Agricultural Legal Issues

What we don’t know can hurt us
Prevention is the key
Try not to ever need a lawyer
Planning is the key
Courage to examine your situation
If you need one, be prepared
Time
Money
Emotional

Farmers, ranchers and rural citizens need to know/think about legal issues relating to:
- Personal
- Professional
- Community
  - Local
  - State
  - Federal

Personal & Professional
- Are your affairs in order?
- Have you planned for your operation?
  - Short term
  - Long term
  - After you are gone
- Property issues
- Contract Issues
- Injury/harm/tort issues
- Emerging issues

Property issues
- Boundary lines
- Title issues
- Fences
  - Adverse possession
  - Liability related to your property
- Transfer of ownership of your operation
  - How to
  - Who to
- Acquisition of new lands for your operation
  - What’s been there

Contract Issues
- How to form a contract
- Who can enter into a contract & regarding what types of issues
- What happens when someone breaches the contract
- Remedies when contracts fail
- What types of relationships involve contract issues
Agricultural Legal Issues

- Injury/harm/tort issues
  - Negligence
  - Trespass
  - Nuisance
  - Harm to employees
  - Harm to your person
  - Breach of warranties
  - Harm to your property

Agricultural Legal Issues

- Emerging Issues
  - Changes in tort liability
    - Tort reform
    - Limitations on $ and liability
  - Piercing the corporate veil
    - Affect on liability
    - Application in the LLC context
  - Right to farm challenges
    - Affect on farming operations
    - Constitutionality of provisions

Agricultural Legal Issues

- New marketing opportunities
  - Direct marketing
    - Warranties on products
    - Liability of farmers market boards
    - Liability of the farmer for those entering his operation to “u-pick”
    - Insurance coverage
  - Cooperative marketing opportunities

Agricultural Legal Issues

- Environmental
  - Point and non-point source liability
  - Clean Water
  - Wetlands
  - Storm water regulation
  - Where is your operation in relation to municipalities and emerging/growing municipalities
  - Permits – are they required

Agricultural Legal Issues

- Other environmental issues
  - Endangered Species
  - Pesticides
  - Toxic chemicals
  - Emerging international frameworks for addressing environmental concerns

Agricultural Legal Issues

- Drift
  - Pesticide
  - GMO crops
  - Smoke
    - Restrictions on burning
    - Permits and enforcement provisions
  - Who is liable for the damages caused by drift
Agricultural Legal Issues

- Air quality – Clean Air Act issues
  - Dust
  - Particulate matter
  - Ammonia
  - Permits for sources of air quality pollution
- CERCLA liability
  - Superfund and liability issues
  - Ammonia as a hazardous waste
  - Poultry litter/phosphorous-phosphates as hazardous waste
  - Pesticide drift into sources of water as a CERCLA problem

Agricultural Legal Issues

- Water Issues
  - Availability
  - Quality
  - Permits/regulations controlling use and availability of water
  - Regulated riparian
  - Specially identified areas of the state in which water is critical or water quality is impacted

Agricultural Legal Issues

- What is the role of the extension professional when confronted with our clientele’s legal issues
  - Advisor?
  - Sounding board?
  - Referral?
- Cannot dispense legal advice. Can provide information concerning laws and regulations.
- Must always caution clients to seek private legal counsel
- Problems may occur when we dispense “forms” that cover specific legal/liability issues
- Legal issues very often turn on peculiar fact situations – what applies in one situation may not apply in another

Agricultural Legal Issues

- Educational role
  - What the law says
  - Where the law may be found
  - Understanding the legal system
  - Providing insight/reports regarding what is occurring on the “legal front” in other states
  - Helping the clientele base to “think through” issues that may raise legal/liability concerns
  - Not taking sides

Agricultural Legal Issues

- What you don’t know can hurt you
- What you don’t think about can hurt you
- Preparing for the future is key to success and longevity of any operation
- Rural nature of our areas will change over time
- Preparing rural citizens to think through issues that urban citizens either never confront or have addressed in the past

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Direct Marketing Legal Issues

- Types of Direct Marketing
  - Roadside Stands
  - Roadside Markets
  - U-Picks
  - Farmers Markets
  - Direct Delivery of Product
  - Agri-tourism
  - Subscription Farming/Community Supported Agriculture

- Types of Legal Issues
  - Legal Concerns associated with the product
  - Legal concerns associated with the farm
  - Employment issues
  - Incorporation/structure issues

- Product Legal Issues
  - Where do you sell? Many possibilities
    - Retail
    - Produce departments
    - Greenhouse/garden centers
    - Gift and craft centers
    - Internet
    - Mail order
    - Food Service
      - Delis, coffee & snack bars, ice cream, meat markets
      - Restaurants
    - Institutional settings – hospitals, schools, government run facilities

- Many times, direct marketers don’t think beyond producing, displaying and advertising the product
- Important to understand the legal issues associated with:
  - Labeling
    - What you say about your product
    - Claims you make about your product
    - Advertising
    - Organic vs. Natural
    - Pricing issues
    - Advertising strategy – where, when

- Your “label” language is your contract with your consumer
  - Warranties that the product lives up to the label
  - Breach of warranties claims possible
    - Implied warranty of merchantability
    - Implied warranty of fitness for particular purpose
    - Express warranties
  - Can you disclaim a warranty?
  - Labeling requirements – dietary and nutrition issues – recent changes
  - Uniform product codes
**Processed Products**
- Regulations for processing
- Sanitation
- Food safety
- Labeling (again)
- Packaging
- Biggest concerns here are food safety and sanitary standards
  - Different standards for different products
    - Fruit and vegetables
    - Meats & poultry
    - Dairy, eggs
    - Deli-type foods

**Legal Issues Associated with the Farm**
- Negligence & Liability
  - Owners, occupiers & possessors
  - Landlords & tenants
  - Foresee ability of harm & Reasonable care
- Insurance
  - Homeowner’s vs. business liability
  - Workers compensation
  - Language in policies

**Legal Issues on the Farm**
- Best policies to avoid problems
  - Inspect
  - Repair
  - Warn
  - Follow laws, regulations & ordinances
  - Use disclaimers when necessary

**Business Structure**
- Sole proprietorship
- General or Limited partnership
- Corporation
  - C-corp or S-corp
- Limited liability partnerships or companies
- cooperatives

**Employment issues**
- Liability for your employees’ acts
  - Negligence in their hiring
  - Negligence in their retention
  - Negligence in their supervision
  - How to minimize risk
- Hiring issues
  - Background checks & testing
  - Inappropriate questions
  - Driving records

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Employment Issues

- Occupational & worker safety
- Labor laws
- Employer/employee relationships

Occupational Safety

- Occupational Safety and Health Act (OSHA) ensures safe and healthy working conditions
- The OSHA act general *does not* to agricultural work places
- Generally, OSHA doesn’t apply to farm operations with *less than 10 employees*

