



MANAGING LEGAL LIABILITY SERIES: Conducting the Liability Assessment

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The best way to minimize legal liability is to constantly monitor the conditions of your operation to ensure that the operation is safe. A liability assessment is an important part of this monitoring program. A liability assessment systematically reviews the operation to ensure that exposure to liability is minimized, safety is maximized and that steps are in place to respond to accidents.

A liability assessment consists of the four main components:

- 1) The operator should review the present liability insurance policies with the insurance agent and attorney for the operation;
- 2) A standard operating procedure should be in place in case an accident occurs;
- 3) An attorney should be retained and familiarized with the operation before any problems occur so that action can be taken quickly if needed;; and,
- 4) The physical layout of the operation should be periodically inspected for safety concerns. Pictures should be taken to document the condition of the property and to note any issues that have been corrected. The operator or a third party may perform the physical inspection. Your liability insurance company or attorney are the most common third-party inspectors.

A physical inspection by a third party often proves to be useful. However, for legal reasons, this inspection should be done by an attorney or at the direction of your attorney. A third party inspection not coordinated through your attorney may be required to be disclosed to parties that file suit against the operation. These issues should be discussed with your attorney PRIOR to having any third party inspection done.

The following checklist includes important items to consider when conducting a liability assessment for your operation. The checklist should be treated as a starting point and modified to fit your operation. You know your business better than anyone, so you should think of all the possible ways that problems could arise and ensure that the risk of accidents is minimized. Making your operation safe not only minimizes exposure to legal liability but also makes the operation more welcoming to the public. Customers that feel safe are more likely to enjoy the visit, come back again and spread the word to their friends. A safe business is likely to be a successful business.

Two key elements of a liability assessment should be kept in mind. First, a liability audit is an ongoing, never-ending activity. An operator should always be alert to the conditions on the property and constantly updating the assessment. Second, documentation is essential, particularly if an accident occurs and a lawsuit is filed. Employees should periodically inspect wagons for hay rides, corn mazes, hay castles, and all areas where customers will be entering. These inspections should be documented on a check sheet and initialed by the employee(s). These records should be kept for at least five years. In a recent lawsuit in Virginia, a corn maze operator was sued by a former customer. The customer claimed that pesticides on the cornstalks made her ill. Primarily due to good record-keeping, the lawsuit was dismissed and the operator absolved of any liability.

References

Blacka, Aaron, et. al, AgriTourism, Virginia Cooperative Extension, Publication 310-003:
http://pubs.ext.vt.edu/310/310-003/310-003_pdf.pdf

National Children's Center for Rural Agriculture Health and Safety, Marshfield Clinic,
Agritourism Health and Safety Guidelines for Children:
<http://www.marshfieldclinic.org/proxy/MCRF-Centers-NFMC-NCCRAHS-AgritourismHealthandSafetyGuidelinesforChildren2011.1.pdf>

Walker, Martha A., "Building a Risk Management Plan," Virginia Cooperative Extension.

Walker, Martha A., "Evaluating Your Company: Observations of a Visitor," Virginia Cooperative Extension.

Walker, Martha A., "Observations of a Visitor: Agritourism Operations," Virginia Cooperative Extension.