

## The Dilemma of The Non-Paying Customer

Many horse owners discover that they cannot afford their horses. The result is that trainers face the dilemma of the customer who simply does not pay the board bill or is perpetually behind. The trainer usually tolerates the non-payer (who almost always promises to pay at some point in the near future) for a period of months before finally realizing that the customer basically does not have the funds to pay. But in the meantime, the trainer has been subsidizing the cost of maintaining the animal. The question I get is: “What can I do about my customer who is not paying the bills?”

### Contract or no contract?

The answer to this question is primarily based on whether or not the customer has signed a boarding contract, and if so, what the boarding contract provides in the way of remedies for non-payment. Some boarding contracts are better than others when it comes to dealing with this problem. If the trainer copied a contract from a friend, or found a contract on the internet, then there is a high likelihood that the document does not effectively deal with the problem. For example, the contract probably says something to the effect of “if you don’t pay your bill, I (the trainer) will have a lien on your horse as provided by law, and can sell your horse to cover the unpaid bill as provided by law.” This is usually not much help because the law is likely to require the trainer to jump through all kinds of hoops before that sale can take place. So while this type of language may look impressive at first glance, it is usually not much of a practical solution.

What is helpful is when the contract allows the trainer to take specific action to collect on bad debt *without* reference to what is “provided by law.” Parties to a contract are free to agree to whatever floats their boat (within reason) and so there is nothing to stop a boarding contract from spelling out clearly and exactly what will happen when a customer falls behind on their account. For example, after 14 days, riding privileges are suspended; after 30 days, barn privileges are suspended; after 90 days, the horse and all property belonging to the boarder are deemed abandoned and become the property of the trainer. These types of provisions are practical because they are clear, definite, and easy to understand.

### Lien or no lien?

If there is no contract, then what a trainer can do is limited by law. Most states recognize a “livery lien,” either by statute or common law, which gives the trainer a possessory lien on a horse in its care for the payment of charges related to its upkeep. This is like a “mechanic’s lien” – if you take your car to the mechanic to get fixed, you don’t get the keys until you’ve paid your bill in full. But what a trainer can do to enforce a livery lien depends on state law. The important thing to remember is that the lien is “possessory” – which means that it is only good so long as the trainer hangs onto the



horse. No point in closing the barn door once the horse is gone – if the horse leaves the barn the lien goes with it (in most states).

But what then? Can the horse be sold? Put down? Given away? How does the “lien” translate into \$\$dollars? Again, this depends on what the state law says. Some states have different procedures depending on the value of the horse. Some states require a court order or a sheriff’s sale. But the moral of the story is that having a lien does not translate into automatic ownership of the horse.

### To sue or not to sue?

If someone owes you money, taking them to court is always an option. But it is not always the best option. Most people do not realize that even if you “win” your case against someone in court, that doesn’t mean the person has to pay you anything right away, if ever. And we did away with debtor’s prison a long time ago, so there is no satisfaction from that perspective. And while the racing industry has rules that can ban a deadbeat customer from a racetrack, the show horse industry doesn’t – so that deadbeat customer can move from barn to barn and keep showing on someone else’s tab indefinitely.

In addition to the obvious problem that you can’t get blood from a stone, there are also risks to litigation, including the risk that the person you are suing for that unpaid board bill will turn around and sue you for something. In other professions it is a well-accepted risk that if you sue a customer for not paying, you are likely to get sued for malpractice. Doctors and lawyers take this risk very seriously and as a result tend to manage their businesses accordingly: lawyers often require payment of fees in advance and doctors usually require proof of insurance or upfront payment for services rendered.

Finally, the contract question factors back into the decision of whether or not to sue. If there is a boarding contract, does it have provisions that will limit the risks and costs to the trainer? If so, then a lawsuit or *threat* of a lawsuit may offer a real possibility of getting paid.

