

# FARM INSURANCE



A HOW-TO GUIDE  
FOR URBAN FARMERS



Douglas Foy of the 7th Ward Boys and Girls Garden, New Orleans, LA

## **About the Author**

In the Spring of 2013, The Loyola University of New Orleans College of Law offered an environmental policy clinic course that focused on food, farms and fisheries management. Under the supervision of a Louisiana licensed experienced attorney, students engaged with actual non-profit clients and developed strategic plans to address environmental issues through policy advocacy. Emily Posner (Juris Doctor Candidate 2013) created this manual from her research for her clinic project.

## **Acknowledgements**

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## **Purpose:**

Being an urban farming pioneer comes with challenges, especially in advocating for one's interests with insurance companies. This manual is designed to support urban farmers in being their own advocate when seeking the best insurance plan for their operation. It will review:

- why it is currently difficult to find insurance for urban farms in Louisiana.
- the different types of liabilities that exist under Louisiana law,
- the types of insurance coverages that protect against these liabilities, and
- the laws that limit liabilities associated with agriculture.

We hope that this narrative will empower urban farmers in New Orleans and beyond with the language and understanding necessary to obtain affordable insurance.



Cafe Hope Farm, Marrero, LA

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# I. Introduction

At a time when unemployment and obesity rates are up and availability of healthy fresh affordable food is down, people all around the United State are joining in on the increasingly popular grow your own food movement. In cities, rooftops, side lots and even indoors in unused or abandoned buildings, urban agriculture is literally sprouting everywhere. In many cases these gardens serve not just those who grow them – but also extended family, friends and neighbors. Increasingly, people are making a living in urban farming. With industry and business come risk and legal liabilities as well. Most farmers are unfamiliar with the legal responsibilities that can come with growing food and have not considered the need for insurance. Unfortunately, while insurance for these new farms is necessary, because the insurance industry is unfamiliar with urban agriculture, it is often time consuming and difficult or too expensive to obtain. Following is a review of the types of legal matters urban farmers should consider and some potential solutions to these matters regarding acquiring proper insurance to protect them and their farms.

## II. Background

Agricultural initiatives should consider a variety of options to protect participants and assets from various legal liabilities that may arise out of its operations. Developing a functional plan of protection really requires urban farmers to implement a two-prong approach: 1) institute a best-practices management plan and a recall plan; and 2) seek appropriate insurance to protect your farm and its assets from accidents.

There is no one-size fits all policy for rural or urban farms. Often city farms face an additional challenge in finding insurance, because many insurance companies have never covered urban farms, and they are therefore uncertain about how to assess the risks associated with these types of operations.

Michael Walton, an urban farmer from Cleveland, Ohio, clearly summarized this problem in testimony before the U.S. House of Representatives Subcommittee on Agriculture in May of 2012. He said that insurance is another roadblock and recounted how he had “called a national leader in farm insurance, and their agent called back to tell [him that his farm] would be pioneers, because the company was not prepared to insure small plot urban agriculture, farms without buildings or substantial equipment for them to insure or without purchase agreements to bank on.”<sup>1</sup>

New Orleans farmers have encountered difficulties like that of Michael Walton. For instance, insurance companies such as Farm Bureau and State Farm have refused coverage to New Orleans’ urban farming pioneers. Furthermore, Louisiana projects face an additional obstacle in that they have even less of an insurance market to access than other areas, because many insurance companies have chosen not to cover Louisiana following Hurricane Katrina, and the incarceration of public officials from the state’s insurance commission for impropriety.

Despite these challenges, developing and strengthening markets for local agriculture in Louisiana’s urban centers requires the state’s city farmers to continue to push for access to insurance coverage. City farmers should be prepared to set aside adequate time to shop for a policy that will best protect a farm and other assets.

### III. Does your urban agriculture project need insurance coverage?

Your farming project may not need insurance. For instance, a backyard gardener who gives produce away to neighbors when they request it probably does not need coverage, because it is likely that the landowner's homeowner's insurance policy will cover an accident that might occur on the premise (though it is always smart to check with the agent of the policy).

