

Top 10 Ways to Limit Your Liability When Visitors Come to Your Farm

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Many farm and ranch businesses are inviting customers onto their farms for agritourism, u-pick operations, hunting, community supported agriculture, and educational purposes. When a landowner invites a person onto his farm for the landowner's business purposes, the landowner can become subject to legal liability if the invitee gets hurt. However, there are ways to limit that liability, and a non-exclusive and very general list is written below as a guide for landowners. This list is intended to raise certain issues, but should not be substituted for specific advice from your attorney.

- 1. Organize Your Business to Limit Liability** – One of the best places to start to limit your liability risk is to organize your business in a way that sets your exposure to risk at a level that is comfortable for you, considering your assets, tax needs and business control.
 - Sole Proprietorship – The owner starts a business but does not incorporate. The owner is personally liable but has ultimate power and control over business, and can do business in other states without much paperwork. Tax issues are more simplified for sole proprietorships. Your personal risk of exposure to liability is HIGH.
 - General Partnership – The owners start a business together but do not incorporate in a general partnership. All owners can be sued for all or a portion of debt, but creditors must exhaust the partnership property before getting a lien on the partners' individual property. All partners have equal decision making rights, unless otherwise agreed, and can do business in other states without much paperwork. The partnership can address tax issues as "Check-the-box" which means the partners may elect either pass through taxation or entity treatment. Your personal risk of exposure to liability is HIGH.
 - Limited Liability Partnership – The owners must file a statement of qualification with the Secretary of State to start an LLP. After doing so, the owners are not personally liable if they maintain \$500,000 in security; but owners are liable for their own wrongful acts. All owners have equal decision making rights unless otherwise agreed. To do business in another state, the LLP must file a statement of foreign qualification. Taxation is "Check-the-box." Your personal risk of exposure to liability is MODERATE.
 - Limited Partnership – The owners must file a certificate of limited partnership with the Secretary of State to form a Limited Partnership. Owners of Limited Partnerships are not liable for debts of the company unless they participate in control. General partners are jointly and severally liable, but creditors must exhaust the partnership property before levying on partners' individual property. Limited partners do not participate in management but general partners have control. To do

business in another state, the LP must register in that state. Taxation is “Check-the-box.” Your personal risk of exposure to liability is MODERATE.

- Limited Liability Company – To form an LLC, the owners/members must file Articles of Incorporation with the Secretary of State. The owners/members of an LLC are not personally liable for the obligations of the LLC. LLCs are managed by one or more managers elected by the members, but can be structured to have management by members. To do business in another state, the LLC must register in that state. Taxation is “Check-the-box.” Your personal risk of exposure to liability is LOW.
 - Corporation – To form an LLC, incorporators must file Articles of Incorporation with the Secretary of State. Shareholders of a corporation are not personally liable for the obligations of the corporation in most instances. Shareholders elect directors who appoint officers and oversee management. Corporations must register before doing business in another state. Shareholders are subject to double taxation but may elect to be an “S Corporation” with pass through treatment if there are no more than 75 shareholders. Your personal risk of exposure to liability is LOW.
- 2. Release Agreement/Waivers** – All hunting leases, contracts, tickets, or other forms of communication must include liability release language. However, a release or waiver will not always protect you from liability risks. A judge will examine the waiver or release for specific language and the likelihood that the injured party was aware or should have been aware that liability was limited. Releases or waivers do help limit your risks but do not provide 100% protection. Ask your attorney for specific language for your release or waiver agreements.
 - 3. Set Rules and Regulations** – Provide a detailed list of rules to your customers. If you have a corn maze, rule number one should be to stay on the path, and rule two should be to not throw the corn. Consider whether you should prohibit alcohol and/or tobacco use to protect your visitors from fire or conflict. Many farm businesses prohibit visitors from bringing weapons onto the farm. If you allow hunting or the firing of any type of weapon, develop specific guidelines which include no shooting zones. The more clear your rules and regulations are to your visitors, the more your risk is lowered.
 - 4. Signage** – Post signs on your property directing customers where they should park or walk. Place signs warning of any known dangers at critical points. Make the signs age appropriate for your expected visitors. Because many visitors may not pay as close of attention to signs as they should, verbally inform visitors of known dangers.
 - 5. Security Measures and Safety Controls** – Provide adequate security and lighting for parking lots and other areas where theft or assaults might occur. Consider posting signs in your parking area disclaiming liability for any lost or stolen items from vehicles. Require parents to maintain control of their children. Limit access to children without accompaniment of an adult. Determine how many employees are necessary to ensure the safety and security of your visitors and ensure that staffing is adequate.

- 6. Provide Medical Assistance and Warnings** – Provide training to your employees on how to address medical emergencies. Place warning signs in areas with animals which inform visitors that animals may bite or other dangerous conditions. Keep a well-stocked first aid kit. Keep handy the phone numbers to emergency staff available to assist the number of visitors that you have present at any time. This may necessitate setting visitor capacity limits.
- 7. Insurance** – Maintain adequate insurance on your policy to cover you if a person is injured on your property. Provide your insurance agent with a detailed description of your operation and any scenarios that may potentially cause harm to a visitor. Invite your insurance agent to tour your property to assist the agent in determining any specialized insurance policies that you may need to cover your risks of liability.
- 8. Code Compliance** – Be aware of all building codes that apply to your property and comply with those codes. Failure to do so will put you at risk if someone is injured.
- 9. Sanitation** – To minimize the transfer of food borne illness, utilize a sanitizing solution such as a chlorine mixture on all areas that come in contact with any food products including fresh fruits and vegetables. If serving food, follow all rules set forth by your local health department.
- 10. Record keeping** – Keeping accurate records is essential. Keep records of each repair you have made and each safety device you install. Make note of all inspections that you have made of your property.

DISCLAIMER

The information in this fact sheet is intended for use as educational material to assist farmers and their advisors in understanding liability issues which may arise when customers are invited onto their property for educational opportunities, recreation, sports, marketing, or other activities. This fact sheet is not intended as, and should not be used as, a substitute or replacement for individual legal advice. Laws, regulations, interpretations, codes and judicial developments can change at any time. For these reasons, the utilization of this material by any person represents an agreement to hold harmless the author and the Kerr Center for Sustainable Agriculture, Inc., for any liability, claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information in this fact sheet.

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