

Managing Risk for Farm Direct and Ag Tourism Ventures

The purpose of this factsheet series is to help producers and processors understand the key elements needed to manage a business. This factsheet discusses some of the basic components of risk management for farm direct marketing and ag tourism ventures as it relates to liability issues.

Bart and Lisa have a saskatoon u-pick operation. They also process their saskatoons into jams, jellies and syrups, which they sell in their on-farm store and at the local farmers' market. As part of their u-pick operation, they have a children's play area. They offer farm tours where they explain how the u-pick operation runs, show the processing facility and invite guests to try samples of their products. Now they wonder if they could be sued if someone is injured while visiting the farm. Would their farm insurance policy cover them in the event of a lawsuit?

Adequate insurance is essential to the long-term success of your business. Insurance is a cost of doing business and should be included in the price of your product. This factsheet describes the types of risks you face in operating a farm direct marketing or ag tourism venture and discusses the types of insurance you may need to cover these risks.

Definitions

Farm direct marketing

Selling farm direct allows the producer to assume the accountability and rewards of delivering quality agri-food products directly to the consumer through a variety of marketing channels. Examples of farm direct marketing channels include: u-pick and u-fish ventures, farm gate sales, farm stores, mail

order, Alberta approved farmers' markets, direct to restaurants (where we assume the chef is the end user), community-supported agriculture, municipal buying clubs and online sales. Developing relationships with customers is key to the success of this marketing channel.

Ag tourism

Ag tourism is the marriage between two of Alberta's top industries: agriculture and tourism. It presents the consumer or tourist with an opportunity to engage in a direct exchange of values between themselves and the farm community, whether it is at a farmers' market, on a farm tour, at an agriculture festival or fair or at a country vacation farm or market garden.

Determining your risks

Knowing what your risks are helps you evaluate what type and how much insurance you need. *Speculative risk* involves the chance of a loss or a gain. You can partially control this risk through management decisions. Purchasing supplies when the price is low or contracting to supply product in the future at a specific price are examples of speculative risk. *Pure risk* involves only the chance of a loss. The occurrence can neither be controlled nor predicted. The information that follows looks at three types of pure risk.

Personal risks

This includes events that involve you, your spouse, your family or a business partner. Personal injury, disability and death are examples. Issues to consider include:

- Who depends on the income from your business?

- How are these people affected if you aren't able to operate the business?
- Will your debts be paid after death or during recovery from a disability?
- How much money is required to provide for your dependents, and for how long?
- Will your business continue without you?
- Do you have a business partner and will death or disability of you or your partner affect your business?
- Can you afford to hire a person to help during a recovery period?
- Can you afford to buy out your partner?

Property risks

This involves damage to or loss of physical items owned, leased or contracted by your business. Issues to consider include:

- What is the value of the property or equipment that you own, rent or lease?
- Are any of these items being used as collateral for mortgages or loans?
- What is today's replacement value of these items?
- Will the loss of an item or the loss of use of an item impair the operation of your business, and for how long?

Public risks

This involves injury to another person or damage to another person's property during the course of your daily activities. Issues to consider include:

- Will anyone be visiting your place of business?
- Do you have any employees?
- Can you afford a lawsuit or medical bills if customers, suppliers or employees are injured at your place of business?
- Do you sell products that could be found to be harmful?

Your answers to these questions about personal, property and public risks will give you a better idea about the type and amount of insurance you need. If you are operating your business from your farm or your home, don't assume that your existing policies adequately insure you. Check with your insurance carrier.

Talk to a lawyer

Liability issues resulting in lawsuits are becoming more common. Consumers are aware that if they suffer an injury while at your place of business or with respect to a product they purchased from your business, they

may have the option of suing the business in order to gain restitution. It is important that you seek legal advice about the potential liability issues surrounding your business in addition to the advice you have already received from your insurance carrier. Be candid with your lawyer about your business and the possible hazards that customers face. Your lawyer can give you some idea of the risk of not having insurance to cover your business if customers are injured.