However, beyond backyard growers, insurance is increasingly becoming a need for many city farmers to access land and new markets. Often landowners who lease their property to an urban farmer will require the farmer to be insured. As well, many local stores and restaurants in New Orleans require that farmers carry a policy that insures their products. For instance, the New Orleans food co-op requires that farmers have a plan that covers up to a \$1 million in the event that their food causes an illness or otherwise injures a customer.



Lutz Farm, New Orleans, LA

You may be able to both get land and sell to consumer markets that do not require insurance. Nevertheless, you may still be at risk of losing your assets – your farm and even personal funds and possessions – in a law suit if someone were to injure themselves or get sick from your food. Insurance in these cases, and others, may be a good investment to protect yourself and your business or organization's assets should an accident happen.

#### IV. What are potential legal liabilities for urban farms:

Legal liabilities – meaning you or your farm being held responsible for some occurrence – can arise when you break local, state and/or federal law. Lawsuits that may result from such violations are generally about contracts, property, environmental, constitutional and/or tort law. Some common examples of legal liabilities for a farm or farmer are violating certain requirements of the federal clean water act, or breaking a contract with a customer. However, farm insurance currently does not often protect against these types of liabilities (though other business insurance might), and therefore the focus of this manual is primarily tort law.

Insurance policies usually protect their customers against liabilities associated with tort law. In Louisiana, a tort is an action that causes harm to someone's health or property, which entitles that individual to recover damages from whoever committed the act.<sup>2</sup> Torts claims generally fall into the following two categories: 1) intentional tort; and 2) negligence.

An **intentional tort** is a purposeful action of one individual against another, for example if you punch someone. Louisiana law and public policy forbid an individual from being able to insure against his/her own intentional acts, meaning you cannot get insurance to cover things you do to others purposefully. Most insurance policies will have what is known as an "exclusionary clause" that will not provide insurance coverage for any bodily injury or property damage that results from an intentional act, whether they are committed by the insured or a third party for whom the insured is responsible (i.e. a minor child or an employee).<sup>3</sup> As such, urban farmers should take precaution to prevent harmful, intentional



Louisiana Figs

acts on their property, and should know that insurance does not protect them from these types of incidents.

A **negligence** claim allows an injured party to seek damages against the individual responsible for the damage, even if his/her action or inaction was not intentional.<sup>4</sup> A negligence claim requires that the injured party prove that under the particular set of circumstances, the party responsible for the damages owed a duty of care to the injured, and that the responsible party violated that duty of care, and that the failure to execute proper care caused the injury/damage.

Negligence lawsuits are very common. For example, under Louisiana negligence law, an urban farmer could be held responsible if a visitor tripped on a rake inadvertently left near a garden bed and was hurt from the fall. A negligence lawsuit can also be brought against a farmer if produce that she/he sells makes a

consumer sick or otherwise injures the consumer.

However, farmers may also be held liable under Louisiana's Products Liability Act or Louisiana's Workers Compensation Act. Under Louisiana's **products liability statute**, farmers can be held liable in only two ways: (1) the farmer assumes the status of a manufacturer (unlikely for most urban farmers); or (2) the farmer sells value added products (like picked greenbeans).<sup>5</sup> Farmers that only sell things like fresh produce, eggs, or milk are **specifically exempt** from liability – meaning they cannot be sued for a defective product – under Louisiana products liability act.<sup>6</sup>

Farmers are liable for any injuries sustained by their workers.<sup>7</sup> A worker under Louisiana workers compensation law includes full time employees, part time employees, and maybe interns.<sup>8</sup> If your farm is employing individuals as independent contractors, but a substantial portion of their work is manual labor, you will need to have workers compensation to cover any injuries they may incur.<sup>9</sup> This means that the law requires any farm with employees and maybe even interns to either purchase workers compensation insurance or become a part of group self-insurance fund.<sup>10</sup> There is one exception to this requirement in that any unincorporated farm whose net earnings of all its employees do not exceed \$2,500, and the employee's themselves do not net more than \$1,000 is exempt from liability under Louisiana's worker's compensation laws.<sup>11</sup>

Because of the physical nature of farming and possibility of risk, we recommend that if an urban farm is using unpaid interns that they seek further legal assistance to insure that they are in compliance of all federal and state labor laws, which includes purchasing workers compensation.

