

# Risk, Liability and Insurance for Direct Marketers

## EMERGING AGRICULTURAL MARKETS TEAM

UW COOPERATIVE EXTENSION

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**F**armers increase their risk and exposure to lawsuits by marketing their products directly to consumers. The public has become increasingly conscious of legal actions, and when faced with a problem, more people are willing to pursue remedies through the legal system.

### Risk and liability

Risk is exposure to possible loss or injury. Understanding risk exposure and liability will help you understand the need for insurance to protect the financial position of your direct marketing business. Risk can take many forms. For example, property such as buildings, equipment, cars and trucks are subject to loss as a result of fire, windstorm, theft or vandalism. More difficult to grasp than these kinds of risk is the concept of liability, which means that you can be considered negligent, and therefore liable, for something bad that befalls a person as a result of an interaction with your business.

Liability of a direct marketer results from some form of negligence. Negligence results from careless acts or the failure to act. The liability of a farmer who is engaged in direct marketing is likely to arise from negligence in: (1) personal actions; (2) trespass or injury by livestock; (3) the negligent acts of employees in the course of their employment that result in injury to others; (4) injury to employees arising from personal actions, defective machinery or equipment, or defective conditions on the premises; (5) the condition of the premises with respect to

the customer (business invitees); or (6) defective or contaminated products.<sup>1</sup>

Under the law, negligence—a careless act or a failure to act—is called a "tort." A direct marketer who commits a negligent act that results in injury to another may be liable for the harm caused by the negligence. For example, a liability suit may claim a child was injured by an animal on a farm visit, or that someone cut themselves on an unsafe piece of equipment, or a tooth was broken by a stone left in a chicken gizzard purchased from your farm.

Many farmers feel they are not at risk for liability claims, as their customers are primarily friends and family. In today's world of insurance and litigation, selling to friends offers no protection. If a friend comes to your farm to buy chickens and breaks a leg while playing with your dog, they will most likely go to the hospital for treatment. If they use their health insurance policy to pay for the injury, their insurance company will insist that a claim be made against your operation, regardless of the friend's wishes.

In the area of liability, no clear-cut guidelines exist. A jury frequently determines the outcome of a liability case. The court will decide if the direct marketer is liable for harm to an injured party. Liability insurance can be purchased to protect the farm from financial ruin in the case of a judgment coming down against the direct marketer.

### A farm insurance program

Direct marketers need to regularly review their insurance needs with an insurance agent and attorney. Liability questions are more challenging than those brought up by simple physical property coverage.

The farm insurance program must consider:

1. **Property coverage**—(buildings, vehicles, equipment and inventory). A clear explanation in the policy is essential so the direct marketer knows what the policy provides; for example, coverage in the event equipment failure results in the loss of a \$1,200 product inventory.
2. **Liability coverage**—The general public may elect to sue for an injury while on your property. A claim may also be filed as a result of injuries caused by you or one of your employees. If a product causes harm to the buyer, the farmer may be held liable. A farmer is exposed to liability for the farm operations, whether conducted on the premises or away from them, such as while selling at a farmer's market. Insurance jargon calls this "exposures incidental to the use and occupancy of the farm premises and the operations conducted thereon, as well as those conducted outside the premises." Liability insurance is essential to pay for all sums the insured direct marketer becomes legally obligated to pay if they lose a claim.

<sup>1</sup> Geyer, Leon L., *How to Avoid Lawsuits for Negligence—A Primer for Direct Marketing Farmers*, Publication 448-008, April 1987, Virginia Cooperative Extension Service, Virginia Tech University, Blacksburg, Virginia.

3. **Workers' compensation and employers' liability coverage**—Under Wisconsin law, a person engaged in farming is required to obtain a policy of Workers' Compensation when that person employs six or more employees for 20 consecutive or nonconsecutive days during a calendar year. Employees injured on the job receive unlimited medical and two-thirds of the state average wage. If Workers' Compensation doesn't apply, the injured party can still receive compensation from the employer for monetary loss and possibly pain and suffering.

## Insurance alternatives

Insurance companies offer a diverse range of coverage. Individual policies are available for physical loss of property, liability and workers' compensation as well as coverage for other specific needs. The alternative most direct marketers select is for a package policy that combines all types of coverage in one policy.

Frequently, a general "farm owner's policy" will provide acceptable coverage for a roadside stand or pick-your-own operation if the income derived from that "risky portion" is incidental (minor) to the overall farm business. The dollar sales limit, such as \$5,000 provided in the policy may be increased with the insurance company's approval.

Product liability insurance may often be provided by a farm owner's policy for the sale of sweet corn, apples, strawberries, or other products if they have not been altered or processed. If the product is processed ("manufactured" would be the

insurance term) into apple cider or strawberry jam, the farm owner policy generally won't provide product liability insurance. Liability insurance for a processed or altered product generally must be purchased in addition to the general farm owner's policy.

The cost of insurance for a direct marketer will depend on the size and nature of the business and also risk factors (playground equipment, farm ponds, hayrides). Carrying a higher deductible on your policy will transfer some of the risk back to you, and decrease insurance premium costs. Some farm activities, although allowed by law, such as the on-farm processing of poultry, may create havoc with your farm insurance policy. Carefully explore your options.

## Risk management

Risk in everything is inevitable, but it is possible to minimize risk on your premises. For example, pick-your-own apples operations may only allow picking from the ground rather than providing a ladder. A strawberry pick-your-own advises that someone in the family or an employee should be trained in CPR. Post realistic and thoughtful rules of conduct for visitors.

One important consideration when exploring your farm liability is how your farm and personal assets are legally arranged. Incorporating your farm business, either through a corporation or limited liability company, is a way of separating your farm business from the assets of your personal life. For example, if two brothers work together in a vegetable farm business, they may choose to form a limited liability

company (LLC). The assets of their company may include the tractor and the greenhouse and the equipment used to harvest, sort and wash the produce. However, personal vehicles, family houses, the cow barn and other non-vegetable business property are isolated from the LLC.

In this case, if a problem came up for the vegetable business (for example someone broke a tooth on some gravel left in a leak top), a suit would be limited to making a claim only against the assets incorporated within the LLC. Separation of your farm business from your personal life is important for several reasons, and though it adds some record-keeping complexity, business incorporation is generally simple, inexpensive and worthwhile. Insurance companies look very favorably on it.

In summary:

1. Visit with a qualified professional insurance agent regarding the total insurance program necessary for your direct marketing business.
2. Familiarize yourself and the agent with potential risks and liability.
3. Accept smaller risks yourself by carrying a deductible policy.
4. Visit with other direct marketers regarding their choices of insurance and insurance companies.
5. Consider incorporating your farm business independently from other personal and farm assets.
6. Understand your insurance policy and review it yearly or more often if changes occur in the business.

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**Risk, Liability and Insurance for Direct Marketers (A3811-7)I**

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*Direct Marketing in Wisconsin* is a project of the Cooperative Extension Emerging Agricultural Markets team. The team's work is supported in part by a USDA grant (Agricultural Entrepreneurship-Wisconsin). For more information on the team's work and Wisconsin's new agricultural markets, visit [www.uwex.edu/ces/agmarkets](http://www.uwex.edu/ces/agmarkets).

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