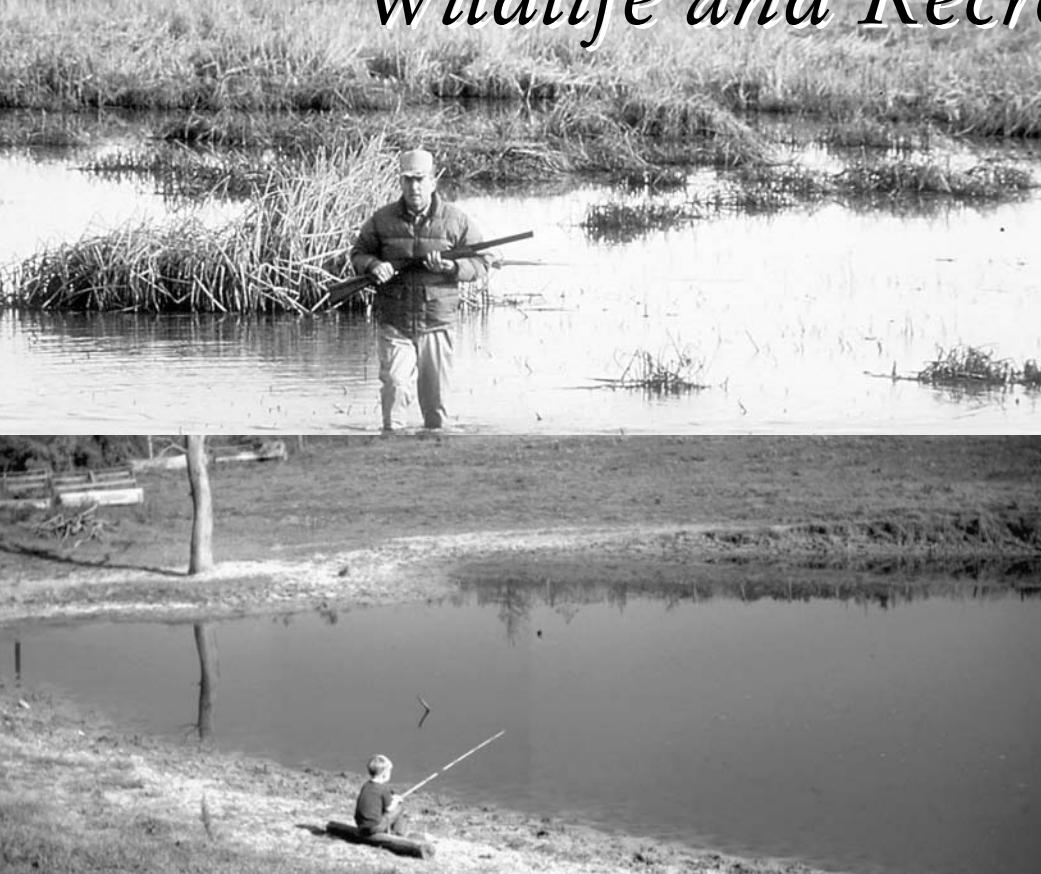


NATURAL RESOURCE ENTERPRISES

Wildlife and Recreation



Hunting Leases: Considerations and Alternatives for Landowners

Interest is growing in the South and throughout the United States for landowners to provide recreational access to their land for sportsmen and others to hunt, fish, and enjoy other types of outdoor recreation. For many farm, ranch, forest, and other landowners, alternative enterprises may provide an opportunity to sustain their natural resource base, maintain their quality of life, and increase annual profits.

Offering access to private land for recreational uses by the public can be a viable alternative enterprise. Natural resource-based alternative enterprises on private land range from producing products such as pine straw for

mulching, to providing access for bird watching, trail riding, and hunting and fishing.

Recreational hunting and fishing leases have become an important source of supplemental income for many landowners in recent years, and the demand for access to private lands for recreational uses continues to grow. When these enterprises are appropriately developed and implemented, they will contribute to local community economies in many ways.

However, there are many things to consider before implementing a hunting lease.

Not all private landowners will want to open their lands for such access and use, but for those who feel they would like to explore such

enterprises, some tradeoffs will be necessary. Landowners must consider and manage such enterprises as an integral part of their total operations. They must also keep in mind the long-term sustainability of their natural resource base on which the total operation depends.

The information in this publication helps you as a landowner make informed decisions about one potential alternative natural resource-based enterprise – hunting leases. Much of the information in this publication comes from a number of sources, including scientific papers presented at various conferences, and from personal experience working with private landowners and recreational users over the past 35 years.

This publication does not provide all-inclusive, definitive information on hunting leases for any individual. Natural resource produc-

tivity and sustainability capabilities in different areas are not necessarily the same. Each geographic site capability is different. Each landowner's objectives and management skills are different. Figures in this publication for fees charged per acre and minimum amounts of acreage suggested for specific kinds of hunting operations may not be appropriate for every operation. Some of the figures provided are "rule of thumb" or "ballpark" estimates for consideration based on regional or statewide surveys and informal discussions with enterprise operators. Liability insurance sources provided are simply sources known, and it is very likely there are many other providers. Sample lease agreements and sample hunting club bylaws are simply templates that you, a manager, or a hunting club group may find useful to customize for individual and operation needs.

TYPES OF HUNTING LEASES

A hunting lease is an agreement between you as the landowner (lessor) and hunters (lessees) that grants the hunter access rights for hunting game animals (and other specified activities) on your property for a specified time period. Hunters usually pay you an agreed-upon dollar amount per acre or per hunter. However, in some leases you may agree to a smaller combination of dollars per acre or per hunter with a written agreement that the hunter or hunters perform some service in exchange for the privilege of hunting access. There are numerous kinds of leases and agreements based on the agreed-upon collaboration (usually in writing) between the lessor and lessee. Following are some common types of hunting leases:

■ Long-Term

- ✓ Seasonal lease – all species of game legal to hunt
- ✓ Seasonal lease – specified animal or animals
- ✓ Annual or multi-year lease – all species
- ✓ Annual or multi-year lease – specified game animal or animals.

■ Short-Term

- ✓ Daily hunting, often by permits
- ✓ Weekly hunts
- ✓ Multi-day (three to five) day hunts
- ✓ Special Season Hunts – such as bow, muzzle-loader, or rifle only.

The most common types of hunting leases are the long-term annual and long-term seasonal. Under this type of leasing system, you generally provide individual hunters or groups of hunters the privilege of access to your land for hunting for a season, a full year, or for several consecutive years.

This type of leasing usually allows the hunter or hunters the privilege of hunting legal game species during specified open seasons, with fees assessed on a cost per-acre or lump sum basis. These leases let you specify which game species can be hunted, and you can reserve hunting rights for yourself, your guests, and immediate family. In fact, depending on the interests of the lessee and your willingness, these leases can be customized to the satisfaction of both you and the lessee, as well as the agreed-upon price paid for the privilege of leasing.

For many landowners, such long-term seasonal or annual leases for a set price per acre or lump sum seem to be the easiest to negotiate and require the least oversight. If you are satisfied with this type of arrangement, the lease fee is satisfactory, and the lessee(s) has demonstrated appropriate and responsible care of the land and resources, you can continue such annual leases on a multi-year arrangement.

Long-term leases have advantages and disadvantages. The advantages are that such leases generally result in better landowner-sportsmen relationships, because you get to know the lessee(s) personally, helping to build trust over time, and the sportsmen get to understand what your objectives are, and they become interested in helping manage the properties to meet these objectives. The longer time that lessee(s) lease a property, the better they come to know it, and the more likely they will become interested in working with you to improve habitat management for wildlife. The more provincial interest they develop in the property, the more they will help to prevent trespass and poaching. If you are satisfied with the long-term arrangement, you can project anticipated income.

The disadvantage is that sometimes such long-term lease arrangements make it difficult to increase lease fees when you need to, and some lessee(s) take such an interest that they begin to think of the property as theirs and forget to honor your rights. However, both sportsmen and landowners are more often willing to make time, labor, and financial investments in leased property when they know they have a secure arrangement for more than one year or season. Such long-term lease arrangements can be for specific game species only or offer hunting for all legal game species to the lessee(s). It can include such other activities as scouting before hunting seasons, camping, and fishing if available.

If you are active in the day-to-day management of the property, you may also choose to lease access rights for hunting one particular species to one hunter or group of hunters and to yet another hunter or group of hunters for hunting another species. An example would be deer hunting to one group and spring turkey hunting to another, or dove hunting to one group and waterfowl hunting to another. Obviously this works best when seasons do not overlap, and it generally requires intensive involvement by you or someone you assign such management responsibilities to. These leases usually return the most annual income but clearly also require the most intensive involvement of you or a

manager. They also require more labor, time, and habitat management investments, such as providing dove fields, food plots, waterfowl blinds, and other requirements.

Short-term leases can be on a daily permit basis, such as for dove hunting; a per weekend basis for deer or waterfowl hunting; a weekly basis during a special season, such as bow hunting or muzzle-loader hunting; or for a one-season, special management type of hunt, such as a late-season doe hunt only. Some of these hunts can be packaged to include guides, lodging if available (on the lease property or at a local motel), and meals. Clearly this type of leasing arrangement requires intensive management and marketing for greatest success, but it can yield a higher rate of return and does not obligate the entire property for an entire hunting season or year. In other words, you can provide access to limited portions of the land for shorter periods of time and can limit the hunting to the species desired.

Hunting leases can be developed by sportsmen contacting you directly about the potential of leasing your land for hunting rights access. Or a broker may make such arrangements. However, more and more landowners interested in leasing their land for hunting access are finding that newspaper and magazine ads or a web site will often locate willing hunters or groups of hunters interested in leasing tracts of land for hunting privileges. There can be some advantage for some owners, particularly non-resident landowners, in having a broker take care of the advertising and locating and dealing with responsible lessee(s) and with neighboring landowners. Another advantage is the broker can help ensure the lessee(s) honor their lease and pay on time. However, such brokers will come at a cost.

Before beginning a hunting lease program, you need to consider a number of things and be prepared to spend some time, labor, and resources to determine the value of your resources, how to manage and sustain them as renewable natural resources, what your long-term objectives are, and if such a leasing program is compatible with your other land management objectives. You also should recognize the advantages and disadvantages of leasing your land for hunting, such as these:

■ *Advantages*

- ✓ Can be a dependable source of additional annual income

- ✓ Can provide in-kind labor assistance from lessee(s)
- ✓ Can help reduce trespass problems
- ✓ Can help you gain better control of who is using the land for what purposes
- ✓ Can complement other land management operations
- ✓ Can improve other recreational opportunities
- ✓ Can benefit local community economy
- ✓ Can help you better manage wildlife habitat and populations

■ Disadvantages

- ✓ Increased liability concerns and costs
- ✓ Will require increased landowner or manager involvement of dealing with lessee(s)
- ✓ Could mean some tradeoffs in other operations
- ✓ Could present conflicts with neighbors
- ✓ Likely to require some investment in habitat and access management
- ✓ Will require record keeping, evaluation, and business management

HUNTING LEASE AGREEMENTS

Without question, most hunting leases should be undertaken only with a written agreement. Such an agreement serves as a contract that protects the agreed-upon rights of both you (lessor) and the sportsman (lessee). The significance of a well-considered written lease agreement cannot be over emphasized, since it is the foundation for a successful hunting lease program. Effective hunting lease agreements protect your interests yet allow enough flexibility to permit enjoyment of the access rights provided to the sportsmen or lessee(s). Such leases can be developed from “boiler-plate” examples but can be customized to protect you against later conflicts. A lease must be well thought out before being finalized and agreed to by you and lessee(s). Most of the potential conflicts between you and lessee(s) can be prevented, and a good working relationship can be maintained by having a mutually agreed-upon written lease. Some “boiler-plate” examples of written hunting leases are provided in the back of this publication for examination and modification

to meet individual needs. Your needs and desires are paramount but must be tempered by recognizing the needs and desires of the lessees and what they are willing to pay for.

■ Considerations when Developing A Lease Agreement

- ✓ **References** – If you are not familiar with sportsmen or groups who desire to lease your property, you should not hesitate to ask for references. You may get references from other landowners who leased to the lessee(s) previously or from Conservation officers or community leaders who know the person(s).
- ✓ **Proof of liability insurance** – As part of the lease agreement you can require the lessee(s) to pay for liability insurance (with your name listed on the policy) and provide proof of coverage by keeping a copy of the insurance policy with proof of purchase. Requirements for liability insurance can be written into the lease agreement. Be sure such policies cannot be canceled during the lease time. This precaution transfers a large portion of the liability to the lessee(s). Otherwise you are responsible for the costs of appropriate liability insurance coverage to ensure your protection.
- ✓ **Establish and maintain open communication** – An open channel of communication from the beginning prevents potential misunderstanding between you and sportsmen. For hunting clubs or organized groups of lessees, try to arrange a time before the hunting season to meet with the group and get to know them.
- ✓ **Organized groups/hunting clubs** – Hunting clubs should be well organized and governed by self-regulating bylaws and have a contact person designated. A sample of hunting club bylaws is provided in the back of this publication. You should receive a copy of adopted bylaws.
- ✓ **Lease to local sportsmen when possible** – Local sportsmen, if willing to pay, can often help look after property. Having such local participation often avoids the local resentment of the “outsider” image.
- ✓ **Annual meetings** – You should meet with sportsmen groups or hunting clubs who lease your land at least once each year before the hunting season to discuss land use changes,

modifications that may be needed to the lease agreement, or your need for some help improving habitat or hunting opportunities.

