



Managing Legal Risk for Livestock and Dairy Producers in Ohio

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AGRICULTURAL AND RESOURCE LAW PROGRAM

Project Support

- This project is provided with support from the North Central Risk Management Education Center, whose mission is *to empower the strengths and skills of individuals in the North Central region who are involved in the management of agricultural production, marketing, financial, legal, and human resource risks.*
- Visit the website at www.NCRME.org



Workshop Overview

Addressing legal risks in emerging risk areas:

- Animal identification
- Ohio Livestock Care Standards
- GIPSA
- Farm security issues

Understanding, assessing and adopting risk management strategies.

Workshop Overview

We will . . .

1. Explain the laws and legal issues.
2. Discuss strategies for managing risk.
3. Follow up.
4. Make resources available on website.

You will . . .

5. Assess your operation.
6. Identify risk management practices.
7. Adopt risk management practices.
8. Evaluate the program and participate in follow up surveys.

Workshop Overview

- **Important components:**
 - Exercises
 - Evaluations
 - Action
 - Follow up



Animal Identification

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Animal Identification Timeline

- 3000 BC**
 - Farmers begin branding animals to show ownership and identification
- 1930s**
 - State and federal programs tracing movement of livestock involved in disease outbreaks are started for some diseases in cattle, swine & sheep.
- December, 2003**
 - “The Cow that Stole Christmas”: BSE is discovered in cows in United States
- 2004**
 - USDA introduces the **voluntary** National Animal Identification System (NAIS) to identify and trace the movement of livestock.
- 2010**
 - USDA ends NAIS and begins a “flexible yet coordinated approach that embraces the strengths and expertise of States, Tribal Nations, and producers.”

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NAIS Components

Premise Identification

- Landowners register “premises,” which is then assigned a unique PIN identifier
- PINs are maintained in **state** databases

→

Animal Identification

- Animals are identified (individually or as a group) with unique ID numbers that stay with them until slaughter
- Numbers are associated with specific premises in **USDA** database

→

Animal Tracing

- Data on movement of animals is maintained in **state and private sector** databases

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NAIS Concerns

- **Cost**
 - Who will be paying for the components and labor?
- **Privacy/Confidentiality**
 - Who has access to the data (FOIA, subpoena)?
 - Why does the government need the data?
- **Liability**
 - Will the traceback ability increase producer liability for those who would have previously remained anonymous?
- **Religious Freedom**
 - “And [the Antichrist] causeth all, both small and great, rich and poor, free and bond, to receive a mark in their right hand, or in their foreheads. And that no man might buy or sell, save [except] he that had the mark, or the name of the beast, or the number of his name.”

× *Rev 13:16-17*

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State Identification Systems

- Some states, including Wisconsin, Indiana, and Michigan, mandated at least part of the three-step NAIS system.
- Many other states, including Ohio, use a voluntary provision for the NAIS system.

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Where Are We Now?

- 2004 - 2010: Voluntary federal NAIS program in place
- Mar., 2010: NAIS discontinued
- Aug., 2011: New proposed regulations published
- Nov., 2011: Comment period closed

Animal ID in Ohio- Covered Animals

Included

- Equine (horses, donkeys, mules, ponies)
- Bovine (bison, cattle)
- Goats
- Poultry (chickens, turkeys, geese, ducks, guinea fowl, and squab)
- Captive game birds (pheasants, quail, wild turkeys, migratory wildfowl, pigeons, and exotic birds)
- Sheep
- Swine (other than wild hogs but including pot belly pigs)
- Cervid (deer, elk, moose, caribou, reindeer)
- Camelids (llamas, alpacas)
- Ratites (rheas, ostriches, emu, cassowary, kiwi)
- Fish (aquaculture)

Not included:

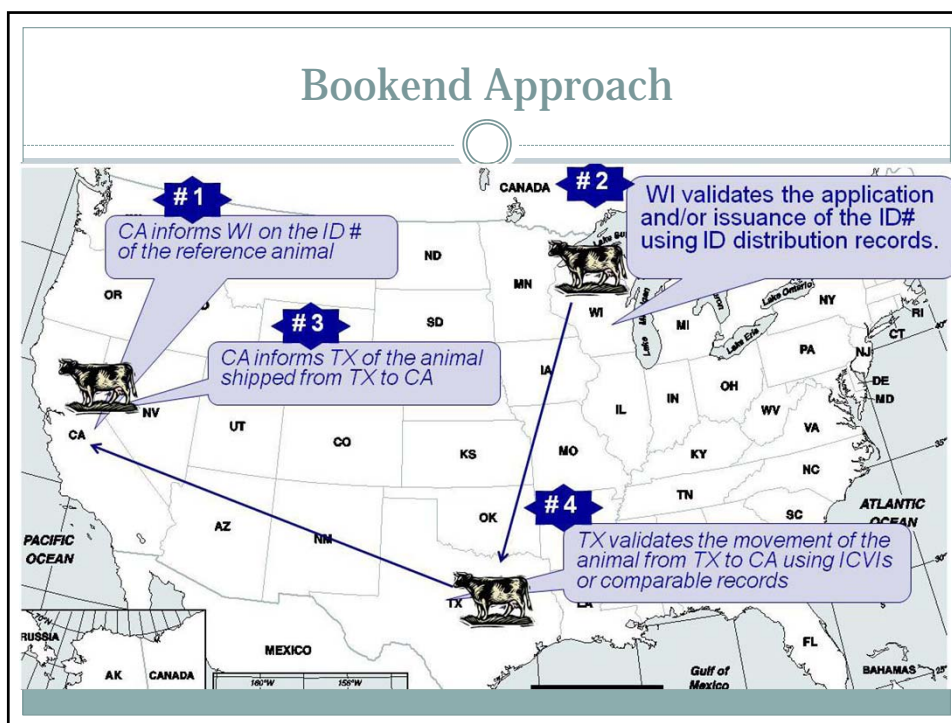
- Rabbits
- Dogs
- Cats

Ohio Animal ID

- “The Ohio Department of Agriculture is taking the first step in implementing the NAIS by encouraging Ohio's livestock and poultry industries to voluntarily register all premises (farms, markets, concentration points, exhibitions, packing/processing plants, and other locations) that produce, manage or hold livestock.”
- The Ohio livestock care standards board is specifically prohibited from creating a statewide animal identification system.

Federal Proposal in a Nutshell

- **ONLY** apply to animals moving interstate
- Owned, led, and administered by the states and tribes
 - This is important, because it still raises many of the same concerns as the federal system would have in terms of confidentiality and liability
 - Now reliant on protection of state FOIA laws, rather than the federal exemption
- “Bookend approach” to identification
- Measured by benchmarks, rather than by premises or animals that are registered/marked
- Primary focus on state veterinarian to identify the animals
- Species specific
- Consequences for failure do not result in a loss of funding, but instead in higher costs to export animals
 - Potential additional testing on animals before they can be moved from state to state



Brands

- Brands would not be listed as official identification for cattle
- However, animal health officials in the shipping and receiving states may agree to ship or receive cattle that are identified with brands
- If both the shipping and receiving states agree, then branding will be an acceptable identification method between those two states.
- If the shipping and receiving states do not agree, another (acceptable) method of identification must be used.

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Ohio Livestock Care Standards and Ohio Animal Cruelty Laws

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Ohio Livestock Care Standards

- New regulations that establish standards of care for dairy, beef, swine, turkeys, broilers, sheep, goats, alpacas, llamas, and equine.
 - Feed and water
 - Health
 - Management
 - Transportation
 - Euthanasia
- Effective September 29, 2011.
- Ohio Administrative Code 901:12.

Ohio Livestock Care Standards

- Burden is now on the livestock operator to know and implement the standards.
- ODA fact sheets on the standards are included in workshop handbook.
- Detailed guides for each specie, videos and the regulations are available online at <http://www.agri.ohio.gov/LivestockCareStandards/>

Enforcement of Ohio Livestock Care Standards

- Ohio Department of Agriculture is responsible for enforcement of the livestock care standards.
- Enforcement program is complaint driven.
 - No new inspection program for enforcing the standards.
- ODA's goals:
 - Acknowledge the learning curve.
 - Help bring operators into compliance.

Enforcement of Ohio Livestock Care Standards

- After receiving a credible complaint, ODA will investigate the complaint.
 - A credible complaint is one that does not specify facts or an act that is a violation of standards.
- ODA has authority to enter the premises to investigate the complaint.
 - With permission of property owner/operator, or
 - If permission not granted, then with an administrative search warrant.

Enforcement of Ohio Livestock Care Standards

- ODA will issue a report after an investigation.
- Will identify whether an operator is not meeting the care standards.
 - Will include recommendations for corrective measures that will bring operator into compliance.
 - Operator will have time to institute corrective measures.

Enforcement of Ohio Livestock Care Standards

- If operator doesn't come into compliance, ODA can assess notice of violation and civil penalties.
 - Farmer has right to request a hearing within 30 days after receiving notice of violation.
 - Administrative hearing is before an independent hearing officer who is not an employee of ODA.
 - After notified of hearing officer's decision, operator has right to appeal the decision.