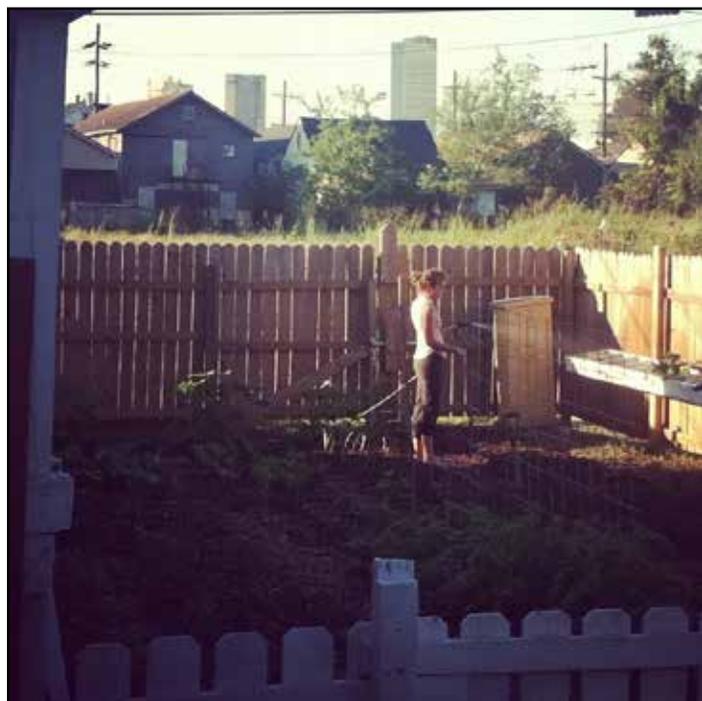
## V. What type of insurance coverage should urban farms get?

A comprehensive plan will protect a farmer against all of the risks addressed in section IV of this manual. You will need to describe your operation in depth to get the best rate and coverage.

Often times, insurance companies inappropriately equate urban initiatives with large industrial and corporate agricultural operations. After all, industrial agriculture is one of the most dangerous industries in the United States,<sup>12</sup> particularly because of industrial agriculture's widespread use of dangerous machinery and harmful pesticides. Translated

into numbers: 1) the fatality rate for farmworkers in crop and animal production was 7 times higher than that for all workers in private industry; 2) farmworkers had a fatality rate of 24.7 deaths per 100,000, while the rate for all workers was 3.5; and 3) In 2010, the injury rate for agricultural workers was over 20 percent higher than the rate for all workers. Agricultural workers' injury rates were 4.8 per 100 workers, while the rate for all workers was 3.8.<sup>13</sup>

Most urban agricultural projects, however, differ greatly from most rural operations, as there is far less reliance on farm machinery and harmful pesticides. Communicating these differences to your insurance agent is essential to get an affordable rate. This widespread misunderstanding by insurance companies about urban agriculture initiatives is not fair; however, shifting the conversation within the insurance industry is an important step toward building a vibrant local and sustainable agricultural community here in New Orleans and other urban centers throughout the United States.



Watering the garden, 7th Ward, New Orleans, LA

It is important for you to help your insurance agent to properly classify your farming operation. Many insurance companies have never insured a small farming project in a city, and might be wary of working with your program. Be sure to ask if their company provides **small farm, hobby farm, or recreational farm insurance policies**. These classifications exist in the insurance industry, but have only been traditionally applied to rural farms.

