

# Liability and Insurance Considerations

Liability should be one of your major considerations when you enter into a fee-recreation enterprise. In general, if you decide to impose a fee for any recreational activity conducted on your land or land you are in possession and control of (rent or lease), you are exposed to greater liabilities for any injury of visitors that may occur. Meet with your attorney and insurance agent to determine the extent of liability and insurance needed and to develop a risk management plan.

The landowner or user in possession and control of the land is obligated to make reasonable use of the property, which causes no unreasonable harm to others in the vicinity. Liability equally applies on land you may be renting or leasing — ownership is not the key factor.

The extent of your liability toward a person who enters the property and who has potential of being hurt depends on the

There are a number of ways to reduce liability exposure, such as:

1. Knowing the statutes and regulations that apply to fee recreation land use
2. Having a formal fee-recreation property use agreement with clientele
3. Having adequate liability insurance that covers all fee-recreation activities
4. Incorporating the business
5. Selecting the clients that use your property; and,
6. Providing a tour of the property to all clients and explaining any known potential hazards.

status of the visitor. Oregon law defines a visitor as trespasser, licensee, or an invitee.

**TRESPASSER:** Someone who enters the property of another without consent of the owner. Possessor of the land (expressed or implied). Consent is simply the owner/possessor's willingness to let the other person enter or remain on the land. Someone you ask to leave, but who stays, becomes a trespasser. Someone who walks past a "No Trespassing" sign is generally a trespasser.

Trespassers enter the property for their own purposes and not for the performance of any obligation to the landowner. In Oregon law, trespass may be classed as intentional, reckless, negligent, or without fault. Since the trespasser has no authority to enter the property, the landowner has no duty to warn about dangerous conditions or activities on the property. Exceptions are where significant numbers of trespassers are known to frequent the area or where young children are involved.

In general, the landowner is not liable for injuries to trespassers caused by a landowner's failure to exercise reasonable care to put the land in safe condition for them, except if there is willful, wanton, or reckless action on the part of the landowner (actions by the landowner intended to cause injury or reckless disregard or indifference to human safety).

**LICENSEES:** A licensee is someone who comes onto your land with consent. The licensee generally is on your premises without business or commercial reason. Social guests fall in the category of licensee. A public officer who enters a premise in the line of duty is a licensee.

The duty owed to licensees depends on whether the injury is caused by a condition of the land or activities on the land. As a condition of the land, a possessor/owner is liable for willful or wanton acts or gross negligence. As to activities on the land, the possessor/owner has the duty to exercise reasonable care for the protection of the licensee. You are not required to put the land (natural conditions) in safe condition for licensees, but must warn licensees of dangerous conditions and activities.

The licensee classification is especially important with respect to the use of land for recreational purposes. Recreationists using the land with permission, but without a fee imposed, would likely be considered licensees in Oregon.

Oregon law provides considerable protection to landowners against injury liability to licensees if the disclosure requirements are met.

**INVITEES:** Someone who enters or remains on the property at the expressed or implied invitation of the owner/possessor for the benefit of the inviter, or the mutual benefit of the owner/inviter and the invitee.

Invitees come in two forms: public or business.

A public invitee is a person who is invited to enter or remain on the land as a member of the public for the purpose to which the land is held open to the public. A business invitee is a person who is invited to enter or remain on the land for a purpose directly or indirectly connected with business dealings.

In general, the landowner's liability obligations are the highest under an invitee situation, less with a licensee, and even less with the trespasser.

In the case of the invitee, the owner/possessor's obligations may include inspecting the property, warning of dangers, removing dangerous conditions, curtailing dangerous activities, etc. The owner must exercise reasonable care to make the premises reasonably safe. Merely posting warning signs is not enough.

#### **Law Changes:**

The 1995 Oregon Legislature enacted House Bill 2296 to grant immunity to landowners who directly or indirectly permit persons to use their land for recreational uses, woodcutting, or the harvest of special forest products without charge. (Landowners may charge up to \$20 per cord for permission to use the land for woodcutting and still maintain the immunity protection).

Under the statute, the landowner/possessor is not liable in contract or tort for any personal injury, death, or property damage that arises out of use of the land as long as there are no fees paid (with the exception noted above).