Enforcement of Ohio Livestock Care Standards

- **Penalties -- minor violations:**
 - Acts of neglect or unintentional substandard practices.
 - Fine of up to \$500 for first offense.
 - Up to \$1000 for subsequent violations within 5 years.

Enforcement of Ohio Livestock Care Standards

- **Penalties -- major violations**
 - For reckless or intentional acts that unjustifiably inflict pain, including acts that:
 - ✦ Place animal's life in peril
 - ✦ Causes long term disfigurement
 - ✦ Causes long term health impairments
 - ✦ Causes loss or impairment of limb or organ
 - Fine of up to \$5,000 for first offense.
 - Up to \$10,000 for subsequent violations within 5 years.

Enforcement of Ohio Livestock Care Standards

- **To date:**
 - ODA has received 34 complaints.
 - Not all were credible complaints.
 - In nearly all cases where concerns were legitimate, concerns were addressed through corrective measures and without further action by ODA.
 - A few open cases exist; not known whether corrective measures will take place or notice of violation will result.

What about Ohio's Animal Cruelty Law?

- **Livestock care standards are independent of animal cruelty law enforcement.**
- **There could be overlap:**
 - A complaint or an incident might lead to investigations or violations of both the livestock care standards and the animal cruelty law.

Ohio Animal Cruelty Law

- **Ohio Revised Code 959.13 (see handbook)**
 - Neglect – food, water, shelter
 - Torturing, beating, mutilating, killing
 - Transporting stress
 - Misdemeanor penalties
 - ✦ Up to \$750 and 90 days in jail for each offense.

Ohio Animal Cruelty Law

- **Enforced by local humane society agents or local law enforcement.**
 - Similar process as livestock care standards, but likely not a “corrective measures” approach:
 - ✦ Credible complaint
 - ✦ Investigation
 - ✦ Seizure of animals, penalties, criminal prosecution

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“GIPSA” Rules

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GIPSA Update

- **June 2010.**
 - GIPSA released proposed regulations that would drastically change the way producers raise, buy and sell livestock and poultry
- **November 2010.**
 - Comment period on the proposal closed.
- **December 2011.**
 - Final rule released

GIPSA is:

The federal agency within USDA that is responsible for issuing regulations and enforcing rules that govern the contracting, buying and selling of livestock and poultry.



What Does GIPSA Do?

Main Goal: Helps “ensure a productive and competitive global marketplace for U.S. agricultural products.”

- Regulates the marketing of poultry, livestock, meat, grains, and various other agricultural products
- Upholds “fair and competitive trading practices”
- Enforces the Packers and Stockyards Act



United States Department of Agriculture

Grain Inspection, Packers & Stockyards Administration

Packers & Stockyards Act of 1921

89 year old statute meant to protect consumers and producers

- Prohibits “unfair and deceptive practices”
- Undue preferences
- Price manipulation

New Regulations are partially based on the original PSA (plus amendments) and partially on the 2008 Farm Bill amendments.

Packers and Stockyards Act

It is unlawful for any packer, swine contractor or live poultry dealer to

1. “Engage in or use any unfair, unjustly discriminatory or deceptive practice or device;” or
2. “Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect”

7 U.S.C. 192(a) & (b)

Any livestock or poultry contract that contains a provision requiring the use of arbitration shall contain terms that conspicuously disclose the right of the contract producer or grower, prior to entering the contract, to decline the requirement to use arbitration to resolve any controversy that may arise

7 U.S.C. 197

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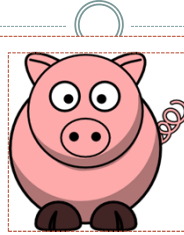
7 U.S.C. 197

Who Would These Regulations Apply To?



Packer

- Buyer of livestock for slaughter
- Person who manufactures or prepares meat for sale or shipment
- Marketer of livestock products in an unmanufactured form
 - Wholesale brokers, dealers or distributors



Swine Contractor

- A person who pays another to raise and care for hogs under a swine production contract.



Live Poultry Dealer

- Person who obtains live poultry by purchase or under a poultry growing arrangement
- Includes all stages of live poultry production, including pullets, laying hens, breeders and broilers
- Excluding egg-type pullets, hens that produce table eggs, and breeder flocks for the egg industry.

