

The National Agricultural Law Center



University of Arkansas



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Agritourism and Liability

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University of Arkansas



**The nation's leading resource for agricultural
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Research - Information - Education



The National Agricultural Law Center

The Nation's Leading Source of Agricultural and Food Law Research and Information

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Located in Fayetteville, Arkansas, the National Agricultural Law Center serves the nation's vast agricultural community and is a key partner of the USDA National Agricultural Library. For more information, [click here](#).



A federal judge in California recently dismissed a constitutional challenge to that state's "Proposition 2," a ballot initiative that addressed the confinement of laying hens, veal calves, and pregnant sows. To read the language of state statutes that have been enacted addressing farm animal confinement, [click here](#).

Twitter @nataglaw

September 26, 2012

[@bammedia](#) [@AgCouncilofAr](#) Nat'l Ag Law Center and Nat'l Assoc. of State Depts. of Agriculture form new partnership, <http://t.co/IsQLTX2f>

Ag and Food Law Blog

[HSUS Files Suit Against NPPC Funding](#)
24 September 2012

Earlier today, the Humane Society of the United States (HSUS) filed suit against the United States D [...]

[Center Hosting Series of Ag Law Producer Workshops in Louisiana, Mississippi, and Arkansas](#)
24 September 2012

The National Agricultural Law Center is hosting a series of producer workshop meetings throughout Lo [...]

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The National Agricultural Law Center



Comprehensive compilation of specific agricultural and

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Welcome to the National AgLaw Center electronic resources for an agricultural Center-published research articles; each room is an overview article that the left side of each reading room. Periodic browsing of our Reading Rooms is ongoing.

- **Administrative Law**
- **Animal Identification**
- **Aquaculture**
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planning devices, business entities, and rules governing succession of property, the Internal Revenue Code primarily governs the major tax issues associated with estate planning. [Read the full overview](#)

Note: Recently added resources are posted at the top of the applicable sections.

Topics:

- Landowner Liability
- Business Organizations
- Statutes limiting liability
 - Recreational Use
 - Equine Activity
- Other steps to reduce risk

Premises Liability

- Premises liability is based on the notion of negligence
 - The failure to exercise the care that a **reasonably prudent person** would exercise in like circumstances



Negligence

- There are 4 parts to a cause of action for negligence (if they lack any one of these then you are safe!):
 - **Duty of Care**
 - Your responsibilities as a land owner; different in each situation
 - Typically the “reasonable person” standard
 - Duty of Care changes with the person
 - **Breach of Duty**
 - A failure on your part regarding your responsibilities
 - **Causation**
 - Your failure caused the “injury”
 - **Damages**
 - There must be an actual harm that can be redressed

Liability Issues

- So now there are people on your land...
 - How did they get there?
 - Did you invite them or charge them to come onto your land?
 - Did they ask your permission? Are you allowing them to enter for free?
 - Are they trespassing? Are you aware of their presence?

Liability Issues

- 3 Categories of People on Your Premises
 - Trespasser (2 types)
 - Lowest duty of care
 - Licensee
 - Higher duty of care than trespasser, but less than invitee
 - Invitee
 - Highest duty of care

Liability Issues: Trespasser

- Trespassers

- Entered upon land without permission or invitation
- Knowledge of trespasser
 - No knowledge - no duty, no liability
 - Knowledge - duty not to affirmatively harm
 - A course of action which shows a deliberate intention to harm or utter indifference to, or conscious disregard of, the safety of others
- Example: Teenagers going out to your pond and fishing without your permission
 - Do you know about them? What can't you do about them?

TRESPASSERS - CRAIGSLIST

[fayetteville, AR craigslist](#) > [for sale / wanted](#) > [farm & garden](#)

Avoid scams and fraud by dealing locally! Beware any deal involving Western Union, Moneygram, wire transfer, cashier check, money order, shipping protection/certification/guarantee. [More info](#)

I need a mean bull (Siloam springs)

Date: 2012-03-07, 6:04PM CST

Reply to: see below [\[Errors when replying to ads?\]](#)

I am hoping to find an aggressive bull that is protective of his field . I am wanting a very aggressive one that will chase people off.

