

Legal Issues Associated with Horse Rescue and Adoption



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CLR Law, PLLC is a Concierge Law Firm offering clients
Life, Legacy & Estate Planning and Equine Legal & Business services
throughout Hunt Country, Virginia.



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HLM focuses on using mediation to transform conflicts
between people over animals.

We are committed to helping everyone feel
heard, respected & understood.



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Fostering Peaceful Solutions
In Conflicts Over Animals

What's Up for Discussion:

- Why horse rescues need our help
- What kind of help they need
- Legal considerations for adoption



What is a “Rescue” and who decides?

Not as clear cut as you think.

- Confiscation/Animal Control?
- Surrender?
 - Owner living
 - Owner dead
- Thoroughbred aftercare?
- Auctions?
- Kill pens?
- Wild >> Sanctuary?

Impact of public opinion.



Why add horse rescues to your practice?

Rescues are functioning businesses:

Nonprofit Nonstock Corporations

- Employers
- Landowners/Lessees
- Fundraisers
- Social media Influencers
- Merchandizers

501(c)(3)s have more responsibilities than standard corporations including: caring for live animals, greater IRS scrutiny, and additional reporting requirements.

They need our help.



What they need you to do for them:

- Set up their 501(c)(3) – and all that entails!
- Draft contracts and policies (lists in later slides)
- Governance advice
- Employment Law
- Workers' Compensation
- Trademark/Copyright of logos, programs, media
- Real Estate
- Defamation
- Disputes
- Ongoing steady state operations – “Outside Counsel”



Horse “Rescue”

Who decides what constitutes a real “Rescue” ?

- No legal definition
- A matter of public opinion
- Public decides with their \$\$

Social Media’s impact on horse rescues

- Insatiable demand for transparency and content
- Increased public and “competitor” scrutiny
- Defamatory attacks



Increased scrutiny = defamatory attacks

Other rescues – competitive not collaborative

- Blame/Shame “public service announcements”
- Always a “Rescue” never a Rescue
- Encourage citizen and IRS investigations of each other

Public scrutiny – public decides their fate

- Insatiable demand for transparency and content
- Inconceivable stories – they killed 40 horse!
- Trolls rally the troops
- Personal attacks on founders, directors, and employees

What if they don't have their sh!t together?



What horse rescues usually don't know:

- How to run a business – horses 1st, business 2nd (if there's time)
- IRS can do and can't do (e.g., lobbying)
- State law can do and can't do (e.g., board requirements)
- Recordkeeping requirements
- Filing requirements (IRS, SCC, Corp. Transparency Act)
- Transparency requirements (e.g., records requests, website)
- Fundraising rules and regulations (e.g., hiring professionals)
- Executive compensation rules and regulations
- Tax requirements
- Employee vs. Independent Contractor

What they don't know can hurt them.



Ancillary Benefits:

- Personal businesses
- Estate planning
- Private real estate
- Divorce
- Immigration
- etc.



501(c)(3) Development:

- Articles of Incorporation
- SCC registration as Nonprofit Nonstock Corp.
- Mission statement and Narrative (needed for Form 1023)
- Bylaws
- IRS 501(c)(3) application (Form 1023)
- Contracts and Policies
- Board of Directors and Officers (state law compliance)
- State Charitable Solicitation Licensing (online fundraising?)
- Corporate Transparency Act
- Annual maintenance
- Disputes



Rescue Contracts:

- Adoption Application
- Release and Liability Waiver
- Adoption Contract
- Release by Owner/Agent
- Euthanasia/Death Certificate
- Residential Lease
- Employee Agreement
- Employee Resignation
- Board Member Contracts
- Board Member Resignation
- Foster Agreement
- Training Contract
- Commercial Lease
- Donation Receipt
- Surrender Agreement
- Land Lease Agreement
- NDA
- Depiction Releases
- Independent Contractors
 - Veterinarians
 - Quarantine
 - Hauling
 - Farriers
 - Suppliers

Advise against online contract shops and hiring Google Law Firm.