Examples of Application

PSA Directly Applies

- LLC involved in swine production contracts
- Broiler integrator contracts
- Forward contracts of beef producers

PSA Does Not Directly Apply

- Producer marketing his own livestock
- Producer buying livestock for her own stocking or feeding purposes.
- Producer who raises hens that lay table eggs

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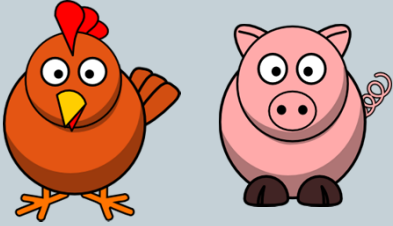
7 U.S.C. 197

Additional Capital Investments

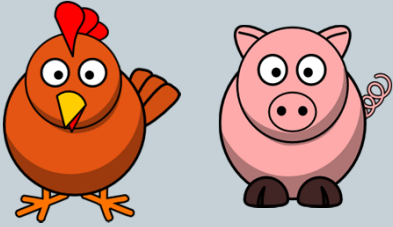
- An “additional capital investment” is “a combined amount of \$12,500 or more per structure paid by a poultry grower or swine production contract grower over the life of the poultry growing arrangement or swine production contract beyond the initial investment for facilities used to grow, raise and care for poultry or swine”
 - Includes: total cost of upgrades to the structure, upgrades or equipment located in and around each structure, goods and professional services that are directly attributable to the additional capital investment.”
 - Does not include: costs of maintenance and repair

C.F.R. § 201.2(n)

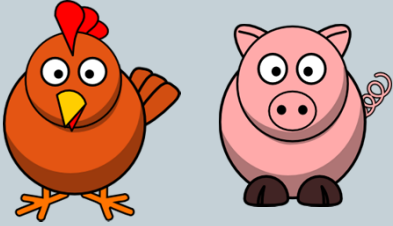
Additional Capital Investments
“unfair, unjustly discriminatory and deceptive practices”

Factors:	Who:
<ul style="list-style-type: none"> • Does the producer have discretion to decide for or against the capital investment? • Is the investment the result of coercion, retaliation or threats of coercion or retaliation? 	
C.F.R. § 201.216	

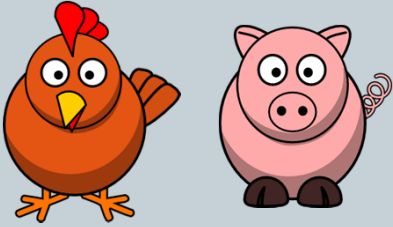
Additional Capital Investments
“unfair, unjustly discriminatory and deceptive practices”

Factors:	Who:
<ul style="list-style-type: none"> • Does the integrator intend to (or actually does) close or substantially reduce operations at the processing facility within one year of requiring the investment? (barring a catastrophe, natural disaster or emergency) 	
C.F.R. § 201.216	

Additional Capital Investments
“unfair, unjustly discriminatory and deceptive practices”

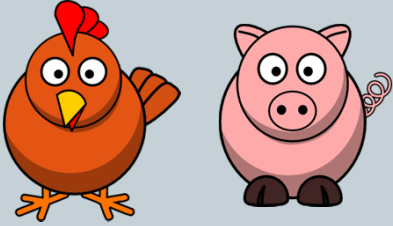
Factors:	Who:
<ul style="list-style-type: none"> • Is the investment cost reasonably expected to be recouped by the producer? • Is the producer given a reasonable time period to implement the required investments? 	
C.F.R. § 201.216	

Additional Capital Investments
“unfair, unjustly discriminatory and deceptive practices”

Factors:	Who:
<ul style="list-style-type: none"> • How old are the producer’s facilities? <ul style="list-style-type: none"> ○ Taking into account recent upgrades to or capital investments in the facilities • Are all similarly situated producers required to make the same investments? 	
C.F.R. § 201.216	


Additional Capital Investments

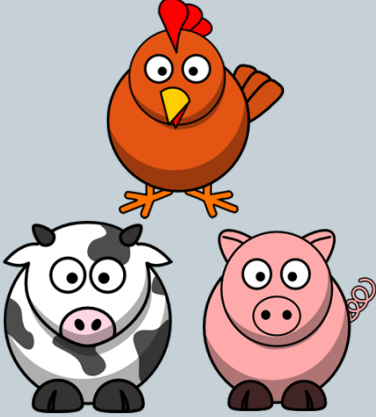
“unfair, unjustly discriminatory and deceptive practices”


Factors:	Who:
<ul style="list-style-type: none"> • Are equipment changes required on equipment that is previously approved and is still operating as it was intended to operate, unless “adequate compensation incentives” are offered? 	
C.F.R. § 201.216	

“Reasonable notice” of bird delivery suspension

“unfair, unjustly discriminatory and deceptive practices”

