Equine Law

EQUINE ACTIVITY STATUTES (EAS) - THE CAPSULE EVALUATION

As of January 1, 2004

*Only Alaska, California, Maryland, Nevada, New York and Pennsylvania have NOT enacted EAS. ***(NB Pennsylvania has enacted its EAS this year)***

*Courts apply the law of the state in which the accident happened.

*In broad terms the EAS limit the liability of certain persons and or entities related to an equine activity during which a participant was injured by an equine in an accident caused by one of the inherent risks associated with equines or an equine activity.

*While no EAS gives a specific laundry list of inherent risks some attempt to describe them in general terms. Inherent risks are usually those risks, which the activity provider cannot, within reason, control.

*No court has ruled, and none is likely to, that an incompetent, untrained staff is an "inherent risk" within the meaning of an EAS.

*These statutes do not absolve either the amateur or the professional from the reasonable or professional duty to be careful.

REQUIREMENTS OF THE STATUTES

POSTING REQUIREMENT – This means a sign or signs placed where the people who need to see it are likely to see it.

NOTICE REQUIREMENT – This means a written notice, usually with specific wording, either in all contracts or in a release form. THE EAS THAT REQUIRE IT WILL TELL YOU IN WHICH FORM IT GOES.

PENALTIES FOR FAILING TO POST OR INCLUDE NOTICE

No EAS lists the specific penalty if a posting and/or notice requirement is ignored. However, that certainly does not mean that there would not be one. The most likely scenario is that the court would make the EAS unavailable to the party wishing to benefit from it, that is the party who failed to meet the posting or notice requirement. It is also possible that the court could invalidate the release form or contract that failed to contain the required notice. The court, conceivably, could do both.

It is highly unlikely that any court would ignore a legislative requirement and levy no penalty.

WHICH STATE REQUIRES WHAT?

10 STATES have EAS that do not require signs or written notices. If your operation or activity is in one of these you need do nothing to obtain the benefits offered by your statute: Connecticut, Hawaii, Idaho, Montana, New Hampshire, North Dakota, Oklahoma, Utah, Washington, and Wyoming.

4 STATES require signs but not written notices: Arkansas, Minnesota, New Jersey, New Mexico. In these four, and only these four, the little sign is enough.

23 STATES require that the same language be posted on your property and appear in your written contracts: Alabama, Colorado, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Missouri, Mississippi. Nebraska, North Carolina, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont. Copy your sign to your contracts.

2 STATES require that specified language appear either on a sign or in a written contract: Florida and Maine. Here you have a choice but smart money will put the mandatory language in both. Now your goats can eat the sign and you are still covered.

3 STATES require that any release of liability form contain the mandatory language given by the particular statute: Arizona, Oregon, Virginia.

2 STATES require notice in all contracts but do not require the posting of signs: Ohio, West Virginia

"So, WHAT ARE YOU WAITING FOR? You can ignore the Equine Activity Statute that exists in your state. You are also free to sky dive without a parachute if you choose. But, why would you want to do that? The costs of obtaining the protection of these statutes is almost free and the inconvenience of obtaining protection is small. You don't even need a lawyer. It really is a no-brainer. If in your state notice is required in addition to or instead of posting, then put the mandatory language in all your written contracts." Robert O. Dawson, Professor of Law

HOW TO MISINTERPRET AN EAS

1. ALL THE EAS ARE ALIKE. – No they aren't! A few are extremely similar. A few are extremely different. The few that have nearly identical wording will be interpreted by different courts, at different times, under different circumstances, always with the possibility of different results. Many have small but critical differences.

2. Because "inherent risks" are never specifically defined but some of the basic guidelines are alike, inherent risks are the same in all states. Not so because courts are different and each case will be colored by its particular facts and situation. A common example of "inherent risks" follows:

The propensity of an animal to behave in ways that may result in injury, harm, or death, to persons on or around them; the unpredictability of the animal's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals; certain hazards such as surface and subsurface conditions; collisions with other animals or objects; the potential or a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

An inherent risk usually means circumstances over which we have no control. That may be different at different times and in different places. It does not absolve the provider or sponsor of his or her reasonable or professional duty of care. These statutes do not mean that now we can teach lessons or have shows in places that we could not before or under circumstances that we could not before. They are not a blanket immunity from responsibility for actions and do not make it no longer necessary for us to think something through before doing it. For example the student's or competitor's horse was stung by a bee. An inherent risk? The facility manager had noticed the hive a few feet from the door of the arena weeks before but had done nothing. Still an inherent risk?

