



---

---

# The National Agricultural Law Center

*The nation's leading source for agricultural and food law research & information*

NationalAgLawCenter.org | nataglaw@uark.edu

---

---

Factsheet Series: 2020



National Agricultural Library

This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

## Ten Legal Issues for Farm Stay Operators

**Peggy Kirk Hall**

*Associate Professor  
Ohio State University Extension*

**Abigail Wood**

*Research Assistant, OSU Agricultural & Resource Law Program*

Imagine waking up on a farm—to countryside views, open space, and farm activities—and you've envisioned a "farm stay." A farm stay offers people an escape to the country and provides urban individuals an opportunity to experience a rural lifestyle and gain a glimpse inside life on a farm. The farm stay is part of a growing trend in "agritourism" that involves family farmers using their land, food supply, and livestock to attract guests to the farm.<sup>1</sup>

For farm and ranch owners, offering a farm stay accommodation can generate a new stream of revenue. Many farmers and ranchers appear to be recognizing and capitalizing on this financial opportunity. While lagging behind many European countries, the U.S. now has a national non-profit trade association that connects potential guests to accredited farm stay operators through an online booking platform, the U.S. Farm Stay Association.<sup>2</sup> The association currently has 121 accredited farm stay operators across the country and reports that there are about 1,500 additional working farms and ranches in the U.S. that offer lodging, a doubling since the association began in 2010.<sup>3</sup> In 2018, there were approximately 57,000 listings on the popular Airbnb website that the company identified as "rural," bringing in about \$316 million to the "rural" hosts,<sup>4</sup> and Airbnb added a more specific "farm stay" category to its listings a year ago.

While adding a farm stay business might sound appealing, however, there are legal concerns to be aware of when deciding if it's a good fit for a farm or ranch operation. As with any new business idea, operators will benefit from a careful examination of legal requirements and legal risks in addition to determining the physical, economic and management needs for the farm stay endeavor. In this bulletin, we review the top ten potential legal issues operators may face when considering adding a farm stay business to the farm or ranch. But first, we define what we mean by "farm stay," examine various types of farm stay experiences,

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**

and illustrate the connection between the type of farm stay and resulting legal risks and requirements. At the end of the bulletin, we organize the information into a checklist that can assist with the process of considering and managing farm stay legal issues.

## What exactly is a farm stay?

The term “farm stay” likely means different things to different people. The U.S. Farm Stay Association describes a farm stay as staying overnight in the country and experiencing the lifestyle, with hosts putting a personal face and story to farming.<sup>5</sup> There is also a more general definition for a farm stay, which is any type of accommodation on a working farm.<sup>6</sup>

When we use the term “farm stay” in this publication, we’re referring to a fee-based provision of overnight lodging on a “working farm” that is actively engaged in agricultural production. The accommodations can vary significantly. Guests might stay in the main farm house or in a guest house, barn space, cabin, camper, cottage, yurt, tent or similar space. Typically, the stays are short-term. Lodging might also include a guest experience that engages the guest in farm or ranch activities such as feeding animals, collecting eggs, picking produce, herding livestock and helping with gardening, cooking or canning. Or the stay could include other amenities that don’t directly engage guests in farming activities, such as taking an educational class, having a massage, and enjoying recreational activities like hiking, fishing, snowmobiling, camping, and hunting. Additionally, some farm stays offer food options, often meals that highlight home-made foods and produce, eggs, dairy or meat grown on the farm.

Note that our definition of “farm stay” does not include a “work stay” arrangement in which someone performs farm labor in exchange for lodging, which raises slightly different legal issues that we do not discuss in this bulletin. We also do not require that a “working farm” be a commercial enterprise, but also encompass accommodations on a farm that exists only for self-sustenance in our definition of a farm stay. Other terms for what we’re calling a farm stay include guest ranch, dude ranch, farm bed and breakfast, agricultural stay, farm Airbnb or the European term, “agriturismo.”

