

EQUINE INSURANCE – DO I NEED IT?: UNDERSTANDING THE BENEFITS OF EQUINE LIABILITY COVERAGE FOR YOUR EQUINE BUSINESS OPERATION

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It is no secret that horse ownership can be a risky business. Anyone that operates an equine-related business is aware of the significant cost, planning, and efforts required to provide a safe, successful, and enjoyable experience for everyone involved. But even with the most careful planning, accidents can happen. Unfortunately, in today's litigious society, some of these accidents can evolve into lengthy and expensive litigation. Without proper liability insurance, the overwhelming costs of litigation can force the unsuspecting equine operation into dire financial straits or even bankruptcy.

Consequently, as with all business operations, one of the first things to consider is adequate protection in the unfortunate event of a lawsuit. Ask yourself, if someone is injured by one of your horses, can you afford to defend a lawsuit or pay a judgment against you? Likewise, if a horse that is boarded at your stable is injured, are you prepared to pay for the costs associated with potential litigation arising out of the accident? Every horse and equine-related business owner should have ready answers in place for these questions well before an accident occurs.

Some horse owners rely solely on their state's equine activity statute for protection from equine-related accidents. This could prove to be a costly mistake. While the protections afforded to horse owners and professionals by the equine activity statutes are helpful, they are not enough. A common misconception in the equine community is that equine activity statutes, which have been adopted in 46 states (all except New York, Maryland, Nevada, and California), protect the horse owner and professional from getting sued in the first instance. This is not correct. Equine activity statutes provide a defense to horse owners and providers from frivolous lawsuits arising out of equine-related accidents that could not have been avoided, and while they may discourage an injured party from filing a lawsuit, they do not prevent it.

The underlying premise for these statutes is that a person cannot recover for injuries that were the result of the "inherent risks" of engaging in equine activities (such as, a fall resulting from a horse stumbling or spooking, or getting kicked or bitten). None

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of these statutes completely eliminate all possible horse-related liabilities. In fact, these statutes typically spell out what risks are not considered “inherent”—such as the failure to appropriately match a horse and rider based on experience or providing faulty tack or equipment—and therefore fair game for a lawsuit. Another thing to keep in mind is that these statutes may have certain requirements that must be met in order to obtain their benefits (such as, posting or notice requirements).

In certain states that have yet to adopt an equine activity statute, such as New York and California, a legal defense called “assumption of the risk” offers horse owners and professionals some protection from unavoidable accidents. Like the equine activity statutes, the assumption of the risk defense operates as a bar to recovery for injuries resulting from the risks inherent in equine-related activities. It is important to keep in mind that the assumption of the risk defense, and the equine activity statutes, never provide a defense to gross negligence or intentional misconduct.

Although the above legal defenses are extremely helpful to horse owners and professionals, it is risky to rely exclusively on them. Your attorney will utilize these defenses in an attempt to obtain a complete dismissal of the lawsuit, but substantial fees will be incurred to achieve a successful end result. Moreover, keeping in mind that litigation can be unpredictable, in the worst case scenario, substantial attorneys’ fees will be incurred in defending a lawsuit that results in a verdict in favor of the injured party. Without proper liability insurance, you will need to pay both the significant costs of defending the lawsuit and the judgment rendered against you. But, with an appropriate equine liability policy in place, your policy will provide for defense costs and will pay for any claims up to the policy limits for which you are found liable.

Liability insurance can be defined as insurance covering the insured against loss arising from injury or damage to another person or property caused by negligence or acts of omission during performance of his or her duties or business. It is important that your insurance agent and company understand your operation, so it is best to find a company that is experienced in equine insurance. Companies will ask you for detailed information about your equine operation (i.e., training, boarding, lessons, etc.) so that the appropriate premium can be charged. Typically, the more activities you have or income you produce, the more exposure or risk of a potential claim is present, and the higher the insurance premium will be. Operations that are not disclosed may not be covered.

Liability for an equine operation can be purchased under a farmowners policy or under a separate general liability policy. It can be to an insured’s advantage to package the property with the liability coverage under a farm policy. Liability limits are purchased in increments and can be one limit or be a split limit. For example; an equine commercial liability policy with a \$1m per occurrence liability would provide a maximum of \$1m for any one claim. A \$2m general aggregate limit would provide a maximum amount of \$2m total for the entire policy year. Some companies offer a savings by attaching a deductible to the liability coverage. Be sure to know if a deductible exists prior to a claim.

As mentioned earlier, the liability limit would also provide for defense coverage; which may be one of the most important assets to a liability policy. By paying an insurance premium, you hire your agent and insurance company. When an unfortunate incident occurs, both parties are working for you to investigate and determine fault in a liability claim. Defense coverage alone can be costly.

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Just like the equine activity statutes, your insurance company may have certain requirements in order to obtain coverage, including posting barn rules and emergency numbers, having waivers/hold harmless agreements signed by everyone at the farm, and requiring that riders wear helmets and boots. These requirements are to protect you from a claim or lawsuit and to help the company's defense when a lawsuit is brought against you. Other recommendations on the farm, such as handrails on steps or removing debris, can also protect you from a liability claim and help with the defense of your case. Although company recommendations and requirements can seem inconvenient, the purpose is to reduce risk and potential claims.

An exclusion for care, custody and control coverage is usually present under equine commercial liability and farm liability coverage. Care, custody, and control coverage is available either by endorsement to the liability policy or as a separate policy. This provides coverage for the value of the non-owned horses in your care. Non-owned horses in your care could be boarded or in training horses at your farm. The policy will react to a claim brought against you if the non-owned horse was "damaged" (death, injury, or theft) as a result of your negligence while the horse was in your care custody and control. Policies are purchased with a per horse limit and a per policy limit.

It is always best not to rely on an equine business owner's care custody and control coverage to insure your owned, boarded horses. The care custody and control coverage is optional and not always purchased. It is important to inquire about an equine mortality policy to insure your horse(s). Policies can be purchased for accidental coverage only or full mortality (accidental coverage and health related death). Rates are based on the age, breed, and use of the horse. Major medical, surgical, and other coverages are available when the full mortality policy is purchased. As an owner of a boarding or training stable, it is recommended that you require the non-owned horses at your stable to have a mortality policy and include such verbiage in your agreement.

This article provides a general overview of equine activity statutes and some of the insurance coverages available to you as a horse owner or equine business owner. Knowledge is power and protection.