

TO LIEN OR NOT TO LIEN...

AN UPDATE ON THE STABLE KEEPER'S LIEN LAW

Legal Bits

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The Stable Keepers Lien Section of the Innkeepers Lien Act, 770 ILCS 40/49, ("the Statute") defines the rights and responsibilities of individuals and entities seeking to enforce their rights for unpaid boarding or other related services against the owner of the boarded horse. The Statute, as it was written, was confusing and therefore difficult to enforce by the lien holder and difficult to defend against by the horse owner. The Horsemen's Council of Illinois ("HCI") proposed revised statute provisions clarifying defined terms and adding sections so that the law may be more useful to lien holders in enforcing their rights and easier for horse owners to understand their rights in challenging any such lien enforcement.

This article identifies a number of material provisions included in the proposed legislation that HCI believes individuals and facilities should read and understand when it comes to enforcing liens against boarded horses. The proposed revised Statute has passed the vote of the House and Senate, and was submitted for review to the Governor for his approval.

Definitions: Several terms are defined in the definitions section such as boarding and training as well as what constitutes personal property. You will see in later sections below why these definitions are important. The definition of "boarding and training services" was broadened to include services requested by the owner under a written boarding agreement, a written request from the owner (could include text or e-mail request), administering supplements or medications, trailering the horse, and providing assistance to the veterinarian, breeder, or farrier servicing the horse. The term "personal property left on the premises" will include any carriage, harness, tack, equipment, supplements, medications, or other personal property stored by the owner at the facility.

Lien Amount: The Statute provides that the facility shall have a lien upon the horse and the personal property left on the premises for the amount owed for

stabling the horse and storing this personal property, as well as the proper charges due for the boarding and training services, as well as all fees and expenses, including legal fees, incurred by the facility to enforce the lien.

Possession: The original Statute explained that this is a possessory lien, meaning, the facility has a lien on the horse as long as it remains in the facility's possession. This is still the case, however, now the Statute further states that in the event local authorities are contacted by either the facility seeking to maintain possession or the owner trying to take possession, the officer may restrict the removal of the horse from the facility if the officer is shown a written boarding agreement signed by the horse owner acknowledging the facility's lien for any amounts owed for the fees and expenses defined above. If the horse owner demonstrates the lien has been satisfied, the officer may allow the owner's removal of the horse.

Enforcement: The Statute was confusing on how the possessory lien is enforced by public sale, and the Statute did not provide for any private sale to satisfy the lien. The proposed revisions provide that the lien enforcement must be by public sale of the horse and the stored property, unless the boarding agreement provides clear authorization that the horse and property may be sold through a private sale or ownership transfer directly to the facility to satisfy the lien. The Statute requires a written demand for payment and notice of public sale to the owner before the horse may be sold by public or private sale.

Residual Funds: In the event the horse is sold, whether by private or public sale, any funds received in excess of the lien amount, including attorneys' fees and costs incurred in the lien enforcement process, shall be paid to the original owner. If the original owner cannot be found, the surplus funds shall be paid to the facility's chosen equine rescue, rehabilitation, or retirement facility or organization.

Certificate of Purchase: At the time the horse is sold through public auction, the sheriff or other person conducting the sale, shall provide a public sale certificate of purchase of the horse to the highest bidder. The original owner shall thereafter have no claim of right, title, or interest in the horse. At the time the horse is sold through a private sale, the facility shall provide the buyer with the private sale certificate certifying that the requirements of the Statute were met and that the buyer is the legal title owner of the horse. Similar to the public auction, the original owner shall thereafter have no claim of right, title or interest in the horse.

Facility Taking Ownership: In the event the lien is enforced through the facility obtaining ownership of the horse and the personal property stored, the facility shall make a demand for payment to the owner with an appraisal of the value of the horse and the property showing that the horse and property will be kept in satisfaction of the full value of the lien.

Reading and understanding these newly drafted provisions of the Statute emphasize the need for carefully drafted written boarding agreements and horse lease agreements, and document the need for regular and proper communications between the horse owner and the facility to ensure the lien is timely and properly enforced.

If you have any questions about these or any other provisions of the proposed statute, please contact the undersigned counsel who played a significant role in the drafting of this new law.

This article is intended for informational and educational purposes only. It is provided with the understanding that the author is not rendering legal advice to From the Horse's Mouth readers. If you have questions you may contact the author, a licensed equine law attorney, at yocrant@hinshawlaw.com

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