Factors:	Who:
<ul style="list-style-type: none"> • If grower has been given written notice of intent to suspend delivery • If notice is given at least 90 days before suspension date • If notice includes <ul style="list-style-type: none"> ○ Reason for suspension ○ Length of suspension ○ Date delivery will resume • If a catastrophe, natural disaster or other emergency prevented the notice. 	
C.F.R. § 201.215	

“Reasonable Time” to Cure Breach <i>“unfair, unjustly discriminatory and deceptive practices”</i>	
Factors:	Who:
<ul style="list-style-type: none"> • If written notice was supplied upon initial discovery • If notice includes <ul style="list-style-type: none"> ○ Description of the act/omission ○ Date of breach; ○ Explanation of how producer can remedy breach (if possible); ○ Date of reasonable time to remedy 	
C.F.R. § 201.217	

“Reasonable Time” to Cure Breach <i>“unfair, unjustly discriminatory and deceptive practices”</i>	
Factors:	Who:
<ul style="list-style-type: none"> • If notice allows a response to the claimed breach and gives adequate time to do so • If time period takes into account the producer’s ongoing responsibility to the animals under their care 	
C.F.R. § 201.217	

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7 U.S.C. 197

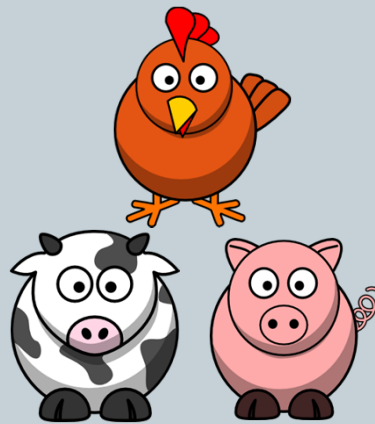
Arbitration Clauses

Arbitration as a "meaningful opportunity" for participation

Factors:

- If disclosure is made in "bold, conspicuous print" describing
 - The costs paid by the producer;
 - ✦ Reasonableness of costs for typical arbitration
 - May include administrative and filing fees, arbitrator deposits and fees
 - The arbitration process;
 - ✦ If it complies w/ the Federal Arbitration Act
 - Any limitations on legal rights and remedies of the producer

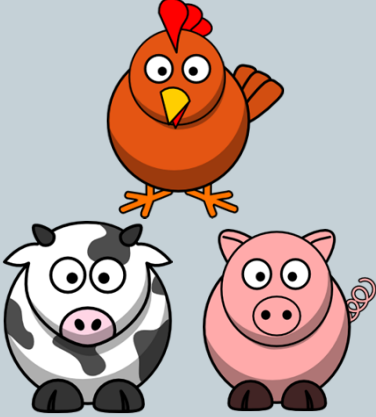
Who:



C.F.R. § 201.218

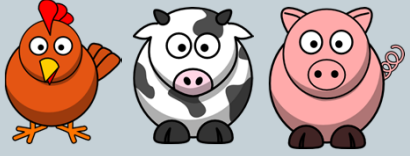
Arbitration Clauses

Arbitration as a "meaningful opportunity" for participation

Factors:	Who:
<ul style="list-style-type: none"> • If qualified neutral parties will be used as arbitrators • If a written opinion based on law and precedent will be given to the parties • If there are reasonable time limits to the arbitration process and outcome • If arbitration is used only to resolve disputes relevant to contractual obligations <p style="text-align: center; font-size: small;">C.F.R. § 201.218</p>	

Arbitration Clauses

Arbitration as a "meaningful opportunity" for participation

<ul style="list-style-type: none"> • This statement must be on the contract signature page: <div style="text-align: center; margin-top: 10px;">  </div> <p style="text-align: center; font-size: small;">C.F.R § 201.218</p>	<p>A poultry grower, livestock producer or swine production contract grower has the right to decline to be bound by the arbitration provision set forth in this agreement. A poultry grower, livestock producer or swine production contract grower shall indicate whether or not it desires to be bound by the arbitration provision by signing one of the following statements; failure to choose an option will be treated as if the poultry grower, livestock producer or swine production contract grower declined to be bound by the arbitration provisions set forth in this Agreement</p> <p>I decline to be bound by the arbitration provisions set forth in this Agreement: _____</p> <p>I accept the arbitration provisions as set forth in this Agreement : _____</p>
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What If These Regulations are Violated?

- **GIPSA Penalties: Violations are resolved, according to their seriousness, as follows:**
 - Cease and desist orders
 - Suspension of business operations
 - Civil Penalties up to \$11,000 per violation (up to \$27,000 for violations of poultry trust provisions)
 - Serious violations can be referred to the Dept. of Justice for permanent injunctions, fines, and jail sentences.
- **Private party civil penalties include reparations and damages**

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Farm Security Issues

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Farm Security Issues

- **Livestock containment**
 - Liability for animals running at large.
- **Allegations of mistreatment**
 - “Undercover” employees or visitors on the farm.
 - Reports/allegations of cruel management practices.

