



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law

Webinar Series

Understanding the Basics of

Agritourism Laws

July 26, 2024





Understanding Agricultural Law

**A Legal Educational Series for General Practice Attorneys and Business
Advisors Representing Agricultural and Rural Clients**

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





Understanding Agricultural Law Series:

Past Topics:

- Agricultural Labor Laws
- Leasing Farmland for Energy Development
- Local Land Use Regulation of Agriculture
- Statutory Protections for Ag Operations
- Agricultural Cooperatives
- Livestock Market Regulation
- Crop Insurance
- Federal & State Conservation Programs
- Licensing & Regulation of Direct Agricultural Product Sales
- Agricultural Finance
- PA's "Clean & Green" Tax Assessment Program
- Animal Confinement Laws
- Conservation Easements
- Landowner Immunity Statutes
- The Farm Credit System
- Milk Pricing
- Pesticides
- Seed Laws
- Fair Labor Standards Act (FLSA)
- Perishable Agricultural Commodities Act (PACA)
- Food Labeling
- Organic Production
- Buyer Default Protections for Producers
- PA's Agricultural Area Security Law

aglaw.psu.edu/understanding-agricultural-law/



Understanding Agricultural Law Series

Upcoming Topics:

Aug. 23, 2024 *Understanding the Basics of the H-2A Temporary Agricultural Worker Program*

More upcoming programs with the Center for Agricultural and Shale Law:

Aug. 20, 2024, Penn State Extension Solar Law Symposium

Sept. 18, 2024, Right to Repair and Agriculture, *Ross Pifer Presents with the National Agricultural Law Center*

Thurs. Sept. 19, 2024—Pennsylvania Agricultural Law Symposium!

Register at <https://aglaw.psu.edu/events/>



PennState Law

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Previously...

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and Shale Law

Understanding Agricultural Law
Webinar Series

Understanding the Basics of

Landowner Immunity Statutes

May 19, 2023



Previously...

Understanding the Basics of Landowner Immunity Statutes

Materials:

- [Resources: Understanding the Basics of Landowner Immunity Statutes](#)
- [Agricultural Law Fact Sheet: Pennsylvania's Equine Activity Immunity Act](#)
- [Agricultural Law Fact Sheet: Pennsylvania's Agritourism Activity Protection Act](#)
- [PowerPoint: Understanding the Basics of Landowner Immunity Statutes](#)
- [Recording: Understanding the Basics of Landowner Immunity Statutes](#)



Previously...

Understanding the Basics of Landowner Immunity Statutes

- Liability re: trespassers, licensees, invitees
- Types of torts: negligence, intentional, strict liability
- Protections from liability. Ex: state immunity legislation
 - Pennsylvania's Agritourism Activity Protection Act
 - PA Equine Activity Immunity Act
 - Recreational Use of Land and Water Act
 - Right to Farm



Understanding the Basics of Agritourism Laws

- What laws affect agritourism operations?
- What type of state legislation relates to agritourism?
- What are the major similarities between state liability statutes?
- What are some significant differences between state liability statutes?



What is Agritourism?

- Types of Agritourism:
 - On farm farmers' markets
 - You-Pick (fruits/vegetables)
 - Hay rides
 - Pumpkin patches
 - Corn mazes
 - Christmas tree farms
 - Wineries
 - Barn weddings
 - On farm petting zoos
 - Goat Yoga
 - Overnight farm stays



What sort of legal issues or laws will affect my agritourism operation?

- Laws affecting your business:
 - Taxes
 - Regulations & municipal law
 - how/where you can build (zoning & permitting)
 - Insurance (may be required)
 - State statutes
 - Liability and lawsuits
 - Nuisance
 - Negligence
 - Strict liability



What sort of laws will affect my agritourism operation?

