

The Equine Esquire

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Protecting Yourself Against the “Attractive Nuisance”

Horses and children have always gone together. It's a sweet picture of perfection. However, what happens if a child trespasses on your property and is injured by a horse? To a child, horses can present both an irresistible lure and a hidden danger. Put the two together and you have the potential for liability.

What is an “attractive nuisance”?

“Attractive nuisances” are potentially harmful objects and conditions on the land that are so inviting or interesting to a child that it would lure the child onto the property to investigate. Therefore, courts recognize children can fall harm to risks that adults are more likely to see and understand. Unlike the general rule that a landowner owes no duty to protect trespassers, the “attractive nuisance” doctrine provides that a landowner/occupier may be liable for foreseeable harm to trespassing children. Children usually cannot appreciate the dangers they may encounter with horses. They cannot read warning signs, and easily climb over or crawl under fences. Depending on the circumstances, a horse could qualify as an “attractive nuisance.”

Evaluating your potential liability

Being aware of potential liability is particularly important to those with horses because they: 1) need large areas of land, which requires greater diligence in maintenance; 2) attract people to ride, touch, and admire, especially children who are unaware of the dangers; and 3) can cause significant injuries given their size and strength. To be held responsible for injuries caused by an attractive nuisance, the parents of the injured child must prove each of the following elements:

- The luring condition on the property is in a place where the landowner/occupier knows, or should know, that children may trespass;
- The luring object or condition is something that the landowner/occupier knows can cause injury to children who come near it;
- Children cannot appreciate the dangerous nature of the condition or object if they interfere or touch it;
- The burden on the landowner/occupier to eliminate the risk is slight compared to the risk posed to children; and
- The landowner/occupier has not used reasonable care to stop children from being injured by the luring condition or object.

Never assume you are immune from liability because a child injured on your property was a “trespasser.” The “attractive nuisance” doctrine is an exception to the general rule that landowners/occupiers are not liable for injuries to trespassers. Also, you will likely not prevail by raising the defense that the child's parents failed to properly supervise.

Measures to minimize or eliminate liability

The law doesn't require landowners/occupiers to childproof their property. However, it expects them to be alert to potential dangers to children, and to take reasonable steps to prevent harm to those too young to appreciate the danger. There are many simple

measures you can take to help minimize or avoid liability for an “attractive nuisance,” such as:

- Apply common sense. There is no replacement for good common sense. It's usually easy to spot an accident waiting to happen.
- Check your conduct. Your affirmative conduct in allowing children to trespass on your property could almost certainly make you liable if an injury results from an “attractive nuisance.” When you see trespassing children, warn them of the danger and ask them to leave your property. Notify their parents, if possible. These efforts will help evidence the many precautions you are taking to protect others.
- Make regular inspections. Check your property often to identify any hazards that might foreseeably create a risk of injury to others, especially trespassing children. Take measures to eliminate or minimize the risk.
- Review local laws. Local laws often regulate objects that are dangerous to inquisitive children. Become familiar and comply with applicable local regulations.
- Review insurance coverage. Review your liability insurance policy, specifically the exclusions. Also, often the policy language will state special precautions you must take to protect others from hazards on your property. If you fail to take such measures, your insurance coverage may be voided.
- Listen to concerned parents. Be open-minded if a concerned parent approaches you about a potentially dangerous condition and be solution-focused. A simple conversation may help avoid tragic accidents and lawsuits.
- Secure horses with dangerous propensities. If you have horses with known dangerous tendencies, keep them away from areas where children can easily see and approach them. If these horses are kept inside, make sure their stalls are designed so that children cannot touch or access them.

Proving personal injury under the attractive nuisance doctrine depends on the unique facts of each case. The level of understanding of a child varies depending on the age, and what constitutes reasonable care will change with the type of dangerous condition and age of the child who was hurt. Having an awareness of the law and following the precautions above will help to minimize risks and foreseeable injuries, thus helping to protect you against the liability that comes with having an “attractive nuisance.”

The above article is not intended to be legal advice. Readers should seek legal counsel to determine how the law applies to their particular circumstances.



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