Equine industry liability releases: are fewer words better?

Julie I. Fershtman
Lexology, The Riding Instructor
March 28, 2016

AUTHORS/ CONTRIBUTORS
Julie I. Fershtman

Julie Fershtman, our Equine Law practitioner, is speaking at the 31st Annual National Conference on Equine Law in Lexington, Kentucky, on the topic of liability releases in equine activities. Today's blog post shares some of her upcoming remarks.

IS THE SHORTEST RELEASE OF LIABILITY THE BEST?

In a 1960 Tennessee case, the plaintiff rented a horse from the defendant's stable but was injured when a stirrup broke. He sued. Before the ride, however, he signed the stable's liability release. The Tennessee Supreme Court affirmed dismissal of his lawsuit and enforced the release. Interestingly, the release was only *16 words long*. It stated:

> "I am hiring your horse to ride today and all future rides at my own risk."

The case was: Moss v. Fortune, 340 S.W.2d 902 (Tenn. 1960).

What can the equine industry learn from this? *Absolutely nothing*.

The law regarding releases of liability (also known as "waivers") has become tremendously complex. Gone are the days when a 16-word document can dismiss a case, thanks to numerous state statutes and court cases. Consequently, those who believe "shorter is better" with liability releases could be doing themselves a serious disservice.

DETAILS MATTER

Releases of liability are important documents in the risk management efforts of stables, horse owners, associations, operators, businesses, and equine industry professionals. When these documents are challenged by an injured person, issues often center on one or more of the following:

- *State law or recognized public policy*. A small number of states have statutes or cases setting forth a recognized public policy that renders releases, regardless of how well they were worded, unenforceable.
- *Faulty language*. Most states have shown a willingness to enforce waivers/releases, but courts will not enforce these documents if they believe they were improperly drafted. The problem is, many people in the equine industry have used (or re-used) forms from other states or other operations. These documents might not account for unique state requirements and individual needs.
- *Presentation and signing issues*. Courts sometimes refuse to enforce a release if they are convinced that there was a problem or defect in the manner in which the document was presented. For example, a person might claim that he or she was wrongly rushed or defrauded into signing the release. On the other hand, courts have recognized that, as a general matter, when someone chooses not to read a release before signing, this does not, on its own, render the document unenforceable.
- *Signing issues*. An improperly signed release will not be enforced. For example, a release signed only by a minor for an equine activity would be voidable.
- *Serious wrongdoing*. Most states will not allow releases to prevent legitimate claims of serious wrongdoing, such claims for gross negligence, intentional misconduct, willful misconduct, and/or wanton misconduct. Still, an injured party who raises any of these claims in an effort to avoid a release must be able to prove them; otherwise, a lawsuit still risks dismissal.

CONCLUSION

Courts give releases of liability intense scrutiny, but cases exist in almost every state where they have been enforced and lawsuits dismissed on the strength of these documents. Those who use releases of liability should make sure that their documents comply with applicable state laws and are properly presented. Also, remember that releases are not a substitute for liability insurance; people who sign releases can, and sometimes do, file lawsuits. With this in mind, liability insurance is always important.