Animals Running at Large Law

- **Ohio Revised Code 951:**
 - Recently revised - changes effective September 20, 2011.
 - Prohibits an owner or keeper of livestock from *permitting* the animals to run at large on the public road or upon unenclosed land.
 - ✦ Applies to cattle, hogs, sheep, goats, horses, mules or geese.
 - ✦ Revisions added llamas, alpacas, bison.

Animals Running at Large Law

- **Ohio Revised Code 951:**
 - Creates civil and criminal liability for violations.
 - Allows a finder to confine, advertise and receive compensation for caring for animals.

Animals Running at Large Revisions

- **Revised law - civil liability:**
 - A person may recover damages for harm caused by livestock if the operator's "negligence" caused the animals to be at large.
 - ✦ "Negligence" is a failure to use due care.
 - An animal being at large creates an initial presumption that the operator is negligent.
 - The operator must then rebut the presumption by proving that he or she exercised due care.

Animals Running at Large Revisions

- **When is an operator "negligent" in keeping animals from running at large?**
 - Fails to check fences and gates regularly.
 - Fails to check fences and gates often.
 - Fails to maintain fences, gates, etc.
 - Fails to respond to an event such as a storm.
 - Fails to train employees adequately.

Animals Running at Large

- **For criminal liability:**
 - A livestock operator who “recklessly” allows animals to run at large can be subject to criminal prosecution.
 - ✦ A person behaves recklessly when he or she disregards a known risk of his or her conduct, with heedless indifference to consequences.
 - Prosecutor must prove that the operator was reckless.

Allegations of Mistreatment

- **How might allegations of mistreatment occur?**
 - Complaint through livestock care standards
 - Complaint through animal cruelty law
 - Public reveal of an undercover investigation

Allegations of Mistreatment

- What laws apply?
 - ?
- No Ohio law directly prohibits videotaping or photographing without permission.
- No law addresses employee issue.

Allegations of Mistreatment

- Other state laws:
 - Iowa's Agricultural Production Facility Fraud law, recently enacted.
 - Farm "terrorism" laws.
 - ✦ Prohibit tampering or destruction of facility, crops, animals.
 - ✦ A few include videotaping and photographing prohibitions.
 - ✦ Ohio "agri-terrorism" law – Ohio Revised Code 901.511.

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Risk Management Strategies

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Managing Legal Risk

- **Generally:**
 - Knowledge
 - ✦ Of laws and regulations that apply.
 - ✦ Of best management practices.
 - Compliance, compliance, compliance
 - Insurance
 - ✦ That coordinates with your operation's activities.

Managing Legal Risk

- **Ohio Livestock Care Standards**
 - Training employees and family members on livestock care standards.
 - Recordkeeping:
 - ✦ Established policies
 - ✦ Management practices
 - ✦ Animal health records
 - ✦ Mortality
 - ✦ Employees

Managing Legal Risk

- **Ohio Livestock Care Standards**
 - **Inspection mentality**
 - ✦ Inside and outside of the barn.
 - **ODA collaboration**
 - ✦ Investigation.
 - ✦ Corrective measures.
 - **Farm security maintenance**

Managing Legal Risk

- **Farm security maintenance**
 - **Visibility and access**
 - ✦ Do you need to limit the public's view?
 - Of animals, manure, feedlot.
 - ✦ Limit tours, groups, etc.?
 - ✦ Physically secure access points
 - Especially into barns.

Managing Legal Risk

- **Farm security**
 - **Animal containment: fences, gates, enclosures**
 - ✦ Use best management practices in construction.
 - ✦ Conduct routine inspection and maintenance.
 - Follow a written policy.
 - ✦ Maintain records.
 - ✦ Use locks?
 - ✦ Use cameras?
 - ✦ Address responsibility for leasing situation.
 - Is owner or tenant responsible for containment infrastructure?

Managing Legal Risk

- **Farm security**
 - **Relationship with local law enforcement**
 - ✦ Develop relationship with local patrol.
 - ✦ Report suspicious behavior in your area.
 - ✦ Help cultivate an understanding of your operation and other livestock operators in the community.
 - Educational meeting?
 - ✦ Ensure understanding of Animals at Large revisions.
 - County prosecutor involvement

Managing Legal Risk

- **Farm security**
 - **Employee hiring practices**
 - ✦ **Require documentation of identity.**
 - Photo identification, driver's license, social security card.
 - Use I-9 form.
 - ✦ **Require and check references.**
 - ✦ **Require and conduct background checks.**
 - With permission of applicant.