- ✓ **Limit hunters and guests** – For the benefits of safety, enjoyment, and protection of the resource, the number of hunters must be restricted. For example, too many hunters using the property at any one time during the season may compromise the safety, enjoyment, and sustainability of the resources. Here are some rules of thumb for consideration with exceptions for different kinds of habitat and hunting: for deer hunting, one hunter per 100 acres; for waterfowl hunting, one hunting party per 100 acres of wetlands or waterfowl habitat; and for turkey, one hunter per 200 acres.
- ✓ **Written rules** – Consider drafting written rules aimed at preventing potential accidents and protecting property, especially if there are known hazards, such as old wells, sinkholes, and other risks to personal safety on the property. Make sure all lessees are aware of these written rules, and have them sign a statement that they have read and understand these rules.
- ✓ **Incorporation** – Hunting clubs representatives (officers) cannot legally represent the entire club when signing a lease agreement unless the club or group is incorporated. If the club or group is not incorporated, each member of the club/group must sign and date the written lease agreement.
- ✓ **Liability risk reduction** – In addition to requiring the club/group to purchase an insurance policy to cover liability, you should practice a risk reduction program that reduces all known hazards on the property. Keep records of such efforts to reduce or eliminate known and potential risks to lessees. You should keep accurate records in case of a libel suit. Identify hazards you cannot reduce or eliminate, and explain them to lessees with a map and written description.

Here are other considerations: If ATVs are to be used on property, require additional rider insurance from lessees. Avoid single-strand cable gates, or have them clearly marked and flagged. If portable tree stands are to be used, make sure lessees' liability insurance covers such use, or require permanent stands to be used. In accord with state law, require sportsmen to pass an approved hunter safety program and show a certificate of completion. (Anyone born after January 1, 1972 is legally required to complete a hunter education course before purchasing a Mississippi hunting license. Also, anyone 12 years of age but under 16 years of age must have a certificate showing completion of a hunter education course approved by the Department of Wildlife, Fisheries, and Parks before hunting in Mississippi.)

- ✓ **Attorney lease review** – Have an attorney review the written lease before it is agreed to and signed by either party. This helps protect both parties and clarifies that the agreement is legal and binding.
- ✓ **Up-front payment** – The agreed-upon lease payment should be made before the hunting season begins, preferably before the date of the lease period. This ensures that payment is made before the hunt begins, and it allows the owner the potential of investing the funds and earning interest.
- ✓ **Permanent structure policy** – You may or may not want the lessee to put up permanent structures, such as buildings, sheds, or cabins. If you do permit any of these, you should decide what types of structures to allow and what should happen to these structures if and when the lease is terminated.
- ✓ **Vehicle restriction** – You may want to restrict what type of vehicles may be used on identified roads and trails and/or restrict the use of particular types of vehicles to certain roads on the property.
- ✓ **Notification of presence** – You may require hunters to check in and out via a check station or notify you in advance by phone or in writing when hunting or otherwise accessing the property.
- ✓ **Arbitration** – Disputes can arise, regardless of how well the lease agreement is written. Some leases specify using arbiters who were agreed upon in advance by both parties. The arbiter should be a neutral party, such as an attorney, conservation officer, or other mutually agreed-upon individual.
- ✓ **Game law violations** – In case game laws are violated, unintentionally or intentionally, the club/group bylaws need to ensure the violation is reported to both the local conservation officer and to the landowner.

- ✓ **Automatic lease renewal** – If you are pleased with the lessee(s), you may want to provide for an automatic lease renewal agreement consideration. This can be put into effect barring conflicts or need for some change in the agreement, if agreed upon 90 days before the lease terminates. This may be an advantage for both parties if things are going well.

Suggested Items To Include In a Written Hunting Lease

- ✓ Your name, address, and phone number and the same information for the sportsmen, group, or club (lessees).
- ✓ The purpose of the hunting lease, describing the species of game allowed to be hunted as well as other activities allowed on the property, such as camping, fishing, scouting, permanent structure placement, and disposal.
- ✓ A description of the property with the location of the tract, boundaries, and areas off limits to hunting access. You should also provide a map with the property description. It is wise to conduct a tour of the property or tract to be leased with lessees to point out clearly marked property boundaries as well as any known restricted-use areas or hazards. In the description it is helpful to point out the present condition of the property, such as 20-year-old pine plantation, row crop areas, pasture, restricted areas, and reasons for restrictions.
- ✓ The duration of the lease, describing the beginning and ending dates of the lease, whether seasonal or annual, or longer term.
- ✓ The method of lease payment, stating how much the lessee(s) must pay and a date when payment must be received. Penalties for late payment can be described but must be well in advance of the beginning of the hunting season.
- ✓ Damage provisions and a deposit (if you think this is needed) to cover the costs of damage or loss of your property, livestock, or other resources if not repaired or compensated. Such damage provisions should specify that the lessee(s) are responsible for any damages or losses they or their guests (if allowed) cause to the property or to your assets. You should return damage deposits to the lessee(s) if damage is cor-

rected or does not occur during the effective lease period.

- ✓ A termination of a lease clause with provisions to cancel a lease agreement if either party fails to abide by the terms of the written lease agreement, such as a lessee's violating state or federal game regulations. It must also ensure your or your heirs' rights to cancel a lease if you sell the property or if you die within the effective lease period.
- ✓ A subleasing clause that specifies whether the lessee(s) can sublease or assign leasing rights to a third party. You should avoid the idea of subleasing your property to third party access by the original lessee(s).
- ✓ The lessee's responsibilities should be clearly defined within the agreement to include these items: closing gates and repairing broken fences; obeying all state and federal game regulations; helping put out wildfires; evicting trespassers or at least immediately contacting the owner or local law enforcement personnel; adhering to the management plan regarding game harvest recommendations; keeping good game harvest records; appropriate posting of the property; restrictions on the use of alcohol; and off road vehicles as you determine.
- ✓ Your (lessor) responsibilities should be clearly defined within the lease to include duties (as you agree to provide) such as maintaining roads, planting food plots or preparing fields for dove hunting, and providing facilities for lodging or for cleaning and storing harvested game. Obviously these duties and amenities have a cost, and you will have to consider them in the cost of the lease.
- ✓ Your rights as the landowner must be clearly stated in the lease, such as the right to continue to manage the land to meet your identified objectives, the right to allow family members defined hunting privileges, and the right to request removal of a club or group member who violates property or approved behavior codes.
- ✓ You can add indemnity clauses or "hold harmless" disclaimers to the lease agreement. These may protect you from liability if someone is injured on your land. You can use them as proof that an injured lessee assumed the risks of doing a particular activity like climbing a tree or

crossing a fence. They do not, however, relieve you of liability associated with demonstrated negligence.

- ✓ The number of members allowed in lessee club/group.
- ✓ The number of guests, if allowed, and the number of total lessee(s) and invited guests that may be on the property to hunt at any specific time.

■ Determining Hunting Lease Price Structure

If you have no experience leasing land for hunting access, one of the most difficult decisions is determining a fair market price that is competitive yet gives you a reasonable return for the lease and any services or amenities provided. The following are known methods but are by no means the only methods:

- ✓ **Break even plus 10 percent** – The lease price is based on management and costs associated with the lease operation plus 10 percent to cover unforeseen costs and the need for the lease to cover operational costs and land taxes.
- ✓ **Habitat valuation** – The lease price is determined from a subjective rating of the quality and quantity of wildlife habitat available. For example, if the wildlife habitat and populations have been managed to provide high populations of wildlife and better than average hunting opportunities, the value of the lease may be higher, or if the lessee(s) want to limit or keep out other hunters that the property could reasonably sustain, they may have to pay a premium price for that.
- ✓ **Baseline plus value-added** – You charge a base price per acre plus charges on improvements made, amenities, or services provided.
- ✓ **Competitive pricing** – You base the lease price on the going rate of other leases in the area or lease prices charged elsewhere for similar access, services, and amenities provided.
- ✓ **Sealed bid** – This is similar to timber sales in that you develop a description of the hunting lease and what it offers, and you request sealed bids. You can do this via advertising or by contacting individuals or sportsmen groups who may have an interest.

HOW TO FIND A RESPONSIBLE LESSEE

It may be difficult to identify and locate responsible hunters who will take an interest in the land and resources being leased and who will respect the property and abide by terms and conditions in a written lease. It will pay dividends in the long-term, however. Without appropriate screening of lessee(s), you may find yourself with an unmanageable group who have no regard for your rights or maintaining the property and the sustainability of the habitat and wildlife. Many problems could arise, such as trash dumping, wildfires, road and tree damage, illegal hunting, damage to facilities and livestock, and over harvest of the game resource. For the most part, you can avoid these problems by using these practices:

- ✓ leasing to known sportsmen with some local members
- ✓ developing and using a well-constructed written lease that protects your interests and that every member, if the club or group is not incorporated, must sign, or if incorporated, that the representative makes sure every member has read and understands.

Remember that after you locate interested lessee(s) ask them to provide a list of references, and use this list to ensure they have not had problems in the past leasing lands from other landowners and are known to be responsible and ethical sportsmen. If the lessee(s) pass this background check, conduct a personal interview with the lessee(s) or their representative, if the group is incorporated. Develop a list of questions in advance that you want to have answered, and don't be afraid to ask tough questions. Then use all the information to make an informed decision about leasing to the lessee(s) and if you think they are willing to accept and abide by the terms of the written lease agreement.

■ Trespass

Mississippi law forbids all persons to enter private lands without permission from the landowner. Hunting, fishing, or trapping on land without permission of the landowner is a misdemeanor punishable by a fine and possible imprisonment. The trespass law is enforceable by conservation officers and county sheriffs.

SUMMARY

Recreational access leases have become an important source of alternative income for many forest and agricultural landowners in the South as well as in other parts of the United States. Most forest industry landowners and managers now consider income from recreational access leases as a vital part of their resource and financial decision-making process.

If you as a private landowner consider such leases as an alternative enterprise to supplement your income, you should understand the advantages and disadvantages of the leases. You also must consider and remember you are not selling wildlife, which is publicly owned. You are selling the opportunity and privileges that go with access to your land for the purposes specified in the written lease agreement. Having some idea of the habitat quality and status of wildlife populations on your land will be important in making decisions. The sustainability of

your renewable resources is the key to long-term income potential as well as sustainability of the operation. Recreational access/hunting leases can become an enjoyable and rewarding experience for you (lessor) and sportsmen (lessees) with advance planning, preparation, management, and communication.

As far as the economic potential of hunting leases, the range of returns varies considerably based on the type of lease. One example would be high quality waterfowl blinds leases that bring the highest annual returns per acre of access, versus leases for small game hunting that may be as low as 50¢ per acre, to high quality big game leases that may go for as much as \$25.00 per acre or more in some areas. A recent study of fee hunting in Mississippi reported that for the 1997-98 season, annual net revenues averaged \$3.91 per acre statewide by landowners leasing their lands for hunting.



SAMPLE HUNTING LEASE AGREEMENT

This hunting lease agreement is for educational purposes only. It is important to check with your attorney before writing and signing a binding legal agreement. You may want this lease to be more detailed or include more requirements, or you may want it to be less detailed. If you want to provide other services or rights, such as guides, cleaning game, or allowing the lessee to improve the habitat, you should include those provisions.

STATE OF:

COUNTY OF:

TRACT:

This Lease Agreement (the "Lease") entered into as of the day of _____, by and between _____ hereinafter referred to as Lessor, and _____ a/an (state whether an individual, a partnership, corporation, or unincorporated association) hereinafter referred to as Lessee.

The Lessor agrees to lease the Hunting Rights, as defined below, on _____ acres more or less, to Lessee for _____ (\$ _____/Acre), for a term commencing on _____, (the "Commencement Date") and ending on _____ (the "Expiration Date") on the following described property (the "Land").

See Attached Description

The Hunting Rights shall consist of the exclusive right and privilege of propagating, protecting, hunting, shooting and taking game and waterfowl on the Land together with the right of Lessee to enter upon, across and over the Land for such purposes and none other.

This Hunting Lease Agreement shall be subject to the following terms and conditions:

PAYMENT

1. The Lessee shall pay to the Lessor _____, the amount of one (1) year's Rent in full, on or before _____ by check payable to Lessor.

COMPLIANCE WITH LAW

2. Lessee agrees for itself, its licensees and invitees to comply with all laws and regulations of the United States and of the State and Local Governments wherein the Land lies relating to the game or which are otherwise applicable to Lessee's use of the Land. Any violation of this paragraph shall give Lessor the right to immediately cancel this Lease.

