



Agricultural Law Update

June 2014

MANAGING RISK IN MICHIGAN'S BOOMING AGRITOURISM SECTOR

- Liza C. Moore

Tourism and agriculture are Michigan's second and third largest industries. So it's only natural that Michigan would be one of the leaders in the national movement towards agritourism. From markets to petting zoos, corn mazes to cider mills, opportunities for Michigan agricultural operations to expand market base and increase revenue abound. It's important, however, for farmers to understand the rules and regulations that apply, as well as the increased liability that comes with inviting the public onto their premises.

THE RIGHT TO FARM ACT

In recognition of the growing importance of agritourism to Michigan's economy, the State of Michigan has taken action to make it easier, and less risky, to operate some agritourism businesses through modifications to the Michigan Right to Farm Act.

In 1981, Michigan adopted the Right to Farm Act, a law designed to protect farmers from nuisance lawsuits while maintaining environmental quality and minimizing impacts to surrounding landowners. This law authorized the Michigan Commission of Agriculture and Rural Development to develop Generally Accepted Agricultural Management Practices (GAAMPs), a minimum set of standards required by farmers to receive nuisance suit protection. The implementation of GAAMPs is entirely voluntary, with a primary benefit to the farmer being the protections from nuisance suits provided for in the Right to Farm Act.

In 2010 the Commission approved GAAMPs for Farm Markets. Specifically, the GAAMPs were developed to provide direction as to what constitutes an on-farm market and farm market activities.

While the Right to Farm Act provides some protections for certain agritourism activities, there are many other issues to consider when engaging in this business.

ZONING AND REGULATIONS

Notwithstanding the Right to Farm Act, it is still important to review and understand local zoning and building regulations that may apply as you add a commercial or retail operation to your existing farming activities. Depending on the intended use of your land, you may be required to obtain a permit or variance, and local building codes should also be reviewed.

LIABILITY

The last thing a farmer wants to consider when contemplating an agritourism operation is a visitor falling off a hayride or out of an apple tree, being injured by a piece of equipment or machinery, or being bitten by an animal. But these and other liability risks are very real, and steps should be taken to mitigate them.

Generally speaking, as an agritourism operator you owe your visitors a general duty of care to prevent them from being injured by risks that you're aware of or should be aware of on your land. That means that you should conduct an audit and inspection of your land and operations to identify risks and hazards and fix them. Steps to take to reduce the risk of liability should include:

- Consider physical site hazards including visitor activities and "attractive nuisances" (such as farm equipment, stacks of hay, etc.) that may attract children;

Continued on page 2 | **Managing Risk**

- Post rules and warnings for customers and conduct regular inspections;
- Educate your visitors on how to interact safely with livestock;
- Consider what you are selling or producing and any health or safety regulations or considerations;
- Understand what will be required on-site to safeguard the health and safety of your employees;
- Post and implement employee rules and regulations; and
- Consider using preventative measures like waivers or product warnings if warranted.

INSURANCE

No matter how careful you are, accidents may happen. Therefore, farmers who offer agritourism activities should obtain appropriate insurance coverage. In many instances, an existing policy that covers the farm business itself does not extend to liability from other profit-making activities.

SALE OF FOOD AND BEVERAGES

If you operate a farm market, on-farm store or cider mill on your property, you must be aware of and comply with Michigan's Food Law, and other laws governing food safety. For example, there are no Michigan licensing requirements for farmers selling fresh, whole, uncut fruits and vegetables at a farmers market in Michigan; however, fresh fruits and vegetables must be handled safely and protected from contamination. Another example involves the production and sale of apple cider. The production and sale of cider is subject to many state and federal requirements. How and where the cider is produced and sold affects pasteurization and other requirements. Many other laws, rules and regulations apply depending on what is being sold and where it is

being sold. Bottom line – make sure you're consulting with an attorney if you intend to sell food or beverages on your land. Below are several additional resources to utilize for the sale of food and beverages on your land:

- www.iflr.msu.edu
- www.michiganfoodsafety.com
- cottagefoods.org/laws/usa/michigan

FEDERAL LAWS AND REGULATIONS

By opening up your land to visitors and conducting business, you may be subjecting yourself to federal laws and regulations that you never considered. For example, the Americans with Disability Act may apply and require wheelchair ramps to be installed in order to allow access to buildings. It's important to be aware of applicable federal laws and regulations as non-compliance can be costly.

While we've identified a number of risks to be aware of while operating an agritourism business, our objective is not to discourage anyone from pursuing this worthy endeavor. There are, obviously, many rewards that go along with the risks, such as the potential for increased income and the opportunity to educate and inform the public about farming and agriculture. Risk management strategies can help minimize the risks and maximize the potential benefits. From reviewing applicable rules and regulations, to drafting effective liability waivers, Foster Swift's Agricultural attorneys can help to identify and provide solutions to many of the legal and business challenges that agritourism businesses face.

