



# Liens for Agistment of Horses under the Impounding of Livestock Act 1994

Updated: January 2008

AG1179

ISSN 1329-8062

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A landholder can allow a horse (or horses) owned by another person to be kept (agisted) on their property for a fee. Such agistment fees vary widely, as do the services and facilities provided for the fee.

Agistment agreements may be a simple verbal arrangement, or ideally, a written agreement between both parties that includes details of the responsibilities of each party, agreed ongoing fees, and payment of unforeseen expenses such as emergency veterinary care.

A signed written agreement between the landholder and the horse owner is highly recommended to prevent disputes arising from misunderstandings and to provide for payment defaults.

## What is a lien?

Unfortunately, many horse agistment agreements are only verbal arrangements. Should a default occur in payment of fees, the landholder is left with the responsibility of feeding and caring for someone else's horse for which they are not receiving payment, with no legal way to remove the horse from the property. A lien under the *Impounding of Livestock Act 1994* provides landholders with a legal process and means of recovering expenses incurred and/or a means of disposing of the horse, where payments are in default and there is no formal written agreement between the parties providing for payment defaults.

## When and how does the lien provision in the Act work?

When a payment default occurs in a verbal agistment agreement in Victoria, under the *Impounding of Livestock Act 1994*, a landholder can create a lien over a horse. This enables them to hold the horse until the money owing is paid within a set period of time, and to sell, exchange, dispose of or destroy the horse if payment is not received by the required date. It is an offence under the Act for a person to remove a horse under a lien from the lien holder, without the permission of the lien holder.

The lien provisions in the Act only apply to horses, and **only apply if there is no written agreement** between the parties providing for defaults on agistment-related payments.

Under the Act, if a payment default occurs, the landholder may issue a default notice to the owner of the horse, if the horse owner has been in default for 14 or more days. The lien over the horse is created when the default notice is served.

The default notice must:

- Specify the amount of money owing for agistment and other related costs (within a maximum period of 3 months);
- Give details of the default and how the money owing was calculated;
- Inform the horse owner that a lien over the horse is held by the person issuing the notice, and that person may keep the horse until the lien is extinguished;
- Inform the horse owner how they may recover the horse, including reimbursement for extra costs incurred by the lien holder in caring for the horse during the period between the date the default notice was issued and extinguishment of the lien or 60 days (whichever occurs first), and costs incurred relating to the intended sale, exchange, disposal or destruction of the horse;
- Inform the horse owner that, if the owner has not paid the money owing within 28 days, the lien holder may sell, exchange, dispose of or destroy the horse;
- Specify when the notice is taken to be served; and
- Specify the date that the notice was issued.

The default notice can be served either in person or by registered post to the horse owner's last known address. If the horse owner's address is not known, the lien holder can publish a notice in the public notices section of a daily Victorian newspaper. This notice must name the horse owner and general location of the horse, advise the horse owner of the fees that are owed, and that Part 3 of the *Impounding of Livestock Act* (liens) applies.

If the horse owner has not paid the money owed or come to a satisfactory agreement with the lien holder within 28 days, the lien holder can then offer the horse for sale at a public auction or by public tender, to attempt to recover their costs. The lien holder must not buy a horse that they have offered for sale (the sale must be at arms length), and must keep all records of the sale for 2 years.

The lien holder may retain from the proceeds of the sale of the horse the amount of money specified in the default notice, extra costs relating to care of the horse after the default notice was issued (maximum of 60 days) and reasonable costs associated with the intended sale, exchange, disposal or destruction of the horse. Any remaining proceeds from the sale must be paid by the lien holder to the horse owner, or if the owner can not be found, to the Consolidated Fund. If the proceeds of the sale of the horse are less than the amount owing to the lien holder, they may sue the horse owner for the remaining amount.

If the horse is offered for sale and is not sold, the lien holder may then exchange, dispose of or destroy the horse. Exchange or disposal of the horse must be at arms length. The lien holder is not required to offer the horse for sale if they obtain a certificate from a registered veterinary practitioner stating that the horse is unsuitable for sale. Additionally, the lien holder must not exchange, dispose of or destroy the horse if it has not firstly been offered for sale or unless they have a certificate from a veterinary practitioner as described above. Ownership of the horse does not transfer from the original owner to a new owner unless the disposal process described above has been followed.

Disputes about liens and the amount owed can be lodged with the Victorian Civil Appeals Tribunal (VCAT) prior to the disposal of the horse by the lien holder.

For more information, contact the DPI Customer Service Centre on 136 186.

*The previous version of this note was published in January 2006.*

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