Consider having your lawyer draft a waiver and release for your farm visitors to sign. This sort of waiver and release may not totally absolve you if an injury occurs, but it could lessen the financial impact upon your business. It may also help to make visitors realize your operation is a working farm with potential dangers. You may not be able to prevent the lawsuit from happening, but if your operation is made as safe as possible and you have adequate insurance coverage, you should be able to manage your liability risk. Your lawyer can also discuss contract liability, the *Occupiers' Liability Act* (Alberta) and negligence issues with you. The following is an over-simplified description of these legal matters which you can use to start discussions with your lawyer.

Liability for breach of contract may arise when a provision in a contract or an agreement (either verbal or written) is not fulfilled. For instance, if a product is sold by a seller to a customer to be used by the customer for a certain purpose and the customer is unable to use the product for that purpose due to a faulty product, the customer may be able to sue the seller for breach of contract. The customer may be entitled to be paid damages or to be reimbursed for the purchase price (or both in some circumstances). The amount of damages can often be much greater than the original purchase price.

Negligence is the essential element that must be proven before a person can be legally held liable for unintentional injury to others. The law of negligence is based upon precedent as established by previous court decisions.

Canadian Tort Law, Linden, 6th edition, describes the following six elements as being necessary to commence a negligence claim:

1. The claimant must suffer some damage.
2. The damage must be caused by the conduct of the individual (the "business owner") against whom the claim is to be made but which may also be caused by the conduct of employees of the business owner.
3. The business owner's (or the employee's) conduct must be negligent, that is, in breach of the standard of care set by the law.

4. There must be a duty recognized by law to avoid this damage.
5. The damage should not be too remote as a result of the business owner's conduct.
6. The conduct of the claimant should not be such as to bar recovery.

The *Occupiers' Liability Act* is a provincial statute which stipulates that a business owner "owes a duty to every visitor on his/her premises to take such care as in all circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which the visitor is invited or permitted by the business owner to be there or is permitted by law to be there." "The common duty of care applies in relation to the condition of the premises, activities on the premises, and the conduct of third parties on the premises." Certain exceptions to this rule are described in the Act and liability may be extended, restricted, modified or excluded in certain circumstances.

The Act also provides that the business owner generally does not owe a duty of care to a trespasser on the business owner's premises. However, a business owner is liable to a trespasser for damages for death or injury to the trespasser that results from the business owner's willful or reckless conduct. The Act imposes a further duty of care in the case of child trespassers on the business owner's (referred to as the "occupier" in the Act) property:

- 13 (1) When an occupier knows or has reason to know
- (a) that a child trespasser is on the occupier's premises, and
 - (b) that the condition of, or activities on, the premises create a danger of death or serious bodily harm to that child, the occupier owes a duty to that child to take such care as in all the circumstances of the case is reasonable to see that the child will be reasonably safe from that danger.
- (2) In determining whether the duty of care under subsection (1) has been discharged, consideration shall be given to
- (a) the age of the child,
 - (b) the ability of the child to appreciate the danger, and
 - (c) the burden on the occupier of eliminating the danger or protecting the child from the danger as compared to the risk of the danger to the child.

- (3) For the purposes of subsection (1), the occupier has reason to know that a child trespasser is on the occupier's premises if the occupier has knowledge of facts from which a reasonable person would infer that a child is present or that the presence of a child is so probable that the occupier should conduct himself or herself on the assumption that a child is present.

Selecting an insurance carrier

Not all carriers are familiar with the insurance coverage you need. Check with businesses similar to yours as to what insurance company they deal with. Consider videotaping your operation so the carrier gets a better idea of what is involved in your business. Then, be candid in your discussions with the carrier to ensure that he/she understands your business. You don't want to be pigeonholed into a coverage that doesn't meet your needs. If a carrier doesn't offer the type of insurance you are seeking, check with another agency. Don't buy without comparison-shopping. Prices vary between companies.

Your insurance carrier may suggest that you buy a basic policy covering the general operation of your business and additional riders to cover activities not normally covered under a basic policy. Riders are separate, specialty policies for which you pay additional premiums. These are added to your insurance coverage.