#### **Equine activity:**

The 1995 Oregon Legislature also adopted ORS 30.687-30.697 to limit liability for damages to persons harmed in the course of equine activities. The law provides that, with some exceptions, an equine activity sponsor or professional is not liable for injury or death arising out of riding, training, driving, grooming, or riding as a passenger on a horse. The limitation does not apply to a situation involving a race, or to situations of willful or wanton disregard for safety or intentional actions.

#### **Other Forms of Liability:**

**Alcoholic beverages:** Other activities associated with a fee-recreation event or activity may result in additional types of liability. For example, if intoxicating beverages are served at a cost, the owner/operator is required to carry liquor legal liability insurance (see additional information on liquor licensing)

**Transportation:** If transportation is provided (carrying paying guests around in a personal automobile), a commercial auto policy is needed. Your regular auto coverage will not cover commercial use of the vehicle.

Vicarious liability: Additionally, the possessor of land is not only responsible for his/her own actions, but also for the acts of persons acting on their behalf. This may include an employee or even an independent contractor (pack guides, boatmen, for example).

Off-farm liability: If an activity sponsored on the farm causes harm, hazard, or injury to people outside the farm, other forms of liability are involved. These are the customary issues of trespass, chemical drift, spread of fire from one party's property to another, seepage of water onto adjacent lands, mining onto another's property, projecting a foundation across a boundary line, etc. Some activities may also cause nuisance to an off-farm party that causes liability. The risks identified may seem onerous and discouraging, but there are insurance companies willing to work with you to protect your interests through policy coverage.

### **Nuisance and Right to Farm:**

The 1993 Legislature adopted a "Right to Farm" law (ORS 30.930) that set limits on liability for many farm and forest practices. Whether the law will be of assistance in a claim created by a recreational use on farm land will depend on whether the circumstances fall within the guidelines set forth in the statute. The activity must meet the criteria of a "farming practice" to receive the immunity protection.

**Fanning practices** is defined as an activity that is or may be used on a farm of a similar nature; generally accepted, reasonable and prudent as a method for operation on a farm that is in business for profit; compatible with applicable laws; and is done in a reasonable and prudent manner.

### **Solve Problems Early:**

Without getting into the details of the law, an important point here is that a successful recreation activity, done in conjunction with on-going farming activities, should have the support and understanding of neighbors, local officials, and other affected parties. If there are issues that create concern or disagreement, you should address these with the respective parties as soon as possible. One method for doing this is through mediation — the use of an impartial third party neutral mediator who assists the interested parties to find a common resolution to the problem. The Oregon Department of Agriculture offers mediation services through its Farm Mediation Program. For information, contact the program coordinator at (503) 986-4558 or (800) 347-7028.



## BUSINESS STRUCTURE

Incorporating a recreational business may be one way to ease the burden of liability. In theory, an individual is not liable for any assets other than those he or she has invested in the corporation. Other types of organizations with some potential for limiting liabilities of their owners are limited partnerships and limited liability companies.

## LIABILITY INSURANCE

Adequate liability insurance is imperative. Most policies that cover general farm and ranch activities do not cover recreational activities on the land. You will either need to add a rider to your existing policy or get a new policy with one of the companies that provide insurance for your particular activity.

Liability insurance coverage for a fee recreation activity is generally written in \$100,000, \$300,000, \$500,000 and \$1,000,000 packages. As a rule, you should maintain enough liability insurance coverage to protect personal assets as much as economically possible. Additionally, if you plan to hire a hunting, fishing, or packing guide for your operation, Oregon statutes require the guide to have minimum liability coverage of \$300,000.

Premium rates vary among insurance companies, based on the exposure of risk for a particular fee-recreation activity. The rates are affected by the portion of the enterprise devoted to recreation and type of activities. Additionally, your managerial capability as an operator appears to be significant in determining premiums.

Some questions for consideration regarding insurance for your enterprise are:

1. Is the difference between the premium for the insurance and the income gained enough to offset each other and still allow a sufficient financial gain to make the venture worthwhile?
2. Can you realistically pass the costs of insurance on to the customer, or will the cost decrease the customer demand for the activity?

