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SPECIAL REPORT

Estate Planning for Horse Owners: What's All the Fuss About?

By Robert E. Kass, JD, LL.M.

Why should a horse owner take his or her horses into account in the owner's estate planning? In most cases the horse owner will outlive the horse. In many cases, the horse owner has not even done estate planning for the owner's two-legged family members, so what's the fuss about? Just let things go and, in all probability, everything will work out fine, you may say.

The fact is that estate planning is not planning for the best case scenario, but for the worst case scenario. Estate planners hope for the best – but plan for the worst. Particularly where an animal is involved, the animal cannot fend for itself. Reflect on the famous quote from *THE LITTLE PRINCE*, by Antoine de Saint Exupéry:

“Men have forgotten this truth,” said the fox. “But you must not forget it. You become responsible, forever, for what you have tamed...”

That's the reason we believe that a responsible pet owner, including an owner of a horse, has a moral responsibility to plan for the animal's future welfare, should something happen to the owner. This extends not only to the death of the owner, but also incapacity or unexpected prolonged absence. It also encompasses planning for natural disasters such as tornados, hurricanes, fire, and flood. In fact, some disaster planners would extend the planning to nuclear and other major disasters and terrorist acts which result in widespread evacuations.

In our book on estate planning for pet owners, *WHO WILL CARE WHEN YOU'RE NOT THERE? ESTATE PLANNING FOR PET OWNERS* (www.carobtreepress.com), we review basic considerations as to why planning is necessary, what events to plan for, the issues that must be addressed, and the alternative solutions.



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Since the publication of that book we have been approached by numerous horse owners, horse owner associations, veterinarians, lawyers and estate administrators, all requesting that we publish something which focuses on the particular issues facing horse owners. That is the reason for this Special Report.

As you will see, it is intended to supplement our book and does not contain full discussion of all the basic issues.

Planning for Horses: A Topic With Infinite Variations

Planning for horse owners is more complex than planning for owners of small animals for numerous reasons.

First, horses have relatively long life expectancies, and are more expensive to maintain than small animals such as a dog or cat. It's also more difficult to find someone to care for your horse than it might be for a dog or cat. You typically can't ask your neighbor or your brother-in-law to take your horse if something happens to you. You may get lucky if you live in an area where everyone has horses or your entire family is into horses, but from what we have heard that might be the exception rather than the rule.

Next, there are different types of horse owners. Some own one horse, keep it on their own property, and ride it as a hobby. Others board their horses and have trainers and instructors. Some own numerous horses, may or may not have a personal relationship with them, and consider their ownership more of a business. They may be using them for racing, for example, or they give riding lessons. Many are very involved showing their horses, sometimes in various countries. Some consider their horses sports equipment, while others use them in their work. Some own horses primarily for breeding.

Next, there are many different breeds of horses, some of which pose unique problems. This may be, for example, because of the nature of the horse itself, its personality or details related to registration.

In some cases, family members other than the one primarily involved with the horse will have an interest in horses. However, in many other cases, maybe even a majority of cases, only the horse owner is interested. It has been reported that 80% of horse owners are women and that in most cases the man in their lives, whether their husband or significant other, does not have the same profound relationship with the horse that they do. In fact, in many of those cases the man does not understand that relationship at all and considers it an extravagance.

The economic situations of horse owners will vary as well. In many cases, they are wealthy and have the means to work with a lawyer to craft an appropriate plan for their horses should something happen to the owner. In other cases, the net income of the horse owner is relatively modest.

Much of the information in this article will be useful to the horse owner who is not in the business of owning horses and has more of a personal relationship with the horse. This type of horse owner is very concerned about what would happen to the horse in the event of the owner's death or disability. We intend to address the concerns of the horse owner who would not simply say "sell the horses to the highest bidder or send them to the slaughterhouse," but instead wants to assure that the horses are cared for in the same manner as the owner cared for them, for as long as possible.

Full Disclosure

For the sake of full disclosure, I must say that I am not a horse owner but rather an estate planning attorney who helps owners of horses and other animals provide for their welfare should something happen to the owner. However, much of the information in this Special Report comes from people who have had first-hand experiences, generally with what went wrong when there was no planning or inadequate planning for horses.

These people are members of various horse owner groups on LinkedIn whom I have asked for their input, as well as attorneys and estate administrators on an American Bar Association listserv for estate administrators. They provided a wealth of information about actual cases where things have gone terribly wrong. I hope that by sharing these experiences you will become aware of the need to do better planning for the welfare of your horses.

Should You Own A Horse?

Before we even start to talk about planning for your horse, I think it's appropriate to step back and ask a fundamental question, "Should you even own a horse at all?"

In my research I came across many websites of horse rescue groups and schools of veterinary medicine which raise this question. It's intended for the person who does not yet own a horse, but may also be appropriate for someone who currently owns a horse but might decide to no longer own a horse.

When you see the challenges to providing for your horse's long-term welfare, you may well decide that it's best not to even start with horse ownership.

As most of you will want to skip over this section because you are already committed to owning your horse, I will keep it brief.

Much like many large animals, horses rank high in the category of responsibility. With improvements in nutrition and health care, horses are living longer, productive lives. It would not be uncommon to find horses living well into their 20's and 30's. With this in mind, are you prepared to offer a lifelong commitment to your horse or ensure that it is responsibly cared for should you no longer be able to financially provide for it?