Do you belong to a group or association that offers group insurance products? For example, both the Alberta Farmers' Market Association and the Alberta Farm Fresh Producers Association have worked with insurance companies to set up insurance plans for their members. Other groups include chambers of commerce or alumni associations. Be sure you understand exactly what the policy offers. Group insurance is set up to cover a number of situations and therefore may not be exactly what you need. Check the policy details and talk to a company representative.

How much insurance?

Whether you choose to purchase insurance on your own or through a group policy, it's a good idea to outline the risks your business could face and how likely you are to face these risks. Then, you can determine the coverage you need.

Your answers to the questions in the *Determining Your Risks* section will serve as a guide and help you put a dollar value on the cost of a risk to your business. You need to estimate the amount of insurance you'll need. Issues to consider include:

- the total value of a possible loss
- the most you can afford to lose
- the probability of such a loss occurring
- what problems others in farm direct marketing or ag tourism have experienced
- the cost of down time
- what you are doing to reduce the chances of loss to your business
- safety precautions you have set in place to reduce your risk
- training courses, sprinkler systems and alarms

Points to consider when purchasing insurance

- Remember that the purpose of insurance is protection.
- The direct marketer or ag tourism operator who can least afford insurance is usually the one who needs it the most. If you can't afford to pay the premiums, then you probably can't afford the cost of a loss.
- The greater the risk and the probability that the risk will occur, the greater the need for insurance protection. Insure these risks first. For example, compare the cost of liability insurance to the cost to your business if someone sues because of an adverse reaction to your product.
- A key factor in evaluating a risk is to determine how much you would be affected by a loss. Some events cause a loss but you can continue to function normally.
- Investigate ways of decreasing your premium costs, such as: increasing your deductible to a level that is still financially safe for you; installing safety and security devices, i.e. fire extinguishers and smoke alarms; and, developing a fund to cover small losses, i.e. self-insure yourself against small losses.
- Review your insurance coverage annually and adjust coverage as needed.
- Read your policy carefully. Know the risks that are covered and any conditions and restrictions. Ask your agent to explain any parts that you don't understand. Watch for exclusions and be aware of any restrictive clauses, which may limit or void the insurance coverage.
- Provide all of the information that is requested when applying for insurance. If your business

situation changes, let your carrier know so that your policy is always kept up to date. Failure to inform your agent of changes to your business, including expansion, use of new sites and addition of machinery or new products could result in denied coverage if a problem does arise.

Types of liability insurance policies

There are two types of liability insurance policies that can be purchased. These are comprehensive liability insurance and an owner's, landlord's and tenant's policy.

Comprehensive liability insurance

There are also two types of comprehensive liability insurance policies that can be purchased, a farmer's comprehensive liability policy and a comprehensive general liability policy.

A farmer's comprehensive liability policy covers your farm operations, whereas a comprehensive general liability policy covers you for your commercial operations, including products that you sell and operations that you complete.

In some cases, the farm policy can be extended for certain operations. This may result in a premium increase. If the operations can't be included under the farm policy, a general liability policy must be purchased. Tell your insurer about your farm direct marketing or ag tourism business, as well as your expected sales. This is important because they may exclude some kinds of business ventures or only include them up to a certain level of sales. If sales aren't expected to be significant in the first year, the existing insurance policy may be sufficient. As the business grows, the policy may have to be amended to reflect this increase, resulting in a premium increase or the purchase of a new policy. If customers are coming onto the farm to purchase your products, the potential for liability to the customer is greater. This may also result in an amendment to your existing policy.

Owner's, landlord's and tenant's policy

This policy provides coverage for liability hazards arising from ownership, maintenance and use of the land.

If you are renting your land, this type of policy protects you in case your tenant does not have the proper general liability coverage.

For example, your tenant develops the land as an ag tourism attraction, but doesn't purchase any liability insurance. A visitor is hurt on the premises and sues. Since the tenant doesn't have insurance, the liability may be passed to you, the owner.

In this situation it would be in your best interest to require the tenant have liability insurance as part of your rental agreement. As part of this coverage, the landlord should be listed on the policy as an additional insured and receive a copy of the liability certificate from the tenant. The landlord should try to persuade the tenant to use waivers and releases, and should

include a clause in the lease whereby the tenant agrees to indemnify and hold harmless the landowner for any claims, losses or damages brought against or suffered by the landowner.

