

A new owner with a promising Thoroughbred is looking for a good trainer. She inquires at the track and is referred to a trainer that has a reputation for developing winners. The two meet at the stable and agree to fees, veterinarian and farrier care, race commissions, and schedule a date and time to begin training. Is this a done deal? Unfortunately for many owners and trainers, it is.

**WORDS: PETER J. SACOPULOS, ESQ. PHOTOS: SHUTTERSTOCK**

**T**YPICALLY, a handshake “formalizes” the discussion and nothing is reduced to writing. Such deals leave owners in uncertain and unclear positions should a dispute arise. And they leave trainers vulnerable to clients that refuse to pay a day rate they “said they would,” or who refuse to pay additional charges because they incorrectly assumed those charges were included in the trainer’s fee. These “handshake deals” are ripe with risk, yet I see them frequently. They are especially common with private owners and stables and, surprisingly, even with high profile trainers.

One reason for their ubiquity is that there has been very little case law in this area. *So far*. Recent litigation regarding commission and “industry standard” may be the harbinger of a turning tide. Trainer-owner breakdowns like this one, as well as other disputes and misunderstandings, may be avoided by taking a straightforward and practical step: *create a written trainer’s agreement*. It clarifies everything in black and white, and adds a level of validity to the agreement. Additionally, it is not difficult or expensive to do.

### Why you need a written agreement

What if a truck spooks a horse and the

owner cannot be reached to approve emergency care for a laceration? What recourse does a trainer have if an owner stops paying the monthly bill? And, how can owners avoid surprise charges they thought were included in the trainer’s fee?

A well-written agreement addresses issues such as these, as well as many others.

New owners frequently contact me with a story that goes something like this: “The trainer told me he would train my racehorse for \$75 a day. I did the math, and figured it was going to cost me \$2,250 a month. But now I’m also getting bills for routine vet and farrier services. What is my recourse?”

What the new owner often does not realize is that in addition to the trainer’s day rate, he or she is responsible for regular veterinarian and farrier bills. Additionally, many new racehorse owners also do not understand that there is a fee for the pony rider, the private or third-party veterinarian who administers Lasix before the race, as well as fees for the jockey.

These are reasons to have a written agreement that is signed by both parties prior to beginning training services. The trainer agreement is important both from the standpoint of defining liability and establishing and clarifying expectations.

**Defining Trainer’s Liability** – Trainers are subject to the Absolute Insurer Rule. That rule, of which the owner should be made

aware, states that the trainer is absolutely liable when a horse is entered into an official race and tests positive for prohibited medications or substances or when test results reveal permitted medications in excess of the maximum allowed levels. When such a positive test result occurs, it is *prima facie* evidence of a violation of the trainer responsibility rule. To this end, the trainer’s agreement should include a provision that requires the horse that is the subject of the agreement be tested for all foreign substances, therapeutic and otherwise, prior to being transferred to the trainer. This is important to assure that the trainer does not take possession and responsibility of a horse that has previously received or been administered a foreign substance that may result in a positive test result and a violation of the Absolute Insurer Rule. In addition, there should be a clear understanding and written provision defining liability coverage for damage caused by the subject horse(s) to person and property. Typically, the trainer secures the liability policy and, in many cases, should list the owner as an additional insured. An additional concern is coverage for the equine athlete. The trainer, unless he or she has an ownership interest, does not have an insurable interest in the horse. As such, if the horse is to be insured for purposes of mortality, the policy will likely be the responsibility and expense of the owner. This too should be defined in the written trainer’s agreement.

**Defining Services and Expectations** – The specific services to be supplied by the trainer require clear definition. The trainer’s agreement should define “who pays for what.” If the owner places more than one horse in training with the trainer and the agreement differs from horse to horse, then separate agreements are recommended. The primary purpose of a trainer’s agreement is to provide clarity. Each item not contemplated by the day-rate needs to specify which party is responsible. These additional costs may include veterinarian fees, farrier fees, and costs for administration of Lasix by a private or third-party veterinarian as well as the cost of having the horse ponied from the paddock to the gate and jockey fees. Additionally, expectations as to liability and associated coverage need to be defined for the owner, the trainer, and as to potential third-parties.

### What to include in the trainer’s agreement

Although each training agreement is unique, there are key standard components to these agreements. The **Training Agreement Checklist** in the table opposite provides a list of the most common components to include, with details that will assist trainers in developing an agreement. After having the agreement reviewed and finalized by an attorney, the final document may become a template that is customized to each client. Owners, too, will find this checklist useful when



reviewing these agreements.

All provisions of a training agreement are important. However, the following four provisions or areas are key and are often the cause of conflict:

**1. Fees and Payment.** Clearly, this is a critical topic for both parties. Specify the details of the daily rate, what is included, and what is *not* included. Explain payment terms and timelines as well as how delinquent payments are handled. Additionally, be specific about the form of payment be it cash, check, or transfer. For convenience and reporting ease, I recommend that owners establish a track account, from which payment may be transferred to the trainer. By doing so, at the end of the meet, the bursar's office will provide a report of all transactions, saving the owner, trainer, and accountant time and energy at tax time.