Managing Legal Risk

- **Farm security**
 - **Employee management practices**
 - ✦ **Provide training on care standards.**
 - Requirement acknowledgement by employee.
 - ✦ **Written care standards policy.**
 - Requiring adherence to care standards and duty to report violations.
 - Signed by employees.

Managing Legal Risk

- **Farm security**
 - **Employee management practices**
 - ✦ **Written policy prohibiting cameras, taping.**
 - Signed by employees.
 - ✦ **Employee probationary period.**
 - Include oversight duties for other employees.
 - ✦ **Monitor employee actions.**
 - Vulnerable employees.
 - Volunteering to work late.
 - Physical locations.

Managing Legal Risk

- **Farm security**
 - **Employee management practices**
 - ✦ **Use cameras?**
 - ✦ **Conduct searches?**
 - Risky
 - Constitutional rights!
 - Off limits: lockers, cars, purses
 - ✦ **Provide a work uniform.**
 - No camera pocket!



Managing Legal Risk: Business Organizations

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The Business Structure

- What is so Important about a Business Structure?
 - Liability Protection – separating assets so that a creditor or plaintiff cannot take everything you own
 - Fairly cheap to use
 - Easy to set up

How Business Entities Work to Protect You

Know what business entities provide protection:

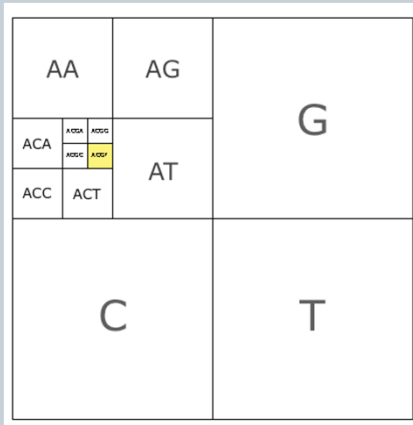
- No protection - Sole Proprietorship and General Partnership
- Some partners protected – Limited Partnership
- Full protection – Limited Liability Companies and Corporations

Why the differences in protection?

- Some business entities function as a separate legal entity (like another person) and others do not.



Like “Fire Breaks” -Not Shields



640 Acre section of land.

How to use a Business Entity



- Creating a business entity is not enough to provide any protection
- Creating a business entity is like buying another basket...

Respect the Business Structure

- At the end of the day, Courts will only respect your business structure as much as you do.
- What does this mean?
 - You **HAVE** to keep the business separate from your personal life and from other businesses that you run.
 - Keep separate bank accounts, business records, etc...
 - Don't use business funds for the family vacation

Issues we'll cover for each one

- Liability of Owners
- Legal Status
- Formation
- Management
- Taxation

Types of Business Structures

- Sole Proprietorship
- General Partnership
- Limited Partnership
- Limited Liability Corporation
- Corporations
 - Subchapter "S"
 - Subchapter "C"

Sole Proprietorship

- Liability of Owners
 - 100% liability for the business debt
 - Creditors will be able to reach your personal assets as well as what you invested into the business.
 - This means that property such as your land, your home, your personal bank accounts are at risk!
- Legal Status
 - Not a separate legal entity
 - You would be sued directly.

Sole Proprietorship

- **Formation**
 - No formalities are required...if you start a business by yourself than this is what you have.
 - Formed or dissolved at the discretion of the individual who owns it
 - Only 1 person, or it becomes a partnership
- **Management**
 - Easy decision making – only one person to consult!
- **Taxation**
 - Income is taxed on the individual's tax return (1040)
 - Schedule C

General Partnership

- **Definition**
 - An association of two or more “persons” who agree to carry on as co-owners of a business for profit.
 - No intent is necessary to form a general partnership and it is possible to create one without intending to.

General Partnership

- **Liability**

- Each partner is ***jointly and severally*** liable for the debts of the business.
 - Not only are you personally liable for the debts and actions of the business (just like the sole proprietorship), but you are also responsible for all of the other partners actions
- Creditors can reach your personal assets, in addition to what you have invested into the business

General Partnership

- **Legal Status**

- Recognized as a separate legal entity

- **Formation**

- No formalities are required
- Can be formed unintentionally (only intent required is to run business for profit)...Example look at your land lease forms when you go home.
- There can be a formal partnership agreement that details management responsibilities and how profits/losses will be split

General Partnership

- **Management**

- Each member of the partnership is called a “general partner”
- The decisions are made by all partners and all partners actively participate...any partner can bind the rest of the partners to a contract
- Profits and losses are split evenly
 - Unless the partnership agreement states otherwise and there typically has to be a good reason for this.