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Regulatory Considerations

- Zoning
- Construction code
- Food Safety
- Liquor Laws
- Animal Welfare Laws
- Other





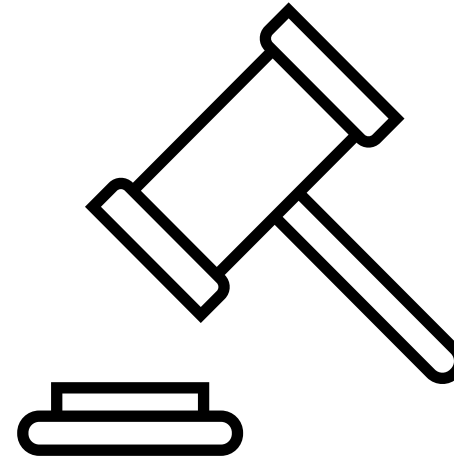
Regulations: Zoning

- Local Ordinances for
 - Traffic
 - Parking
 - Hours of Operation
 - Noise/Lighting
 - Structures



Types of lawsuits brought against farming operations:

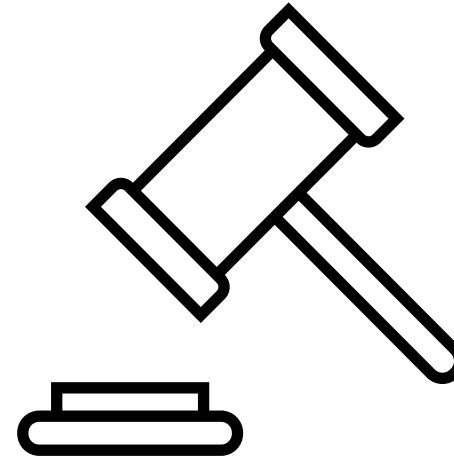
- Negligence
- Strict liability
- Intentional torts
 - Ex: Nuisance





Types of lawsuits brought against farming operations:

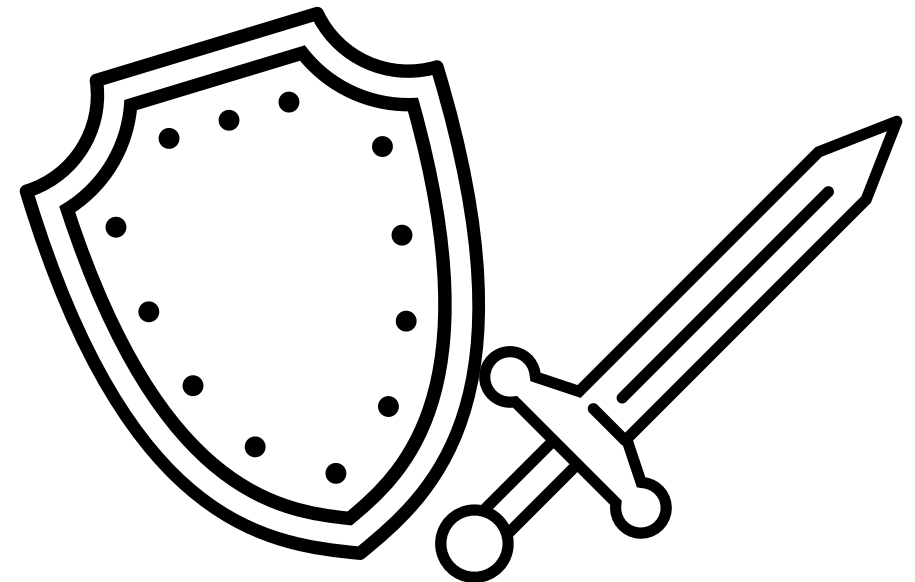
- Negligence
- Strict liability
- Intentional torts
 - Ex: Nuisance





How to protect against liability claims:

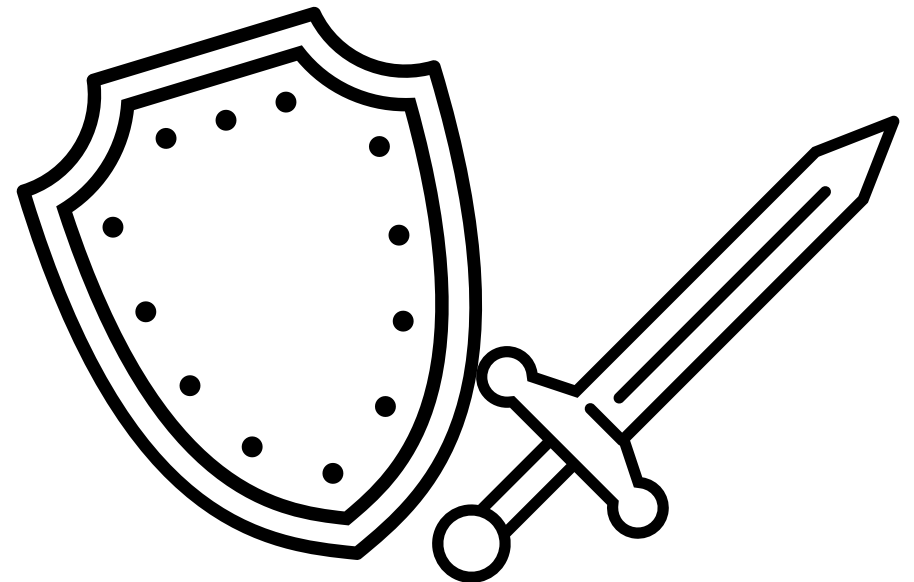
- Liability Insurance
- Entity Formation
- Notice of Risk and Waivers
- State Liability Legislation





