

## New procedures for foreclosure on agister's liens

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By **Jeff Todd** and **Andrew Long**

While the Oklahoma horse industry survived the recent economic decline fairly well, we are aware of many horse boarding and training facilities whose customers disappeared or otherwise quit paying their bills. When this occurs, two issues arise: (i) how to recover the amount due from the customer, and (ii) how to get rid of the horse. As a creditor, the facility needs to retain possession of the horse to secure payment of the amount owed. In cases of abandonment, the facility, as a bailor of personal property, is legally obligated to continue to provide reasonable care of the abandoned property until relieved of its duty.



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In Oklahoma, any person who keeps, boards or trains an animal has a lien (often referred to as an "agister's lien") on the animal for the value of the goods and services provided. For example, if the owner of a horse contracts with a boarder to board his horse for three months for \$250 per month, the boarder has a lien on the horse in the amount of \$750 to secure payment of the obligation. Once the owner pays the amount owed, the lien is extinguished. If the owner does not pay his debt and the boarder has retained possession of the horse, the boarder can sue the owner for the amount owed and enforce his lien by selling the animal and use the proceeds from the sale to pay off the debt.



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Currently, to foreclose on the lien, Oklahoma's agister's lien laws required that the lienholder sue and obtain an order of foreclosure requiring the county sheriff to sell the horse and distribute the proceeds from the sale. Foreclosing a lien on a horse using this procedure is often too time consuming and costly to make the process worthwhile.

On November 1, 2011, an amendment to the agister's lien laws (4 Okla. Stat. 4 194.1) implements a new procedure for foreclosing a possessory lien on animals. The new procedure allows a lienholder to foreclose his lien in a non-judicial manner by sending a written notice of sale to the owner(s) of the animal, posting the notice in public places, and conducting a commercially reasonable sale. While the lienholder may still desire to file a lawsuit against the owner to recover on the debt or facilitate the transfer of registration papers, a cumbersome foreclosure process will no longer be required.

Following is an outline of the foreclosure steps necessary under the new procedures:

**1. Confirm lien rights.** Not all activities with animals result in the creation of a lien. Generally, Oklahoma law grants a possessory lien to anyone who keeps, feeds, grazes, boards or trains any animal. In addition to the provision of applicable services, possession is required.

**2. Identify the owner(s).** In order to effectively foreclose on the animal, it is necessary to determine who owns or claims an interest in the animal. Ownership should be determined at the outset of the board/training arrangement. It is also important to determine if there are other perfected liens on the animal as lienholders can be considered to have an ownership interest. Assistance from an attorney may be necessary to search for any applicable lienholders.

**3. Notices.** Much like the requirements to foreclose a mechanic's lien, the new procedures require notice of the sale to the public and owners. Notices must include:

- The name(s) of the owner(s) and all other known parties that have an interest in the animal (such as a security interest holder).
- A description of the animal. This may include the name and registration number, if available.
- The nature of the goods or services provided that resulted in the lien (e.g., boarding a horse for breeding).
- The value of the goods or services provided.
- The time and place of sale. This needs to be sufficient so that someone reading the notice will know when and where the sale will occur.
- The name of the party, agent or attorney foreclosing the lien. If the party foreclosing the lien is a business, then the name of a contact person must be listed.
- Signature of the foreclosing party or agent. (This can be a copied or electronic signature).

The sale cannot be conducted until at least thirty (30) days after the lien accrues (i.e. when a debt is owed for the services provided). For example, if a facility boards an animal on June 1, and payment is not due for forty-five (45) days, then the lien would not accrue until July 15, and the sale could not be conducted for another thirty days.

**4. Post copies of the notice.** The notice must be posted in at least three (3) public places in the county where the sale will take place. Examples of public places might include bulletin boards in courthouses, libraries, feed stores or other places open to the public. The notices must be posted at least ten (10) days before the sale will occur. Proper records of the postings should be maintained for future proof of compliance.

**5. Mail copies of the notice.** The notice must also be mailed to the last known address of the owner(s) of the animal, as well as all other parties who claim an interest in the animal. The mailing must occur at least ten (10) days before the sale will occur. The notice must be sent by certified mail, which requires the recipient to sign for the notice. The post office should be requested to return a receipt for each notice mailed for proof of mailing.

**6. Conduct the sale.** At the time and location stated in the notices, the sale should be conducted in a "commercially reasonable" manner. An example of a commercially reasonable sale would be an auction open to members of the public. While a sale at a public auction facility would clearly suffice, a properly noticed auction at the boarding facility would likely also be sufficient. The lienholder may, in good faith, purchase the animal at the sale.

**7. Distribute sales proceeds.** After the sale has occurred, the proceeds must be distributed. If no other party besides the owner had any interest in the animal, then the lienholder may retain the amount owed from the sale proceeds and apply it to the debt. If the lienholder purchased the animal at the sale, a credit should be given on the amount owed based on the sales price. If proceeds remain after the proper application on the debt, the balance should be returned to the owner. Again, if others claim an interest in the animal, consultation with an attorney is recommended.

**8. Follow-up letter.** Although not required by the new law, it is good practice to send a follow-up letter (by certified mail) to all the owners and other parties with an interest in the animal. This notice should state when and where the sale occurred, the buyer's name, the buyer's contact information (if available), and the selling price of the animal. The letter can also be used to summarize the new amount owed or remit any balance.

Documentation evidencing compliance with these requirements should be retained.

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