



NAVIGATING THE AGRITOURISM INSURANCE MAZE

Developing an Effective Insurance Program

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AGENDA

Liability Principles

Liability Insurance & Agritourism Activities

Risk Management & Safety Guidelines

Agritourism Liability & Property Insurance Considerations

AGRITOURISM LIABILITY EXPOSURES



Premises



Products

Activities

Services



Equipment

Animals

Employees



PREMISES LIABILITY WHAT IS YOUR LEGAL DUTY?

Depends on Type of Visitor

Trespasser – On Premises Without Permission From Owner

- Ordinarily the owner owes no duty to a trespasser except a duty not to injure the trespasser intentionally.
- A trespasser generally cannot recover for injury by reason of defects in the premises or contact with running machinery.
- Trespassers take the risk of the place as they find it.

PREMISES LIABILITY WHAT IS YOUR LEGAL DUTY?

Depends on Type of Visitor

Licensee – On Premises With Permission/Consent of Owner, Not for a Business Purpose Carried on by the Owner, But for the Licensee's Convenience or Benefit (i.e. Social Guest)

- Generally speaking the owner is only liable to a licensee for injuries caused by active negligence or by intentional conduct.
- The owner owes the duty to exercise reasonable care to avoid injury to the licensee and make the premises safe.

**PREMISES LIABILITY
WHAT IS YOUR LEGAL DUTY?**

Depends on Type of Visitor

Invitee – On Premises With An Express or Implied Invitation From the Owner

- The owner owes the invitee the duty of using reasonable care to maintain the premises in a reasonably safe condition.
- The owner must warn the invitee of any dangers or hazardous conditions that exist.



WARNING



Under Virginia law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.

AGRITOURISM LIABILITY

- The use of the "Warning Sign" **does not relieve the operator of any legal liability.**
- The "Warning Sign" puts the public on notice that, under Virginia law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at the agritourism location if such injury or death results from the inherent risks of the agritourism activity.

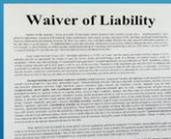
AGRITOURISM LIABILITY

Nothing shall prevent or limit the liability of an agritourism professional if the agritourism professional does any one or more of the following:

- Commits an act or omission that constitutes negligence or... disregard for the safety of the participant, and that act or omission causes injury, damage, or death to the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger causes injury, damage, or death to the participant; or
- Intentionally injures the participant

RELEASE OF LIABILITY WAIVERS

- Generally **NOT** Legally Enforceable
 - May Discourage Lawsuits
- If used, seek legal advice for proper language



INSURANCE & YOUR OPERATION



**FARM LIABILITY COVERAGE
BASE POLICY**

Principal Coverages

- Premises & Operations Liability Coverage
- Products Liability Coverage
- Medical Payments Coverage



**FARM LIABILITY COVERAGE
BASE POLICY**

Principal Coverages

Premises & Operations Liability Coverage

Bodily injury or property damage caused by an occurrence arising out of the ownership, maintenance or use of the insured premises or farming operation (i.e. neighbor injured while visiting farm)



**FARM LIABILITY COVERAGE
BASE POLICY**

Principal Farm Liability Coverages

Products Liability Coverage

Legal liability for bodily injury and/or property damage caused by defective products (raw produce, baked goods, value-added products, and goods purchased from others for resale)



**FARM LIABILITY COVERAGE
BASE POLICY**

Principal Coverages

Products Liability Coverage

- Policy exclusion for products manufactured or processed by the insured
- If the raw product is altered, there is **no products liability** coverage under the base policy (i.e. strawberries to jelly, apples to cider, grapes to wine)



Coverage can be obtained by either endorsing the policy or obtaining a separate liability policy

PRODUCT LIABILITY CONCERNS

The number of product liability claims and lawsuits has grown significantly in recent years.

- From 2011 to 2012 – **7% increase** in product liability lawsuits

Injured parties increasingly receive large amounts of compensation in these cases, through either court judgments or settlements.

- Median award for product liability claims in 2013 was **\$75K**

PRODUCT LIABILITY CONCERNS

Direct sales of farm products exposes producers to higher risk, whether the products provided are produced on the farm or are purchased from suppliers.

Potential liability attaches to **EVERY** enterprise in the product supply chain, including the producer, wholesaler and retailer.

Processing and packaging products for direct sale further increases potential liability.