How to protect against liability claims:

- Liability Insurance
- Entity Formation
- Notice of Risk and Waivers
- State Liability Legislation





No Agritourism Related Statutes

- California*
- Connecticut*
- District of Columbia
- Massachusetts
- Michigan
- Nevada
- New Mexico
- Rhode Island
- Wyoming



States with Non-liability Agritourism Statutes

- Arizona
- Delaware
- Hawaii
- Illinois
- Maryland
- New Hampshire
- New Jersey



States with Agritourism Liability Statutes

- Alabama
- Alaska
- Arkansas
- Colorado
- Florida
- Georgia
- Idaho
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin



Understanding the Basics of Agritourism Laws

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Architecture of agritourism legislation:

- Definition
- Signage
- Liability



Architecture of agritourism legislation:

- Basic definition elements:
 - Agritourism activity – an activity that allows members of the general public to participate in farming-related activities at an agricultural operation, including but not limited to...
 - Participant – any person other than the agritourism operator who participates in the activity
 - Inherent risks – dangers or hazards that are integral to an agritourism activity (behavior of animals, structures & equipment)



Architecture of agritourism legislation:

- Posting Signs
 - General signage requirements for most states:
 - Signs must be clearly visible
 - Located at agritourism site and entrance (or place of payment)
 - Sometimes laws specify sign size and letter height
 - Sometimes laws specify exact language



State Exceptions re: Signage

- No Signage required:
 - Alaska
 - [Alaska Code §9.65.290\(e\) -- Definitions/liability](#)
 - Montana
 - [Mont. Code Ann. §27-1-752 -- Definitions \(§ 27-1-753\(1-2\)\)](#)



Architecture of agritourism legislation:

- Liability limitation:
 - an agritourism professional is not liable for damage or personal injury to a participant resulting from the inherent risks of agritourism activities
 - Participants assume the risk of agritourism activities



Architecture of agritourism legislation:

- Liability limitation: What is an Inherent Risk?
 - Participants “cannot” sue the agritourism operator for injuries sustained from an inherent risk of an activity
 - Ex: What would be an inherent risk at an animal petting zoo?
 - Ex: What would be an inherent risk at an apple picking operation?



Pennsylvania's Agritourism Activity Protection Act



PA's Agritourism Activity Protection Act

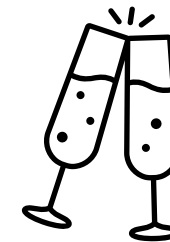
- Agritourism Activity Protection Act
 - (Act 27 of 2021)
 - Effective August 29, 2021
- Provides agritourism providers liability protection from civil liability for injury or damages sustained by a third-party participant in agritourism activity.





PA's Agritourism Activity Protection Act

- Important Exclusions:
 - No liability protection for weddings or concerts
 - No liability protection for overnight stays
 - No liability protection for food and beverage service





PA's Agritourism Activity Protection Act

- In order to receive liability protection, an operator must meet the key elements of the statute:
 - Agritourism definition
 - Farm must be “normal agricultural operation”
 - Written Agreement or Tickets
 - Signage



PA's Agritourism Activity Protection Act

- Agritourism definition:
 - “A farm-related tourism or farm-related entertainment activity that takes place on agricultural land and allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in or be entertained by an aspect of agricultural production, harvesting, husbandry or rural lifestyle that occurs on the farm.”



