



Kate Kirsch, attorney and horsewoman.

≈ Q&A ≈

WILLS & DIRECTIVES: SAFEGUARDING THE FUTURE OF HORSES WE LOVE

By Kate Kirsch

Kate Kirsch is an attorney whose firm is located in Buffalo, New York. With five other lawyers in the group, they represent workers in areas such as personal injury, workers compensation, and social security disability. She has served two terms as Vice President of Finance on the American Morgan Horse Association's Board of Directors. Kate is a lifelong owner, breeder, and exhibitor of Morgan horses who says, "I rode hunter/jumpers starting at the age of eight. At 12, I rode my first Morgan. And that was that!" She says establishing trusts and directives for her horses is central to her role as their owner. "I feel personally responsible for horses I care about, to be sure they have a good life and a good ending. Horses rely on us. We raise them like pets. We are their stewards for a period of time."

In this question and answer interview, and its accompanying documents, Kate shares her approaches to safeguarding the future of horses she has loved.

Describe the legal status of livestock left by those who pass without some kind of directive or trust.

First, to be clear, I do not practice in the field of trusts and estates. We hire a reputable local firm that has attorneys who focus in this area and are familiar with drafting equine trusts to handle our estate matters. Generally speaking, though, in law, animals

are considered chattel and are therefore subject to property rights. When it comes to the death of an owner with no directives in their will, livestock is property that can be disposed of in any manner, as long as it is consistent with the animal treatment/abuse laws in that state. To a Morgan horse owner, that means your beloved Morgan(s) could be sent to an auction of any sort if you have no specific directives in place laying out how the horse(s) will be cared for and where the money for their care is to come from.

Owners must have to identify different categories, such as older horses needing care, show horses of significant value, youngsters who have a long future. Do you suggest different determinations based on these categories?

We have been through the gamut in terms of the Morgans we have owned and the directives we have set up as we have had changing herds in terms of age and number. During a time when our entire family was traveling extensively together and our Morgans were in their late teens, I purchased a life insurance policy and reached out to a reputable equine sanctuary in the Catskills. We reached an arrangement where, were we to die, the sanctuary would get the policy payout and would take our horses and care for them for the remainder of their natural lives. Our wills reflected this arrangement and we spoke with our extended family about our wishes.

LIFETIME GUARANTEE OF VALUE

This Guaranteed Value Contract (“Contract”) is entered into, by:

The Smith Family, The Current Owner of Jane Doe, aka “Jane,” Microchip #XXXXXXX, AMHA #1234567; consisting of Sam Smith, residing at XXXXXXXXXXX, phone number xxx-xxx-xxxx, Susie Smith, residing at XXXXXXXXXXX, phone number xxx-xxx-xxxx, and Scott Smith, residing at XXXXXXXXXXX, phone number xxx-xxx-xxxx, and their assigns and heirs.

Recitals:

WHEREAS, the Smith Family is the current lawful possessor of a Morgan horse known as Jane Doe (hereafter known as “Jane”);

AND WHEREAS, the Smith Family desires to ensure that Jane maintain a minimum value irrespective of her owner, location and/or condition, as long as she is living, so as to avoid sale and/or transfer of Jane for meat processing;

NOW, THEREFORE, the Smith Family agree as follows:

1. Guaranteed Value:

The Smith Family hereby agrees that Jane shall forever carry with her a guaranteed minimum value that the Smith Family agrees to pay for Jane, if living. This minimum value shall be calculated at **two times** the current market price of meat plus any shipping costs required to return Jane to the Smith Family.

2. Irrevocability:

The Parties acknowledge and agree that this guaranteed minimum value contract shall be irrevocable and binding, and that this Lifetime Guarantee of Value shall travel with Jane upon transfer to any new owner.

3. Transfer of Ownership:

In the event that the ownership of Jane is transferred to a third party, this Contract and its terms shall continue to be binding and the current owner of Jane shall ensure that the new owner is aware of terms set forth herein.