Call me or text im not particular on the breed

479- [REDACTED]

Liability Issues: Licensee

- Licensee
 - Present for a non-commercial, non-business purpose with the consent of the possessor of the property, such as a social **guest** at someone's residence

Liability Issues: Licensee

- Your Duty:
 - Refrain from injuring the person through willful or wanton conduct
 - i.e., deliberate behavior such as setting booby traps
 - Warn of hidden dangers where the person does not know or is unlikely to know of the conditions or risks
- Example:
 - Someone asks for permission to hunt, walk, use land without a fee
 - Need to warn of the bull on the back 40 that isn't fenced in or of a huge snake population that you know of.
 - What about a pond that is located on the back 40?
 - It is not hidden so there is no general duty to warn them

Recreational Use Statutes

- Provide some form of liability protection for landowners who allow public use of their land.
 - Enacted, in some form, in all 50 states
- Typically applies to licensees, but not to invitees
 - The KS statute works by lowering the duty of care down to that of a trespasser.



West's Ann. Cal. Civ. Code § 846

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby

- (a) extend any assurance that the premises are safe for such purpose, or
- (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or**
- (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

Trespass?

- Florida Swimming hole hypothetical
- What do you think the court said?



Iowa Example

Sallee v. Stewart, 814 N.W.2d 622 (Iowa Ct. App. 2012)

- “Recreational purpose” means the following or any combination thereof: Hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein.
- D owned a dairy and P was injured in the hay loft on a school field trip...should Rec. Use apply?

Liability Issues: Invitee

- Invitee
 - Person who is invited upon the premises in order to conduct business with the possessor
 - Came on the land for *your* benefit
 - Customers in store or shopping center
 - **Employees**
 - Students
 - Business visitor

Liability Issues: Invitee

- Your duty:
 - Highest duty of care
 - A general duty to use ordinary care to keep the premises reasonably safe for the benefit of the invitee.
 - Typically you show these people the most concern anyways (i.e. “the customer is always right”)
 - But what about employees?
 - What kind of concern are they typically shown? What kind of jobs do they typically perform?
 - This means making sure your employees have safe equipment, facilities, proper training, etc.

Status of Entrant

- The status of a person on your land can change fluidly.
 - For example -
 - If you allow someone to fish in your pond, but they explore other parts of your land, they may change from a licensee to a trespasser, but if you catch them and accept money for their access to the other parts of the land they become an invitee.
- It is important to define the area that visitors have permission to use.

Review: Liability Issues

- 3 Categories of Entrants on the Premises
 - Trespasser
 - Duty not to affirmatively harm (i.e. no booby traps)
 - Licensee
 - Warn of hidden dangers where the person does not know or is unlikely to know of the conditions or risks and duty not to affirmatively harm
 - Invitee
 - A general duty to use ordinary care to keep the premises reasonably safe for the benefit of the invitee.

More than just “Agritourism” Statutes

- **Agritourism - 2012**
 - <http://nationalaglawcenter.org/assets/agritourism/index.html>
- **Recreational Use - 2010**
 - <http://nationalaglawcenter.org/assets/recreationaluse/index.html>
- **Equine Activity Statutes - 2011**
 - <http://www.animallaw.info/articles/armpequineliability.htm>





**BUSINESS
ORGANIZATION
OPTIONS TO PROTECT
YOUR PERSONAL AND
BUSINESS ASSETS.**

The Business Structure

- What is so Important about a Business Structure?
 - Liability Protection – separating assets so that a creditor or plaintiff cannot take everything you own
 - Fairly cheap to use
 - Easy to set up
 - Great estate planning tool

How Business Entities Work to Protect You

Know what business entities provide protection:

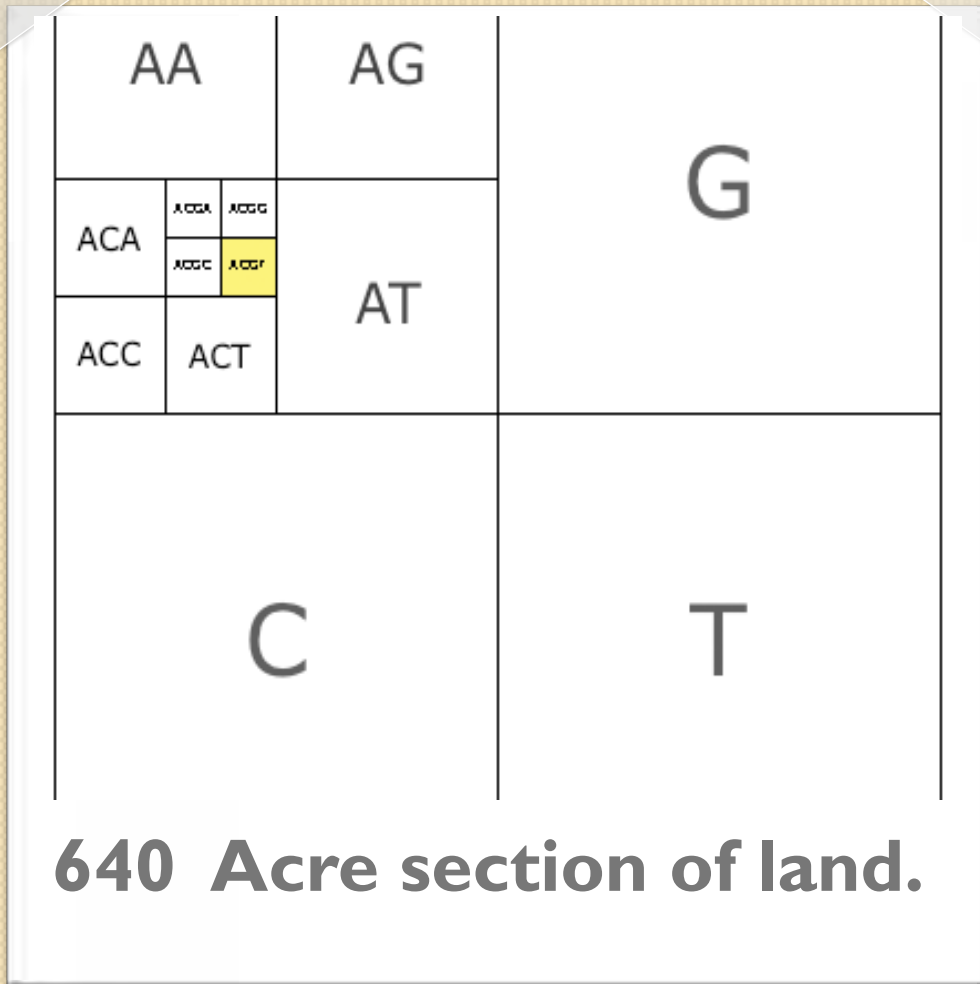
- No protection - Sole Proprietorship and General Partnership
- Some partners protected – Limited Partnership
- Full protection – Limited Liability Companies and Corporations

How Business Entities Work to Protect You, continued

Why the differences in protection?

- Some business entities function as a separate legal entity (like another person) and others do not.





Business Organizations are like “fire breaks” and not shields

640 Acre section of land.

How to use a Business Entity



- Creating a business entity is not enough to provide any protection
- Creating a business entity is like buying another basket...

Respect the Business Structure

- At the end of the day, Courts will only respect your business structure as much as you do.
- What does this mean?
 - You **HAVE** to keep the business separate from your personal life and from other businesses that you run.
 - Keep separate bank accounts, business records, etc...
 - Don't use business funds for the family vacation

Issues we'll cover for each one

- Liability of Owners
- Legal Status
- Formation
- Management
- Taxation

Types of Business Structures

- Sole Proprietorship
- General Partnership
- Limited Liability Corporation

Sole Proprietorship

- Liability of Owners
 - 100% liability for the business debt
 - Creditors will be able to reach your personal assets as well as what you invested into the business.
 - This means that property such as your land, your home, your personal bank accounts are at risk!
- Legal Status
 - Not a separate legal entity
 - You would be sued directly.

Sole Proprietorship

- **Formation**

- No formalities are required...if you start a business by yourself than this is what you have.
- Formed or dissolved at the discretion of the individual who owns it
- Only 1 person, or it becomes a partnership

- **Management**

- Easy decision making – only one person to consult!

