

TRAINER LIABILITIES FOR HORSES IN THEIR CARE

And How Trainers & Horse Owners Can Protect Themselves

by Julie I. Fershtman, Attorney at Law

Dan hired a trainer, Sarah, to train his horse and haul it to a few shows during the year. While under Sarah's care, however, Dan's horse coliced, and a veterinarian had to put the horse down. Should Sarah, the trainer, be responsible for paying for the loss of Dan's horse and his vet bills?

What the Law Expects of a Trainer's Services

When a person, such as Dan, leaves a horse with a trainer for care, keeping, and training, the law generally requires the trainer to use "reasonable care" in carrying out these tasks. This means that the trainer must use the degree of care that a prudent and careful trainer would use in similar circumstances.

Difficulties and Complexities of Suing Horse Trainers

The loss of a horse is unfortunate, but courts will expect Dan to do far more than merely point to the loss of his horse and blame the trainer. Proving that the trainer is legally responsible for the loss can be a complicated process for a few reasons:

- Even with very good care, horses can develop colic.
- Dan's horse might have harbored a condition that made it more likely to colic, having nothing to do with the quality of care that Sarah and her staff gave the horse.
- To prove that improper care caused his horse's demise, Dan may need to retain an expert witness veterinarian. That expert would evaluate the evidence, such as necropsy information, veterinary records, surgical records, evaluation of the horse (if it is alive), and all other documents. The expert might also need to conduct further tests on the horse. Afterwards, Dan would hope that the expert will support his case that improper care led to the horse's demise, to a reasonable degree of veterinary certainty.
- Dan might expect people at the stable, who witnessed first-hand the care and attention the trainer gave Dan's horse, to testify against the trainer. That might not happen. They might not want to be involved. Even if Dan's lawyer serves

subpoenas on everyone and they testify at a deposition or trial, their testimony could be unpredictable.

What the Trainer Stands to Lose

State laws will determine what Dan can collect if he wins his case against the trainer. Depending on the applicable law, he might collect the horse's value immediately before its death; or, if his horse lives, he might collect the decrease in the horse's value that he attributes to the trainer's improper care. His case might also try to recover expenses he incurred while trying to bring his horse back to health, such as veterinary bills, equine hospitalization costs, and hauling fees. Depending on the circumstances and law, he might also seek to recover the value of any lost foals or lost net earnings from races, shows, or stud fees. Under prevailing law in most states, Dan cannot expect to recover losses from his "pain and suffering."

Damage Control for Trainers and Horse Owners

Through careful advance planning, horse trainers and owners can try to protect themselves from problems before they occur.

Trainers

- *Liability Insurance.* Liability insurance will not prevent problems from happening, but it could spare trainers the burden of hiring a lawyer or settling disputes using their own funds. For equine businesses, the typical insurance is Commercial General Liability Insurance and/or Equine Professional Liability Insurance, but trainers may need more. Because these types of liability insurance policies **may not** protect trainers against claims involving horses that are injured or die from the trainer's negligence while the horse is in the trainer's care, custody, and control, trainers should consider purchasing an extra coverage endorsement known as "Care, Custody, and Control" insurance (some companies call it "care custody, or control" insurance or a "bailee coverage legal liability" policy). Keep in mind that



a trainer's Care, Custody, and Control insurance coverage potentially covers, up to certain policy limits, situations where the trainer was negligent in caring for the horse – this is not a mortality insurance policy. Discuss appropriate coverages and policy limits with a knowledgeable insurance agent.

- *Liability releases.* Courts in most states have enforced liability releases as long as the documents are properly worded and signed. Trainers can consider including properly-worded liability releases within their training contracts (where allowed by law).

Owners

• *Equine insurance.* Horse owners can purchase mortality, major medical, and/or loss of use insurance. These coverages are designed to compensate horse owners for the loss of a horse and for expenses associated with the horse's veterinary care. Trainers should keep in mind that after insurers pay mortality claims, they almost always have the right to bring legal action against parties believed to be responsible for causing the loss. This legal concept is called "subrogation," and equine insurers might pursue it against trainers. Discuss this coverage with an equine insurance agent.

This article does not constitute legal advice. When questions arise based on specific situations, direct them to a knowledgeable attorney.



About the Author

Julie Fershtman is one of the nation's most experienced Equine Law practitioners. A Shareholder with Foster Swift Collins & Smith, PC, based in Michigan, she has successfully handled equine cases in 17 jurisdictions nationwide and tried equine cases in 4 states. She has drafted thousands of equine industry contracts and is a Fellow of the American College of Equine Attorneys. Her speaking engagements span 29 states. For more information, please, visit:
www.equinelaw.net and www.equinelawblog.com