

# EQUINE LIABILITY: AM I RESPONSIBLE IF MY HORSE INJURES SOMEONE?

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It's your worst nightmare. Your horse just injured someone. It was the final riding lesson of the evening. During the short 30-minute lesson, a student that has been riding with you for six months suffered a serious injury when the horse she was riding bucked (unexpectedly) and threw her into a wall. Knocked unconscious, she appears to have a head injury and a broken arm. The last thing you heard from her irate parents, unfairly blaming you for the accident, was "you'll be hearing from my lawyer." Your heart sinks. You've been giving lessons for fifteen years and, despite some minor falls here and there, you've never had a serious accident (or threatened lawsuit) — until today. Now what?

First, just because your horse injures someone, does not automatically mean that you are going to be held responsible (liable) for the injury. This does not mean that you will not get sued — you may — but the court could find that you are not at fault. The reason is that New York State recognizes that horse-related activities carry certain risks that a person "assumes" when engaging in these activities. The legal doctrine, known as "assumption of the risk," may provide a complete defense to horse owners and stable operators that are named as defendants in a lawsuit. Essentially, if the risks of the activity are fully understood or perfectly obvious to the plaintiff (here, the injured rider), then the law deems plaintiff to have consented to those risks. Examples of "inherent risks" in horseback riding include:

- Falling while mounting the horse
- Being thrown after the horse suddenly breaks into a run
- Falling when the horse slips and falls
- Getting kicked

It is important to keep in mind that the skill and experience of the injured plaintiff is considered in determining whether he or she fully appreciated the risks associated with the activity, and, thus, voluntarily assumed the risk. The risks assumed by a beginner rider will be very different than those assumed by an experienced or professional horseman.

Assumption of the risk is not always a successful defense, however. The doctrine does not bar recovery for reckless or intentional conduct, or concealed or unreasonably increased risks. For example, if you allowed a fairly beginner rider to take her lesson

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on a green-broke colt that has a known tendency to buck, and the beginner rider was not made aware of that tendency, then you have unreasonably increased the risk that your rider will fall as a result of the horse bucking. It is highly unlikely that this rider will be deemed to have assumed the risk of falling under these circumstances. On the other hand, the defense is likely available if the beginner rider was appropriately assigned to your most trusted lesson horse that has never bucked a day in its life (to your knowledge).

In addition to the doctrine of assumption of the risk, liability waivers and releases can afford additional protections to horse owners and professionals. Importantly, however, not all releases are valid. New York law does not allow a place of “amusement” or “recreation” to excuse itself from liability for damages caused by the owner’s or operator’s negligence. Determining whether your facility falls within this exception can be tricky; but in general, if a plaintiff is injured while receiving horseback riding lessons, which are instructional, the facility is not considered recreational, and your release is not void against public policy. If your facility rents horses for recreational purposes only (*i.e.* a trail ride), however, then it is likely that a release will not bar an injured plaintiff’s claim.

Moreover, because courts are reluctant to enforce exculpatory provisions, a carefully drafted release, signed by the right party, is crucial in protecting a horse or stable owner from liability. For example, broad, sweeping releases are not sufficient to relieve a defendant from liability for negligence. Finally, children cannot sign away their legal rights — period. Having parents or guardians sign a release merely releases their own right to sue, not their child’s right. Despite these complexities, releases serve important functions: not only will a release potentially discourage someone from suing you in the first place, if properly drafted, it can prevent a plaintiff from prevailing in a lawsuit.

Now, what can you do to protect yourself from the potential liability described above? Although each of the following points require lengthy explanation (which is beyond the scope of this article), there are several important considerations to minimize exposure to liability:

- Before you allow anyone to ride your horse, determine his or her experience level and match the appropriate horse to their ability.
- Based on that rider’s experience, appropriately explain the risks of riding, and make sure that they understand those risks. Explain that, if you ride horses, at some point, it is likely that you will fall off.
- If the horse they are riding has any known dangerous propensities, advise them in detail of the behavior in order to provide them with an opportunity to decline the increased risk.
- Have your attorney draft an appropriate release that is tailored to your operation. Make sure all visitors, spectators, riders, and guests execute the properly drafted release.
- Require that all riders wear a helmet while riding; particularly those under the age of 18.
- Post signs advising of the dangers of horse-related activities.
- Get insurance. Do not expect your homeowner’s insurance to cover your horse-related business activities.
- If an accident occurs, immediately notify your insurance carrier.
- If you are served with a lawsuit, call your attorney.

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In summary, New York law protects horse owners and professionals from horse-related incidents that are truly accidents resulting from the inherent risks of participating in equine related activities. If you carefully plan ahead and take a proactive approach in minimizing such risks, you can reduce the likelihood of avoidable injuries; and, consequently, dramatically decrease the risk of getting sued and being held liable in the unfortunate event that a lawsuit is commenced against you.

