

Agistment Contracts for Horses

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Why do I need an agistment contract?

What should a contract include?

What are my responsibilities?

What should I expect from a landholder?

Where can I get help to prepare a contract?

Owners and occupiers of land (landholders) may allow horses or stock owned by another person to be kept on their land for a fee (agistment). The horse owner may also be liable for the costs of feed, exercising, training and caring for their horse. Agistment may involve a wide range of situations from simple arrangements to look after pet ponies to professional racehorse and livestock management.

Agistment may be arranged by a brief discussion. However, verbal agistment agreements rarely plan for problems such as horse injury or disease, non-payment by owners, or the need to relocate horses because of fire, flood or drought. If one person disputes aspects of a verbal agreement, or cannot be contacted, the other person is left in a difficult position.

Using a written agistment agreement is recommended, because it helps horse owners and landholders by setting out their expectations and anticipating problems before they arise. This reduces the likelihood of unsatisfactory outcomes and further legal expenses. You can contact your industry association to obtain information on standard contracts and referral to experienced legal advisers.

In the absence of a written agistment agreement that covers non-payment of fees, the Impounding of Livestock Act 1994 enables a landholder to create a lien over an agisted horse if there is a default in payment, and to take steps to sell, dispose of or destroy the horse if payment remains outstanding. Many landholders retain these rights in agistment contracts and stud breeders often require the right to sell progeny and update documents such as stud books and racing papers.

Several standard contracts and terms and conditions have been prepared to meet the particular needs of different sections of the horse industry. The standard terms and conditions of the Australian Trainers' Association, for example, give the trainer rights to power of attorney, a lien, and sale of the horse if payment remains outstanding.

This Agriculture Note provides information for landholders and horse and pony owners on how to use agistment contracts to get the best results and avoid common agistment problems and conflicts.

Responsibilities

The agistment contract should describe the responsibilities of the livestock owner and the landholder. It should also set out procedures for dealing with problems that could arise. Although an experienced legal adviser should prepare the agistment contract, you need to provide this adviser with relevant information about your requirements.

Horse owners are normally responsible for:

- caring for the horse and paying all associated costs
- insurance for the horse and against any damage it may cause
- informing the landholder of any diseases the horse is carrying
- checking the horse routinely to ensure the conditions of the agreement are being met; and
 - ensuring that the landholder can contact the owner or
 - Owner's representative in an emergency. Landholders are usually responsible for
- advising owners if the site becomes unsuitable, eg presence of diseased animals
- advising owners of accident or injury to the horse (but would not be liable unless this was due to negligence);
- sending invoices and final notice of the planned sale of the horse to recover costs; and
 - Allowing the owner access to records of agistment costs and proceeds from the sale of livestock for a set period, and any money left over after deducting agistment costs.
 - To protect themselves in case of non-payment of debts, landholders may require the contract to provide for:
 - a lien over the horse until an agistment debt is paid;
 - power of attorney concerning the horse and any progeny so that the landholder has the power to sell the horse, after all reasonable efforts have been made to obtain outstanding agistment payment from the owner;
 - the horse owner to be liable for any residual debt not recovered by the sale; and
 - stud/racing papers to be updated to reflect the new owner so that the horse can be sold at true value. In such a case, the following may be set out in the contract to protect owners against wrongful sale of the horse
 - minimum period that the debt may remain outstanding before the horse is sold
 - payment of a specified proportion of debt to postpone the sale for a specified period
 - invoices and final notice to be sent to owner and/or representative prior to sale of the horse; and
 - Notice of public auction of the horse to be advertised in a specified newspaper

Recovering outstanding agistment costs is further discussed on page 3 of this Agriculture Note.

The general outline of a contract

As discussed earlier, the contract should list the responsibilities and rights of each party. These are dispersed throughout the contract.

The following outline lists some of the items that should be considered for inclusion in agistment contracts.

