

Protecting the Family Operation: What Tiffany's Dad Needs to Know



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Disclaimer

This presentation is for educational purposes only as well as to give general information and a general understanding of the law, not to provide specific legal advice. This presentation does not create an attorney/client relationship and should not be used as a substitute for the advice of a licensed attorney.



Roadmap

- Estate/Succession Planning
- Landowner liability



3 Key Steps to a Successful Estate/Transition Plan

1. Put together a “death folder” and gather other important info.
2. Determine goals and interest of you & heirs.
3. Draft key estate planning documents.



Step 1: Death Folder

- Estate planning documents
- IRA/401(k)/Pension/Retirement Plan
- Life insurance policies
- Bank account info
- Safety deposit box info
- Credit card and debt info and pay schedules
- Health insurance policies
- Birth certificate, marriage licenses, social security cards, military discharge papers

Death Folder Contents

- List of personal property
- Burial plot location and funeral instructions
- Email and computer passwords
- Deeds, titles, registrations, leases, royalty documents, water permits, surveys
- List of structures, equipment, vehicles
- List of livestock, stored crops, marketing contracts
- Crop insurance policies and FSA contracts

Death Folder (cont.)

- Names and contact information for:
 - Attorney
 - Accountant
 - Banker
 - Insurance agent
 - FSA Office
 - Any commodity buyers (i.e. milk co-op or cattle buyer)



Put this info somewhere safe
and...



Step 2: Determine Goals & Interest

- What is our goal with this plan?
- How does our financial status fit with these goals?
 - Liquidity
 - Net worth
 - Ability to support multiplied families
 - Are estate taxes a concern?
- What ideas do you have about how the future should look?

Family Meeting

- I don't recommend the Uncle Fred approach.
- Include all stakeholders.
- Determine interests, values, goals of potential heirs.
- What are their ideas about how the future should look?
- Gather information about willingness to participate in ongoing business operation.
- Discuss interest in day-to-day operations, strategic decisions, etc.

Step 3: Draft Key Estate Planning Documents

- Check beneficiaries!
- Will
- Power of Attorney (appoint agent to make financial decisions)
- Medical Power of Attorney (appoint agent to make decisions if incapacitated)
- Advanced Healthcare Directive (whether to provide life sustaining measures if terminal or irreversible)

5 Steps to Liability Protection

1. Liability Insurance.
2. Identify dangerous conditions on the land & either warn or make them safe.
3. Obtain written liability waivers from anyone on property.
4. Consider using a business entity structure.
5. Ensure limited liability statutes apply to the operation.



1. Liability Insurance

- Every landowner needs it. Period.
- Amount you need depends on what you are doing.
- Ensure that every activity you have going on is covered.
- Watch for any caps on coverage in the fine print.



2. Identify Dangerous Conditions...

- For premises liability based upon level of duty, which depends on the category of the injured person:
 - **Trespasser:** Duty not to intentionally injure or act with gross negligence.
 - **Licensee:** Duty to warn or make safe dangerous conditions known to the landowner but not obvious to the plaintiff.
 - **Invitee:** Duty to warn or make safe dangerous conditions known to the landlord, or of which the landlord should have discovered with reasonable inspection.

3. Obtain Written Liability Waiver

- General Rule: Texas will enforce releases if properly drafted and injured party is an adult.
- Extremely complicated issue—*please* see an attorney!
- Release must be:
 - Express
 - “Release any and all claims against the landowner including claims for negligence, gross negligence, and strict liability.”
 - Signed near the time of the injury.
 - Specifically addresses activity.
 - Conspicuous

4. Consider Business Entities

- Certain business entities offer limited liability of members.
- Limited Liability Company, Corporation, Trust
- Must jump through the right hoops to get protection.
- Which one works best depends on your operation.



5. Ensure Limited Liability Statutes Apply

- Texas Recreational Use Statute
- Texas Agritourism Act
- Texas Farm Animal Liability Act



Recreational Use Statute

- Civil Practice and Remedies Code Chapter 75
- A landowner is liable only for intentional acts or gross negligence if:
 - The land involved is agricultural land (“suitable for” test);
 - It is being used for recreational purposes (hunting included); and
 - Certain monetary requirements are met:
 - The landowner does not charge a fee; or
 - The total charges for the past calendar year for all recreational use is less than 20 times the amount of ad valorem taxes last year; or
 - The landowner has liability insurance coverage of more than \$500,000 for each person, \$1 million for each single occurrence of bodily injury or death, and \$100,000 for each single occurrence of injury or destruction of property.

Agritourism Act

- Civil Practice and Remedies Code 75A
- Landowner not liable if engaged in business of providing activity on agricultural land for recreational or educational purpose and the landowner placed a sign or obtained signed release language.
- “Agricultural land”: Suitable for growing crops or raising livestock.
- “Recreational purpose”: Same as RUS.

Agritourism Act: Signage

- Must be posted and maintained in a “clearly visible location on or near any premises on which an agritourism activity is conducted.”

WARNING

UNDER TEXAS LAW (CHAPTER 75A, CIVIL PRACTICE AND REMEDIES CODE), AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AN AGRITOURISM ACTIVITY.

Agritourism Act: Release Language

- Must be signed before the agritourism activity,
- *By the participant or their parent, guardian, or managing conservator,*
- Document separate from any other agreement other than a different warning, consent, or assumption of risk statement, and
- Printed in not less than 10 point bold type.

AGREEMENT AND WARNING

I UNDERSTAND AND ACKNOWLEDGE THAT AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AGRITOURISM ACTIVITIES. I UNDERSTAND THAT I HAVE ACCEPTED ALL RISK OF INJURY, DEATH, PROPERTY DAMAGE, AND OTHER LOSS THAT MAY RESULT FROM AGRITOURISM ACTIVITIES.

Farm Animal Liability Act

- Civil Practice and Remedies Code Chapter 87 (1995)
- Purpose is to limit liability for inherent risks with farm animals.
- Requirements:
 - Persons are not liable for damages to
 - Participant in a farm animal activity or livestock show
 - If injury results from risks inherent to farm animal activity or livestock show
 - Subject to numerous exceptions
 - Defendant provided animal to the person and did not make a reasonable and prudent effort to determine ability of participant to safely engage in activity & to safely manage the animal

Why go through the hassle?



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Pipeline Easement Negotiation Checklist and Podcast

Posted on [January 10, 2018](#) by [tiffany.dowell](#)



If you've ever gotten notice that a pipeline company is planning on coming across your property and you found yourself facing the task of negotiating an easement, you know how intimidating that can be. The most important thing to keep in mind is that you, as a landowner, do have rights! You can and should take time to really negotiate with the company to ensure you are receiving adequate compensation and have included terms in the agreement to protect your property. In the last couple of months, I've...

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Thank you!



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