Insurance coverage

The following table outlines the most common insurance coverages. Depending upon your situation, you may require the additional insurance coverages noted in the next table. Check with your insurance carrier.

Most common insurance coverages			
Most common forms of insurance	Definition	Policy found under	Cost
Home Insurance	Coverage for the physical loss of property owned, rented or leased. Includes liability coverage. Can be extended for business operations. Most home business policies can include coverage for property, crime, liability, fidelity and loss of income.	Home Insurance Policy	Flat rate. Home business package cost is based on what type of business is being operated out of the home.
Loss of Income/ Business Interruption	Coverage for loss of income due to an insured peril, i.e. fire. This coverage is often overlooked and is one form of coverage you cannot afford to be without.	Property Insurance Policy	\$x per \$100
Farm Insurance	Covers loss of or damage to buildings and personal property. May include outbuildings, equipment and livestock. Includes liability coverage for farm operations and can be extended to include a business operated on the farm (other than a typical farming operation).	Farm Insurance Policy	Cost dependent on operations
Business/ Commercial Insurance	Covers loss of buildings, stock, equipment and commercial general liability. Coverage can be added for loss of income and crime. Can be purchased as a package or each can be purchased separately.	Business/Commercial Insurance Policy	Cost dependent on operations
Vehicle Insurance	There are three parts to vehicle insurance: 1. liability 2. accident benefits 3. damage to the vehicle itself Vehicles being used for business purposes need to be disclosed to your insurance carrier.	Automobile Insurance Policy	Premiums are dependent upon your 'rating' or driving record as well as the vehicle you are driving.

The following is a guide to the different types of insurance coverage for your farm direct marketing or ag tourism business. Check with your insurance carrier for additional details.

The cost category is a guide to how premiums are arrived at. Individual circumstances will vary, resulting in different rates and different coverages. Check with your insurance carrier.

Forms of insurance coverage			
Forms of coverage	Definition	Policy found under	Cost
Fire Insurance	Protects property against loss due to fire. Most basic coverage available.	Home, Farm or Commercial Property Insurance Policy	Flat rate or \$x per \$100
Fire and Extended Coverage	Protects against conditions not covered by basic fire insurance such as storms, explosions, smoke damage and various other disasters. Also covers for vandalism.	Home, Farm or Commercial Property Insurance Policy	Flat rate or \$x per \$100
All Perils	Covers against all perils of direct loss. Subject to exclusions.	Home, Farm or Commercial Property Insurance Policy	Flat rate or \$x per \$100
Liability Insurance	Covers claims due to bodily injury or property damage sustained by customers or others on the premises or during business-related activities. Could also include product liability and completed operations liability. Check with your insurance carrier.	General Liability Policy: Homeowner's Liability, Farmer's Liability, Commercial General Liability or Tenant's Liability	Flat rate dependent on operations, total sales and number of employees
Crime Coverage	Pays for losses of cash and other financial instruments due to theft, burglary, robbery and employee dishonesty.	Addition to Property Insurance Policy	Flat rate
Fidelity Bonds	Placed on employees with access to cash receipts or any other company funds, guaranteeing against loss from embezzlement.	Fidelity Bond Policy	Flat rate
**Crime and Fidelity Coverage can also be purchased as one policy.			
Business Owners Life Insurance	Can be used in the event of death of you or your partners. Lenders often require life insurance when loans are made to a business. Insurance purchased through the lending institution generally only covers you for the amount of the loan. Check with your insurance carrier before proceeding with coverage offered from the lending institution.	Owned Life Insurance Policy	\$x per \$1,000 Actual rate depends on age, smoking status, etc.
Disability Insurance	Used to provide income when injured. Critical illness insurance is relatively new and may be available to cover cancer or other major illnesses.	Disability Insurance Policy Personal Coverage may also be available through Workers' Compensation Board.	Relatively expensive and sometimes difficult to purchase.
Workers' Compensation Insurance(WCB)	In the event of a work related injury or illness, benefits for you and your employees include: <ul style="list-style-type: none"> • Protection from loss of income, • Comprehensive medical and rehabilitative services. 	Workers' Compensation Board Edmonton Tel: 780-498-3999 Fax: 780-427-5863 Calgary Tel: 403-517-6000 Fax: 403-517-6201 Toll-free In Alberta: 1-866-922-9221 Across Canada: 1-800-661-9608 Fax (in Alberta): 1-800-661-1993 Website: http://www.wcb.ab.ca	Rates vary depending on classification of business.

