

The Equine Esquire

Column editor Patrice Doyle, Attorney at Law, Board of Directors

Evaluating Your Liability Waiver

Think about this typical scenario...parents bring their young daughter to a riding stable for lessons. The facility owner gives the parents a lesson contract to review and sign. The contract identifies the facility, participant, dates of lessons, and skill level of the child. Additionally, the contract language states, "I agree to accept full responsibility for myself and my minor child during the lessons. I will hold the facility harmless for any accident, injury, or loss that may occur due to participation in riding lessons." The parents sign the contract. The daughter later falls off her horse during a lesson and breaks her arm. The parents sue the facility on behalf of their minor daughter. The attorney for the facility files a motion to dismiss the lawsuit based on the existence of a signed liability waiver. What happens? For the reasons that follow, there is a strong likelihood that the particular waiver the parents signed will be deemed unenforceable in a court of law, and the facility will not escape liability for the daughter's injuries.

A waiver, often termed a release, is a contract between the facility (trainer, horse owner, etc.) and the participant (or participant's parent(s) if a minor). The agreement is reviewed and signed prior to commencing the activity in which the facility seeks to be absolved of any fault or liability for injuries resulting from its ordinary negligence or mistakes.

Waivers fail for many reasons, but one of the most frequent causes is that they are poorly written. When evaluating your liability waiver, consider the following:

- **Title and form** – Clearly title the document in large type so the participant knows what they are signing. Use terminology such as LIABILITY WAIVER & RELEASE or specific to the activity such as BOARDING & TRAINING AGREEMENT AND LIABILITY RELEASE.
- **Clarity and readability** – Is the exculpatory language conspicuous (underline, bold, upper case, etc.)? Is the font size large enough to be easily read? Is it written in language that can be understood by the intended reader? Do not use legalese.
- **Naming parties released from liability** – Name all parties being released from liability, otherwise they will likely not gain any protection in court. It's fine to use individual names as well as groups such as "employees, agents, officers, directors, volunteers, sponsors", etc.
- **List the inherent risks of the activity** – Hazards and risks must be spelled out in the release and clearly separated from other sections. Include a list of potential equine risks, including minor, serious, and catastrophic events that could occur. Also include the consequences of these risks (eg. minor: scrapes, bruises; serious: broken bones, concussion; catastrophic: death, paralysis.) If the possible risks are not made clear, then the injured party can claim they did not "knowingly waive" the liability where they were uninformed.
- **Identify signers & releasees** – Does the agreement clearly identify who is to sign the release and who the release affects? In the case of a minor, does the person signing have the legal right to do so? Include full names, addresses, and phone numbers.
- **Use the word "negligence"** – There must be a distinct section

regarding waiver of liability for acts of ordinary negligence. Be sure to broadly describe all phases and aspects of participation. No court will enforce a release that attempts to waive liability for gross negligence, willful and wanton misconduct, or intentional acts.

- **Include dates** – Does the release indicate when it was executed, when it takes effect, and how long it remains in force? For an activity that is more than a one-time event, such as a boarding or training, consider requiring a new release to be signed annually, and especially if the activity or premises is modified.

When incorporating the use of a waiver in your business, make sure you and your staff administer the waiver properly and fairly:

- Allow the signer(s) time to read;
- Explain the agreement;
- Answer questions;
- Provide an executed copy to the signer;
- Develop a system to retain the signed documents and allow for easy retrieval (electronic storage and storing originals in a clean, safe place);
- Review the waiver language from time to time, especially if there are changes in your facility, or in services/activities offered; and
- Do not use sign-up sheets as liability waivers as courts have consistently disallowed their use as waivers.

In sum, no business should operate without a good liability waiver. If you've considered all the criteria above when drafting your waiver, it is probably well-positioned to enjoy enforcement under the law.



Patrice Doyle is a senior attorney at Kornblum, Cochran, Erickson & Harbison, L.L.P., and has been an avid horsewoman since childhood. She can be of assistance in guiding you through equine-related legal issues. Contact her at (707) 544-9006 or www.kcehlaw.com.

The above article is provided free and offers general information on the topic of waivers. Neither the author nor the publication intend this article to be viewed as rendering legal advice. If legal advice is sought, readers should seek competent legal counsel regarding their particular circumstances.

 KORNBLUM, COCHRAN, ERICKSON & HARBISON Attorneys at Law Kornblum, Cochran, Erickson & Harbison, L.L.P. A Partnership of Professional Corporations and an Individual	Patrice A. Doyle Attorney at Law
1388 Sutter Street, Suite 820 San Francisco CA 94109	Email: patrice@kcehlaw.com
50 Old Courthouse Square, Suite 601 Santa Rosa CA 95404	Telephone: (707) 544-9006 Facsimile: (707) 544-8213 Web: www.kcehlaw.com