Once you settle on an appropriate classification with your agent, it is time to create a plan that covers **premises liabilities, products liabilities, and workers compensation** (if needed). Below is important information that you need to know about these types of coverage:

### A. Premise Liability

Premise liability coverage provides coverage for businesses and organizations against careless acts, omissions or both by the business/organization or its workers that result in physical injury or property damage at the farm itself. This type of coverage should cover accidents on the premises of the organization where tort liability may arise pursuant to organizational acts causing damage<sup>14</sup> and acts of negligence,<sup>15</sup> as well as acts and omissions by employees.<sup>16</sup>

Farmers may seek protection from certain types of liabilities that may arise on their farm. First, section 9:2795.5 of the Louisiana Revised Statutes limits the liability of all agri-tourism ventures from injuries that arise out of an agri-tourist activity, so long as the farm is a state-approved agri-tourism initiative and has properly posted warnings on-site. This provision protects farmers from law suits where an injury results from agri-tourism activities on the farm, so long as 1) the farm has been certified as an agri-tourism

operation; and 2) the farm adequately warns about the inherent dangers associated with the agri-tourism activities of the farm. Many urban agriculture ventures are eligible for agri-tourism classification, especially if they lead tours, conduct educational activities, or host volunteers. A list of ventures eligible for agri-tourism classification, as well as the “Plan of Operation” application can be found in the appendix of this manual. If your farm goes through the process and becomes a certified agri-tourism operation, this should be clearly communicated to your insurance agent, as it will hopefully help to reduce your premium.

Also, 9:2800.4 of the Louisiana Revised Statutes removes a farmers liability to anyone who unlawfully enters the farm so long as the land is “bona fide agricultural land assessed as such for parish ad valorem taxes.”<sup>17</sup> Again, if your farm is recognized as agricultural land, be sure to communicate this to your insurance agent.

## **B. Produce and Products Liability**

Urban farmers should consider an insurance policy that will protect them from a lawsuit that may result if someone gets sick or injured from eating something grown on the farm. Farmers who donate or give away the food they grow in most circumstances do not require this type of insurance protection because they are protected by federal law.<sup>18</sup> However, farmers who are selling or bartering the food they grow in an urban garden or farm should look into a policy that will protect their assets and interests. First, if you only sell produce within its natural state, the farmer will need a policy that covers this. This may be wrapped up in general liability coverage of the farm, but should be explicitly discussed with the insurance agent and stated in your plan. Second, if the farmer enhances his/her product in any way (i.e. pickles cucumbers or dries herbs), and then sells the product, any defect in the good would likely be subject to liability under the Louisiana Products Liability Act should it make some sick or otherwise injure an individual. In this case, the farmer should consider an additional products liability plan, or a commercial general liability plan, so that as an individual he/she is not assuming all legal liability for the product.



Creole tomatoes

## **C. Workers Compensation**

Workers compensation law in Louisiana creates a particular process for legal claims that arise between employers and employees in relation to workplace injury. As such, all claims must travel through this process, and the law mandates that all employers carry workers compensation coverage. Urban farmers that employ third parties or have farm interns in some cases are required to obtain workers compensation coverage. This extends to independent contractors as well, if these contractors are involved in the pursuit of the farm’s business, or if they are performing a significant amount of manual labor.<sup>19</sup> Volunteers, however, cannot make a claim to the Louisiana Office of Workers Compensation, and so your workers compensation package does not need to cover them.<sup>20</sup>

## **VI. Where can your farm get insurance:**

A comprehensive plan will protect a farmer against all of the risks addressed in section IV of this manual. You will need to describe your operation in depth to get the best rate and coverage.

### **1. Parkway Partners:**

Parkway Partners is a longstanding organization in the New Orleans community that manages an urban gardening network overseeing 40 active gardens and farms throughout the city. One of the many areas of support that Parkway Partners Urban Gardens Program provides is premise liability coverage to gardens and farms within its network. The organization emphasizes a “community first” model. There are a number of considerations to become a Parkway Partner’s farm. New gardeners interested in joining Parkway Partner’s network should contact Susannah Burley, Program Director of Urban Gardens, Schoolyard Gardens and ReLeaf at: [sburley@parkwaypartnersnola.org](mailto:sburley@parkwaypartnersnola.org) or 504-620-2224, ext 400 to set up a time to talk.