POSTING

3. Lessee shall have the right to post the Land for hunting to prevent trespassing by any parties other than Lessor, its Agents, Contractors, Employees, Licensees, Invitees, or Assigns provided that Lessee has obtained the Lessor's prior written approval of every sign designed to be so used. Every such sign shall bear only the name of the Lessee. Lessor reserves the right to prosecute any trespass regarding said Land but has no obligation to do so.

LESSOR'S USE OF ITS PREMISE

4. Lessor reserves the right in itself, its Agents, Contractors, Employees, Licensees, Assigns, Invitees, or Designees to enter upon any or all of the Land at any time for any purpose of cruising, marking, cutting or removing trees and timber or conducting any other acts relating thereto and no such use by Lessor shall constitute a violation of this Lease. This right reserved by Lessor shall be deemed to include any clearing, site preparation, controlled burning and planting or other forestry work or silvicultural practices reasonably necessary to produce trees and timber on the Land. Lessee shall not interfere with Lessor's rights as set forth herein.

GATES/BARRIERS

5. Lessor grants to Lessee the right to install gates or other barriers (properly marked for safety) subject to the written permission of Lessor and the terms and conditions relating thereto as set forth elsewhere in the Lease, on private roads on the Land, and Lessee agrees to provide Lessor with keys to all locks prior to installation and at all times requested by Lessor during the term of this Lease.

ROAD OR FENCE DAMAGE

6. Lessee agrees to maintain and surrender at the termination of this Lease all private roads on the Lands in at least as good a condition as they were in on the date first above-referenced. Lessee agrees to repair any fences or other structures damaged by itself, its licensees or invitees.

ASSIGNMENT

7. Lessee may not assign this Lease or sublease the hunting rights the subject of this Lease without prior written permission of Lessor. Any assignment or sublease in violation of this provision will void this Lease and subject Lessee to damages.

FIRE PREVENTION

8. Lessee shall not set, cause or allow any fire to be or remain on the Land. Lessee covenants and agrees to use every precaution to protect the timber, trees, land, and forest products on the Land from fire or other damage, and to that end, Lessee will make every effort to put out any fire that may occur on the Land. In the event that any fire shall be started or allowed to escape onto or burn upon the Land by Lessee or anyone who derives his/her/its right to be on the Land from Lessee, Lessor shall have the right immediately to cancel this Lease without notice, and any payments heretofore paid shall be retained by Lessor as a deposit against actual damages, refundable to the extent such damages as finally determined by Lessor are less than said deposit. In addition, Lessor shall be entitled to recover from Lessee any damages which Lessor sustains as the result of such fire. Lessee shall immediately notify the appropriate state agency and Lessor of any fire that Lessee becomes aware of on Lessor's lands or within the vicinity thereof.

INDEMINIFICATION AND INSURANCE

9. Lessee shall indemnify, defend and hold harmless Lessor, its directors, officers, employees and agents from any and all loss, damage, personal injury (including death at any time arising therefrom) and other claims arising directly or indirectly from or out of any occurrence in, or upon, or at the said Lands or any part thereof relating to the use of said Land by Lessee, Lessee's invitees or any other person operating by, for or under Lessee pursuant to this Lease. Lessee further agrees to secure and maintain a \$1,000,000 public liability insurance policy in connection with the use of the Land with Lessor named as

insured and with such insurance companies as shall be agreeable to Lessor. This indemnity shall survive the termination, cancellation or expiration of this Lease.

RULES AND REGULATIONS

10. Lessor's rules and regulations attached hereto as Exhibit "A" are incorporated herein by reference and made an integral part hereof. Lessee agrees that any violation of said rules and regulations is a material breach of this Lease and shall entitle Lessor to cancel this Lease as its option effective upon notice by Lessor to Lessee of such cancellation.

Lessor reserves the right from time to time, to amend, supplement or terminate any such rules and regulations applicable to this Lease. In the event of any such amendment, supplement, or termination, Lessor shall give Lessee reasonable written notice before any such rules and regulations shall become effective.

MATERIAL TO BE SUBMITTED TO LESSOR

11. If this Lease is executed by or on behalf of a hunting club, Lessee shall provide Lessor, prior to the execution hereof, a membership list including all directors, officers, and/or shareholders, their names and addresses and a copy of Lessee's Charter, Partnership Agreement and By-Laws, if any. During the term of this Lease, Lessee shall notify Lessor of any material change in the information previously provided by Lessee to Lessor under this paragraph 11.

LESSEE'S LIABILITY RE: TREES, TIMBER, ETC.

12. Lessee covenants and agrees to assume responsibility and to pay for any trees, timber or other forest products that may be cut, damaged, or removed from the Land by Lessee or in connection with Lessee's use of the Land or any damages caused thereupon.

NO WARRANTY

13. This Lease is made and accepted without any representations or warranties of any kind on the part of the Lessor as to the title to the Land or its suitability for any purposes; and expressly subject to any and all existing easements, mortgages, reservations, liens, rights-of-way, contracts, leases (whether grazing, farming, oil, gas or minerals) or other encumbrances or on the ground affecting Land or to any such property rights that may hereafter be granted from time to time by Lessor.

LESSEE'S RESPONSIBILITY

14. Lessee assumes responsibility for the condition of the Land and Lessor shall not be liable or responsible for any damages or injuries caused by any vices or defects therein to the Lessee or to any occupant or to anyone in or on the Land who derives his or their right to be thereon from the Lessee.

USE OF ROADS

15. Lessee shall have the right to use any connecting road(s) of Lessor solely for ingress, egress, or regress to the Land; such use, however, shall be at Lessee's own risks and Lessor shall not be liable for any latent or patent defects in any such road nor will it be liable for any damages or injuries sustained by Lessee arising out of or resulting from the use of any of said Lessor's roads. Lessee acknowledges its obligation of maintenance and repair for connecting roads in accord with its obligation of maintenance and repair under paragraph 6.

SURRENDER AT END OF TERM

16. Lessee agrees to surrender the Land at the end of the term of this Lease according to the terms hereof. There shall be no renewal of this Lease by implication or by holding over.

MERGER CLAUSE

17. This Lease contains the entire understanding and agreement between the parties, all prior agreements between the parties, whether written or oral, being merged herein and to be of no further force and effect. This Lease may not be changed, amended or modified except by a writing properly executed by both parties hereto.

CANCELLATION

18. Anything in this Lease to the contrary notwithstanding, it is expressly understood and agreed that Lessor and Lessee each reserve the right to cancel this Lease, with or without cause, at any time during the Term hereof after first giving the other party thirty (30) days prior written notice thereof. In the event of cancellation by Lessee, all rentals theretofore paid and unearned shall be retained by the Lessor as compensation for Lessor's overhead expenses in making the Land available for lease, and shall not be refunded to Lessee.

APPLICABLE LAW

19. This Lease shall be construed under the laws of the State first noted above.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be properly executed as of the day and year first above written.

WITNESSES:

SAMPLE HUNTING LEASE AGREEMENT

This hunting lease agreement is for educational purposes only. It is important to check with your attorney before writing and signing a binding legal agreement. You may want more details or fewer details than this lease includes. If you want to provide other services or rights, such as guides, cleaning game, or allowing the lessee to improve the habitat, they should be included.

_____, owner of _____ farm, (legal description of the land), County, (state), herein referred to as "Landowner," for good and sufficient consideration, as hereinafter set forth, leases hunting rights on those portions of the _____ farm, hereinafter described, to _____ and others so executing this agreement and hereinafter referred to as "Lessees," on the following terms and conditions:

1. The tract of land, hereinafter referred to as "lease" upon which hunting rights are granted, is the _____ farm described herein consisting of approximately _____ acres.

(description of land with aerial photograph if available)

Lessees understand the location and boundaries of said tract and agree that no hunting rights are granted hereunder on any tract other than the tract herein designated and that no hunting or discharging of firearms shall be done by Lessees while traveling to or from the lease.

2. This agreement and the rights and duties granted and incurred hereunder shall be for a term commencing with the opening of _____ season in 20____, and the closing of _____ season in 20____, as set for _____ County, (state), under regulations enforced by the (state wildlife agency) unless terminated pursuant to provisions of this agreement hereinafter set forth. Provided that either the Landowner or Lessee may cancel this agreement by giving written notice of its intent to do so thirty (30) days prior to the date that rental for the second or third year of the term here provided is due. In which event, Lessee shall be relieved of the obligation to pay further rental under the terms and shall deliver possession of the premises.
3. The consideration to be paid by Lessee to Landowner at _____ County, (state), is \$_____ in cash, one-half to be paid on or before June 1, 20____, and the balance to be paid on or before October 1, 20____. Failure to pay the second installment shall thereupon terminate and cancel the lease and the amount already paid shall be forfeited as liquidated damage for the breach of the agreement. A \$_____ deposit will be required to insure that lease premises are left in a clean and orderly condition. Farm personnel will inspect the premises within 30 days after the lease expires. If cleanup is necessary, the farm will accomplish such, and the \$_____ deposit will be forfeited by the Lessees. If the premises are determined by farm personnel to be clean and orderly, the \$_____ deposit will be returned to the Lessees within 60 days after expiration of the lease.
4. Lessees shall not assign this lease or sublet the leased premises without the written consent of _____.

5. Lessees shall at all times abide by and obey all state and federal hunting laws and regulations and Lessee shall be responsible for the conduct of Lessee's guests or members in connection with said hunting laws and shall be responsible for any violation of said hunting laws or regulations by said Lessee, its guests, or members. Any violation of the hunting laws or regulations of any governmental authority shall give rise to the right of immediate cancellation of this lease by the Landowner upon written notice to Lessees, and in the event of the cancellation of said lease due to violation of game laws by Lessees, its guests or members, no prorata of the rent previously paid shall be made, same to be forfeited as liquidated damages, and Lessees shall, upon receipt of such notice, immediately vacate and surrender unto the Landowner possession of the leased premises.

Lessees shall, during the period in which it has access to the leased premises, continually protect same against trespassers and squatters, and to the best of Lessee's ability have such persons apprehended and prosecuted.

6. This lease agreement is expressly made subject to the "General Conditions of the Lease," which are attached hereto as Exhibit "A," and made a part hereof for all purposes the same as if copied herein verbatim.
7. If Lessees default in the performance of any of the covenants or conditions hereof, including the "General Conditions of Lease," which are attached hereto as Exhibit "A," then such breach shall cause an immediate termination of this lease and a forfeiture to Landowner of all consideration prepaid. The Lessee shall have no further rights under the term of this lease agreement. In the event a lawsuit arises out of or in connection with this lease agreement and the rights of the parties thereof, the prevailing party may recover not only actual damages and costs but also reasonable attorneys' fees expended in the matter.
8. Landowner shall not be liable for any injuries, deaths, or property damage sustained by (1) any Lessees hereto, (2) any employees of Lessees, (3) any business invitees of Lessees, (4) any guest of Lessees, (5) any person who comes to the leased premises with the express or implied permission of Lessees on the _____ farm with permission of the Lessee hereunder except for such injury, death, or property damage as may be sustained directly as a result of Landowner's sole negligence. Lessee hereunder jointly and severally agrees to indemnify Landowner, his agents or employees against any claim asserted against Landowner or any of Landowner's agents or employees as a result of personal injury, death or property damage arising through: (1) the negligence of a Lessee or any persons on the farm with the permission of a Lessee, or (2) through the concurrent negligence of a Landowner or his agents or employees any one or more of Lessees or any person on the _____ farm with the permission of the Lessee.

All minors permitted by Lessee to hunt, fish, or swim on the leased premises shall be under the direct supervision of one of their parents (or guardian) and when children are present on the leased premises, the parents shall be fully responsible for their acts and safety and agree to hold Landowner harmless therefor, regardless of the nature of the cause of damage, whether property or personal injury, to themselves or others.

9. The leased premises are taken by Lessee in an "as is" condition, and no representation of any kind is made by _____ regarding the suitability of such premises for the purpose for which they have been leased.

10. This lease may not be terminated or repudiated by Lessee except by written notice signed and acknowledged in duplicate before a Notary Public by Lessee, and such termination or repudiation shall not be effective until Lessee has mailed one executed copy thereof to Landowner by registered mail and filed the other executed copy thereof for record in the Office of the County Clerk, _____ County, (state). This lease shall be binding upon the distributees, heirs, next of kin, successors, executors, administrators, and personal representatives of each of the undersigned. In signing the foregoing lease, each of the undersigned hereby acknowledges and represents:
 - (a) That he has read the foregoing lease, understands it, and signs it voluntarily; and
 - (b) That he is over 21 years of age and of sound mind;

In witness whereof, the parties have set their hands this _____ day of _____, 20____.

LESSEES:

DATE:

LANDOWNER:

DATE:

WITNESS:

DATE:

STATE OF _____

COUNTY OF _____

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, 20____, by _____ and _____.

