



# Equine Law Overview

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# Presentation Topics

- ❑ Premise Liability
- ❑ Hobby Loss Rules
- ❑ Equine Liability Act and Waivers
- ❑ Volunteer Protection Act
- ❑ Sales and Disclosure Laws
- ❑ Transportation Issues
- ❑ General Questions?

# Premise Liability

- ❑ Landowners responsibility for accidents that occur on premises
- ❑ Liability depends on visitor's status





# Visitor Status

## ❑ Invitee:

- ❑ Someone specifically invited onto property typically for a business purpose
- ❑ usually implies that the property owner/possessor has taken reasonable steps to assure the safety of the premises.

## ❑ Licensee:

- ❑ Someone entering property for their own purpose or as a social guest, with consent of owner
- ❑ Usually implies property owner has taken reasonable steps to assure safety of premises
- ❑ Lesser duty owed to Licensee than to Invitee

## ❑ Trespasser:

- ❑ Someone who enters without any right to do so.
- ❑ No implied promise that reasonable care has been made to assure the safety of the property
- ❑ Except: for known dangers not readily apparent to the trespasser

# Discussion Examples

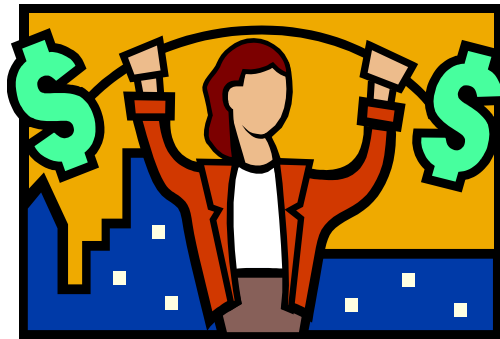


- ❑ Stallion in pasture accessible by public
- ❑ Shavings Storage Barn accessible by minors on private land
- ❑ Shavings Storage Barn accessible by minors on Boarding Facility land
- ❑ Overgrown barb wire on private property trail known to be used by trespassers

# Equine Tax Planning

## ❑ **Hobby Loss Rule:**

- ❑ If an activity is not engaged in for profit, no losses attributable for such activity will be allowed.
- ❑ Proof of “For Profit” motive
  - ❑ Engaged in activity for profit
  - ❑ Requires objective facts, not subjective intent



# Ten Steps To Avoid the Hobby Loss Audit:

- 1. *Keep good and separate records*



- 2. *Create & Update a Business Plan*



# Ten Steps (cont'd)

- **3. *Invest substantial time***



- **4. *Consult with Experts***





# Ten Steps (cont'd)

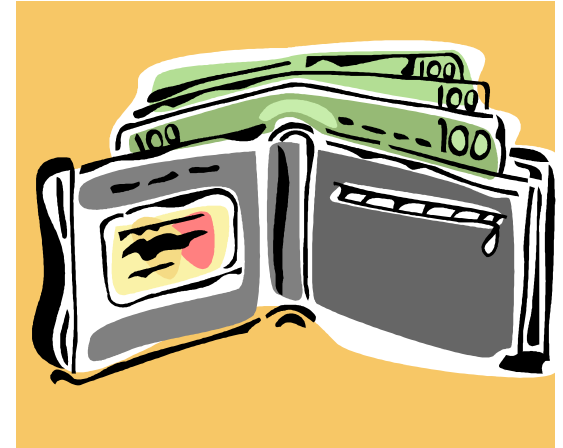
- *5. Record internal hardships*



- 6. Prove expectation of appreciation*

## Ten Steps (Cont'd.)

7. *Devote substantial resources*



8. *Limit appearance of pleasure*

# Ten Steps (cont)

- 9. *Generate substantial revenues*



*10. Create a Cash Basis profit year*



# Equine Liability Act & Waivers



- ❑ Kansas Domestic Animal Activity Liability Act K.S.A. §60-4001 *et seq*
- ❑ Statutory in nature
- ❑ Dependant upon definition
  - ❑ Professional
  - ❑ Participant
- ❑ Dependant upon activity involved
  - ❑ Is it a “domestic animal activity”
  - ❑ Is the injury related to an inherently dangerous aspect normally associated with that animal activity
- ❑ Are you compliant with statute (professionals only)
  - ❑ Sign Posting / Contract language

# Inherent Risk of Equine Activities:





# Domestic Animal Activity Liability Act

## ❑ Exceptions K.S.A. 60-4003

- ❑ Provision of faulty tack or equipment which caused injury
- ❑ Failure to adequately match rider to mount based on rider's ability
- ❑ Failure to warn of known latent or dangerous conditions on land
- ❑ Failure to meet standard of care of a reasonable sponsor, professional or other person engaged in domestic animal activities in same locality
- ❑ Injures participant by willful, wanton or intentional conduct
- ❑ Not applicable to Products Liability or Workers Compensation actions

