

# horses and the law

By **Susan Hopkins**  
Photography by **Sharon Meyers**

SUSAN HOPKINS RECENTLY ASKED AARON KOFFEL, A SOLICITOR AT KOFFELS SOLICITORS & BARRISTERS, A COMMERCIAL LAW FIRM WITH A DIVISION SPECIALISING IN THE EQUESTRIAN INDUSTRY, A FEW QUESTIONS ABOUT HORSES AND THE LAW.

**W**hen a horse is kept on agistment and the owner defaults in payment, what is the procedure the agistor has to go through before the horse can be sold or given away?

“The available option for the agistor varies depending on which State or Territory you are in. For example in Victoria you have the Impounding of Livestock Act 1994, which allows the agistor a relatively swift process for the selling of the horse to reclaim unpaid fees. Essentially the act allows you to claim a lien over the horse for the unpaid fees and eventually sell the horse in order to recoup the outstanding amount. Any funds in excess of the outstanding amount must of course be sent to the previous owner.

“For other States and Territories however, a lien can only be claimed if the horse has been improved in some way through, for example, training. Ordinary agistment does not improve the horse and as a result you cannot claim ownership nor sell the horse to recoup your costs. Essentially the

only avenue is to impound the horse, if necessary, and then attempt to recoup your cost in legal proceeding against the owner.

“My number one advice if you have a horse agisted at your property is to have a contract in place. You can include a term in the contract which empowers you to sell the horse if fees remain unpaid. A basic contract will only take a lawyer a few hours to draft and will be relatively inexpensive. If you get caught with a horse, with unpaid fees, it will cost you thousands upon thousands to resolve.”

*There is more to the agistment story. What happens when a horse on agistment does damage to a stud owner's property when it is out of the general area being paid for without the permission of the stud owner. Is the stud owner able to request payment for these damages?*

“The person in control of the horse is responsible for the damage resulting from the conduct of the horse. Generally speaking, if the



Have contracts in place with any horse related business. Mares at Niarla Arabians, Qld.



Know where you stand with the law when agisting horses.

horse is on the property owned by the agistor then the horse is in control of the agistor. Let's say for example that the horse has been moved from one area to another and the horse kicks out and does damage to a fence. In this case the agistor assumes the liability.

"An exception may be where the owner of the horse knows the horse is particularly hot headed and prone to kicking out and does not tell the agistor. In this case the owner may be liable.

"Another exception may be that the horse does damage to another section of property that is not related to the business of agistment. In this case the horse will be deemed to be in trespass and the individual in control of the horse will be liable. For example if the horse has purely broken out of its yard, then the agistor will most probably incur the liability. If however, the owner of the horse rode the horse onto this part of the property, without permission, then it would be the owner who is liable for the damage."

*If a horse's owner comes onto the agistment property with small children and other adults and the agisted horse hurts one of the children - where does the stud owner stand then in respect of damages?*

"As long as the injury did not result from any negligence on behalf of the agistor, then they should not be liable for any claim. The agistor however may need to have signs to warn visitors about

the dangers of the horses. Lack of care by the agistor may result in liability for the agistor. For example, let's say the fence is improperly installed and as a result the horse breaks loose from the paddock, which in turn results in the horse bolting through the car park area and injuring one of the children. In this instance the agistor would be liable. In terms of personal liability you would then need to refer to the terms of your insurance policy as you may also be sued as the owner. You may not be ultimately liable but your insurer would need to defend you.

"If you are in the agistment business one easy way to limit your liability is to ensure you have a separate company that owns the business. If you own the business in your own name and something bad happens and the business is liable this makes you personally liable. All your personal assets can be taken including your house. If the business is in a separate company name then the only assets that come into jeopardy are those assets owned by the company."

*Buying and selling horses is another area that involves an element of risk, especially with equine influenza and its aftermath. Buyers who purchased during this time were often required to agist horses with the seller until movement restrictions were lifted. What happens when the horse that finally walks off the truck after purchase looks poor in comparison to the original sales photographs and video?*

"The determining issue here is when did ownership pass? In this case it appears that ownership passed when payment was made and not when the buyer came into possession of the horse. It would first need to be determined what the condition of the horse was at the time of purchase. If the horse at the time of purchase was in good condition and then deteriorated, issues such as misrepresentation or unfit purpose do not apply. It is then a question as to why the horse deteriorated. The original seller who has agisted the horse over the period is required to adequately maintain the upkeep of the horse. If for example the horse has deteriorated because the seller (agistor) has not met this requirement, then the buyer (owner) of the horse may be able to recoup damages for this deterioration."

*What happens if the buyer discovers his new horse is a windsucker after the seller said it had no vices and no issues were picked up in the pre-purchase exam?*

"Ah yes, the windsucker! The question about the vices is what saves the purchaser in this instance. In this case the seller was intentionally misleading and deceptive. If the question had not been asked then the seller could quite easily argue that they did not mislead the buyer and it is up to the buyer to make their own enquiries.

"The vet may or may not be liable depending upon the severity of the windsucking and the type of vet report ordered. A good reference is the report sheet used by the vet. A vet may not observe the horse for an extended period and therefore may not be expected to pick up on the windsucking. That said, most vets should make a comment about any serious vices that would affect the horse.

"Let's say for argument sake the vet report included a comment saying the horse does not have any vices, including windsucking. As a result the vet is also probably liable and legal proceedings may be commenced against either the seller or the vet or both.

"Again you can claim for damages which would amount to the difference between the amount paid and the current worth of the horse. Please note however that you do not receive more money on account of damages because you have an action against both parties. From a practical point of view often the vendor does not have the funds to pay the plaintiff and as a result the vet will become the sole defendant.

"The other difficulty regarding an action against the vendor is that the proceedings would come down to what each party claims was said at the time of purchase. Perhaps the vendor argues that they told the purchaser the horse was a windsucker or claims that the purchaser never asked about the vices. In which case unless there is a third party to substantiate what was said, it will be left to the court to decide who is telling the truth. In comparison the case against the vet is more straight forward."

*Aaron Koffel is a solicitor at Koffels Solicitors & Barristers, a boutique commercial law firm located in the Sydney CBD. Apart from commercial and corporate advice, Koffels specialises in the equestrian industry. They advise on small equine disputes to large international sale and purchase. If you have any questions or require legal support please contact Koffels Solicitors & Barristers for a free initial consultation. **AHN.***

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