The cost of owning a horse can certainly add up quickly. The expense of shelter, feed, veterinary care, healthcare and riding equipment are just some of the things that should be considered before purchasing.

If you are considering owning a horse for your child to ride, you should definitely assess the child's commitment. Arrange with a local stable for riding lessons to provide the child an opportunity to participate in supervised care of a horse for a period of time to determine whether the child will be diligent with the routine care of the animal.

The American Association of Equine Practitioners (AAEP) has an excellent brochure you can obtain online, "What To Expect When Owning a Horse." Do a Google search for that title, in quotes, and you will also find a number of articles on that subject. Even if you are committing to owning a horse, they may help you come up with a budget to provide funds in your estate plan for someone else to care for your horse.

Ask yourself if you can afford to own a horse. The AAEP estimates that the minimum yearly cost to care for a horse, not including veterinary and farrier expenses, is

Some companies offer health insurance for horses, and that should be evaluated.

If you're buying a horse for a child, consider what will happen when the child grows older, goes off to college or moves out. Assuming the horse has a 20 to 30 year life span, will there be a corresponding number of years commitment to the horse? If not, you should have a plan to provide for the horse or investigate ways to sell the horse or re-purpose it when you can no longer take care of it. We'll touch on some of these when we address how to plan for your horse and what some people consider a reasonable alternative, which is to dispose of the horse during your lifetime.

When describing horse ownership, two words are frequently used: "rewards," and "responsibility."

Horse owners, perhaps better than members of their families, understand how rewarding it is to be part of a horse's life, whether that life is showing, driving, racing, trail riding, or providing simple pleasure.

Raising your horses, training them, and being there when they excel at their particular discipline is pleasurable and intense. Your horses are a catalyst for personal

To the Survivors, the Horse Was a Nuisance

A veterinarian reported that she was contacted by the children of an 85 year old trail rider who had recently passed away. They asked if she would euthanize their father's horse. Mom, also 85, was frail and not interested in the horse.

The vet refused, and instead urged them to find a home for the horse. However, this would not be the first or the last time family members of a horse rider decided that they did not want to be bothered with what they considered to be a nuisance and a financial burden.

\$1,825. Add veterinary and farrier costs, as well as boarding expenses in some cases, and the yearly cost for keeping a horse can reach \$5,000.

If you aren't sure if you can afford a horse or if you are ready for one, leasing and/or lessons are good options. Leasing a horse enables you to experience what it will be like to own a horse without actually owning one. Taking lessons enables you to ride horses and be around them without the extra cost and responsibility of ownership.

Care for the horse in the event of illness is also something that should not be underestimated. Illness is more of an issue with horses than most people realize. Despite their size and substance, many factors can affect horses and cause mild to very serious conditions, even a change in diet. Horses can have anything from a minor cold to acute colic. Most horse owners are not prepared to handle a sick horse on their own, and the best course of action is to contact a veterinarian, and that can be expensive.

accomplishment, often the center of family activity, and a means to further social interaction with other horse owners.

But with those rewards also come a responsibility – the responsibility to care for the animal who relies upon you for food, shelter, healthcare, education, and perhaps most importantly, emotional interaction. As a horse owner, you have to accept that responsibility, without reservation.

Should You Dispose of Your Horse During Your Lifetime?

When a client of mine saw that I was a member of various horse owner groups on LinkedIn, he disclosed to me that over the years he had owned many horses, some real prize winners, which were shown all over the world. I asked him how he dealt with his horses in his estate planning and he said, "Very simply. I sold all the horses some years ago."

His daughter was the horse person in the family, and as she grew older she had less time to deal with the horses. He felt that the best way to make sure that the horses had good homes would be to deal with this during his lifetime when he was in full control of the process. In addition to allowing him to make the right placement, it also permitted him to maximize value rather than relying on someone else after his death.

He avoided any concerns that the people he would have appointed as care givers and Trustees of an Equine Trust might not be there for the full lifetimes of the horses, or the concern that he may have selected the wrong person.

For a variety of reasons, there could be a time in your life when you feel that you are no longer able, either physically or perhaps financially, to provide care for your horse, or you just feel, like my client, that it would be best that you deal with the disposition of the horse yourself rather than leave it to someone else.

Theoretically, there are basically three ways to accomplish this, i.e., by sale, by donation or gift, or even by euthanasia. For now, let's assume we're not talking about a

horse will go and who will own it, then selling it by private sale will enable you to learn more about the buyer and the facility where the horse will be kept. For peace of mind, you should visit the facility. Selling your horse to another person directly enables you to meet and perhaps develop a relationship with buyer.

You can even request that if the buyer ever decides to dispose of the horse, they contact you before doing so and give you a right of first refusal to purchase the horse back.

You can also exercise the right to cancel the registration papers and sell the horse without papers if the buyer agrees. This could prevent future use of the horse for showing or racing and for breeding and registering the offspring, if that's your intent.

If you sell it at auction, you will have the least amount of control over where the horse will end up. Most horse auctions involve the sale of horses to individuals who want to buy horses for specific purposes, such as racing, showing, stable horses or recreational riding. In many cases there will be "reserves" or minimum bids that must be paid for the sale to be completed.

Lack of a Plan Almost Led to Disaster for the Horse

A horse rescue operation reported to me a situation involving not one but two deaths. A horse owner had cancer, hoped to beat it, then died, without any instructions or planning for her horse. In a pity move, one of the woman's daughters, who knew nothing about horses, picked up the horse, only 10 years old, and made an attempt to care for him. She was later killed in an accident.

