

Protecting Your Farm or Ranch Assets

Developing Direct Market Agricultural Enterprises
and Understanding Legal Liability in the Inland Northwest

Chapter 4: Insurance



School children at Greentree Naturals

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Navigating the Insurance Maze

Introduction

An ounce of prevention...

None of us enjoys the financial burden of insurance, but we heartily appreciate our coverage when we hit a deer with our vehicle or experience an unexpected hospital stay. For Direct Farm Marketing the need for specific insurance coverage stems from the desire to protect yourself in case of injuries or damage that may occur on your premises, physical damage to machinery or buildings, product liability and workman's compensation for employee coverage. You should not assume that the insurance you now have is what you need.

This section will provide guidance on the following three topics:

1. Provide general understanding about how insurance operates and key terms to understand.
2. Consider some of the basic rules of how insurance operates, including a list of questions to ask your insurance agent.
3. Consider some of the unique insurance issues, which might arise in connection with direct farm marketing.

Forms of Insurance

The first step is to specifically identify the risks involved with your activities. It is wise to eliminate as many as possible and then seek the type of insurance policy to cover them.

- Many small farmers start their operations with a homeowner's policy. It may be possible to obtain coverage for additional activities, which include sales less than \$5000 per year, provided that the business is a secondary income.
- The comprehensive farm liability policy is designed to provide liability coverage for accidents that might happen on the farm. This would cover you and your family, guests and customers, who visit the farm as long as the injuries occur in connection with what is defined as farming. Friends and relatives are typically covered when they visit the farm.
- A commercial business policy is custom fit to your business activities on the farm and may be needed if what you are doing resembles a commercial venture rather than a traditional farm.
- Coverage for your employees is a combination of liability from your farm or commercial policy and worker's compensation from the State of Idaho

Insurance Consumer Hotline: 1-800-562-6900 for more information

At the end of this section is a list of companies that provide farm liability coverage. Looking for agents that represent these companies can be a useful step in finding an agent for your insurance needs.

Establishing a relationship with your agent or broker is very important. Be sure and choose a company that guarantees “truth in exchange.” You will want to know that the person you do business with is trustworthy. Whatever they promise needs to be in writing. As hard as it is, carefully read your policy and keep asking questions until you understand what it says. Never go on assumptions; the proof of your protection will be in the policy.

Keep in mind that you are paying money for insurance so you expect to be covered. You will not be able to obtain the coverage you need unless your agent knows what you are doing. It is important to be thorough and explain to your agent what you are doing so the agent can write the policy you need.

Never understate what it is that you are doing on your farm in hopes this will reduce your costs. If something happens and you are underinsured, you will be in a bad situation, having paid your premiums for no return.

You have an obligation to periodically report any changes in the nature of your activities or property that is the subject of your coverage.

Questions to Ask Your Agent

As you begin to communicate with your agent or broker, keep a running list of questions you would like answered. You have a right to have all of your questions answered because you are paying money for insurance and you don't want any surprises in the

future. In addition, if you are thorough and can clearly explain what you are doing, the agent or broker can write the policy you need.

Here are some sample questions:

- Are you a general agent working for one company or an independent agent?
- At what point does my homeowner's policy no longer cover my involvement with direct farm marketing?
- Can my homeowner's policy be extended to cover my activities (with additional premiums)?
- Is there a limit to the amount or type of direct farm sales I can make and still have them considered as incidental to my farm operation?
- If I have a farm policy, does my liability cover my direct farm marketing sales, such as at my roadside stand, U-pick operations, delivery to restaurants and farmer's markets? What activities are excluded as a “separate business” for which I need to buy a commercial policy?

What type of coverage do you need?

Perhaps you already have some insurance. What type of coverage do you need? There is no specific answer to this question because not all businesses or farming situations are alike. Insurance is a necessity in most businesses. The standard advice is to only insure against what you can't afford to lose. None of us can afford to lose the farm; therefore it is extremely important to have insurance protection.