Farm Family Members

- Are farm family members counted as employees?
  - Generally no, even if they are paid
  - But, every year Congress must decide whether to cover farm family members or not, so you must stay informed

Agriculture is Dangerous

- Agriculture ranks as one of the most dangerous activities
- Farm vehicle accidents are frequent
- Farm workers must be trained on how to handle hazardous chemicals
- The state labor department has authority over labor issues in Arkansas

State Regulation of Dangerous Conditions

- Handling of anhydrous ammonia
- Slow-moving equipment or vehicles
- Roll-over protective structures for tractors
- Guards or shields on agriculture equipment
- General duty: all employers are under a general duty to keep the workplace free of recognized hazards that can cause serious injury or death
Livestock Operations

- Manure pit collection systems for animal waste can be hazardous operations
- The general duty clause applies
- The national institute for occupational safety and health recommends posting manure pits with hazardous warning signs that can be understood by all workers

Livestock Operations

- NIOSH also suggests:
  - Access points for entry to manure pits be restricted
  - Air monitoring around manure pits
  - Emergency rescue procedures

General Duty Requirements

- Other requirements employers must comply with under the “general duty” are:
  - Posting OSHA posters
  - Information employees of safety regulations
  - Maintain up-to-date records of injuries and illnesses
  - Report fatalities occurring on the job
  - Inform employees concerning potential hazards of chemicals

Labor Laws & the Safety of Children

- Agriculture employers are generally exempt from fair labor standards act coverage concerning child labor
- Many children are injured every year in agriculture-related accidents
- Children of any age cannot be used in agricultural jobs that are hazardous

Hazardous Tasks

- Hazardous agricultural tasks include:
  - Using farm machinery
  - Hay balers
  - Feed grinders
  - Power post-hole diggers
  - Working in a farmyard pen or stall with a bull, board or stud horse kept for breeding
  - Working with a sow with suckling pigs, cows with newborn calves
  - Working inside manure pits

Children can be Employed at Certain Ages

- Children aged 14 – 16 can be employed if it won’t interfere with their schooling
- Children aged 16 and above can do any agricultural task so long as it is not hazardous
- Some children aged 12 and under can be employed alongside their adult parents
### Employer/Employee Relationships
- Aside from the employer’s responsibility for the employees’ wages, the area of greatest risk to the employer is the risk of liability for employee injuries on the job.
- By the early 1900s, every state had adopted a worker’s compensation law to cover on-the-job injuries.

### Workers Compensation is Exclusive
- In 1990, the U.S. Supreme Court said that migrant farm workers injured on the job could sue their employers in federal court even after they received workers’ compensation payments.
- In 1995, Pres. Clinton signed a law amending that made the state workers’ compensation courts the only remedy for actual damages for injury or death to a migrant/seasonal farm worker.

### Employer's General Duties
- An employer generally has the duties to:
  - Provide reasonably safe tools
  - Provide reasonably safe place to work
  - Warn and instruct employees of dangers that the employees could not have been expected to discover
  - Provide reasonably competent fellow employees

### An Employer’s Defenses
- An employer can defend himself against cases brought for injuries to his employees if:
  - The employee was aware of the danger
  - The injuries were caused by a co-employee
  - The employee contributed to his own injuries

### Workers’ Compensation
- Workers compensation is no-fault.
- The worker doesn’t have to show that the employer was negligent – he only has to show:
  - The injury
  - The injury occurred while he was acting within the scope of his employment
  - The injury was related to his employment

### Amount of Recovery
- Amounts of recovery for injuries under workers’ compensation programs are fixed.
- Different types of injuries to different body parts = different damage awards.
Arkansas’ Workers’ Compensation Coverage

- Arkansas’ workers’ compensation coverage for agricultural employees:
  - (Payroll)
  - (Type of work)

Employer’s Liability to Others

- Employer’s can be liable to others for the acts of their employees
- Liability is imposed if the employee acted “within the scope of employment”
- If so, the employer and the employee will be held jointly liable
- If you hire independent contractors and do not control their actions, you may be able to avoid liability if their actions harm another

Presentation References

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Sources for More Information

- Fact Sheet #40: Federal Child Labor Laws in Farm Jobs, U.S. Department of Labor
  www.dol.gov/esa/regs/compliance/whd/whdfs40.htm

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Employment Liability and Other Legal Issues Q & A

Case One:
- What are my responsibilities as an agricultural employer?
- Where are my liabilities?

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- Generally NOT considered employees even if they are paid
  - But, every year Congress must decide whether to cover farm family members or not, so you must stay informed

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Other requirements employers must comply with under the “general duty” are:
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  - Working with a sow with suckling pigs, cows with newborn calves
  - Working inside manure pits

**Children Can be Employed at Certain Ages**

- Children aged 14 – 16 can be employed if it won’t interfere with their schooling
- Children aged 16 and 17 can do any agricultural task so long as it is not hazardous
- Some children aged 12 and under can be employed alongside their adult parents
- Age 18 – no longer considered a child in most cases

**Employer/Employee Relationships**

- Aside from the employer’s responsibility for the employees wages, the area of greatest risk to the employer is the risk of liability for employee injuries on the job
- By the early 1900s, every state had adopted a worker’s compensation law to cover on-the-job injuries

**Workers Compensation is Exclusive**

- In 1990, the Supreme Court said that migrant farm workers could sue their employers even after they received workers' compensation payments
- In 1995, Pres. Clinton signed a law that made the state workers' comp courts the only remedy for actual damages for injury or death to a migrant/seasonal farm worker
- Now all employees must choose route – workers comp or federal court, cannot do both

**Employer’s General Duties**

- An employer generally has the duties to:
  - Provide reasonably safe tools
  - Provide a reasonably safe place to work
  - Warn and instruct employees of dangers that the employees could not have been expected to discover
  - Provide reasonably competent fellow employees
An Employer’s Defenses

- An employer can defend himself against cases brought for injuries to his employees if:
  - The employee was aware of the danger
  - The injuries were caused by a co-employee
  - The employee contributed to his own injuries

This may reduce but not eliminate employer liability

Workers’ Compensation

- Workers compensation is no-fault
- The worker doesn’t have to show that the employer was negligent – he only has to show:
  - The injury
  - The injury occurred while he was acting within the scope of his employment
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Amount of Recovery

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Arkansas' Workers’ Compensation Coverage

- Arkansas’ workers’ compensation coverage for agricultural employees:
  - (Payroll)
  - (Type of work)
- Employers’ payment rates to workers comp will be influenced by number and type of claims on his property

Employer’s Liability to Others

- Employer’s can be liable to others for the acts of their employees
- Liability is imposed if the employee acted “within the scope of employment”
- If so, the employer and the employee can be held jointly liable
- If you hire independent contractors and do not control their actions, you may be able to avoid liability if their actions harm another

How Do Employers Manage Risk?

- Carry worker’s comp on all employees
- Use credible “temp” agencies or contractors
- Follow all general duty requirements – err on the side of safety
- Keep excellent records of interactions with employees
Other Legal Issues

Case Two:

“Someone comes onto my land and gets hurt. Am I liable?”

