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Recommended Citation
South Dakota State University, Cooperative Extension, "Liability Risks for Hunter Hosts" (1964). SDSU Extension Fact Sheets. 862.
https://openprairie.sdstate.edu/extension_fact/862

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Liability Risks for Hunter Hosts

Cooperative Extension Service
South Dakota State University
Brookings, South Dakota
Liability Risks for Hunter Hosts

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This fact sheet is designed to give the property holder general information on liability risks and liability insurance protection. For specific counsel and advice your lawyer and insurance agent should be consulted.

The growing number of farm families providing room and board for hunters and opening their properties for other recreation enterprises increases the possibility of accidents and court action as a result of such accidents. It is important that farmers have an understanding of their responsibilities to these guests and to others who might enter their farms.

Under tort law, covering property holders liability, three conditions must exist before there can be any grounds for court action: (1) the property holder (tenant or owner-operator) must have a legal responsibility to the injured party, (2) he must be negligent in that responsibility, and (3) the injured party must have suffered damage as a result of the property holder's negligence.

South Dakota law imposes a legal responsibility upon the property holder to exercise care for the safety of people who enter upon his property. The degree of care that is required by law depends upon the circumstances under which people enter.

A person entering the property of another is classified as either an "invitee," a "licensee" or a "trespasser." The property owner owes a different degree of responsibility to each, so it is important that he understands the basis for this classification and his legal responsibility to each one.

INVITEE

An invitee is a person who enters the property of another with the property holder's permission and bestows a benefit upon the property holder for the privilege. This may or may not be a cash payment. The hunter who pays for the privilege of hunting on your land is an invitee. The hunter who pays for room and board with the implied consent to hunt your land is also an invitee. The latter case tends toward an innkeeper situation in which the law requires a high degree of care for the safety of the guest.

The property holder is not an insurer of the safety of his guests. It is his duty to exercise reasonable care for their safety. For example, if a guest is injured by an unruly bull and the farmer was aware that the bull was unruly and that the guest might go near him,
the court would probably hold the farmer liable. However, if the farmer had warned the guest that there was an unruly bull on the premises and advised him to avoid that area of the farm, the court would probably rule that the farmer had fulfilled his legal duty to his guest.

The property holder might be held liable for injury to an invitee by circumstances unknown to the property holder if they could have been known by reasonable inspection of the premises. He has the legal obligation to an invitee to inspect the premises to discover any possible dangers. He does not have this obligation to a licensee or trespasser.

**LICENSEE**

The licensee is a person who enters the property of another with the property holder's permission but to pursue his own motives. He might be a salesman or a person who has permission to hunt, but has not paid for the privilege.

In South Dakota during the hunting season he might also be a hunter who has entered unfenced and unposted harvested land without either the property holder's permission or knowledge. South Dakota law gives the hunter the right to hunt such land if signs have not been posted otherwise. The failure of the owner or tenant to post such signs constitutes an implied consent to enter for the purpose of hunting.

The property holder has the responsibility to warn the licensee of any hidden dangers or other hazards that might be present. Beyond this he has no further responsibility.

If a hunter asks permission to hunt and is told there are other hunters in the field but proceeds to hunt anyway and is injured by another hunter, the property holder probably won't be held responsible. However, he might be held liable for damages if, in the opinion of the court, there were more hunters on the land than is reasonably safe and the licensee was in no position to make this judgment for himself.

The property holder is under no obligation to protect the licensee from any danger that he (the licensee) can reasonably be expected to discover for himself.

**TRESPASSER**

A trespasser is one who enters the land of another without the occupier's permission or knowledge. The property holder does have a responsibility for the safety of the trespasser although it is very, very slight.

The property holder is liable for the safety of a trespasser only to the extent of his knowledge of the trespasser's presence and the potential concealed danger to him and if he (property holder) could have reasonably been expected to warn him in time.

The property holder has the right to remove a trespasser from his land, but only to the extent that he can evict him without inflicting physical bodily harm. Reasonable force is permissible.

There is one very important exception to the above general rules and this is the case of the "Attractive Nuisance Doctrine." A minor child who has been attracted upon your property by some unattended object that is known to be an attraction to children is no mere trespasser. The law imposes a special responsibility upon the property holder for the child's safety.

The object must be inherently dangerous and something that will ordinarily attract children. This might be a piece of farm machinery, a boat left tied to the shore of a farm pond, or a vacant barn. Even a windmill tower with a ladder extending invitingly to the ground might be classified as an attractive nuisance. Every property holder should be aware of the attractive nuisance doctrine and exercise proper care to guard the safety of children.

**METHODS FOR PROTECTION AGAINST LIABILITY CLAIMS**

Many people believe they can absolve themselves of their responsibility for the safety of their guests by posting "Not Responsible for Accidents" signs or by requiring the signing of a disclaimer. The fact remains that the law does hold the property holder responsible for the safety of people on his premises to the extent described above. The obligation cannot be removed. Under tort law, every adult is held responsible for his action (or inaction when a legal responsibility to act exists).

Most accidents can be avoided by keeping the farm in a reasonably safe condition at all times. It is just good housekeeping practice to take appropriate action when hazards are known to exist. In the event that such hazards cannot be removed they should be fenced and signs proclaiming their existence should be erected.

The property holder should also conduct himself in a responsible manner in the presence of his paying guests. He should be particularly careful when guiding hunters and transporting them, whether it be in an auto, farm truck or tractor.

Many farmers to protect themselves against costly judgments have insured for this risk. An insurance policy is a contractual arrangement between two parties. For a stated fee the company will pay (usually up to a specified amount) the damages of any judgment held against the insured if such risks are covered in the contract (policy).

The insurance company assumes the risk of financial loss due to damages caused by your negligence.
It does not relieve the insured of his legal responsibility to his guests.

In general there are three types of insurance policies that provide coverage against liability risks. These are (1) Farmers Comprehensive Personal Liability, (2) Comprehensive General Liability, and (3) Owners, Landlords and Tenants Liability. A competent insurance agent can help you determine the one that will best suit your situation.

1. **The Farmers Comprehensive Personal Liability** policy is the one most widely used by farmers for their regular farming operations. It may not be adequate if you open your farm to paying guests. Some companies might approve a recreation enterprise under the provisions of this policy and others may not. The decision is usually made upon the basis of the amount of money the recreational enterprise nets the family, the length of time it is carried on, and the provisions of your policy. Your insurance agent will tell you if you are covered for recreation enterprises. If there is any question about the coverage, a legal opinion may be requested by you or your insurance agent from the legal department of the company.

2. **The Comprehensive General Liability** is a “tailor made” policy. Rates are based upon the expected revenue and the risks the company is expected to assume. You pay only for the time you actually require the coverage.

   For example, suppose you expected to host 20 hunters for two weeks and charged $10.00 per day for each. Your premium or deposit would be based upon this premise. If at the end of the season you were host for only 10 hunters for one week you might be entitled to a refund.

   Generally where children are guests the rates are higher and, as can be expected, the rates differ for each enterprise. The premium rate for a riding stable is high compared to the rate for a private campground.

3. **The Owners, Landlords and Tenants Policy** is designed specifically for the businessman who opens a business to serve the public. It may or may not suit your needs. It insures against almost any risk a businessman may encounter in ordinary business operation. Protection is afforded the year round and premiums are paid accordingly.

Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the United States Department of Agriculture.

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5M—9-64—File: 3.27—1784—Reprint 1M—11-71—2867