## Types of farm stays and legal implications

What kinds of farm stays exist around the country? We’ve taken a look across the U.S. to identify the types of farm stays that operators offer guests. Our research led us to categorize farm stays into three different types, summarized in the chart below. The models vary according to the location of the lodging accommodations, the activities guests engage in, and the other services the farm or ranch provides for guests, such as meals.

Legal requirements and risks will likely vary for the different types of farm stays, so it’s imperative to consider the differences among the types of farm stays. The models below present a range of legal issues and needs. For example, allowing guests to engage in farm or recreational activities presents a higher risk that a guest will suffer an injury on the farm. Likewise, local land use laws and food licensing laws may depend upon whether a guest accommodation is within the farm house or is in a standalone cabin or cottage accommodation, and the location of the standalone structure. Also consider that deciding to allow guests

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



to see livestock production activities might expose a farmer or rancher to criticism of husbandry practices and allegations of animal abuse, as well as an increased risk of physical injuries to guests.

The location of the accommodation, what the guests can and cannot do or see, and other services provided to the guest are all factors that play into the legal issues that we explain below. An operator will benefit from considering these legal requirements and issues when deciding what type of farm stay to offer guests.

### Types of Farm Stays

1. Engaged in the farm



In this model, guests engage in farm activities and "chores" such as milking cows, feeding animals, or harvesting crops. Guests stay in the residence or in a nearby cabin, barn or bunkhouse. Meals are often part of the stay, and guests might even assist with meal preparations.

2. Not engaged in the farm



The second model does not engage guests in farm activities, but might offer non-farm activities such as spa treatments or classes. Guests typically stay in separate lodging, usually away from the farmstead, as pictured above. These stays may or may not include meals provided by the

3. Engaged in recreation



The third model is a recreational farm stay. Guests often lodge in separate accommodations away from the farm house and engage in recreational activities such as hunting, fishing, hiking, horseback riding, biking, camping and snowmobiling. Meals may or not be provided

### What are the legal issues for farm stay operators?

When exploring whether a farm stay might be a sound business venture, legal issues and requirements should play a key role. Are there any permit requirements? Is a license necessary, and what will that require? What risks of liability for injuries are there, and will insurance adequately cover those risks? What about taxes? The questions go on, and as with any business idea, there are many legal considerations to work through before moving forward.

It can be challenging, however, to explain the legal issues that apply to a specific farm stay operator because many of the issues are dependent upon state and local laws. Keep in mind that the laws can vary tremendously, and requirements in one political jurisdiction may differ from another jurisdiction. For some issues, there may be an interplay between local, state, and federal laws, meaning that a farm stay operator must first look for laws that are close to home, then examine state and federal laws as well. In any event, the assistance of a local attorney can be invaluable when sorting through the laws and legal issues that apply to a specific farm stay situation.

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



We've assessed the primary legal issues that may affect a farm stay operation and gathered them below. Our explanations provide a general overview, but we include specific references to illustrate how state and local laws might address the issue. Remember, it's extremely important to identify the applicable law for a farmer or rancher's specific location to correctly understand the appropriate legal requirements and issues.

## 1. How do state and local laws define a “farm stay”?

A first hurdle that an operator may face is understanding where a farm stay activity fits within the spectrum of laws that might apply to the situation. Is a farm stay considered to be an “agricultural activity” that falls under laws that apply specifically to agriculture? Is it “agritourism,” and therefore to be treated legally as an agritourism activity, in places where there are unique laws for agritourism? Is it to be dealt with under the laws that apply to a bed and breakfast? Or is it a “commercial” activity, subject to the laws that apply to commercial businesses that provide short-term rentals? Unfortunately, the answer to these questions vary from place to place. The answer also depends upon the size and type of the accommodations and which aspect of the business we're referring to, such as whether a building permit or food license is necessary or how personal injury liability laws apply to the activities.

It can be helpful if the state or local government has a **farm stay law**, as in California's Agricultural Homestay law.<sup>7</sup> The law lays out guidelines for county and local health jurisdictions to authorize lodging and meal service to a limited number of guests on a working farm, but allows each county to establish its specific ordinances. The county of Sonoma, for example, enacted an ordinance setting standards for “agricultural farm stays” that incorporates and expands upon the state law provisions.<sup>8</sup> Few states currently have such explicit laws for farm stays, however.