Degree of Liability Depends Upon Their Status

- Entrants onto your land fall into categories:
  - Trespasser
  - Invitee
  - Licensee

Trespasser

- Someone who enters or remains on your land without your consent
- Someone who hunts on your land without your consent
- Someone who enters upon your land to commit a crime
- At common law, the duty of care to these individuals is slight, but not non-existent
- Duty of care increases if the trespasser is a child

Licensee

- Licensees are those entering upon your land with your permission and for their own purposes or business interests
  - Social guests
  - Unsolicited sales persons
  - Hunters permitted to hunt without paying fees to the landowner

Trespasser

- You cannot intentionally injure a trespasser
- You cannot use more force than is necessary to remove a trespasser
- You can’t recklessly endanger a trespasser
- Child trespassers are owed a higher duty of care
**Licensee**
- Duty of care is greater than that owed to trespassers
- Can’t intentionally injure a licensee or recklessly endanger a licensee
- Should take steps to warn the licensee of dangerous conditions on the land

**Invitee**
- Invitees are those coming onto the land at the express or implied invitation of the landowner
- Invitees come onto the land for the landowner’s financial benefit
- Owed greatest duty of care
- Invitees count on the landowner taking reasonable steps to ensure the premises are safe
- Should warn of existing and known dangers & eliminate any dangers you can

**Minimizing Liabilities from People on Your Property**
- Remove hazards, where possible
- Post warnings of all hazards
- Post keep out signs
- Record problems with trespassers (police calls, letters to trespassers, witnesses)
- Remember, once an invitee, likely always an invitee

**Case Three:**
- My neighbor builds a fence line on my property. What can I do to get him to move it?

**Adverse Possession**
- Can be very difficult and expensive if it goes to court.
- Best bet is to work with neighbor on friendly basis first, if possible.
- Ask yourself: Is the land really worth it?
  - Is fence line 2 feet over for a quarter mile
  - Is fence 20 feet over for four miles

**Minimize Occurrence of Adverse Possession**
- Try to keep lines of communication open with neighbors
- Have land thoroughly surveyed
- Keep excellent records
- Use legit Surveyor
  - Letters, use signed certified mail
  - Address issue immediately. The longer you let a fence line sit there the harder it will be to reclaim it
- Ask yourself if it is really worth it
Case Four:

- I want to buy land and the surveyor says my land extends over the neighbor’s existing fence line. How do I get this land back?

Another Case of Adverse Possession

- Use same techniques as in previous situation
- Must ask yourself, is it worth the fight?
- You can negotiate with seller on price adjustment based on “lost land”

Case Five:

- I just discovered that land I bought last year has hazardous materials on it. The materials have obviously been there awhile. Am I liable for fines, etc?

“Potentially Responsible Party”

- Law states that everyone in the chain of title who has owned the land since the hazardous materials were placed there is potentially liable.
- Ignorance is NOT bliss!

Minimizing Acquired Risks

- Have land checked out thoroughly by a professional
  - No “fly by night companies,” use someone licensed and reputable
- Check out land and previous owners yourself
- Have hazardous items removed BEFORE you take title on land
- In these cases you MAY be able to limit your liability if you can prove there is no reasonable way you could have known the substance was there
- Or you may have grounds to sue another party

GOLDEN RULE

- When you ask a lawyer a question about your responsibilities and liabilities, don’t be surprised if the answer you get is “it depends”
- Liabilities and risks will depend upon
  - The facts
  - How good your lawyer is
  - How credible any witnesses are
  - The nature of the issue
- Your best option is to always minimize your risks wherever possible. This may cost you upfront, but could save you even bigger costs down the road.
Minimizing Risks

- Keep excellent records
  - Know land boundaries
  - Inform police/officials of trespassers, “litterers”
  - Tell the world!
    - Newspaper articles, local radio shows
      (embarrass them enough to stop)
- Know your lender
  - Can be helpful in some situations

More Questions?

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Environmental Concerns

The farmer and rancher must take steps to ensure that his or her operation is in compliance with environmental requirements.

What Does this Include?

- Water quality regulations
- Air quality regulations
- Odor, nuisance and right to farm laws
- Wetlands regulation
- Toxic substances
- Hazardous substances
- Endangered species & wildlife regulation
- Pesticide regulation

Water Quality Regulation

- If you have livestock, you may have to obtain an NPDES permit
  - Depends on the number of head you have on site
  - Depends on the location of your operation – is it close to water
  - Depends on whether you've been found to be a "significant contributor" to pollution in the past
  - May depend now on whether you are in a sensitive watershed, such as the Illinois River Watershed

How Do You Know if a Permit is Required?

- You need to work with the tribal NRCS official
- You need to work with the tribal agricultural liaison
- You need to get in touch with the department of agriculture officials

No Discharge

- The NPDES permit system is designed around the idea that farming/ranching operations won’t discharge animal wastes into water bodies
- Make every attempt to avoid animal waste discharges – and work with NRCS and tribal officials to design your operation
Poultry Feeding

- If you feed poultry in Arkansas, you are required to **register** annually with the State of Arkansas Soil & Water Conservation Commission ASWCC
- You also must apply for a Concentrated Animal Feeding Operation (CAFO) General Permit
- Finally, you are required to have a Poultry Litter Management Plan

Clean Air Requirements

- Clean air act regulates air quality and requires that contributors to air pollution obtain permits
- Agriculture has not historically been heavily regulated under the clean air act
- New efforts may be underway to regulate dust, particulate matter, engine exhaust, and other by-products of the normal farming or ranching operation

Odor, Nuisance & Right to Farm

- Historically, air quality problems from farming or ranching have been regulated by lawsuits between adjoining landowners, not by regulation
- Most lawsuits have been over odor, dust, flies or mosquitoes, or the noises associated with farming or ranching

Nuisances & Odor

- Problems with odors from nearby ag operations were addressed by bringing **nuisance lawsuits**
- Nuisances are defined by state statutes and case law
- Nuisances are generally things that injure health, are offensive to the senses, or obstruct the free use of one's real or personal property

Who can Bring a Nuisance Lawsuit?