**2. Authorization for Emergency Care.** This is in the best interest of the horse's well-being. Many veterinarians and farriers require written authorization prior to treating a horse. Authorization for treatment of a horse whose owner is not physically present should be part of the agreement and may specify treatment to and including a specific dollar amount. Also, include a clause authorizing the trainer to obtain emergency care if he or she is unable to contact the owner.

**3. Insurance.** Owners should expect their trainer to carry liability insurance that covers personal injury and property damage. A common policy includes coverage limits of \$100,000 per person, \$300,000 per accident, and \$50,000 per property damage for acts of the horses. Additionally, if the owner elects to insure the horse for mortality, that too shall be included, and clearly state that in the event a horse expires or is euthanized, all insurance proceeds shall be paid to the owner.

**4. Liability.** No matter how careful or experienced, many things are simply out of the trainer's control. The trainer's agreement often includes a provision that the trainer is not liable for sickness, disease, theft, or death or injury arising out of the boarding or training of the animal *except in the event of willful negligence*. This protects the trainer from events he or she cannot control, and the owner in the case that the trainer is, indeed, negligent. There are often state-specific requirements for this clause. Consult an attorney who understands the requirements in your state. The trainer's agreement should also contain a provision whereby the owner agrees that he or she has not administered nor caused any foreign substance to be administered to the horse prior to transfer. In the event that any foreign substance was administered, then the precise substance/medication, dosage, and date of administration must be provided to the trainer at the time of transfer. Additionally, it is recommended the horse be tested, both blood and urine, at the time of transfer to assure the trainer

TRAINER'S AGREEMENT CHECKLIST	
<b>PARTIES.</b>	The names of all parties involved – owner(s) and trainer(s).
<b>HORSES.</b>	The full names of all horses that will be trained under the agreement. Include insured amounts, carriers, and contact information for each.
<b>OWNERSHIP.</b>	Describe the ownership, title/registration, and lease/management disposition of each horse. The name and address of the individual, entity, or syndicate holding full title and registration should also be listed.
<b>PAYMENT FOR TRAINING SERVICES.</b>	Describe the trainer's base fee, per day, plus any additional fees and expenses that may be required (and which will be detailed later in the agreement). State that the daily rate x 30 days is billable to the owner at the end of the billing period, which is typically one month. A good agreement lists what is included in the fees, payment terms, and payment methods. (i.e., check, credit card, transfer, etc.) It can also state that fees may change subject to written notice.
<b>AUTHORIZED AGENT.</b>	This essential component ensures that the trainer is the authorized agent who may contact a veterinarian or farrier to arrange for services. Typically, a maximum, per incident approval amount is specified in the contract. The clause should indicate that the trainer has the authority to authorize emergency care in the case that the owner is not available, and a maximum amount that the trainer may approve without owner consent.
<b>INSURANCE.</b>	Describe the coverage and limits of the trainer's liability insurance, which covers harm to people and property. However, as a general rule, a trainer's liability policy typically does not protect the owner against losses due to fire, theft, death, etc. arising from injuries or accidents. (See INDEMNIFICATION, below.)
<b>LIMITATION OF LIABILITY AND INDEMNIFICATION.</b>	This section holds the trainer harmless for equine sickness, disease, theft, death, or injury arising out of the boarding or training of the animal – except in the event of willful negligence. There are often state-specific requirements for this clause. It is recommended that an attorney who understands state requirements be consulted.
<b>ACCEPTANCE.</b>	This provision makes it clear that the contract is not effective until both the owner and the trainer have signed.
<b>VETERINARIAN AND FARRIER CARE.</b>	The trainer agreement should include a provision that states the trainer is authorized to arrange for routine care, such as vaccinations, Coggins test, dental care, hoof care, etc. List all services that the trainer is authorized to schedule. The agreement should also state that the trainer is authorized to approve <i>emergency care and surgery</i> , if the owner is not available, up to a certain amount. Specify this amount in the contract.
<b>COMMISSIONS.</b>	Clarify whether the owner and/or trainer share in race winnings or for facilitating the sale of a horse, and if so, the commission percentage. For race winnings, clarify whether there is a variance in the percentage if it is a claiming race, a stakes race, or an allowance race.
<b>BILLING.</b>	Specify when bills are due (typically, within 30 days of billing date), and if interest is charged for overdue balances.
<b>LIEN.</b>	This provides an important protection to trainers, when owners are delinquent in their payments. The clause should explain that if the owner fails to pay his/her bills, after a certain amount of time (say, 45 days), the trainer has the right to attach a lien to the horse, in the form of a liveryman lien or adjuster lien, and may ultimately, having secured the lien, sell the horse to recover losses.
<b>INSURANCE.</b>	Specifies who is responsible for insuring the animal, and at what coverage amount.
<b>TERMINATION AND WAIVER.</b>	Clarifies how the agreement may be terminated. In most cases, the agreement has a 30-day termination provision, after a written notice is provided.

does not run afoul of the absolute insurer rule and thereby, potentially jeopardize his or her career and livelihood.

Training agreements do not have to be lengthy and complicated. In fact, many of the trainer's agreements I have developed for clients are only a few pages long. That said, these documents do need to be complete

and clear. Trainers, use the guidance and checklist provided to draft an agreement and have it reviewed by an attorney. Owners, make sure any agreement you are presented with is complete and understandable. Once both parties have agreed to the terms and signed the training agreement, each should retain a copy of the executed version. ■