

5 Steps to Landowner Liability Protection



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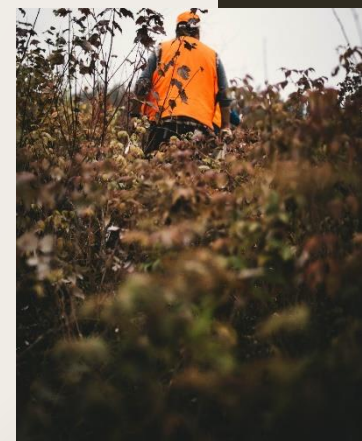
1. Liability Insurance

- Every landowner and ag tenant needs it. Period.
- Liability insurance is usually quite affordable.
- Amount you need depends on what you are doing.
- Ensure that every activity you have going on is covered.
- Watch for any caps on coverage in the fine print.



2. Identify Dangerous Conditions...

- Duty owed depends on the person injured by a condition on the land:
 - Trespasser: Duty not to intentionally injure or act with gross negligence.
 - Licensee: Duty to warn of dangerous conditions known to the landowner that might not be visible to the plaintiff.
 - Invitee: Duty to warn of dangerous conditions known or that should be known to the landowner with a reasonable inspection that might not be visible to the plaintiff.



3. Obtain Written Liability Waiver

- General Rule: Texas will enforce releases if properly drafted and injured party is an adult.
- Extremely complicated issue—*please* see an attorney!
- Release must be:
 - Express
 - “Release any and all claims against the landowner including claims for negligence and gross negligence.
 - Signed near the time of the injury.
 - Specifically addresses activity.
 - Conspicuous

4. Consider Business Entities

- Certain business entities offer limited liability of members.
- Limited Liability Company, Corporation, Trust
- Must jump through the right hoops to get protection.
- Which one works best depends on your operation.



5. Ensure Limited Liability Statutes Apply

- Texas Recreational Use Statute
- Texas Agritourism Act
- Texas Farm Animal Liability Act



Recreational Use Statute



Recreational Use Statute: Summary

- Landowners are liable only for intentional acts or gross negligence if the statutory requirements apply.
- Requirements are:
 - Agricultural land (or non-agricultural land)
 - Plaintiff there for recreational purpose
 - One of the three listed monetary requirements
 - Landowner does not charge a fee;
 - Total charges collected over the past calendar year are not more than 20 times the total amount of ad valorem taxes imposed on the premises for the previous calendar year; or
 - Has liability insurance coverage of at least \$500,000 per person, \$1 million per occurrence of bodily injury or death, and \$100,000 for injury to property.

Agritourism Act



Agritourism Act: Summary

- Requirements:
 - Agritourism entities are not liable
 - Person engaged in providing an educational or recreational activity on ag land, regardless of compensation.
 - Plaintiffs there for recreational or educational purpose
 - Proper sign and/or release language used
 - Subject to numerous exceptions



Agritourism Act: Signage

- Must be posted and maintained in a “clearly visible location on or near any premises on which an agritourism activity is conducted.”

WARNING

UNDER TEXAS LAW (CHAPTER 75A, CIVIL PRACTICE AND REMEDIES CODE), AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AN AGRITOURISM ACTIVITY.



Agritourism Act: Release Language

- Must be signed before the agritourism activity,
- *By the participant or their parent, guardian, or managing conservator,*
- Document separate from any other agreement other than a different warning, consent, or assumption of risk statement, and
- Printed in not less than 10 point bold type.

AGREEMENT AND WARNING

I UNDERSTAND AND ACKNOWLEDGE THAT AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AGRITOURISM ACTIVITIES. I UNDERSTAND THAT I HAVE ACCEPTED ALL RISK OF INJURY, DEATH, PROPERTY DAMAGE, AND OTHER LOSS THAT MAY RESULT FROM AGRITOURISM ACTIVITIES.

Agritourism Act: Exceptions

- Plaintiff is employee of agritourism entity
- Intentional acts
- Injury proximately caused by:
 - Entity's negligence evidencing a disregard for the safety of an agritourism participant;
 - One of the following dangers of which the entity knew or should have known:
 - Dangerous condition on the land, facilities, or equipment used in the activity;
 - Dangerous propensity, that is not disclosed to the agritourism participant, of a particular animal used in the activity; or
 - Entity's failure to train or improper training of an employee actively involved in the agritourism activity.