The following activities will be reviewed very closely by an insurance company and will involve special coverage if available:

- Hunting
- Fishing
- Lodging
- Food Services
- Alcohol
- Animals, especially horses
- Landing strips on the property



Keep in mind that employees who change job functions because of the new activity may be placed in different work classifications resulting in changes in workers compensation premium costs as well.

## Selecting Insurance Based on Your Recreational Activities

Generally, the following activities will be viewed as Commercial Insurance subject to a separate policy from the general farm or ranch policy coverage:

- Boating, Canoeing, Rafting
- Clay Bird Shooting or other Shooting Events
- Elder Hostel Programs
- Exotic Animal Farms
- Fee Hunting and Fishing
- Festivals, Concerts, and Special Events
- Guest or Dude Ranches
- Horseback Riding; Horse, Mule, and Llama Pack Teams
- Hunting Dog Trials and Training
- Hunting Preserves
- Moto-Cross, ATV, Snowmobile, and Mountain Bike Riding
- Seasonal Festivals and Celebrations
- Wineries and Breweries

In general, the following activities can be made part of a farm or ranch insurance policy by endorsements. Each activity is always viewed on its own merit:

- Bed and Breakfast
- Farmers Markets
- Roadside Markets
- School Youth Tours
- Technical Tours
- Working Farm (viewing and limited participation)

### Questions to ask in comparing insurance coverage:

1. Is there a deductible?
2. Does the insurance apply to:
  - Your premises and operations liability?
  - Your products and operations liability?
  - Your contractual liability to others?
  - Your personal injury liability to others (libel, slander, invasion of privacy)?
  - Your advertising injury to others?
  - Your property liability damage to others?
  - Incidental medical malpractice liability resulting from aiding an injured person?
  - Non-owned watercraft liability?
  - Host liquor liability?
  - Court costs for defense (above limit or included in liability policy limit)?
3. Are employees added as additional insureds?
4. Are there additional charges for adding public land management agencies, such as the U.S. Forest Service, BLM, or Oregon Marine Board as additional insured?
5. Is the premium a set fee, based on a percentage of gross sales, or client days?
6. Do you have to join an association to get insurance?
7. Are there representations in the policy that the guests or operators must adhere to for a claim to be honored?
8. Does the insurance agent understand your proposed fee-recreation business?

- Waiver of liability: as an additional protection you may want to incorporate principles of firearms safety, require successful completion of hunter safety or horse riding basics, prohibit use of alcohol with certain activities, etc.
- Acknowledgment and assumption of risk: describe the nature of the property (i.e., wild land with barbed-wire fences, logs, poison ivy, wild animals, uneven terrain, etc.) and the activities (horse riding, fishing, etc.), and then have the lessee/guest accept the risks such activities can have.
- Insurance: with this provision, you may want to have the user agree to carry liability insurance and to name you in the policy as an insured.
- Conditions of cancellation, renegotiation, or renewal: a list of conditions necessary in the case either party wishes to terminate, renegotiate or renew an agreement for various reasons.
- Mediating differences: This arrangement may reduce the probability of disagreements resulting in litigation. Specify that any problems arising from the agreement or the use of the property, including injury, will first be addressed in mediation before either party resorts to legal action.
- Payment specify the rate to be paid, how payment is to be made—where, when, etc., and the provisions for failure to pay.
- Damage deposit: this provision would cover damages the lessee does to the property that are not repaired by the lessee. The deposit would be returned to the lessee if damages do not occur.
- Miscellaneous: other sections or provisions may include gates and fences, trespass enforcement, in-kind services provided by the user (fence construction, wildlife crop planting, etc.), limitations of the number of campers or overnight recreational vehicles in certain areas, use of campfires or cooking fires, garbage, sanitation, other guest policies, etc.
- Signatures: finally, complete the agreement with the printed name and address of each member of the recreation group, followed by their signatures and the date of each person's signing.



**SAMPLE AGREEMENT**

**PERMISSION TO ENTER AND USE  
PROPERTY FOR RECREATION PURPOSES**

\_\_\_\_\_ (Guest) is hereby given permission to enter property known as: \_\_\_\_\_

\_\_\_\_\_

for the following purposes: \_\_\_\_\_

on the following dates: \_\_\_\_\_

This permission is strictly limited to the above description and is subject to strict compliance with the rules and regulations copied and attached, and other limitations or restrictions which from time to time may be given either orally or in writing.