Many states do have **agritourism laws** that may apply to a farm stay, however. Agritourism laws often limit personal injury liability, provide tax benefits, establish land use requirements or make other unique provisions for “agritourism” operations.<sup>9</sup> Within such laws, an important question is whether the definition of “agritourism” encompasses overnight lodging and other farm stay activities. For example, Vermont's agritourism statute expressly includes farm stays and further defines a farm stay as “a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.”<sup>10</sup> This specific reference to farm stays clearly allows a farm stay operator to benefit from Vermont's agritourism statute, which prevents any bylaw from prohibiting agritourism activities such as farm stays.

---

*Few states have unique laws for farm stays – instead, a state might generally encompass farm stays within the state's agritourism laws.*

---

Many other state agritourism laws are less clear than Vermont's law. For example, Montana's agritourism statute implies, but does not precisely state, that farm stays fall within its definition of “agritourism,” which means “a form of commercial enterprise that links agricultural production or agricultural processing with tourism in order to attract visitors to a farm, ranch, or other agricultural business for purposes of entertaining or educating the visitors.”<sup>11</sup> In this case, it becomes important to know whether the law has

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



been applied to include farm stay activities with the definition of agritourism, which would allow such activities to benefit from the law’s liability protections.

In states that have neither farm stay or agritourism statutes, farm stay operators will have to work a bit harder to determine which laws do apply to the situation. Even where a farm stay or an agritourism law exists, the law might not address all legal aspects of the farm stay business and the operator will have to fill in the gaps to identify all potential legal requirements. Helpful assistance can arrive in the form of state and local regulators, attorneys, and content specialists like Extension educators or consultants. Regardless of the definitional challenges, identifying how and where a proposed farm stay situation falls into the body of law is an important first step towards legal compliance and reducing legal risk.

## 2. Zoning regulations

Not all communities where farms and ranches exist are subject to zoning regulations. But when a farmer or rancher in a zoned community proposes to add overnight accommodations and other farm stay activities on the property, a zoning checkup is important. That is, check in with the local zoning authority to determine if the farm stay activities may take place in the zoning district in which the land is located, if there are development standards to follow, or if a special permit is required for the use.

It’s common for farm and ranch owners to be in an area zoned as an “agricultural,” “rural” or a similar type of zoning district. The zoning regulations designate the types of land uses that are “permitted uses” within that district, and applicable standards for each permitted use. A landowner must confirm whether the proposed farm stay activities are allowed as permitted uses in the district, or if not, whether the activities could be allowed under a “conditional use” or “special use” permit. Sometimes, a “rezoning” to a different type of district might be the only way to receive approval for the proposed use, but such a request can be difficult and costly and would be subject to a hearing process during which community members could support or oppose the change of zoning district.

---

*Adding a farm stay to the farm could be a land use change that requires compliance with zoning regulations.*

---

Zoning provides a good example of the importance of understanding where the farm stay activities fit into state and local laws, as described in the section above. For example, Cass County, Nebraska has established “agritourism overlay districts” for purposes of zoning, and delineates different zoning requirements for “agritourism,” which includes several farm stay situations. A farm stay operation that offers camp sites as its lodging would obtain a simplified “minor over-the-counter” permit for the use, while an operation planning to offer a bed and breakfast experience on the farm falls under the agritourism provisions, but would be subject to different zoning standards and a “major over-the-counter” permit process.<sup>12</sup> We’d have to look elsewhere in the zoning code to determine how the regulations affect other types of farm stay accommodations that don’t fall under the agritourism overlay district.

Engaging in a land use that is not authorized by the zoning regulations can result in fines or an order to cease the land use activity. Failing to ascertain and abide by zoning standards that apply to the use, such as setting a structure back from property lines or ensuring adequate ingress or egress, can result in costly changes.

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



For these reasons, it’s wise to determine early whether there are any zoning compliance issues with the proposed farm stay land use. For more, see our *Agritourism Activities and Zoning* fact sheet in this series.