PA's Agritourism Activity Protection Act

- Normal Agricultural Operation (as defined by PA's Right to Farm)
 - "The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities..."
 - 10 acres, or
 - (if less than 10 acres) Income of \$10,000 or more



PA's Agritourism Activity Protection Act

Written Agreement or Tickets

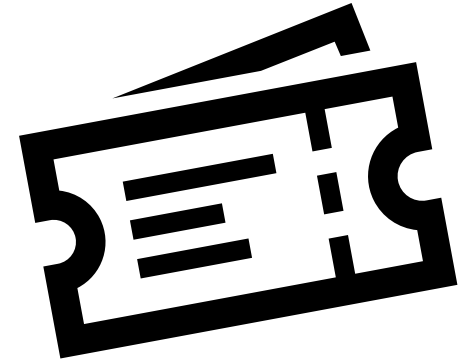
"AGREEMENT AND WARNING: I understand and acknowledge that, except for limited circumstances listed below, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. I understand that I have accepted all risk of injury, death, property damage and other loss that may result from an agritourism activity. I understand that an agritourism activity provider is not protected from liability if the provider:

1. Performs an act in a grossly negligent manner and causes injury or damages to a participant.
2. Purposefully causes a participant's injury.
3. Acts or fails to act in a way that constitutes criminal conduct.
4. Recklessly fails to warn or guard against a dangerous condition that causes injury or damages to a participant. A dangerous condition is a condition that creates an imminent and substantial risk of injury or damages to a participant."



Liability Statutes - Pennsylvania

- Tickets (alternative to written agreement)
 - Must have “substantially the same language”
 - Must require the tickets for entry to the activity





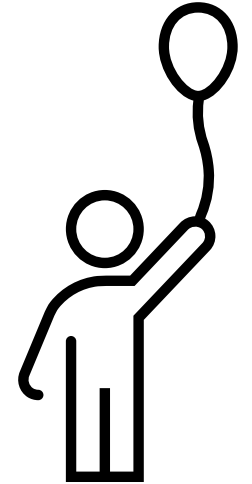
Liability Statutes - Pennsylvania

- Signage
 - "WARNING: Read your written agreement or the back of your ticket. Under Pennsylvania law, except for limited circumstances, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. Do not participate in the activity if you do not wish to waive liability."
 - Every entrance or all locations
 - 3ft by 2ft



Liability Statutes - Pennsylvania

- Application of the law to minors
 - Parent or guardian must sign on behalf of minor
 - Guardian must sign on behalf of care-dependent person





Liability Statutes - Pennsylvania

- PA Agritourism Immunity Act
 - <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2021&sessInd=0&act=27>
- Right to Farm Act:
 - https://pennstatelaw.libguides.com/ld.php?content_id=19902751
- PA Farm Bureau resources
 - <https://pfb.com/agritourism-liability/>



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Registration Requirement

- Georgia
- Kansas
- Louisiana
- Mississippi
- Missouri
- North Dakota
- Oklahoma



Fees and charges

Whether or not for a fee

- Alabama
- Colorado
- Delaware
- Idaho
- Indiana
- Iowa
- Kansas
- Kentucky
- Maine
- Minnesota
- Missouri
- Nebraska
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Tennessee
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin



Fees and charges

- Must charge participants a fee
 - South Dakota
 - Georgia



Shooting Ranges

- Includes shooting as a type of agritourism:
 - Colorado
 - Louisiana (skeet)
 - Montana (target)
- Does not allow shooting as agritourism:
 - North Carolina (via case law)



Case Law re: shooting ranges

- *Jeffries v. Cty. of Harnett*, 259 N.C. App. 473 (N.C. Ct. App. 2018)
 - <https://appellate.nccourts.org/opinions/?c=2&pdf=36228>
- Landowner has a crop farm (Andrews Farms) and leases property to himself for Drake Landing, “a recreational hunting and shooting enterprise.”
- Neighbors asked the zoning authority to determine if the shooting activities qualified as agritourism



Case Law re: shooting ranges

- *Jeffries v. Cty. of Harnett*, 259 N.C. App. 473 (N.C. Ct. App. 2018)
 - <https://appellate.nccourts.org/opinions/?c=2&pdf=36228>
- The court determined that outdoor shooting activities, including the activities offered at Drake Landing, do NOT constitute agritourism as a matter of law and are subject to zoning