- Anyone experiencing a loss of enjoyment of their own property, or an injury to their own property, through the activities of another, may bring a nuisance lawsuit
- Those filing nuisance lawsuits can seek to have the nuisance activity stopped and can recover money damages for the effects caused by the nuisance

Protection of Farming from Nuisance Claims

- Every state has adopted a "right-to-farm" statute that provides farming and ranching operations protection from nuisance lawsuits
New Right-to-Farm Interpretations

- Other states are limiting the right-to-farm protection (Iowa)
- You cannot use the right to farm protection to “take” the property of another without just compensation
- In other words, you can’t use your property in such a way that your neighbor is restricted in the use of his property and then claim you are protected by a right to farm statute just because you were there before he was

Wetlands Regulation

- Section 404 of the clean water act requires that any agricultural producer that “dredges and fills” on his property and affects water sources, must obtain a permit to do so
- Any time you take action that would fill in a wetland, dam up a stream, put in irrigation gates or docks, or the like, you may need a permit

General Permits

- Your particular activity may fall under a nationwide or region-wide “General Permit” – check with the NRCS/liaison officials
- These general permits cover things like:
  - Fish and wildlife harvesting
  - Enhancement and attraction devices
  - Farm building
  - Agricultural activities

Toxic Substances

- Toxic Substances Control Act (TSCA) regulates chemicals
- The act controls how chemicals can be sold commercially and how they can be used
- The act also controls how much of these chemicals are allowed to show up in the food supply (either in human food, animal feed or as food additives)

Hazardous Waste

- The Resource Conservation and Recovery Act (RCRA) controls hazardous waste
- Hazardous waste includes such things as petroleum and pesticides
- The RCRA law controls how you use, store and dispose of hazardous waste

Underground Storage Tanks

- If your operation has an underground storage tank on site, you must meet all the standards relating to construction, monitoring, operating, reporting, record keeping and financial responsibility
- If your operation uses a large amount of oil per month, it must be stored and transported according to the law
Endangered Species Act & Wildlife Protection

- The Endangered Species Act (ESA) protects "endangered" and "threatened" species and their habitats
- No one can take action that would harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect and animal or plant that is on the endangered or threatened species list

Habitat Identification

- It is important to know whether your farming or ranching operation is in the habitat of an endangered species or in the flyway of a bird protected under the federal migratory bird treaty act
- Consult with NRCS officials, tribal ag liaisons, US Fish and Wildlife officials and other appropriate officials to determine if there are protected species in your area

Pesticide Regulation

- The Federal Insecticide, Fungicide and Rodenticide Act regulates pesticides
- Pesticides have federal standards concerning their use, production and sale
- Pesticides have detailed labeling requirements and you must follow labeling requirements for the pesticide’s use
- There are also worker protection standards that apply to all employers who have employees that work with or around pesticides

Presentation References

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Sources for More Information

- National Agriculture Compliance Assistance Center
  - www.epa.gov/agriculture

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Farmers Market Legal Issues

Farmers Market legal issues

- General areas of legal risk
  - Contracts
  - Property issues
  - Torts
- Areas of concern relating to farming in general
  - Marketing
  - Food Safety
  - Licensing & Certification
  - Zoning
  - Employment
  - Payment issues
  - On-farm issues

Farmers market legal issues

- Are farmers on the market carrying liability insurance?
- Is the market itself in the right place – are all zoning requirements addressed?
- Are farmers on the market selling products that have come from an unlicensed facility?
- Are farmers on the market adhering to the market rules in general?
- Are farmers on the market complying with applicable recordkeeping and paperwork rules?
- Is the market area itself safe?
- Is the market board carrying liability insurance? Does it cover only directors and officers? Employees?

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- Is the market itself in the right place – are all zoning requirements addressed?
- Are farmers on the market selling products that have come from an unlicensed facility?
- Are farmers on the market adhering to the market rules in general?
- Are farmers on the market complying with applicable recordkeeping and paperwork rules?
- Is the market area itself safe?
- Is the market board carrying liability insurance? Does it cover only directors and officers? Employees?

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Farmers market legal issues

- Market Managers
  - Primary role is in assisting the board and monitoring the market
  - Roles and responsibilities clearly outlined
  - Methods/procedures for resolving disputes that arise on the market – what is the manager’s role; the board’s role?
  - If the manager is a public employee – whose employee is he/she? Have you discussed the manager’s liabilities in light of his/her “other job”

Farmers market legal issues

- Role of the manager in dealing with:
  - The public
  - The farmers on the market
  - The media
  - The regulatory community
  - Consumers on the market
  - Who does what, when…

Farmers market legal issues

- What are the laws in Arkansas relating to:
  - Farmers markets
  - Direct marketing of agricultural products
  - What is allowed/prohibited by those laws
  - How have those laws (if they have) been interpreted by the courts
  - Are there fines or penalties for non-compliance with the laws

Farmers market legal issues

- Where – can farmers’ markets be held
- When – can farmers’ markets be held
- How – can farmers’ markets be held
- Who – can be involved in a farmers market
- What – can farmers’ markets sell
- The sources for answers to these questions may be state law, local ordinances or custom, and caselaw – look in all places

Farmers market legal issues

- If you are on state, federal or local property you may have one set of concerns
- If you are on private property, you may have a different set of concerns

- Licenses
  - Does the market itself need one or just the farmers on the market or does anyone need a license?
  - What kind of license?
  - How often must the license be renewed? Does the board retain a copy of individual farmers’ licenses?

Farmers market legal issues

- If the farmers on your market sign an agreement,
  - What is in the agreement?
  - When was the last time someone reviewed the agreement?
  - How often is the agreement updated?
Farmers market legal issues

- Agreements
  - Use of sites
  - Liability insurance
  - How to be admitted on the market
  - Grounds for suspension/termination
  - Appeal from decisions
  - Resolution of conflicts
  - Indemnification
  - Agreements to abide by rules/regulations
  - Duration
  - Who signs

- Food safety concerns – sampling on the market
- Food handling and storage while at market
- Representations concerning product
  - Quality
  - Organic nature
  - Verification – role of the market
  - Labeling and warranties
- Inspection of farms
  - Who, what, when, where, how
- Planning for what’s on the market

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Land Use

Zoning
- Government’s police power – usually local government
- Rural/urban fringe
- Zoning of farming activities is increasing
  - Setbacks
  - Types of activities
  - Size of activities

Nuisance
- Claims resulting from farming activities that may have caused damage to another person or property
  - Odor
  - Sounds
  - Dust
  - Improper disposal of dead animals
  - Creation of water pollution conditions

Nuisance Claims
- May end in litigation
  - Expensive to defend
  - May result in court-ordered damages
  - May also result in changes to the operation or ceasing operation

Right to Farm vs. Rights of Others
- Arkansas has a right to farm statute
- Protects farming operations
  - Operation in conformance with regulations
  - No change in the farming operations
  - Conducted in conformance with generally accepted agricultural management policies
Duties: to those entering your farming operation

- Trespassers
- Licenses
- Invitees

Trespassers

- Those who enter your farming operation without permission
  - Cannot maliciously injure
  - Cannot use excessive force to remove
  - May have a duty to warn of dangers existing on the property

Licensees

- Those who enter your operation with permission and for their own purpose (social guests or salespersons)
  - Must warn of dangerous conditions
  - Must warn of dangerous animals
  - If you allow hunting, you must warn when there are other hunters on the property

Invitees

- Those who are on the property by invitation and for your purpose (deliverers, customers at u-pick operations)
  - Must warn of all dangers
  - Must try to make the premises reasonably safe

Presentation References

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Sources for More Information

- John Copeland, Recreational Access to Private Lands, publication available at:
  - National Center for Agricultural Law Research and Information, University of Arkansas; Fayetteville, AR
- Roger McEower; Recreational Use of Private Lands: Associated Legal Issuer & Concerns
  http://www.nationalaglawcenter.org/publications/notes.htm
- 50okla.Stat.Sec.1and1.1
Sources for More Information

- "Agricultural Protection Acts"
  
  http://tarlton.law.utexas.edu/dawson/nuisance/nuisance.htm

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A Discussion of Dispute Resolution

- Multi-party
- Multi-jurisdictional
- Multi-issue
- Multi-agenda
- Multi-resource

Do we have a conflict?