### 3. Building and fire codes

While zoning regulations determine whether and where certain land uses may take place within a zoned district, building and fire codes dictate how the structures on the land are to be constructed. When building or renovating a structure for farm stay activities, an operator should check to see if a building permit is necessary and if so, must follow applicable building code provisions. Likewise, a fire code may require the operator to take measures that reduce both the risk of a structural fire and the potential for harm if there is a fire. The primary purpose of these codes is protecting human safety, and operators should note that building and fire code compliance can also ensure optimal property liability insurance coverage.

---

*Because it houses people, a farm stay structure may not be legally treated the same as other farm buildings for building and fire code compliance.*

---

**Exemptions for accommodations in the residence.** Different outcomes for building and fire code compliance can occur when farm stay guests lodge inside an owner occupied farm residence. Bed and breakfasts and other short-term rentals that place guests inside an existing residence might not require significant building or fire code compliance since the structure is already approved for occupancy. In such cases, there may be limits on the number of guest rooms and the number of guests an operator may host at one time. There could also be some fire code requirements for smoke detectors and fire extinguishers. Where farm guests stay in separate buildings that are not part of the residence and there is a higher number of guests, additional building and fire code requirements are likely to come into play.

**But traditional agricultural exemptions probably don’t apply.** Many farmers and ranchers are accustomed to statutory exemptions from building and fire code laws for agricultural structures. Note that such exemptions often regard only buildings that are used to support an agricultural use of land, such as a barn used for storing farm equipment. It’s quite possible that the exemptions will not apply to a farm stay activity that involves people occupying an agricultural structure for overnight accommodations, as the building is not for an agricultural use. Once people reside in a building, even short-term, there is a higher concern about structural integrity and fire safety and the exemptions for agricultural structures may no longer apply.

As an example, Michigan’s Construction Code establishes construction standards for “buildings” and “structures” but the code states that the term ‘building’ “does not include a building, whether temporary or permanent, incidental to the use for agricultural purposes of the land on which the building is located if it is not used in the business of retail trade,” that the term ‘structure’ “does not include a structure incident to the use for agricultural purposes of the land on which the structure is located,” and that the term ‘agricultural purposes’ refers to engaging in agriculture or tillage characterized by “cultivating or using land and soil for the production of crops for the use of animals or humans...”<sup>13</sup> Put together, these provisions would exempt a barn used for farm equipment from the construction code because it’s a “structure incident to the use for agricultural purposes of the land on which it’s located.” But the law would not exempt a barn used to house people overnight on the farm, since that is not incident to the use of the land for agricultural purposes.

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



**The American Disabilities Act (ADA) might apply.** A related issue concerns the ADA, which requires private businesses to ensure access for disabled persons in “places of accommodation,” which includes “places of lodging.” According to the ADA, “places of lodging” means hotels, motels, inns and other short-term stays with amenities similar to a hotel, motel or inn, but does not include facilities that contain no more than five rooms for rent in the place where the proprietor resides. It’s clear that where an operator is renting no more than five rooms inside the residence for the farm stay experience, the residence would not be subject to the ADA. But less clear is whether a farm stay experience is either an “inn, hotel, or motel” or a guest room “with amenities similar to a hotel, motel, or inn,” which the ADA further explains as having on-site or off-site management and reservations, rooms that are available on a walk-up or call-in basis, housekeeping or linen services provided and reservations that don’t guarantee a particular unit until check in.<sup>14</sup> Due to the lack of clarity on what meets the definition of an “inn, hotel, or motel,” an operator should seek a professional legal opinion on whether a particular farm stay experience is subject to the ADA.

If the accommodation is subject to the ADA, the operator must assure access to the facility and its amenities for disabled persons and must also describe the facility on its website adequately so that a guest can determine whether the accommodations are sufficient for the guest’s disabilities. For more information, refer to the ADA website at <https://www.ada.gov/> and to this article on accessible lodging: <https://adata.org/factsheet/accessible-lodging>.