Read your policies very carefully to determine what is included and excluded. Often, if an item is not listed, it is not covered. Check with your insurance carrier.

Disaster planning

All businesses are exposed to natural and man-made disasters such as fires, floods, winter storms, sabotage, or transportation accidents. Any one of these can disrupt operations and even shut down a business. Disaster planning involves developing specific written action plans detailing how your company would cope with the unexpected. Your insurance carrier can help you develop a strategy.

Risks associated with food products

Selling food products to be consumed by humans or animals subjects you to possible claims of negligence if the product is spoiled or unwholesome. The sale of all food, whether it is at a farm store, a farmers' market or elsewhere, is subject to regulatory enforcement. It is imperative that you thoroughly research the provincial and federal acts and regulations that affect your business prior to production of your food products. *Farm Direct Marketing: Know the Regulations*, an Alberta Agriculture and Forestry series of free booklet publications, is a good place to start your research.

Consumers are looking for assurances that their food is being produced in a safe manner. On-farm food safety programs (OFFS) help create a proper operational environment for food safety through the implementation of Good Production Practices (GPP). The Hazard Analysis Critical Control Point (HACCP) system is a proactive program that is internationally recognized as an effective approach to food safety. Many companies are choosing to develop and implement a HACCP program to show due diligence in product manufacturing, meet customer requests and gain access to markets with HACCP requirements.

Developing and implementing such programs can help ensure food safety and ultimately lower your risks. It can also help you produce a record of where contamination may have occurred in the event of a problem.

Selling at a farmers' market

As noted earlier, the farmers' market is the most common channel for marketing farm direct products. The farmers' market provides a central place of business where consumers can purchase their farm direct products, meet the farmers and support the farming community. Only Alberta approved farmers'

markets allow for the sale of food products prepared in the home. Speak with a public health inspector to learn about the requirements.

As noted earlier, the Alberta Farmers' Market Association offers a group policy that meets the basic needs of each approved market and vendor, as long as they are members of the association. Risks can include any kind of injury or illness which occurs at the market or as a result of something purchased while at the market, i.e. a fall in the parking lot, another customer's dog bites you, getting sick from a contaminated product purchased at the market or suffering an injury from a craft purchased from a vendor at the market.

The farmers' market insurance policy covers the market as an event and does not include coverage for the vendors or their products. If an injury/illness occurs at a farmers' market or as a result of something purchased from the market, it is most likely the farmers' market, the sponsoring body (such as an agricultural society) and the vendor(s) that will be named in any lawsuit. If you, the vendor, don't have adequate insurance coverage, you may be required to pay the injured party out of your own pocket. This could seriously harm, or even bankrupt, your business.

In the event of a claim

"To trigger coverage, you must inform the insurance company that a covered event has occurred and describe the nature of the injury. You most likely are required to provide the notice within a certain period of time, usually measured in terms of hours. Failure to do so may void coverage. This is especially true in situations involving physical injury to a person, since the insurance company may want to move quickly to preserve evidence, interview witnesses, and conduct other aspects of investigation."

In the Eyes of the Law: Legal Issues Associated with Direct Farm Marketing.

Biosecurity

Biosecurity refers to those precautions taken to reduce the risk (and liability) of introducing livestock or poultry diseases, such as foot and mouth disease, to a farm or region where they do not already exist. Examples of common biosecurity practices include quarantining new stock, controlling rodents, cleaning footwear or changing coveralls. A complete farm biosecurity program will cover: incoming stock, vaccination, feedstuffs, water, pets, pest control (birds, rodents, wildlife, insects, etc.), and farm visitors. Most farm

visitors would likely be considered low to moderate risk unless they are directly working with livestock or manure, but it is wise to have a protocol in place in order to reduce your potential liability.