- What is a conflict?
  - A disagreement through which parties involved perceive a threat to their needs, interests or concerns
  - Disagreement – differences in positions of two or more parties
    - True disagreement vs. perceived disagreement
    - Is there a misunderstanding that exaggerates our disagreements
    - Must understand the true areas of disagreement

- Do we have a conflict?
  - Who are the parties involved?
    - Who is involved
    - Do they know they are involved in the disagreement
    - Are people participating in the dispute that are part of the social system surrounding the dispute or are they directly involved
    - Have the parties “taken sides”

- Do we have a conflict?
  - Perceived threats
    - People respond to perceived threats, not always to true threats facing them
    - Perception may become reality
    - People’s behaviors, feelings and ongoing responses may modify by an evolving sense of threat
    - What is the true threat (issue) – we must understand the true threat in order to develop strategies (solutions) that manage it (our agreement)

- Do we have a conflict?
  - Needs, interests and concerns
    - Ongoing relationships
    - Complex, emotional components
    - Procedural needs & psychological needs
    - Substantive needs
    - Interests and concerns of the parties that transcend immediate pressing situations
### Do we have a conflict?

- Threats
  - Power
  - Status
  - Physical
  - Emotional
  - Environment
  - A meaningful experience in people’s lives that cannot be shrugged off

### Do we have a conflict?

- We respond based on our perceptions of the situation
- Responses don’t always follow the objective review/assessment of the problem
- Filter perceptions and reactions through our values, culture, beliefs, information, experience, gender and other variables
- Ideas and feelings that can be strong and powerful guides to solutions

### Do we have a conflict?

- Predictable and expectable situations that naturally arise
- Need to develop procedures for identifying conflicts that are likely to arise
- Need to develop systems through which we can constructively manage conflicts

### Do we have a conflict?

- Creative problem-solving strategies are essential
- Transform from “my way or the highway”
- Need to entertain new possibilities

### Do we have a conflict?

- Conflict is Normal
- We need to anticipate that conflict will occur
  - Identify sources of conflict
  - Identify triggers for future conflicts
  - Identify how we’ve responded in the past and currently
  - Do we have a system in place for avoiding or addressing future conflicts that we know will arise

### Do we have a conflict?

- Normal, healthy organizations and systems all experience conflict
- Dysfunction within an organization can bring about conflict
- Dysfunction can arise from unplanned growth or other stressors
- How can we transform conflicts into opportunities for growth and learning
Do we have a conflict?
- Are there seasonal peaks in the potential for conflict?
- Do we have channels for expressing our problems and concerns in a predictable, reliable manner?
- Are there factors that make our problems worse?

Do we have a conflict?
- Behavior – conflict styles – ways to meet one's needs in a dispute – consider the impact these styles have on others
  - Competing – one’s own needs are advocated over the needs of others
    - Aggressive style of communication
    - Low regard for future relationships
    - Exercise of coercive power
    - Want control over all discussions – in substance and in ground rules
    - Fear of loss of control

Do we have a conflict?
- Behavior – conflict styles
  - Accommodating (smoothing) – opposite of competing
    - Yield their needs to those of others
    - Try to be diplomatic
    - Tend to allow needs of the group to overwhelm their own
    - May not even state their needs
    - Preserving relationships is most important

Do we have a conflict?
- Behavior – conflict styles
  - Avoiding – if we don’t talk about it, it’ll go away
    - Feels get pent up
    - Views go unexpressed
    - Conflict festers until too big to ignore
    - Conflict grows and spreads until it kills the relationship
    - People are often confused, wondering what went wrong

Do we have a conflict?
- Behavior – conflict styles
  - Compromising
    - Gain & give in a series of tradeoffs
    - Generally not satisfying
    - Don’t always understand the other side very well
    - Often retain a lack of trust and avoid risk-taking involved in collaborative behavior

Do we have a conflict?
- Behavior – conflict styles
  - Collaborative – pooling of individual needs and goals toward a common goal
    - Win-win problem solving
    - Cooperative to achieve better solution than could have been achieved alone
    - Chance for consensus & integration of needs
    - Brings new time, energy and possibilities to resolving the dispute
### Do we have a conflict?

- If we use competing style – might force others to accept “our” solution – but this might be accompanied by fear and resentment.
- If we use accommodation – may proceed smoothly but build up frustrations that needs are going unmet
- If use compromise – may be o.k. outcome but still harbor resentments in the future
- If we collaborate, may not gain a better solution than a compromise but will probably feel better about our chances for future understanding and goodwill.
- If we avoid – everyone remains clueless

### Responses to conflicts

- Emotional – anger, fear, despair, confusion
- Cognitive – inner thoughts or observations
- Physical – heightened stress, bodily tension, increased perspiration, tunnel vision, shallow or accelerated breathing, nausea and rapid heartbeat – high-anxiety responses

### Perceptions

- Parties may have different perceptions of the situation – perception filters:
  - Culture, race & ethnicity – view of the social structure of the world – view of our own needs varies
  - Gender & sexuality – men and women perceive situations differently - may relate to power and privilege as well as socialization patterns
  - Relationship vs. task
  - Substance vs. process
  - Immediate vs. long-term outcomes

- Knowledge – parties respond to conflicts based on knowledge they have of the issues
  - Situation-specific knowledge vs. general knowledge
  - Will influence willingness to engage in efforts to understand the conflict
- Impressions of the messenger
  - Is the messenger a threat, a goof, diminutive, calm, not calm, credible

- Our society tends to reward alternative responses to conflict rather than negotiation
- Rewards for aggressive approaches vs. compassionate approaches
- Negotiation requires profound courage on the part of all parties
Do we have a conflict?

- Courage
  - Honestly and clearly articulate
  - Sit down and listen to adversaries
  - Look at your own role in the dispute
  - Approach others with sense of empathy
  - Be open and respect another’s perspective
  - Engagement in dialogue

Do we have a conflict?

- How does all this relate to the present Arkansas-Oklahoma conflict?
  - It is clear we have a disagreement
  - Who are the parties currently involved
    - Are there other stakeholders not involved in the litigation
    - Are the other stakeholders/parties involved in discussions at any level
  - Are there perceived or actual threats
    - To what and to whom
    - Have the perceived threats become real threats

Do we have a conflict?

