



EQUINE BUSINESS HEALTH CHECK-UP

Many people ask why they need insurance and equine contracts where they are protected by their state's equine liability act (EALA) statute. First, not all states have this EALA statute. Second, even where an EALA statute has been enacted, some states have exceptions making it difficult to dismiss a claim until after a length and expensive trial process. Third, lack of a written contract creates greater risk of the parties misunderstandings or adequate consideration of the issues to be discussed and anticipated.

The following **EQUINE BUSINESS HEALTH CHECK-UP** is based on real life situations that demonstrate why proper contracts and appropriate equine insurance coverage is critically important. **Dare to take this test. See if YOUR equine business practices are offering you the protection you need.**

1. Am I Using Appropriate Contracts?

A written contract can maximize your legal protection. The wrong contract could expose you to needless and potentially devastating liability. Use of professionally drafted contracts may result in insurance premium savings. Not only is it important to use such contracts, they must be executed and used properly.

If you are not currently using written contracts, you may worry about how your customers will react. If contracts are presented in the proper manner and with a positive approach, most people will respond in kind. A contract creates the opportunity to clarify each party's understanding of the terms and conditions. Use of contracts will often assure the customer that the stable is a well-managed and professional business.

Practical Example: An equine client implemented a new boarding contract which required the owner to specifically authorize and establish the parameters of acceptable



emergency medical care for the horse in the owner's absence. The boarder was thus forced to consider, before an accident occurred, exactly what her instructions would be with respect to this previously unanticipated but extremely common situation.

2. Does my contract language track my state's Equine Activity Liability Act?

Most states (but not all) have passed some form of the Equine Activity Liability Act (EALA), require special warning language in all contracts used by the equine business. To learn if your state has an EALA statute, contact your state or the American Horse Council. You can also view the chart found at (insert link to EALA Statute 50 State Summary Chart). If your state has an EALA statute, and you use written contracts, your contract must contain the requisite statutory warning in a manner that tracks the language of the statute. It warns participants of the inherent risks of equine activities. If your state requires this contractual warning, and you do not include it, you will most likely be unable to take advantage of the special liability protections provided by the statute.

Practical Example: An equine boarding stable included a participant warning which did not exactly track the language of the statute. A participant was injured and sued. The stable's attempts to dismiss the suit under the Equine Activity Limited Liability Act failed, because there existed an issue as to whether the contract warning language strictly complied with the statutory warning requirements.

3. Have I trained my employees to properly execute contracts?

Contracts must be signed by every customer or participant. If anyone is under the age of 21, their parent or legal guardian must also sign. Both parents must sign for a minor, as if only one parent signs, the other parent is not bound by any liability waivers made by the one parent. Make sure that your customers understand the terms of the contract. Honestly answer any questions they may have. Be sure all blanks are filled in. Never hand a contract to a customer and ask them to immediately sign. Give them time

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to thoroughly read and understand the agreement. When the signed contract is returned, ask if they read and understood the contract. **DO NOT DOWNPLAY THE CONTRACT FORMALITIES.** Your contracts are there to protect you. Review the signed contract to ensure that it is completed fully. Areas that require special attention should immediately be noted and resolved. Return a copy of the executed agreement to the customer and retain the original in your files for a minimum of five years.

Practical Example: An equine business owner permitted the trainer to handle execution of all contracts. The trainer reviewed only the last page signature line, but did not review all pages of the contract. Following a serious accident, the owner discovered that the contract forms had all been turned in without signatures next to the liability waiver, rendering the waiver useless.

4. **Do I regularly update my contracts?**

All contracts should be reviewed annually. An updated contract should be executed each year to account for changed circumstances, language update to comply with statutory changes, updated horse and owner information, stable procedure changes, and/or new fee schedules.

Practical Example: An equine business owner required execution of an original boarding contract that granted a security interest in the horse for unpaid board. The horse was subsequently traded for a new horse, but the Stable did not require the owner to execute a new contract. When the owner fell behind in board payments, the Stable subsequently found it had no contractual grounds for perfecting and foreclosing on its security interest where the old contract was inapplicable to the new horse.

5. **Do I include a security interest clause in my contracts?**

When a horse's board remains unpaid, you must pay ongoing maintenance costs until the payment dispute is resolved. A good contract will notify your clients of your intent to claim an agister's lien on the horse. This lien is a statutory right which differs from state to state. But you can create a contractual right to claim an interest in the horse, its foals, and/or tack or other personal belongings of the boarder until the board and other



fees under the contract or paid. In the alternative, a perfected security interest created by contract can allow you, after sufficient notice and opportunity to cure to the boarder, to sell the horse and personal items at auction to recoup your costs. It's a powerful collection tool and can save you much time and money if included in your contract.