Another daughter then took the horse, but some time later contacted the horse rescue operation and demanded that they pick up the horse immediately or she would shoot it in the head. The operator of the rescue operation would generally have not gone to the town where the horse was being kept because it was outside of her geographic area (three hours away), but she decided she had to in this situation.

She arrived to find the horse in a residential neighborhood, in the daughter's backyard, wandering around among wooden pallets with nails sticking out of them, with no food or water, and underweight. His coat and feet were in rough shape as he had not been cared for in so long. She immediately took him to her rescue, where he had his feet trimmed, was fed properly, brushed, loved and cared for, and gelded. They began training with their trainer, and the horse is now a lovely horse who has show prospects. The horse is a white registered Anglo Arabian born at the Kentucky Horse Park, with lots of potential.

horse that needs to be put down but rather one of the first two options.

I might add, however, that there is a risk that if you do not do something during your lifetime your family members, if they do not have the same commitment to the horse as you do, may seek to have the horse euthanized or take matters into their own hands.

Sale of Your Horse. There are many ways a horse can be sold. If it is important to you that you know where the

In other sales, however, there will not be minimums and the horse will be sold regardless of the bid price. In some of these sales, horses will be purchased to take to facilities that process them for meat to be shipped overseas for human consumption. You should definitely be aware of this when sending your horse to auction.

Leasing. Provided the horse is in good health with a good disposition, you may find someone interested in owning the horse but who would prefer to first lease to try it out. This will provide the potential owner an opportunity

to see how the horse would fit into his or her life. You may be able to loan the horse in exchange for boarding and daily care. This is a slight variation on the sale alternative.

Retirement Facilities and Horse Rescues. There are many facilities that play a role in providing care and finding new owners and careers for horses that are considered unwanted or which were subjected to neglect or abuse.

Retirement Facilities. A retirement facility is one possibility. It can be compared to an assisted living facility for people, with staff trained to care for the health issues facing older horses and those with injuries. Although most horse retirement facilities are run honestly and with the best interest of the horses at heart, there have been reports of horses abused and neglected at some facilities, so please be very careful to consider the facility closely and certainly make a personal visit and do whatever it takes to do due diligence.

How do the other horses look? Is the place neat, clean and free from debris? A key issue will be whether the horses have the room they need to move around to combat arthritis, as horses standing in box stalls will stiffen up quickly. Another issue is specialized care, such as custom feed, special medical attention, and educated staff that understands the needs of your horse.

A list of equine facilities that accept horses can be found on the website of the Unwanted Horse Coalition, www.unwantedhorsecoalition.org. You can find others researching on the Internet.

For the most part, retirement facilities are not free. You will have to pay a monthly board bill just as you would in any boarding facility.

There are other types of facilities to which you would be donating your horse and no longer own it or control what happens to the horse. Many of these would be for specific breeds. In some cases, horses must be at least "pasture sound." Some may go on to second careers, while most will spend the rest of their days eating grass. Unsound or "pasture pet" horses will only be accepted for retirement at some facilities with your tax-deductible donation for the ongoing care of the horse.

Rescue Operations. You should be aware of the difference between a retirement facility and a horse rescue operation. Rescues are generally for neglected or abused horses. They provide emergency care when horses have been removed from their owners or abandoned. Horses may be adopted out when they have recovered from their trauma. These programs are generally funded by donations and operated on a non-profit basis. As a general rule, "owner initiated surrenders" are not accepted.

Retirement facilities, by comparison, are generally for older horses, or those which are unsuitable for work because of injuries. The type of care that is needed may be more maintenance than care for trauma. The horses are privately owned, and the facilities may be for-profit private

boarding facilities, although this is not always the case.

Second Careers. You may consider a second career for your horse. This is often a solution for race horses which reach the end of their racing careers. Though they do not race any more, they are considered for stallions, brood mares, trail riding, equestrian sports, backyard pleasure or even therapeutic use.

Equine Therapy. Some equine therapy programs involve therapeutic riding and driving programs in which the horse is used as a therapeutic tool for people with disabilities. Therapeutic riding, driving and hippo therapy utilize equine-oriented activities which contribute positively to the cognitive, physical, emotional and social well-being of children and adults with special needs.

Equine-related activities for therapeutic purposes are known as equine-assisted activities and therapies (EAAT). Besides horseback riding, EAAT includes carriage driving, interactive vaulting (gymnastics on horseback), equine-facilitated learning and mental health. Each activity uses the horse as a partner in cognitive and behavioral therapy along with a licensed therapist. For individuals with special needs, equine-assisted activities have been shown to improve muscle tone, balance, posture, coordination, motor development, as well as emotional well-being.

The Professional Association of Therapeutic Horsemanship International (PATH International) is one organization which has a focus on horseback riding as a form of physical and mental therapy. [Www.pathintl.org](http://www.pathintl.org). PATH International began in 1969 and now has nearly 4,500 certified instructors and equine specialists at 850 locations around the world. Each year it helps more than 54,000 children and adults with physical, mental and emotional challenges find strength and independence through the power of the horse.

A variety of EAAT disciplines also help war veterans and military personnel. PATH International has such a program, PATH International Equine Services for Heroes. <http://www.pathintl.org/resources-education/path-intl-equine-services-for-heroes>

To participate in therapeutic activities, the breed of the horse is not a critical consideration. Different breeds offer different builds needed for a wide range of activities, including riding, driving, vaulting and interaction on the ground. The most important aspect is the individual horse's suitability for equine-assisted activities and therapy.

