

Agritourism – Business and Legal Challenges

- Martin R. Crim
- Vanderpool, Frostick & Nishanian, P.C.
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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.



AGENDA

Universal business challenges

Agritourism specific challenges

Agritourism Activity Liability Act

Legal landmines

Current local government regulations

Emerging issues for local government

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:



Regulate:

Zoning

Noise

Odor

Traffic

Parking

Signage

Nuisance

Owners' Defenses:

Right to Farm Act

State statutes restricting zoning authority

Dillon Rule

Overlap with state authority (e.g., VDOT)

Vested rights and grandfathering

First amendment

Exemption from USBC for farms



- 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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