4. Governing Law:

This Contract shall be governed by and construed in accordance with the laws of New York. Any disputes arising out of or relating to this Contract shall be resolved exclusively by the courts of New York.

5. Entire Agreement:

This Contract constitutes the entire agreement with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the Effective Date first above written.

Date:

The Smith Family:

[Signature]

[Names of members of The Smith Family]

Date:

A sample of Attorney Kate Kirsch's unique Lifetime Guarantee of Value, which follows horses she sells. She reminds others to be sure such a document is consistent with law in your state of residence.

With older horses, a stable, well-run sanctuary would work. With younger horses, sitting in a field at a sanctuary would not be a suitable life. As we now have young stock more suited for the show ring, we have updated our wills and added a trust for the horses should we both pass. The trust sets forth specific instructions for their care and the money to be set aside for this purpose. In addition, we have picked a suitable trustee, and a secondary trustee should the first not be able to serve, whom we trust to fully implement the directives laid out in the trust. The trust would allow our young stock to continue in training and in the show ring should the worst happen to my husband and me.

Regarding horses you've sold, you have a precaution about "first right of refusal." Explain that.

When I was younger and less knowledgeable on these matters, I would add language to the contract of sale pertaining to a "Right of

First Refusal." The idea was that the new owner would not sell the horse to another party without first offering us the option of purchasing the horse. These contracts, which are unenforceable, never resulted in us being contacted prior to the sale of the horse. These contracts do not provide any incentive to the buyer, now trying to sell the horse, to take the time to follow through with a past owner. For instance, there is no indication of what the prior owner would be willing to pay or consideration for the changing values of the specific horse and the market. Moreover, it is likely that old contract is sitting in a drawer somewhere or in the trash as it holds no real value to the current horse owner upon sale of the horse.

In your personal planning for Morgans you've owned or bred you have two different categories of contracts. What are they and can you provide brief descriptions?

Our horses now sell with a Lifetime Guarantee of Value Contract

SAMPLE NEW YORK WILL LANGUAGE FOR EQUINE TRUST

When drafting a Last Will and Testament and giving personal effects, household effects, automobiles, and other personal tangible property to successors, the attorney will add a paragraph:

- A. I give all horses owned by me and all horse related tangible personal property, including, but not limited to, all tack and care items, to the trustee of the SUZIE SMITH REVOCABLE TRUST, created under a Trust Agreement made by me as Grantor, as the same may be amended or restated, to be held in accordance with the provisions comprising such Trust Agreement at the time of my death.

SAMPLE NEW YORK TRUST LANGUAGE

In the Trust Agreement for the SUZIE SMITH REVOCABLE TRUST (part and parcel of the Last Will and Testament) paragraphs can be added as such:

- A. If I owned any horses on the death of the survivor of us, either directly or indirectly (such horses owned at such time, the "Horses"), the Trustee must hold (i) the Horses, (ii) all tangible personal property associated with the Horses, including, but not limited to, all tack and care items, and (iii) the sum of XXXXXXXX in an honorary trust for animals in accordance with Estates, Powers, and Trusts Law Section 7-8.1 and on the following terms:
 - 1. The Trustee may distribute any part or all of the income and principal of the trust for the care, maintenance, boarding, and general welfare of the Horses. Payments may be made in the amounts and proportions determined from time to time in the discretion of the Trustee. As guidance to the Trustee, I request that the Trustee consider the wellbeing of the Horses first before considering the interests of any remainder beneficiary, it being my (or my husband's and my, etc.) intent to provide for the most generous care of the Horses possible, even to the extent of exhausting this trust providing such care. In addition, it is our strong intent to release the Trustee from any liability, to the maximum extent allowable by law, to any remainder beneficiary for providing such care. Any income not paid must be accumulated and added at least annually to principal.
 - 2. The trust terminates on the last to die of the Horses. On such termination, and after all remaining final expenses associated with the Horses have been paid, the remaining principal of the trust (if any) must be distributed to my then surviving descendants, per stirpes, subject to Sections 3.2 and 3.3.