However, while minor health issues may be acceptable, horses used for therapeutic riding programs must be sound enough to work regularly. Walking in an arena with a disabled person may look easy, but it is not. The horse must be physically able to carry a person whose weight may be unevenly distributed.

In addition, the horse must also be able to deal with situations such as quietly walking up to a ramp with a

person in a wheelchair and standing perfectly still while the person is being assisted in mounting the horse.

A thorough evaluation of the horse will be necessary, and possibly even a trial period at the center before final acceptance, with only a select number of horses meeting strict qualifications set forth by the riding center.

You can find a therapeutic riding center on the website of the North American Riding for the Handicapped Association (NAHRA), www.narha.org.

Horses in the Prison Setting. Equine therapy can take other forms. For example, the Indiana Horse Council Foundation awarded a grant to The Thoroughbred

Retirement Foundation, Inc. Putnamville Correctional Facility for the Putnamville Equine Management Program.

The program gives low-risk, non-violent offenders the opportunity to work with racehorses that are retired or no longer competitive to rehabilitate and retrain them for new careers. The horses are then offered for private adoption to be used for another discipline such as trail riding, equestrian sports, backyard pleasure or therapeutic use.

The program saves many horses from an uncertain future while simultaneously teaching the offenders compassion, responsibility and marketable skills they can

Checklist for Considering an Equine Facility

The following checklist is from "Own Responsibly," a brochure published by the Unwanted Horse Coalition.

1. Does the facility subscribe to accepted guidelines for operating such facilities, such as the "Care Guidelines for Rescue and Retirement Facilities" prepared by the American Association of Equine Practitioners?
2. Is it an entity exempt from federal tax under Section 501(c)(3) of the Internal Revenue Code?
3. Does it file IRS Form 990 and forms required by the state? Will the facility provide copies?
4. Does it have a mission statement and a Board of Directors? Who are they?
5. How long has the facility been operating?
6. If it is a facility that will use the horse, how will it be used?
7. Does the facility have ample room for horses to graze and/or move about?
8. Will the horse stay at the facility or be placed into foster care? If the facility uses foster care, how are foster homes screened?
9. Does it have an agreement regarding the use, boarding or care of the horse?
10. If it is a facility that adopts horses out, what are the requirements for adoption? Does the facility follow up with the new owner to ensure the horse is being properly cared for? How often?
11. Does the facility have a policy against breeding or restrict the horse's use in any way?
12. What is the facility's post-adoption policy on breeding and use?
13. If this is an adoption facility, are stallions gelded upon entry and before adoption?
14. What becomes of the horse when the adaptor or the user no longer wants the horse?
15. Will the organization advise you before your horse is transferred to a new owner?
16. Can the original owner ask for the horse back?
17. Will the facility provide routine and emergency veterinary and dental care and farrier needs?
18. Does the facility provide training/re-training for the horse?
19. What are the physical characteristics of the facility, including barns, pastures and shelters?
20. Can owners visit if they wish?
21. Have any welfare charges been brought against the facility?
22. Does the facility euthanize horses that cannot be placed? If so, will the facility notify the owner beforehand?

use after their release to become contributing members of society. In addition to cleaning stalls, feeding and bonding with the horses, offenders receive classroom instruction on farrier science, nutrition, equine law and business. The goal of this program is to change the lives of both the horses and the inmates.

Other programs combining horses with inmates at correctional facilities also exist. Many inmates have never been around large animals, and building a bond with an animal helps teach them empathy and compassion. It is a good learning experience for the inmates to see and treat the ailments of older horses, and for the horse to get the special attention that they need. For many horses, this is a last option. Many nonprofit retirement facilities do not have the staff to treat special needs cases, so this can be viewed as a hospice situation for the horses.

Mounted Police Units. Mounted units of law enforcement agencies such as local police and sheriff departments fulfill a mission which includes traffic control, crowd control, community relations and prevention of street crime.

Officers are used extensively at concerts, demonstrations, strikes, entertainment events, public celebrations and numerous other assemblies which take place throughout the year. Depending on the demeanor of the crowd, one mounted police officer can have the effect of 10 officers on foot. The mounted unit has therefore earned a reputation for being in the vanguard whenever the police department is called upon to ensure the order and safety of large groups of people.

Requirements for a horse to be accepted by a mounted unit will vary, but generally the following will apply:

- Sex - geldings only
- Age - 3-9 years
- Height - minimum of 15.2 hands, preferably taller
- Color - solid dark colors with minimal white markings.
- Conformation - good withers; sturdy legs and feet; strong bone and muscle
- Health - must be sound and in prime working condition; negative Coggins
- Horses with vices such as kicking, biting and cribbing will generally be disqualified.

Donation. If you are considering donating the horse to an organization, you should inquire as to what will happen to the horse after the donation. What will it be used for? Will it be adopted by or sold to someone else? Will it be kept in "retirement"?

Ask how the care of the horse will be paid for and visit the facility to see if other horses at the facility are being properly cared for.

If the horse will be donated to a veterinary school for teaching and/or research, there are strict guidelines that the school must follow to ensure humane care for horses in their care. Get a copy of those guidelines and study them to make sure you're comfortable with what will happen or could happen to the horse.

Colleges and Universities. You might also want to consider donating your horse to a college, university or private school which has an equine program and accepts donations of horses. These horses may be used for a riding program, a breeding program, or in connection with the curriculum of a pre-veterinary medicine or veterinary medicine degree.

