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Land Brings Liability Exposure

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Land is often the primary asset of a farm or ranch business, but it is also a major source of liability exposure. Harm to a person on the farm property can bring liability for medical bills, lost wages, attorney fees and other costs. Even if the farm isn't ultimately responsible for the harm, it can take significant time, energy and money to defend a liability claim. Farm and ranch landowners should take premises liability risk seriously.

NEGLIGENCE AND THE LANDOWNER'S STANDARD OF CARE

The legal claim for a premises liability incident is often negligence, which is the failure to meet the required level of care for a situation. The law expects a landowner to maintain a standard of care to keep the property safe for visitors. If a landowner doesn't meet the standard of care and a visitor suffers resulting injury, the landowner could be liable under the theory of negligence.

The first step toward managing premises liability risk is

to know your standard of care for farm visitors. State law establishes your standard of care, and the laws vary in approach. Most states establish a "general duty of reasonable care" for property visitors. Whether the landowner took reasonable care involves analysis of several factors, including foreseeability of the injury, benefits of the condition that harmed the person and burdens of correcting the condition to reduce risk of harm.

A few states take a different approach and use a classification system that varies standard of care according to the "type" of property visitor. A landowner has a higher standard for customers and others invited onto the property for business than for those who enter the property for their own purposes and has the lowest standard of care for trespassers.

Some states have simplified the classification system with just two types of visitors – those lawfully on the property and those who are "unlawful," with a higher standard for lawful visitors. In visitor classification states, the higher standard of care for customers and lawful visitors requires a landowner to seek out and manage dangers that might harm visitors.

The first step toward minimizing premises liability risk is to know the legal standard of care established in your state. Attorneys and insurance providers can explain your state's standard of care, or an Internet search on "premises liability law" for your state should yield an explanation.

SPECIAL STANDARDS OF CARE FOR CHILDREN

Unique standards of care can apply to children, even when they are trespassing. Many states have adopted an "attractive nuisance doctrine" to address liability for child trespassers who are drawn to and harmed by a dangerous artificial condition on the property. In this situation, a landowner could be liable for the child's injuries if it was foreseeable that the child could be on the property, the condition created a high risk, the child couldn't appreciate the risk and the landowner failed to take reasonable steps to address the risk. A few examples of dangerous artificial conditions that attract children onto farms include machinery, grain bins, silos, manure lagoons, drainage outlets, haylofts, chemicals, water tanks and abandoned buildings or equipment.

IMMUNITY LAWS CAN PREVENT LIABILITY

Many states have special immunity laws that prevent liability for agricultural landowners in certain situations. An "equine activity act" can limit liability for harm to participants in activities involving horses and other equine. "Recreational user statutes" generally state that a landowner has no liability when allowing people to freely use farmland for recreational purposes such as hunting, fishing or snowmobiling.

"U-Pick" laws limit liability for injuries a customer suffers when self-picking produce if the injuries result from normal agricultural land surface conditions. Several states have recently enacted "agri-tourism immunity laws" that limit liability when visitors voluntarily engage in agri-tainment activities such as corn mazes, hay rides and viewing farm animals.

OTHER LEGAL DEFENSES MIGHT AFFECT LIABILITY

Even where it appears a landowner could be liable for a visitor's injuries, legal defenses might offset or negate liability. Such defenses can shift legal responsibility from the landowner to the harmed person.

If a person's own actions or failures contributed to or caused their injuries, a landowner could assert "contributory negligence" and "assumption of risk." Where a dangerous condition is very apparent, a landowner could use an "open and obvious" defense to argue that the visitor should have seen and recognized the danger. For injuries to children, "negligent supervision" by a parent or guardian could have contributed

to or caused the child's harm. Where customers go into areas marked "off limits," the defense that the customer "exceeded the scope of the invitation" might apply. Be aware that state laws differ in recognition and interpretation of defenses to premises liability claims.

MANAGING LIABILITY EXPOSURE

While premises liability is a real risk for farm and ranch landowners, it is possible to manage the risk. Awareness, good land management and business tools can keep liability exposure to a minimum.

Begin by being aware of laws that apply in your state. Consider the types of visitors you bring onto the property and know the required legal standard of care for each. Understand immunity laws that could affect your situation.

Continuously assess your property for dangerous conditions and maintain records of assessments and corrective actions. When you identify a dangerous situation, consider whether it is necessary to the operation. If so, use measures to keep visitors away from the danger, such as fencing, blockades, locks and signs. Eliminate a dangerous condition that is not necessary, fix the situation or reduce its danger. If you invite customers onto your farm, clearly identify areas customers may and may not enter.

If children might be near your farm, pay special attention to artificial dangers that might attract and entice children. Take extra precautions to mitigate dangers or keep children away from the dangers and, if possible, notify parents of the situation.

Regularly examine your property insurance and determine how it applies to all activities and conditions on your property. Discuss coverage with your insurer, being sure to notify the insurer when conditions or activities change. Obtain additional riders or increase your coverage if necessary.

Consider a business entity for the farm business. A corporation or limited liability company can separate assets and limit personal responsibility for business liabilities. Be aware, however, that an entity won't protect personal assets if you acted negligently during business activities. For example, if you use poor workmanship to repair a dangerous condition while working for the farm, you could be personally liable for resulting injuries. Additionally, a business entity may not be necessary if you have few personal assets. Talk with an attorney to determine whether a business entity would be useful for your situation.