

Legal Liability Of Landowners With Fee Hunting Enterprises



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**LEGAL LIABILITY OF LANDOWNERS
WITH FEE HUNTING ENTERPRISES**

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Introduction

Many farmers and ranchers are thinking of ways to add income to their operations. Some consider charging a trespass fee to hunters wishing to hunt on the landowner's property. A major question of these landowners is, "What is my legal liability in this type of operation?" This publication tries to answer this question. Each individual ranch/farm has its own particular set of circumstances, but some general guidelines are presented here.

Legal Liability of Landowners

In New Mexico, liability of landowners to entrants injured on the landowner's property is governed by common law rules. Common law liability of landowners is a function of their relationship with persons injured on their property. There are four relationship categories:

1. Trespasser
2. Trespasser -- minors (attractive nuisance)
3. Licensee
4. Invitee

Trespasser Lowest in the so-called duty of care is the trespasser, someone who enters on the property without the landowner's knowledge or consent. Landowners are not liable for injuries to trespassers as long as the conditions on the property do not constitute a dangerous force. With habitual trespassers, the landowner must either 1) notify the authorities, thus showing an unwillingness to allow them on his

property or 2) discover and prevent any activities or situations that may endanger the trespasser(s). The latter is based on the premise that continued tolerance of trespass amounts to permission, making the intruder a licensee, not a trespasser.

Trespasser -- minors Trespassing children may not understand certain risks of harm, and the landowner cannot expect them to protect themselves. The duty of care is higher; it is up to the landowner to protect children from dangers by placing barriers and warning signs, and notifying parents in the surrounding area of potential dangers to their children.

Licensee A licensee has permission to enter the property, but for the licensee's purpose. The landowner receives no gain. The landowner need not give warning or protection against known conditions that should be obvious. The landowner must warn and protect against conditions that constitute a concealed trap.

Landowners are liable to licensees for failure to exercise reasonable care in conducting an activity that injures a licensee if the licensee did not realize the danger, or know it existed.

Invitee The invitee enters and remains on the land with the permission of the landowner, whether for the benefit of the landowner or for their mutual benefit. The duty of care owed an invitee by a landowner is high. It entails making the premises safe by making routine inspections of the property, repairing, removing or warning of dangerous conditions, and curtailing dangerous activities. The landowner is subject to liability only for harm sustained when the invitee is on the land within the scope of his invitation.

Liability Insurance

Liability insurance for fee hunting operations is rapidly changing. Landowners should discuss liability coverage with their insurance agent and attorney. Individual situations may warrant coverage not necessary for everyone. However, here are some general guidelines presented for fee hunting situations.

Insurance companies that offer farm and ranch liability policies usually do so under a non-business or non-commercial definition. If the fee hunting enterprise involves offering hunting facilities, setting up blinds, renting horses and pack animals, acting as a guide and providing food and living quarters, it is considered business other than farming or ranching, and it is excluded from many farm/ranch insurance policies. These conditions need to be covered by a commercial insurance carrier.

Some insurance companies provide liability coverage for fee hunting enterprises, but the coverage, rates and conditions often vary. If the farmer/rancher is merely charging a minimal fee so he will know who is on his land, and hopes to prevent damage to fences, gates, water tanks and livestock, and the hunter is strictly on his own, this would be considered incidental exposure. This coverage is usually under the base liability coverage of a typical ranch or farm policy. Liability premium charges are usually based on the amount of acreage involved in the farm/ranch operation, plus the liability and medical payment coverage chosen.

Some insurance companies that carry farm/ranch policies will cover fee hunting liability if it is not a significant source of income. For those farms/ranches

that offer horses, guide services, or if the fee hunting operation is a major portion of the ranch income, a specific or separate policy through their own insurance company or a surplus line company is necessary. A surplus line company deals with hard to insure business that they feel may have a great potential for loss or are uncommon businesses.

For commercial insurance, the premium is usually based on estimated gross receipts. At the end of the policy year, receipts are audited and adjustments are made for discrepancies. The premiums, based on estimated risk, will vary from ranch to ranch. Some of the items insurance companies evaluate are: facilities provided to hunters, type of game hunted, number of hunters at any one time, type of land on the ranch, whether the land is fenced, and types of weapons used.

Guidelines to Reduce Liability Risk

All applicants should be interviewed, and ranchers might consider asking for references from other landowners who have granted hunting privileges to the applicants. Property boundaries should be posted so hunters do not get on someone else's land. Landowners should grant written permission, and hunters should have the document available at all times. Only those persons listed on the permit should be allowed to hunt. Landowners should develop rules, put them in writing and explain them to each hunter. Everyone should abide by the same rules and these rules must be strictly enforced. Hunters should be reminded to obey all laws. Alcohol and drugs should be prohibited. Maps showing which roads are open and closed, plus pastures closed to hunting, should be provided. Safety zones

should be clearly established around homes, barns, neighbor's property and other areas where shooting is not allowed. Landowners should insist that guide/outfitter services the hunters use have insurance.

Your attorney's advice is a major part of ensuring your risk is minimized.