

## **Using the Agisters Lien to Collect Unpaid Board and Training Fees**

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If you own or operate a boarding or training facility, you probably have faced the problem of unpaid board and training bills. This problem can have a detrimental effect on your business, as the overhead and cost of feeding and caring for the horse will continue, but your stream of income halts. Many times, these past due accounts will be caught up, and your relationship with the client will continue. Other times, however, you will find yourself in a situation where you must take action in order to recoup your money. One avenue you can take to collect the unpaid board and training bills is the Agisters Lien.

### **The “Agisters Lien”**

Generally, a lien represents a form of property interest or right. For instance, if you purchase a house which is at least partially financed by a bank, that bank will have a lien on your house. This lien secures the bank's interest in the house, and prevents the sale of the house without the permission or payoff of the bank. Additionally, this lien provides the bank a remedy for collection for foreclosure of the house, should the house owner fall behind in payments.

An agisters lien is similar to the house lien described above, but specifically addresses debts the care of horses or other animals. Almost all states have statutes which set forth their agisters lien, which grants the keeper of a horse a lien on the horse for the keeper's charges resulting from the care and feeding of the horse. Each state has its own agisters lien, and therefore careful attention must be paid to the applicable state statute.

### **Using the Agisters Lien**

The keeper (stable owner, boarder or trainer) need not file anything in order to obtain an agisters lien. Once a horse has been placed in the keeper's barn or pasture, the keeper will have a lien against the horse for the amount owed to the keeper by the owner of the horse. What charges are allowed to be included in the lien varies from state to state, and sometimes is not totally clear by reviewing the statute. Clearly, the keeper is entitled to a lien in the amount of feed and care provided to the horse. Some state statutes also include specific provisions which would allow for the lien to include training and show fees. While no state specifically disallow training and show fees, some remain silent, and therefore remain somewhat ambiguous.

State agisters lien statutes generally have two critical requirements. First the keeper must keep actual and continuous possession of the horse on which the lien is asserted. There are some limited exceptions to this rule, as discussed below. Second, the keeper must fully comply with the state statutes for enforcing the lien.

### **Continuous Possession**

Nearly every state agisters lien statute contemplates the keeper's continuous possession of

the horse. Giving up possession of the horse will generally mean that the lien on the horse for its care will also be surrendered. Many state statutes contain two exceptions to this rule.

First, if the horse is taken from the keeper's possession without permission (i.e., stolen), then the lien will remain enforceable. In many cases, however, the keeper will be required to record the lien with the Secretary of State or county register of deeds within a certain period of time (60-90 days), as described in the second exception below.

Second, some state statutes will allow for the keeper to relinquish control of the horse, yet retain its lien on the horse, provided the keeper files or records its lien with the Secretary of State or county recorder of deeds where the horse is located. The filing of this lien will provide notice to any future buyers of the horse of the contents and legal effect of the lien held by the keeper.

## **Enforcement of Lien**

Agisters liens vary greatly from state to state in their provisions for enforcement of the lien. Every state which has an agisters lien statute will provide very detailed procedures for enforcement. Careful attention must be paid to each detail of the statute. As a general rule, there are two types of enforcement statutes: *Self-Help* and *Judicial* enforcement.

A. ***Self-Help Enforcement.*** Under this first type of enforcement, the keeper will be able to complete the enforcement of its agisters lien by giving the proper notices and holding a foreclosure sale without the assistance of the court system. The procedure for self-help enforcement is as follows:

1. **Period of Non-Payment.** In order for a keeper to have the ability to start the process of enforcement of its lien, the owner must be delinquent on the amount due for the care of the horse. Most statutes provide that a 30 to 90 day delinquency enables the keeper to start the process.

2. **Demand for Payment.** Before any formal procedures can start the process of noticing up a public auction for the sale of the horse, the keeper must make a formal, written demand for payment to the owner. Such notice should be sent via certified mail, return request required.

