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Lawyers trot out their horse sense

HANDFUL OF ATTORNEYS SPECIALIZES IN REINING IN PROBLEMS IN EQUINE LAW

By Rodney Foo
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There was a time when horse trading was done with a mere handshake. But that time has just about vanished now that horses are a \$39 billion industry in the United States.

Given the potentially high financial stakes, it's not surprising that consumers and businesses engaged in everything from renting stalls to leasing valuable horses seek counsel from attorneys who specialize in . . . horse law.

"A lot of people spend money on horses and not always wisely," observed attorney Rachel Kosmal McCart.

McCart is among a handful of attorneys with Bay Area offices that specializes in equine law. Horse attorneys plow a very specialized field that combines an expertise in horses -- many of the attorneys either own horses or grew up around them -- with their knowledge of the law.

They grapple with issues that range from liability to immigration laws. They write agreements for the boarding, sale or leasing of horses. Some handle the securities and tax implications for syndicates that control the propagation of Kentucky Derby and Breeders' Cup winners.

An estimated 200 attorneys nationwide practice horse law. There are at least three based in the Bay Area: Polly Hey, in Redwood City; Lauren M. Terk, in Larkspur; and Steven M. McCarthy, in Oakland. McCart, who moved from San Jose to Oregon last year, still maintains a local office.

There are an estimated 9.2 million horses in the United States, including 700,000 -- 8 percent of the total -- in California, according to the American Horse Council, an industry lobbying organization.

"It's a huge industry and the need for legal work is there," said Julie Fershtman, a Michigan-based equine law attorney and author of several equine law books.

Take Kathy Frazier, a Portola Valley resident who wanted to rent an empty stable on her property but worried about liability issues that could arise if a horse were injured in her care or if it escaped. She met with Hey, who steered her to specialized insurance offered by a Louisville, Ky., carrier.

"I feel like Polly saved us from taking out a huge amount of liability insurance unknowingly," Frazier said.

While another attorney also may have pointed Frazier in the right direction, equine lawyers say they can help their clients faster and more thoroughly because they have a solid grasp of the horse culture.

"I'm not saying only an equine specialist can do equine law," Terk said. "But, I don't do patent trademark law for a reason."

Equine law, an amalgamation of torts and contract law, is not considered a "pure" body of law, such as, for example, maritime law. But it is law applied to a very specialized industry with its own problems.

"I love my work," said Lexington, Ky.-based attorney Laura D'Angelo, who last year helped a client accused of misrepresenting the height of a pony that was sold. "Day to day, you never know what's coming across your desk."

Terk once represented a couple who had bought several stallions and gelded them. One day, the couple took a drive and noticed a sign with the picture of their horses; the sign said the horses had been stolen.

The couple came to two awful realizations: They had purchased stolen horses and they could not return the animals in

their original condition to their rightful owner. The couple contacted the owner who subsequently sued the couple, alleging they had conspired to steal the horses, Terk said.

``Why would they call if they conspired to steal them?" she said. ``People will argue everything to the nth degree."

The case was resolved under confidential terms.

Science also has added new legal complexities. In 2002, the American Quarter Horse Association, which controls the breed's standards, agreed to settle a 2-year-old, anti-trust lawsuit brought by breeders in Texas who argued that foals born from surrogate mares must be recognized as full-fledged quarter horses.

The association's rules allowed only one foal from one mare a year to be recognized. But with technological advancements, quarter horse breeders could flush embryos from quality mares and transfer them to surrogate mares, greatly increasing a prized mare's annual production of foals. The association's criteria, the breeders said, lowered the value of their full-blooded quarter horse foals.

The association eventually agreed to recognize foals from surrogate mares in addition to paying the opposing side's attorney fees.

Some legal matters don't even deal with the animals. Lately, equine law attorneys are being hired by stable and track operators to help them solve the industry's shortage of grooms by filing work visa paperwork for immigrants from Mexico, Hey said.

Not every attorney specializing in equine law handles enough cases to support a practice. So, many also deal in other areas of law to pay the bills.

For example, Terk also handles product liability litigation, which blossomed into equine liability; Fershtman concentrates on insurance defense and coverage and employment; D'Angelo originally got into transactional law; and McCart had been an in-house corporate lawyer for Intel until 2005.

McCart recommends that anyone thinking about getting into equine law maintain their knowledge and a presence in the horse industry, attend the best law school they can get into and work for a good firm that will allow them to develop their clients.

And Fershtman warns they should know this about their prospective clients: ``This is a very self-reliant and do-it-yourself industry. Most of the people in the horse industry do not want to spend a lot of money for a lawyer."

Contact Rodney Foo at rfoo@mercurynews.com or (408) 920-5258.