

# Reducing Risk by Managing Liability

## Why risk management matters, in the words of farmers and ranchers with agritourism operations.

- Visitors are coming for an experience; we want those experiences to be positive ones.
- We want visitors to have fun and be safe.
- We want our employees to be happy (and not have to spend their time chasing people away from where they shouldn't be).
- We don't want to be sued; we want to get paid.
- We need to know the details of our policies — what we are protected against and how we can protect ourselves.
- We must actively manage risk through such things as fencing off areas we don't want people to explore and hiring extra help for busy times.
- In farming and ranching, we often learn by doing, but in the case of managing risk, preparation is really important.

## RISK IS EVERYWHERE

There is a degree of risk inherently associated with most activities. Risk can be high or low, but as panelist Keith Barnhart of Willow Springs Ranch noted, “every time someone comes on your ranch, it's a risk. We just need to accept that as a given.” Risk cannot be eliminated, but it can be managed.

While it's safe to assume that you already have liability policies for your farming and ranching operations, the minute you invite someone onto your property and charge a fee, this negates the liability protections in your general policy unless the fee-based operations have been included specifically. For that reason, you need to consider additional insurance, specific to your planned agritourism activities, that specifically protects you for risks associated with those activities. In the case of Willow Springs Ranch, the outfitter's liability policy covers their agritourism activities, while general liability policy covers ranching operations.

## RISK COMES IN MANY FORMS:

There are several classes of risk to consider in order to protect your assets. You have more control over some than you do others.

- Economic — Changes in the market that affect your operations.
- Legal — What compliance/statutory liability laws affect your activities?
- Political — Laws and policies change over time.
- Social — This includes public/neighbor relations, the potential loss of reputation, and scenarios that could irritate neighbors.
- Physical property and people on your property — If people are staying on your farm or ranch and they venture off your property, you may still be liable for anything that happens to them over the period of time that they are your guests. Ask your insurance agent about how this applies in your case.
- Judicial — Judge/jury decisions can cause changes in public attitudes.



## MANAGING RISK INCLUDES SEVERAL STEPS

Risk management is the process of protecting your assets by analyzing and planning for risks associated with your operation.

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- Identify the specific risk exposures for planned activities at your business. In other words, imagine all the ways people can injure themselves. Keep in mind that adults are usually a greater challenge than children, who tend to obey rules.
- Analyze the degree of risk associated with specific activities. Are there situations that could cause serious injuries? These are especially critical to address.
- Develop strategies for controlling exposure to risk. For example, can you put something away, fence it off, add a sign, provide advance information, etc.?
  - Keep in mind that you want to balance being hospitable and avoiding risk. For example, if you go to extremes and tack up “Do not” signs everywhere, this may detract from the welcoming experience you want to give your guests.
- Determine how to finance losses associated with risk. Through sound risk management strategies alone, you can reduce, but not entirely eliminate risk. In purchasing liability insurance, you transfer the risk costs to your insurance company in exchange for your premium payments; your deductibles represent what you directly assume as your share of the risk beyond what the carrier pays.
- This only works well if your insurance agent fully knows what your operations entail. Otherwise, you may have issues when/if you need to make a claim.
- If you have vendors providing agritourism services on your property, you can have them add you as an Additional Insured on their liability insurance for their operations (e.g., someone holding an event or a farm dinner).
- Having waivers and releases signed by your customers with “hold harmless” language can also alleviate your risk-exposure issues if you aren’t negligent, but such waivers don’t keep you from being sued. Most insurance policies do provide for legal defense.
- Since you cannot transfer the risk costs associated with your negligence, you need to consistently implement and monitor your risk management activities: Have clear policies and procedures in place and be sure you consistently apply them. For example, Willow Springs Ranch sends its release form to customers as part of a welcome package of information that people can review before sending their payment. The form has a check box to acknowledge that the information has been read and understood. It’s best to send that information in advance for activities that have some real risk (e.g., horseback riding is more risky than u-pick strawberries), or else you could be accused of “unfair inducement,” which means giving folks no option but to sign after they’ve already paid for an experience.
- If you need to make a claim, it should not preclude you from securing insurance in the future, but it may increase your rate, depending on the size of the claim, the state of your industry, whether you informed the insurance company of all your activities in advance, and whether you were actually negligent.
- Remember that even if you have done everything “by the book” to ensure your visitors’ safety, it will still impact you if someone gets hurt on your property. So try your best to anticipate and address as much as you can with risk management, and ensure that you are never negligent.

## TIPS FOR FINDING A GOOD INSURANCE AGENT

- The questions on the following page should give you a good vocabulary for interviewing agents. If your prospective agent isn't asking you these questions, he/she may not have the expertise to insure a farm, ranch or agritourism operation.
- Ask others with similar operations about whom they use.
- Check with your state insurance commission regarding reputation and complaints against your prospective insurance agent.
- Trust your intuition to tell you if it's a good fit.

## OTHER RESOURCES

- [Oregon Equine Inherent Risk Law](#) (1993), offers specific liability protections for agritourism activities associated with horses.
- [Oregon Agritourism Inherent Risk Law](#) (2015), expands liability protections for all Oregon agritourism activities as defined by statute.

*Excerpted from a presentation at the 2012 Oregon Agritourism Summit by Lance Adams, PayneWest Insurance, Baker City, OR, along with Keith Barnhart, Willow Springs Guest Ranch, Lakeview OR.*

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