Schools with an animal science department that includes an equine research component or veterinary school may accept your horse to be used in teaching and/or research to benefit medical advancements in the equine field. You should be aware, however, that once the horse is the property of the university, you will generally not be able to place restrictions on the use of the horse.

Acceptance requirements for these programs will vary. In some cases, the school may want the horse for a certain trial period.

Donations of horses to these programs will be evaluated using stringent criteria as to the soundness, disposition, amount of training and age of the horse. The more strict than donation requirements, the more likely the organization will want the horse for the long-term. If the school accepts any and all donations, you may find that there is a high turnover rate for horses in their programs.

Some schools specialize in specific breeds of horses. For example, some major universities currently specialize in Arabians, Thoroughbreds, American Quarter Horses and Morgans. Other schools may focus on specific equestrian disciplines, such as hunters or reining horses. If your horse does not fit into one school's program, it may well be an ideal candidate for another.

You should not assume that once a horse is donated to an educational institution it will spend the rest of its life there. It is possible that once it is donated it could be sold immediately or at a later date to raise funds for the program. It's therefore very important that before donating your horse to any organization you become aware of and are comfortable with its policy on selling horses

Planning for Your Horse's Welfare in the Event of Natural Disaster

Estate planning for horse owners comprises not only planning for your death or disability, but also planning in case a natural disaster strikes your barn.

The following pointers are from a Florida veterinarian (Dr. Dana N. Zimmel, "Disaster Planning for Horse Farms," *American's Horse Daily* (online edition), November 23, 2011), and are merely suggestive, not

medical advice. Consult your own veterinarian or horse owner's association for ideas which may be specific to your area or breed, or individual horse.

Each farm should have a written disaster plan to optimize safety and survival of all animals.

Before the Storm

Vaccinations. All horses should have a tetanus toxoid vaccine within the last year. Due to the increase in mosquitoes after massive rainfall, all horses should receive West Nile virus and eastern and western equine encephalitis vaccinations at the beginning of hurricane or rainy season in your area.

Coggins test. A negative Coggins test is necessary if the horse needs to be evacuated to a community shelter or across the state line.

Health certificate. A health certificate is required to cross the state line. This may be necessary for evacuation of coastal areas.

Identification:

Each horse should be identified with at least one, if not all, of the following:

- A leather halter with name/farm information in a zip lock bag secured to the halter with duct tape.
- A waterproof luggage tag with the horse/farm name and phone number braided into the tail.
- Photos of each horse as proof of ownership highlighting obvious identifying marks.

Evacuation of flood planes and coastal areas is recommended. Evacuation must occur 48 hours before hurricane-force winds occur in the area. Transportation of horses when wind gusts exceed 40 mph is dangerous.

Contact your local Emergency Preparedness Center for emergency relocation lists.

Should horses be left in the pasture or placed in the barn? If the pasture has good fencing and limited trees, it is probably best to leave the horses outside. Well-constructed pole barns or concrete block barns may provide safety from flying debris, but the horses may become trapped if wind collapses the building.

Large animals were killed during Hurricane Andrew in 1992 by collapsing barns, electrocution, kidney failure secondary to dehydration, and by being hit and killed on roadways or tangled in barbed wire after escaping from their pasture. Keep horses out of pastures with power lines.

Fencing. Do not keep horses in barbed wire or electric fencing during a storm. Trees with shallow roots will fall easily under hurricane-force winds and can injure the horse or destroy the fencing.

Fire ants and snakes will search for high ground during flooding. Carefully look over the premises and feed for these potential dangers.

Water. Each horse should have 12 to 20 gallons per day stored. Fill garbage cans with plastic liners and fill all water troughs. Have a generator to run the well if you have large numbers of horses.

Keep chlorine bleach on hand to add to contaminated water, if necessary. To purify water, add two drops of chlorine bleach per quart of water and let stand for 30 minutes.

Feed storage. Store a minimum of 72 hours of feed and hay (seven days is best). It is very possible that roads will be closed because of downed power lines and trees, limiting access to feed stores. Cover hay with waterproof tarps and place it on pallets.

Keep grain in water-tight containers.

Secure all movable objects.

Remove all items from hallways.

Jumps and lawn furniture should be secured in a safe place.

Place large vehicles, tractors and trailers in an open field where trees cannot fall on them.

Turn off electrical power to the barn.

Emergency first aid kit:

- Bandages (leg wraps and quilts)
- Antiseptics
- Scissors/knife
- Topical antibiotic ointments
- Tranquilizers
- Pain relievers (phenylbutazone or Banamine)
- Flashlight and extra batteries
- Extra halters and lead ropes
- Clean towels
- Fly spray
- Emergency Tools
- Chain saw and fuel
- Hammer and nails
- Fence repair materials
- Wire cutters, tool box, pry bar
- Fire extinguisher
- Duct tape

After the Storm

Carefully inspect each horse for injury to eyes and limbs.

Walk the pasture to remove debris. Make sure that no red maple tree branches fell in the pasture, as even a few are very toxic to horses. Clinical signs of red maple toxicity are dark-chocolate-colored gums, anorexia and red urine.

Inspect the property for downed power lines.

Take pictures of storm damage.

If your horse is missing, contact the local animal control or disaster response team.

