

Learn the laws and liabilities for horseback-riding enthusiasts dealing with trespassing children.

courtesy of America's Horse Daily

Gary Johnson lived in the middle of nowhere, his 15-acre horse farm nestled between hundreds of acres of corn and soybean fields in Kansas City, Missouri. He and his family enjoyed the peace and quiet without a neighbor in sight. Then suburbia hit – fast and hard. A few years ago, rows of corn were replaced by rows of houses, just feet from his horse pasture. Along with the houses came swarms of curious children, eager to meet their new four-legged neighbors just beyond the wire fence.



Gary was content to adjust to his new neighbors – until a group of small children gave him a big scare.

“One day, as I was walking out to the back pasture, I saw four little children: the oldest around 10 and the youngest around 2,” Gary recalls. “They had climbed through the fence to play with the horses. As I first looked, they were surrounded by my four horses. The kids were pulling out grass and hand-feeding it to the horses.

“I had to stop in my tracks because my horses always come running when they see me – they usually assume it’s time to head toward the barn for grain,” he continues. “I knew that if the horses wheeled around to head toward me, they might accidentally trample one of the children. So I dropped to my knees and waited.”

Fortunately, the horses never saw Gary, and the children eventually turned to crawl back through the fence for their homes.

“I ran to catch up with them to have a visit,” Gary says. “They were scared at first, thinking they

were in big trouble. But I had a gentle conversation with them, warning them of the dangers they could have been in. I suggested that if they wanted to pet or feed the horses, they could have their parents contact me to arrange a supervised meeting with the horses.”

But those were just four children in a neighborhood full of youngsters, and Gary knows children regularly trespass on his pasture. The neighborhood parents don't seem to mind – one parent even mowed a path to the fence line so his children could easily walk from their backyard to Gary's horse pasture. Gary constantly worries that, one of these days, a child will accidentally get hurt in his pasture.

“I'm convinced that in most cases, kids and their parents simply don't realize the basic dangers involved with horses,” Gary says.

What if a Child Gets Hurt?

Gary's dilemma is common to horse owners across the country who face encroaching suburbia. No matter how gentle and calm our horses may be, any horse is capable of getting spooked or scared and forgetting to watch out for the youngster beside him. So there is a real, potential danger to children trespassing on Gary's pasture.

As unfair as it might seem and regardless of his defenses, Gary might be held liable if one of his horses injures a trespassing child. But, he argues, “The parents should be supervising their activities or discouraging their children from trespassing. I have 'No Trespassing' signs posted. Plus, I was here first. They moved here knowing their children could be tempted to pet my horses.”

As attorney Julie Fershtman, of Farmington Hills, Michigan, explains, “Trespassing children are any horse facility's nightmare. Children cannot – or simply do not – read warning signs,” she says. “They are capable of climbing over or crawling under fences.”

Of course, trespassing adults aren't afforded many rights if injured while trespassing. But in the eyes of the law, trespassing children are a different, more complicated ballgame.

Why Could Gary Be Liable?

Gary's pasture full of horses might be considered an attractive nuisance, which is a type of negligence. In many states, the attractive nuisance doctrine makes the landowner liable for harm caused to trespassing children. By definition, attractive nuisances are potentially harmful objects and conditions on the land or of the land that, by their features, have the ability to attract children. Examples include swimming pools, sewer drains, tractors, farm equipment and, in some cases, animals such as horses.

Courts consider many factors in evaluating whether landowners are liable under the legal theory of attractive nuisances. According to Julie, they look at:

- whether the landowner knew or had reason to know that children could trespass near the hazard;

- whether the hazard poses an unreasonable risk of death or serious bodily harm to children;
- whether children, due to their age, could recognize the danger involved;
- whether the landowner maintained the hazardous condition;
- whether the hazardous condition is relatively easy to correct;
- whether the landowner exercised reasonable care to eliminate the hazard or protect the children.

Consult a knowledgeable attorney for the attractive nuisance and trespassing child laws in your state. Courts in some states may not consider horses in a field an attractive nuisance, most likely because of the horse industry's prominence and importance to the state's economy. Your state might fall at any end of the spectrum. As one court in Louisiana put it in 1999, "We will not impose a duty on all owners or lessees of historical pastureland to 'child proof' their land."