- Arkansas/Oklahoma situation
  - What are the needs, interests and concerns of all those involved
  - What is our knowledge base
  - Are we filtering our knowledge base through anything?
    - Culture, race, gender, impressions of the messengers, previous experiences

Do we have a conflict?

- Arkansas/Oklahoma
  - What have been our responses so far?
  - Have those responses involved emotional, cognitive or physical responses
  - Have those responses achieved results
    - If so, how effective have those results been
    - What remains to be accomplished or addressed

Do we have a conflict?

- Arkansas/Oklahoma
  - Are we competing?
  - Are we accommodating
  - Are we avoiding?
  - Are we compromising?
  - Are we collaborating?
  - Who has been involved in our conflicts to date and what have their behaviors been?
    - Competing, accommodating, avoiding, compromising or collaborating?

Do we have a conflict?

- Are other jurisdictions or parties appropriate to a long-term discussion/solution to our continuing needs, desires and interests?
  - Texas
  - Missouri
  - Kansas
  - Louisiana
  - Tennessee
  - Mississippi
  - In addition to our friend Oklahoma
Do we have a conflict?

Unquestionable that we will all face challenges in the years to come in planning for growth in our multi-state, multi-jurisdictional region.

How will we deal with the conflicts that undoubtedly will arise?

Do we have a conflict?

- Will we aggressively pursue an outcome?
- Will we avoid identification of our challenges until crisis hits?
- Will we have the knowledge base necessary to contribute to the discussion?
- Will we ensure that all potential stakeholders/parties are involved in sharing the knowledge and engaged in the discussion?
- How can we identify the procedures & institutions necessary to address our inevitable conflicts?
- How can we put in place a different means to address our conflicts?

Do we have a conflict?

- Yes, undoubtedly we do...
- So, what are we going to do about it?

The man who says he is willing to meet you halfway is usually a poor judge of distance.
-- Laurence J. Peter

Conflict occurs when two opposing parties have interests or goals that appear to be incompatible.
-- Richard Hughes

Do we have a conflict?

It is a good and fair settlement when neither party likes the outcome, but agree to it.
-- Unknown

If the only tool you have is a hammer, you tend to see every problem as a nail.
-- Abraham Maslow

The human race has one really effective weapon, and that is laughter.
-- Mark Twain

Do we have a conflict?

The reverse side also has a reverse side.
-- Japanese proverb

- For more information:
  - About Conflict – [http://www.ohrd.wisc.edu](http://www.ohrd.wisc.edu)
  - Conflict Resolution – [http://www.conflictresolution.com](http://www.conflictresolution.com)

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# Estate Planning
## What You Need to Know

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## A Glossary of Estate Planning Terms

### Terminology

**Beneficiary** An individual, institution, trustee or estate which receives, or may become eligible to receive, benefits under a will, insurance policy, retirement plan, annuity, trust, or other contract.

**Custodianship** An ownership arrangement in which property management rights are given to a custodian for the benefit of a child beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act; a custodian's duties resemble those of a trustee, although the custodian does not take legal title to the trust property and custodianship ends when the minor reaches the age of majority as specified by state law. May also apply to property management rights of individuals who are determined to be incompetent to handle their own affairs.

**Donor** A person who makes a gift. The person setting up a trust can be called donor, trustor, grantor, or settlor.

**Dower** The life estate of a widow in the property of her husband. At common law a wife had a life estate in one-third (in value) of the property of her husband who died without leaving a valid will or from whose will she dissented. In many states common law dower has been abolished by statute or never has been recognized.

**Durable Power of Attorney** A written legal document which allows one person (the principal) to authorize another person (the attorney-in-fact or agent) to act on his or her behalf with respect to specified types of property, and which may remain in effect during a subsequent disability or incompetency of the principal.

**Estate** Everything of value (all property) that a person owns while living or at the time of death.

**Estate Planning** Process designed to conserve estate assets before and after death, distribute property according to the individual's wishes, minimize federal estate and state inheritance taxes, provide estate liquidity to meet costs of estate settlement, and provide for the family's financial needs.

**Estate Tax** A tax imposed on the transfer of property from a decedent to his or her heirs, legatees or devisees.

**Executor or Executrix** An individual or institution nominated in a will and appointed by a court to settle the estate of a deceased.

**Grantee** A person to whom property is transferred by deed or to whom property rights are granted by means of a trust instrument or some other document.

**Grantor** The person who establishes the trust. Also called the creator, settlor, donor or trustor.

**Guardian** A person legally entrusted with the care of, and managing the property and rights of, another person, usually a minor child.

**Holographic Will** A will written entirely in the testator's own handwriting.

**Lateral Succession** Succession in property ownership in which the property is transferred between members of the same generation.
Terminology

Living Trust A written legal document into which you place all of your property, with instructions for its management and distribution upon your disability or death.  
Partition The judicial separation of the respective interests in property of joint owners or tenants in common so each may take possession, enjoy, and control his or her share of the property.

Terminology

Power of Attorney A written legal document that gives an individual the authority to act for another.  
Primary Beneficiary Beneficiary of a life insurance policy who is first entitled to receive the policy proceeds on the insured’s death.  
Probate A court procedure for settling the personal affairs of a decedent by formally proving the validity of a will and establishing the legal transfer of property to beneficiaries, or appointing an administrator and supervising the legal transfer to property to heirs if there is no valid will.

Terminology

Revocable Beneficiary Beneficiary designation allowing the policyowner the right to change the beneficiary without consent of the beneficiary.  
Revocable Trust A trust that can be changed after it is established. Assets can be added or removed from the corpus of the trust, the beneficiary(ies) can be changed, and other changes including termination of the trust, are allowed.  
Succession A term used to describe transfers of asset ownership through inheritance, gifting, preferential sale, or other means that fulfill the wishes of the person(s) with present ownership of the assets.  
Suicide Clause Contractual provision in a life insurance policy stating that if the insured commits suicide within two years after the policy is issued, the face amount of insurance will not be paid; only premiums paid will be refunded.

Terminology

Testator One who writes or has written and signs a will.  
Trust A legal arrangement in which an individual (the trustor) gives fiduciary control of property to a person or institution (the trustee) for the benefit of beneficiaries.  
Trust Declaration or Trust Instrument A document defining the nature and duration of the trust, the powers of the trustee, and identifying the trust’s beneficiary(ies).  
Trustee An individual or organization which holds or manages and invests assets for the benefit of another.  
Vest To confer an immediate, fixed right of immediate or future possession and enjoyment of property.  
Will A person’s written declaration of desires for disposal of his or her property after death.

What is Estate Planning?

- Estate planning is arranging for the orderly transfer of your assets (property) following death.  
- The ideal estate plan minimizes taxes, expenses, and delays, and assures that your assets reach intended heirs.
**What is an Estate?**

- An estate includes all property (real and personal) a person owns minus any debts.

**What Would Happen...**

1. If I don't wake up in the morning, what would happen to the property I've worked a lifetime for?
2. If I become physically or mentally incapacitated, who will make decisions regarding my physical and financial well-being?
3. Would my spouse, children or other beneficiaries be provided for?