Roots on the Rooftop, Rouses Supermarket, New Orleans, LA

### **2. American Community Garden Association:**

As of Spring 2013, the American Community Gardening Association (“ACGA”) offers a community garden insurance program to its members. Membership costs \$100 for organizations, and \$65 for school organizations, you can join here <http://communitygarden.org/support-us/become-a-member/join-the-acga.php>

Gardens of all sizes can now be properly protected against unforeseen accidents and liability through the organization’s insurance partner, Brunswick Companies. An insurance application can be found at <http://brunswickcompanies.com/ci-community-garden-insurance.html>

### **3. Individual Policy:**

There are a handful of companies that are currently providing coverage for urban farms and gardens. One option is to contact Jennifer Calingasan of Louisiana Companies at 800-756-7838 or [jcalingasan@lacompanies.com](mailto:jcalingasan@lacompanies.com). Another option is to contact Albert S. Pappalardo, Jr. of Pappalardo Agency, INC. at 504-486-7441 [al@insurela.com](mailto:al@insurela.com).

## About the Loyola Law School Environmental Policy Clinic



This manual was produced by Emily Posner of the Loyola Law Environmental Policy Clinic. The Clinic trains professional, capable and ethical lawyers to effectively engage in environmental advocacy worldwide. This is a pilot project under the supervision of Clinic Director Professor Bill Quigley, Professor Rob Verchick and Marianne Cufone.

**Mission:** To develop professional, capable and ethical lawyers who will have a holistic understanding of environmental law and policy, and can effectively engage in environmental advocacy worldwide.

**To learn more about the Loyola Law School Environmental Policy Clinic, visit our Facebook page at: <https://www.facebook.com/LoyolaNOEnviroPolicyClinic>**

For more information about accessing insurance as an urban farmer please contact Emily Posner at [poscreek@gmail.com](mailto:poscreek@gmail.com) or 207-930-5232

# Endnotes

1. Michael Walton testimony to U.S. House Sub-Committee on Agriculture (May 10, 2012), *available at* <http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/pdf/hearings/Walton120510.pdf> (last visited April 13, 2013).
2. See La. C. C. art. 2315.
3. See generally *Leslie v. Andrews*, 2004-2053 (La. App. 4 Cir. 5/5/05), 905 So. 2d 368, *writ denied*, 901 So.2d 1077 (La.2005).
4. See La. C. C. art. 2316.
5. See generally La. R. S. 9:2800.51, *et seq.*
6. La. R. S. 9:2800.52(4)-(5).
7. See La. R. S. 23:1031(A).
8. There is a contemporary debate about whether unpaid internships create an employer-employee relationship that mandates the purchase of workers compensation. The Fair Labor Standards Acts provides that so long as an educational experience exists for the intern where the intern is the primary beneficiary of the relationship, than an employee relationship does not exist. However, Louisiana courts have yet to determine whether unpaid interns in the state are entitled to workers compensation should they become injured performing work within the context of their internship.
9. See La. R. S. 23: 1021(7)(defining an independent contractor).
10. See generally Louisiana Workforce Commission. Frequently Asked Questions From Employers About Disputed Claims, *available at* [http://www.laworks.net/FAQs/FAQ\\_WorkComp\\_EmployerDisputedClaims.asp#answer\\_1](http://www.laworks.net/FAQs/FAQ_WorkComp_EmployerDisputedClaims.asp#answer_1) (last visited April 13, 2013).
11. See La. R. S. 23:1035(B)(1).
12. See United States Department of Labor. Agricultural Operations, *available at* <http://www.osha.gov/dsg/topics/agriculturaloperations/#1> (last visited April 9, 2013).
13. *Id.*
14. La. C. C. 2315.
15. La. C. C. 2316,
16. La. C. C. 2320.
17. La. R. S. 9:2800.4(A)(2).
18. 42 U.S. § 1971.
19. See La. R. S. 23:1061.
20. See *Gordon v. St. Tammany Parish School Bd.*, 2003-1035 (La. App. 1 Cir. 4/2/04), 879 So.2d 171.

