

# Liability and Selecting the Right Coverage

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Farmers' Market: The Basics  
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## Overview

- Introduction
- Basics of liability
- Products Liability
- Liability Insurance
- Products Liability Insurance
- Conclusions

## Introduction

- Increased popularity of local food, slow food and farmers' markets
- Increased incidence of food contamination- most recently, beef; and alfalfa sprouts, cilantro and parsley from an organic farm
- Increasing number of lawsuits involving contaminated food, and larger judgments in those lawsuits
- Recent peanut salmonella outbreak: over 100 lawsuits against producers; producers lost over \$1 billion

## Liability

- Duty
- Breach
- Causation
- Damages

## Basis of Liability

- Intentional acts
- Negligence
- Strict Liability

## Products Liability

- The legal liability for personal injuries and property damage caused by defective products
- Either the user of the product or others affected by the use of the product may file suit
- In addition, potential liability attaches to every enterprise in the chain of supplying a product to market, including the producer, wholesaler and retailer
- The legal liability for personal injuries and property damage caused by defective products
- Duty to warn/give instructions

## Products Liability

- The majority of states impose strict liability in tort (liability without fault)
- Other grounds include negligence and breach of implied warranty
- Some states have strict warranty liability as well
- States not using strict liability (Delaware and Virginia) rely on negligence and implied warranty

## Products Liability- Concerns

- The number of claims and lawsuits in products liability generally has grown significantly in recent years
- Injured parties increasingly receive large amounts of compensation in these cases, through either court judgments or settlements
- Farm markets and other direct sales of farm products exposes producers to higher risk, whether the food products provided are produced on the farm or are purchased from suppliers
- Processing and packaging products for direct sale further increases potential liability

## Insurance Generally

- Transferring risk
- Hazard, liability, crop, and more
- Self insure or buy an insurance policy?

## Farmers' Market Coalition Survey

- 23% of farmers' markets do not have liability insurance
- 33% of those with insurance buy directly; 28% from association; and 17% from state, local government or other sponsor
- Only 16% of market policies cover vendors
- 38% not satisfied or ambivalent with current policy
- 53% require vendors to purchase general liability coverage; 1/3 of those require proof of coverage
- 39% require vendors to purchase products liability coverage; 1/3 of those require proof of coverage

## Liability Insurance

- General Farm Liability Policy
- Covers some products liability, but only for “unprocessed” produce
- Production v. marketing
- If covered, will pay judgments up to limits of liability
- Will pay attorneys’ fees also
- Some policies now reduce coverage by attorneys’ fees

## Liability Insurance and Farmers’ Markets

- The owner/operator of the farmers’ market should have their own policies
- Workers Compensation
- Products Liability
- Officers and Directors

## Liability Insurance and Vendors at Farmers' Markets

- Owner of land needs liability insurance, operator needs separate policy, vendors need yet another separate policy
- Vendors should be required to provide a copy of a current certificate of general liability insurance, as well as products liability insurance, naming the owner/operator of the market as an additional insured
- Some markets specify the amount of coverage; how much is appropriate?
- Some states require vendors to obtain liability insurance

## Obtaining Liability Insurance

- Many state associations have sponsored group policy programs offering liability policies (including products liability)
- Farmers' Market Coalition has partnered with an insurance company to make insurance available to vendors <http://farmersmarketcoalition.org/>  
<http://web4agents.com/Sites/Site6/page.asp?CustomerID=952&PAGEID=12044>
- \$350/yr. for those with less than \$100,000/year in farmers' markets sales

## Products Liability Insurance

- Need additional coverage for all but the most basic of claims
- Some retailers, farmers' markets require coverage; some in particular amounts

## Insurance tips

- Tell the agent EVERYTHING- agent's favorite answer- IT'S NOT COVERED!
- Get it in writing
- Can't afford insurance? Can't afford to be in business- lawsuits not based on level of sales
- Ask for certificate of insurance from suppliers
- Recall coverage available
- Umbrella policy

## Indemnity and Hold Harmless

- Many farmers' markets require an indemnity and hold harmless agreement from vendors
- The vendor agrees to reimburse the owner/operator for any damages that the owner/operator pays as a result of the acts of the vendor
- Vendor further agrees to defend the owner/operator and pay for any defense
- Only as good as the vendor's bank account

## Conclusions

- Each party involved needs a separate liability insurance and products liability insurance policy
- Vendor should name landowner, operator of market as additional insured
- Small producers need coverage- lawsuits not based on producer's sales
- Get to know your insurance agent and understand your policy!
- If the agent doesn't know about the activity, assume that it is not covered!