Practical Example: An equine client provided training to a green hunter/jumper. That particular state's agister lien permitted liens based upon "stipulated fees." Following extensive training, the horse began to successfully compete at the Grand Prix level, but the owners were seriously delinquent in payment of board and training fees. Where the training was provided under a verbal contract, and where there was no express agreement as to "stipulated fees" for the training, the trainer was unable to establish either a statutory or a contract lien against the horse. The owner was able to remove it from the Stable and sell it at a greatly appreciated value without ever compensating the trainer for the time and expense invested.

6. Do I maintain the appropriate detailed business records?

All businesses should keep detailed records. It is recommended that you keep copies of all executed contracts and liability waivers FOR AT LEAST 5 YEARS. This includes any old contracts, even if they have been updated by new contracts. This is because most states have a 5 year statute of limitations for contract disputes (ie a person suing on a contract has up to 5 years to file the lawsuit). In addition, most states have a 2 to 5 year statute of limitations for personal injury litigation. Its critically important to have access to contracts which may contain written liability waivers enabling you to immediately dismiss the litigation.

In addition, your use of additional forms may assist in speedily resolving a lawsuit under your particular state's Equine Activity Liability Act. These forms should include:

- a) **Horse Evaluation Forms.** These should be completed for every lesson horse. Forms should be updated at least annually, or as required by circumstances. The form serves as evidence as to a horse's character and/or known propensities supporting the stable's reasonable use of that horse based on those factors. Similarly, the form may indicate that certain horses should be removed from certain activities. The evaluation enables

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the stable owner to make wise decisions about the horses they use, and the manner in which they are used.

b) **Rider Evaluation Forms.** This form should be filled out before the rider's first lesson. It should include information provided by the rider as to their experience and include the instructor's evaluation of the rider's ability following their first ride. It should be updated at least twice a year, or as required by additional lessons or graduation to more high risk activities such as jumping, outdoor trail rides, competitions, etc. Such records should be kept confidential.

c) **Tack Identification and Maintenance Forms.** All tack used by a stable should be inventoried with maintenance and cleaning dates documented. This is to limit the stable's liability for injuries resulting from broken or defective tack. Many states liability statutes provide that a stable **WILL BE LIABLE** for injuries resulting from faulty tack which the stable "knew or should have known about." Keeping adequate records of your tack, showing that you check and clean the tack on a regular basis and make repairs as needed, can show that you did not know and could not have known of any faulty tack. Tack should be checked, cleaned, evaluated and repaired on a regular basis. A separate Tack Identification and Maintenance Record should be used for each piece of tack. Similarly, tack belonging to boarders should be identified on the Boarding Agreement form including an adequate description, and an approximate value. This form is invaluable in the event of a boarder's loss claim for same.

Practical Example: A green rider represents on the Rider Evaluation Form a much higher experience level than is warranted. The rider is accordingly given a more advanced horse. The rider fails to adequately fasten the girth and is injured when the saddle slips. The stable avoids a lawsuit by: 1) showing the stable's reasonable assignment of the horse based upon the rider's own representations as to skill, and 2) showing that the saddle slip could not have occurred due to faulty tack, where the girth had been cleaned and checked the prior week.

7. Have I recently inspected and safeguarded the premises?

Approximately every six months, a comprehensive review of the stable and surrounding premises and land should be made. A "Premises Inspection Report" should be filled out in order to document such inspections. The inspection should examine and record inspection results for the following:

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- a) **Fire Extinguishers.** Fire extinguishers should be placed in several places throughout the barn and all outbuildings. The fire extinguishers should be checked frequently to ensure they are in proper working condition.

- b) **Stalls.** All horse stalls should be closely scrutinized to ensure safety for all people and horses. Stalls should be lined with wood in order to prevent exposure to metal surfaces. Make sure all boards are secure and no nails or screws are protruding. All feed troughs/bins and water buckets should be checked for safety. Light fixtures should be high enough so that the horse cannot reach or otherwise interfere with them. Stall latches should be adjusted in order to prevent injuries to horse or tack damage when moving through doorway. If a horse presents any danger to people, the stall should be properly reinforced to prevent such exposure to the public. Any stalls occupied by problem horses (biting, kicking, charging) should have a warning sign clearly identifying the dangers presented.

- c) **Aisle/Alley Ways.** All aisle or alleyways should be kept clear of obstructions at all times. Make sure there are no protrusions that could potentially injure a passing horse or rider. All ties and cross-ties should be checked for safety and replaced as needed. Any dangerous areas or areas where people and/or horses are not permitted should be clearly marked. Alleyway surfaces should be appropriate, with no slick surfaces.

- d) **Tack Rooms.** Ensure that tack rooms are in good condition. All tack rooms should have a fire extinguisher near the door. All special instructions should be noted by posting signs.

