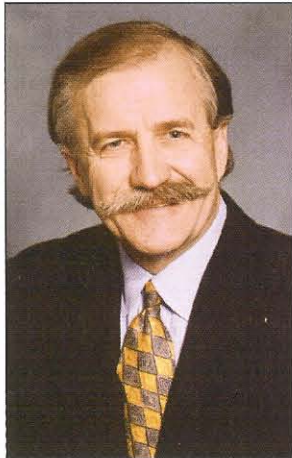


release forms for minors



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CAN THE LEGAL RIGHTS OF A MINOR HORSEMAN BE SIGNED AWAY? Most equine professionals and sponsors of equine related activities attempt to limit their liability from lawsuits by having their customers or participants sign a release form prior to participation by the individual. When the individual is a minor, it is usually the parent or guardian that signs on behalf of the minor.

Previously signed releases attempt to protect the equine professional or sponsor from liability for injuries caused by their ordinary negligence. Ordinary negligence is commonly defined as the failure to use reasonable care. On the other hand, gross negligence, willful or wanton conduct and intentional conduct are typically not included in such releases. This is because courts would not enforce such attempts to limit liability in any event.

Equine professionals include horse trainers, riding instructors, farm managers and the like. Also included are their employees. Equine sponsors are typically persons or organizations that are involved in equine related activities such as show or event management, breed registries and horse clubs.

Most courts are reluctant to enforce liability releases of any kind. Moreover, if the language of the release is in any vague or ambiguous it will be interpreted against the equine professional. In short, courts will look for reasons to invalidate a previously signed release because they are disfavored in the law. This is particularly true when it comes to minors. Previously signed releases have been almost always held to be unenforceable when the injured person is a child. Even if the release were to be found to be enforceable against an adult, the courts will usually determine that it would be against public policy to enforce the release against a minor. Consequently, it would be an extraordinary situation for a court to enforce a previously signed release against a minor child.

Nevertheless, certain terms or conditions of a previously signed release signed on behalf of a minor by a parent or guardian may be enforceable. Recently there have been court decisions that enforce binding arbitration clauses in a release signed on behalf of a minor. In effect, binding arbitration clauses deny access to the courts as the forum for dispute resolution. Instead, an arbitrator or panel of arbitrators is appointed by the parties to literally sit as the judge and jury in the dispute. As long as the selection process in appointing the arbitrators is fair and reasonable the arbitration clause may be valid.

One common method of selecting arbitrators is to have each party appoint its own arbitrator and then the two arbitrators select a third neutral arbitrator. The only time a court would get involved would be if the two party arbitrators could not agree on the appointment of the neutral arbitrator. Once the three arbitrator panel is in place it would have the same authority as a court of competent jurisdiction. Of course there are other ways to select the arbitrator(s), such as using the forum of the American Arbitration Association.

The stated reason for enforcing an arbitration clause against a minor is that it does not prejudice any substantive legal rights of the minor. In other words, an arbitrator is obligated to apply the same law as the courts of the relevant jurisdiction. Moreover, courts generally favor alternative dispute resolution as long as fairness is not sacrificed for expediency. How this all plays out in the various states remains to be seen. So, if you are an equine professional don't bet the farm that you can rely on previously signed releases on behalf of minors to protect you from liability. At the same time, if you are the parent or guardian of a minor who signed a liability waiver in favor of an equine professional and your child had the misfortune of suffering an injury, all may not be lost. In either case, consult with an experienced equine lawyer to guide you through this legal thicket.

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