For a PowerPoint presentation entitled “Equine Emergency Sheltering Plan,” which is based on resources available in North Carolina but which provides considerable food for thought and includes a 24-step disaster plan, see the following URL: <http://www.ncagr.gov/markets/livestock/horse/documents/EquineEmergencyShelteringPlan1.pdf>

You can also do a Google search: horse natural disaster planning, for many more tips and checklists. This search led me to a more comprehensive discussion prepared by the Connecticut Horse Council, Inc., which includes not only natural disasters but also technological incidents (chemical fires and nuclear power plant incidents); intentional and terrorist acts, including chemical, biological, radiological and nuclear risks; barn fires and horse transportation incidents. See <http://cthorsecouncil.org/resources/EquineHealthEMRFiles/CHCHorsesDisasterplanning.pdf>.

Planning for Your Horse’s Welfare in the Event of Your Prolonged Absence or Disability

We’ve considered steps to take to prepare for natural disasters that could affect your horse, and also the possibility of selling your horse or donating it to an organization if you can no longer take care of it.

What happens if something happens to you and you are either disabled for a period of time or simply unable to make it back home because of some unforeseen event? This could be an accident or illness, or broad scale natural disaster, or even the shutdown of the air traffic system because of a terrorist attack which does not affect the locale where the horse is living but does keep you from getting back to the horse.

If you’re the only one who’s caring for the horse, you need to make sure that there is someone who has complete care instructions and who is authorized to deal with the horse should a vet other third party have to be called in. A suggested checklist of horse care guidelines will be provided upon request via email to rkass@bsdd.com.

Just as with your own health care, where you should certainly have a Power of Attorney for Health Care in place, you should also have a Durable Power of Attorney for Animal Care which authorizes someone to act on your behalf with respect to your horse.

In addition, should you be unconscious or unable to communicate, you should also have a wallet card which indicates that you have animals at home or in your care and who should be contacted in the event of an emergency.

Our book, WHO WILL CARE WHEN YOU’RE NOT THERE? contains a specimen wallet card which can be cut out for your use, and you can ask your attorney about the Durable Power of Attorney for Animal Care.

Further, unless you have already made arrangements to board your horse, you’ll need to have people in place to take care of your horse if you’re not available, and a source of ready funds for them to use to take care of your horse. We will address this next.

Planning for Your Horse’s Welfare in the Event of Your Death

In the event of your death while you still own a horse, it is imperative that you have a plan in place which assures your horse’s long term welfare.

This will have the same components as estate planning for pet owners, generally, but with twists and turns due to the particular nature of horses. Here are some of the basic concepts, all of which are discussed in more detail in our book with regard to pets in general:

Budget. You should establish a budget for the care of your horse, based not only on the normal year-in, year-out expenses, but also including an amount for unanticipated events. The amount of the budget will, in part, turn on what you foresee happening to the horse in the event of your disability or death. Should it be sold, donated, or transferred to a retirement facility? Or do you want it to stay in place and be cared for indefinitely, just as if you were there?

Care Giver. You should determine who will be your horse’s care giver, and also set up a line of succession in case something happens to your first choice. Remember that this role may well extend over many years. The 21 year old neighbor from down the road may be a good choice now, but may not be there forever. Succession, or lack thereof, seems to be a recurring theme in problems that occur in caring for animals.

Care Instructions. Care instructions are critical. Please consider our horse care planning checklist as merely a suggestion upon which you can build, based upon issues you feel are important with regard to your own horse. We definitely believe that all of this should be put in writing so that your own philosophy with regard to your horse is clearly stated and can be understood and followed.

It’s also important that you discuss your philosophy with whomever you choose to be your horse’s care giver, to make sure that person understands and agrees to follow your instructions. He or she may not have the same views as you do, but should agree to implement your intentions.

Trustee. You may find it appropriate to separate the roles of care giver and money person by establishing a second person as the Trustee over the funds which you are going to set aside for care of your horse. While in some

cases one person is designated to both hold the money and disburse it, frequently it is better to create a system of checks and balances by separating the two functions. Where substantial funds are involved, such as with the care of a horse, we recommend serious consideration of a second person as Trustee.

Trust Protector. In some states it is possible to designate yet another person as “Trust Protector,” which is similar to a Trustee but who can have specific powers which you can define however you wish.

For example, you may have only one person in mind to designate as Trustee, but the Trust Protector could have the power to designate Successor Trustees in the event that the Trustee dies or can no longer serve, for whatever reason. The Trust Protector might also be given the power to require periodic veterinary inspections of the horse, to make sure that proper care is being given.

Veterinary Oversight. Whatever arrangements you put into place should include veterinary exams of the horse on some reasonable periodic basis, with reporting back to the Trustee (and Trust Protector, if any), as well as the care giver.

Legal Framework. There are many horse owners who, for whatever reason, would prefer to try to accomplish all of this with an informal arrangement. They discuss their objectives with a family member, trusted friend, neighbor, or colleague from a horse owner’s association, do or do not make some financial arrangement to fund the care of the horse, but in any event do not put anything in writing. We strongly recommend against this approach because of the complexity of the issues.

Others will say that they have dealt with this type of planning by a provision in their Will which, upon review, is generally very short and may simply leave the horse to a certain person with an amount of money to take care of the horse. One problem with this is that the Will does not become effective until it is admitted to probate, and that is a fairly time-consuming process which certainly does not take effect the day after you die.