3. THE EAS NOW MEAN THAT PERSONS AND ENTITIES COVERED BY THE EAS CAN NO LONGER BE HELD RESPONSIBLE FOR INJURIES CAUSED BY EQUINES EXCEPT AS PERMITTED BY THE "EXCEPTIONS" SECTION OF THE STATUTE. I would not want to take those odds to Las Vegas. Just as "inherent risks" have been left to considerable interpretation, so has much else. Nowhere do these statutes appear to allow people to behave irresponsibly. One may read the body of a statute one way or perhaps read the exceptions another. Either way courts are requiring the same amount of responsible behavior since enactment of the EAS as before. Now it is easier to deal with the result of unforeseen circumstances, of "inherent risks". However, it is still not possible to hand a horse to a novice, give the novice a quick explanation of "start, stop and steer" and then expect to have an easy defense if there is an accident. It is also difficult to defend the use of untrained staff. Guessing about training is dangerous.

4. THE EXCEPTIONS TO THE LIMITATIONS OF LIABILITY ARE EASY TO READ AND MEAN EXACTLY WHAT THEY SAY. Well, sort of, maybe.

a. The sections on tack and equipment can be used for product liability problems and go back to the manufacturer but they can also relate to maintenance, adjustment and fit, to the horse at the time of mounting and through out the ride or lesson.

b. The sections relating to the determination of whether the equine provider has made a reasonable and prudent effort to determine whether this participant can safely participate in this activity, manage this particular equine, and whether (in one case) this particular equine can safely participate in this activity is the one that causes the most surprises. Often some reliance on the participant's own representations is permitted by the particular statute, but this kind of reliance can be extremely dangerous.

Many equine service providers will be willing to defend themselves by saying, "She told me she knew how to ride;" "He said he hunted in Ireland;" and "Their mother told me they had taken lessons for years." This is a "participant's own representation" of his experience and skill. These same providers will later joke about these same customers, how badly they rode and how they knew immediately that the customer was really a beginner or lacked adequate foundation skills. The customer often believes what he says. He has no frame of reference.

A smart provider will adjust "the participants own representation" to what the provider truly believes to be more accurate and a reasonable and prudent assessment of the participant's ability. Of course that may take a bit more time. The participant may have to frame of reference at all or it may be expressing wishful thinking. If it is not practical to give a pre-ride skills test the safe approach is to treat all the

customers initially as novices. One can always move them up. At least then you can be sure they have the foundation skills you want.

Anyway, a competent rider will have a good ride on Ole Dobbin, or any other horse, and you won't have to face the aftermath of an accident you could not defend within the terms of the statute.

REMEMBER THAT KNOWING YOUR STATUTE AND MEETING ITS REQUIREMENTS MAY NOT BE ENOUGH. IF YOU TRAVEL AND HAUL CUSTOMERS THE STATUTE THAT WILL APPLY AT THE TIME OF AN UNFORTUNATE ACCIDENT WILL BE THE STATUTE OF THE STATE IN WHICH THE ACCIDENT OCCURS.

Four Recent Cases Applicable to Inherent Risk in New York

Applbaum v. Golden Acres Farm and Ranch
U.S. District Court, New York
333 F.Supp.2d 31
August 11, 2004

Summary of Opinion: Plaintiff Applbaum, age nine, was injured while on a trail ride conducted by the defendant. Her horse headed for the barn at a trot when the wrangler instructed her to proceed while he closed a gate. Plaintiff fell off the horse, which then stepped on her, causing serious injury. The defendant filed a motion for summary judgment on the ground that plaintiff had assumed the risk of injury and that her father had signed a release of the defendant from liability for any injury that might occur. The trial court in this opinion says there was no assumption of risk here because the trial ride was operated in a sub-standard fashion, which increased the risk of injury beyond that inherent in the activity. The release was invalid because it was not clear that it was a release, as it was embedded in a sign-up list, and is void in any event under the New York recreational release law. So the case cannot be disposed of without a trial.

Kinara v. Jamaica Bay Riding Academy
New York Appellate Division
783 N.Y.S.2d 636
October 18, 2004

Summary of Opinion: Plaintiff was injured during a trail ride when she was kicked by the defendant's horse. The trial court granted summary judgment on the ground that plaintiff was informed the horse was wild and unpredictable. In this opinion, the Appellate Division agrees with that decision.

TRUMMER v. NIEWISCH
Supreme Court, Appellate Division, 2nd Dept., New York
792 N.Y. 2d 596
April 4, 2005

Summary of opinion: Plaintiff was injured during a riding lesson. He had executed a release two years before. Even though this court finds the release insufficiently clear it holds in favor of the defendant. The court found that the plaintiff's fall was not the result of negligence but was the result of the horse becoming frightened, a risk inherent in the activity.

ESLIN v. COUNTY OF SUFFOLK
Supreme Court of New York, Appellate Division
2005 WL 1220730
May 23, 2005

Summary of Opinion: The plaintiff fell from a rental horse after the horse took off at a gallop. She signed a release in which she acknowledged more than 10 hours of riding experience. She also initialed paragraphs warning that horses could stop short or change speed at will. This court rules that plaintiff assumed the risk of the dangers or riding horses.