In most cases, insurance is required as a condition for a bank loan. In a sole proprietorship, adequate insurance is critical because you are personally liable for all debts. Having adequate insurance is one way to manage this possible risk of being personally liable for your business' default on loans.

Many business owners naively believe their business doesn't need insurance. Even in the case of home-based businesses, thinking your homeowner's policy will cover any business loss is a huge mistake. The activities of your home office are not likely to be insured by your homeowner's policy unless you have a special "rider" on that homeowner's policy or have separate home office coverage.

Ask your insurance agent to look at your present coverage to analyze what additional areas of risk your business exposes you to and recommend the types and amounts of insurance your business requires. Make a list of all of the business activities that you have on going at your farm to include things like farm tours, apprentices, workshops, and value added products etc. and share these with your agent.

Property and liability are the most important types of insurance for businesses. A property policy provides insurance on your building and other physical assets. Liability protects you against claims of injury or property loss resulting from negligence on your part. Life and health coverage is primarily seen as part of your employee benefit package.

Liability Insurance

Liability insurance protects your business if for example; someone suffers a bodily injury while on your site and sues you for damages. Your insurance policy should cover your costs for these damages. Many policies will also cover injuries like libel and slander (if you are in the publishing business, for instance). The cost of liability insurance is generally related to the risk of your industry. As an agricultural business, your cost may depend upon what you produce on your farm and how you produce it, and whether or not your operation is open to the general public.

Liability for the acts of animals kept as pets or part of the farm operation is another area specific to agricultural business. For example, legal liabilities may arise if your cattle get into your neighbor's cornfield or they cause a car accident while they were crossing the road. Perhaps a horse or a goat bites someone while visiting the farm; these are things to consider when you have farm visitors.

**Taken from the Cultivating Success Farmer Mentor Handbook, by Diane Green*

Product Liability

Product liability insurance protects you against injury or property loss due to a product defect or design flaw, this list includes farm machinery, livestock products and food products.

Professional Liability

Professional insurance protects people whose business involves services or consulting. People who are self-employed often need professional liability insurance to protect both their personal and business interests. Perhaps other farmers hire you to advise on production planning, for example, and pay you for that service. Find out from your insurance agent if that activity exposes you to any special liability issues.

Workman's Compensation Insurance and State Laws

University of Idaho and Washington State University students are coming to farms to do on-farm apprenticeships or internships; some students receive college credits for their time, some do not. We want to be sure that the farmers involved with this farmer-mentor program are protected from liability and adhering to the workman's compensation laws.

Workers' Compensation Insurance covers employees when they are injured on the job and is required by law in every state. Requirements in each state vary. Most require that businesses have some type of benefits that cover medical and rehabilitation costs and lost wages for employees hurt on the job.

Interns / apprentices are not really employees as in most situations; they are not paid for their time. In common circumstances, the apprentice is given room and board in exchange for the learning experience and helping on the farm. There is a fine line between having an employee and an apprentice when it comes to meeting the worker's compensation laws specific to your farming enterprise.

In the eyes of the Industrial Commission, room and board is considered a method of payment. The farmer may need to calculate dollar amount associated with the room and board as an equivalent for service provided in exchange. This type of apprentice exchange is considered contract service – where farmer is paying the contractor or apprentice room and board in exchange for service rendered.

TITLE 72 WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION Idaho administrative code #72205 [(9)](8) A work experience student, as that term is defined in section 72-102, Idaho Code, who does not receive wages while participating in the school's work experience program shall be covered by the school district's policy with the state insurance fund.

**Taken from the Cultivating Success - Farmer Mentor Handbook*

ATTRA Question of the Week

<http://attra.ncat.org/>

Where can I find information about product liability for my eggs, broilers, and beef?