FARM LIABILITY EXCLUSION

Coverage does not apply to bodily injury or property damage resulting from activities related to the "business" of an insured

- For the Farm policy, business is any trade, profession or occupation whether full or part time **other than farming**
- Farming is considered to be:
 - The production of crops
 - The raising or care of livestock
 - The operation of roadside stands and farm markets maintained principally for the sale of the insured's own farm products, but **DOES NOT INCLUDE** other retail activities



FARM LIABILITY EXCLUSION

With basic farm liability coverage, activities such as the following are excluded:

- | | |
|-----------------------------|-----------------|
| Animal Viewing/Petting | Bed & Breakfast |
| Corn Mazes | Farm Tours |
| Hay/Wagon Rides | Festivals |
| Pick Your Own Operations | Hay Mazes |
| Haunted Attractions | Cabin Rental |
| Event Venue (i.e. weddings) | Gift Shops |
| Playgrounds | Camping |



Coverage can be obtained by either endorsing the policy or obtaining a separate liability policy

FARM LIABILITY

Questions For Your Insurance Provider

- How does my policy define farming?
- Do my agritourism activities fall within that definition?
- Does my policy provide coverage for my products?
 - Raw & Processed

FARM LIABILITY COVERAGE BASE POLICY

Principal Coverages

Medical Payments Coverage



- 3rd party medical expenses for bodily injury caused by an accident on the insured's premises or arising out of the insured's operations
- Paid regardless of fault



FARM LIABILITY COVERAGE BASE POLICY

Incidental Coverage

Claims & Defense Cost Coverage

- Provides coverage for costs to defend the insured against claims or lawsuits
- Attorney fees, court costs, filing fees, investigation costs



RISK MANAGEMENT

The practice of identifying potential risks in advance, analyzing them, taking precautionary steps to reduce/curb the risk and monitoring/evaluating the results



RISK MANAGEMENT & SAFETY GUIDELINES



Farm Entrance & Exit

- Unobstructed Visibility
- Clearly Marked for Smooth Traffic Flow
- Roadway Leading to Premises is Graded, Properly Surfaced and Free of Potholes/Obstructions



Parking Area

- Sufficient Size to Accommodate Traffic
- Clearly Marked with Signs
- Free of Potholes/Obstructions
- Properly Lit for Night Operations
- Prompt Removal of Ice and Snow

RISK MANAGEMENT & SAFETY GUIDELINES



General Premises

- Walkways Clearly Defined and Unobstructed
- Signs Directing Customers to Activities
- "Off Limits" Areas Clearly Marked with "Authorized Personnel Only", "Employees Only" or "Keep Out" signs (i.e. chemical storage areas, equipment storage areas)
- Access to potentially hazardous areas such as ponds, lakes, and manure storage facilities is restricted by fencing or barricades



RISK MANAGEMENT & SAFETY GUIDELINES



General Premises

- Visitors Kept Away From Areas Where Farm Machinery/Equipment is in Use
- Farm Equipment & Tools Stored Away From Areas Frequented By Customers
- Customers Not Permitted to Operate or Have Access to Farm Equipment
- Ample Number of Workers Available to Oversee Guests



RISK MANAGEMENT & SAFETY GUIDELINES

General Premises



- Workers must be aware of their responsibilities and role in creating a safe experience for the public
- Restrooms, If Provided, Must Be Accessible and Cleaned Regularly
- First Aid Kits With Appropriate Supplies – Emergency Phone Numbers Posted
- Develop an Emergency Response Plan – Be Prepared if an Accident/Incident Occurs



RISK MANAGEMENT & SAFETY GUIDELINES

Proof Of Liability Insurance (Certificates of Insurance)

Verifies that insurance coverage is in force

Should be obtained from all vendors/service providers with whom you do business

If premises is rented to third party (i.e. wedding) should be required as a condition for using the property

\$1 million minimum liability limit

RISK MANAGEMENT & SAFETY GUIDELINES

Hay/Wagon Rides



- Wagons Equipped With Secure Railings or Side Panels Extending at Least 36 Inches Above Seating Level on All Sides
- Wagons Equipped Either With Permanent Steps or Mounting Blocks/Steps for Loading/Unloading With Loading/Unloading Taking Place on the Sides or in the Rear of the Wagon.
- The Route Must be Clearly Defined & Free of Obstruction – Should Not Utilize or Cross Public Roads

RISK MANAGEMENT & SAFETY GUIDELINES

Hay/Wagon Rides



- Equipment Used to Pull Wagons Must be of Adequate Size to Handle the Load With a Hitch Pin (Equipped With a Safety Clip) and Safety Chains Being Utilized.
- Operator of the Equipment Pulling the Wagon Must Be Fully Trained and Experienced in the Operation of the Equipment.
- A Farm Employee/Guide Should Accompany Riders in the Wagon.



RISK MANAGEMENT & SAFETY GUIDELINES

Farm Tours

- Tours Guided With at Least Two Employees in Each Tour Group
- Off Limits Areas of the Farm Must be Clearly Marked
- No Contact With Working Machinery or Tools
- Tour Route Must be Clearly Marked & Free of Hazards
- Smoking Prohibited With "No Smoking" Signs Posted



RISK MANAGEMENT & SAFETY GUIDELINES

Animal Viewing/Petting Areas



Animals Nonthreatening & Docile (i.e. sheep, calves, chicks, rabbits, baby animals, etc.)

