

## Boarding Contracts – by Stephanie Bonney

In the horse world, we often fail to use legal agreements for our transactions, especially if we aren't dealing with large dollar amounts. We like and trust the people that we're dealing with, and we don't contemplate future problems. If things do go sideways, we assume that they would have gone bad even with a good agreement. However, there are other reasons for having written agreements for our transactions involving horses. In this column, and future columns, we will be addressing common equine situations and discussing general legal tenets for those situations. Please be advised that this column is not providing legal advice. Consult an attorney if you have any questions regarding information presented in this article.

The best reason for having written agreements for equine transactions is to ensure that both parties understand the agreement the same way. You may think that you and someone else are on the same page in regard to the sale, breeding, boarding, or the leasing of a horse, but when a problem arises, you may discover that there was no true agreement on how to handle the particular problem. Even if you don't believe you'll ever need to enforce an agreement, by writing down all the terms, including what happens when things go wrong, both parties will ensure that they are in true agreement.

An agreement, or "contract", is essentially defined as where one party promises to perform a service in return for another party's promise to tender payment for performance of the same. It can be further defined as being an agreement between two or more persons to do or not to do a particular thing; and the "obligation" of a contract is found in the terms in which the contract is expressed and is the duty thus assumed by the contracting parties respectively to perform the stipulations of such contract. A writing that contains the agreement of the parties, with the terms and conditions, serves as proof of the obligation. Most agreements can be oral, although there are certain agreements that must be written to be enforced. The problem with oral agreements is that they can be hard to enforce and more importantly, both parties may not have the same understanding as to the terms and conditions.

An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of the making of it, being stated in distinct and explicit language, either orally or in writing. An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by law, as a matter of reason and justice from the parties' acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even necessary, assumption that a contract existed between them by tacit understanding. Thus, two people may have a contract with each other even if neither of them thought one existed.

In the remainder of this article, I will discuss the considerations of boarding contracts—agreements between a horse owner and a barn owner for the horse to reside in the barn owner's barn. Anytime a horse owned by Party A is being boarded or taken care of by Party B, an express boarding agreement between the parties becomes essential. Although that express agreement can be oral or in writing, as mentioned previously, there are distinct advantages to putting the express agreement in writing. The written agreement should outline each party's responsibilities with regard to the care and maintenance of the horse in question. Any basic understanding between the parties should be spelled out as specifically as possible. The more specific the terms of the contract, the less room for misunderstandings in the future.

In a boarding agreement, the owner of the horse is mostly interested in making sure the horse will be well taken care of, while the barn is most interested in providing a service and getting paid. Failure to make payments when required can result in the barn's right to lien against the horse and can ultimately

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lead either directly or indirectly to a subsequent sheriff's sale of the horse for the amount owed for the board (liens will be covered in a later article).

Because of liability, insurance has increasingly become an issue, and thus, should also be addressed in the boarding agreement itself. If the owner of the horse is required to have coverage of any kind, it should be stated in the agreement. "Hold Harmless" clauses are also put into most boarding contracts. All parties should fully understand the repercussions of any release, waiver, and/or hold harmless clause in order to make an intelligent and voluntary decision regarding the release or waiver.

Part of an attorney's job in drafting or reviewing contracts is to imagine worst case scenarios and try to address the most common ones in the contract (which means we are not always the most optimistic people). So, when drafting or reviewing a boarding contract, try to think of some of the situations that could come up: what happens if your horse has to go to the vet and you can't be reached? Is the barn able to authorize medical treatment? What if they barn authorized colic surgery and you can't afford it? What happens if your horse knocks down the fence and gets out? What repairs should be considered wear and tear and which repairs should the owner pay for? What if the horse is allowed to be used for lessons and the horse is injured during the lesson? Who pays for the medical treatment? In addition to addressing some of these types of situations, there should be a list of fees charged for extra services (such as administering medications, changing blankets, getting horse for the farrier, etc.). While no one wants a 50 page boarding contract, covering some of the common situations that may come up will be helpful for both parties.

Finally, I will add the caveat that a contract can never cover every type of contingency. A good relationship between the parties is always the best way to deal with conflicts in a contract. However, a well written agreement can help ensure that both parties truly understand the most important terms and conditions.