My commission expires: _____

Notary Public

NATURAL RESOURCE ENTERPRISES

EXHIBIT "A," GENERAL CONDITIONS OF LEASE (EXAMPLES OF OPTIONAL CLAUSES)

LANDOWNER, LEASE TO _____ LESSEE

These general conditions of lease are applicable to the lease agreement between _____, hereinafter referred to as LANDOWNER, and _____, LESSEE. Lessee and all persons authorized to Lessee to hunt upon the leased premises shall be hereinafter collectively referred to as "Hunters."

1. It will be the responsibility of the Lessee to furnish each hunter or guest with a copy of these general conditions of lease.
2. Lessees understand and agree that the leased premises are not leased for agricultural or grazing purposes and, consequently, taken subject to the rights thereof.
3. Lessee acknowledges that Landowner owns the property herein leased, primarily for agricultural purposes and the growing of timber. Lessee shall in no manner interfere or obstruct Landowner's farming, forestry, or livestock operations.
4. Landowner reserves the right to deny access to the leased premises to any person or persons for any of the following reasons: drunkenness, carelessness with firearms, trespassing on property of adjoining landowners, acts which could reasonably be expected to strain relationships with adjoining landowners, or any other activities which to the ordinary person would be considered objectionable, offensive, or to cause embarrassment to Landowner or be detrimental to Landowner's interest. Failure of Lessee to expel or deny access to the premises to any person or persons after being notified to do so by Landowner may result in the termination of this lease at discretion of Landowner.
5. No hunter shall be allowed to:
 - (a) Shoot a firearm from a vehicle;
 - (b) Erect a deer stand within 150 yards of the boundary of the herein leased premises;
 - (c) Permanently affix a deer stand in trees;
 - (d) Abuse existing roads by use of vehicles during wet or damp conditions.
 - (e) Fire rifles or other firearms in the direction of any house, barn, other improvements or across any haul road located on the leased premises;
 - (f) Build or allow fires on the leased premises, except in those areas specifically designated by Landowner in writing, and, in event, shall be kept fully liable for such fires; and
 - (g) Leave open a gate found closed or close a gate found open.
6. Hunters shall at all times maintain a high standard of conduct acceptable to _____.

HUNTING CLUB BYLAWS

Hunting Club bylaws should contain provisions that govern the day-to-day operation of the club. The bylaws should be adapted to local conditions that affect the club, its relationship with landowners(s), and the well-being of the land and wildlife resources. You should keep the bylaws as simple, concise, and understandable as possible for the benefit of the members and yourself. Some clubs develop bylaws that are too complex and too extensive for the basic needs and are too difficult to manage or enforce adequately. Bylaws should be written to be basic to the operation of the club or group's interest and to add others as needed based on the club/group's growth, changing needs, changing wildlife regulations, or changes you need. Some examples of items that need to be considered when drafting bylaws are as follows:

- ✓ Guest privileges and/or regulations.
- ✓ Safety for members, for the landowners, and/or property.
- ✓ Land management and stewardship of the property.
- ✓ Appropriate disciplinary procedures for all members and guests, if allowed.
- ✓ Rules of the hunt for all participants.
- ✓ Strict adherence to all state and federal wildlife regulations.
- ✓ Functional/operational committees, such as camp operation and maintenance, stand or blind placement and maintenance, food and cooks for organized hunts, and such.
- ✓ Maintenance of appropriate member and landowner(s) relations.
- ✓ If management for quality deer management is a club/group objective, this needs to be made clear in the bylaws.
- ✓ Any club/group self-imposed management requirements, such as no dogs, use of trailing dogs for retrieving cripples, or for chasing deer. Also consider if other species are allowed to be hunted during regulated seasons, such as turkey, squirrels, raccoons, waterfowl and such, and doves.

Obviously hunting club/group bylaws are essential for many organized hunting operations, and if you have concerns about the legality of the bylaws and their enforcement, you may consult a lawyer. Clearly one of the most important considerations must be that all members and invited guests must understand and agree in writing to the adopted bylaws for them to be useful and effective. The items listed above for consideration are not all you need to consider. The list can be expanded based on the desires and needs of you and the membership.

LIABILITY INSURANCE FOR LANDOWNERS AND HUNTING CLUBS

Insurance is a contract where an insurer (insurance company) undertakes to protect the insured (person purchasing the insurance) against loss, damage, or liability from an unknown or possible event. The insured pays the insurer a premium for this coverage.

Liability insurance covers loss because of negligence. It does not cover loss because of an intentional act. You can greatly reduce negligence on most private lands through risk planning.

Liability insurance companies generally limit the total liability of the insurance company to a certain amount, which may be much less than the insured person may suffer. Therefore, liability insurance may not completely eliminate the loss that occurs, but it does reduce the risk of loss.

If you already have liability insurance on your property, you may be able to work with your insurer to add liability coverage for a hunting lease. Your insurer may require that the hunting club or lessees get liability insurance as part of the written lease agreement. You may want to prepare or have an attorney prepare a hunting club disclaimer that all hunting club members or lessees must sign that points out potential risks on the land. Some of these might be an abandoned well, livestock that may need to be avoided, and such. Disclaimers may not be legal, but they do serve to warn lessees of potential risks and may prevent a liability suit if the lessees ignore the identified risks they signed a waiver for.

Many insurance companies offer liability for hunting clubs or for landowners who lease their land for hunting or other recreational access. **The following list by no means includes all sources of information, but it does provide some sources of information about liability insurance, coverage, costs, and comparisons.** Another source you should not overlook is a rider to existing policies to cover recreational access including hunting.

If someone pays for access to your land to hunt or fish or other recreational use, you owe that person certain duties of care, such as posting warnings as to dangerous conditions on the property, including potentially dangerous animals, abandoned wells, old buildings, and other structures. You may be liable for injuries to a hunter caused by another hunter if not you are not covered by insurance. For example, liability may be based on your negligence if you allow too many hunters in a given area, or if you admit an intoxicated hunter who injures another hunter.

■ *Some Known Sources of Liability Insurance*

Southeastern Wildlife Federation's Hunting Club Liability Insurance Program

Contact – Ms. Carol Cash Turner, Insurance Agent, Southeastern Wildlife Federation, P.O. Box 1109, Montgomery, Alabama 36102. Telephone: (334) 832-9453. Premium rates are based on the number of members in the club and the limit of liability selected. SWF offers liability limits of \$300,000, \$500,000 and \$1,000,000 in either Limited or Broad form. The Limited form excludes occurrences between members and/or guests. The Broad form also has \$25,000 Fire Legal Timber coverage. Both forms include a \$25,000 Accidental Death benefit and a \$1,000 medical Expense benefit for each member. There are no hidden charges, and as many as four landowners may be listed as “Additional Insured” at no extra cost. For any landowners over four, the cost per landowner is \$10 plus tax.

Davis-Garvin-Agency

Contact – Dr. Ed Wilson, Account Executive, P.O. Box 21627, Columbia, South Carolina 29221-9961. Telephone: (800) 845-3163, or (803) 732-0060. This agency provides two types of hunting lease liability packages: (1) for an individual hunting club; or (2) for a landowner with a large acreage or groups of landowners representing large acreages. The premium for hunting clubs is determined by the number of members and

guests, with the minimum premium being \$364 for a \$1 million per occurrence liability limit. The premium for large properties or groups of landowners is determined by the acreage involved, with the minimum acreage being 10,000 acres. The rate for a \$1 million per occurrence liability limit varies from 24¢ per acre plus tax for 10,000 to 49,000 acres to 17¢ per acre plus tax for 50,000 + acres.

Bramlett Agency

1000 Energy Center, Suite 104, P.O. Box 369, Ardmore, Oklahoma 73042, (405) 223-7300. This company sells liability insurance for most types of hunting leases.

ISERA (International Special Event and Recreation Association)

Contact – Jim Quist, Underwriting Specialist, 8722 South Harrison Street, Sandy, Utah 84070. Telephone (toll free): (877) 678-7342 or (801)-304-3735. This company insures primarily shooting preserves and shooting ranges.

Worldwide Outfitters and Guide Association, Outfitters and Guides Underwriters Inc.

Contact – Jim Quist, 8722 South Harrison Street, Sandy, Utah 84070. Telephone (toll free): (877) 678-7342 or (801) 304-3735. This company insures primarily guides and outfitters for a variety of outdoor recreation activities, including hunting and fishing.

Outdoor Underwriters, Inc.

Contact – R. Tim Reed, CLU, Outdoor Recreation Insurance, P.O. Box 431, Wheeling, West Virginia 26003. Telephone: (800) 738-1300. This company is affiliated with the Philadelphia Insurance Companies and insures guides, outfitters, hunting clubs, and landowners with hunting leases for up to \$1,000,000 per occurrence.

These are just some examples. Many other insurers may offer such insurance, including your present property insurer through an additional rider. However, the above contacts provide the opportunity to contact these insurers and compare coverage and costs.

For more information, these publications are available from your county Extension office:

- P2308 – Natural Resource Enterprises – Wildlife and Recreation, A Checklist of Considerations
- P2310 – Natural Resource Enterprises – Wildlife and Recreation, Hunting Leases
- SRAC #479a – Fee Fishing: An Introduction
- SRAC #480 – Fee Fishing Ponds: Management of Food Fish and Water Quality
- SRAC #481 – Development and Management of Fishing Leases
- SRAC #482 – Fee Fishing: Location, Site Development, and Other Considerations

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NATURAL RESOURCE ENTERPRISES

**Southern
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Center**

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Fee-Fishing An Introduction

Charles E. Cichra, Michael P. Masser and Ronnie J. Gilbert*

Fishing is the number one recreational pastime in the United States. The U.S. Department of the Interior estimated that 35.6 million anglers spent \$24 billion in 1991. The increasing demand on already over-utilized public fishing waters provides an opportunity for the development and expansion of commercial fishing facilities. "Fee-fishing," the practice in which anglers pay for the right to fish or for any fish that are caught, can bridge the supply shortfall for quality fishing opportunities, especially near urban areas. Fee-fishing can provide profits for the owner, social and recreational benefits for the community, and a market for locally produced fish.

Many privately owned ponds are seldom fished and often under-harvested. These can be turned into alternative sources of revenue for the pond owners. In addition, many sites exist for new ponds that can be specifically designed, constructed and managed for fee fishing.

Fee-fishing is appealing to a variety of individuals, including ex-

perienced anglers who seek particular species, anglers who like to fish but are limited by time or resources, families with small children, the physically challenged and the elderly. Fee-fishing can be attractive to tourists or individuals that fish only occasionally, since most states do not require anglers to have a license to fish in fee-fishing ponds.



Figure 1. Fishing rights on larger ponds with quality fishing can be leased on a long-term basis.

Types of fee-fishing operations

There are three basic types of fee-fishing operations: (1) long-term leases; (2) day leases or "ticket" lakes and (3) "fish-out" ponds, "pound" lakes or "pay-by-the-pound" lakes. Long-term leasing involves the leasing of exclusive fishing rights on a long-term basis similar to hunting leases to an individual or group (Figure 1). Fishing success relies on natural production of the leased water body. Day leasing involves collecting a daily use fee from anglers, allowing access to a given water body. Both natural production and occasionally stocked fish support the angler's harvest. Fish-out ponds are stocked with high densities of catchable-size fish. The angler is then charged for each fish caught or limited as to the number that can be taken. More information can be found in SRAC Publication Numbers 480 (*Fee-fishing Ponds: Management of Food Fish and Water Quality*), 481 (*Development and Management of Fishing Leases*) and 482 (*Fee-Fishing: Location, Site Development and Other Considerations*).

*Respectively, Extension Fisheries Specialist, University of Florida; Extension Fisheries Specialist, Auburn University; and Extension Aquaculture Specialist, University of Georgia.

Long-term leasing

Long-term leasing usually involves quality fishing for large-mouth bass or panfish, such as bluegill, redear sunfish and crappie. Location and aesthetics are often the most important selling points. Many people fish to relax and escape the hustle and bustle of daily life. They want a quality fishing experience and are willing to pay for it. Unlike hunting leases, which generally require a large tract of land to support adequate game, fishing leases can be small. With proper management, each acre of water can support 300 to 400 pounds of harvestable-size sportfish, providing many hours of productive fishing.

Major steps involved in leasing the fishing rights to a pond include: (1) locating suitable lessee, (2) establishing terms of the lease and (3) executing the written lease.

Interested parties can be located through word of mouth, newspapers or magazine advertisements. The amount of effort and money expended in locating possible lessees should depend on the quality of the fishing and the location and visual attractiveness of the site. These factors will determine the value of the lease. A trophy bass fishery, located at an attractive site and close to a large metropolitan area, will bring top dollar.