General Partnership

- **Taxation**

- The general partnership has the advantage of being a “pass-through entity”
- This means the partnership itself pays no income taxes
- Instead, income is taxed only after it is distributed to the partners.
 - This is different than the “double tax” where income is taxed when the business earns it and when it is paid out to the individual partners.

Limited Partnership

- **A more formal business organization that limits some liability**
- **Liability**
 - **General Partner**
 - Is fully liable for the financial and legal obligations of the business
 - **Limited Partner**
 - Only at risk of losing the capital invested or pledged to the business
 - Personal assets are not at risk

Limited Partnership

- **Legal Status**
 - Separate legal entity
- **Formation**
 - Requires at least 1 General partner and 1 Limited partner
 - Requires a partnership agreement that lays out how the business will be run, including how profits/losses will be divided
 - Certificate must be filed with Secretary of State...all states vary slightly, but the our website contains the necessary information
 - Name of business must have "limited" or "LP"

Example

Grandmother wishes to help her grandson start a farming operation and she really doesn't know much about farming.

- The Limited Partnership would work well for her because she can have a stake in the business (i.e. she doesn't have to just give the grandson money).
- If the grandson fails then only the money that she gave to the grandson can be lost and the creditors cannot come back against her.

Limited Liability Company (LLC)

- **LLC – created in the 1970s**
 - Similar to Limited Partnerships...except everybody can be protected.
 - Provides protection to personal assets
 - Made up of “members” rather than “partners”
- **Liability**
 - Members' personal assets are protected from creditors of the business.
 - Creditors can only reach that which has been invested or pledged to the business

LLC



- **Legal Status**
 - Recognized as separate legal entity
- **Formation**
 - Can be formed with 1 or more members
 - Created by delivering Articles of Organization to the Secretary of State's office
 - **Must include**
 - Name of LLC
 - Address of LLC
 - Agent for service of process
 - Certain reports must be filed each year to maintain LLC status

LLC



- **Management – 2 options**
 - Member Management (small businesses)
 - All members have the right to participate in management
 - This is the more common option
 - Manager Management (large businesses)
 - Only designated members have management authority as provided in articles of organization
 - Profits and losses are shared equally among members unless otherwise agreed

LLC

- **Taxation**

- The LLC can elect to be a “pass-through entity”
 - Income is taxed only when it is distributed to the members
- Or the LLC also has the option of being taxed as a corporation
 - Income would be taxed when the LLC earns it and again when it is distributed to the members

Corporations

- **Most complex business organization**
- **Offer liability protection for shareholders**
 - Similar to that of LLC
 - Older business organization with centuries of case law.

Corporations

- **Liability**
 - Shareholders are protected from creditors of the corporation in most cases
- **Legal Status**
 - Corporation is a separate legal entity

Corporations

- **Formation**
 - Articles of incorporation must be filed with Secretary of State
 - **Must include**
 - Name of corporation
 - Purpose of corporation
 - Stock structure
 - Fictitious name statement
 - **By Laws**
 - **Include details of how the corporation will be run**
 - Officers
 - Shareholder meetings
 - Number and terms of Directors on Board

Corporations

- **Formalities**

- Record keeping requirements
- Regular board meetings
- Annual shareholder meetings
- Annual filing requirements for the state

Corporations

- **Management**

- Shareholders elect a Board of Directors
- Board of Directors appoint Officers
 - Officers are responsible for day-to-day management decisions
 - Board of Directors is responsible for long term planning and management
- Shareholders have limited management authority and vote only on extraordinary measures
 - Like selling more than 1/2 of the assets or dissolving

Types of Corporations

- **S Corporation**

- Limited number of shareholders (100 or less)
- “Legal persons” that are allowed to be shareholders is limited to citizens, resident aliens, estates and certain trusts
 - **No corporations, non-resident aliens**
- Only one class of voting stock
- Distribution rights to shareholders must be equal
- No tax at the corporate level... “pass through”
 - **Similar to taxation of LLC**

Types of Corporations

- **C Corporation**

- Typically the big national corporations
- Unlimited number of shareholders
- No limits on who (or what legal entities) can be shareholders
- Can issue common or preferred stocks or bonds (multiple classes of stock)
- Distribution rights are very flexible
- Income is taxed at the corporate level
 - **And then again when it is distributed to shareholders**

How to choose!

- Deciding which business structure to use is an important decision.
- Many factors to consider
 - Who is involved
 - What is their role
 - What are the requirements
 - What makes the most sense for your business

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- Visit the website at www.NCRME.org

