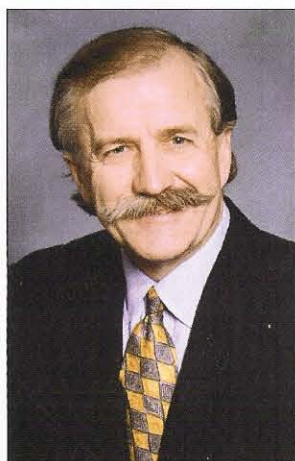


alternatives to lawsuits



By Mati Jarve
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MANY OF THE INQUIRIES I RECEIVE FROM HORSE OWNERS INVOLVE DISPUTES involving relatively small amounts of money. After I explain to them about the high cost of litigation they are understandably disappointed and frustrated that they can't afford their "day in court." There are other options however.

If the case is really small, say in the range of \$10,000, I usually advise the person to file a claim in small claims court. They can represent themselves, very much like the litigants that are seen on television in the numerous court related shows seen every day across the nation.

In the next level of cases, say less than \$25,000, it may be difficult to find an experienced attorney to accept the case on a contingent fee basis. Or, the case may not be amenable to a contingency fee at all. At the same time, the client may find it too expensive to front a substantial retainer and be billed at an hourly rate that could easily range from \$250 to \$400 an hour or more. These cases are well suited to Alternative Dispute Resolution (ADR) programs.

ADR programs have been around for a long time, but are gaining in popularity because of the high cost and delays inherent in traditional litigation. Although there are numerous variations of ADR, the two most popular forms are arbitration and mediation. In both arbitration and mediation the parties agree to submit their dispute to an independent third party. The independent third party can be a retired judge, an experienced attorney, or a well respected individual knowledgeable with the customs and practices in the equine industry. The agreement should be in writing. The important point is that neither party can be forced to submit to either arbitration or mediation. Since a party cannot be forced into ADR, the refusal of one of the parties to voluntarily submit to ADR will necessarily eliminate the option. The only alternative will then be a lawsuit.

Since ADR is strictly voluntary, the terms and conditions of the agreed upon process are entirely consensual. In other words, the parties can agree to arbitrate or mediate upon such terms as they deem appropriate. Typically however, the mediation process employs an individual, known as the mediator, who attempts to facilitate a compromise settlement between the parties. A mediator does not have the authority to decide the terms of a settlement. Instead, he will try to get the parties to compromise their respective positions by pointing out the strengths and weaknesses of the case and perhaps offering his advice or opinion. In the end however, mediation is non-binding. If the mediator is unsuccessful in getting the parties to voluntarily agree to a settlement, the parties are free to pursue traditional litigation.

Arbitration, unlike mediation, results in a decision rendered by the arbitrator. Depending upon the agreement between the parties, the arbitration can be either binding or non-binding. The identity of the arbitrator (or panel of arbitrators) can be agreed upon between the parties, or the selection process can be left to a third party entity, such as the American Arbitration Association. In either event, the parties must agree to the method of appointing the arbitrator(s). This can be helpful in equine matters because as stated before, the parties can agree to appoint an arbitrator or arbitrators that are familiar with the custom and practices of the horse industry. An arbitration is usually more formal than mediation and is usually conducted more like a trial, although the rules of evidence are typically relaxed. The arbitrator acts as both the judge and jury and renders a decision, based on the evidence presented at the hearing. Depending on whether the parties have agreed to binding or non-binding arbitration, the decision of the arbitrator will be final and not subject to appeal, or it will simply be advisory in nature. If binding arbitration is agreed upon, the award can be reduced to a judgment and docketed with the court, just as if it were a verdict rendered in a court of law. Typically a final decision in a binding arbitration cannot be legally challenged or appealed in a court of law except in extremely limited circumstances.

As long as both sides agree to pursue the ADR option in good faith it can save the parties time and money as well as lead to a satisfactory result for all concerned.

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