



The Equine Esquire

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Forming a Limited Liability Company for Your Horse-Related Business

If you own a business related to horses, such as a boarding stable, training operation, or farrier services, you should, at a minimum, utilize a liability waiver form drafted by a licensed attorney. Without one, you risk being held personally liable if someone is injured. Additionally, even if you carry liability coverage, many insurance policies will deny the claim if you didn't obtain a signed waiver and/or post proper signage. These situations leave your personal finances and assets exposed, but there are ways to help insulate yourself against personal liability.

Along with having insurance coverage and using well-drafted contracts and waivers, incorporating your horse-related business is one of the most important steps you can take to minimize risk. Incorporating is the legal mechanism which separates your personal/family assets (such as a house, bank accounts, vehicles, horses, and other property) from your business-related assets.

It's not uncommon in the horse industry for small businesses to operate as a sole proprietorship or partnership. In a sole proprietorship, you are the sole owner, investor, and operator, and you have *unlimited personal liability* for the business debts/liabilities. A partnership consists of two or more persons carrying on a business for profit. The risk is even greater with a partnership because *each partner has unlimited personal liability for the acts of his or her partners*. Neither of these structures will protect you from the risks associated with operating an equine business.

A limited liability company (LLC) is a hybrid business entity that blends elements of partnership and corporate structures. The LLC's main advantage over a partnership is that the owner(s) (called "members") liability for debts and obligations of the LLC is limited to their own financial investment in the business.

An LLC is easily formed by filing articles of organization with the secretary of state, and the member(s) must enter into an operating agreement (preferably in writing). An LLC operating agreement allows you to structure your financial and working relationships with your co-owners in a way that suits your business. In your operating agreement, you and your co-owners establish each owner's percentage of ownership in the LLC, his or her share of profits (or losses), his or her rights and responsibilities, and what will happen to the business if one of you leaves.

Using an LLC to conduct your affairs will not only protect your personal assets, but may have tax benefits as well. If the LLC consists of one owner, it will be treated for tax purposes as a sole proprietorship, unless it elects to be taxable as a corporation. If the LLC has more than one owner, it will be treated as a partnership for tax purposes, unless it elects to be treated as a corporation. LLCs do

not pay income tax, but are subject to the \$800 annual franchise tax and a LLC fee. LLCs do not issue stock and are not required to hold annual meetings or keep written minutes.

Establishing your LLC will allow your business the flexibility to add members, benefit from decreased taxation (by avoiding the "double taxation pitfall" of a standard corporation), and will give your company unparalleled flexibility with respect to how it is organized, how distributions are handled, and how it is run. In effect, your business can reap the benefits and flexibility of a partnership while enjoying the same protections from liability and debt that a corporation provides. Equally important, the LLC structure provides an extra shield of liability protection as long as the business runs according to the operating agreement. Please understand that just because you've formed an LLC, it doesn't prevent a lawsuit, so it's still important to have liability insurance.

Running a horse-related business as a sole proprietorship or partnership personally exposes you to significant liability. Coupling that liability with the unpredictable nature of horses only adds an extra level of exposure. Every day that you operate your horse-related business as anything other than an LLC (or a corporation, if appropriate), you are leaving your personal and family assets unprotected against loss. Therefore, I strongly encourage you to consider the benefits of LLC formation as it applies to your business.



Patrice Doyle is a senior attorney at Kornblum, Cochran, Erickson & Harbison, L.L.P., and has been an avid horsewoman since childhood. She can be of assistance in guiding you through equine-related legal issues. Contact her at (707) 544-9006 or www.kcehlaw.com.

The above article is not intended to be legal, tax, or financial advice. Readers should seek legal counsel regarding their particular circumstances.

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