D.D.
Nebraska

Answer: From Dr. Neil Hamilton's *The Legal Guide for Direct Farm Marketing*, the section on products liability coverage:

The issue of whether products liability insurance is commonly available in the context of direct farm marketing is somewhat confusing. Many farmers believe that their typical farm liability insurance policy will provide them with "products liability coverage." In most situations this is probably not true. Farm liability coverage applies in situations when people are injured while on the farm premises. This is a different issue than someone being injured by a product which was purchased on the farm. The classic form of products liability insurance is the type of coverage a manufacturer acquires to apply when a person was injured using a product purchased from the manufacturer. The insurance policy is written on an individual basis and the cost of the insurance is a function of the type of product being sold, the process under which it is manufactured, and the type of risks associated with using it.

As it relates to the sale of food such as fresh produce and meat, the main concern about product liability is what happens if someone becomes ill from eating the food. Would a farm liability policy apply in this situation? The best answer is that it probably would not because it was not the type of activity or injury which the insurer was covering. This injury is not connected to the use of the farm premises. If the farm operation has an additional "excess liability policy" sometimes referred to as an umbrella policy, the answer could be different. It will all depend on the language of the policy and whether the injury involved can be shown to have been within the parties' expectations about the coverage. If you have concerns about this issue, the best advice is to ask your insurance agent how your current liability policy would apply in such a situation. If the answer is no, then you should ask whether such "products liability" insurance is even available for the products you sell.

See Resources (below) for links to *Liability Concerns for Farmers Involved in Direct Marketing of Farm Products*, the publication *Food Product Liability Insurance*, and the article "How much insurance is enough?" These provide information on many aspects of liability insurance.

Before 2001, the North American Farmers' Direct Marketing Association offered liability insurance for their members. They no longer provide this service, but they have a list (exclusively for their members) of insurance companies providing liability insurance policies for direct marketing operations

A part of the publication *Risky Business?* answers the common question: "What if a customer gets hurt while on my farm or gets sick from eating my farm products?" It discusses insurance, but also suggests organizing your farm business as a corporation to limit liability. The Midwest Plan Service Catalog page lists several publications that discuss farm corporations and planning financial organization structure for farms.

Your local Extension should be able to put you in touch with the Nebraska Farm Management Extension Specialist in your area. They could help you decide if a corporation or limited liability corporation (LLC) would fit your situation.

You should contact insurance agents working with business insurance. These agents should be able to help you find a policy to cover your value-added business.

Resources

The Legal Guide for Direct Farm Marketing. 1999. By Neil D. Hamilton. 240 p.
\$20 plus \$3 shipping.

How To Pick An Agent Or Broker

Mike Kreidler
Washington Insurance Commissioner

FACT SHEET:

Agent vs. Direct Writers: The choice between an agent and a direct writer is one that hinges on the consumer's own style and preferences. Are you more comfortable dealing with the same person when you have questions? Do you want to confer regularly on concerns like remodeling — or the need to update your coverage? If so, you probably will prefer the personal touch of an agent. On the other hand, direct writers offer you the convenience of a single phone call or 24-hour toll-free service. As a direct writer, the company does not usually pay a commission to agents.

Agents and Brokers: Many individuals and businesses buy their insurance coverage from agents, who represent either specific companies or a number of companies. However, other individuals and many businesses prefer to buy from a broker, who represents them directly in the marketplace. Many businesses prefer to use brokers because they want an independent source of information who can sample the broad range of coverage available and put together the best package for specific circumstances. Both agents and brokers should be responsive to their customer's needs. However, you should remember that the agent also represents the company or companies he or she is appointed by. The broker works for you.

Selecting a Representative: How do you pick the right agent or broker? Check with your friends, neighbors, colleagues and family, especially with people who have had difficulty with claims or coverage. It's instructive how insurance representatives react under those circumstances because you can get an idea about how they will respond to you when you need similar help. In general, consumers should investigate potential agents or brokers every way they can. For example, the Office of the Insurance Commissioner will tell Washington consumers on request how many complaints have been filed against an agent or broker — and whether that licensee has faced disciplinary action in the past. Consumers have a right to that information.

The Office of the Insurance Commissioner can help you

If you have any questions or need additional information about your rights as an insurance consumer, call our Consumer Hotline at 1-800-562-6900 or visit our web site at www.insurance.wa.gov

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