Children Required to be Accompanied by Adult

Public Not Permitted to Mingle With Animals Inside Pens/Fencing.



Hand Washing/Sanitizing Stations with Washing Instructions Positioned Near the Viewing/Petting Area



Rules Posted (i.e. Do Not Feed The Animals, No Taunting, etc.)

RISK MANAGEMENT & SAFETY GUIDELINES

Retail Area/Gift Shop



- Aisles & Walkways Adequately Spaced & Unobstructed
- Floors & Floor Coverings in Good Condition – Not Worn or Loose
- Stairs in Good Condition with Nonskid Material & Sturdy Railings
- Sturdy Display Cases, Shelves & Racks

RISK MANAGEMENT & SAFETY GUIDELINES

Snack Bar/Refreshment Stand



- Food Preparation Area Clean & Organized With No Trash Accumulation
- Hand Washing/Hand Sanitizing Stations in Place With Signs & Hand Washing Instructions (English & Spanish)
- If Food Service is Provided by an Outside Vendor, Proof of Liability Insurance (Certificate of Insurance) of at Least \$1 million Must be Obtained With the Farm Named as an Additional Insured on the Policy.



EMPLOYEE SAFETY

CREATING A SAFE WORK ENVIRONMENT



- Ensure That Employees Are Trained in the Proper & SAFE operation of Equipment/Machinery
- Assign Age Appropriate Tasks
- All Protective Shields & Safety Guards for Machinery & Tools Must be in Place at All Times
- Model Safe Behavior – Set a Good Example for Employees – Let Them Know Safety is Important to You!

LIABILITY COVERAGE CONSIDERATIONS

Workers Compensation Coverage

- Required for Farm & Horticultural Operations That Have More Than Three (3) Full-Time Employees

Umbrella Coverage

- Covers Amounts Above Those Covered Under One or More Primary Liability Policies, & Does Not Respond Until the Liability Limits of the Primary Policies are Exhausted

FARM PROPERTY COVERAGE CONSIDERATIONS



Most farm coverage forms provide coverage on a named perils basis for farm property

Fire or Lightning
Windstorm or Hail
Explosion
Riot or Civil Commotion
Aircraft
Vehicles
Smoke
Vandalism

Theft
Sinkhole Collapse
Volcanic Action
Earthquake Loss to Livestock
Flood Loss to Livestock
Collision
Electrocution of Livestock
Loading & Unloading Accidents

FARM PROPERTY COVERAGE CONSIDERATIONS

Covered perils can be broadened by endorsement subject to company guidelines and for an additional premium

Common Farm Property Endorsements

Special Form Coverage - Risks of direct physical loss, unless excluded

Weight of Ice, Snow & Sleet Coverage - Adds coverage for loss or damage due to this peril

Earthquake Coverage - Adds coverage for earthquake peril

FARM PROPERTY COVERAGE CONSIDERATIONS

Replacement Cost Coverage – Farm Barns & Buildings

The base policy provides coverage for farm buildings & structures on an actual cash value basis.

[A.C.V. = Replacement Cost minus Depreciation]

Replacement cost coverage is available by endorsement subject to company guidelines and for an additional premium

Should be considered for essential farm structures

FARM PROPERTY COVERAGE CONSIDERATIONS

Farm Extra Expense Coverage

Pays actual & necessary expenses incurred to continue normal farm operations resulting from a covered loss to farm property insured under the policy

Loss example: A wagon used for a hay ride activity at a farm festival is destroyed by fire. Extra Expense Coverage pays the cost of renting a replacement wagon.

FARM PROPERTY COVERAGE CONSIDERATIONS

Farm Income Coverage (Loss of Income Coverage)

Provides coverage for the actual loss of business income due to the necessary suspension of operations as a result of direct physical loss or damage to insured property.

Loss example: Barn used as a reception hall for a wedding venue is damaged by fire. Two events cannot be hosted until it can be repaired. Farm Income Coverage replaces this lost income.

PROTECTING YOUR OPERATION

Read Your Policy! - Invest the Time to Better Understand Your Coverage

Meet With Your Agent **At Least Annually** to Review Your Coverage

Make Your Insurance Agent Aware of **ALL** Activities Taking Place on Your Farm

- Assist in designing insurance program tailored to your farming operation
- **What They Don't Know Can Hurt You!**

PROTECTING YOUR OPERATION

Insurers have resources to assist policyholders with liability assessment of their operation

Safety Inspections

General Safety Guidelines & Checklists

Safety Guidelines for Specific Activities

& Exposures

Partner with your agent & insurer to create both a safe operation and an effective insurance program

QUESTIONS?

CONTACT INFORMATION

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