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Resolving equine legal disputes without kicking up a fuss

"Ours is a litigious society, and legal actions, many of which perhaps would not have seen the inside of a courthouse during an earlier period, have become commonplace. As a result, legal costs are soaring, and there are court delays due to full calendars and a lack of public resources for the court system."

— Harris H. Agnew, former Illinois 17th Judicial Circuit judge

Judge Agnew, like most of us, appreciated the "whom can I sue" mentality of today's society and the limited resources with which the legal system can resolve such an influx of claims.

The horse industry is no exception.

At least once, if not more often, everyone the I know in the horse industry has faced a legal dispute, either directly or through someone they know. The desire for our "day in court," however, is frustrated by the costs, time, public exposure or other unavoidable factors of the legal process.

As both an equine lawyer and a commercial litigator, I am frequently asked how parties can resolve their disputes without these undesired elements of our court system. Parties should consider taking their claims outside the courtroom and into alternative dispute resolution.

ADR affords the parties an opportunity to resolve their disputes — including equine disputes — without going to trial. The most commonly used ADR methods include mediation, an informal meeting, and arbitration, a formal decision process. Considering the advantages and disadvantages of both for equine industry disputes facilitates deciding whether ADR is right for particular disputes and the parties involved.

Mediation

Mediation utilizes the training and experience of a mutually selected, impartial, neutral person, the mediator, to guide the discussion of ways to solve the problem. Some mediators are attorneys while some have training in other professions. Their skill is in helping people explore the real issues in conflict and what actions would resolve the problem.

The mediator does not make decisions about the merits of a case or the likelihood of success at trial. Rather, the mediator brings the parties together to develop a workable and effective solution. Mediation can be voluntary or involuntary by court order, and can be binding, or nonbinding, depending on the agreement of the parties.

Upon the successful completion of mediation, the parties will agree upon and execute a settlement document which memorializes each and every term of the agreement reached by the parties.

The advantages of mediation for the equine industry are similar to many other walks of life and include, but are not limited to:

Speed: In the equine industry, time is always of the essence. Horses require food, stabling and training, regardless of the amount of money in dispute. A horse's age, training and competition or racing career does not wait for the resolution of the ownership dispute.

Mediation is faster than filing a complaint and litigating a case to trial which can take anywhere from several months to several years to complete. A mediation conference can be scheduled immediately after a dispute arises and in any location convenient to the parties, whether it is a



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mediation center, a lawyer's office or even the indoor arena viewing room.

It's cost effective: In many cases involving horses, the cost of litigation can exceed the amount at stake. Mediation is less formal than litigation and therefore less expensive.

For example, there is no discovery permitted and therefore the extensive costs of written interrogatories, document production and depositions are completely avoided. Also, while the advice of an attorney is recommended for any conflict resolution, attorneys are not always necessary for mediation.

Finally, court required filing fees and other costs are eliminated. A mediator may charge by the hour; however, this cost will always be less than a trial.

Maintain control: Litigation is a "win-lose" resolution process — one winner, one loser. In mediation, the parties work together to compromise and develop creative solutions. The mediator can suggest options that the parties themselves may not have even considered prior to the meeting.

Therefore, the risk or fear of a losing outcome is significantly

diminished, if not completely eliminated. Additionally, unlike a trial, either party may terminate the mediation at any time without consequence.

Resolve competing claims: In equine-related disputes, like many other situations, the parties may seek to resolve competing claims. The boarder may be withholding boarding payments because the facility owner has not provided heat in the barn as promised. In this case, the boarder could sue for breach of contract — failure to provide a heated facility.

In turn, the facility could sue for breach of contract — failure to pay for boarding the horse. The mediator may efficiently and effectively assist these parties in reaching an amicable resolution without timely and expensive court intervention.

It can be confidential: The horse industry is a very small world. One person's problem becomes everyone's business. With the invention of the internet and social media, negative drama becomes public news almost instantaneously. Taking a case to court makes the dispute public knowledge.

The complaint, the answer and other filed documents are publicly available at the courthouse and, in many cases, on the internet. Mediation gives both parties an opportunity to be heard, while at the same time preserving the confidentiality of their dispute and resolution.

Maintain future business relationships: As mentioned above, litigation is an "I win, you lose" proposition. In many cases, relationships cannot survive the adversity inherent in this form of dispute resolution. Maintaining future business and/or personal relationship in the horse industry is imperative.

The likelihood of preserving a future relationship with the adversary is greater with the assistance of neutral mediator creating “win-win” options for the dispute resolution.

Arbitration

Arbitration involves presenting a case to a neutral person, or panel of three neutral parties, who decide the dispute. Arbitration may be mandatory and ordered by the court in a case under \$50,000 or simply an agreed upon term of a contract between the parties entered into prior to the dispute.

In most cases, whether mandatory or voluntary, the arbitrator considers written position statements, verbal

testimony and documentary evidence from both parties and their respective witnesses.

Like a judge or jury, the arbitrator renders a decision based on all the evidence presented. The arbitrator’s decision is final and subject to limited court review on appeal.

Many of the advantages of mediation are advantages to arbitration as well, and include, but are in no way limited to:

Speedy and cost effective: Like mediation, arbitration can be faster and less expensive than litigating a case to trial. For those parties that still want to experience their “day in court,” arbitrators administer oaths and affirmations to witnesses, deter-

mine the admissibility of evidence and decide the law and the facts of the case.

Unlike mediation, the rules of evidence apply and arbitration allows for some degree of discovery. The discovery is limited and therefore still not as financially burdensome as discovery in litigation.

It’s open to creative solutions: Also like mediation, arbitrators may creatively resolve competing claims between parties or even find a middle ground and compromise the award to each side.

Confidentiality: The arbitration proceedings and final decision are confidential and not made publicly available.

It’s enforceable: The terms of

the arbitrators’ decision are enforceable in court if not followed by the losing party. The arbitrators’ decision may also be appealed to the court on the basis that the arbitrators exceeded their authority or were biased rather than neutral in their decision making process.

Attorneys can effectively represent their clients by exploring alternative dispute resolution as an efficient and financially beneficial means of resolving equine industry issues early on in the retention.

Clients and their horses cannot always afford to wait for the lengthy, time consuming and costly dispute resolution process of litigation.