Introduction

- description of both parties, witness, representative in an emergency, and nature of the agistment agreement (especially if linked to a training or stud agreement)

Horse/s

- names of all horses covered by the contract with descriptions, including colour, markings (brands, whorls and scars)
- pre-existing injuries, ailments or vices
- vaccination record for such conditions as tetanus and strangles and dates of any relevant treatments, eg worming, teeth care

Finance

- duration of the agreement
- fees, costs, charges and payment schedules
- non-payment, lien, sale of the horse and progeny with ownership documents updated
- indemnity from the owner for agreed costs incurred by landholder for veterinary, or other specified services
- advance payment if required (eg if landholder is not dealing with horse owner)
- records of costs and sale of horse to be made available to owner
- if a training contract so requires, allocation of prize winnings during the contract and immediately after training terminates
- possible re-evaluation of costs in adverse weather conditions such as drought and flood
- provision for the landholder to recover outstanding debt (see later section)

Termination

- termination date and/or notice of termination
- ability to vary arrangement if circumstances change
- transport costs to deliver horse to owner
- final payment
- if a stud contract, shares in progeny, stud book submission and live foal guarantee
- **Standard of horse management**
- testing for disease
- accommodation, shelter from weather, fencing / confinement
- stocking rate, allowance for varying seasonal conditions
- authority to request veterinary, dental and farrier services
- each person's responsibility for welfare of the horse
- inspection by owner to ensure horse is properly looked after
- pest and disease management including: quarantine, paddock rotation, sprays, drenches, pest resistance, teeth, feet, inoculation
- if a stud contract: managing pregnancy, delivery and further care such as vaccinations, drenching etc
- if a training contract: race activities and transport
- any special dietary requirements
- quality of pasture, feed and supplements

- care of pasture, irrigation, fertiliser, weed and pest control
- availability and quality of water supply (dams, troughs, tanks)
- description of service and standard of care to be provided

Dispute resolution

The advantage and potential cost savings to both parties of including a standard dispute resolution clause in their contract should be considered. This would allow disputes arising in relation to interpretation or performance of (higher value) contracts to be referred to an agreed expert, or one appointed by an agreed industry body, rather than the courts, to provide an efficient process for resolution.

Using contracts to manage common agistment problems

Horse ownership

When a landholder is not dealing with the owner, or person with power of attorney, the lien and right to sell the animal as security for payment will usually not apply.

If an agistment contract was not signed by the owner, or all of the co-owners, it may not be upheld in court. Co-owners of a horse may be legally liable for agistment costs, but if a co-owner who was not party to the contract stops the sale of the horse, agistment and legal expenses can accumulate quickly.

Lessees and trainers are not in a position to offer a lien and rights to sell the horse as security. Trainers often arrange for agistment, farrier and veterinary services on behalf of the horse owner. They are placed in a difficult position if the owner does not pay for services. Landholders and trainers may require that those signing the contract declare that they are the sole owner, have power of attorney, or have authority to sign for co-owners. If the contract is not with the true owner, it should provide sufficient details to enable the landholder to locate the true owner in the event of non-payment or an emergency.

Other viable alternatives may be to obtain signatures of all co-owners/partners on the contract, or payment in advance.

Foals

The contract should allow for the birth of progeny, or be able to be amended or renewed to account for these additional costs.

Under common law, the owner of the mare owns any progeny, and is liable for their agistment costs.

Landholders who wish to sell progeny to recoup outstanding debts should obtain signed agreement to this effect from the owner or person with power of attorney that the progeny may be sold, and that stud papers and other documents will be properly updated.

Horses delivered to landholder without prior agreement

Sometimes horses are delivered without prior arrangement, and owners do not contact the landholder for several days after delivery.

This practice should be discouraged as landholders cannot be certain of the health status of the horse, what level of service is required, and when (and how much) payment may be expected.