In the meantime, the horse may have medical needs and the funds to pay the veterinarian must be available immediately. Furthermore, unless you really don’t care about the issues raised by the care instructions, you are relegating all of this to informal discussions, if the care instructions were even discussed at all.

We therefore strongly recommend that you consider putting into place a revocable trust for the care of your horse, with accompanying detailed care instructions. The trust will establish a series of care givers who will have authority to act not only in the event of your death but also in the event of your disability.

It may also establish a Trustee and either Successor Trustees or some method of appointing Successor Trustees, such as by a Trust Protector. It will be in the form of what

we refer to as a “traditional pet trust,” not a “statutory pet trust,” which tends to be much less complete. If it deals solely with one or more horses, it can be called an “Equine Trust Agreement.”

In the process of developing such a trust with your attorney, you will also discuss how to fund the trust, and whether to fund it, at least partially, during your lifetime. You may want to establish the authority of your successor right now, so that person does not experience any delay in accessing funds to pay for the horse’s care. Additional funding can come after your death, either from your main estate plan, or life insurance, or perhaps a transfer-on-death designation on a bank or brokerage account.

Mistakes to Avoid in Planning for Your Horse

As with any problem, the first step in solving it is to acknowledge that there’s a problem. In some cases, the solution to the problem will be to not own the horse in the first place, so you don’t have to worry about the long-term challenge in providing for the horse’s care if something happens to you. For others, the answer will be to make an arrangement during your lifetime to dispose of the horse while you can still be in complete control of the process.

In the table which follows we share some of the details of cases which horse owners, attorneys and estate administrators from around the country have been kind enough to share with us, so that we can all hopefully benefit from their experiences. If you have any others you are willing to share, please send them to me at rkass@bsdd.com.◆

This Special Report is intended to provide educational information of a general nature, not legal advice. Planning for your horses and other animals, as with your general estate planning, must be based on your specific situation, and also take into account the law of your state. Please consult your attorney to assist you in your estate planning and planning for your horses.

The Mistake	The Case Study
<p>1) <i>Not doing any planning for the horse, with the belief that there will always be a horse rescue operation that will accept the horse and care for it.</i></p>	<p>“We are at capacity and take in horses as spots open up, either through the death of a horse or when we adopt out a horse. We need to keep in mind that all horses adopted through us will return in the event the family can no longer care for them. Overall, relying on a horse rescue to step in when no plans have been made would be a big gamble. The other horse rescue operations I know of are in a similar position to us – always full and having to turn people away.”</p> <p><i>Sandra, horse rescue, Howell, Michigan</i></p> <p>“I get calls all the time. Horse owner passed, now would I take their horses, nobody in the family wants them. It’s really sad. They say if I don’t help them by taking the horses, they will go to the sale barn. Not good! Most families don’t care about the animals and should not expect that there will be a rescue operation there that can take them.”</p> <p><i>Kathy, horse rescue, Culleoka, TN</i></p>
<p>2) <i>Leaving the horse to your vet, and asking him to find a home for it.</i></p>	<p>“We have a waiting list and are not usually able to take in a horse on short notice. A few years ago a client of a vet passed away and left him the horse. In that case, we were able to take it in, [but it’s not a safe assumption that the vet will always be able to place an animal.]</p> <p><i>Sandra, horse rescue, Howell, Michigan</i></p>
<p>3) <i>Writing the horse’s trainer into the plan in some way that it is difficult to change, such as by including the trainer in the Will.</i></p>	<p>“I prefer to avoid naming the trainer in the Will or Trust itself, but keep it separate so it can be easily modified as situations change. Trainers come and go frequently go in the horse world, so you don’t want to cast their name in concrete. Many are unscrupulous as well. The Trustee or Executor should have the power to determine the best person, but with input from the owner. I do not recommend having the vet fill this role. They are not equipped to deal with the situation, but are often the first person the owner thinks of.”</p> <p><i>Teresa C., CPA, Dixon, CA</i></p>
<p>4) <i>Not including specific care instructions and naming someone with authority to carry them out and who agrees to do so.</i></p>	<p>“Where the owner is the only one in the family with the interest in horses, a separate trust with specific instructions is one way to protect the owner’s wishes for the horse. Unfortunately, the person who is designated as the Executor or Trustee of the estate, to handle other property in general, may not understand the owner’s wishes fully with respect to the horses, or greed may take over. The horses are the losers here, as they will likely be sold off or given away quickly to inappropriate homes.</p> <p><i>Teresa C., CPA, Dixon, CA</i></p>
<p>5) <i>Not giving your designee a full appreciation of the job they will be undertaking. This could result from just naming someone in the Will or failing to provide full care instructions so that the care giver gain a real understanding of what the horses need. Informal arrangements will suffer from this as well.</i></p>	<p>“I was the executor for my mother’s estate and had to dispose of seven hunter jumpers and sever relationships with trainers and others. It was much more complicated than I anticipated.”</p> <p><i>John, Trust Officer, Hartford, CT</i></p> <p>“Too often it seems people who are dealing with the subsequent change in circumstances don’t realize what it takes in time and money to care for a horse, and fail to understand the necessity for regular care and attention. Basic stuff, like feeding (types of suitable food), general care of feet and teeth, vaccinations and human interaction that horses need if they are to remain connected and manageable. I find that most of the horses I’m working with that are being rescued have similar issues, including neglect (physical and mental), which in turn leads to serious physical health problems, and often leads to a dangerous horse. The horses lose at every turn in this scenario.”</p> <p><i>Angela, horse rescue</i></p>