Food and beverage

- Includes meals:
 - New Hampshire
 - California (for agricultural homestays)
 - Delaware (bed and breakfast & picnicking)
 - Louisiana (bed and breakfast)
 - Idaho (bed and breakfast)
- Excludes food and beverage:
 - Pennsylvania



Overnight Stays

- Includes overnight stays:
 - New Hampshire
 - California
 - Hawaii
 - Louisiana
 - Minnesota
- Excludes overnight stays:
 - Pennsylvania



Case Law re: Wineries

- *Rivendell Winery, LLC v. Donovan*, [74 A.D.3d 1594](#) (N.Y. App. Div. 2010)
 - Plaintiffs wanted to operate a “farm winery” on property that was zoned for agriculture. The town’s building inspector denied the application.
 - The NY court held that the winery (as in the public-facing part of a winery) does not fall within the definition of “agriculture” in New Paltz Zoning Law § 140-4.



Alcohol

States that Include Wineries

- Delaware
- Iowa
- Louisiana
- Minnesota (winemaking)
- New Jersey
- New York
- Oregon
- Virginia

States that Include Breweries

- Iowa (2021)
- New Jersey (2023)

Excludes food & beverage service:

- Pennsylvania*



Case Law re: Wineries

- *Geiselman v. Hellam Twp. Bd. of Supervisors*, 2021 Pa. Commw. Unpub. LEXIS 553
 - Landowner received approval for application for a conditional use to operate a winery
 - Neighbors brought suit
 - Court of Common Pleas of York County affirmed the decision of the Township Board
 - Commonwealth Court of PA affirms



Weddings

- States that include weddings:
 - Delaware (barn parties or farm festivals)
 - Idaho (farm festivals)
 - Illinois (weddings or concerts)
 - Kentucky
- State that do not include weddings
 - Pennsylvania



Case Law re: Weddings

- *Nixon v. Webster Twp.*, No. 343505, 2020 Mich. App. LEXIS 438 (Ct. App. Jan. 21, 2020)
 - Under local zoning laws in Webster Township, wedding barns are not “seasonal agri-tourism” and therefore are not a permitted use



Case Law re: Weddings

- *Forster v. Town of Henniker*, 167 N.H. 745, 118 A.3d 1016 (2015)
 - Supreme Court of New Hampshire
 - The court held that a Christmas tree farm used for weddings, must be approved under the town's zoning laws.
 - “Even if using petitioner's Christmas tree farm as a venue for commercial weddings and similar events constituted “agritourism” for purposes of showing a permitted use, the plain meaning of RSA 21:34-a did not provide that they also constituted “agriculture,” ”



Rights to Engage in Agritourism

- Oklahoma (2021)
 - “...the rights of Oklahomans to engage in agritourism activities shall not be banned by any county, municipality, state agency or political subdivision.”
- New Hampshire (2019)
 - “Agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers...”



Agritourism Liability Statutes New Legislation and Updates

New Legislation

- Arizona (2019)
- Illinois (2023)
- Iowa (2021) *liability
- New Jersey (2023)
- Pennsylvania (2021) *liability
- Vermont (2021) *liability

Updates

- Alaska (2019)
- Colorado (2020)
- Indiana (2022)
- New Hampshire (2019)
- South Dakota (2022)
- Utah (2024)
- Virginia (2020)



Agritourism Liability Statutes Updates

- Alaska – added “farm touring”
- Colorado – excluded marijuana
- Indiana – added details to definition
- New Hampshire – made definition more inclusive
- South Dakota – removed “whether or not” for a fee
- Utah – removed comparative negligence language
- Virginia – added horseback riding



Case Law re: Signage

- Bayne v. Carleton Farm, Inc., 25 Wash. App. 2d 1042, review denied, 532 P.3d 160 (Wash. 2023)
 - A participant at an agritourism operation sustained injuries after going down a “roller slide” at the Carlton Farm
 - The participant had a child in their lap
 - The momentum of the slide carried the participant forward and they struck a fencepost (about 6 feet from the end of the slide)



Case Law re: Signage

- Bayne v. Carleton Farm, Inc., 25 Wash. App. 2d 1042, review denied, 532 P.3d 160 (Wash. 2023)
 - “There is no evidence of the location of the sign and, thus, no evidence that this warning was directed specifically toward the slide or users of the slide. Moreover, the sign did not alert slide users to any limitations, restrictions or potential hazards. Therefore, the evidence of the sign does not raise a genuine issue of material fact as to whether Carleton Farm acted with reasonable care to warn invitees of the slide's dangers.”