Please contact Attorney Liza C. Moore with any questions you may have on managing risk in agritourism at 517.371.8281 or lmoore@fosterswift.com.

FAMILY IN BUSINESS TOGETHER...CONFLICT HAPPENS

- Guest Author Barb Dartt, DVM, MS

Recently, I observed a family business client – let’s call them the Hatfields – discuss employing an additional family member in their business. In about 25 minutes, they were able to decide: (1) That they would offer the job, (2) What the job would consist of, and (3) How much the compensation would be. In my experience, that’s a challenging set of decisions, and for most, a source of conflict, that got completed in a very short time frame. Family employment and compensation are particularly challenging because they occur at the intersection of the family and business systems. And the family system and the business system are set up to accomplish VERY different results.

AT ODDS: FAMILY AND BUSINESS PURPOSE

It could be argued that the family system exists to grow adults that contribute to society. Ideally, the family does this by nurturing and developing children. A family is typically characterized by:

- Informal expectations;
- Unconditional support;
- Authority based on seniority; and
- Long-term commitment that is based on an individual’s identity as part of the family.

Now, contrast that with the purpose of the business system – to be efficient and generate profit. Typically, a successful business is characterized by:

- Formal expectations and policies;
- Conditional support based on performance;
- Authority based on contributions and/or position; and
- Shorter term commitment based on rewards received for employment.

As family businesses grow – both in the number of family managers and owners as well as in business size – conflicts resulting from the competing purposes of

these two systems are inevitable. For example, from the family perspective, family employment in the business is about belonging to the family and providing for family members, regardless of their skill set or business needs. From the business perspective, family employment is about adding needed skills at the right time to grow efficiency and profits.

So, if conflict is unavoidable, how did the Hatfields make their decisions so quickly and, at the same time, maintain family harmony?

MANAGING THE INEVITABLE FAMILY-BUSINESS CONFLICT

Mom and Dad Hatfield really wanted their third son to join the business – he would be able to move back to Michigan, bringing three grandchildren much closer. The brother and sister already working in the business (and who both were owners, too), were excited about working with their younger brother who had skills the business needed. However, they were concerned about what kind of salary he expected. Also, they weren’t sure if the accounting role he was going to fill was really a full-time job and didn’t know if their brother would be willing to do outside, get-your-hands-dirty jobs for the rest of his work time. Finally, financially, they weren’t quite sure what the impact of adding his salary would be to business profitability.

The Hatfields were able to navigate this conflict between the needs of the family and the needs of the business because prior to facing the issue, they had created structure to support and guide their decision making.

1. They created an environment for discussion.

Mom and Dad modeled discussion. They were sometimes loud and contentious but they got on the same page and supported each other’s

Continued on page 4 | [Family in Business Together](#)

1. positions. They have always had an office for meetings, even when the business was very small. They have regular meetings with pre-set agendas at least quarterly, including up-to-date financials. Decision making always includes every member of the family management team present and participating.
2. **They created guidelines for family employment.** Striking a balance in family businesses between being too informal and too bureaucratic is tough. The trick is knowing which guidelines or policies to create BEFORE you actually need them. (How family employment decisions will be made is high on the list.) When guidelines are created ahead of need, they become part of the family and business. When guidelines are created during the need, they become about one person, are hard to justify and usually create hurt feelings. During the process of hiring their first child, the Hatfields created Family Employment Guidelines. As the family management group has grown, utilizing the guidelines creates points for

discussion and familiarity with what the business stands for. They also shared the guidelines with family not working in the business, establishing clear expectations and outlining a fair decision process.

Conflict makes many folks uncomfortable, leading to avoidance of tough topics like hiring a family member. However, conflict is a natural consequence of combining two systems with very different purposes. The structures outlined above are like an insurance policy. It can be hard to devote time and money to putting them in place ahead of time, but when a conflict arises, it can be too late. I challenge you to set some time aside and create structure to manage the conflicts that lurk within all family businesses.

