



Chapter 14— Considering Liability Issues

Liability issues concern riders, landowners and managers, outfitters, concessionaires, event coordinators and sponsors, and anyone else who is involved in equestrian recreation. Accidents with horses and mules happen.

A frequent question is, “Can I be sued?” The answer is, “Yes.” Little can be done to prevent an aggrieved party or plaintiff from filing a lawsuit. Landowners are better prepared to deal with lawsuits if they:

- ☆ Know the State statutes that reduce liability for landowners who open their lands to free public use. The statutes include, but are not limited to, equine liability acts and recreational use statutes.
- ☆ Work with legal advisors to develop a risk management plan. It is important to keep facilities in good condition and free of hazards. Use good judgment about activities allowed on the property.
- ☆ Purchase liability insurance that covers equestrian activities.

This guidebook can only provide basic information about liability. Laws and their interpretation vary widely by jurisdiction, and the best advice is to seek

professional legal counsel. Citations in this chapter provide resources that give additional background. Be aware that statutes and rulings change or are amended frequently, and that Web site information may become outdated or be invalid.

Equine Liability Acts and Recreational Use Statutes

In the 1990s, lawsuit costs and rising liability insurance rates contributed to an economic downturn for equestrian businesses and activities. Since then,

many States have adopted equine liability acts to address these concerns. For an example of such an act, see *Appendix I—Sample Equine Liability Act (New Mexico)*. Because these acts are relatively new, the courts have heard few cases. Certain liability considerations are common to a number of equestrian activities. Equestrians and landowners should become familiar with the equine liability acts that apply to lands they own, visit, or manage. Figure 14–1 shows one approach to presenting information regarding risk.



Recreation Liability Law

These sources provide additional information regarding liability law as it pertains to recreation or horses and mules:

- ☆ The Animal Legal & Historical Center has a searchable database of cases, statutes, and articles relating to stock in the United States and other countries at <http://www.animallaw.info>.
- ☆ The Equestrian Land Conservation Resource has links to equine activity statutes on the *Information by State* Web page at http://elcr.org/index_info.php.
- ☆ The University of Vermont offers information regarding equine law, statutes for horsemen, law cases for horsemen, and safety articles on the *Equine Law and Horsemanship Safety* Web page at <http://asci.uvm.edu/equine/law>.

Resource Roundup

- ☆ The International Mountain Bicycling Association offers a table of State recreational use statutes that lists the year the law was passed and indicates whether the law addresses such topics as: duty to keep safe, duty to warn, assurance of safety, misconduct and similar issues, and whether protection is lost if a fee is charged. View the table at http://imba.com/resources/trail_issues/liability_chart.html.
- ☆ The National Park Service’s Rivers, Trails, and Conservation Assistance Program has brochures about limited liability recreation laws for all 50 states on its *Recreational Use Statutes and the Private Landowner* Web page at <http://www.nps.gov/ncrc/programs/rtca/helpfultools/recusebrochures>.



Figure 14-1—Liability laws vary around the country.

Every State has recreational use statutes that address a landowner’s liability for injuries that occur to an individual recreating on the landowner’s property if a fee is not charged. These statutes help protect private landowners, reduce the threat of lawsuits, and encourage landowners to open their lands to recreational use. Refer to *Appendix J—Sample Recreational Use Statute (Kentucky)* for an example of a State recreational use statute. Some landowners worry that by opening their lands to the public for such use, they risk losing the land through adverse possession. Some recreational use statutes address this issue, and some State recreational use statutes

define recreation user responsibilities. Local jurisdictional guidelines and statutes define required precautions when horses or mules are involved in any recreational pursuit. These guidelines also differ widely from one jurisdiction to another. It is the equestrian’s responsibility to know the applicable statutes and regulations.

Land management agencies have their own concerns about lawsuits resulting from equestrian activities. Government immunity acts or tort claims acts generally address Federal and State liability. Some also address recreation concerns. In some cases, State recreational use statutes apply to public lands. The statutes differ by State, as do their interpretations by State courts.

Risk Management Strategies

Sound risk management strategies use common sense to incorporate facility standards that reduce the risk of injury. It’s common sense to anticipate, identify, and address hazards in a timely manner. Having a perimeter fence around the campground to contain stock that get loose makes sense. Fences or latches designed for cattle may not be adequate for riding animals and packstock. Gates and fences should comply with minimum standards for the type, strength, height, latch closures, and anchoring techniques reasonably expected to contain horses and mules.

Prudent risk management incorporates good safety and emergency access plans. Safe processes and procedures for accessing or leaving public land during emergencies should be identified and implemented. Most public land managers establish routes and practices for use in equestrian-related emergencies. The sheer size and weight of a horse or mule can complicate emergency procedures. For example, lifting an injured or dead horse off a pinned rider can be very difficult, especially in remote areas. Plan ahead.



Resource Roundup

Liability and Lawsuits

The International Mountain Bicycling Association has numerous articles addressing recreation liability subjects, including risk management, landowner liability, insurance, and other relevant topics on its *Liability and Lawsuits* Web page at http://www.imba.com/resources/trail_issues.



Resource Roundup

Safety Trails Forum

The *Safe Trails Forum* offers articles contributed by National Trails Training Partnership members on safety, crime, liability, and related issues. Access the forum at <http://americantrails.org/resources/safety>.

Public land management agencies can develop rescue procedures that minimize rider safety risks and reduce emergency response times. The U.S. Department of Homeland Security Federal Emergency Management Agency (FEMA), many State emergency response teams, and universities with equine veterinarian programs can provide helpful planning guidelines and large-animal rescue training for emergency responders.



Resource Roundup

Emergency Response

Large animal response teams help rescue or relocate stock during disasters, such as floods and fires. Examples include:

- ☆ Clemson Extension Large Animal Emergency Rescue at <http://www.clemson.edu/ep/LART>.
- ☆ UC Davis Veterinary Emergency Response Team at <http://www.vmeth.ucdavis.edu/home/VERT>.

Competitive and Group Trail Events

Equestrian events held on public or private lands, including group trail rides, endurance races, competitive trail rides, instructional lessons, arena activities, and spectator events, usually have special requirements designed to limit liability. Public land management agencies may require special permits for certain recreation uses, such as group or competitive events. Insurance certification often is a requirement for the permit. Liability insurance coverage should protect the event managers and the land managers, while covering other concerns.

Event participants should sign a liability release form. By themselves, release forms don't provide immunity from liability—they are one factor among many risk management strategies. Structure the release-form language to meet requirements of local jurisdictions and State law. Have an attorney review any liability release form.

Other equestrian activities also can cause injuries to spectators, bystanders, and other recreationists. To reduce the risk of accidents, injuries, or recreation user conflicts, post appropriate signs and public information.



Resource Roundup

Mandatory Wording

For information on mandatory language for event contracts, entry forms, and waivers, consult *The Equine Activity Liability Act: How It Affects Associations & Sponsors* (Farris 2005) at <http://www.farrislawfirm.com/Default.aspx?PageID=31>.

Private Insurance

Many owners insure their horses and mules, as well as their horse trailers, tack, carts, and related equipment. Remember:

- ☆ Special insurance and a written description of the equestrian activity generally are required for competitions, events, and instructional training.
- ☆ If any monetary exchange or agreement is made for riding, caring for, transporting, competing, or training horses or mules, or if any other compensation is paid to an individual using stock, the pursuit could be considered a business activity. Most homeowner insurance policies don't normally cover business activities.
- ☆ Some policies don't provide coverage when a horse or mule leaves the landowner's property. Know the limits and exclusions in any equestrian-oriented insurance policy.