What Can Gary Do?

"I've talked to several lawyer friends about my situation, and most agree that a 'No Trespassing' sign would not hold up in court in the event a young child got hurt in my pasture," Gary says. "The child's lawyer would argue that the child could not read or understand the sign. Because there is no such thing as a childproof fence, the best advice I've gotten is to visit with the neighbors and nicely ask them to prohibit their children from entering my pasture. I've done this as much as possible and have gotten a positive response, but we all know that parents cannot keep their eyes on their children all the time."

Julie suggests continuing the friendly conversations with the parents, but taking an added step for protection.

"Talking to the neighbors is good, but the only problem I have, as a lawyer, is that conversations get forgotten," she says. "Friendly, neighborly conversations are certainly very important. However, for the best protection, it can help to have a letter confirming the discussion you had, so you have that as support if the worst should happen. Sending the letter is a good extra precaution."

She recommends sending the friendly letter to the child's parents soon after the child has made the uninvited visit. Consider sending it certified mail with a return receipt requested (from the U.S. Postal Service), and keep accurate records and copies of documents. Here is a sample letter:

Dear neighbor,

Thank you for talking with me yesterday about your son entering my property without permission. Please allow this letter to confirm our agreement and that you will keep him off of my property and away from my horses. But if you wish to bring him over some time for a special visit, you may call me to set up a workable day and time in which I can personally escort the two of you to see my horses. Thank you very much for your understanding.

Best wishes,

Gary Johnson

“In my opinion, a friendly letter to parents shows that you know the children have been trespassing and you don't approve of it.” Julie says. “You're reaffirming that the children are trespassers, and the parents are being set up for arguably negligent supervision of their children. You're also trying to be neighborly and trying to accommodate the neighbors in a nice way.

“These efforts, in themselves, may not eliminate your liability, but they will help evidence the many precautions you are taking to protect others,” she adds. “It's a friendlier method than a harsh letter that says, ‘Keep them out of there.’ Instead, you're saying, ‘You can come back, by appointment only, when I'm available to escort you and your children.’ ”

Again, she suggests keeping good records. “If Gary agrees with the letter strategy, he would be wise to keep a record of who he sent the letter to, a copy of the letter and the return receipts if he sends them by certified mail.

Liability Insurance

As another important preventative measure, Julie suggests that Gary purchase liability insurance. Regardless of the nature of Gary's horse facility (he currently does not board outside horses or provide riding/training lessons), he can greatly benefit from investing in one of the many policies available.

Liability insurance policies protect against claims that seek to hold you liable for an injury or damage to another's property. “If you ever find yourself in the worst-case scenario of being sued, a proper insurance policy is there to provide a legal defense for you, pay any judgment that may be issued against you or settle the matter,” Julie says.

Liability insurance policies include home owners', farm owners', commercial, professional and personal horse owners'. Discuss your liability insurance options with a knowledgeable insurance agent. AQHA corporate partner Markel has a range of insurance options and offers a 10 percent credit to AQHA members who purchase certain types of coverage.

Peace of Mind

By following Julie's suggestions, and by contacting his attorney for more suggestions based on Missouri laws, Gary will not only prevent potential injuries to the neighborhood children, but he'll also protect himself against liability and ultimately rest a little easier at night.

“If you should get sued, you know that you have protection,” Julie says. “Even with the most extensive precautions, we live in a society where litigation is rampant. If you are sued, these precautions could help in your defense.”

About Julie Fershtman: A shareholder with the firm Foster Swift Collins & Smith, PC, Julie Fershtman's law practice crosses all equine breeds and disciplines and serves stables,

April 2021 - Attractive Nuisances

Written by Courtesy of America's Horse Daily
Thursday, 01 April 2021 22:02

professionals, associations, businesses and trainers across the country. She is one of fewer than 20 lawyers nationwide to be named a Fellow of the American College of Equine Attorneys and has successfully tried equine-related cases before juries in four states. She is the author of two books, "Equine Law & Horse Sense" and "More Equine Law & Horse Sense," and writer of www.equinelawblog.com. She has spoken on equine law in 28 states. For more information, visit www.equinelaw.net, www.fosterswift.com or www.fershtmanlaw.com.