Barb Dartt is a partner in GROW: The Family Business Advisors. She is a family business consultant, working with farm families and management teams to help them keep their business healthy and the people happy. Barb can be reached at 269-382-0539 or barb.dartt@growthefamily.biz

UPCOMING AG EVENTS

- | | |
|-------------------------|---------------------------------------------------------------------------------------------------------------------------|
| June 17, 2014 | Artisan/Farmstead Cheesemaker Food Safety Workshop, MSU - http://bit.ly/1nsEXEE |
| July 9, 2014 | MABA Food Safety and Sustainability Meeting, Mt. Pleasant - http://conta.cc/1mrX2Od |
| July 16-20, 2014 | Michigan Livestock Expo, MSU Pavilion - http://bit.ly/1hpOhoo |
| July 22-24, 2014 | Michigan Ag Expo, MSU grounds - http://bit.ly/1k52zLr |
| July 21-25, 2014 | Michigan Dairy Expo and Dairy Days, MSU Pavilion - http://bit.ly/1eJz5Dk |

LITIGATION CORNER

- Liza C. Moore

WHAT'S A COMPLAINT?

A person or business begins a civil (not criminal) lawsuit by filing a document called a complaint with a court. The complaint alleges how the court has the authority to decide the case (jurisdiction), why this court is the correct geographic location for the case (venue), what claims or counts will be pursued (such as breach of contract or defamation), and what money or other relief (damages) the person or business filing the complaint wants to obtain in the lawsuit.

The person or business filing the complaint is called the plaintiff, and the person or business the plaintiff wants money or relief from is

called the defendant. The complaint will ask for a jury trial if the plaintiff wants a jury trial. Where the complaint is filed depends on the dollar amount of the claimed damages, the type of claims alleged by the plaintiff, and where the plaintiff and defendant live or do business.

The plaintiff will have to take steps to have the complaint filed and served on the defendant within a certain amount of time. Then, the defendant must respond within a certain time or a default will enter. Remember, if someone serves you with a complaint, or you think you need to file a complaint, call your attorney.

NEW FUNDING FOR FARMERS TO INCREASE ENERGY EFFICIENCY AND RENEWABLE ENERGY

The USDA announced new funding under the Rural Energy for America program providing grants and loans to farmers and agribusinesses looking to increase energy efficiency and renewable energy. The program was reauthorized in the 2014 Farm Bill, helping many in agriculture take steps toward more efficient operations.

Efficient operations help farmers and agribusinesses save money. Increasingly more farms are utilizing renewable energy production according to the Census of Agriculture. Learn more here: http://www.rurdev.usda.gov/bcp_reapreseei.html

FOOD SAFETY AND SUSTAINABILITY MEETING

Mark your calendars. MABA is planning a special food safety and sustainability meeting on July 9 from 7:30 a.m. to 4:30 p.m. at the Soaring Eagle Casino & Resort in Mt. Pleasant.

Topics to be covered include:

- Sustainability; The Food Industry Perspective
- Bringing it all Together; MABA's Green Program

- The Link Between Sustainability and Food Safety; Market Driven Changes in Agriculture
- Regulatory and Market Driven Food Safety
- What do Retailers Want
- Food Safety; What's Next
- Bringing it Home; Market Opportunities

For more information: <http://conta.cc/1mrX2Od>



Michigan FFA Foundation 15th Annual FFA MASTERS GOLF OUTING



Thursday, August 7
9 a.m. - 3 p.m. (9:30 Shotgun Start)

Eldorado Golf Course
3750 W. Howell Rd., Mason, MI | 989-676-2854

- Register by **July 30** at: www.michiganffa.org
- Registration includes: 18-hole round, cart, putting contest, driving range before the gun, light breakfast, lunch & dinner
- \$100/person or \$400/team of four
- Sponsor an FFA member (with mulligans) to complete your team
- Skins/Mulligans Value Packs available

All proceeds benefit the 6,281 Michigan FFA members

For more information & sponsorship opportunities, visit www.michiganffa.org or contact the Michigan FFA Foundation at 517-432-2482

AGRICULTURAL ATTORNEYS:

GROUP LEADER

Liza C. Moore
517.371.8281
lmoore@fosterswift.com

Charles E. Barbieri | 517.371.8155
Scott A. Chernich | 517.371.8133
James B. Doezema | 616.726.2205
Julie I. Fershtman | 248.785.4731
Brian G. Goodenough | 517.371.8147
Todd W. Hoppe | 616.726.2246
Charles A Janssen | 517.371.8262
Ryan E. Lamb | 616.796.2503

David M. Lick | 517.371.8294
Steve L. Owen | 517.371.8282
Jean G. Shtokal | 517.371.8276
Patricia J. Scott | 517.371.8132
Scott A. Storey | 517.371.8159
Deanna Swisher | 517.371.8136
Lynwood P. VandenBosch | 616.726.2201
David VanderHaagen | 517.371.8102

LANSING

FARMINGTON HILLS

GRAND RAPIDS

DETROIT

HOLLAND

Foster Swift Collins & Smith, PC **Agricultural Law Update** is intended for our clients and friends. This newsletter highlights specific areas of law. This communication is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication.

Proud supporter
of

