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Land owner liability is not a popular topic. Most landowners prefer not even to think of the possibility they could face financial liability for injuries that occur on their land. Despite the unpleasantness of this subject, rural landowners need to address it appropriately. Otherwise, one unfortunate incident could jeopardize their continued ownership of the land or the viability of their agricultural enterprises.

When someone is injured on a parcel of land or as a result of activities occurring on that land, the injured person may seek financial damages from the landowner. The courts commonly rely on the legal theory of negligence to consider liability. In a general sense, negligence occurs when someone — such as a landowner — fails to exercise ordinary care under the circumstances.

The determination of what actions or omissions by a landowner are necessary to establish negligence depends heavily on the individual facts of each case and on state law. Thus, it can be difficult for a landowner to know exactly what precautions, if any, he or she should take. There are, however, some basic concepts to help guide rural landowners.

Duty of care owed to visitors

The duty of care owed by a landowner to a person entering the land depends on whether that visitor is classified as a trespasser, licensee or invitee.

A landowner has a low duty of care, relatively speaking, to a person who enters or remains upon land without consent. This duty of care to trespassers requires a landowner to avoid willful, wanton or reckless conduct that could cause harm. Where a landowner knows trespassers have been on the land, the landowner has a heightened duty of care. A warning of potential dangers or a removal of those dangers may be required. A landowner also has a heightened duty, under the so-called attractive nuisance doctrine, where it's foreseeable that children may trespass upon the land.

People who are invited onto the land for social reasons that have no economic value to a landowner are considered licensees. A landowner generally owes these individuals a higher duty than is owed to trespassers. Specifically, a landowner must warn licensees of any known dangers but is not required to inspect the land to discover possible dangers.

A landowner owes the highest duty of care to those individuals who are invited — either expressly or by implication — onto the land for the economic benefit of the landowner. This is described as a duty to protect, and a landowner may be required to inspect the land for dangerous conditions, warn of known dangers and/or remedy dangerous conditions.

Protecting yourself

To minimize the possibility of negligence liability, a landowner should recognize the legal status of visitors and act accordingly. To safeguard visitors, a landowner should take any actions required by the requisite duty of care.

From a practical standpoint, it's not possible to eliminate entirely the risk of negligence liability. A landowner should take out an insurance policy to protect against financial liability as well as the costs of any litigation. The appropriate amount of insurance coverage depends on many factors. You should consult an insurance agent to determine your needs. 