- **Taxation**

- Income is taxed on the individual's tax return (1040)
 - Schedule C

General Partnership

- Definition

- An association of two or more “persons” who agree to carry on as co-owners of a business for profit.
- No intent is necessary to form a general partnership and it is possible to create one without intending to.

General Partnership

- Liability
 - Each partner is ***jointly and severally*** liable for the debts of the business.
 - Not only are you personally liable for the debts and actions of the business (just like the sole proprietorship), but you are also responsible for all of the other partners actions
 - Creditors can reach your personal assets, in addition to what you have invested into the business

In Re Simmons (Arkansas 2007)

- Simmons farming operation was in financial trouble and filed for Chapter 7 which would discharge many of the debts.
- Simmons' son, and general partner, produced a forged personal guarantee on a loan that Simmons had no knowledge of at the time (he later found out about it)
- Court held that the Son's actions imputed fraud to ALL partners so no discharge was allowed.

General Partnership

- Legal Status
 - Recognized as a separate legal entity
- Formation
 - No formalities are required
 - Can be formed unintentionally (only intent required is to run business for profit)...Example look at your land lease forms when you go home.
 - There can be a formal partnership agreement that details management responsibilities and how profits/losses will be split

General Partnership

- Management
 - Each member of the partnership is called a “general partner”
 - The decisions are made by all partners and all partners actively participate...any partner can bind the rest of the partners to a contract
 - Profits and losses are split evenly
 - Unless the partnership agreement states otherwise and there typically has to be a good reason for this.

General Partnership

- Taxation

- The general partnership has the advantage of being a “pass-through entity”
- This means the partnership itself pays no income taxes
- Instead, income is taxed only after it is distributed to the partners.
 - This is different than the “double tax” where income is taxed when the business earns it and when it is paid out to the individual partners.

Limited Liability Company (LLC)

- LLC – created in the 1970s
 - Similar to Limited Partnerships...except everybody can be protected.
 - Provides protection to personal assets
 - Made up of “members” rather than “partners”
- Liability
 - Members’ personal assets are protected from creditors of the business.
 - Creditors can only reach that which has been invested or pledged to the business

LLC

- Legal Status
 - Recognized as separate legal entity
- Formation
 - Can be formed with 1 or more members
 - Created by delivering Articles of Organization to the Secretary of State's office
 - Must include
 - Name of LLC
 - Address of LLC
 - Agent for service of process
 - Certain reports must be filed each year to maintain LLC status

LLC

- **Management – 2 options**
 - **Member Management (small businesses)**
 - All members have the right to participate in management
 - This is the more common option
 - **Manager Management (large businesses)**
 - Only designated members have management authority as provided in articles of organization
 - Profits and losses are shared equally among members unless otherwise agreed

LLC

- Taxation

- The LLC can elect to be a “pass-through entity”
 - Income is taxed only when it is distributed to the members
- Or the LLC also has the option of being taxed as a corporation
 - Income would be taxed when the LLC earns it and again when it is distributed to the members

Other Steps to Reduce Risk

- If Liability Statutes are not the perfect answer then what can you do?
 - Business Organizations
 - Agritourism/Hunting Lease Planning
 - Insurance

Agritourism Planning

- Planning resources:
 - <http://nationalaglawcenter.org/readingrooms/agritourism/>
- There are many resources that provide things to think about **BEFORE** starting a new business venture.
 - Learning from your mistakes is a great idea, but also learn from the mistakes of others because you will never live long enough to make them all yourself.

Agritourism Planning

- Helpful hints:
 - Mark boundaries carefully
 - Set up an inspection schedule
 - Pros and Cons of this approach
 - Use information from the inspection to provide invitees with a written warning of the dangers.

Insurance

- Who should purchase it?
 - Agritourism
- Who should have their name on the policy?
- What type of insurance do they have?
 - Many common policies (general farm and homeowners) may not provide protection.

Shooting accident in PA example...

Insurance

- Make the insurance agent aware of any changes and that they are covered by the policy (in writing)
 - If possible have them see the agritourism operation in person before buying a policy
 - Check in yearly to see if coverage has changed

Summary

- None of these methods are 100% foolproof
- Even Agritourism statutes are not perfect
- Having a strong mix of the different protections is important

Questions?

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