The lease should spell out exactly the rights and responsibilities of each party including:

- 1) who will have access/fishing rights to the pond;
- 2) how long the lease will be in effect;
- 3) the price;
- 4) under what conditions the lease can be broken;
- 5) any fishing limits or regulations that are to be followed;
- 6) other privileges such as camping or swimming;

- 7) what management practices will be followed such as aquatic weed control, water level drawdown and stocking;
- 8) who will pay for each management option;
- 9) how much liability insurance will be required and who will pay for it; and
- 10) what privileges will be retained by the owner.

A written lease should be prepared with the advice of an attorney, certified public accountant, fisheries biologist and/or other professionals.

Major costs to the pond owner are locating a lessee and drawing up the lease. Any work requested by the lessee should be paid by the lessee. Annual returns can vary from less than \$100 to almost \$100,000. Lease prices vary primarily due to the size of the water body and quality of fishing, but also because of site location and configuration, and demand.

A long-term lease can be advantageous to the landowner. The owner only deals with a few individuals on an occasional basis, minimizing labor. In addition, the landowner will have someone on the property, which should decrease problems with trespass-

ing, theft, vandalism and fire. This option is particularly appealing for absentee landowners. One limitation to long-term leasing is that not all ponds are large enough, or have suitable fisheries, locations or aesthetics.

Day leasing

An aesthetically pleasing pond or one that offers good fishing tends to attract local anglers. Many anglers ask for the right to fish, while others trespass. Such an "attractive nuisance," often considered a liability, can be turned into a source of income. Instead of allowing free fishing, the owner can charge a nominal daily fee for fishing rights, hence the term "day leasing." Ponds of at least 1 acre, but often 5 to 10 acres, are most commonly day leased (Figure 2).

Most of these ponds are located close to a public road. Appropriate signs allow easy recognition by individuals travelling in the area. Angler harvest relies primarily on the natural production of the pond, including largemouth bass, bluegill, redear sunfish and crappie. However, channel catfish may be supplementally stocked to attract more anglers by increasing harvest.

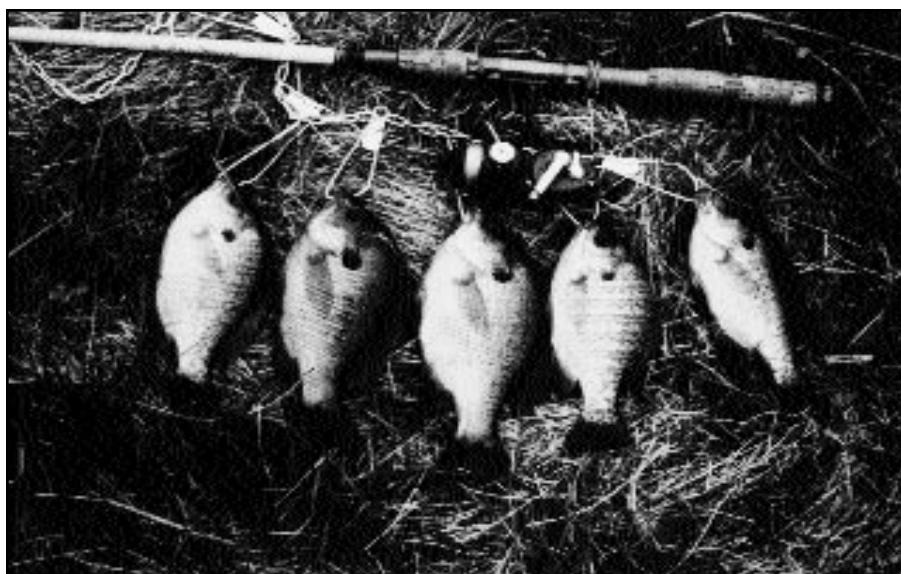


Figure 2. Natural fish production provides most of the angler harvest at day leases.

There are many methods to monitor angler access. First, pond location should be close to the manager's residence to ensure that all anglers pay. The simplest way to collect fees is to have anglers place them into a specially constructed deposit box as they enter the property. This reduces the time expended in collecting fees and works well with small numbers of trustworthy local anglers. Another way to regulate access is to lock the entrance to the pond and require anglers to check in before gaining access. This may be inconvenient if it disrupts work or family life. Posting limited hours and even seasons of the year when the pond is open to fishing will relieve some of this inconvenience. A final method of keeping track of those who have paid is to allow open access to the pond. The manager then visits the pond on an occasional basis to collect the entrance fee. A dated receipt, ticket or permit is then given to those who pay. Later, the manager visits the pond and makes sure that each angler has a current ticket, collecting entrance fees from those that don't possess a current ticket. These operations are often referred to as "ticket lakes."

Operating costs for day-lease ponds are intermediate to those of long-term leases and fish-out ponds. Major costs are collecting the daily use fee and removing garbage. An aesthetically appealing pond helps attract anglers. Advertising can be as simple as by word of mouth. However, this method will generally restrict use to local anglers, and will likely result in only a modest income. Larger numbers of anglers can be drawn to such a pond by posting attractive signs along the roadside and by advertising in local newspapers.

Cost of fish is usually minimal if the natural production and harvest of fish is in balance. Supplemental stocking can increase catch rates and angler interest in returning, with cost varying with the quantity and cost of stocked fish. Returns from stocking can far out-

weigh costs. Additional costs, associated with proper pond management, include aquatic weed control, mowing of pond banks, fertilization, liming and supplemental feeding.

Daily fees generally range from \$2 to \$7 per day for adults for bass/panfish ponds, but can go as high as \$100 per day for ponds with quality bass fishing. There is frequently a limit on the number of fish that can be kept. Children are often admitted free or at half price. Senior citizens are sometimes given discounted fees.

One advantage of day leasing over long-term leasing is the lack of a long-term commitment, allowing the owner to be more flexible in the use of the pond. The day lease relies on natural fish production and requires minimal input of time and money; a distinct advantage over a fish-out operation. A day lease operator could also simply charge for access with no management. A disadvantage of day leasing is that it requires more of the pond owner's time than is required in long-term leasing. Time must be spent collecting litter and fees.

Fish-out ponds

Fish-out ponds, also known as "pound lakes" or "pay-by-the-pound ponds" involve the highest level of management, the highest costs, and potentially the highest returns. Fish-out ponds are marketed as opposed to production operations. Fish-out ponds are especially appealing to families with children (Figure 3) and novice anglers, because of the increased probability of catching fish. They can be excellent places to learn to fish and also to purchase guaranteed fresh fish.

Catchable-size fish are stocked at densities well above natural production limits. Currently, the most commonly used species in southeastern fish-out ponds are channel catfish and rainbow trout. Other species are difficult to consistently obtain in abundance or to haul, hold or stock. A minimal entrance fee is usually charged. An additional charge is then paid for any fish that are caught, based on their number, weight or length. Another method is to charge a fee for entry with a catch limit on numbers or weight of fish.

Fish-out operations should have a minimum of two ponds, allowing anglers to select where they fish. Having more than one pond



Figure 3. Children like to fish at fish-out ponds because of the high likelihood of catching fish.

allows fishing to continue should problems occur in a pond. Ponds of a variety of shapes and sizes will give anglers the feeling of a natural setting. Half-acre ponds will accommodate a fairly large number of anglers who will be able to "reach" most of the fish, but not so large that the ponds can't be easily seined.

One problem with catfish is that all of them are not caught before fishing success drops off.

Typically, catch rates may be as high as 8 to 10 fish per angler hour for the first two weeks after stocking, dropping to 1 to 2 fish per angler hour after the first few weeks. These "hook-shy" fish can be seined from the ponds, placed into live tanks and sold live or sold as processed fish to individuals who don't fish or to those who don't catch enough fish to meet their needs.

Late spring through early fall (April through November) is the primary sales period for catfish. Sales as high as 4,000 pounds per week have been recorded during the spring at individual fish-out operations. Both anglers and fish slow down in the summer. Sales usually increase in the fall as temperatures cool. Fish-out operations are generally open on weekends. Some are open seven days a week. Daylight hours are most common; however, many remain open after dark, especially on weekends.

Shade, a picnic area, food and beverages, bait, tackle, rental equipment, ice and a fish cleaning service can be incorporated into the business. The best means of advertising are word of mouth and roadside signs. Prizes can be given to anglers who catch extremely large fish or tagged fish.

Costs for such an enterprise are highly variable. Major expenses will be for fish and for labor. Help must be on site during all hours of operation to rent equip-

ment, sell concessions, weigh fish and collect fees, keep the facilities litter free, and minimize poaching. Other costs include construction of office, concession and toilet facilities, fencing or natural barriers to keep trespassers out; fish feed; and monitoring and maintaining proper water quality. Returns from a fish-out operation are limited primarily by the number of pounds of fish, concessions and services that can be sold. Entry fees of \$1 or more per person are common. Fish prices vary from \$1 to over \$2 per pound live weight for catfish and over \$3 per pound for rainbow trout. Many operators indicate that they make more money from selling drinks, food, bait and tackle than from the fish sold.

A distinct advantage of fish-out operations is the possibility of using small ponds. Ponds can be located within city limits and at major highway intersections. Also, fishing success does not rely on natural production, but upon artificially maintained populations. The major disadvantage is that fish-out operators must make a tremendous commitment to public relations, marketing and

promoting, and must be sensitive to public needs and behavior. Such operations need to be near population centers and highly visible. A lot of time is required on the part of the manager, who must deal with "people problems" (Figure 4).

Considering fee-fishing as a business

Fee-fishing allows pond owners to supply fishing opportunities to anglers while simultaneously using under-utilized resources as a source of income. Fee-fishing is both a form of entertainment and a source of fresh fish for the user.

Market

Fee-fishing operations are good markets for fish producers. Production acreage in many states is small and geographically dispersed. Producers can sell their fish live to local fee-fishing operations. Thus, there is no need to build a processing facility, and many state health regulations can be avoided by selling live fish. Producers can often get a higher price per pound from fee-fishing operators than from processors.



Figure 4. Day lease and fish-out pond operators must be willing to deal with people.

Licenses and permits

As with most aquaculture facilities, permits must be obtained for surface and ground water (wells) rights, surface water storage (pond and ditch construction), construction of buildings and to meet any additional county or municipal regulations. In addition, permits may be required to sell live fish, bait and concessions, and for construction of buildings. Employees involved in selling food and cleaning fish should obtain state health certificates.

Many states have special permits for the operation of fee-fishing facilities such as ticket lakes or fish-out ponds. These allow anglers to fish at the facility without having to purchase state fishing licenses.

Liability

Customers are subject to injury, therefore liability insurance is highly recommended. Liability insurance is available from most specialty insurance agents. Costs vary, but are usually based on gross annual revenues. In addition, product liability insurance covers you if someone gets sick on the fish that they take home and cook. In the case of a long-term

lease, the cost of liability insurance is less and is usually paid by the lessee (Figure 5).

All reasonable steps should be taken to avoid negligence. Alcohol should be prohibited. Aeration equipment should be placed so that it can operate effectively, yet provide little inconvenience and potential danger. First aid and life saving equipment should be readily available. Swimming should not be allowed. Safe access for handicapped anglers should be provided.

People management

Successful day leases and fish-out operations require as much people management as they do fish management. They require a commitment to public relations, marketing and promotion, and sensitivity to public desires and behavior. The attention span of many anglers is short. Many people fee fish because they are almost certain to catch fish. If they do not catch fish within 5 or 10 minutes, they begin to complain. Some operations charge low prices for their fish, provide little service and have few expenses. Customers bring their own equipment and take care of themselves. Many successful

operations often charge more per pound, but provide everything including tackle rental, employees to explain rules, instruction for new anglers, conversation while they fish, and employees to remove fish from their hooks and to clean and pack their catch on ice.

Operators must be able to get along with people, because that's half the business. If you don't like people, you have a losing battle on your hands, no matter how well you manage your fish. You must be polite and courteous, even under the most difficult situations. The biggest problem that some anglers will have is knowing when to stop catching fish, catching more than they have money to pay for, and discovering this upon trying to leave your facility.

Conclusion

Fee-fishing facilities are rapidly increasing in number, but vary substantially in their success due to differences in location, facilities, services and management.

Medium to large ponds with controlled access are best suited for long-term leasing, while small to medium ponds can be day-leased or used as fish-out ponds. If individuals do not want to take the time to deal with people, yet want to use their ponds as a source of revenue, then they would be best advised to lease on a long-term basis.

Sources of information

For additional information on fee fishing and pond management, contact your local county Extension agent, state fisheries specialist, local USDA Soil Conservation Service office or the nearest office of your state Fish and Game Commission. Phone numbers for these agencies are listed in the government section of your phone book.

