

Agritourism and Business Liability

Agritourism 101
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Any society that needs disclaimers has too many lawyers - Erik Pepke

- Information is provided for instructional and discussion purposes only and does not constitute legal advice
- Develop your own support team for your specific needs - an attorney, an accountant, your insurance agent

What liabilities?



- People invited onto your property - conditions, wildlife
- Your techniques, care, housing, food
- Inherent risks of agritourism activities
- Some examples from your experiences?

Tools for your toolbox

- Risk assessment and risk management - MBWA (management by wandering around)
- Documentation - inspection records, incident reports
- Create an entity for riskier activities
- Insurance - affords defense and liability
- Limited liability statutes
- Signage
- Legal documents - waivers/releases, agreements, contracts

Agritourism activities



Agricultural recreation and agritourism activities - limitation of civil liability

- Section 13-21-121, Colorado Revised Statutes limits liability for agricultural recreation activities
- An activity related to the normal course of agriculture engaged in for entertainment, pleasure, recreation or education, including hunting, shooting, swimming, diving, tubing, riding or operating a motorized recreational vehicle, planting, cultivating, irrigating, harvesting, animal husbandry, rodeo and livestock activities, maintaining equipment

Agricultural recreation

- Does not matter whether a fee is paid
- Protected facilities include privately owned and operated farms and ranches and public property leased, rented or under the control
- Protected facility person owns, leases, operates, manages, is employed at or volunteers at the facility
- Not liable for injury or death from inherent risks including varied skill and experience, equipment, location, ground conditions, weather, animal behavior, collisions, etc.
- Except if provided faulty equipment and knew it was faulty, gross negligence or willful disregard for safety, intentional injury

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Ag Rec Inherent risks

- Dangers or conditions that are an integral part, including
- Varied degree of skill and experience of participants
- Nature of the activity including equipment used and location
- Hazards such as ground conditions, surface grade, weather, animal behavior
- Collisions with persons and objects
- Equipment types, complexity and malfunctions (cannot provide faulty equipment)
- Negligent participants

Limiting the liability in Ag Rec

- Participant by statute has the sole responsibility to know own ability
- Expressly assumes the risk and legal responsibility
- May not make any claim due to inherent risks
- Must exercise reasonable care to protect against dangers of which you actually knew
- OR
- Give warning of dangers ordinarily present on the property
- May post the statutory sign

Equine Activities



Equine Activities - Limitation from Civil Liability

- Section 13-21-119, Colorado Revised Statutes limits liability for equine activities
- An equine activity sponsor, equine professional, DVM or any other person shall not be liable for injury or death of a participant resulting from inherent risks of equine activities
- Equine professional - for compensation instructs, rents an equine, or rents equipment or tack
- Sponsor - those who sponsor, organize, or provide facilities

Definitions under the Equine Limited Liability Act

- Any person who engages in equine activities
 - Amateur or professional
 - Whether or not a fee is paid
- Equine activity - include, among other things, riding, hunting, inspecting, training, trimming and shoeing, boarding, instructing, and competing

Covers inherent risks of equine activities

- Dangers or conditions which are an integral part of equine activities, including:
 - Propensity of the animal to behave in ways that may result in injury to persons on or around them
 - Unpredictability of the animal's reaction to sounds, movement, unfamiliar things
- Certain hazards such as surface or subsurface conditions
- Collisions with animals or objects
- Potential for a negligent participant (such as failing to maintain control of the animal or not acting within his ability)

EXCEPT

- When the person provided equipment or tack and knew or should have known that it was faulty, and it caused the injury
- When the person provided the animal and failed to make reasonable and prudent efforts to match the participant's ability with the animal and the participant's ability to participate in the activity
- When the person owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities and injury was because of a dangerous latent condition known to the person
- When the person's act is a willful or wanton disregard for the safety of the participant

Signs and contract warnings

- The signs are available from Colorado Horse Council, and feed/tack stores and websites - black letters at least 1 inch high
- Every equine professional shall post the signs in a clearly visible location on or near stables, corrals, pens, or arenas where the equine activity is conducted AND the language must be included in every contract between the equine professional and a participant and in any release agreement
- "Under Colorado Law, an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to section 13-21-119, Colorado Revised Statutes"

A sign, yes, but



Not covered by the statute

- Spectators - unless the spectator places himself/herself in an unauthorized area and in immediate proximity to the equine activity
- Personal property - a horse, someone's tack, trailers, vehicles
- Thanks to dicta in *Stone* (2016), it does not cover the use of locker rooms, rest rooms, or dressing rooms associated with the activity - limited to areas where equines are

Landowner Liability



Actions Against Landowners

- Section 13-21-115, Colorado Revised Statutes,
- Different standards with respect to an invitee, licensee, and trespasser (in that order) BUT does not affect attractive nuisance for children 14 and under
- Protects landowners in some circumstances where they were not protected at common law - landowner includes the owner and tenant and anyone responsible for the condition of the land

Waivers and releases

Why not just a sign?

- "Ride at Your Own Risk" - says it all, right?
- But ...
 - Didn't see it
 - Child
 - Not riding at the time

The legal document

- In writing
- Advise of the risks - an informed choice to participate
- Presumption that it was read, understood and agreed

Legal standards for waivers & releases

- Cannot be compelled to resort to a magnifying glass and lexicon
- Avoid the legal jargon - *Stone* (2016) pointed out "affiliates, subsidiaries, successors, or assigns", "assumption of risk", "inherent risk of injury", "includes, but is not limited to", "agree to defend, indemnify and hold harmless" - needs to be simple and clear to a lay person
- Clear headings and placement of text, eliminate confusion
- Specify exactly what risks are covered - don't leave for interpretation, make it stand out

Contract aspects of a waiver & release

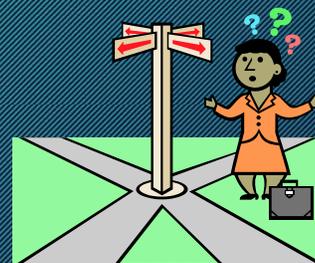
- Must be competent to sign - not a minor, intoxicated
- Meaningful opportunity to review - don't offer it when the group is already saddled and ready to go
- If a minor, check you home state's laws re release signed by parent - may limit the types of activities and change the degree of culpability that can be released (such as cannot release gross negligence)
- Don't allow pencil edits

LEGAL ENTITIES

Limitation of Liability by Formation of
Legal Entities

WHAT ARE THE CHOICES?

- Sole Proprietorship
- C Corporation
- S Corporation
- General Partnership
- Limited Partnership
- Limited Liability Partnership
- Limited Liability Limited Partnership
- Limited Partnership Association
- Limited Liability Company



Sole Proprietorships General Partnerships

- Advantages:

Control

Easy recordkeeping

Less expensive to form and manage

- Disadvantages:

Liability not limited

You could lose it all

LLC's and Corporations

- Advantages:

Limits your exposure for liability in tort (injury, death) and contract (debts) to your investment in the entity
Protects personal assets

- Disadvantages:

More formality

Keep accounts separated

Taxation questions

Questions??

