for both limited liability protection and to reduce self-employment taxes. Finally, we set up a third LLC for Joel and Kim's crop real estate (640 tillable acres) and sheds with the primary goal of facilitating future gifting of membership interests to their children over time.

Recently, Joel and Kim came for their annual meeting to handle corporate formalities for their LLCs. During the meeting, we drafted their Call and Waiver of Notices and Annual Meeting minutes, and filed their Minnesota LLC annual renewals with the secretary of state. Additionally, we drafted a lease agreement between their dairy farming operational LLC and their dairy building LLC and their crop acres LLC. We then filed corporate farm reports for their two land-owning LLCs.

After reviewing the current ownership structure of their dairy farming operation LLC, Joel and Kim decided to maintain the current structure (35% Joel, 35% Kim and 30% farming son) and not gift additional shares. However, they decided to gift membership units in an amount equal to the annual exclusion of their crop real estate LLC to their son, so we drafted a Call and Waiver of Gift Notice and Gift Minutes.

After finishing, we reminded Joel and Kim that last year the Minnesota Legislature enacted the Revised Uniform Limited Liability Company Act and highlighted the key differences and impact, if any, this new act had on their LLCs.

### Effective date

The new act became effective for all new LLCs being formed on or after Aug. 1, 2015. Because Joel and Kim's LLCs were formed before Aug. 1, they could either continue to operate under the old act until Jan. 1, 2018, at which point their LLCs would automatically become subject to the new act, or adopt the new act prior to Jan. 1, 2018. We decided to adapt the new act for their LLCs.

### Management structure

The default rules under the old act created a corporate structure that included members, managers and a board of governors. The default rule under the new act provides for member-managed, manager-managed and board-managed LLCs. Under the new act, the default structure is member-managed. All matters relating to the company's activities are decided exclusively by the managers, and each manager has equal rights.

In their operating agreement, Joel and Kim elected to have their three LLCs be board-managed and appointed themselves as board members. We adopted the new act and switched their management structure to be member-managed. We modified the authority for each member to be his or her ownership percentage in the LLC. Because Joel and Kim own 70% of the membership units, they retained control of their dairy farming operation. The adoption of the new act removed the corporate formalities of having managers and a board of governors.

As we discussed the new act, we emphasized that many of the changes the Legislature made were to default rules that would not impact a customized plan.

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