**What Would Happen...**

4. Would my spouse have adequate control of business and family affairs?
5. Would the person who settles my estate have my family’s interest and needs uppermost in their thoughts and actions?
6. Would the “tax bite” be the minimum required by law?

**The Purpose of an Estate Plan is to:**

1. Give instructions regarding what will happen to your physical person and personal finances if you are physically or mentally incapacitated
2. Convey the property you own during your lifetime or at your death to the people or charities of your choice
3. Meet the personal and financial needs of you and your beneficiaries
4. Minimize or eliminate economic loss

**Misconceptions Associated With Estate Planning**

1. "Estate planning is needed by elderly and wealthy people only."

- We have daily reminders that death does not respect age. Because one function of an estate plan is to plan how your assets will be distributed at death, being young should not prevent you from creating an estate plan.

**Misconceptions Associated With Estate Planning (cont.)**

1. "Estate planning is needed by elderly and wealthy people only."

- First, if you have not estimated the value of your estate, you might be surprised at its size. You might live poor and die rich, and need to be concerned about minimizing or eliminating estate taxes.
- If you have a modest estate, you want to preserve what you have so you can pass it to your chosen heirs.
Misconceptions Associated With Estate Planning

2. “A simple will lasts a lifetime.”
- A will is the foundation for a good estate plan, but your overall estate plan might include more tools than just a will.
- You may have life insurance in your estate plan.
- Gifts and trusts may be a part of your plan.

Misconceptions Associated With Estate Planning (cont.)

2. “A simple will lasts a lifetime.”
- Your attorney and other professionals working with you can advise you on the appropriate tools to use to accomplish your wishes.
- You need to have a well-designed estate plan and keep it current.

Misconceptions Associated With Estate Planning

3. “The state has laws to protect my estate.”
- Each state has laws designed to settle estates of those who fail to leave a valid will at death. It would be a rare coincidence for the state’s laws to fulfill anyone’s desires completely. In addition, settlement costs time and money, and more problems generally occur than in situations planned carefully during life.

Misconceptions Associated With Estate Planning

4. “Joint ownership with my spouse is a practical substitute for an estate plan.”
- Although joint ownership in certain types of property may offer significant advantages, some joint ownership arrangements have potentially serious estate tax consequences.
- If you currently hold joint tenancy property or are thinking of entering into a joint-tenancy agreement, seek the advice of your attorney.
- Joint tenancy ownership does not always provide a complete substitute for a will or estate plan.

Misconceptions Associated With Estate Planning

5. “Estate planning is too expensive.”
- An estate planning attorney should write your will.
- Charges vary widely from a few hundred dollars for a simple will up to several thousand dollars for a complex estate plan.
- The fee depends on the size of the estate and the time required to prepare the legal documents.

Misconceptions Associated With Estate Planning (cont.)

5. “Estate planning is too expensive.”
- A few dollars spent now could save your family heartache and a lot of money if you die.
- The investment you make in an estate plan may yield higher dividends than any other investment you make.
Establish Objectives for Your Estate Plan

1. Plan for mental or physical incapacity.
2. Dispose of your possessions according to your wishes.
3. Appoint a guardian of your minor children.
4. Minimize settlement costs and estate taxes.
5. Provide for continued operation or orderly termination of a business enterprise.
6. Make provisions for retirement needs.
7. Provide family members information that will be useful in their long-range planning.

The Estate Planning Process

1. You need to answer several important questions to get the estate planning process started:
   - What is your net worth?
     - Your net worth is a snapshot of your overall financial situation from year to year. It is the sum of the current market value of your assets (liquid assets, investment assets, real property and personal property) minus the sum of the outstanding balance on all of your debts.

2. Who owns the assets and liabilities?
3. How are they are titled?
4. How do you want to distribute your assets?
5. Will you distribute them during your lifetime or at your death
   - a. Whom do you want to receive your assets (your spouse, your children, charities, other)?
   - b. How much do you want them to get?
   - c. When do you want them to get it?
   - d. How do you want them to get it (income, principal, income and principal)?
6. Whom do you want to manage the administration and distribution of your estate?
   - a. Executor, trustee and successors
   - b. Guardian (personal and financial) and successors for dependents (children or elderly parents)

You need several pieces of financial information to prepare or update your estate plan.

- You need a copy of your most recent will and any other estate planning documents, tax returns, financial statements you have given to financial institutions and a list of who owns all property listed on those statements.
The Estate Planning Process (cont.)

- You need several pieces of financial information to prepare or update your estate plan.
  - If you have never made a will, you should make one. If it was made several years ago, you may need to revise it.

The Estate Planning Process (cont.)

- You need to revise your will if:
  - 1. You have had substantial changes in your financial status, business interests or lifestyle (marriage or divorce, birth or death of a family member, move from another state).
  - 2. The executor named in your will is deceased or can no longer serve effectively.
  - 3. You need to name a guardian for your dependents or if a new guardian should be substituted.

Will

What Is a Will?

- A will contains written directions to control the disposition of property at death. The will becomes effective at the time of death.
- Each state sets formal requirements for wills. The will must be prepared and executed in accordance with laws governing wills.

In Arkansas:

- The maker must be 18 years of age or older.
- The maker must be of sound mind.
- The will must be witnessed by two people, 18 years of age or older and of sound mind. A holographic will does not have to be witnessed.
- In making a will a married person cannot totally exclude his/her spouse, nor can a joint tenant prevent the other from becoming owner by survivorship.
**Why Are Wills Important?**
- They are of vital importance in estate planning.
- They are the deceased person’s final voice.
- They should be planned thoughtfully and prepared by an attorney.
- They should be reviewed from time to time and altered as assets, tax laws and family situations change.

**What If There Is No Will?**
- When a person dies without a will, he dies “intestate” or without a testament of what he wants done with his property.
- The law of the state makes provision for distribution of property if there is no will.

**Why Make a Will?**
- To plan and direct the disposition of the fruits of a lifetime of work.
- To care for the future and welfare of loved ones.
- To develop an estate plan that will eliminate or limit estate taxes if the maker has substantial real and personal property.

**What Kinds of Wills Are There?**
- **Holographic** – handwritten by the testator (person making a valid will).
  - While it is possible for one to write a will by one’s self, it is not advisable to use this method because wills are very special.

**What Kinds of Wills Are There?**
- **Professionally prepared** – after consultation, prepared by a lawyer trained in estate planning.
  - Wills are legal documents and must be executed with certain formalities. Because legal language is highly technical, and because the will must conform to the laws of the state, it is advisable to consult an attorney for the preparation of this important document.