Liability Statutes (New York)



- N.Y. Gen. Oblig. §§ 18-302
 1. **“Agricultural tourism”** means activities, including the production of maple sap and pure maple products made therefrom, farm and winery tours, equine activities both outdoors and indoors but excluding equine therapy, u-pick Christmas trees, hiking, hunting and other forms of outdoor **recreation offered to farm visitors, conducted by a farmer on-farm for the enjoyment and/or education of the public**, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.”



Liability Statutes (Ohio)



- § 901.80. Agritourism immunity; warning notice
- (2) “Agritourism” means an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity



Liability Statutes (Oklahoma)



- 2 OK Stat § 2-5-14: “Oklahoma Agritourism Activities Liability Act” (Effective 4/12/2013)
 - "Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including **farming, ranching, historic, cultural, harvest-your-own activities**, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity;



Liability Statutes (Oklahoma)



- 2 OK Stat § 2-5-14: Rights to engage in agritourism activities (Effective 11/1/2021)
 - "Agritourism activities" as used in this section means utilizing livestock or poultry for entertainment or educational purposes. This shall include **horseback riding, horse-drawn carriage rides, livestock and poultry shows, petting farms, rodeos**, activities that historically involved the utilization of working animals and other substantially similar activities."



Summary: Practical tips for everyone

- Review your insurance policies
- Entity formation
- Put up warning signs
- “Assumption of risk” notices
- Waivers
- Weekly/daily safety checks
- Review state legislation to see if it could apply to you



Pennsylvania Agricultural Mediation Program



- Who can request mediation?
 - USDA-related issues:
 - Agricultural Loans
 - Wetlands determinations
 - Compliance with farm programs, including conservation programs
 - National organic program established under the Organic Foods Production Act of 1990
 - Agricultural Credit
 - Rural water loan programs
 - Grazing on National Forest System land
 - Pesticides
 - Non-USDA issues:
 - Lease issues; including land leases and equipment leases.
 - Family farm transition.
 - Farmer-neighbor disputes



Pennsylvania Agricultural Mediation Program

- Who conducts mediation?
 - Impartial 3rd party mediator
- If an agreement is not reached, the requestor may seek appeals or legal action



Pennsylvania Agricultural Mediation Program

Contact us:

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(814) 746-4619

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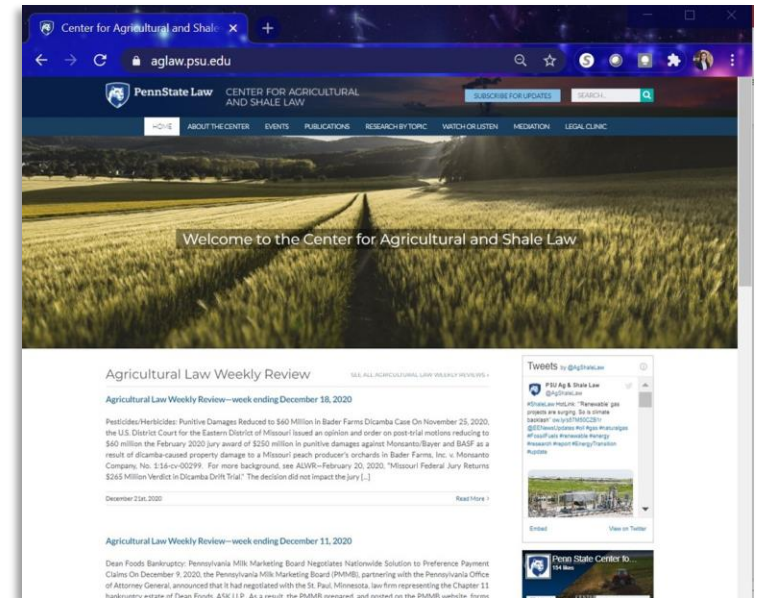
Website: www.PAAgMediation.com



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- Presentations
- PA Ag Mediation Program





Thank you!

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CENTER MISSION AND BACKGROUND

Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information.

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