#### 4. Lodging licenses

Many state and local governments require establishments providing overnight accommodations to obtain a lodging license. This type of license might combine many of the requirements we discuss in this bulletin into one comprehensive license. For example, Minnesota’s lodging license process reviews state law requirements for water quality, plumbing, septic, electric, fire safety, and other safety systems.<sup>15</sup> Requirements for smaller lodging facilities with few rooms and guests may be less demanding than for larger lodging facilities. An operator should check with state and local health departments or similar agencies to ascertain whether the farm stay requires a lodging license. If so, understand and make plans for meeting the required standards and do so as early as possible to avoid costly redesigns or changes. Resources from agencies, universities and lodging associations can be helpful to navigating the lodging license standards.

---

*A lodging license addresses guest safety needs in a comprehensive license, often requiring standards for water, plumbing, septic, electric, fire, and safety systems, and might also include food safety.*

---

#### 5. Water and sewage laws

As one would guess, another concern and area of potential liability for farm stay operators is supplying safe drinking water to guests and having a sufficient septic system to deal with waste and wastewater. Many state and local laws require approval of a water source that is intended for human use by the local health department or state environmental protection agency. The approval process typically involves an inspection and water test. Likewise, an operator may need to confirm that an existing septic system to be used will be sufficient, usually gauged by the size of the system and the extent of expected use. If a system is not sufficient, the operator may have to alter the system to accommodate higher use or install a new, separate septic system for new construction. In all situations, there are likely to be permitting requirements. As with

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



other areas of law, there could be exemptions based upon the size and location of the accommodations and water and septic requirements could be rolled into a lodging license, explained above.

## 6. Food and alcohol: safety and licenses

**Food licenses.** Food and beverage options can be desirable amenities to offer guests of a farm stay. Such offerings can vary widely and might consist of hot breakfasts cooked in the home, meal baskets, snacks, beverages, groceries, made-to-order dinners and alcohol. What, when and how an operator provides in regards to food or beverages will determine whether a food or beverage license is required. In Ohio, for example, a food service operation license is not required for “a private home operated as a bed-and-breakfast that prepares and offers food to guests, if the home is owner-occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, and the number of guests served does not exceed sixteen.”<sup>16</sup> Under this exemption, a smaller farm stay providing only breakfast prepared in the home where guests reside does not require a food license.

---

*Including food and alcohol with a farm stay may add license requirements and increase liability risks, but compliance and product liability insurance can reduce these risks.*

---

Where a food license is a requirement for a farm stay operation, however, the licensing process typically involves submitting a site plan of the food service areas that conforms to food safety code standards for food storage and preparation, water supply, dishwashing and dining. Additionally, the operator or an employee will likely need to obtain certification by completing a food safety training program such as ServSafe, a curriculum developed by the National Restaurant Association.<sup>17</sup>

**Serving alcohol.** If serving alcoholic beverages, an operator may have to obtain a separate liquor license. Note, however, that some states don’t require a liquor license for serving wine or alcohol to lodging guests in certain situations. For example, Pennsylvania allows a “bed and breakfast homestead or inn” to serve a bottle of a licensed limited winery’s wine to paying guests over the age of 21 upon check-in.<sup>18</sup> The cost and complexity of obtaining a liquor license varies according to location, and might require legal assistance.

**Food safety.** Because serving food presents the possibility that a guest will contract an illness from the food, it’s critical to reduce the risk of food product liability. A failure to follow mandated or recommended food handling and preparation practices can place an operator at risk for a product liability claim and liability for harm resulting from a foodborne illness. Proper licensing and food safety training are designed to address food safety risk. Even if a license is not required for the type of food services offered, engaging in food safety training is a recommended management practice. Equally imperative is food product liability insurance. Most general liability insurance policies don’t cover food products, so an operator should review the existing policy with the insurance provider and verify whether additional insurance coverage is necessary and available. If serving alcohol, an operator should also review that with the insurance provider to determine whether additional insurance coverage is necessary.

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**





## 7. Taxes

Not surprisingly, a farm stay operator will be affected by tax laws, which can range from collecting taxes on lodging fees, reporting farm stay income, and paying self-employment tax.