**Living Trust**
- A living trust is a legal document which allows an individual to transfer ownership of titled and personal property from their name to a trust.
  - Once property is transferred, the trust – not the individual – becomes the legal owner. And, even though the individual no longer “legally” owns the property, he/she can remain in control of all assets in the trust as long as he/she lives and remains competent.
Estate Planning References

For more information about Estate Planning and Wills go to:

http://www.uaex.edu/Other_Areas/publications/PDF/FSHEC-36.pdf


http://www.uaex.edu/Other_Areas/publications/pdf/FSHEC-100.pdf

http://www.arfamilies.org/money/estate_planning.htm

Presentation References

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Estate Planning Survey

Completion of this survey is voluntary.

1) What does State Planning help you accomplish? (circle one)
   a) To become rich
   b) To save money for retirement
   c) To arrange the orderly transfer of property following death
   d) To help you plan for a successful business

2) What does a well structured Estate Planning help you minimize? (circle one)
   a) Savings in your bank account
   b) Taxes and expenses
   c) Your salary
   d) Insurance payments

3) In Arkansas you must be 18 years of age or older to make a will.
   YES [ ]     NO [ ]

4) To make a will you must be sound of mind.
   YES [ ]     NO [ ]

5) A holographic will must be witnessed by two people.
   YES [ ]     NO [ ]

6) When a person dies without a will “intestate” the law of the state determines distribution after?
   a) Administration
   b) Funeral & Last illness debts
   c) Taxes and Family allowances
   d) All of the above
   e) None of the above

7) Estate Planning involves more than just the dollar value of the things you own.
   YES [ ]     NO [ ]

8) All Estate Plans are the same.
   YES [ ]     NO [ ]

9) Estate planning is needed by the elderly and wealthy people only.
   YES [ ]     NO [ ]
10) A simple will lasts a lifetime.

YES [ ]  NO [ ]

11) Estate law has laws to protect my estate.

YES [ ]  NO [ ]

12) Joint ownership with my spouse is a practical substitute for an estate plan.

YES [ ]  NO [ ]

13) Estate Planning is too expensive.

YES [ ]  NO [ ]

14) What are the objectives you need to consider in developing a well structured estate plan? (choose more than one)

a) Plan for mental or physical incapacity
b) Sell your assets to save the money in the bank
c) Dispose of your possessions according to your wishes
d) Appoint a guardian for your minor children
e) Make investment plans
f) Minimize settlement costs and estate taxes
g) Make provisions for retirement needs
h) All of the above

Test your knowledge of estate planning terms. Match the following words with their definitions.

A) Beneficiary  B) Guardian  C) Estate  D) Living Trust  E) Power of Attorney  F) Trust

1. __________ An individual, institution, trustee or estate which receives, or may become eligible to receive, benefits under a will

2. __________ A written legal document which allows one person (the principal) to authorize another person (the attorney-in-fact or agent) to act on his or her behalf with respect to specified types of property

3. __________ Everything of value (all property) that a person owns while living or at the time of death

4. __________ A person legally entrusted with the care of, and managing the property and rights of, another person, usually a minor child

5. __________ A written legal document into which you place all of your property, with instructions for its management and distribution upon your disability or death

6. __________ A legal arrangement in which an individual (the trustor) gives fiduciary control of property to a person or institution (the trustee) for the benefit of beneficiaries
Do you know how to browse a web page on the Internet?

YES [ ]   NO [ ]

How well do you read in Spanish?

[ ] Not at all    [ ] Beginning    [ ] Intermediate    [ ] Advanced

How well do you write in Spanish?

[ ] Not at all    [ ] Beginning    [ ] Intermediate    [ ] Advanced

How well do you read in English?

[ ] Not at all    [ ] Beginning    [ ] Intermediate    [ ] Advanced

How well do you write in English?

[ ] Not at all    [ ] Beginning    [ ] Intermediate    [ ] Advanced

Do you plan to incorporate an estate plan in your personal life?

YES [ ]   NO [ ]

How would you rate your interest in obtaining additional information or education on each of the following risk management topics? (circle one in each row)

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Would you be interested in obtaining information regarding FREE English language classes?

YES [ ]   NO [ ]
Liabilities Survey

Completion of this survey is voluntary.

1) Occupational Safety and Health Act (OSHA) ensures safe and healthy working conditions.

   YES [ ]    NO [ ]

2) The OSHA act generally applies to agricultural work places with less than 10 employees.

   YES [ ]    NO [ ]

3) All employers are under a “general duty” to keep the workplace free of recognized hazards that can cause serious injury or death.

   YES [ ]    NO [ ]

4) Employers must comply with under the “general duty” with:

   a) Post OSHA posters
   b) Inform employees of safety regulations
   c) Maintain up-to-date records of injuries and illnesses
   d) Report fatalities occurring on the job
   e) Inform employees concerning potential hazards of chemicals
   f) All of the above
   g) None of the above

5) Children 18 and under cannot be used in agricultural jobs that are hazardous

   YES [ ]    NO [ ]

6) Hazardous agricultural tasks include:

   a) Using farm machinery
   b) Hay balers
   c) Feed grinders
   d) Power post-hole diggers
   e) Working in a farmyard pen or stall with a bull, board or stud horse kept for breeding
   f) Working with a sow with suckling pigs, cows with newborn calves
   g) Working inside manure pits
   h) All of the above
   i) None of the above

7) The greatest risk area for an employer is the risk of being liable for injuries that an employee incurs on the job

   YES [ ]    NO [ ]

8) An employer generally has the duties to:
a) Provide reasonably safe tools  
b) Provide a reasonably safe place to work  
c) Warn and instruct employees of dangers that the employees could not have been expected to discover  
d) Provide reasonably competent fellow employees  
e) All of the above  
f) None of the above

9) An employer can defend himself against cases brought for injuries to his employees if:
   a) The employee was aware of the danger  
b) The injuries were caused by a co-employee  
c) The employee contributed to his own injuries  
d) All of the above  
e) None of the above

10) To obtain compensation, the worker does not have to show that the employer was negligent – he only has to show:
    a) The injury  
b) The injury occurred while he was acting within the scope of his employment  
c) The injury was related to his employment  
d) All of the above  
e) None of the above

11) The amounts of recovery for injuries under workers’ compensation programs are fixed.
    YES [  ]  NO [  ]

12) Different types of injuries to different body parts have same damage awards.
    YES [  ]  NO [  ]

13) Employers can be liable to others for the acts of their employees.
    YES [  ]  NO [  ]

14) If you hire independent contractors and control their actions, you may be able to avoid liability if their actions harm another.
    YES [  ]  NO [  ]

15) Liabilities and risks will depend upon:
    a) The facts  
b) How good your lawyer is  
c) How credible any witnesses are  
d) The nature of the issue  
e) All of the above  
f) None of the above

16) Match the following words with their definitions:
    A) Trespasser    B) Licensee    C) Invitee
1. ___________ those entering upon your land with your permission and for their own purposes or business interests

2. ___________ those coming onto the land at the express or implied invitation of the landowner

3. ___________ someone who enters or remains on your land without your consent

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Would you be interested in obtaining information regarding FREE English language classes?

YES [ ]  NO [ ]

Would you know how to browse a web page on the Internet?

YES [ ]  NO [ ]