Agritourism – Business and Legal Challenges

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• Disclaimer: This presentation does not constitute legal advice. We do not have an attorney-client relationship until we execute an engagement letter.
Universal Business Challenges

- Organizing an entity
- Scaling up
- Licensing, labeling and regulatory compliance
- Human Resources
- Intellectual property
- Tax compliance
- Sale or dissolution of a business
- Succession Planning
Specific Business Challenges

- Buy-out agreement (entire venue rented for a day or weekend)
- Agritourism statutes
- Premises liability for farms
- ABC regulation
Agritourism Activity Liability Act

If you have the statutory notices posted, you’re not liable for injury, loss, damage or death due to:

• The inherent risks of agritourism activities, which means:
  • Dangers or conditions that are integral to agritourism activity

• This includes
  • Surface and subsurface conditions
  • Dangers from plants and animals
  • Farming structures or equipment
  • The potential that another participant will fail to follow instructions

But you’re still liable for the following:

• Negligence
• Willfully or wantonly disregarding the safety of a participant
• Failure to warn about a dangerous condition of land or “dangerous propensity of a particular animal”
• Intentionally injuring a participant
Addressing the Unknown Unknowns a/k/a Landmines

• Some legal landmines
  • Nasty surprises with land transactions
  • Not dealing with the inevitable
  • Having multiple lines of business without separate entities
  • Conflicts with neighbors
  • Intellectual property (copyright, labels, trademarks, service marks, trade secrets)
• Employment issues such as:
  • non-compete agreements
  • immigration visas
  • employee handbook
Local Government areas of regulation

A selection of areas that a county, city or town can regulate, and some general defenses for landowners:

<table>
<thead>
<tr>
<th>Regulate:</th>
<th>Owners’ Defenses:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning</td>
<td>Right to Farm Act</td>
</tr>
<tr>
<td>Noise</td>
<td>State statutes restricting zoning authority</td>
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<tr>
<td>Odor</td>
<td>Dillon Rule</td>
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<tr>
<td>Traffic</td>
<td>Overlap with state authority (e.g., VDOT)</td>
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<tr>
<td>Parking</td>
<td>Vested rights and grandfathering</td>
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<tr>
<td>Signage</td>
<td>First amendment</td>
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<tr>
<td>Nuisance</td>
<td>Exemption from USBC for farms</td>
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</tbody>
</table>
Emerging Local Government Issues

• Transferable development rights
• Non-agricultural fill
• Economic Incentives (including local match for state AFID grant)
• Drawing the line between ABC and local authority
• Wedding venues (bill defeated in General Assembly this year)
• Fleshing out what is “usual and customary at Virginia agricultural operations.”

Emerging Local Government Issues
Putting it all together

- Identify and mitigate legal challenges early
- Reevaluate your situation periodically
- Pick up the phone and call; maybe it's time to at least ask a question

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