

## **Equine Activity Liability Act, Do I Still Need Insurance?**

By Robert A. Hoffa, Esq.

Many times I am asked, "My state has an Equine Activity Liability Act (EALA) -- do I still need insurance?" The answer is absolutely. Care, custody and control insurance is a policy which applies to horses in your care, custody and control whether for training, showing or boarding. The insurance applies specifically to horses and any injuries or harm they may sustain.

Forty-four states have adopted an Equine Activity Liability Act of some form. The concern is, many people believe that because an EALA is in effect in their state, they cannot be sued. That simply is not true. There is not someone standing at the courthouse telling a person that he or she cannot file a suit because it involves an equine activity. EALAs do not prevent someone from suing you regardless of how frivolous the claim may be. All that is required to file suit against another person is to go to the courthouse, pay the filing fee and file the Complaint. Once suit is filed, you are under an obligation to respond to the claim within a fixed time period, or a judgment may be entered against you. If you are insured under a liability policy for your equine business, the insurance company will retain an attorney to represent you. The insurance company will pay the costs of legal representation. If, however, you are uninsured, you will either have to defend yourself against the suit or hire an attorney and pay for the representation out of your own pocket. While this is not the most important reason to have liability insurance, it certainly is a consideration.

There is little doubt that the passage of these Equine Activity Liability Acts is probably the best legislation the equine industry has seen. What the EALA does, is provide you with a defense to claims relating to certain equine activities. These statutory defenses enable you to have some cases dismissed early in the litigation process by what is known as a Summary Judgment Motion. In essence the court decides, rather than a jury, that there is no legal basis for this claim and dismisses it as a matter of law.

In order to receive the protection of the EALA some states have requirements for posting of signs and/or written releases warning of the inherent dangers involved in equine activities. These requirements differ from state to state. You have to make certain you comply with your state's requirements, or you will not be provided the protection and the defenses that the Act was designed to give you. That does not mean you automatically lose any case filed against you but rather, makes it more difficult to defend the claim. Like most things in law, there are exceptions to EALA protection. Exceptions from immunity to liability may include an allegation that you provided the person with a horse that was not suitable for his or her riding ability, provided faulty tack, were grossly negligent, or the person suing you may have been a spectator. Some EALAs do not provide protection if the person injured was a minor even though they were involved in an equine

activity. Most of the statutes only apply to participants in equine activities. That definition varies from state to state. While the intent of these acts was to protect the equine activity sponsor, trainer or farm owner, you can see there are many legal loopholes which will still expose you to liability. Even if you have complied with all of the requirements for EALA protection, you may still be exposed to liability because the Plaintiff falls into one of the exception categories.

Defending lawsuits can be a costly undertaking. You incur expenses for witnesses, filing fees, court costs and legal fees. Even if you win the lawsuit, you do not get reimbursed all of your expenses. The key is to protect you, your property and your other assets from these types of claims. Even if you have the protection of a corporation or a limited liability company, you still may be exposed to personal liability if the person making the claim can show that you did not comply with your state's requirements for corporate protection. This is commonly known as piercing the corporate veil. While corporate protection may help you, it is not the same as having insurance protection.

A good liability policy tailored to your particular needs will protect you, your investment and your assets. When you are insured, your insurance company will be responsible for the costs of your legal representation and any judgment or verdict that may be entered against you up to your policy limits. Make sure your policy protects the type of business you operate and that the exclusions contained in that policy are not concerning activities in which you engage.

## **About the Expert**

**Robert A. Hoffa** is an Attorney with an office in Williamsport, Pennsylvania. His clients have included equine associations, trainers and breeders throughout the United States. Mr. Hoffa was general counsel to the NRHA from 1988 to 1999. In addition, he has been a Guest Lecturer at Salem Teikyo University for their Equine Law Classes, as well as a Guest Speaker at the University of Kentucky Equine Law Seminar, Equine Affaire, and the Horse World Expo.

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