### Bankruptcy

The threat of losing a horse, even one the customer can’t afford to own, sometimes sends people running for bankruptcy protection. The main thing a trainer needs to know about bankruptcy is something called the “automatic stay.” This means as of the minute the customer files for bankruptcy, the trainer must stop all measures to attempt to collect the debt, including filing suit, continuing litigation, or otherwise hounding the client to pay their bill. Even contacting the customer by telephone or mail to demand payment is prohibited, as is “repossessing” the horse. The second most important thing that a trainer should do in the face of a customer’s bankruptcy filing is to hire their own lawyer to represent them in the bankruptcy proceeding. Bankruptcy is simply too complicated a process for creditors (the trainer that is owed money is referred



equestrian  
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to as a “creditor” and the customer who has filed for bankruptcy is called the “debtor”) to explain in this article. But suffice it to say, if you don’t get your own lawyer, your customer will come out of bankruptcy with a clean slate – which likely will mean walking away from the debt owed to you without paying you a dime.

### Can’t I just sell the horse?

No (unless you have a contract that lets you do that). But basically, no. To sell a horse, you have to own the horse. A lien does not give you ownership. A money judgment does not give you ownership. Selling a horse you don’t own is a crime. Then you will really need a lawyer and bail money, and you still won’t come out ahead.

### So, what should I do?

Assuming that you don’t have a contract that lets you “foreclose” on the horse, the best outcome in these kinds of situations is a negotiated compromise. This usually means having a heart-to-heart with the customer who owes you money. In this economy, horse owners need to be reasonable about their ability to afford their horse habit, but they also need to be reasonable about the value of their horse in a “fire sale” situation. Maybe the horse will bring \$100,000 for the right buyer in a few months. But who is going to pay for the horse to stay in training and showing in the meantime? Who is going to pay the vet, the farrier, and the board bill? A \$100,000 horse in three months might be a \$50,000 horse today. Likewise, a \$50,000 horse in three months might be a \$15,000 horse today, and the board bill may stand at \$20,000. What then?

If the amount owed exceeds the value of the horse, the simplest thing may be for the owner to permit the “foreclosure” and simply transfer ownership of the horse to the trainer in exchange for erasing the amount owed. That is, if the trainer is willing to take the horse “on the cuff.”

If the dollar value of the horse is little or nothing, or the horse has some physical or health problem that will make it not saleable, then everyone needs to be realistic about whether the horse is even usable for anyone. Perhaps a charitable donation or a non-charitable adoption is an option. Owners may want their horses to be lawn ornaments and live out their lives in green pastures, but a trainer should be forthright about their intentions: don’t let the owner think the horse will be “retired” in the back pasture if you plan to put it down.

If the value of the horse exceeds the amount of the debt, then it is likely the owner will want the excess of any sale proceeds. The trainer should get the owner’s agreement, in writing, as to what the expectations are. Again, the fact that the owner owes money for the upkeep of the horse does not give a trainer the right to keep all the sale proceeds “just because.” There should be a written agreement giving the trainer the authority to sell the horse with details about whether the owner will or won’t have the ability to veto a



particular sales price. The written agreement should also spell out whether costs and expenses will continue to accrue until the horse is sold, and if so at what rate, and whether the trainer will also take a commission on the sale. If the trainer plans to accept the sale proceeds and remit a balance to the owner after all the debts and expenses of the sale are paid, then the owner should agree to that in writing as well, and the trainer should be prepared to give the owner a written accounting of how the sale proceeds were applied. This type of agreement does not need to be drafted by an attorney, but an attorney might be helpful in thinking of all the angles that need to be covered.

### The moral of this story . . .

Sometimes customers don't pay. It happens. It has and it always will. People will always pay their mortgage and their electric bill and their car payment before they pay the board bill on their horse. Why? Because they signed a contract with the bank and they don't want to lose their house or have their car repossessed. The power company will turn off the lights. And they know that even if they don't pay, their trainer is not going to stop feeding their horse or turn it loose on the highway (both of which are crimes by the way).

So make like the bank and get a contract! Then you'll have the power to get paid first instead of not at all.