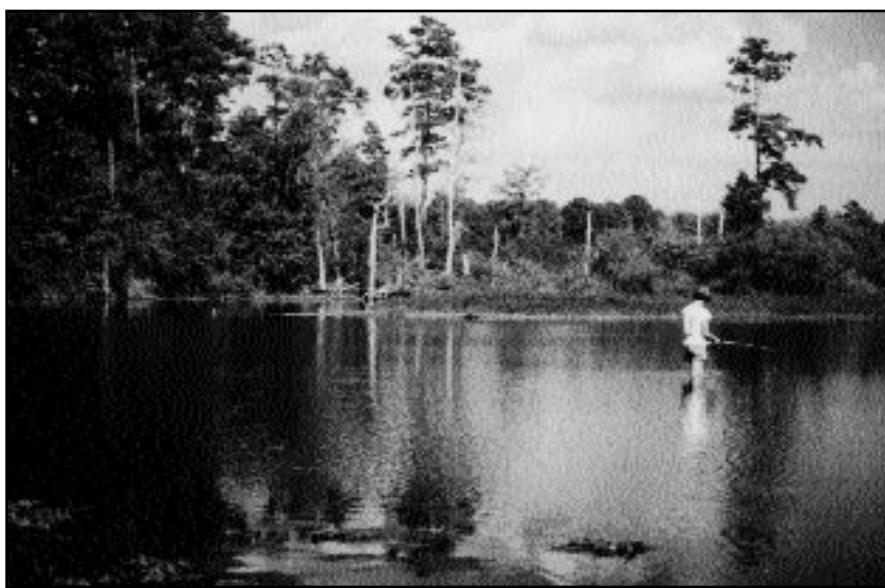
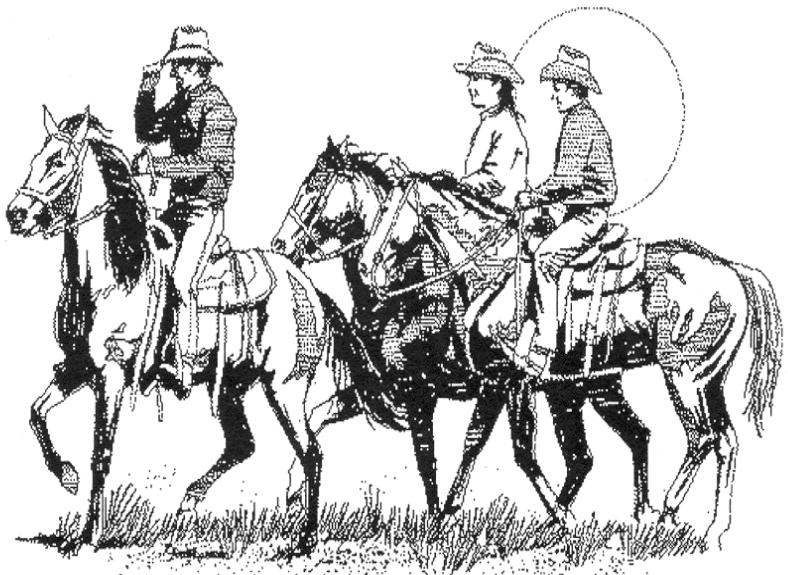


Figure 5. Liability insurance must be provided at all fee-fishing operations in the event that someone is injured.

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Handbook for Ranchers & Farmers



Equestrian Trail Riding
as an Alternative
Agricultural Enterprise



INTRODUCTION

In the spring of 1999, representatives from Texas Equestrian Trail Riders Association (TETRA), Texas Agricultural Extension Service (TAEX), Texas Farm Bureau (TFB) and Texas Southwest Cattle Raisers' Association (TSCRA) came together to discuss the needs of Texas equestrians and Texas ranchers. The groups' goal was to determine if a collaborative strategy could be developed which would address the concerns of trail riders, ranchers and farmers. The concerns we discussed were:

- depressed status of agriculture
- limited amount of public land available for equestrian trail riding
- limited awareness by urban Texans regarding the agricultural story in Texas
- growing number of Texans interested in equestrian trail riding
- fascination by non-ranchers with the ranching life style
- need for alternative sources of income to enable ranchers to maintain their life style

The outcome of these discussions was the creation of the Ranch Based Trail Ride Task Force.

The role of the task force was to develop demonstration ranch-based trail rides and to collect information to explore trail riding as an alternative enterprise for Texas ranchers and farmers. The task force scheduled four rides in the fall of 1999:

- *Miller Ranch*, Marfa, Texas, October 1, 2, 3
- *Southland Land & Cattle Company Ranch*, Kaufman, Texas, October 15, 16, 17
- *Walnut Creek Ranch*, Water Valley, Texas, November 26, 27, 28
- *33 Ranch*, Kenedy, Texas, December 10, 11, 12

Through the development of these rides, the task force learned a lot. This handbook is the task force's attempt to provide this information to interested farmers and ranchers. It looks at what we found to be the relevant issues.

Initial Considerations - Questions which will help interested persons better understand about a ranch-based trail ride.

Liability Issues - Rancher/farmer liability is discussed and strategies are presented.

Survey Findings - Information gathered from the ride attendees.

Helpful Contacts - Organizations that can help ranchers/farmers get started.

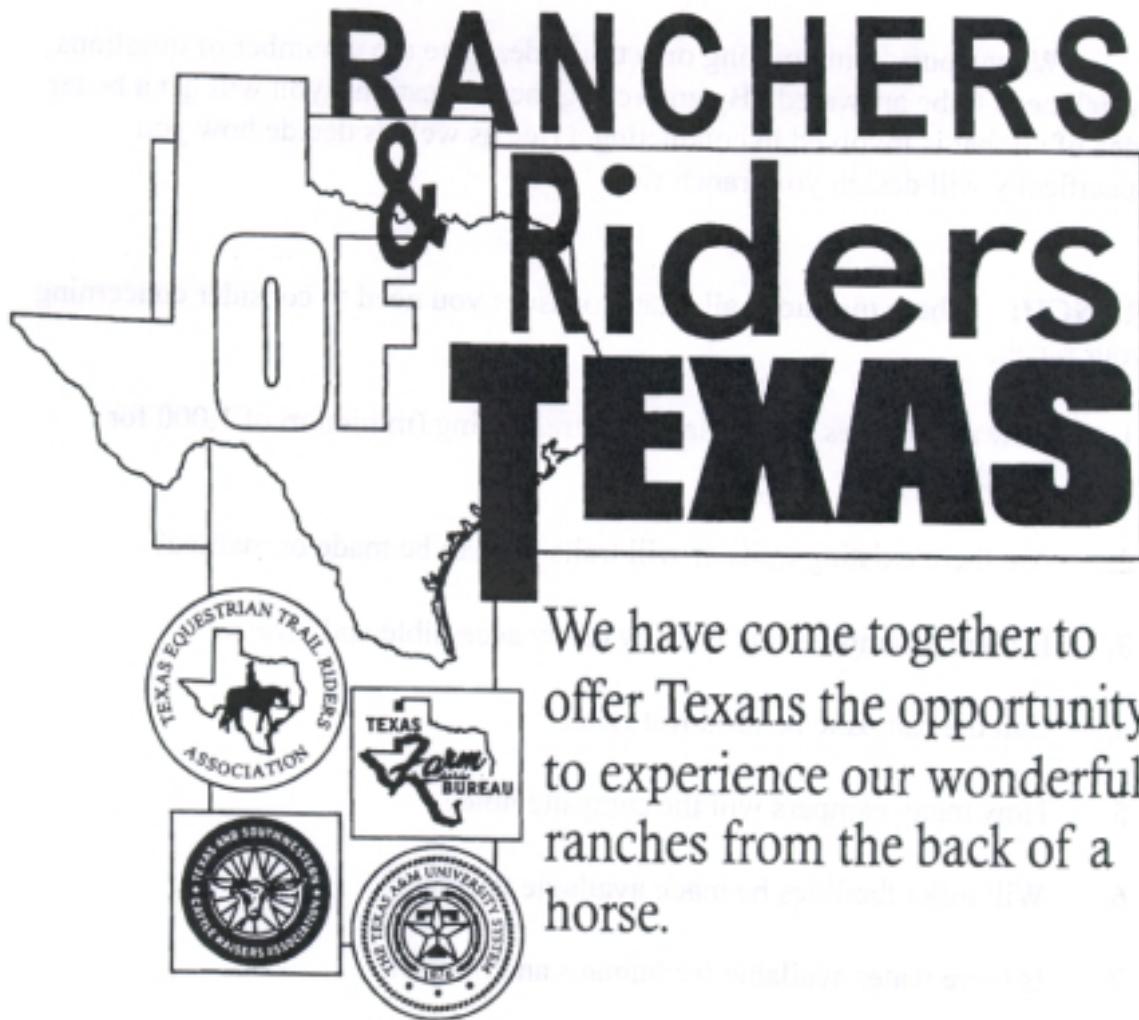
Concluding Thoughts - Some ideas to help ranchers/farmers decide how to get started.

Examples - Literature which was developed for the demonstration rides.

Ranch-based trail rides are certainly not the complete answer to address all the concerns the task force identified. Trail rides are an economically viable option for some ranchers/farmers and will provide additional riding options for equestrians throughout Texas.

Through our year of working together, the task force was able to attain some goals which went beyond the scope of the project. We saw that individuals, with seemingly divergent needs, can get together and listen to each other. Through these discussions we many times determined that under our surface differences there were very similar values, in this case, a love of the Texas ranching tradition and a love of Texas horses.

It is our belief that if you decide to have a trail ride on your ranch, you will have a similar discovery with the riders you meet.



We have come together to offer Texans the opportunity to experience our wonderful ranches from the back of a horse.

TASK FORCE MEMBERS

Craig Brubaker – Task Force Chairman

Susan Breed – TETRA

Lonnie Bradshaw – TETRA

Matt Jauer – TFB and TSCRA

Ned Meister – TFB

Butch Davis – TSCRA

Doug Householder – TAEX

Scott Shafer – TAEX

Bruce Carpenter - TAEX

Judon Fambrough – Texas Real Estate Center

CONSIDERATIONS

When considering putting on a trail ride, there are a number of questions which need to be answered. By answering these questions, you will get a better idea of all that is involved in conducting a ride as well as decide how you specifically will design your ranch ride.

RANCH: These questions all relate to issues you need to consider concerning your ranch.

1. How many acres are available for trail riding (minimum of 1,000 for weekend ride)?
2. Are there existing trails or will trails need to be made or marked?
3. Is there a campsite that is fairly easily accessible and level?
4. Can the campsite be used if it rains?
5. How many campers will the campsite hold?
6. Will toilet facilities be made available to riders?
7. Is there water available for humans and horses?
8. Are there electrical hook-ups available to campers?
9. Is the access road cleared and graded flat enough so that smaller vehicles won't be "high centered" or larger vehicles (RV's) impeded by trees or brush?
10. How can horses be restrained overnight, i.e. tied to trees, existing pens or corrals, tied to trailers?
11. Will riders or horses be allowed to swim in tanks or rivers?
12. Should the campsite be shredded or mosquito sprayed for comfort ahead of time?
13. What times of year are most suitable and enjoyable for trail riding in your area?
14. Are wagons welcome/appropriate for the terrain?
15. Are there motels, entertainment or shops nearby?
16. Is lodging available on the property?
17. What unique qualities does the property have to offer, i.e. historic, wildlife, etc.?

18. What type of educational program could be provided, i.e. horsemanship, wildlife, historic, etc.?

FOOD: Many rides provide food. These are some issues to consider in making that decision for your ride.

1. Will any food be served?
2. Who will cook the food?
3. Who will serve the food?
4. What will the food cost you?
5. What will you charge for the meals?
6. Is it mandatory or may riders, “on a budget”, provide their own food and get a reduced rate?
7. Will beer and alcohol be allowed on the trails and/or in camp?
8. Are there trash receptacles available near the eating areas?
9. Will tables and chairs be provided?
10. Is there shade, i.e. trees, a tent awning, a shelter, available at the dining area?
11. Will cold drinks be provided at “pop breaks” along the trail?

RIDE MANAGEMENT: This is the most time consuming part of any ride. These considerations will help you start to get a picture of the amount of work involved.

1. Who will organize the ride? I.e. rancher, club representative, independent organizer?
2. When will the ride begin and end? (Most rides open Friday afternoon and close Sunday afternoon.)
3. Are signs posted to help riders find camp areas?
4. Will written ride rules be provided to each rider?
5. What horse papers will be required? (All riders must, at a minimum, provide Coggins papers.)
6. Who will provide final answers in case of disputes?
7. Who will be trail bosses and scouts?

8. Will fees be refunded if ride is cancelled due to rain?
9. Will everyone ride together or can people choose to ride unattended?
10. Is a ranch map available/necessary?
11. Will separate trail boss be provided for riders with faster gaited type horses?
12. Will certain areas of the ranch be off limits?
13. Who will restricted/hazardous areas be marked?
14. Who will collect many and signed releases?
15. Who will prepare and serve food?
16. Who will be parking director?
17. Who will check horse papers?
18. Who will be on site clean-up crew?
19. Will dogs be allowed?
20. How many riders and/or wagons can be handled on the ride?
21. What local resources are available?
Locations and phone numbers for:
 - Motels
 - Health services
 - Emergency services
 - Veterinary services
 - Cowboy minister
 - Unique visitor attractions
 - Gas stations, propane
22. Will there be quiet hours, i.e. 10:00 PM to 7:00 AM?
23. Will there be a special camping area for those who want to run generators?
24. Will lighting or electrical hookups be provided in any part of the camping area?
25. Will there be a special policy regarding studs?