3. **Waiting Period.** Following the demand for payment, statutes generally require the keeper to wait a prescribed period of time, usually 10 to 30 days, prior to advancing to the next step.

4. **Notice of Sale.** If the owner fails to respond to the demand for payment, and after the waiting period expires, the keeper should then provide notice of the sale. The notice of sale should contain the time, place and date of the sale; the name, address and phone number of the person claiming the lien and the owner of the horse; and a full description of the horse. Your state's statute will detail the information which must be contained in the notice.

The notice should be sent to all owners of the horse and any person who may have an interest in the horse (i.e., other lien holders). Again, the notice should be sent by certified mail, with return receipt requested. Further, most statutes require publication of the notice of sale in the local newspaper once a week, for 2 to 4 weeks.

5. **Public Auction.** Pursuant to the mailed and published notice of sale, the keeper will be able to hold the foreclosure sale. Unless otherwise directed by the statute, the sale should be held at the barn where the horse is located, and the horse should be made available for viewing prior to the sale. At the posted time of sale, the keeper (or their representative) should announce the sale, and begin taking bids. Some state statutes require a sheriff to perform the sale, especially where the keeper plans to purchase the horse. If, however, a third party purchases the horse for an amount greater than the amount owed for the care of the horse, the keeper must forward the excess proceeds to the owner.

6. **Obtaining Registration Papers.** Since most of a horse's value stems from its registration and the benefits which result from registration (showing, breeding, etc.), one of the most important steps in the foreclosure process is obtaining the registration papers on the horse. Prior to beginning the process of enforcing the agisters lien, the keeper should contact the applicable breed registry, inquiring as to the process for obtaining registration papers for a repossessed horse. You should explain the situation to them, and ask what documentation they will require in order to obtain the registration papers. Usually a full documentation of the above steps (including receipts and copies of notices) will suffice the registry's requirements.

B. **Judicial Enforcement.** Under a judicial-type enforcement statute, the keeper will have to get approval of the court prior to selling the horse. If the dollar amount of the lien is below your state's small claims court limit (usually \$2,500 to \$7,500), the keeper will be able to represent themselves to enforce the lien through small claims court. If the lien exceeds the small claims court limit, the keeper will need to hire an attorney to represent them in court. The steps for judicial enforcement of a lien are similar to the self-help enforcement. The main difference appears following step three above, the Waiting Period.

After the waiting period, the keeper or the keeper's attorney will need to file a petition for foreclosure. Your state statutes will dictate what items must be included. The petition will need to be served on the owner of the horse, and all parties who have an interest in the horse. Upon filing of the petition and service on the owner, the court will schedule a hearing. Again, the notice of the hearing must be provided to the owner. At the hearing, the judge will hear the merits of the case (the lien), at which time the keeper will present its evidence of the lien and the judge will rule on the case. If the judge rules that the keeper indeed does have a lien on the horse, a sale will be authorized by the court. Following authorization by the court, the keeper will proceed as described in the self-help repossession, by providing notice of the sale and holding the sale.

## **Failure to Follow Enforcement Procedures**

Without following the proper procedures, the law does not allow for a keeper to sell a horse to satisfy a debt owed by a horse's owner. Thus, following enforcement procedures proves critical, and the failure could result in liability on behalf of the keeper. A few statutes provide for such errors, awarding the owner certain damages. In other states, failure to follow procedure could result in the owner having a claim against the keeper for conversion (taking property owned by another), fraud, due process violation and violation of the state deceptive trade practices act.

## **Conclusion**

The agisters lien enables the provider of horse care to feel somewhat secure that he or she will receive payment for the care provided to the horse, as the liens provide a means for collection of unpaid board and training bills. Without a uniform agisters lien law on the books, however, each individual must carefully review their state agisters lien statute to ensure that all procedures are followed and to prevent future liability for wrongfully taking and selling an owners horse.

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