# Spectators

- ❑ No assumption of risk of injury
- ❑ Sponsor has Duty to
  - ❑ Warn
  - ❑ Take Reasonable Measures
  - ❑ To segregate from equine areas





# Spectator Warning

**WARNING:**

**LIVESTOCK AREA.**

**SPECTATORS NOT ALLOWED.**

**ENTRY INTO THIS AREA CONSTITUTES A VOLUNTARY PARTICIPATION IN A DOMESTIC ANIMAL ACTIVITY. BY ENTERING THIS AREA, YOU ASSUME THE RISK OF INJURY OR DEATH.**



# Waivers

- ❑ Are they worth the paper they're written on?
- ❑ YES! If drafted correctly
  - ❑ Liability waivers, if properly drafted, are legally enforceable under state contract law grounds. *Anderson v. Union Pacific Railroad Co.*, 790 P.2d 438, 440 (Kan. App. 1990).
  - ❑ Liability waivers will be upheld, under Kansas law, unless the agreement is contrary to public policy or is illegal. *Id.*
  - ❑ Kansas courts will strictly construe liability waivers against the party who drafted the waiver. *Id.*
  - ❑ To be properly drafted, waiver must:
    - ❑ Contain language which is clear and concise
    - ❑ Waiver must be fairly and honestly entered into
    - ❑ Waiver must have been made with understanding by all parties including waiver of the ordinary negligence of the released party. *Id.* at 346-47.





# Volunteer Protection Act

- ❑ Federal: U.S.C. 14501
- ❑ Kansas: K.S.A. 60-3601
- ❑ Non-profit volunteers immune from liability IF:
  - ❑ Acting within scope of designated role
  - ❑ Properly certified if required
  - ❑ Harm unrelated to intentional, willful, wanton or reckless conduct
  - ❑ Harm not related to operation of a motor vehicle

# Sales & Disclosure Rules

- ❑ **Caveat Emptor: Let the Buyer Beware**
- ❑ **Statute of Frauds: Requires Contract to be in writing to be enforceable**
  - ❑ If Livestock Costs \$500 or more



# Sales & Disclosure Rules (cont)

## □ Buyer's Duties

### □ Ask questions

- Age, physical condition, vaccinations, health papers, Coggins, breeding condition, soundness/lameness problems, vices, surgical procedures; founder/laminitis/colic/other
- Temperament, uses, show record, show record of relatives.

### □ Identify intended purpose

### □ Conduct a “reasonable” inspection

- Intended use
- Measured by customary practice in the industry



# Sales & Disclosures (cont'd)

## ❑ Sellers Duties

- ❑ Respond truthfully IF ASKED
- ❑ Identify fitness for expressed particular purpose
- ❑ Heightened duty for minors




# Sales Contract

## □ Seller

- Option to obtain vet exam clause
- Include “As is” clause
  - No warranties
  - No guarantees
- Merger clause
- If financed
  - Right to enter & repossess

## □ Buyer

- Identification of intended use
- Identification of specific warranties & guarantees
- Sale subject to vet/farrier exam
  - Return transportation costs obligation of seller
- Insurance (if economically warranted)



- 1. What**
- 2. Who**
- 3. Price**
- 4. Signed**



# Transportation Issues

- ❑ What is covered by your vehicular insurance?
  - ❑ (1) repair or replacement of the vehicle damage;
  - ❑ (2) repair or replacement of the vehicle contents, including the show tack assuming any of it was inside the damaged vehicle instead of the horse trailer; and
  - ❑ (3) reasonable personal injury/medical expenses of Kindly Equestrian and Former Friend up to the limits of that particular policy



# Transportation Issues

- ❑ What is covered by your trailer insurance?
  - ❑ (1) repair or replacement of the trailer damage;
  - ❑ (2) repair or replacement of the trailer contents, including YOUR tack assuming any of it was inside the trailer
  - ❑ (3) DOES NOT cover your friend's tack inside the trailer
  - ❑ (4) DOES NOT cover your friend's horse inside the trailer
  - ❑ (5) May or May Not cover your horse
- ❑ Are you receiving compensation of ANY form for hauling someone else's horse?
  - ❑ Barter or gas sharing may constitute "compensation"
  - ❑ "Compensation" means "for business"
  - ❑ Requires a separate Carrier policy



# QUESTIONS?