The Mistake	The Case Study
<p>6) <i>Relying too heavily on the current trainer as the one to be designated care giver for the horses.</i></p>	<p>“I am now over 65 and have been involved with horses since I was four. I’ve been thinking about my own planning as I realize that past friends and riding buddies are no longer available as time goes on. I’m considering designating a professional trainer who has the skill to place my horses and providing that she would receive a large percentage of the sale of the horses after I am gone. I have a few young horses with a good amount of Dressage Training on them, and brilliant, and I simply want to know that they will have the chance to go to the right new owner. However, I also have a sense that even though the trainer has worked with the horses and knows them, she is busy with shows and travels a lot so I need to keep some flexibility in this plan, review and restructure as time goes on.”</p> <p><i>Claudia, horse owner, California</i></p> <p>“Trainers who had previously represented that certain horses were promising show horses with great potential value, suddenly found reasons after the horse owner’s death why that value could not be realized when asked to sell the horses. Trainers who are receiving steady monthly boarding and training fees are not highly motivated to find a buyer, even if an attractive commission is offered. In most cases, even a few months of continuing boarding and training fees will exceed the potential commission.”</p> <p><i>John, Trust Officer, Hartford, CT</i></p>
<p>7) <i>Lack of checks and balances in a trust, lack of notification by the owner of the organization which was to receive the horses.</i></p>	<p>“Our horse rescue has been accepting horses from estates for many years. The last one left us nine Arabians which came with a trust which was supposed to be valued at \$30,000. However, we received only half that as the Trustee (an animal control officer for the county!) used the money for something else. The horses were in terrible shape when we got them. Three were loaded with cancer and had to be euthanized....There were no checks and balances. We did not know we were named in the trust until the fellow controlling the funds called us to come get the horses. Had we known, we would have had an initial in-depth assessment of all the horses and regular follow-ups by volunteers like we do with our adoption contracts (every four months, with four high resolution photos of the front, back and both sides).</p> <p><i>Robert, horse rescue, Morrilton, FL</i></p>
<p>8) <i>Putting the wrong person in charge of the money.</i></p>	<p>A son-in-law was put in charge of the horse farm and ran the horse operations into the ground. The family then sued to hold the corporate trustee liable for the resulting losses.</p> <p><i>John, Attorney, Louisville, KY</i></p>
<p>9) <i>Lack of thorough consideration of how the plan would operate as a practical matter, resulting in a lack of clarity and ensuing litigation.</i></p>	<p>“A client left a bequest of tangible personal property including several valuable thoroughbred horses, passing much more in value to the recipient than they probably intended.”</p> <p>“In another case, litigation was required to determine whether trophies from horse races were the property of the life beneficiary of a horse farm at her death, or were part of the principal passing to the remainder beneficiaries.”</p> <p><i>John, Attorney, Louisville, KY</i></p> <p>“I was involved in a situation where there was frozen semen and embryos obtained from previously collections, and no instructions as to what to do with them.”</p> <p><i>Vaughn, Attorney, Springfield, IL</i></p>
<p>10) <i>General difficulties in having a third party sell the horse and tack.</i></p>	<p>“Finding a reputable buyer that can be trusted not to resell the horses to a slaughterhouse is challenging. The marketplace is highly inefficient, primarily word-of-mouth. The purchase and sale of horses is time-consuming and there is no ready marketplace. The ongoing care and training of a horse is expensive.</p> <p>Tack supplies which may have been expensive to accumulate are also very difficult to sell. If there is a great distance between where the horses are boarded and the place of administration of the estate, that can also add to the practical challenge of assuring that the horses are properly cared for and that the sale takes place expeditiously.”</p> <p><i>John, Trust Officer, Hartford, CT</i></p>

The Mistake	The Case Study
<p>11) <i>No plan to deal with immediate issues of funds or authority to provide for care of the horses.</i></p>	<p>“Among botched plans I have seen was the total lack of a plan for the caretakers to buy feed, provide veterinary care, and deal with animal care issues. There was no way to pay employees, and no provision for the herd to be liquidated at fair market value. The breed registry did not recognize the paperwork from the caretakers, since they were not approved to sign breeder’s certificates, registration applications, transfer forms and so on.</p> <p>“The biggest problem is creating continuity, as livestock needs to be fed and watered daily, horses confined to box stalls need to be groomed, exercised and handled. Horses in pasture settings need to be checked on and often fed at least daily.</p> <p>“Horses are accidents waiting to happen, so there must be a veterinarian with access to prior healthcare history willing to oversee health and well-being without being paid until everything gets settled. That should not be the case. Funds should be made immediately available. Is there a person (employee, family member, interested horse owner) who is competent and willing to spend the time and energy needed to ensure the horses are properly cared for?”</p> <p><i>Vaughn, Attorney, Springfield, IL</i></p>
<p>12) <i>Failure to properly identify the horses in the documents.</i></p>	<p>“I live and practice in an area in North Carolina that has numerous horse farms, and I have dealt with my fair share of botched registrations and ambiguous wills and trusts that do not adequately identify the horse in question.”</p> <p><i>Scott, Attorney, Oak Ridge, NC</i></p> <p>“I had a case where the owner was disabled, then died, and no one had access to registration papers to identify a herd of gray horses that all looked the same to novice care givers.”</p> <p><i>Vaughn, Attorney, Springfield, IL</i></p>

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Leah’s personal mission is to make a positive difference in the world through a love of horses.

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