**Collecting taxes on lodging fees.** A majority of the states impose a sales tax on lodging, and farm stay operators in those states will be required to collect and submit sales taxes. There might also be a state or local “bed tax” on short-term overnight rentals, also referred to as occupancy tax, hotel tax, lodging tax, short-term rental excise tax, or transient lodging tax. The purpose of this type of tax is to help fund visitor services such as emergency response, roads, sewers, water, and travel and tourism bureaus. Like sales taxes, the percentage charged as the bed tax varies significantly from jurisdiction to jurisdiction, and it’s possible to have both state and local bed taxes. In some states, an operator might have to collect sales taxes and bed taxes.<sup>19</sup> Dealing with sales and bed taxes can be a challenge for farm stay operators, but failure to collect and submit the taxes creates tax liability risk that can result in back taxes, penalties, and interest.

**Income and self-employment taxes.** Farmers and ranchers are accustomed to the practice of paying income and self-employment taxes, so it should come as no surprise that funds from the farm stay business will be subject to both of these taxes. Be aware, though, that lodging income is not the same as farm income so would not be reported on Schedule F. Rather, income reporting will be on Schedule C or Schedule E, depending upon the type of lodging offered. As with other farm business activities, tax deductions may be applicable. Operators should maintain records of all business expenses and discuss tax management strategies with professional tax advisors.

## 8. Animals and animal welfare

Farm stay operators with livestock must be consider whether to expose the animals to people who aren’t familiar or experienced with livestock. Allowing guests to be around animals, feed and care for them, and see management practices might have unintended consequences. For example, doing so could expose the livestock to potential harm from overly excited children or guests who unintentionally but improperly feed or handle the animals. Alternatively, animals might bite, kick, step on or pass “zoonotic diseases” to patrons. And unfortunately, guests might question livestock management practices, which could have animal welfare implications if reported to agencies or on social media.

These concerns suggest the need for a careful plan about human-animal interactions during the farm stay experience. An operator should comply with applicable animal welfare requirements in state and recommended Best Management Practices for reducing disease transmission. Manage guest interactions carefully, taking care not to leave guests without adequate education and supervision. As with all legal concerns, document what you do and how you do it, anticipate potential trouble spots, and be prepared to react to an animal injury or animal welfare incident. For more information, see our bulletin on *Farm Animals and People: Liability Issues for Agritourism* in this fact sheet series.

---

*Allowing guests to interact with your animals and see your livestock management practices may harm the animals and you, especially if the guests have little experience with livestock.*

---

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



## 9. Premises liability

A common question we hear in agricultural law is, “what if someone suffers harm on my farm—will I be liable?” Premises liability laws help us answer this question. Unfortunately, though, the answer is often, “it depends.” Whether an operator might be liable for an injury to a farm stay guest depends on many factors, such as how the guest was harmed, what measures the operator had taken to prevent such harm, the actions of the guest, and whether an immunity law applies to the situation. Generally, premises liability laws establish the legal duties a landowner owes to guests on the premises, and each state differs in how it prescribes those legal duties. Some state laws allocate higher legal duties for paying guests, such as farm stay guests. Failing to abide by or “breaching” the state’s legal duties for your guests can lead to a claim of **negligence** if the breach caused harm to a guest.

---

*To learn if a state has an agritourism immunity law, check out the compilation of **State Agritourism Statutes** on the website of the **National Agricultural Law Center**.*

---

State immunity laws, such as an “**agritourism immunity law**” or a “**recreational user statute**” can reduce an operator’s legal duties and grant immunity for certain types of harm. Usually, the harm must result from an inherent risk of engaging in agritourism or recreational activities. There are differences in the type and breadth of state immunity laws that might address farm stays, so it’s important to find out if a state has an immunity law that applies to a farm stay situation. Even where there is an applicable immunity law, an operator should be diligent in searching out dangers on the property that could harm guests, and preventing potential harm by doing away with the dangers, keeping guests away from them, or warning them about the dangers. And good insurance coverage, as we discuss below, is critical.

