

HOW LANDOWNERS CAN PROTECT THEMSELVES FROM LIABILITY

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A common concern for Texas landowners is how to protect themselves from liability if someone is injured on their property. There is no silver bullet that ensures a landowner will not ever be liable for anything, and there is nothing landowners can do to make it impossible for another person to file a lawsuit against them. However, landowners can significantly limit their chances of being held liable or limit the financial burden of a judgment against them by taking the following steps before an injury occurs.

CARRY LIABILITY INSURANCE

Every landowner should have a liability insurance policy that covers every activity taking place on the property. If a landowner has a farm and ranch policy, but also conducts other activities such as a roadside fruit stand or guided hunts, he or she should confirm that the additional activities are covered by the provisions of the farm and ranch policy. An endorsement may be needed for the additional activities.

How much insurance a landowner should carry depends on the amount of risk associated with the operation. For example, a farm in the middle of nowhere that does not host any sort of events or have any guests would likely need a lower coverage amount than a farm that has a pumpkin patch and corn maze every fall with thousands of guests. Talk through the details of your operation with your insurance agent to determine the right level of coverage and type of policy you need. Landowners involved in recreational activities should consider carrying at least the amount of coverage mentioned in the Texas Recreational Use Statute. (See Tex. Civ. Prac. & Remedies Code Chapter 75.)



IDENTIFY DANGEROUS CONDITIONS ON THE LAND AND PROVIDE WARNINGS OR MAKE THEM SAFE

When a person is injured due to a condition on the property, a “premises liability claim” is often brought against the landowner. Texas law places injured parties into one of three categories to determine whether the defendant is liable to the injured party in a premises liability case. A landowner owes a certain level of duty to each category. If the level of duty is met, the landowner is not liable. If the landowner fails to meet the required duty, he or she can be held liable for the injury.

Texas law recognizes the following three categories and duty levels:

- ▶ **Trespasser:** A trespasser is a person who enters the property without permission. The duty owed by a landowner is not to intentionally injure or act with gross negligence.

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OBTAIN WRITTEN LIABILITY RELEASES FROM ANYONE ENTERING THE PROPERTY

Liability releases (also called liability waivers) are documents signed by guests agreeing that they will not hold a landowner liable for injuries that occur on the property. Releases usually identify the activity involved, list common dangers associated with that type of activity, and state that the signer understands those risks and agrees not to sue the landowner for negligence.

Texas courts will generally enforce this type of waiver if drafted in a manner that meets the legal requirements for such documents. In Texas, waivers must be express and conspicuous. This means that specific language must be included that expressly waives liability for negligence claims and the waiver may not be hidden in the fine print where a signer is unlikely to read it. One caveat to this is that there is some question as to whether these releases are enforceable when signed by a parent on behalf of a minor child. The Texas Supreme Court has never answered this question. Given the complex nature of these releases and the importance of having one that is enforceable, a landowner should seek the assistance of an attorney to draft a proper waiver. Spending the money up front to do so can certainly pay off in the long run if a lawsuit can be avoided.

- ▶ **Licensee:** A licensee is a person who enters the property for their own benefit. The duty owed by a landowner is to warn or make safe any dangerous conditions the landowner knows about that might not be obvious to the licensee.
- ▶ **Invitee:** An invitee is a person who enters the property for mutual benefit for themselves and the landowner. The duty owed by a landowner is to warn or make safe dangerous conditions the landowner knows about or should have known about with a reasonable inspection.

For example, a deep hole covered with tree limbs could be considered a dangerous condition. For a trespasser, unless the landowner knew of the situation and had evidence of many people being injured, intentionally created the situation, or some other egregious facts, he or she would likely not be liable since the landowner did not act intentionally or with gross negligence. For a licensee, the question would be whether the landowner actually knew about the hole and, if so, whether he warned the licensee about the hidden danger. For an invitee, the question would be whether the landowner actually knew of the hole, or if the landowner would have known about it if he or she had done a reasonable inspection.

As the law makes clear, these are very fact-specific questions. The most prudent approach for a landowner is to determine whether there are dangerous conditions on their property and, if so, warn people about those conditions or make them safe. There is no set requirement for how warnings may be given, but if the landowner is entering into any type of lease or contract, identifying dangerous conditions in that type of document is useful.



ENSURE THAT ALL LIMITED LIABILITY STATUTES APPLY TO THE OPERATION

Many states have limited liability statutes protecting landowners from liability if certain conditions are met. In Texas, three such statutes apply: the Texas Recreational Use Statute, the Texas Agritourism Act, and the Texas Farm Animal Liability Act. While the scope and requirements of each statute differ, they each offer essential, limited liability protections for Texas landowners.

- ▶ The Texas Recreational Use Statute (Tex. Civ. Prac. & Remedies Code Chapter 75) provides that a landowner is not liable except for intentional acts or gross negligence if the person injured was there for a recreational purpose and the landowner either charged no fee, did not charge more than a certain amount, or carried a sufficient level of insurance. In other words, this statute results in the standard of duty owed to a trespasser being applied to recreational guests.
- ▶ The Texas Agritourism Act (Tex. Civil Prac. & Remedies Code Chapter 75A) states that landowners are not liable for injuries that occur during activities on agricultural land for recreational or educational purposes, regardless of compensation, if the landowner either hung a required sign or obtained signed release language.
- ▶ The Texas Farm Animal Liability Act (Tex. Civil Prac. & Remedies Code Chapter 87) offers liability protection for a farm animal owner if a farm animal activity participant is injured during a farm animal activity and is a result of an inherent risk of that activity. As of September 1, 2021, all farm and ranch owners and lessees must hang a sign pursuant to the statute to qualify for these protections. Texas landowners should carefully review the details of these statutes and ensure they take the steps necessary for the statutes to apply to their operations.



property owned by the entity. For example, if someone gets injured on property owned by an LLC of which Bob is a member, Bob would not be personally liable for the injuries. Conversely, if Bob owned the land in his own name, his personal assets could be subject to liability if an injury were to occur. Many considerations go into whether a business entity is right for an operation and, if so, which entity to select. Consult with an accountant and attorney in your area to help make the right decision for your operation.

The risk of being sued or held liable for injuries occurring on their property is a real concern for Texas landowners. However, taking responsible steps can limit their liability and protect their operations.



USE A LIMITED LIABILITY BUSINESS ENTITY STRUCTURE

Landowners may want to consider putting their business (or a particular part of the business) into a business entity that offers limited liability. This could include a limited liability company, limited partnership, corporation, or a trust. When formed correctly and handled properly, these types of entities can provide limited liability for a landowner if an injury occurs on



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