**RELEASE, WAIVER, AND INDEMNITY**

I have read the above permission and the accompanying rules and warnings, and I understand that participating in \_\_\_\_\_ (name of activity) results in certain risks, regardless of all feasible safety measures, which can be taken. I am aware of the nature of the risks involved. I will follow any and all rules presented to me. I will conduct myself as a prudent person with regard for the safety of others, and myself and for the property of others.

To the extent proposed activities involve equine activity as that term is defined in state law, I hereby waive the right to bring an action against the equine professional or equine activity sponsor for any injury or death arising out of riding, training, driving, grooming, or as a passenger upon the equine.

I assume the risk of any responsibility of injury, loss, or damage to person or property resulting from my participation in activities on the premises. I will not hold the landowners, possessors, or occupiers liable.

I agree to indemnify and hold the landowners, possessors, or occupiers harmless from any claims or damages resulting from my actions, which may affect the person or property of the landowners, possessors, or occupiers of the premises or any other person.

Signed \_\_\_\_\_

Date \_\_\_\_\_

## Potential Sources of Liability Insurance for Fee-Recreation Enterprises

### **Gillingham & Associates, Inc.**

Westminster, CO  
Phone: (303) 428-5400  
Fax: (303) 428-5900

[www.outdoorinsurance.com](http://www.outdoorinsurance.com)

Coverage includes outfitters and guides, horses and related activities, guest ranches, fishing, hunting preserves, shooting clubs, trap and skeet shooting, field dog training, snowmobile tours and related activities.

### **Gray's Insurance**

Colorado Springs, CO  
Phone: (719) 444-8940 or (800) 747-4679

Special programs in equine coverage include: dude and guest ranches, guides and outfitters, stables, and trail rides, boarding and training, riding academies, tack, show animals and clubs, medical, farm and ranch packages. Outdoor recreational coverage includes white water rafting, cross-country skiing, snowmobiling, camps, golf courses, skeet and trap shooting, fishing ponds, and hunting preserves.

### **Hart Insurance**

Grants Pass, OR  
Phone: (541) 479-5521  
Fax: (541) 474-1890

[www.hartinsurance.com](http://www.hartinsurance.com)

Coverage programs include fishing, hunting, whitewater rafting, pack animals, watercraft, outfitters, guest ranches, resorts, lodging and other outdoor insurance.

### **K&K Insurance**

Fort Wayne, IN  
Phone: (800) 637-4757  
Fax: (260) 459-5866

[www.kandkinsurance.com](http://www.kandkinsurance.com)

Commercial equine liability coverage, pack teams, riding lessons, trail rides, wagons, buggies, hunting, fishing, pony rides and boarding. Provides coverage for guides and outfitters and guest ranches. ATV, snowmobiles, and bicycle rental, rock/ice climbing, rafting, canoes/kayaks, fishing ponds and streams, boating, campsites and lodges are eligible. Package policies.

### **Kohout Insurance**

Seattle, WA  
Phone: (206) 364-2866 or (800) 800-4413  
Fax: (206) 417-5966

[www.guideinsurance.com](http://www.guideinsurance.com)

Independent insurance agent who covers guided hunting and fishing, wagon and sleigh rides, trail rides, mountaineering, sled dog tours, winter sports, whitewater rafting, swimming facilities, guest ranches, food services, pony rides, mountain biking and related activities.

### **The Insurance Mart**

Madras, OR  
Phone: (800) 742-0794

[www.the-insurance-mart.com](http://www.the-insurance-mart.com)

Independent agency that provides liability coverage for equine businesses, professional guides and packers, horse-guided hunting operations, BLM and Forest Service insurance certificates, dog sled tours, whitewater rafting, drift and jet boats, rafts, kayaks, guest ranches, field dog trails, horses, llamas, hunting preserves, resorts and lodges.

### **Worldwide Outfitter and Guides Association, Inc.**

Salt Lake, UT  
Phone: (800) 321-1493

[www.smallcompanyinsurance.com](http://www.smallcompanyinsurance.com)

Association that provides liability insurance to its members as participants in a group master policy. Coverage for outfitter and guide services and some closely related activities.