COSTS: The pricing of any new service is a difficult question to answer. Based upon our demonstration rides, we developed these considerations.

1. How much will it cost to ride? (\$35 per horse, no meals; \$75 per rider, 6 meals)
2. Can children under a certain age participate for a reduced rate?
3. Will advance reservations/deposits be required?
4. What is the policy on refunds after a certain date?
5. What is the policy on refunds if weather forces cancellation?
6. Will riders be permitted to participate on a daily basis or must they pay for the entire period? If daily, how will you know who has paid for today/all, i.e. badges, hospital bracelets, etc?
7. Will any part of the cost be donated to charity or to the specific horse rider organization?

MARKETING: Obviously, if you have decided to put on a ride, you need to let trail riders know about it. These recommendations outline an inexpensive marketing plan which will get you started.

1. Print an attractive flyer which will:
 - a. Describe the unique qualities of the ranch and any unusual activities, i.e. river, beautiful views, singing, story telling.
 - b. Include a phone number to call if riders have questions. E-mail is also helpful, and cheap.
 - c. Answer all the basic questions, what, when, why, how much.
 - d. List all restrictions, i.e. dogs, alcohol, age limits.
2. Send the flyer to target markets.
 - a. Contact trail riding clubs to get mailing lists, i.e. TETRA, local riding clubs, sheriffs' posse.
 - b. Contact trail riding publications, i.e. Texas Trails, Trail Riders Journal, Trail Riders Magazine (this is generally free).
 - c. Post flyer at local feed stores, co-ops, extension offices.
3. Contact all local publications, i.e. newspapers, horse newsletters, and ask them if they will list your ride and if they would like to do an article.
4. Conduct all marketing at least one month in advance, earlier if possible.

LIABILITY ISSUES

The popularity of equine activities and events has reached an all-time high in Texas.

With any activity, equine related or not, comes associated risks and liabilities. Participants face the risk of personal injuries from animals, other participants as well as -premise defects. Merchants face possible liability from equipment failure as well as their rented animals injuring participants and spectators. Finally, sponsors and landowners furnishing the facilities and land for the events, face potential liability for harm to participants and spectators injured by animals, premise defects, to name a few.

If Texas legislators had not passed laws protecting merchants, sponsors and landowners, the popularity of equine activities may not have risen to its current level in this state. This section presents a brief overview of the case law and statutory law regarding the associated risks and liabilities.

Participants Injuring Participants

As to the issue of participants injuring other participants at an equine event, only recently has Texas appellate cases addressed the topic. The first case involved golf, the second softball and the third barrel racing. In each case, the courts held that any person who voluntarily agrees to participate in the sporting event waives their right to sue for any foreseeable injury they incur. No Texas statutes address the issue, only case law.

Merchants' Liability

Texas statutes do address the issue of merchants' liability for equipment failure and rented animal injuring participants. In 1995, Texas legislators enacted Chapter 87 of the Texas Civil Practices and Remedies Code. The statute encourages equine activities by limiting the liability of those who sponsor or permit equine events.

More precisely, the statute provided that "any person, including an equine sponsor or an *equine professional*, is not liable for property damage or damages arising from the personal injury or death of a participant if the property damage, injury or death results from the dangers or conditions that are inherent risk of equine activity."

The statute is chock full of definitions of the key words and terms. Without belaboring each, please refer to the article entitled "Statutory Limitations for Equine Activities" attached at the end of this paper. Of interest, though, note that "equine animals" includes horses, ponies, donkeys and hinnies.

The statute defines an "equine professional" as a person, who for compensation:

- instructs a participant or rents to a participant an equine animal for the purpose of riding, driving or being a passenger on the equine animal or
- rents equipment or tack to a participant.

The limited liability is not automatic, though. The equine professional must clearly and visibly post and maintain prescribed warning signs on or near stables, corrals or arenas that they manage or control. The same warning must be written clearly into every contract in which the professionals enter with participants for professional services; instructions; or rental of equipment, tack or an equine animal regardless of where the equine activity occurs.

The warning must read as follows:

Warning

Under Texas law (Chapter 87, Civil Practice and Remedies Code), an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities.

(These signs are available at your local Farm Bureau office.)

However, merchants and instructors are not protected if they provide equipment or tack that they know or should have known was faulty or did not determine a participant's ability to safely manage an animal.

Sponsors' Liability

Sponsors of equine events also receive the statutory protection, but without the need of posting the required warning just described. The statute defines "equine activity sponsors" as:

- a person or group who sponsors, organizes or provides the facilities for an equine activity, including equine facilities for a pony club, 4-H club, hunt club, riding club, therapeutic riding program, high school or college class, program or activity without regard to whether the person operates for profit or
- an operator of, instructor at, or promoter for equine facilities, including a stable, clubhouse, pony ride string, fair or arena where an equine activity is held.

There are exceptions to coverage for sponsors. The statute requires sponsors (and landowners) to post warning signs or to provide written or

verbal warnings of known dangerous latent conditions of the land they own, lease or control.

Liability to Spectators

Chapter 87 does not cover any injury, harm or death to a spectator at an equine activity or event. The only exception is when the spectator is in an unauthorized area in the immediate proximity to the equine activity. For this reason, either or both waivers and liability insurance, discussed later, may need to be used for protection.

Landowners' Liability

The last person in the chain of liability is the landowner. The term "landowner" or "property owner" is not mentioned in Chapter 87 while the definition of a sponsor includes the person or group who **provides the facilities** for an equine activity. The definition of sponsors also includes **an operator** of a stable, clubhouse, pony ride string, fair or arena. The word "owner" is non-existent.

Obviously, the landowner receives limited, but not blanket protection from "certain land conditions and hazards, including surface and subsurface conditions." However, the statute never mentions which of the *certain* conditions are covered. Likewise, the list of activities not covered by the statute include dangerous latent conditions of the land if known and not disclosed by the person who owned, leased or otherwise controlled the property. Evidently, the *certain* conditions covered are those dangerous conditions *unknown* to the landowner, operator or sponsor.

Landowners allowing or sponsoring equine events may wish to look to another statute, Chapter 75 of the Texas Civil Practices and Remedies Code, for supplemental protection. The only problem with Chapter 75 is that equine activities are not explicitly mentioned.

Landowners' Common Law Duty

To understand the importance of Chapter 75, landowners must grasp their common law duty to persons on their property.

A landowner's liability (or responsibility) for the safety of anyone on the property depends on the legal classification of the person at the time of injury. There are four categories: an *invitee*, a *licensee*, a *trespasser* and a *child under the attractive nuisance doctrine*. Theoretically, participants and spectators could fit in any one of these.

Fee-paying participants and spectators at equine events are classified as invitees. Landowners have a legal duty to keep the premises safe for the invitee's protection. To accomplish this the landowner must give adequate

and timely notice of concealed or latent perils (dangerous conditions) that are personally known or that a reasonable inspection would reveal. Injuries caused by dangerous conditions that are apparent or that could be revealed by reasonable inspection are the landowner's responsibility, but comparative negligence lessens the liability to the extent invitees contribute to their own injuries for failing to be on the lookout.

Nonpaying participants and spectators with permission to enter are classified as licensees. Landowners have a legal duty to warn them of known dangerous conditions or to make the conditions reasonably safe.

This requirement parallels the requirement under Chapter 87 where notice of known dangerous latent defects must be disclosed. No inspection is required. Again, comparative negligence lessens the liability to the extent licensees contribute to their own injuries for failing to be on the lookout.

Participants and spectators who enter without permission are classified as trespassers. The landowner owes them no legal duty. The law prohibits the landowner from willfully or wantonly injuring them except in self-defense or when protecting property. The landowner is liable for gross negligence or for acts done with malicious intent or in bad faith.

Trespassing children are protected by the attractive nuisance doctrine. An attractive nuisance exists when: the trespassing child is not accompanied by an adult; the child is too young to appreciate or realize a dangerous condition; the location of the dangerous condition is one that the landowner knew or should have known children frequent; and the utility of maintaining the condition is slight compared to the probability of injury to children. The landowner may avoid liability if any one of these conditions is missing.

Recreational Guests (Chapter 75)

To encourage landowners to allow recreational guests on their property, Texas legislators enacted Chapter 75 of the Texas Civil Practices and Remedies Code. The statute reduces a qualifying landowner's duty of care to recreational guests, whether invitees or licensees, to that of a trespasser.

The primary problem faced by landowners for equine activities is the statutory definition of recreational guests. It does not specifically mention equine activities and events nor address the status of spectators at recreational events.

Section 75.001 (3) defines the term "recreational purposes" to include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study (including bird-watching), cave exploration, water-skiing and other water sports, or any other activity associated with enjoying nature or the outdoors. In all probability, certain, if not all, equine activities

would fall under any *other activity associated with enjoying nature or the outdoors*. But, it does not explicitly say so.

To qualify, the place where the recreational activity (equine event) occurs must be on agricultural land. This means any land located in this state suitable for use in production of-

- plants and fruits grown for human or animal consumption or for . fibers, floriculture, viticulture, horticulture or seeds,
- forests and trees for lumber, fiber or other items used for industrial, commercial or personal consumption or
- domestic or native farm or ranch animals kept for use or profit.

As long as the participants enter for recreational purposes on agricultural land, and as long as the landowner's total charges during the previous calendar year for all entries do not exceed four times the total amount of ad valorem taxes imposed on the land during the same period, the landowner owes the recreational guests no greater duty than that of a trespasser. Furthermore, the landowner is not responsible for any injury to a person or property caused by the recreational guest while on the property.

If the fee limit is exceeded, the landowner owes all recreational guests the common-law duty owed an invitee or licensee with one exception. The trespassory degree of care is preserved if the landowner on agricultural land has minimum amounts of liability insurance coverage. These amounts are \$500,000 for each person, \$1 million for each single occurrence of bodily injury or death and \$1 00,000 for each single occurrence for injury to or destruction of property.

Landowners achieve two advantages by having the minimum amounts of liability insurance. First, the trespassory degree of care continues to participants when charges exceed four times the amount of the ad valorem taxes. Second the stipulated amounts of liability coverage serve to cap the landowner's liability if sued for an act or omission relating to the premises. (*See page 15*)

If the fee limit is exceeded without the minimum liability coverage in effect, then the landowner faces the degree of care owed to either an invitee or licensee, whichever the case may be. The amount charged has no effect on the attractive nuisance doctrine.

Landowners' Options for Limiting Liability

What, then, are landowners' alternatives for limiting liability? **First**, to avail themselves of the benefits of Chapter 75, landowners may charge no more than four times the amount of ad valorem taxes imposed on the agricultural land or twice the amount of ad valorem taxes on non-agricultural

land. (*See page 15.*) This may not be a viable option for large-scale operations or where agricultural-use or open space valuation is taken.

Landowners who charge more than four times the amount of the ad valorem taxes may purchase liability insurance according to the specified minimum amounts depending on whether the activity is conducted on agricultural or non-agricultural land.

Second, to take advantage of any benefits under Chapter 87, landowners and sponsors may post the appropriate warning on their property and include the same warning in all their contracts. Arguably, this warning protects merchants only but is important if the landowner or sponsors rent animals or equipment to participants. Also, landowners must still warn all participants verbally, in writing or by signs of known dangerous latent conditions of the land under Chapter 87.

Third, the landowner can do as the law dictates: inspect the property routinely and either warn the participants and spectators of the dangerous conditions or make the conditions safe. This may be difficult because conditions change rapidly. Notifying all participants and spectators of a dangerous condition may prove impossible.

Fourth, the landowner may require the participants or sponsors to purchase and assign a liability insurance policy to the landowner covering the landowner's liability to the participants and possibly spectators. The minimum coverage should equal or exceed the limits mentioned earlier. However, the premiums may cause the entry price to become prohibitive, especially on non-agricultural land where no amount of liability insurance caps the landowner's or sponsor's liability. (*See page 15.*)

Fifth, the landowner and sponsors may secure waivers from the participants and possibly spectators, releasing the landowner and sponsors from liability. A waiver is defined as the intentional relinquishment of a known right. To be effective, the release provision must meet certain standards.

For instance, the agreement must be based on an offer and acceptance between parties who have equal bargaining power. For this reason, a recent Texas appellate court ruled that parents cannot release, in advance, a minor's right to recover for personal injuries caused by the negligence of another (*Munoz v. IlHaz Inc. dibia Physical Whimsical*, 863 S. W. 2d 207 [1993]).

The agreement for the release must be based on consideration, but it need not be monetary. The agreement in exchange for the right to participate or view an equine activity or event may be sufficient.

The Texas Supreme Court has added three more requirements for an effective waiver agreement. First, the provision must state that the participant or spectator indemnifies (releases) the landowner and/or sponsor

from any acts arising "from the landowner's or sponsor's negligence." This is sometimes referred to as the Express Negligence Doctrine (*Ethyl Corp. v. Daniel Const. Co.*, 725 S. W. 2d 705 [Tx. S. Ct. 1987]).