Farm Animal Liability Act



Farm Animal Liability Act: Summary

- Requirements:
 - Persons are not liable for damages to
 - Participant in a farm animal activity or livestock show
 - If injury results from risks inherent to farm animal activity or livestock show
 - Subject to numerous exceptions



Limitations

- Only applies to injured participants
- Long list of exceptions
- Does not apply if the injured party is a “rancher or ranch hand”
- May be distinction between employee and independent contractor?

FALA: Inherent Risks

- Statute specifically includes:
 - Propensity of an animal to behave in ways that may result in injury;
 - Unpredictability of farm animal's reaction to sound, sudden movement, or unfamiliar object, person, or animal;
 - With respect to equine activities, certain land conditions and hazards including surface and subsurface conditions;
 - Collision with another animal or object; or
 - Potential of a participant to act negligently that may contribute to an injury of another.
- Broad definition—any risk inherent to farm animal activity.

FALA: Language for Farm Animal Professionals

- **Farm animal professional:** Person engaged for compensation in instructing a participant or renting to a participant an animal, equipment or tack, or who provides veterinary or farrier services.
- Must post if maintain a stable, corral, or arena where professional conducts a farm animal activity.
- Clearly visible location on or near stable, corral, or arena.
- Must include in all contracts for professional service, instruction, or rental of equipment, tack, or farm animals.
- Must be clearly readable
- Language:

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A FARM ANIMAL PROFESSIONAL IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN FARM ANIMAL ACTIVITIES RESULTING FROM THE INHERENT RISKS OF FARM ANIMAL ACTIVITIES.

FALA: Language for Livestock Show Sponsors

- **Livestock show sponsor:** Group that organizes & sanctions a livestock show.
- Must post if maintain a stable, barn, corral, or arena at which a livestock show occurs.
- Clearly visible location on or near stable, barn, corral, or arena.
- Must include in all contracts with livestock show participants.
- Must be clearly readable.
- Language:

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A LIVESTOCK SHOW SPONSOR IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN A LIVESTOCK SHOW RESULTING FROM THE INHERENT RISKS OF LIVESTOCK SHOW ACTIVITIES.

FALA: Exceptions

- Injury caused by faulty equipment or tack provided by defendant who knew/should have known it was faulty;
- **Defendant provided animal to the person and did not make a reasonable and prudent effort to determine ability of participant to safely engage in activity & to safely manage the animal;**
 - Does not require “formal, searching inquiry”
- Injury caused by dangerous latent condition of the land owned/controlled by defendant for which warning signs, notices, or verbal warnings were not provided and defendant knew of the condition;

Exceptions (continued)

- Defendant acted with willful or wanton disregard for safety of the participant;
 - Want of care indicating conscious indifference to welfare of persons affected.
- The person intentionally caused the injury;
- For stock shows, the injured party was invited or allowed to participate in the activity but the person was not registered or assisting a registered participant.

James v. Young:

TX Farm Liability Act

- Young family invites James family over to the ranch, child injured.
- Negligence suit filed, FALA raised as defense, exception claimed.
 - Defendant provided animal to the person and did not make a reasonable and prudent effort to determine ability of participant to safely engage in activity & to safely manage the animal
- Trial court sides with landowner—grants summary judgment. Appellate court affirms.

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Pipeline Easement Negotiation Checklist and Podcast

Posted on [January 10, 2018](#) by [tiffany.dowell](#)



If you've ever gotten notice that a pipeline company is planning on coming across your property and you found yourself facing the task of negotiating an easement, you know how intimidating that can be. The most important thing to keep in mind is that you, as a landowner, do have rights! You can and should take time to really negotiate with

the company to ensure you are receiving adequate compensation and have included terms in the agreement to protect your property. In the last couple of months, I've...

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A portrait of Tiffany Lashmet, a woman with long brown hair and glasses, smiling. She is wearing a black top with red floral embroidery and a necklace with blue stones. The background is a blurred green field.

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Thank You!



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