## 10. Insurance coverage

Many of the legal issues we raised above lead us to our final legal concern: obtaining insurance coverage for the farm stay activity. Insurance is a traditional and trustworthy tool for reducing legal risk, and it’s critical for any new risk venture such as a farm stay business. But finding an insurance policy that addresses a farm stay situation might be difficult, and purchasing the coverage might be expensive. The model of farm stay that a farm or ranch offers will drive the solutions. For example, if the guests stay within the home and don’t engage in any farm activities, a typical homeowner’s insurance might cover the situation. If guests do engage in farm activities, however, a general farm policy might or might not address the activities that would occur on the farm property. A special “rider” may be necessary. Especially if serving food, you may need a separate food product liability rider. A sit down discussion with the insurance representative is imperative, taking care to discuss all potential activities to explore all coverage options and costs. Operators might also benefit from talking to other farm stay operators and associations such as Farm Stay USA to learn about insurance providers and compare product and coverage options. For more information on insurance, see our *Agritourism and Insurance* fact sheet in this series.

---

*A carefully tailored insurance policy that addresses the risk aspects of the farm stay activity is a necessary risk management tool for a farm stay operator.*

---

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



## Review it all with professional assistance

As this bulletin illustrates, there can be many legal issues involved in adding a farm stay element to the farm or ranch business. The assistance of an attorney who works in agriculture or has experience with farm stay or similar businesses attorney can ensure that an operator has addressed all applicable legal requirements and reduced legal risk. It can be helpful to ask other farm stay operators for attorney recommendations, or talk with institutions like Extension, the National Agricultural Law Center, lenders, and other businesses.

An attorney can also review how the farm stay activity fits within the farm or ranch business. It's important to examine the entire operation and review legal needs. For example, an operator may need to change the **farm transition and estate plan** or establish a **new business entity**, such as a Limited Liability Company. In addition to reviewing the farm and ranch's situation with an attorney and the insurance representative, consult with other professionals such as an accountant, lender and financial planner.

---

### A checklist for working through farm stay legal issues

We've condensed the issues in this bulletin into a checklist to aid in working through farm stay legal issues. It's not a comprehensive list of all legal issues, but aims to provide a good start. Remember, laws vary by state and depend upon the type of farm stay experience an operator offers. Work with a professional team, including an attorney, to review your situation and reduce your legal risk.

- 1 **Understand how your state and local laws define a farm stay.**
  - ➔ Look for a farm stay law, an agritourism law, laws for bed-and-breakfasts or short-term rentals—there may be several different ways of defining a farm stay activity, so be aware of the differences.
- 2 **Make sure local zoning allows a farm stay use on your land.**
  - ➔ If not, see if you need to apply for a zoning permit to authorize the new land use activity.
- 3 **Determine if you must comply with a building code, fire code or the Americans with Disabilities Act.**
  - ➔ Do this early, as building revisions can be costly.
- 4 **Check state and local laws to see if they require you to obtain a lodging license.**
  - ➔ If so, you may need a site plan of your accommodations.
- 5 **Verify that your water source and sewer meet applicable laws.**
  - ➔ This might be addressed in a lodging license, or be a separate process.
- 6 **If considering food and beverages, identify whether you need a food or alcohol license.**
  - ➔ You may also have to attend food safety training or obtain food safety certification.
- 7 **Determine if you must collect lodging or sales taxes and how to report your income on tax returns.**
  - ➔ Discuss a bookkeeping and payment system and income tax strategies with your accountant.
- 8 **Develop a plan for people-animal interactions**
  - ➔ Meet applicable animal welfare standards and employ recommended Best Management Practices.
- 9 **Make the property safe for visitors and identify agritourism or recreational user immunity laws.**
  - ➔ Apply the legal standard of care you owe your guests, and know how to qualify for immunity laws.
- 10 **Review insurance needs and obtain adequate insurance coverage.**
  - ➔ Carefully review all activities and determine the appropriate amount and coverage to manage your risk.

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**



## Agritourism Resources from the National Agricultural Law Center

See our other agritourism publications, including the **Agritourism Fact Sheet Series**, on the National Agricultural Law Center website at <https://nationalaglawcenter.org/center-publications/agritourism/>.