For more information:

Office of the Chief Provincial Veterinarian
O.S. Longman Building
6909 - 116 Street
Edmonton, Alberta T6H 4P2
Telephone: (780) 427-3448
Fax: (780) 415-0810

Practical tips for protecting farm visitors

People come to your farm for a variety of reasons. You may operate an ag tourism venture such as a bed and breakfast, or sell your farm direct products from your farm gate or at your farm store. In most cases, common sense prevails, but cannot take the place of adequate insurance coverage. Regardless of why people come to the farm, here are some practical tips to safeguard your visitors from injury:

- Before anyone comes to your farm, identify the areas of your farm that guests will visit, the activities they will be involved in, how they will be supervised, the safety precautions you will take and any rules you need to post.
- Ensure that you regularly inspect your premises for hazards or hidden conditions.
- Plan for emergencies. In addition to having someone on staff who knows basic first aid and CPR, always have a well-stocked first aid kit available.
- Have fire extinguishers and water hoses available, as well as smoke and fire alarms in all buildings.
- Consider how an ambulance or other emergency vehicle will access different parts of your farm.
- Provide staff with walkie-talkies or cell phones. If an injury occurs away from the main buildings, first aid or emergency attention can be accessed that much quicker.
- Suggest that visitors wear appropriate clothing for the activities they are taking part in.
- If not part of the available farm activities, animals/livestock should be kept away from the public. Be very careful which animals the public is allowed to interact with. Always have a staff member supervise animal interaction.
- Provide a hand washing station for anyone who may be in contact with animals as well as for customers who come to your farm to pick produce.
- Clearly post signs marking where people are and are not allowed to go. Also mark any hazards. Some hazards simply cannot be roped off. Instead, they need to be marked because common sense may not prevail.
- Ensure water/ponds are clearly marked and cordoned off so that children cannot access them. Do not assume that parents will always watch their children and keep them safe. They may be busy picking produce.
- Remove all keys and lock all farm machinery. If possible, keep machinery locked in a shed. This precaution prevents visitors from trying to operate or climb on your equipment.
- Pesticides, herbicides and other farm management materials should be safely stored in a secure location away from the public view.
- Whenever possible, move burnable materials away from buildings.
- Have exits with properly illuminated exit signs.
- Have a clearly marked, designated smoking area.
- Have phones and/or cell phones available for calling 911. Make sure the address of the farm is listed so it can be given to emergency personnel.
- Take proper biosecurity measures if farm visitors are in contact with farm animals, animal feed, manure, etc. It may also be important to ensure that farm visitors' footwear is decontaminated prior to them entering your farm.
- Meet and greet all your farm visitors and outline your expectations to them. At this time, signs can be pointed out, potential hazards outlined, waivers and releases can be signed and basic ground rules for visiting your farm discussed. Remember, many small children may not be able to read or interpret your hazard signs. Visitors must be aware that this is a "working farm" and that some hazards are inherent. You're not trying to scare them, just keep them safe. Handle all situations diplomatically. Remember, you still want your customers to come back and tell others about your operation.

References

Biosecurity for AAFRD Staff Visiting Farms, Abattoirs and Other Agri-Food Establishments. Alberta Agriculture, Food and Rural Development. July 2001.

Canadian Tort Law, 6th edition. Allen M. Linden, Toronto and Vancouver: Butterworths, 1997.

Farm Direct Marketing: Know the Regulations booklet series:

- *General Legislation* (Agdex 844-1)
- *Food Labels* (Agdex 844-2)
- *Food Claims* (Agdex 844-3)
- *Meat and Meat Products* (Agdex 844-4)
- *Poultry and Poultry Products* (Agdex 844-5)
- *Fruits, Vegetables and Products* (Agdex 844-6)

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In the Eyes of the Law: Legal Issues Associated with Direct Farm Marketing. University of Minnesota Extension Service – Tourism Center. 2002.

Safety and Risk Management. University of California Small Farm Center. Fact Sheets for Managing Agri- and Nature-Tourism Operations. May 2000

For more information contact:

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For toll-free access to these individuals, dial 310-0000 and then their number.

For additional information about developing your business, go to Alberta Agriculture and Forestry's website: www.agriculture.alberta.ca.