Second, the written contract must give the participants or spectators fair notice of the release provision. The fair-notice principle focuses on the appearance and placement of the provision, not its content. However, the fair-notice requirement is -not necessary if the landowner or sponsor can prove the participant or spectator had actual notice or knowledge of the provision (*Spense & Howe Constr. Co. v. Gu@'Oil Corp.*, 365 S. W. 2d 631 [Tx. S. Ct., 1963]).

Third, the release provisions must be conspicuous. The element of "conspicuousness" is tied to the previous "fair-notice" requirement. Basically, the release provision must be conspicuous enough to give the participants or spectators fair notice of its existence (*Dresser Industries, Inc. v. Page Petroleum, Inc.*, 853 S. W. 2d 505 [Tx. S. Ct. 1993]).

How "conspicuous" is conspicuous? No absolute answer can be given. However, the following suggestions may be useful.

- Make the written provision noticeable.
- Emphasize the entire paragraph - not just a portion. Better still, place the waiver at the end of the contract on a separate sheet of paper.
- Use headings but not misleading ones. Italicize the headings.
- Ask the participants and spectators to initial the waiver provisions of the contract or sign the page if placed on a separate sheet.

For some protection from the attractive nuisance doctrine, the landowner or sponsors agreement may require all children to be accompanied by an adult at all times.

If the waiver form is used, it may meet the requirement under Chapter 87 of providing written notice of known dangerous latent conditions of the land. Consequently, the form could serve two functions.

A waiver form for hunters was presented by the late Dan Patton, an attorney with Morrill, Patton and Bauer in Beeville, Texas, at the 13'h Advanced Real Estate Law Course sponsored by the Texas State Bar in 199 1. The form has been tailored to equine activities and events and is included at the end of this paper. The form is not endorsed by Mr. Patton, the speaker, sponsors of this seminar, the Texas Real Estate Center or Texas A&M.

This section was written by Judon Fambrough, Senior Lecturer, Attorney at Law, Texas Real Estate Center, Texas A&M University.

CATEGORIES OF LAND AND LIMITED LIABILITY UNDER CHAPTER 75

Chapter 75 divides land and liability into three categories. It is important to understand each category with equine activities or events because the property on which the event occurs may or may not be agricultural land and equine activities and events may or may not be classified as recreational purposes.

The broadest protection is given to agricultural land used for recreational purposes. Landowners, lessees and occupants owe invitees and licensees no greater duty than owed trespassers until total charges exceed four times the ad valorem (property) taxes. Then, the minimum amounts of liability insurance are needed to cap liability and to preserve the trespassory degree of care.

Limited protection is given to non-agricultural land used for recreational purposes. (This category could include stables, arenas, etc.) Landowners, lessees and occupants owe invitees (not licensees) no greater care than owed trespassers until the total charges exceeds twice the amount of ad valorem (property) taxes. Then, no amount of liability insurance will cap the landowner's, lessee's or occupant's liability nor preserve the trespassory degree of care.

Finally, maximum liability coverage is extended to agricultural land used for non-recreational purposes as long as \$1 million liability insurance is in place for each single occurrence of bodily injury or property damage.

Obviously, all landowners, sponsors, lessees and occupants would like for all equine activities and events to be classified as a "recreational use" on agricultural land to ensure coverage under Chapter 75.

It is unclear whether viewing a recreational event as a spectator makes the spectator a recreational guest under Chapter 75. Arguments can be made either way. No Texas appellate cases address the question.

A Reprint from *Tierra Grande*, the Real Estate Center journal

Statutory Limitations for Equine Activities

By Judon Fambrough

Effective September 1, 1995, the Texas Legislature enacted a new statute that encourages equine activities by limiting the liability of those who sponsor or permit such events as parades, trail drives or shows. More precisely, the statute provides that "any person, including an *equine sponsor* or an *equine professional*, is not liable for property damage or damages arising from the personal injury or death of a *participant* if the property damage, injury, or death result from the dangers or conditions that are an *inherent risk of equine activity* . . ." (Chapter 87 of the Texas Civil Practices and Remedies Code). The statute lists *inherent risks as:*

- the animal's tendency to behave in ways that cause personal injury or death;
- the animal's unpredictable reaction to sound, sudden movement or unfamiliar object, person or other animal;
- certain land conditions and hazards, including surface and subsurface conditions;
- collision with another animal or object; or
- a participant's negligent actions that cause injury to themselves or others when they fail to control the animal or to act within their ability.

Definitions—which comprise half of the statute—are critical for understanding the new law. For instance, the term *equine animal* includes a horse, pony, mule, donkey or hinny.

An *equine activity* includes:

- an equine animal show, fair, competition, performance or parade that involves any breed of equine animal and any equine discipline, including dressage, hunter and jumper horse shows, grande prix jumping, three-day events, combined training, driving, pulling, cutting, polo, steeple chasing, English and Western performance riding, endurance trail riding, Western games and hunting;
- equine training or teaching activities;
- boarding equine animals;
- riding, inspecting or evaluating an equine animal belonging to another, whether or not with compensation to the owner;
- informal equine activity, including a ride, trip or hunt that is sponsored by an equine activity sponsor;
- permitting a prospective purchaser of the equine animal to ride, inspect or evaluate the equine animal;
- sponsoring an informal equine activity, including a ride, trip or hunt;
- placing or replacing horseshoes on an equine animal; or
- rodeos and single-event competitions, including team roping, calf roping and single steer roping & whether or not the participants are compensated.

An *equine activity sponsor* means:

- a person or group who sponsors, organizes or provides the facilities for an equine activity,

including equine facilities for a pony club, 4-H club, hunt club, riding club, therapeutic riding program, high school or college class program or activity without regard to whether the person operates for profit or

- an operator of, instructor at, or promoter for equine facilities, including a stable, clubhouse, pony ride string, fair or arena where an equine activity is held.

An *equine professional* means a person who for compensation:

- instructs a participant or rents to a participant an equine animal for the purpose of riding, driving or being a passenger on the equine animal or
- rents equipment or tack to a participant.

A *participant* means a person who *engages in an equine activity* regardless of whether the person is an amateur or professional or whether the person pays for the activity or participates in the activity for free.

Engages in an equine activity means riding, handling, training, driving, assisting in the medical treatment of, being a passenger on or assisting a participant or sponsor with an equine animal. The term includes management of a show involving equine animals. The term does not include being a spectator at an equine activity unless the spectator is in an unauthorized area and in immediate proximity to the equine activity.

Certain exceptions and limitations apply. Liability for property damage continues when it arises from a participant's personal injury or death when the person, sponsor or professional:

- provided faulty equipment or tack to the participant, and they knew or should have known it was faulty;
- did not determine the participant's abilities to safely manage an equine animal before providing one;
- did not post warning signs or provide written notices or verbal warnings of dangerous latent conditions of the land if they knew of the conditions and they owned, leased or otherwise controlled the property;
- injured a participant by an act or omission with willful or wanton disregard for the participant's safety; or
- intentionally injured or killed someone.

Finally, equine professionals who want to claim the statutory limitations must clearly and visibly post and maintain prescribed warning signs on or near stables, corrals or arenas that they manage or control. The same warning must be written clearly into every contract the professionals enter with participants for professional services, instructions or rental of equipment, tack or an equine animal regardless of where the equine activity occurs.

The warning must read as follows:

Warning

Under Texas law (Chapter 87, Civil Practice and Remedies Code), an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities.

Sample

RELEASE OF LIABILITY AND ACKNOWLEDGMENT AND ACCEPTANCE OF DANGERS, RISKS AND HAZARDS OF EQUINE ACTIVITIES AND EVENTS

I, the undersigned participant, hereby acknowledge that I have knowingly and willingly entered an Agreement, or become a party bound by the terms and conditions of an Agreement for an equine activity or event by and between the Sponsors and Landowners, namely

and _____, dated _____, 19_____. I understand the terms, provisions and conditions of the Agreement for the equine activity or event, its warnings and agree to abide by its terms, provisions and conditions.

I further acknowledge and understand that no warranty, either express or implied, is made by the Sponsors or Landowners as to the condition of the property or the facilities where the activity or event is to be held (hereinafter the premises) located in _____ County, Texas, or of any roads, trails, buildings, gates, fences, pens or other facilities or improvements located thereon. This document serves to warn me that dangerous conditions, risks and hazards do exist. My presence and activities on the premises expose both me and my property to dangerous conditions, risks and hazards, including but not limited to: poisonous snakes, insects, spiders, buildings, barns, arenas

and other improvements, whether or not owned or erected by Sponsors or Landowners; erosion and general condition of the land, both on and off road roadways or senderos, creating rough, hazardous and dangerous driving, riding and walking conditions; animals, both wild and domestic that may be diseased and/or potentially dangerous; deep water, and the use of vehicles. I hereby state that I am aware

of these facts and expressly assume all such dangers, risks and hazards associated with them and agree to hold the Sponsors and Landowners harmless from these conditions whether or not caused by the Sponsors' or Landowners' negligence.

In consideration for the right to enter the premises, and to participate in the equine activity or event, I hereby release and agree to protect, indemnify and hold harmless the Sponsors, Landowners and their respective assignees, heirs, agents, employees and contractors from and against any and all claims, demands, causes of action and damages, including attorneys' fees, resulting from any accident, incident or occurrence arising out of, incidental to or in any way resulting from the use of the premises and any improvements located thereon, whether or not caused by the Sponsors' or Landowners' negligence. This release applies during the time that I am permitted on the premises. I hereby further covenant and agree that my heirs, successors, assigns and I will not make any claim or institute any suit or action at law or in equity against the Sponsors, Landowners or their respective assignees, heirs, agents, representatives, employees, successors or contractors by reason of conditions of the premises or activities occurring thereon, whether or not caused by the Sponsors' or Landowners' negligence.

As used in this release, the terms *I, my person and myself* include minors in my care while on the premises. I agree to accompany my minor children at all times while on the premises to prevent and avoid any possible imposition of the Attractive Nuisance Doctrine against the Sponsors or Landowners.

Dated and signed this _____ day of _____ 20_____.

(Participant's Signature)

(Participant's Printed Name)

Participant's Address: _____

The late Dean Patton, an attorney with Morrill, Patton and Bauer in Beeville, Texas, presented this waiver form at the 13th Advanced Real Estate Course sponsored by the Texas State Bar in 1991. It has been edited by the Real Estate Center at Texas A&M University and tailored to equine activities and events. It is offered as a sample only.

SURVEY FINDINGS

At each of the ranch rides, the riders were asked to fill out a questionnaire. The following summarized these results.

The average rider:

- has been trail riding for 13 years
- attends 12 trail rides a year
- drives 200 miles to participate in trail rides
- spends 2 nights away from home per ride
- owns 3 or fewer horses
- classifies themselves as an "intermediate" rider
- is 50 years old
- has graduated from high school and taken some college classes

When asked what would make a good ranch to ride on, these were the most frequent responses:

- Scenery and views
- Water crossings
- Challenging/varied/hilly trails
- Safety

When asked what would make a good trail ride, these were the most frequent responses:

- Good food
- Access to water for horses in camp area and on trail
- Rest room facilities
- Water and electrical hookups
- Evening entertainment, i.e. bonfire, singing, dancing
- Good parking and setup areas

HELPFUL CONTACTS

ASSOCIATIONS

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254-751-2457

Texas Southwest Cattle Raisers'Association

1301 W. 7TH
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817-332-7064

Texas A&M University System

Extension Horse Specialist Office
Department of Animal Science
2471 TAMU
College Station, Texas 77843-2471
409-845-1562

MEDIA

Texas Trailriding Homepage

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Texas Trails

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254-848-4656
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Texas Trailriders Journal

3400 Mesa Court
Flower Mound, Texas
817-491-1554
TxTrlTdr@aoLcom

Trail Rider Magazine

P.O. Box 5089
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318-448-2234
trailmag@centuryinter.net
www.trailridermagazine.com

CONCLUDING THOUGHTS

If you have reached this point of the handbook and your interest is aroused, you should consider joining TETRA as a ranch family member. The \$20.00 you spend will be well worth it. Through their newsletter, you will start to get to know more about trail riding. You will also learn about trail riding opportunities in your area. It is very important that you go on or visit a trail ride before you ever decide to put one on yourself.

Ranch-based trail riding is not for every rancher. It is an activity which can take a lot of time and involves you with a lot of people. If you enjoy having friends visit your ranch and would like to expand that idea to a money making venture, trail riding might be for you.

An initial low-cost way to test the waters is to ask some of the local TETRA members if they would like to come to your ranch for a ride. Guide the riders through your ranch for a couple of hours and then sit down for some honest conversation and iced tea.

An agricultural enterprise fits every ranch. It is only through careful consideration that successful mix of business activities can be created. We hope this handbook has helped you to evaluate trail riding as an alternative income source.