### Additional Resources

Farm Stay USA, <https://farmsayus.com>.

Jan Joannides et al, *Farmstay--Diversifying Your Farm Business Through Agritourism: A How-to Manual for Establishing a Farmstay in Minnesota*, MINNESOTA INSTITUTE FOR SUSTAINABLE AGRICULTURE (2011), <https://conservancy.umn.edu/bitstream/handle/11299/115893/FarmstayManual.pdf?sequence=1>

Scottie Jones, "The U.S. Farm Stay—Not Italy's Agriturismo yet (ever?)," NET 2015 Conference, available at [http://agrillife.org/extensiontourism/files/2015/11/jones\\_farm\\_stays\\_net2015.pdf](http://agrillife.org/extensiontourism/files/2015/11/jones_farm_stays_net2015.pdf).

University of California Agriculture Ombudsman, "Agricultural Farm Stay Fact Sheet," [https://ucanr.edu/sites/CESonomaAgOmbuds/Agricultural\\_Farm\\_Stay/](https://ucanr.edu/sites/CESonomaAgOmbuds/Agricultural_Farm_Stay/).

University of California Sustainable Agriculture Research and Education Program, *Guest Lodging on Your Farm or Ranch—A Practical Guide*, UNIVERSITY OF CALIFORNIA AGRICULTURE AND NATURAL RESOURCES (2019), <https://ucanr.edu/sites/agritourism/files/311994.pdf>.

<sup>1</sup> Liz Tracy, The Goods: How are small farms surviving? Airbnb, Jul 11, 2019 7:00 am EDT, Vox, <https://www.vox.com/the-goods/2019/7/11/20681454/farms-airbnb-vacation-rentals>.

<sup>2</sup> U.S. Farm Stay Association, <https://farmstayus.com>.

<sup>3</sup> Personal correspondence with Scottie Jones, Executive Director, U.S. Farm Stay Association, June 12, 2020.

<sup>4</sup> Airbnb, *Rural Airbnb Hosts in the U.S. Earned \$316 Million in 2018*, July 2, 2019, available at <https://news.airbnb.com/en-us/rural-airbnb-hosts-in-the-u-s-earned-316-million-in-2018/>.

<sup>5</sup> U.S. Farm Stay Association, <https://farmstayus.com>.

<sup>6</sup> Michelle Nowak, Farm Stays and Agritourism for Beginning Farmers (Information and Resources), Beginning Farmers, Feb. 22, 2010, <https://www.beginningfarmers.org/guest-article-farm-stays-and-agritourism-for-beginning-farmers-including-resources/>

<sup>7</sup> CA Agricultural Homestay Act, Cal. Health & Safety Code §113793(a)(2).

<sup>8</sup> Sonoma County, California, *Agricultural Farmstay Standards*, Sonoma County Municipal Code Sec. 26-88-085.

<sup>9</sup> For a compilation of state agritourism laws, visit our "States' Agritourism Statutes," <https://nationalaglawcenter.org/state-compilations/agritourism/>.

<sup>10</sup> 24 V.S.A. § 4412(11).

<sup>11</sup> Mont. Code Ann. § 27-7-752(1).

<sup>12</sup> Cass County Nebraska Zoning Regulations, § 5.17.

<sup>13</sup> Mich. Comp. Laws § 125.1502(a)(1).

<sup>14</sup> 28 CFR § 36.104.

<sup>15</sup> Minn. Stat. § 157.16 and Minn. Code R. Chapter 4625.

<sup>16</sup> Ohio Rev. Code § 3717.42(B)(2).

<sup>17</sup> See <https://www.servsafe.com/>.

<sup>18</sup> 47 Pa. C.S. § 4-491(1).

<sup>19</sup> National Conference of State Legislatures, "State Lodging Taxes," January 28, 2019, <https://www.ncsl.org/research/fiscal-policy/state-lodging-taxes.aspx>.

**The information contained in this document is provided for educational purposes only. It is not legal advice, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.**