Rescue Policies:

- Code of Ethics
- **Conflict of Interest Policy**
- **Governance Policy**
- **Financial/Fundraising Policy**
- **Exec. Compensation Policy**
- **Document Retention Policy**
- **Whistleblower Policy**
- Donor Privacy Policy
- Transparency Policy
- Cybersecurity Policy
- Social Media Policy
- Volunteer Policy
- Sexual Harassment Policy
- Euthanasia Policy
- Horse Care & Management Policy
- Employee Handbook

Although the IRC does not require charities to have governance and management policies, the IRS does encourage boards of charities to consider having... (so have them in case the rescue gets audited)



501(c)(3) Fundraising:

- Social Media – especially since COVID-19
- Private Donors
- Grants
- Sponsorships
- Community Events
- Crowdfunding
- Adoption Fees
- Estate Bequests (Planned Giving)

= sources of funding to pay you.



Legal Hazards for Horse Rescues:

Surrender – proof of title

Confiscation/Authorities – evidence/confidentiality

Adoption candidates

- Application – not a contract = no guarantee
- Vetting – background checks/references
- Deposits = implied contract – not recommended
- Site unseen and/or horse unriden

Release and Waiver of Liability and Indemnification

- Employees and Independent Contractors
- Volunteers
- Adoption Candidates
- Visitors (tours)



Legal Hazards for Horse Rescues:

Insurance (lack of)

- General Liability
- Care, Custody, and Control
- Umbrella Policies
- Workers' Compensation (depending on size)
- Recommend all and coverage as high as able

Taxes

- Adoption fees are NOT tax deductible
 - Goods and Services – only \$ over and above
 - Up-front notice to potential adopter
 - Clearly stated in Donation Receipt
- Unrelated Business Income Tax (UBIT) – merchandising?
- Get a CPA



Examples of Important Clauses:

Manage transparency and expectations.

Adoption Application:

Disclaimer: no guarantees

“Submitting this Adoption Application in no way guarantees your acceptance to adopt any horse from [Name of Rescue]. Submitting this Adoption Application in no way requires [Name of Rescue] to hold the horse named in this Adoption Application on your behalf. Therefore, [Name of Rescue] in no way guarantees that the horse named in this Adoption Application will be available for adoption at the time of your acceptance to adopt, if you are accepted.”

SEE EXAMPLE ADOPTION APPLICATION



Examples of Important Clauses:

Transfer of Title – **all**, some, or none

All:

This Agreement grants Animal Adopter **FULL TITLE** to Animal under the following terms:

Ownership: Upon execution, and under the following terms of this Adoption Agreement, Rescue releases all right and title of Animal to Animal Adopter.

Example Terms: Benevolence, Animal Cruelty Laws, Proper Care (shelter, grazing, veterinary care, farrier care, dental care), Right of First Refusal, etc.

By relinquishing all rights, rescues may lose the ability to TRACK the adopted animal because of challenges with enforce reporting requirements.

Losing track of adopted animals is one of the main criticisms of rescues because adopted animals too often end up back in harms way.

SEE EXAMPLE ADOPTION CONTRACTS



Examples of Important Clauses:

Transfer of Title – all, **some**, or none

Some:

“This Agreement grants Animal Adopter a **RESTRICTED TITLE** to Animal under the following terms:

Ownership: ANIMAL ADOPTER IS HEREBY GRANTED 49% OWNERSHIP OF ANIMAL. RESCUE THEREBY RETAINS 51% OWNERSHIP OF ANIMAL AND GRANTS ANIMAL ADOPTER A RESTRICTED TITLE TO ANIMAL, UNDER WHICH ANIMAL ADOPTER KNOWINGLY AND FREELY AGREES TO ADHERE TO THE FOLLOWING TERMS.”

Clearly define rights granted and retained. (see next slide)

SEE EXAMPLE ADOPTION CONTRACTS



Legal Hazards of Adoption:

Examples of rights retained

- Right of First Refusal (no selling, giving, donating, surrendering, or otherwise transferring without consent)
- Mandated Care Standards (shelter, veterinary, farrier, dental care, etc.)
- Prohibited Use (no racing, breeding, jumping, etc.)
- Unannounced Care Inspections
 - Include contract provisions to prevent trespass
- Right to Repossess (with/without Animal Control's assistance)
 - NOTE: Rescues cannot police Animal Control.
 - Rescues are not responsible for Animal Control search & seizure operations or violations of the 4th Amendment of the Constitution.

Example of rights granted

- All rights not retained
- All uses not prohibited
- Right to relocate – but notification and address required
- Transfer of registration?

