

# Haunted Attraction Law

Brett Hays

Director – Fear Fair

Attorney – Hays Law Office

Association Attorney - Haunted Attraction Association



Brett Hays



@fearfair



fearfair



fearfair



# Biography

- Practicing Attorney since 1994
- Director/Founder Fear Fair since 2001
- Board Member/Counsel HAA
- Background in:
  - Personal Injury / Products Liability
  - Criminal Defense
  - Business Law
  - Family Law
- Practice now is mostly Criminal Defense / Family Law



# Home Haunter Issues



# Liability Concerns

- Homeowners Insurance Covers You!
  - Benefits
    - Will provide defense counsel
    - Usually \$100,000 coverage
    - Check your policy!!
  - Dangers!
    - If you charge admission lose coverage
    - Taking donations can count as charging
    - Consider a special policy
      - Surprisingly affordable
      - [eventhelper.com](http://eventhelper.com)



# Professional Haunted Attraction Issues



# Choosing Your Business Form



# Sole Proprietorship

- Simplest Form is Sole Proprietorship
  - Pros
    - Easy to start, end
    - Maintain total control
    - All profits flow straight to owner
  - Cons
    - Liability, Liability, Liability
    - Difficult to raise funds
    - Some expenses not deductible
      - Eg your insurance premiums
    - Difficult to add partners, investors



# Partnership

- Easiest Multiple Owner form is Partnership
  - Pros
    - Relatively Easy to Establish
      - Don't neglect your agreement!!
    - Profits flow straight through
    - Increased talent / resources
  - Cons
    - Liability x2, Liability x3, Liability x4...
    - If one partners leaves or dies, ends
    - Some expenses not deductible
      - Eg your insurance premiums



# General Partnership

- Divide responsibility and liability per agreement
- Equal shares assumed
- Creditors may not care about your agreement



# Limited Partnership

- Most partners have limited liability
  - To extent of their investment
- Most partners have limited input
- More complex and formal than general



# Joint Venture

- Limited period of time or single project
  - For example, one season
- If you keep operating IRS will consider you to be a general partnership
  - Have to file that way
  - Have to wind-up and distribute assets that way



# Partnership Agreement

- How decisions will be made
- How profits/losses will be divided
- How disputes will be resolved
- How future partners may come in
- How partners can be bought out
- How business will end



# Corporations

- It's own entity
- Can make contracts, be sued
  - Pros
    - Liability Protection!!
    - Survives ownership changes
    - Only liable up to your investment
  - Cons
    - Little more complicated to form
    - Monitored by state/feds paperwork
    - Dividends cannot be deducted, so may be taxed twice



# A Note On Liability

- Protection is not absolute!
  - Payroll taxes for example
- You can blow it!
  - Piercing the corporate veil
  - Do not commingle assets



# Subchapter S or C

- Just a tax election
  - Allows taxes to be treated as partnership or sole proprietorship
- There are limits
  - Should only pay yourself what it would cost to replace yourself
  - If not IRS can reclassify as wages and you will owe payroll taxes



# Limited Liability Company

- Liability Protections of a Corporation
- Tax efficiencies and ease of a partnership
- Pick any two
  - Limited liability to extent of assets
  - Continuity of life
  - Centralization of management
  - Free transferability of ownership



# LIABILITY ISSUES



# Areas of Liability

- Employees / Volunteers
- Patrons
- Premises Liability
  - Not just haunt season



# Insurance

- Do you own the building?
- Do you have volunteers/employees/both?
- Will you be open only in the fall?
- Don't neglect to try your local agent?
- Do you have vehicles for the haunt?
- Most event insurance specifically excludes volunteers and is only good during operating hours – and your general insurance excludes the haunt... big dangerous gap you need to fill!



# Insurance

- Understand your coverage!
- General Aggregate Per Event
  - That's all there is, there ain't no more
  - Get as much as you can afford
- Products & Completed Operations, Aggregate
  - Claims from some defect – eg props, electrical
- Personal Injury Aggregate
  - Also covers slander, libel, false arrest



# Insurance

- Each Occurrence
  - Per incident or occurrence not person injured
- Damages to Premises Rented
  - Exceptions to exclusions
    - Only if rented for 7 or fewer consecutive days if legally obligated to pay for damage – (excludes fire)
    - Separate coverage for fire
    - Must be liable due to tort not by agreement



# Insurance

- Medical Payments
  - Payable without regard to fault
  - Limit applies to each person
  - Subject to aggregate, occurrence limits
- Deductible
  - Deductible is per event not aggregate
  - Make sure it's not too high



# Limiting Your Liability

- Waivers
  - Both for volunteers and patrons
  - Better to have them than not
  - Will hold up to an extent
  - Good in general that they were put on notice of risk
    - Have a written policy / get it signed
- Post your warnings and rules!!
- Make sure staff understands importance of the rules and make repercussions consistent and swift



# Your Cast and Crew



# Volunteers

- What can you legally give them
  - Food
    - Only on premises
  - Lodging
    - Maybe at conventions?
  - Scholarships
    - Can include training\
  - Mileage – 55.5 cents for 2012
  - Probably can give up to \$599
    - See 29 CFR 553.106(e)



# Independent Contractors

- Risky
  - Probably cannot get away with it
- Determined by:
  - Behavioral control
    - When, how, where to do work
    - What tools or equipment to use
  - Training – shows want done your way
  - Opportunity for profit or losses



Thanks for coming!  
Any Questions?



Brett Hays



@fearfair



fearfair



fearfair