A reminder from Attorney Kate Kirsch is to have your lawyer assure you the language is consistent with law in your state of residence.



Kate Kirsch, middle right, with the AMHA Board of Directors in 2020.

in addition to the standard Bill of Sale. This simple contract lists all family members and their contact information. The contract also gives a quantifiable sum that we agree to pay into the future for the return of that horse, as long as it is living, regardless of condition. We utilize a figure that can change over time but hopefully provides enough incentive for the buyer to pass on the contract with future sales and reach out to us if the horse is headed to auction. The quantifiable value we set is equal to two times the current market meat price plus shipping back to us. It may not be necessary to go that high and the value can be set at whatever you are comfortable with as long as it incentivizes someone to reach out. To incentivize the continued use of the contract with what could be multiple owners through various sales, it should be sufficiently over the market meat price. For instance, someone could use \$500 over meat price plus shipping, or whatever they feel would be enough to entice any future owner of the horse to reach out before sending that horse off to auction. Ideally, these contracts could be somehow attached to the horse's papers in the event that the contract is lost and the horse finds itself at auction without the benefit of this contract. We feel that this contract, while not foolproof, would have more traction and staying power than the Right of First Refusal. Who wouldn't appreciate buying a horse or selling a horse whose value will never go below a set price that is well above the market meat price at auction? It is a value to any future buyer which, we hope, would help this contract travel more efficiently with the horse over its lifetime.

You also mention a life insurance option. How does that work?

If someone has a beloved Morgan or Morgan(s) but does not have the resources or estate to cover their expenses in event of a death, a life insurance policy could be a potential solution. It should be noted that, in most states, pets do not have any legal claim to property. So instead of leaving the proceeds of a life insurance policy directly to your horse(s) in your will, it is best to leave the horse(s) and the proceeds of the life insurance policy (to be used specifically to care for the horse(s)), to a trusted guardian. Also, as noted above, the proceeds could be directed to be payable to a rescue or sanctuary you trust in exchange for their taking over the lifetime care of your horse(s).

Depending on the owner's age and other factors, term policies can be relatively inexpensive to purchase. Once purchased, they can

be utilized for the sole purpose of supporting the horse(s) when you pass. Your will would have to spell out the guardian, the policy information, and how you want policy proceeds spent, but it is a relatively simple way of providing funds to care for your horse(s) upon your death. The proceeds of the life insurance policy could also be utilized to set up a trust in event of an untimely death. The cost of setting up the trust is borne by the estate out of the proceeds of the insurance so there is no expense in directing a trust while living, other than paying the attorney to put the directives together.

In addition to reading this article, what steps should a horse owner take? Should they consult a lawyer? Will state laws vary? Where do owners need to exercise due diligence?

Estate law does vary state to state so I would recommend that an owner reach out to an attorney familiar with the estate laws in their specific state and, ideally, the construction of trusts set up for animals. The expenses surrounding the creation of the trust are not borne until after the death occurs and would be payable out of the estate, unless otherwise provided. The Last Will and Testament needs to be drafted in such a way that the trust is clearly defined, both monetarily and with regard to directives for how the money should be spent for the care of the horse(s).

Could heirs contravene your directives?

In the event of a Last Will and Testament and/or a Testamentary Trust, it is extremely important that you appoint someone you completely trust to oversee your directives to the letter. The executor you name oversees the administration of the estate and is bound to strictly adhere to the directives laid out in the will, with some rare exceptions. An executor cannot alter the provisions of a will. In the event of a Testamentary Trust, the trustee, who you would name, is in charge of overseeing the trust and complying with the directions in the trust. While the trustee has broad discretion to interpret the trust, they can be found liable for mismanagement of funds in the trust, which is a deterrence to malfeasance in this role. If you cannot find a trustee to name that you fully trust to oversee your directives, you can appoint a bank to oversee the trust. In the end, who you choose to oversee your directives is the most important decision you make for your horse(s). ■