Impact of fire, drought or flood

The impact of fire, flood or drought can dramatically increase the cost of pasture and feed. There are several ways for landholders to use the contract to limit these types of losses:

- where a flat agistment fee is set, allow for termination of the agreement after notice is given by the landholder
- allow for re-evaluation of costs in adverse weather conditions
- if available pasture and water can no longer support the horse, then the owner is to take on responsibility for supplying food and water
- Contracts could have a specified short term duration, and be automatically renewed unless notice is given by the landholder or the owner.

Recovering outstanding agistment costs

Landholders often have to determine how best to recover outstanding agistment fees, and avoid more costs accumulating for the horse which is still on their property.

When a written contract with a payment default clause is not used, a lien may still be created under the Impounding of Livestock Act 1994 as previously outlined.

If landholders have power of attorney or a stated right to sell horses with proper title detailed in a written contract, then horses are more likely to be able to be sold at the best market price. This benefits owners by:

- owners knowing the consequences of non-payment;
- limiting the size of the agistment debt;
- increasing the chance that proceeds from the sale will repay the agistment debt; and
- Increasing the chance those owners will receive any money left over after payment of the debt.

Welfare and cruelty issues

Horses are protected by the Prevention of Cruelty to Animals Act 1986 which is administered by the Minister for Agriculture.

Police or authorised officers from the Department of Primary Industries, municipal councils and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) may be called upon to inspect alleged breaches of welfare.

If you wish to obtain more information about the Prevention of Cruelty to Animals Act 1986, or your responsibilities for the welfare of agisted horses, you can contact the Bureau of Animal Welfare.

Both owners and landholders may be held legally liable if agisted horses are not properly looked after. Each should take responsibility for resolving welfare problems that arise.

When landholders take on responsibility for welfare, owners should check their horses to ensure that the terms of the agreement are being met. Alternatively, owners can appoint agents to do this on their behalf.

Written records should be kept to indicate any period for which responsibility for welfare is transferred to another person. This commonly arises when horses are relocated for stud purposes or because of fire, floods or drought.

There are several definitions of acts of cruelty in the legislation. The two most relevant to agistment situations are when a person:

- is the owner of, or has possession or custody of, an animal which is confined or otherwise unable to provide for itself, and fails to provide the animal with proper and sufficient food, drink and shelter; or
- Is the owner of, or has possession or custody of, a sick or injured animal and knowingly, negligently or unreasonably fails to provide veterinary or other appropriate attention or treatment for the animal.

Under the prevention of cruelty to animals legislation, it is a defence to legal prosecution for an animal owner to prove that, at the time of an alleged offence, he or she had entered into an agreement with another person, for that person to care for the animal.

Further information

Livestock agistment contracts are discussed in a separate Agriculture Note - Agistment contracts for livestock available from your local office of DPI or phone 136 186, or website www.dpi.vic.gov.au/animalwelfare.

Creation of liens under the Impounding of Livestock Act 1994 are discussed in Agriculture note – AG1179, available also from DPI.

Pannam, C L (1979). *The Horse and the Law*.

The Law Book Company, Sydney. This book contains useful information about legal aspects of horse ownership and agistment.

Information on agistment contracts for horses may also be obtained from:

- Victorian Horse Council
Telephone: 03 9714 8689
Email: vichorsecouncil@ozemail.com.au
Website: www.vicnet.net.au/~vichorse/
- Royal Agricultural Society of Victoria - Horse Section
Telephone: 03 9281 7444
- Thoroughbred Breeders Victoria
Telephone: 0439 329 310
- Thoroughbred Racehorse Owners Association
Telephone: 03 9376 6999
- Harness Racing Victoria
Telephone: 03 9375 4255

- Australian Trainers Association
Telephone: 03 9372 1688
- Victorian Farmers Federation - Pastoral Group
Telephone: 03 9207 5550

In the event of concerns regarding welfare of horses you may contact the RSPCA on 03 9224 2222. To clarify the provisions of the Prevention of Cruelty to Animals Act or the Impounding of Livestock Act 1994, you may contact:

Naomi Pearson Bureau of Animal Welfare Department of Primary Industries Telephone: 03 9217 4200.

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www.depi.vic.gov.au/horses