Risk Management

Introduction

Agritourism Intensive 2019
Farmers Face Many Challenges!

- Markets
- Competition
- Transportation
- Labor Issues
- Others?

Slides courtesy of Ramiro Lobo,
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What is Risk?

danger
possibility
Endanger
Chance
peril
gamble
exposure
jeopardy
hazard

RISK

menace
threat
What is Risk?

- In general, risk is defined as…”the possibility of loss or injury.”
  (http://www.merriam-webster.com)

- Risk is…*the possibility of adversity or loss, and refers to “uncertainty that matters.”*

What is Agricultural Risk?

Agricultural Risk is “the probability that an unpredictable event occurs which will negatively affect your farm business.”

- Reduce productivity and annual income
- Impact your financial situation & repayment capacity
- Affect your personal or family satisfaction and wellbeing
What is Risk Management?

- Risk management is the **process** of choosing among alternatives to reduce the financial effects of risk or uncertainties.
- A **conscious** effort of planning, organizing, directing, and controlling resources and activities.
- Requires the evaluation of tradeoffs between changes in risk, expected returns, entrepreneurial freedom and other variables.
Risk management Approaches

- Assume the risk
- Avoid the risk
- Reduce the risk
- Transfer the 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?
I need a mean bull (Siloam springs)

Date: 2012-03-07, 6:04PM CST
Reply to: see below  [Errors when replying to ad!]

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

479-000-0000
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 in no general duty to warn them
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.
Agritourism Planning

- Planning resources:
  - http://nationalaglawcenter.org/readingrooms/agritourism/

- Reduce Risk by Planning for Safety
  - Integrating Safety Into Agritourism:
    - https://safeagritourism.org/
      - Walkthroughs
      - Communication
      - Checklists
      - Resources
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

- 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
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