SEE EXAMPLE ADOPTION CONTRACTS



Legal Hazards of Adoption:

Liability for Animal post-adoption

- Can it be contracted away?
 - Most Adoption Contracts include:
 - Release of Liability
 - Indemnification
 - Transfer Risk of Loss
 - Example: “Despite RESTRICTED TITLE and Animal Adopter’s share of ownership, while Animal is in Animal Adopter’s care, Animal Adopter shall release Rescue from all liability...”
 - Example: “Risk of Loss: While Animal is in Animal Adopter’s care, Animal Adopter agrees to hold Rescue harmless for Animal’s injury, loss, or death. Animal’s care transfers to Animal Adopter at the moment of departure from Rescue’s property.”

SEE EXAMPLE ADOPTION CONTRACTS



Examples of Important Clauses:

Third-Party Indemnification:

“While Animal is in Animal Adopter’s care, **Animal Adopter knowingly agrees to indemnify Rescue** from and against all third-party claims, suits, judgments, including any subrogation interest of any insurer, and related costs, expenses, and fees (including reasonable attorneys’ fees and court costs) for third-party’s bodily injury and/or death, and/or damage and/or loss of real and/or personal property, arising out of or in relation to Animal.”

“While Animal is in Animal Adopter’s care, **Rescue knowingly agrees to indemnify Animal Adopter** from and against all third-party claims of right of possession, title, encumbrance, lien, security interest, and any other creditors’ claims, of, for, or related to Animal.”

SEE EXAMPLE ADOPTION CONTRACTS



Bibliography:

Other sample documents:

- Horse Haven Adoption Agreement (Best Friends): https://homesforhorses.org/wp-content/uploads/Sanctuary-Adoption-Agreement_horse-haven_fillable-1.pdf
- Homes for Horses Coalition: <https://homesforhorses.org/resources/sample-documents/>
- 13 Hands Equine rescue: <https://13handsequine.org/wp-content/uploads/2017/01/13-Hands-Adoption-Contract.pdf>
- Hidden Pond Farm Equine Rescue: https://hiddenpondequinerescue.org/wp-content/uploads/2019/02/2019X_hidden_pond_farm_contract_SAMPLE.pdf
- Sample adoption agreements from ASPCApro: <https://www.aspcapro.org/resource/tips-creating-effective-adoption-contracts-horses> (at bottom of page)
- MidAtlantic Horse Rescue adoption contract: <https://midatlantichorserescue.org/wp-content/uploads/2018/09/Adoption-Agreement.pdf>
- Aiken Equine Rescue: <https://blobby.wsimg.com/go/d3cb2bfe-6997-431b-9a55-aea47e870730/downloads/adoptionform.pdf>
- University of Mass, Hadley Farm horse adoption agreement: https://www.umass.edu/veterinary-animal-sciences/sites/vasci/files/lifetime_adoption_agreement_-_draft.pdf
- Hope After Racing Thoroughbreds: <https://iahart.org/wp-content/uploads/2019/09/HART-Adoption-Agreement-1.pdf>



Bibliography:

Where does rescue money come from? Discussion among various rescues.

- Heart of Phoenix: <https://heartofphoenix.org/2023/03/08/horse-rescue-donations/>
- Lancaster Farming: https://www.lancasterfarming.com/country-life/mid-atlantic-horse/fundraising-becoming-a-bigger-challenge-for-horse-rescues/article_ac99184e-bddd-11ed-bba8-9b3d023fc7fd.html
- ASPCA Pro: <https://www.aspcapro.org/resource/13-social-media-tips-equine-groups-and-others>
- Fairway Stables: <https://fairwaystables.com/equine/equine-law/starting-a-horse-rescue/>
- <https://fairwaystables.com/equine/equine-law/the-contracts-that-equestrian-businesses-need/>

Viability of Social Media fundraising opportunities:

No written evidence (all SM evidence to the contrary) that rescues survive on SM donations.

Red Rover created a state-by-state list of Rescue Grant providers:

<https://redrover.org/2024/01/11/resources-forhorses/>
<https://redrover.org/2024/01/11/resources-for-horses/>

OTTB:

- Retired Racehorse Project <https://www.therrp.org/mission/>
- Thoroughbred Retirement Foundation <https://www.trfinc.org/>



Questions?

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Many Thanks:

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