- e) **Feed/Hay Areas.** Such areas should be well ventilated. Feed and hay areas should be secured, so as to prevent entry of horse if horse becomes free. Obviously, all feed and hay areas should be designed “NO SMOKING” areas. In fact, the stable, as a whole, should be designated a “NO SMOKING” area.

- f) **Arenas.** All arenas should have a fence or barrier high enough to accommodate the use intended. It is recommended that all arena partitions be AT LEAST 3’ 6” high, and constructed out of materials suitable to create an adequate barrier. All fences and barriers should be checked for protruding nails. Arenas should be of an adequate size to accommodate the number of horses, riders, and riding styles utilizing the premises. Arenas should be clear and free of obstructions and hazards. Footing should be appropriate for the use intended. Check for any rocks and holes in arena and repair as necessary.

- g) **Trails.** If applicable, check all riding trails to ensure they are properly cleared and safe to ride through. Footing should be checked, and

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any dangerous conditions remedied. Any areas which present hidden or concealed hazards should be identified by posting a warning sign or marking with yellow caution ribbons.

h) **Fences.** Where applicable, fences should be of an appropriate height and material for the intended use. All fences should be checked for safety, sturdiness and protruding nails, and repaired or replaced as necessary.

i) **Driveways.** Driveways should be kept clear of all obstructions. Parking areas should be clearly marked and enforced. Trailer parking areas should also be clearly marked and enforced.

j) **Electrical Wiring.** Routinely check all wiring for safety. Any areas which present a potential danger should be tended to and repaired immediately.

k) **Emergency Procedures.** Make sure that emergency numbers are clearly posted near all telephones. The stable staff should also be trained in emergency procedures, including emergency evacuation procedures and standard procedures for handling accidents and injuries

l) **Dogs and Pets.** Vicious or noisy dogs or other pets must not be allowed to roam freely when visitors are on premises. Dogs and lesson horses are not a good mix.

m) **“Attractive Nuisances.”** Vicious or unpredictable horses should not be housed or turned out into pens that are highly visible or accessible to the public, where innocent children who cannot read warning signs may be attracted to them. This includes stallions, mares with foals and horses with known dangerous tendencies. Similarly warning signs should be posted advising parents to supervise their children and keep them away from stalls, outdoor pens, drylots and pastures, construction areas, shaving and hay or feed barns, or other areas attractive to children.

n) **Dangerous Horses.** Do not keep dangerous horses if you can help it. If you have a horse that may pose a danger, do not place that horse in a public section of a stable. Harboring a known dangerous or vicious horse can make you liable for damages if the horse harms someone. If such a horse is kept on the premises, be sure that the horse is properly enclosed and that adequate warning signs are posted.

Practical example. Stable owner of facility with large youth program received a new boarder and recently gelded stallion. Boarding agreement advised that stallion had recently been gelded and was still demonstrating “stallion like behavior”. Due to high capacity in barn, the gelding was placed in the only available stall, which

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happened to be next to a mare in heat. The stall was near the stable entrance in a high traffic area. A visiting child attempted to pet the gelding and received a serious bite requiring reconstructive surgery. The stable owner was held liable for “gross negligence” in the placement of the recently gelded stallion, due primarily to the stable owner’s knowledge of the unique facts and the “foreseeable probability that injury might occur from the facts given.

Practical example. A stable owner providing extensive riding trails on the stable property to boarders. A remote area contained a known prairie dog community, with an apparently level field pockmarked by prairie dog holes not immediately visible to riders. A boarder and her guest approached the field at a gallop. The horses both tripped in the holes and fell, requiring euthanasia of one horse and serious injury to the remaining horse and both riders. The stable owner was found liable for failure to identify and warn of a known dangerous condition on the property not immediately observable by others.

A similar situation involved a large bale of rusted barb wire which was located in a visible spot in the middle of the pasture. One boarder began loping her horse in a circle around the bale of rusty wire, when her horse became entangled in a stray strand. The stable owner was not found negligent where the dangerous condition was known and readily observable to all, and where the boarder was found primarily at fault through her failure to exercise reasonable care.

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Congratulations! You have just completed a much needed health check of your equine business. Now measure your results and determine what additional treatment is necessary!

RESULTS:

1. If you answered “Yes” to **6 or more** of the above questions, you receive: **AN EXCELLENT BUSINESS HEALTH RATING.** Prescription: Keep up the good work.!
2. If you answered “Yes” to between 3 to 5 of the above, you receive: **AN AVERAGE BUSINESS HEALTH RATING.** Prescription: Better spend some time fine tuning some of your business practices to avoid future illness.
3. If you answered “Yes” to **2 or less** of the above, you receive: **A SERIOUSLY ILL HEALTH RATING.** Prescription: Time to: (1) take some drastic remedial

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action, (2) get out of the business, or (3) begin saving for your own self-funded insurance to cover that lawsuit lurking just around the corner.

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